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DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
BASSET CREEK ESTATES

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is made this 5<sup>th</sup> day of October, 2006, by MJB OF FLORIDA, LLC, a Florida limited liability company, hereinafter called "Developer."

WITNESSETH:

WHEREAS, Developer is the owner of all the real property described in Article II of this Declaration; and

WHEREAS, Developer desires to create on the real property an exclusive residential community to be named BASSET CREEK ESTATES; and

WHEREAS, Developer desires to ensure the attractiveness of the individual lots and community facilities within BASSET CREEK ESTATES and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the real property and to provide for the maintenance of common areas and other community facilities; and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth each and all of which is and are for the benefit of the real property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in BASSET CREEK ESTATES to ensure the residents' enjoyment of the specific rights, privileges and easements in the community properties and facilities, to create an organization to which shall be delegated and assigned the powers of owning, maintaining and administering the community properties and facilities and administering and enforcing these covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

✓ \* E  
Mark Mobley

WHEREAS, Developer will incorporate under the laws of the State of Florida, as a non-profit corporation, the BASSET CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC., for the purposes of exercising the functions aforesaid within BASSET CREEK ESTATES.

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth, which covenants and restrictions are for the purpose of protecting the value and desirability of, and which shall run with, the real property, and which shall be binding on all parties having any right, title or interest in any of the hereinafter described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### **ARTICLE I** **DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

1. "Articles" shall mean and refer to the Articles of Incorporation of the Association (as defined in paragraph 2 below).
2. "Association" shall mean and refer to the BASSET CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC., and shall include in the context of acts of the Association, its officers, directors, employees and agents and independent contractors under contract with the Association, when such are acting for and pursuant to the authority or directives of the Association.
3. "Board" shall mean and refer to the Board of Directors of the Association.
4. "B.O.R." shall mean and refer to the Basis of Review promulgated by the Southwest Florida Water Management District for implementation of Florida Administrative Code §40D-4.
5. "By-Laws" shall mean and refer to the By-Laws of the Association.
6. "Committee" shall mean and refer to the Architectural Committee.
7. "Common Area" shall mean and refer to that portion or those portions of the Premises (as defined in paragraph 16 below), together with any Common Facilities (as defined in paragraph 9 below) from time to time existing thereon and all easements, rights and appurtenances thereto, intended for the mutual use, benefit or enjoyment of the Members (as defined in paragraph 13 below); and such additions, deletions or substitutions thereto as the Association may from time to time designate (by recording an amendment hereto) for the common use and enjoyment of the Members, pursuant to Article II hereof. The Common Area

shall constitute portions of the Premises which are now or in the future shall be owned, controlled or maintained by the Association, or which is declared to be a Common Area by this Declaration or by an amendment thereto.

8. "Community Development District" or "CDD" shall mean and refer to the K-Bar Ranch Community Development District, or its successors and assigns, which is a community development district created under the provisions of Chapter 190, Florida Statutes. All Lots within K-Bar Ranch are a part of the CDD, and all Owners shall be subject to the assessments levied in connection with the CDD.

9. "Common Facilities" shall mean and refer to the parking areas, roadways, walkways, sidewalks, bicycle paths, guardhouse, gate houses, gates, landscaped areas, swimming pools, recreation areas, ponds, waterways, conservation areas and open spaces and such other improvements or structures (including, but not limited to drainage facilities) from time to time or at any time located or constructed on the Common Area.

10. "Community Streets" means (i) "streets and roads," as delineated on the plat for BASSET CREEK ESTATES, and (ii) any other roads or streets from time to time within or serving the Premises that are owned by the Association and not dedicated to use by the general public.

11. "Developer" shall mean and refer to MJB OF FLORIDA, LLC, a Florida limited liability company, or any successor or assign of Developer that may undertake to develop real property in BASSET CREEK ESTATES and who is designated by Developer as successor Developer.

12. "Lot" shall mean and include parcels of land duly recorded and identified by a plat of subdivision, intended or designated for the construction thereon of one Private Single-Family Residence as herein defined.

13. "Member" shall mean and refer to an Owner (as defined in paragraph 15 below) who holds membership in the Association pursuant to Article II.

14. "BASSET CREEK ESTATES" shall mean and refer to all existing properties, including additions thereto, as are subject to this Declaration and any Supplemental Declaration under the provisions of Article II hereof.

15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Private Single-Family Residence situated within BASSET CREEK ESTATES, including, but not limited to, contract sellers prior to the passage of possession but excluding mortgagees and others having such interest only as security for the performance of an obligation.

16. "Premises" shall mean and refer to the real estate legally described in Exhibit "A" attached hereto (including all structures and improvements located and constructed from time to

time thereon and all easements appurtenant thereto) and such other real estate or interests therein, or other property, as may be added thereto pursuant to Article II hereof.

17. "Private Single-Family Residence" or "Residence" shall mean and refer to a private single family home or house constructed upon one or more of the building plots or Lots within BASSET CREEK ESTATES.

18. "Stormwater Management System" shall mean a system which is designed and constructed to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system as permitted.

19. "Supplemental Declaration" shall mean and refer to an instrument recorded in the Public Records of Hillsborough County, Florida, for the purposes of adding other and further real property to the governance of this Declaration, pursuant to Article II hereof.

20. "Surface Water Management System Facilities" shall include, but is not limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

Section One. Real Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Hillsborough, State of Florida, and is more particularly described in the legal description attached hereto as Exhibit "A," which Exhibit is incorporated herein by reference as fully as if completely and expressly set forth herein. Said real property may hereinafter be referred to as "BASSET CREEK ESTATES" or the "Premises."

Section Two. Additions to Premises. Without further assent or permit, Developer hereby reserves the right, exercisable from time to time, to subject other real property to the restrictions set forth herein, in order to extend the scheme of this Declaration to other property to be developed as part of BASSET CREEK ESTATES and thereby to bring such additional properties within the jurisdiction of the Association. Only the Developer (or a successor Developer specifically designated by the Developer for such purposes) shall have the right to subject additional property to the jurisdiction of the Association; and any attempt to add other property to the governance of the Association or in any way to incorporate such property into BASSET CREEK ESTATES shall be of no effect without the joinder and consent of the Developer, executed with the formalities of a deed and recorded in the Public Records of Hillsborough County, Florida. The additions herein authorized shall be made by filing of record one or more Supplemental Declarations with respect to the properties to be the subject of this Declaration and which shall extend the jurisdiction of the Association to such properties and thereby subject such additions to assessment for their just share

of the Association's expenses. Each Supplemental Declaration may contain such complimentary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character, if any, of the added properties; provided, however, any such supplemental Declaration or any such other Declaration shall not revoke or otherwise amend the provisions of this Declaration as this Declaration pertains to the properties subjected hereto.

Section Three. Mergers. With the consent of the Developer, upon a merger or consolidation of BASSET CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC., with another homeowners' corporation (or similar organization) as provided in its By-Laws, its properties, rights and obligations may be transferred to another surviving or consolidated homeowners' corporation, or alternatively, the properties, rights and obligations of another homeowners' corporation may, by operation of law but only with Developer's consent, be added to the properties, rights and obligations of BASSET CREEK ESTATES HOMEOWNERS' ASSOCIATION, INC., as a surviving corporation pursuant to a merger. The surviving or consolidated homeowners' corporation or association may administer the covenants and restrictions established by this Declaration within the Premises together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Premises except as hereinafter provided and shall not be of effect without Developer's consent.

### **ARTICLE III**

#### **AGREEMENT TO JOIN ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

##### Section One. Membership.

1. Every person or entity who is the Owner of any Lot within BASSET CREEK ESTATES shall be a member of the Association, subject to and bound by the Association's Articles, By-Laws, rules and regulations. The foregoing is not intended to include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership. When any Lot is owned of record in joint tenancy or tenancy in common or by some other legal entity, the members as to such Lot(s) shall be joint and the right of such membership (including the voting power arising therefrom) shall be exercised only as stipulated in Section Two hereinbelow. Membership shall be appurtenant to and may not be separated from a Lot. When one (1) Single-Family Residence is constructed on two (2) or more Lots, the Owner of same shall be entitled to one Membership rate (as described below) for each whole Lot owned.

2. No membership or initiation fee shall be charged, and Members shall not be required to pay at any time any amount to carry on the business of the Association except to pay when due the charges, assessments and special assessments levied upon each Member's Lot as specified in this Declaration, or the By-Laws, or as the Members of the Association may from time to time hereafter adopt.

Section Two. Voting and Voting Rights.

1. The Association shall have two (2) classes of membership voting rights, Class A Members and Class B Members.

A. Class A. Every owner whose Lot is subject to assessment shall be a Class A Member, and every Class A Member shall be entitled to one (1) vote for each Lot owned.

B. Class B. The sole Class B Member shall be Developer, and the Class B Member, for so long as there shall be a Class B Member, shall be entitled to the number of votes equal to Class A Members' votes plus one (1). The Class B Membership shall cease upon the earlier of the date on which (a) the Developer conveys to other than a successor Developer ninety (90%) percent of the parcels of BASSET CREEK ESTATES as it may exist from time to time, or (b) the Developer records in the Public Records of Hillsborough County, Florida, a termination of its right to be a Class B Member.

2. Developer may, from time to time, by written notice to the Association, voluntarily terminate its right to appoint one or more Directors, and continue to exercise its right to appoint the remaining Directors for the period hereinabove specified. Election by Developer to terminate its right to appoint any number of Directors shall not necessarily be deemed an election to terminate the Class B Membership, which shall continue (notwithstanding Developer's waiver of the right to appoint Board members) until the occurrence of the events described in paragraph 1B above. Further, election by Developer to terminate its right to appoint Directors or to terminate its control of the Association shall not affect the right of Developer to participate in the Association as a Member thereof. All Directors who are not subject to appointment by Developer shall be elected by the Association.

3. When two (2) or more persons hold an interest (other than leasehold or security interest) in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by one of such persons as proxy and nominee for all persons holding an interest in a Lot and in no event shall more than the number of votes hereinabove designated be cast with respect to any Lot.

4. Voting on all matters except the election of Directors shall be by voice vote or by show of hands unless a majority of the Members of each Class present at the meeting shall, prior to voting on any matter, demand a ballot vote on the particular matter. Where Directors or officers are to be elected by the Members, the solicitation of proxies for such elections may be conducted by mail.

5. The total number of votes that may be cast on any matter requiring assent of Members shall be equal to the number of votes belonging to Class A and Class B Members, as such numbers shall exist from time to time. Unless this Declaration, the Articles, By-Laws or any law shall specify a greater vote, all Association matters requiring action by Members shall be decided by a majority of the votes cast at a duly called meeting at which more than thirty percent (30%) of the votes that could be cast at such meeting, determined as aforesaid, are represented, in person or by proxy.

**ARTICLE IV**  
**GOVERNANCE OF THE ASSOCIATION**

**Section One. Board of Directors.**

1. The Association shall be governed by its Board comprised of no fewer than three (3) and no more than seven (7) persons (hereinafter "Directors") duly appointed or elected as provided herein and in the Articles and By-Laws.

2. Directors elected by the Members (other than Developer) shall be Members of the Association or spouses of Members. Directors appointed by Developer need not be Members or spouses of Members. The Board shall direct and administer the Common Area and the Common Facilities in accordance with the terms and provisions of this Declaration, including any Supplemental Declarations from time to time recorded pursuant to Article II hereof, as well as in accordance with the Articles and By-Laws.

3. Until the date of the initial meeting of Members described hereinbelow, the Directors shall be three (3) in number, and shall consist of those directors named in the Articles of Incorporation and successors to said named directors designated from time to time by the Developer.

**Section Two. Appointment of Directors by Developer.** Notwithstanding any other provisions of this Declaration or the Articles or By-Laws, the Developer shall be entitled to elect or designate all of the Directors of the Association until such time as the Class B Membership shall be terminated or the Developer terminates its right to elect one or more of the Directors as set forth in Article III.

**Section Three. First and Additional Meeting of Members and Association Delegates to Elect Directors.** Upon receipt by the Association of a copy of any instrument recorded by Developer pursuant to Article III hereinabove or of other appropriate evidence of the termination of Developer's right to select any one or more of the Directors, a meeting of the Members shall be convened within thirty (30) days after receipt of such instrument for the purpose of electing a new Board or to elect those Directors who no longer are to be appointed by Developer.

**Section Four. Election of Directors by Members.** Upon termination of Developer's right to appoint any or all the Directors, those Directors not subject to appointment by Developer shall be elected by vote of the Members (other than the Class B Member) in accordance with the provisions of this Article. Notwithstanding such election, any Director theretofore appointed by Developer who does not elect to resign may stay in office for the balance of his unexpired term and until his successor is elected and qualified.

**Section Five. Informal Action by Members.** Any action required by this Declaration to be taken at a meeting of the Members, or any other action that may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken,

shall be signed by all the Members and respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Members.

Section Six. Board Liability. None among Developer, its partners, employees, shareholders, officers, directors and agents, or the Board, its Directors, officers of the Association, or the agents or employees of any of them (all of the above hereinafter referred to as the "Protected Parties") shall be liable to the Owners or any other person for any mistake of judgment or for any acts or omissions of any nature whatsoever in their respective positions that shall occur subsequent to the date of the recording of this Declaration, except for such acts or omissions found by a court of competent jurisdiction to constitute willful misfeasance, gross negligence or fraud. Each Owner hereby agrees that the Association shall, and the Association hereby agrees to indemnify, hold harmless, protect and defend any and all of the Protected Parties from and against each claim, suit, loss, damage, cost and expense, including, without limitation, attorneys' fees and amounts paid in reasonable settlement or compromise of any such claim, etc., incurred in connection with any act or omission for which such Protected Party is exculpated from liability as provided in this Section. The Board shall assess each Owner for his share of the cost of the aforesaid indemnification, and such assessment shall be collectible and enforceable in the mode and manner set forth in Article VI hereof. To the extent possible, the obligation of the Association and the Owners for indemnification and the Board's liability hereunder shall be insured by means of appropriate contractual endorsements to the comprehensive general liability insurance policies held from time to time by the Association.

Section Seven. Nonprofit Purposes of Association. Nothing herein shall be construed to give the Association authority to conduct an active business for profit on its own behalf or on behalf of the Members, or on behalf of the Developer.

Section Eight. Governing Law. Except as otherwise provided in this Declaration, the Association, its Board, officers and Members, shall be governed by Chapter 617, Florida Statutes.

## ARTICLE V

### PROPERTY RIGHTS IN COMMON AREAS, EASEMENTS

Section One. Members' Easements of Enjoyment. Subject to the provisions of Section Three below, every Member of the Association shall have a non-exclusive right and easement of enjoyment in and to the Common Areas and Common Facilities, and such easement shall be appurtenant to and shall pass with the title to every Private Single-Family Residence situated within BASSET CREEK ESTATES.

Section Two. Title to Common Area. The Developer may retain the legal title to the Common Area until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same, and until such conveyance, Developer shall underwrite the maintenance of the Common Area to the extent assessments from Members (as hereinafter defined) are insufficient for such purpose.



Section Three. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

1. The right of the Association to limit the use of the Common Area and Common Facilities to Owners, their families and guests.
2. The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's published rules and regulations.
3. The right of the Association to dedicate or transfer 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 agreed to by the Members. No such dedications or transfer shall be effective unless the Members entitled to at least a majority of votes in the Association are cast in favor of such dedication or transfer, provided that this paragraph shall not preclude the Board of the Association from granting easements for the installations and maintenance of electrical, telephone, cablevision, water and sewerage, utilities and drainage facilities, and conservation upon, over, under and across the Common Area without the assessment of the membership when such easements are requisite for the convenient use and enjoyment of the Premises.
4. The right of the Developer to impose reasonable covenants and restrictions in respect to such Common Area and Common Facilities, in addition to those set forth therein at the time of conveyance of such Common Area to the Association and such covenants and restrictions will be incorporated by reference and made a part of this Declaration.
5. The right of the Association to levy assessments as provided in this Declaration.
6. The rights of the Association and Developer reserved under this Declaration.
7. The right of the Association to change, improve or modify the Common Area and to mortgage or otherwise encumber the same, or any portion thereof, to secure any indebtedness or obligation of the Association, whether or not the proceeds of such mortgage or encumbrance shall be used for the improvement of the Common Area.
8. The right of the Association to control parking and traffic flow in the Common Area by rules and regulations, including the right to prohibit parking on the streets and roadways of the Premises.
9. The right of the Association (or the Developer acting in the Association's stead) to maintain, irrigate from, alter the water level of, and promulgate rules, regulations and use restrictions for and otherwise exert control over any ponds or lakes lying within or in the vicinity of the Premises.

10. The right of the Association or the Developer to repair, maintain or replace any fences or walls erected by the Association or the Developer along the property line of the Premises, for which an easement of ingress and egress across the Premises for such purpose is hereby created and granted to the Association and the Developer.

Section Four. Extension of Rights and Benefits. Every Member of the Association shall have the right to extend the rights and easements of enjoyment vested in him under this Article to each of his tenants and to each member of his family who resides with him within the Premises and to such other persons as may be permitted by the Association. The Developer shall have the right to extend the rights of enjoyment and use and easements vested in him to its guests and invitees, including, but not limited to, potential purchasers of all or portions of the Premises.

Section Five. Utility Easements. Developer, for itself and its grantees, legal representatives, successors and assigns, hereby reserves a reasonable easement, privilege, and right on, over, under and through the ground to erect, maintain, and use electric and telephone poles, wires, cables, conduits, water mains, drainage lines, or drainage ditches, sewers, and other suitable equipment for drainage and sewage disposal purposes or for the installation, maintenance, transmission, and use of electricity, cable for television reception, security systems, telephone, gas, lighting, heating, water, drainage, sewer and other convenience or utilities on, in, over and under all of the easements and rights-of-way shown on or referred to in the plat (whether such are shown on the plat to be for drainage, utilities or other purposes). Developer shall have the unrestricted and sole right and power of alienating, encumbering and releasing the privileges, easements and rights referred to in this Section. The Owner of the Lot or Lots, subject to the privileges, rights and easements in this Section, shall acquire no right, title or interest in or to any poles, wires, cables, conduits, pipes, mains, valves, lines or other equipment or facilities placed on, in, over or under the property which is subject to said privileges, rights and easements. All such easements, including those designated on the plat, shall remain private easements and the sole and exclusive property of Developer, its grantees, legal representatives, successors and assigns, including, but not limited to, the Association.

Within the aforementioned easements, no structure, planting or other material shall be placed or permitted to remain that would damage or interfere with the installation or maintenance of the utilities or that may change the direction of flow of drainage channels in the easement.

Section Six. Access Easement. The Association and the Developer, and each of them, are hereby granted and reserved perpetual non-exclusive easements through, over and across the Common Area and so much other of the Premises (including specifically, the Lots) as shall be necessary for the purposes of exercising the rights, performing the functions, and discharging the responsibilities, permitted or required to be performed or discharged by them pursuant to any provisions of this Declaration.

Section Seven. MSTU/MSBU. Developer, Hillsborough County, or the City of Tampa may establish a municipal service taxing unit, municipal service benefit unit, or similar mechanism (sometimes referred to in this Declaration as "MSTU/MSBU"), to provide for any one or more of the following: (a) operation and maintenance by the City of Tampa and/or Hillsborough County of any Common Area and/or Common Facilities, and any recreational, drainage or other

improvements thereon, for the uses and purposes set forth in this Declaration or in any applicable subdivision plat, which may or may not include a requirement that ownership of the affected lands and improvements be transferred to the City of Tampa or Hillsborough County; (b) construction or improvement of recreation, drainage, sidewalk, wall, landscaping, open space, conservation or other areas, improvement of facilities on or within the Common Area or any easement areas for the use and benefit of the Premises and the occupants thereof; and (c) construction, operation, or maintenance of street lighting or any other service or benefit to or for the Premises authorized under the terms of this Declaration or the MSTU/MSBU, or by the applicable governmental authority. It is anticipated that the costs incurred by the MSTU/MSBU will be billed directly to the Owners or to the Association for subsequent assessment to the Owners and Lots.

## **ARTICLE VI**

### **COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section One. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot within BASSET CREEK ESTATES by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges prorated for the number of days Owner has title in the year of conveyance; and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the Lot, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. If a Single-Family Residence is constructed on more than one (1) Lot, assessments shall be charged against each such Lot.

Section Two. Purpose of Assessments. The assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine are for the benefit of its Members, which purposes may include maintenance, landscaping, security and beautification of the Common Area. Common Area may include public or other lands designated by the Developer and/or the Association. Funds may also be used to provide other services for the Members to promote the health, safety and welfare of the residents of BASSET CREEK ESTATES, and in particular for the acquisition, improvements and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area and Common Facilities, including, but not limited to, the cost of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against the Common Area; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the employment of security personnel to provide any service that is not readily available from any governmental authority; and such other needs as may arise.

Section Three. Exempt Property. The assessments, charges and liens created under this Article VI shall not apply to the Common Area or to Lots owned by the Developer. Any Lot that

Developer may hereafter designate for common use as part of the Common Area or otherwise shall be exempt from the assessments and charges created herein so long as such Lot is not thereafter used as a Private Single Family Residence. In addition, all property dedicated to and accepted by a local or state public authority, all land granted to or used by a utility company, all properties owned by a charitable or nonprofit organization, and all property set aside or dedicated for conservation purposes shall likewise be exempt therefrom.

Section Four. Maximum Annual Maintenance Assessment. Until January 1, 2007, the maximum annual maintenance assessment shall be One Thousand Dollars (\$1,000.00) per Lot irrespective of whether the assessed Lot is covered by this Declaration or as an "addition" as provided for by Article II, Section Two; provided, however, such sum may be increased by an amount necessary to offset the additional costs of mowing and maintaining lawns of Private Single Family Residences if the Association elects to undertake such activity. From and after January 2, 2007, the annual assessment may be increased by the Board to an amount which will be sufficient, in the judgment of the Board, to provide funds required by the Association in carrying out its stated purposes and functions for the ensuing calendar year; provided, however, in no event shall the annual assessment as adjusted by the Board exceed one hundred twenty-five percent (125%) of the amount of the annual assessment for the immediately preceding calendar year (excluding increases for lawn maintenance, as aforesaid) without the consent and assenting vote of sixty percent (60%) of the total votes of the Association.

Section Five. Special Assessments for Capital Improvements. In addition to the annual assessment authorized hereinabove, the Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of construction or purchase of a specified capital improvement upon or to the Common Area, and the necessary fixtures and personal property related thereto; provided however, that, except for special assessments that shall not exceed in any one (1) calendar year the sum of Three Thousand Dollars (\$3,000.00) per Lot (based on 2006 dollars), any such special assessment shall first be approved at a meeting of the Members (other than the Class B Member) at which a quorum is present in person or by proxy by the affirmative vote of sixty percent (60%) or more of the votes so represented in person or by proxy at such meeting. The foregoing approval shall in no event be required with respect to expenses incurred in connection with the replacement, repair or maintenance of existing Common Area, or any existing improvements or personal property associated therewith.

Section Six. Assessment Rate. Excepting exempt property, both annual and special assessments for the Lots shall be fixed at uniform rates.

Section Seven. Notice and Quorum for any Action Authorized Under Sections Four and Five. Written notice of any meeting called for the purpose of taking any action authorized under Sections Four and Five of this Article shall be sent to all Members not less than ten (10) days and no more than sixty (60) days in advance of the meeting.

Section Eight. Date of Commencement of Annual Assessment; Due dates; Certificate of Payment. Annual assessments provided for herein shall commence as to all Lots of record on the first day of the month following acceptance and approval by the applicable governmental entity of

the infrastructure of BASSET CREEK ESTATES. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Not later than thirty (30) days after January 1 of each year, the Board shall fix the amount of the annual assessment against each Lot, and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed assessment rate shall be sent to every Owner. The due dates for the payment of annual and special assessments shall be established by the Board. The Association shall, upon demand and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid to date.

Section Nine. Effect of Non-Payment of Assessment; remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lower of eighteen percent (18%) per annum or the highest rate permitted by law. The Association, its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section Ten. Subordination of Non-Payment of Assessment; Remedies of the Association. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to assessment; provided, however, that such subordination shall apply only to the assessments that have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, and/or from the lien of any such subsequent assessment. The term mortgage or mortgages shall include deed of trust or deeds of trust.

Section Eleven. Developer Excused From Assessment. Developer hereby agrees that, for so long as Developer is in control of the Association, Developer shall pay any operating expenses of the Association that exceed the assessments receivable from other Members and other income of the Association. For so long as these conditions continue, Developer shall be excused from payment of its share of the operating expenses and assessments related to its Lots and Parcels.

## **ARTICLE VII**

### **USE RESTRICTIONS, COVENANTS AND CONDITIONS**

The Board of Directors of the Association shall have the responsibility of enforcing the restrictions set forth in this Article. The following use restrictions, covenants and conditions shall apply to each and every Lot now or thereafter subjected to this Declaration.

Section One. Screening of Other Uses.

1. No house trailer shall be permitted to stay on any Lot or Common Area. No boats, boat trailers, campers or any other such vehicle, trailer or vessel shall be permitted to stay on a right-of-way or on a Lot unless permanently enclosed in a garage or carport and screened from view of adjoining Lots, streets and Common Area. Temporary buildings and other structures shall be permitted during the construction of houses or as a temporary real estate sales office of Developer for the sale of land and residences. No out building or other appurtenant structure shall be used for residential purposes, either temporarily or permanently.

2. Except with respect to sales activities conducted by developer or their builders, if any, who are offering houses for sale in the ordinary course of business, no house or other structure on any Lot shall be used for commercial or business purposes. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no substance, thing or material shall be kept upon any Lot that will emit foul or noxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other such debris for pickup by garbage and trash removal service units. After pickup of garbage and trash, the Owner shall promptly remove garbage receptacles in the pick-up area and shall store same either behind an outside screened or walled area or in an enclosed area that is not visible from the street or from neighboring Lots. The provisions of this section shall not apply to Lots upon which houses are under construction.

#### Section Two. Fences, Hedges, Walls and Landscaping.

1. All plans for installing or altering landscaping, fences, walls and hedges must receive prior written approval from the Committee before installation.

2. When the Developer constructs a wall or fence ("Boundary Wall") along the boundary of the Premises or any part of the boundary of the Premises, the Association shall maintain and repair at its expense all of any such boundary Wall that does not abut a Lot. Each Owner shall maintain and repair at its expense all of any such interior portion of the Boundary Wall that abuts his or her Lot, which maintenance and repair of the interior portion of the Boundary Wall shall be the obligation of, and shall be undertaken by and at the expense of, the respective Lot Owner(s) upon, or contiguous to, whose Lot(s) such Boundary Wall is constructed, but only as to such portion of the Boundary Wall as bounds such Lot. The obligation of such Owners shall not be affected by the fact that the Boundary Wall may be only partially on the Lot and partially on the right-of-way or other property. No Lot Owner shall be permitted to paint, decorate, change or alter, or add to or affix any object or thing to the exterior surface of the Boundary Wall. Similarly, no Owner shall be permitted to add, attach or fix any object or thing, or in any way damage or impair the interior surface or top of such Boundary Wall. Any change in the color of paint for the Boundary Wall shall be approved by the Committee. If any Owner shall fail to undertake any maintenance, repair or replacement as required by this paragraph, such may be done by the Association, at the Owner's expense, upon ten (10) days' written notice.

#### Section Three. Animals.

1. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any lot, except for household pets such as dogs, cats, and birds kept for the sole pleasure and purpose of the occupants but not for any commercial use or purpose. Birds shall be confined in cages.

2. No person owning or having possession, charge, custody or control of any dog or other pet shall cause, permit or allow the pet to stray, run, go or in any other manner be at large in or upon any public or private street, sidewalk or park or on private property of others without the express or implied consent of the owner of such private property.

3. At all times when outside, dogs shall be kept on a leash, and the Owner shall promptly remove and properly discard any waste left by his or her dog.

#### Section Four. Signs.

1. No advertising signs exceeding shall be erected upon or displayed or otherwise exposed to view on any Lot or improvement thereon unless approved by the Committee. If any Owner or his agent violates the provisions of this section, agents of the Association shall have the right to go upon the Lot and remove the violating sign without liability to the Owner or to the realtor or other party who owns or who installed such sign.

2. Notwithstanding anything in this Declaration to the contrary, Developer, its successors, assigns or other builders permitted to maintain model homes within the Premises shall have the right (to the extent permitted by Developer) to maintain signs of any type and size and for any purpose on any Lot.

#### Section Five. Utilities.

1. All residential utility service lines (including, without limitation, electricity, telephone, any and all types of radio and television lines, cables, etc.) to the Lots shall be underground; provided, however, this restriction shall not be construed to prohibit the installation or construction of one or more central utility service relay towers in the event such is, in the Committee's sole discretion, deemed necessary.

#### Section Six. Wells.

1. Except with the prior written approval and permission of the Committee, no water well shall be sunk or drilled on any Lot; provided, however, Developer reserves the right to locate wells, pumping stations and tanks within residential areas or any Common Area, or in any area designated for such use on any recorded plat. The foregoing is not meant to prohibit a Lot Owner who has an existing well on his Lot to use such existing well for lawn watering.

#### Section Seven. Noxious Activities.

1. The pursuit of hobbies or other inherently dangerous activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices which might cause disorderly, unsightly or unkempt conditions; the shooting of firearms, fireworks or pyrotechnic devices of any type or size; and other such activities shall not be pursued or undertaken on any part of any Lot or the Common Area without the consent of the Developer or the Association.

2. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot, nor shall anything be done thereon that may be or become an embarrassment, discomfort, nuisance or annoyance to the neighborhood.

3. No commercial vehicles of any type shall be permitted to remain overnight on a Lot within the Premises, unless garaged, other than as may be used by the Developer in conjunction with building operations.

4. No private trucks, trailers, boats and no unlicensed motor vehicles of any type shall be permitted to remain overnight on any Lot, unless garaged.

#### Section Eight. Storage of Materials.

1. Incinerators for garbage, trash or other refuse shall not be used in or permitted to be erected or placed on any Lot. Any and all equipment, coolers, woodpiles, garbage cans, refuse or storage piles placed on a Lot (whether temporary or permanent) shall be walled in to conceal same from the view of the neighboring Lots, roads, streets or open areas. Plans for all screens, walls, and enclosures must be approved by the Committee prior to construction.

2. No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction to completion of the improvement in which same is to be used.

3. No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except for water tanks that may be constructed by the Developer for the storage of potable water for the community and fuel tanks for Developer's use during building operations.

#### Section Nine. Community Streets.

1. Access over, on and across Community Streets is extended to any sovereign to make any reasonable or necessary use of the Community Streets for furnishing fire, police, and other emergency services; making inspections, collection and deliveries; and otherwise exercising sovereign authority in a manner consistent with any requirements of applicable law. Such benefit also extends to the United States Postal Service, its successors and assigns, and other public, private or quasi-public utilities (including private delivery or communication services) to furnish services to the Premises in a reasonable manner. The foregoing does not, however, authorize the installation of any facility within the Community Streets without the Association's consent. The Association may



limit or prohibit use of the Community Streets to anyone who does or may cause a disturbance or nuisance within the Premises, including solicitors, pamphleteers, and persons purporting to exercise First Amendment rights. Access also is subject to all of the following rights in favor of the Association, any of which may be exercised from time to time as often as the Board considers necessary, convenient, desirable or expedient:

a. Obstructions. To install, restore, maintain and remove speed bumps or other devices and obstructions to control vehicular traffic within the Premises.

b. Security. To install, restore, maintain, and remove security systems, devices or obstructions, to prevent any unauthorized entry into, or exit from the Premises.

c. Regulations. To adopt, amend and enforce reasonable, uniform rules and regulations (i) controlling vehicular traffic or parking, or both, or (ii) regulating or prohibiting various types of classes of vehicles from operating on the Community Streets that are not consistent with the enjoyment of the Premises as a residential community, or (iii) regulating or prohibiting any other activities in, on or affecting the Community Streets that are inconsistent with their intended use, or (iv) any combination of the foregoing.

As used in this Declaration, the term "vehicle" should be interpreted in its broadest sense to include any vehicular means of transport now or thereafter devised, including bicycles and children's vehicles.

2. Parking. No vehicle may be parked overnight, stored, kept, maintained or restored on the Community Streets, except (i) as from time to time may be expressly permitted by the Association's rules and regulations or otherwise with the Association's advance written consent; (ii) for emergency repairs to a temporarily disabled vehicle; (iii) for reasonable deliveries, loading, unloading and construction operations and activities with respect to any Lot; (iv) as a result of police, fire or other emergency; or (v) in connection with reasonable social gatherings, unless the Association determines that parking on the Community Streets as a result of such gatherings is creating a nuisance, when it from time to time may adopt, amend and enforce uniform rules and regulations limiting such parking, or such gatherings, or both. Any vehicle parked in violation of the provisions of this Section, or the Association's rules and regulations (individually and collectively, the "Parking Restrictions"), may be removed by the Association at the expense of its registered owner at the instance of any officer or director of the Association, or any other person from time to time expressly authorized by the Board (collectively, an "Authorized Person").

3. Enforcement. Each Owner and resident of any Lot has a non-delegable duty to the Association to advise his or her respective guests, tenants and family members of the Parking Restrictions and to enforce their compliance by any reasonable means. If any vehicle owned or controlled by any Owner or other person is properly removed from the Premises pursuant to this Article and the Association's costs and such removal, including reasonable attorney's fees, are not recovered from such person, then the unrecovered portion may be assessed specifically against such Owner's Lot, as provided in this Declaration. Without limiting any other right or remedy, the willful refusal to remove, or permit the removal of, any vehicle parked, kept, stored, maintained or

restored in violation of the Parking Restrictions, in either event after proper demand by an Authorized Person, may be prosecuted as a trespass after warning under applicable law.

4. Traffic Control. Without limiting the preceding sections of this Article, the Association from time to time may establish reasonable speed limits or other rules and regulations for vehicular traffic and any other activities in, upon or about the Community Streets. If (i) any owner, tenant, guest or any other person having a right of ingress and egress over the Community Streets willfully and persistently disregards any of the Association's rules and regulations applicable to the operation of vehicles on or about the Community Streets, with the result that the conduct of such person is, or reasonably may tend to become, a hazard or nuisance to any resident or any other person properly using the Community Streets, and (ii) at least two-thirds of the members of the Board of Directors so find after formal notice to, and reasonable opportunity to be heard by, the person affected in a reasonably impartial manner; then, upon the occurrence of both of the foregoing, the Association may levy or fine against such person in an amount not less than \$50.00 and no more than \$100.00 per violation.

5. Basement Limitation. No action properly taken by the Association to this Article impairs, limits or interferes with the easement for reasonable pedestrian and vehicular use of the Community Streets, by the Plat, this Declaration, and the conveyance of the Common Area to the Association. Developer intends to vest in the Association a sufficient right of possession in and to the Community Streets to enable the Association, acting by and through any Authorized Person, to prosecute actions for trespass under applicable law for violation of the Parking Restrictions or under the conditions stated in the preceding paragraph, for violation of the Association's other rules and regulations with respect to the operation of vehicles on or about the Community Streets. No such person initiating any such action, and/or the Association, is liable for malicious prosecution, defamation, other wrongful misconduct, or for any resulting loss or damage, if such person (i) has personal knowledge or has been reliably informed of sufficient facts to form a reasonable conclusion that a violation has occurred, and (ii) in the case of a violation of the Parking Restrictions only, attempts to notify the person apparently owning or controlling the applicable vehicle before undertaking, demanding or authorizing its removal, as the case may be. A single attempted inquiry at the front door of the residential dwelling in front of which the vehicle apparently is parked in violation of the Parking Restrictions is sufficient compliance with the foregoing notice provision, as is posting a written notice of violation at a conspicuous place on the vehicle for a continuous period of at least one hour.

6. Liability. Any use of the Community Streets is at the sole risk of the person making, permitting or authorizing such use. Without limitation:

a. Maintenance. Neither the Association, nor any of its officers, directors, members or employees (including volunteer employees) is or are liable to any person for any loss, injury, damage or death caused by or resulting from any failure to maintain or restore the Community Streets, or any defect or condition in the Community Streets, whether obvious or hidden, unless, such defect or condition is intentionally created by or on behalf of the Association. For any failure by the Association to maintain or restore the Community Streets, the Association, and not any of its officers, directors, members or

employees (including volunteer employees) is liable only for damages for impairment of the easement of access to and over the Community Streets, and not for any resulting or consequential loss, damage, injury or death. The foregoing limitation does not impair any right or remedy of any Owner to seek injunctive or other appropriate relief, coercing the Association to maintain or restore the Community Streets as required by this Declaration.

b. Dominion. No exercise of dominion, ownership, possession or control over the Community Streets by or on behalf of the Association, including the adoption or enforcement, or both, of rules and regulations, or the provisions or operation of security systems or devices, subjects the Association or any of its officers, directors, members, agents, contractors or employees (including volunteer employees) to any liability, unless such exercise is maliciously intended to cause loss, damage, injury or death to any person. No failure by the Association to adopt or enforce, or both, any rules and regulations controlling the use of the Community Streets, or to take any other action with respect to the Community Streets, including the provision or operation of security devices or systems, imposes any liability on the Association for any damage, loss, death or injury to any person.

c. Title. The Association is not liable, solely because of ownership, possession or control of the Community Streets, for any act or omission of any person using or otherwise on or about the Community Streets, unless the Association otherwise is liable under general principles of *respondeat superior*, without regard to the ownership, possession, dominion or control of the Community Streets.

d. Children. Each Owner and resident of any Lot has a non-delegable duty to the Association to warn and prevent children or other persons of immature, diminished or impaired capacity that are subject to such Owner's or resident's right of control from entering or using the Community Streets in a manner hazardous to any such child's or other person's safety, regardless of whether such entry or use is induced by any condition or activity on or about any of the Community Streets that is attractive to a child or other person of immature, diminished or impaired capacity.

e. Property. The Association has no duty of care with respect to any property of any person at any time located, used or operated on or about the Community Streets, except the duty not to damage any such property maliciously.

7. Developer. As a Developer prerogative, Developer may veto any of the Association's rules and regulations relating to the Community Streets; and Developer's consent also is required of any installation upon or affecting the Community Streets, including speed bumps and security systems, or removal of any such installation made by Developer as part of the development of BASSET CREEK ESTATES.

Section Ten. Garages. Garage doors shall be kept closed except when automobiles are entering or leaving the garage. Only the number of cars exceeding occupied garage spaces shall be parked on the driveway. No garages may be converted to any other use, including, but not limited

to, bedrooms, exercise rooms, workrooms, offices, family rooms or playrooms, without approval from the Committee. This provision shall be strictly enforced.

#### Section Eleven. Miscellaneous.

1. No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or other commercial purpose. No elevation changes shall be permitted that materially affect surface grade of surrounding Lots. No Lot shall be increased in size by filling in the water it abuts.

2. No privies or outside toilet facilities shall be constructed or maintained on any Lot without prior approval of the Committee. Any individual sewerage disposal system ("septic tank") permitted by the Committee (any other provisions herein or any other written statements to the contrary notwithstanding) shall also be of a type approved or recommended by the state and local departments of health and shall be maintained by each Owner at all times in the proper sanitary condition in accordance with applicable state and county sanitation laws. Upon completion of such approved facilities, all plumbing and other sanitary systems must be approved as installed by the committee in addition to state and local health officials.

### **ARTICLE VIII** **ARCHITECTURAL COMMITTEE AND REVIEW**

#### Section One. Approval of Plans and Architectural Committee.

1. Until such time as Developer divests itself of all Lots within the Premises, Developer (or such successor Developer) shall appoint from time to time all the members of an Architectural Committee to consist of not fewer than three (3) nor more than seven (7) members who shall exercise authority to approve plans and specifications. After Developer divests itself of all Lots within BASSET CREEK ESTATES, the Committee shall be elected by the Members.

2. For the purpose of further insuring the development of BASSET CREEK ESTATES as a residential area of highest quality and standards, and in order that all improvements on each Lot shall present an attractive and pleasing appearance from all sides of view, the Committee reserves the exclusive power and discretion to control and approve all of the buildings, structures and other improvements on each Lot in the manner and to the extent set forth herein. No residence or other building and no fence, wall, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the main residence, and no landscaping shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any addition to or exterior change or alteration thereto be made, unless and until building or landscaping plans and specifications covering same, showing the nature, kind, shape, height, size, materials, floor plans, exterior color schemes, location and orientation of the Lot and approximate square footage, construction schedule, front, required, including, if so required, plans for the grading and landscaping of the Lot showing any changes proposed to be made in the elevation or surface contours of the land,

have been submitted to and approved in writing by the Committee. All architectural, remodeling and landscape plans must be accompanied by site plans that show the siting of homes on each side of the Lot under consideration. The Committee shall have the absolute and exclusive right to refuse to approve any such building plans and specification and lot-grading and landscaping plans that are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons and reasons connected with future development plans of the Developer of the Premises or contiguous lands. In the event the Committee rejects such plans and specifications as submitted, the Committee shall so inform the Owner in writing stating with reasonable detail the reason(s) for disapproval and the Committee recommendations to remedy same if in the sole opinion of the Committee a satisfactory remedy is possible. In passing upon such building plans and specifications and lot-grading and landscaping plans, the Committee may take into consideration the suitability and desirability of proposed construction and landscaping, as well as their materials and type to the Lot upon which they are to be erected, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding Lots and neighborhood and their existing structures, and effect and appearance of such construction and landscaping as viewed from neighboring properties. In addition, there shall be submitted to the Committee for approval such samples of building materials proposed to be used as the Committee shall specify and require.

3. As a prerequisite to consideration for approval, and prior to beginning the contemplated work, two (2) complete sets of plans and specifications must be submitted to the Committee. Upon giving written approval, construction and/or installation, as the case may be, shall be started and prosecuted to completion promptly and in strict conformity with such plans and specifications. The Committee shall be entitled to stop any construction in violation of these restrictions and any such exterior addition or change or alteration made without application having first been properly made and approved shall be deemed to be in violation of this covenant and may be required to be restored to the original condition at Owner's cost. In the event the Committee fails within thirty (30) days to approve or disapprove plans and specifications properly submitted in accordance with the requirements of Section One, approval will not be required, and this Section shall be deemed to have been fully complied with. The Committee shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications.

4. It shall be the responsibility of the Committee from time to time to publish and make available acceptable specifications, materials and standards for house construction.

5. With respect to the review required under Article VIII of the Declaration, the Committee ("Committee") or Developer, as applicable, shall consider the following provisions in connection with their respective reviews, together with any architectural guidelines issued by the Committee or Developer from time to time. Specific references to the Committee or Developer in these provisions shall not be construed as a limitation of the general review power of the Committee or Developer, as set forth in the Declaration.

a. Building Type. No building shall be erected, altered, placed or permitted to remain on a Lot or Reconfigured Lot, other than one detached single-family Residence

that shall not exceed thirty five feet (35') in height and shall have a private and enclosed garage for not less than two (2) cars.

b. Minimum Residence Size. All Residences shall contain a minimum of two thousand two hundred (2,200) square feet of heated and air conditioned space, excluding all patios, balconies, decks, and garages.

c. Set Backs. All Residences shall be located within the set backs required by the City of Tampa for residential lots classified as RS-75 for 75' lots and RS-60 for 60' lots.

The foregoing set back requirements may be waived by a written instrument executed by the Developer or Committee as Developer or Committee may deem necessary and convenient in their sole discretion.

d. Roofs. All Residences shall have a roof pitch of at least 4/12. Flat roofs and protrusions through roofs for power ventilators or other apparatus shall not be permitted unless approved by Developer, in its sole discretion, as a part of the Initial Improvements. Roofing and shingle material shall be approved by Developer as to color and material. Any reroofing or reshingling of the Residence other than with the same materials and same color shall be approved by the Committee.

e. Garages. All Residences shall be constructed with a garage that will house at least two (2) but no more than three (3) vehicles. No carports will be permitted unless approved by Developer or the Committee, as applicable. Garage doors shall be kept closed except when automobiles are entering or leaving the garage. No garage shall at any time be used as a Residence or converted to become part of the Residence, except if another garage is constructed in compliance with the provisions hereof. Provided, however, a garage may be used by Developer or builder as a sales office during the marketing of the Property.

f. Driveway Construction. All Residences shall have a paved driveway of stable and permanent construction of a width of at least sixteen (16) feet, but not less than door-to-door width, at the entrance of the garage. All driveways must be constructed with approved materials.

g. Fences and Walls. Without limiting the provisions of any other term hereof, the composition and location and height of any fence or wall to be constructed on any Lot shall be subject to the approval of the Committee. The Committee shall require the composition of any fence or wall to be consistent with the material used in the surrounding Living Units or other fences, if any. If an Owner owns a pet as permitted hereunder, such Owner shall be required to either erect or maintain a fence in the yard or construct and maintain another Committee approved method for keeping and restraining such permitted pets. Any fence, wall, hedge or other similar structure must be included

in the Plan submitted to the Committee with respect to the location, height and type of material and must be approved by the Committee.

h. Ancillary Structures. Unless approved by Developer or the Committee, as applicable, as to use, location and architectural design, no garage, tool, guest quarters, or storage buildings can be constructed separate and apart from the Residence, nor can any such structures be constructed prior to construction of the Residence. Any such permitted ancillary structures, such as detached garages, guest quarters, or storage buildings shall be constructed of the same materials and in the same architectural style as the Residence, and shall be subject to the same setback lines, approvals of the Committee, and other restrictions applicable to the Residence itself.

i. Antennae and Other Devices. Unless prior written approval has been obtained from Developer or the Committee, as applicable, no exterior radio antenna, satellite dish, DBS satellite dishes or other receiving or transmitting device, antenna, aerial, solar panel or other solar collector, windmill, or any similar, exterior structure or apparatus may be erected or maintained anywhere within the Property. In considering whether to approve such devices, the Committee shall consider the size of the device and whether it is visible from other Lots or any road.

j. Artificial Vegetation. No artificial grass, plants or other artificial vegetation or sculptural landscape décor shall be placed or maintained upon the exterior portion of any Lot, unless approved by Developer or the Committee.

k. Lighting. No external lighting shall be installed without the prior approval of Developer or the Committee, as applicable. No lighting will be permitted that alters the residential character of the Property.

l. Recreational Structures. All play structures shall be located at the rear of the Residence or on the inside portion of corner Lots within the setback lines, provided however, any basketball backboards shall be located so as to minimize noise to adjoining Residences and no basketball backboards may be installed adjacent to the street or on any cul-de-sac. Further, all basketball backboards, prior to installation must be approved by the Committee and shall be made of clear glass (fiberglass) and shall not be attached to the Residence. No platform, doghouse, tennis court, playhouse, or play fort shall be constructed on any part of a Lot located in front of the rear line of the Residence constructed upon said Lot, and any such structure shall have prior approval of Developer or the Committee, as applicable. Any portion of a Reconfigured Lot used for recreational purposes must be adequately screened in the front and sides by landscaping, fencing or walls, as approved by the Committee or Developer, as applicable, so that such uses shall not be visible from any road.

m. Window Air Conditioning. No window or wall air conditioning units will be permitted. All air conditioner compressors shall be screened from view, insulated by a fence, wall or shrubbery so as to minimize noise.

n. Window Coverings. No reflective window coverings or treatments shall be permitted. The Committee, at its discretion, may control or prohibit window coverings and treatments not reasonably compatible with aesthetic standards in the area where the Lot is located.

o. Mailboxes. No mailbox, paper box or other receptacle of any kind for any use in the delivery of mail, newspapers, magazines, packages, or similar materials shall be erected on any Lot without the approval of the Committee or Developer, as applicable, as to style and location. If required by the U.S. Postal Service, mail delivery may be made to a centralized box location at any time that the U.S. Postal Services requires a change in the method of delivery. Owners shall install the required receptacles as approved by the Committee.

p. Energy Conservation. Solar energy and other energy conservation devices are not prohibited or discouraged, but the design and appearance of such devices will be closely scrutinized and controlled by the Committee or Developer, as applicable, to assure consistency with the aesthetic standards of the Property. Use of clotheslines or other exterior clothes drying facilities shall not be permitted on the Common Property or any other part of the Property where they would be visible from any road or Lots.

q. Special Taxing District. Developer or the City of Tampa may impose on the Land a Special Taxing District for maintenance of the street lights, and to pay the power bill for the street lights, and all Owners of Lots or Parcels subject hereto agree to join in same at the time the District is created.

r. Significant Wildlife Habitat. Developer, its successors and/or assigns, may impose on each Lot an annual special assessment to pay for the cost of maintaining the "significant wildlife habitat" bordering BASSET CREEK ESTATES, and all Owners of Lots or Parcels subject hereto agree to pay such assessment.

6. There is specifically reserved unto the Committee, the right of entry and inspection upon any Lot for the purpose of determination by the Committee whether there exists any construction of any improvement which violates the terms of any approval by the Committee or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Committee is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith. The Association shall indemnify and hold harmless the Committee from all costs, expenses and liabilities including attorney fees incurred by virtue of any member of the Committee's service as a member of the Committee.

## Section Two. Land Use.



1. By or with the written consent of the Committee, one or more Lots or parts thereof may be combined to form one single building Lot; provided, however, in such event, the Owner shall pay assessments on both such Lots.
2. Only one Private Single-Family Residence shall be erected, constructed, placed or maintained on any one of the platted lots in BASSET CREEK ESTATES as same are now platted, except that more than one Lot may be used for one Private Single-Family Residence.
3. No building shall be erected, altered, place or permitted to remain on any Lot other than one detached Private single-Family Residence.
4. No structure of a temporary nature or character shall be used as residence.
5. In the event that additional properties are added hereto in accordance with Article II, Section Two above, it shall be allowable to add a multifamily use for such additional premises in accordance with a Supplemental Declaration containing such complimentary additions and modifications of these covenants, conditions, and restrictions necessary to reflect the different character of the added properties.

#### Section Three. Surface Water Management System.

1. The Association shall maintain, as part of the common elements, drainage structures for the properties and comply with conditions of the permits from the Southwest Florida Water Management District (hereafter, "SWFWMD" or the "District") for the Surface Water Management System. The Association, shall, when requested by Declarant, accept transfer of the SWFWMD permit for the development. The conditions may include monitoring and record keeping schedules, and maintenance. The Association is responsible for maintenance, repair and replacement of common elements and Surface Water Management System in perpetuity. Notwithstanding any other provisions of this Declaration to the contrary, the Association shall allocate sufficient funds in its annual budget for monitoring and maintenance of the wetland mitigation areas each year until the District determines that the mitigation area(s) is successful in accordance with the Environmental Resource Permit for the Property.
2. The Association shall maintain, as part of the common elements, any areas designated on the Properties as mitigation areas for wetlands. The Association shall comply with all applicable permit conditions for such areas, including monitoring and maintenance of wetland vegetation, and the replanting of wetland vegetation to meet required survival rates.
3. It shall be the responsibility of each property Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, F.A.C., approved and on file with SWFWMD, and to comply with the requirements of B.O.R. subsection 2.6.2.2.5.

4. It is the Lot Owner's responsibility not to remove native vegetation (including cattails) that become established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Lot Owners should address any question regarding authorized activities within the wet detention pond to SWFWMD, City of Tampa Permitting Department and all other appropriate governmental entities.

5. Lot Owners are notified that this Property is subject to the requirements of a permit issued by the Southwest Florida Water Management District. In addition, the Owner is required to obtain a Surface Water Management Permit in accordance with Chapter 40D-4, F.A.C. from SWFWMD prior to initiating any construction or alteration of a Surface Water Management System on this Property.

6. Any ponds or other water areas on Lots or otherwise within the Property are for the exclusive use of the Owners and occupants of those Lots on which such ponds are located, subject to any drainage easements that are part of the Plat or provided for herein. It is the exclusive right and obligation of the Association to maintain such ponds and water areas. The area(s) shown as wetland conservation easement on any recorded plat of the Property, shall be left to remain and survive intact in its present (created or natural) condition, character and state. The disturbance in any manner of the existing (created or natural) condition, character and state of such areas, or the vegetation thereon, or the ecology, topography or bionomics thereof is hereby prohibited. It is the intention of Declarant that these areas shall not be changed, disturbed, used, affected or molested in any manner whatsoever, except as permitted by law. Notwithstanding the foregoing, Declarant may change, disturb and affect such areas as permitted or required by law in the course of the development of the Property or Declarant's other property, and upon completion of any such change, the then existing state and condition shall be deemed for the purposes of this paragraph, to be the present and existing condition, character and state thereof.

7. SWFWMD shall have the right to enforce this Article (including the right of a civil action for injunction and/or penalties) against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities.

8. Any amendment of this Article VIII, as to the protective covenants must receive prior written approval from SWFWMD to be effective.

9. In accordance with SWFWMD requirements impervious construction on each lot is limited to a maximum of 10,000 square feet.

10. If the Association ceases to exist, all Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System Facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility as required pursuant to Article XI of the Articles of Incorporation of the Association, and pursuant to B.O.R. subsection 2.6.2.2.4(h).

## ARTICLE IX OWNER'S OBLIGATIONS

### Section One. Owner's Obligation to Maintain.

All Lots, together with the exterior of all improvements (if any) located thereon, shall be maintained in a neat and attractive condition by their respective Owner. Such maintenance shall include, but not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks and other exterior improvements. In the event the Owner shall fail to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Committee, and such failure shall continue for ten (10) days after the Association posts a notice on such Lot or mails a notice to the Owner at his property address requesting Owner to comply with the requirements of this Section, after approval by two-thirds (2/3) vote of its Board, the Association shall have the right, through its agents and employees, to enter upon said Lot and exterior of the building and any other improvements erected thereon and perform such maintenance as approved by the Board. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject and Owner shall be personally liable to the Association for the costs of such maintenance. The costs, until paid, shall be a permanent charge and lien upon such Lot. Entry to perform maintenance shall be only between the hours of 7:00 a.m. and 7:00 p.m. on any day except Sunday. Such entry as herein provided shall not be a trespass, nor shall the Association be liable for doing anything reasonably necessary or appropriate in connection with carrying out these provisions. By acquiring property subject to these restrictions, each and every Owner agrees to pay such costs promptly upon demand by the Association, their agents, assigns or representatives.

### Section Two. Owner's Obligation to Repair.

Each Owner shall, at his sole cost and expense, repair his Private Single Family Residence, keeping the same in a condition comparable to the condition of such Private Single-Family Residence at the time of its initial construction, excepting only normal wear and tear.

### Section Three. Owner's Obligation to Rebuild.

If all or any portion of a Private Single-Family Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such Private Single-Family Residence in a manner that will substantially restore it to its appearance and conditions immediately prior to casualty or to immediately remove all debris from the Owner's Lot and regrade and resod the Lot. Reconstruction shall be undertaken within six (6) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners. If reconstruction or repair of any such Private Single-Family Residence is not so recommenced within six (6) months, the Association may raze or remove the same promptly from Owner's Lot at Owner's expense.

#### Section Four. Owner's Obligation to Maintain Landscape.

To preserve the natural integrity and beauty of the land, no trees, shrubs, bushes or other vegetation having a diameter of three (3) inches or more shall be cut, destroyed or mutilated except with the prior written consent and permission of the Committee; provided, however, that dead or diseased trees, shrubs, bushes or other vegetation shall be cut and removed promptly from any Lot by the Owner thereof after such dead or diseased condition is first brought to the attention of the Committee and permission for such cutting and removal has been obtained.

### **ARTICLE X** **RIGHTS OF DEVELOPER**

Section One. Sales Office. For so long as the Developer owns any property affected by this Declaration, the Developer and any builders approved by Developer, shall have the right to transact any business necessary to consummate sales of any of said property or other properties owned by Developer, or such approved builders, including, but not limited to, the right to maintain model dwellings, have signs on any portion of the Premises, employees in the offices, use the Common Area and show dwellings. Sales office signs and all items pertaining to sales shall remain the property of the Developer, or such approved builders. The rights of the Developer set forth in this Article may be assigned in whole or in part to another person or entity.

Section Two. Reservations. Developer specifically reserves the right (1) to make such site plan modifications to BASSET CREEK ESTATES as Developer deems necessary or advisable, (2) to amend this Declaration, (3) and to annex, include and subject additional property to this Declaration.

Section Three. Community Systems and Services. Developer reserves for itself, its successors and assignees, and grants to the Association through its Board of Directors (after Developer no longer owns any property described on Exhibit "A") the exclusive and perpetual right to provide and operate, or permit others to provide and operate within the Premises, such telecommunication systems (including, without limitation, cable television, community intranet, internet, broadband, voice over internet protocol (VOIP), wireless WI-FI and other systems for receiving, distributing, and transmitting electronics data, signals and audio or visual communications), security systems and services, utilities (including irrigation, water and natural gas), trash collection and other systems and services, including, without limitation, conduits, wires, amplifiers, towers, antennae, and other apparatus and equipment for the operation or provision thereof (collectively, the "Community Systems and Services") as Developer, in its discretion, deems appropriate and (after Developer no longer owns any of the property described on Exhibit "A") the Association through its Board of Directors, in its discretion, deems appropriate. Such right shall include, without limitation, the right to select and contract with companies are licensed, if applicable, to provide such services in the vicinity of the Premises, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant governmental authority, if applicable. Developer may receive, and shall be entitled to retain, any

rebate, credit, fee or incentive relating to the installation, operation or provision of any Community Systems and Services.

For so long as Developer owns any property described on Exhibit "A," Developer may require that the Association enter into agreements for the provision of the Community Systems and Services. Any payments required as a result of such agreements shall be billed to the Owners by the Association (or its assigns), and each Owner shall be required to make such payment to the Association within twenty (20) days of receipt of the same. In the event that an Owner fails to make a payment for the Community Systems and Services, then the Association shall have the right to lien such Owners Lot until such payment is made. After the Developer no longer owns any property described on Exhibit "A," the Association through its Board of Directors may, but shall not be obligated to, enter into agreements for the provision of Community Systems and Services to all Lots as a common expense. If particular services or benefits are provided to particular Owners or Lots of service areas at their request, the benefited Owner(s) shall pay the service provider directly for such services or the Association may assess the costs as a Special Assessment.

Section Four. Disclaimer of Warranties. The Developer hereby disclaims any and all express or implied warranties as to design, construction, furnishing and equipping of the Premises. As to such warranties that cannot be disclaimed, and to other claims, if any, that can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed. All Owners, by virtue of their acceptance of title to their respective Lot (whether from Developer or from another party), shall be deemed to have automatically waive all of the aforesaid disclaimed warranties and incidental and consequential damages.

Further, given the climate and humid conditions in Florida, molds, mildew, toxins and fungi may exist and/or develop within the homes constructed on the Lots. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Lot, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Developer and the builder of the home from any and all liability resulting from the same, including, without limitation, any liability for incidental or consequential damages (which may result from, without limitation, the inability to possess the residence located on the Lot, inconvenience, moving costs, hotel costs, storage costs, loss of time, lost wages, lost opportunities and/or personal injury). Without limiting the generality of the foregoing, leaks, leaving exterior doors or windows open, wet flooring and moisture will contribute to the growth of mold, mildew, fungus or spores. Each Owner, by acceptance of a deed, or otherwise acquiring title to a Lot, shall be deemed to have agreed that Developer and/or the builder of the residence on the Lot is not responsible, and the Developer and the builder of the residence on the Lot hereby disclaims any responsibility for any illness or allergic reactions, personal injury or death which may be experienced by the Owner, his or her family members and/or his or her or their guests, tenants and invitees and to any pets of persons aforementioned in this sentence, as a result of mold, mildew, fungus or spores. It is the Owner's responsibility to keep the residence located on the Lot clean, dry, well-ventilated and free of contamination.

## ARTICLE XI INSURANCE

Section One. Insurance Company and Policy. All insurance shall be issued by a company authorized to do business in the State of Florida. The named insured shall be the Association individually and as trustee for Owners covered by the policy. The Association is irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners, and shall provide that all proceeds covering property losses shall be paid to the Association as trustee or to such institution in Florida with trust powers as may be designated as insurance trustee by the Board. The trustee shall hold the proceeds for the benefit of the Owners.

Each Owner's portion of the proceeds shall equal such Owner's undivided share in the Association's expenses.

Section Two. Types of Insurance. The Association shall maintain the following types of insurance coverage:

1. Casualty. The Association shall maintain a master policy or policies to insure all buildings and improvements on the Common Area and the Common Facilities. This coverage shall be in such amounts so that the insured will not be co-insured except under the deductible clauses required to obtain coverages at a reasonable cost.

The coverage will include the following: (i) loss or damage by fire or other hazards covered by a standard coverage endorsement; and (ii) such other risks as from time to time shall be customarily covered and buildings similarly built, located and used such as insurance covering windstorm damage, vandalism and malicious mischief; and, when appropriate and possible the policy shall waive the insurer's right to: (i) segregation against the Association and against the Owner, individually and as a group; (ii) the pro rata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for loss that is caused by an act of the Board or a member of the Board on by one or more Owner.

2. Reconstruction and Repair After Casualty. Although it is impossible to anticipate all problems that may arise from casualty, the intent is to try to assure that the overall plan of quality development of BASSET CREEK ESTATES is maintained by requiring damage improvements to be rebuilt and repaired and that unsightly dangerous conditions are remedied as soon as possible. Any reconstruction and repair will be substantially in accordance with the plans and specifications of such property as originally constructed or if none, then according to the plan specifications approved by the Board. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair for which the Association is responsible,

or if at any time during that work, or upon completion of work, the funds available for payment of the costs are insufficient, Assessments shall be made against the Association by all Owners in sufficient amounts to provide funds for the payment of those costs.

3. Public Liability Coverage. The Association shall obtain public liability coverage insuring the Association against any and all claims and demands made by any person or persons for injury received in connection with the operation and maintenance of the Common Area and Common Facilities, or for any other risk insured by such policies that the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than one million dollars covering all claims for personal injury and property damage arising out of the single occurrence provided, however, that the Board may in its sole discretion determine to set higher or lower limits for such coverage upon determining that it is in the best interest of the community to do so. The liability coverage shall include protection against liability for non-owned and hired automobiles and liability hazards related to usage. All such policies shall name the Association (and Developer until the transfer date), as their respective interest may appear, as insured parties under such policy or policies. The original of each policy shall be held by the Board.

4. Fidelity Bond Coverage. The Association shall obtain fidelity bonds covering officers, directors, employees and other persons who handle or are responsible for handling Association funds. Such funds shall be in an amount equal to one hundred percent (100%) of three months operating expenses of the Association and shall contain waivers of any defense based upon the exclusion of persons serving without compensation.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

Section One. Binding Effect. The covenants, conditions and restrictions of this Declaration shall run with and bind the Premises and shall inure to the benefit of and be enforceable by the Association and/or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years after the date that this Declaration is recorded, after which time the same shall be automatically extended for successive periods of ten (10) years unless, prior to the end of such thirty (30) year period or the ten (10) years period then in effect, as the case may be (but not before the termination of the Class B Membership), there shall be recorded in the Public Records of Hillsborough County, Florida: (a) an instrument modifying or abolishing any of the provisions hereof signed by the then Owners and their mortgagees representing seventy-five percent (75%) or more of the Lots that are subject to the provisions of this Declaration, and (b) a certification by the Association to the adoption by the Board of resolutions recommending such modification or abolition to the Members, and certifying to the adoption by vote of the Members of resolutions approving such recommendations at a meeting of the Members called and held in accordance with the Articles and/or By-Laws of the Association.

Section Two. Amendment. For a period of five (5) years after the recordation of this Declaration, Developer shall be entitled, without the consent or joinder of the Association or any

Owner, to amend this Declaration so long as any of the rights of such amendment do not adversely affect in a material way any particular Owner; provided, however, that no amendment shall be made without the consent and joinder of any mortgagee having a mortgage lien on more than ten (10) Lots. Thereafter, this Declaration may be amended by an instrument recorded in the Public Records of Hillsborough County, Florida, accompanied by a certificate of the secretary of the Association certifying that the amendment has been approved by no less than sixty percent (60%) of the Lots which are the subject of this Declaration. The foregoing notwithstanding, the provisions of this section may be amended only by an instrument executed by all Owners and their mortgagees. No amendment shall be effective unless (i) so long as Developer is still in title to any part of the Premises, Developer shall join therein, (ii) written notice of the amendment is sent to every Owner appearing in the records of the Association, at least thirty (30) days in advance of any action taken, (iii) a general meeting has been held thereon, and (iv) such amendment has been recorded in the Public Records of Hillsborough County, Florida. In addition, no amendment executed by less than all of the Members, as provided hereinabove, shall be effective if the effect of the amendment would be either to deprive unreasonably Owners of their rights and interests in the Association and the Premises or to impose a substantially greater economic burden upon individual Owners. Notwithstanding anything in this section, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Section Three. Special Amendments. Anything herein to the contrary notwithstanding, Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time which amends this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Governmental National Mortgage Association, The Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Lots, (iii) to correct clerical or typographical errors in this Declaration or any exhibit, (iv) to bring this Declaration into compliance with applicable law, ordinances or governmental regulations, or (v) to minimize any federal or state income tax liability of the Association. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and consent to the reservation of, the power of Developer to make, execute and record Special Amendments. The right and power to make Special Amendments hereunder shall terminate on the date the Class B Membership terminates.

Section Four. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.



Section Five. Notices. Any notice required or desired to be given under the provisions of this Declaration to any Member, Owner or any other person entitled to use or enjoy the Common Area, or any part thereof, shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the last known person who appears as a Member, Owner or other person entitled to notice, at the last known address for each such person, all as shown on the books and records of the Association at the time such notice is given. In the event that the Owner of any Lots should change (because of sale, gift, testamentary disposition or otherwise), the new Owner shall promptly notify the Association by delivering or mailing written notice of such change to the office of the Association.

Section Six. Enforcement. Enforcement by the Association or any aggrieved Owner of these covenants, conditions, restrictions and easements shall be permissible by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition, restriction or easement, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by this Declaration; and failure by the Association (or by the Developer in its behalf) 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.

Section Seven. Severability. Invalidation of any one of these covenants, conditions, restrictions or easements or the application thereto to a specific circumstance by judgment or court order shall in no way affect any other provisions not expressly held to be void nor the provisions so voided in circumstances or application other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions rules upon as they apply to circumstances other than those expressly invalidated.

Section Eight. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles and By-Laws, and the Articles shall take precedence over the By-Laws.

Section Nine. Lease Restrictions. Any lease entered into by an Owner with regard to his Lot shall contain a provision requiring that the terms of the lease shall be subject in all respects to the provisions of this Declaration, and the By-Laws governing the Lot, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Further, any such lease shall be in writing, for a minimum term of one (1) year, and a copy thereof shall be provided to the Association within ten (10) days of full execution by the parties thereto.

Section Ten. Delegation and Assignability. Developer shall at all times and from time to time have the right to delegate to another person or entity any and all functions herein reserved to Developer. Further, notwithstanding any other provision contained herein to the contrary, Developer shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest (whether real or personal) in and to the Premises, including the Common Area; provided, however, that any such transferee, grantee or assignee shall take such rights subject to all obligations of Developer set forth herein with respect thereto and such transferee, grantee or assignee shall be deemed to have assumed the same. In the event of any such sale, transfer or conveyance, said Developer shall not be relieved

of liability resulting from its failure to perform or negligent performance of its obligation under these covenants prior to such sale, transfer or conveyance. Developer shall not, however, be liable to any person for any injury or loss resulting from failure of performance or negligent performance of Developer's obligations under these covenant arising after such sale, transfer or conveyance.

Section Eleven. Construction. The provisions of this Declaration shall run with the land (Premises), shall be binding upon all heirs, successors, and assigns of any interest in the Premises, and shall be liberally construed to effectuate its purposes of creating a uniform plan for the development and operation of the Premises.

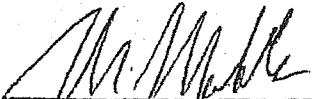
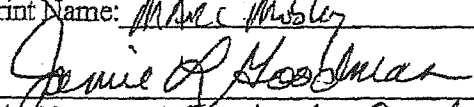
(signatures appear on following pages)

IN WITNESS WHEREOF, the undersigned has caused their signatures and seals to be affixed, this \_\_\_\_ day of October, 2006.

Signed, Sealed and Delivered  
in the Presence of:

"DEVELOPER:"

MJB OF FLORIDA, LLC,  
a Florida limited liability company

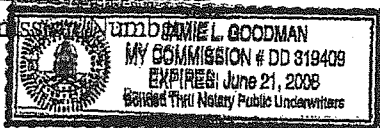
  
Print Name: Timothy F. Mobley  
  
Print Name: JAMIE L. GOODMAN

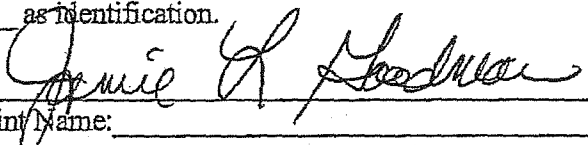
  
By: TIMOTHY F. MOBLEY  
Its: President

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of October, 2006, by TIMOTHY F. MOBLEY, President of MJB OF FLORIDA, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or who produced as identification.

My Commission Expiration  
and Commission



  
Print Name: \_\_\_\_\_

### **EXHIBIT "A"**

A portion of Section 4, Township 27 South, Range 20 East, Hillsborough County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of said Section 4; thence N.89°58'52"W., 2310.32 feet along Southerly boundary line of said Section 4 to the POINT OF BEGINNING; thence continue N.89°58'52"W., 1307.52 feet along said Southerly boundary line; thence N.00°01'08"E., 195.00 feet; thence S.89°58'52"E., 306.00 feet; thence N.00°01'08"E., 272.00 feet; thence N.89°58'52"W., 306.00 feet; thence N.00°01'08"E., 80.00 feet; thence N.89°58'52"W., 11.08 feet; thence N.10°20'39"E., 31.98 feet; thence N.34°45'56"E., 65.76 feet; thence N.53°25'29"E., 38.45 feet; thence N.38°41'50"E., 65.61 feet; thence N.51°48'11"E., 81.54 feet; thence N.31°23'13"E., 25.63 feet; thence N.03°54'04"E., 102.26 feet; thence N.04°36'08"W., 43.89 feet; thence N.21°09'47"W., 88.44 feet; thence N.45°24'33"W., 26.23 feet; thence N.28°58'47"W., 83.57 feet; thence N.21°14'10"W., 51.81 feet; thence N.27°20'23"W., 58.49 feet; thence N.13°59'28"W., 44.13 feet; thence S.82°59'46"W., 12.64 feet; thence S.32°45'39"W., 64.98 feet to the beginning of a curve concave to the Southeast having a radius of 270.00 feet; thence southwesterly 31.58 feet along said curve through a central angle of 06°42'02" (chord bears S.29°24'38"W., 31.56 feet); thence S.26°03'36"W., 296.90 feet to the beginning of a curve concave to the North having a radius of 180.00 feet; thence southwesterly 200.87 feet along said curve through a central angle of 63°56'24" (chord bears S.58°01'48"W., 190.61 feet); thence N.90°00'00"W., 126.27 feet to the beginning of a curve concave to the North having a radius of 169.00 feet; thence NORTHWESTERLY 66.37 feet along said curve through a central angle of 22°30'00" (chord bears N.78°45'00"W., 65.94 feet); thence N.67°30'00"W., 163.64 feet; thence N.23°41'16"E., 60.01 feet; thence S.67°30'00"E., 162.40 feet to the beginning of a curve concave to the North having a radius of 109.00 feet; thence SOUTHEASTERLY 42.80 feet along said curve through a central angle of 22°30'00" (chord bears S.78°45'00"E., 42.53 feet); thence S.90°00'00"E., 126.27 feet to the beginning of a curve concave to the North having a radius of 120.00 feet; thence NORTHEASTERLY 133.92 feet along said curve through a central angle of 63°56'24" (chord bears N.58°01'48"E., 127.07 feet); thence N.26°03'36"E., 296.90 feet to the beginning of a curve concave to the Southeast having a radius of 330.00 feet; thence NORTHEASTERLY 38.59 feet along said curve through a central angle of 06°42'02" (chord bears N.29°24'38"E., 38.57 feet); thence N.32°45'39"E., 82.17 feet to the beginning of a curve concave to the Southeast having a radius of 330.00 feet; thence NORTHEASTERLY 127.42 feet along said curve through a central angle of 22°07'22" (chord bears N.43°49'20"E., 126.63 feet); thence N.54°53'01"E., 77.77 feet; thence N.08°00'00"E., 1097.72 feet; thence N.23°00'00"E., 721.80 feet; thence S.54°27'33"E., 116.16 feet; thence S.11°34'10"E., 63.34 feet; thence S.69°57'38"E., 122.37 feet; thence S.45°10'07"E., 67.26 feet; thence S.61°28'40"E., 46.32 feet; thence S.84°20'34"E., 35.48 feet; thence N.79°30'52"E., 86.34 feet; thence N.64°59'15"E., 51.45 feet; thence N.61°30'41"E., 94.74 feet; thence N.56°27'02"E., 56.11 feet; thence S.51°25'48"E., 82.96 feet to the beginning of a curve concave to the Southwest having a radius of 280.00 feet; thence SOUTHEASTERLY 333.69 feet along said curve through a central angle of 68°16'56" (chord bears S.36°02'40"E., 314.29 feet) to the point of reverse curvature with a curve concave to the Northeast having a radius of 375.00 feet; thence SOUTHEASTERLY 312.28 feet along said curve through a central angle of 47°42'44" (chord bears S.25°45'34"E., 303.33 feet) to the

point of reverse curvature with a curve concave to the Southwest having a radius of 530.00 feet; thence SOUTHEASTERLY 82.50 feet along said curve through a central angle of  $08^{\circ}55'07''$  (chord bears  $S.45^{\circ}09'23''E.$ , 82.42 feet); thence  $S.43^{\circ}46'27''E.$ , 76.84 feet; thence  $S.20^{\circ}57'12''E.$ , 111.82 feet; thence  $S.04^{\circ}40'41''E.$ , 60.00 feet; thence  $S.29^{\circ}32'41''E.$ , 104.26 feet; thence  $S.20^{\circ}43'49''W.$ , 72.55 feet; thence  $S.06^{\circ}16'43''E.$ , 55.21 feet; thence  $S.01^{\circ}16'45''W.$ , 67.77 feet; thence  $S.22^{\circ}20'29''E.$ , 128.41 feet; thence  $S.64^{\circ}37'18''E.$ , 235.78 feet; thence  $S.75^{\circ}56'58''E.$ , 59.63 feet; thence  $S.89^{\circ}07'21''E.$ , 46.55 feet; thence  $N.83^{\circ}00'20''E.$ , 155.97 feet; thence  $N.72^{\circ}04'06''E.$ , 67.35 feet; thence  $S.58^{\circ}13'48''E.$ , 45.61 feet; thence  $S.38^{\circ}11'47''E.$ , 48.34 feet; thence  $S.27^{\circ}38'08''W.$ , 177.78 feet; thence  $S.20^{\circ}44'36''W.$ , 102.02 feet; thence  $S.10^{\circ}30'26''E.$ , 133.93 feet; thence  $S.45^{\circ}44'06''E.$ , 45.84 feet; thence  $S.73^{\circ}52'36''E.$ , 20.54 feet; thence  $N.86^{\circ}39'52''E.$ , 96.26 feet; thence  $N.86^{\circ}31'11''E.$ , 73.36 feet; thence  $N.80^{\circ}38'16''E.$ , 62.37 feet; thence  $S.20^{\circ}05'41''E.$ , 44.02 feet; thence  $N.69^{\circ}53'16''E.$ , 43.46 feet; thence  $S.20^{\circ}06'44''E.$ , 69.04 feet; thence  $S.69^{\circ}52'01''W.$ , 41.93 feet; thence  $S.20^{\circ}07'06''E.$ , 120.95 feet; thence  $S.69^{\circ}54'19''W.$ , 1575.36 feet; thence  $S.13^{\circ}26'00''E.$ , 500.00 feet to the POINT OF BEGINNING.