

**AMENDED AND RESTATED  
DECLARATION OF MASTER COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
MAGNOLIA POINTE**

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This Declaration of Master Covenants, Conditions and Restrictions ("Declaration") of Magnolia Pointe is made by the Members of Magnolia Pointe Master Homeowners' Association, Inc., by and through their undersigned representatives.

**WITNESSETH:**

**WHEREAS**, as of the date of this Amendment, the Declarant does not own any real property belonging to the Association and all Declarant's rights are hereby terminated;

**NOW, THEREFORE**, all of the real property described in **Exhibit "A"** attached hereto shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property. Said easements, covenants, conditions, restrictions, reservations, liens and charges shall run with the real property described in Exhibit "A" attached hereto, shall be binding upon all parties having and/or acquiring any right, title or interest in the real property described therein or in any part thereof, and shall inure to the benefit of each and every person or entity, from time to time, owning or holding an interest in said real property.

**ARTICLE I**

**DEFINITIONS**

The following words and terms when used in this Declaration or any supplemental declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

1. "Architectural Review Board" or ARB shall refer to the board established by the Board and described in Article VIII hereof.
2. "Articles" and "By-Laws" shall mean the Articles of Incorporation and the By-Laws of the Association as they may exist from time to time.
3. "Association" shall mean Magnolia Pointe Master Homeowner's Association, Inc., a Florida non-profit corporation, its successors and assigns, and shall be a homeowner association, not a condominium formed pursuant to Chapter 718 of the Florida Statutes.
4. "Board" shall mean the board of Directors of the Association

5. "Commercial Property" shall mean any parcel of land (whether or not platted) located within Magnolia Pointe used or intended to be used for commercial, industrial, or other non-residential purposes.
6. "Common Expenses" shall mean the actual and estimated expenditures, including reasonable reserves, for maintenance, operation and other services required or authorized to be performed by the Association with respect to Common Property, Open Spaces, Surface Water Management Systems, Lake or Public Areas, all as may be found to be reasonably necessary by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.
7. "Common Property" or "Common Area" shall mean and refer to those tracts of land, together with any improvements thereon, which are actually and specifically dedicated, deeded or leased to the Association and designated in said dedication, deed or lease as "Common Property", or tracts of land identified as "Common Property" on a final plat (or final development plan) recorded by the Declarant. Except where the context clearly indicates otherwise, the term "Common Property" or "Common Area" shall also include "Exclusive Common Areas," as hereafter defined. The term "Common Property" shall also include any personal property acquired by the Association if said property is designated as "Common Property" in the bill of sale or instrument transferring such property. Common Property is specifically reserved for the use and benefit of Members, and is an integral appurtenant part of each Residential Unit.
8. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board and the Architectural Review Board (as defined in Section 2, Article VIII).
9. "Conservation Easements" shall mean easements of dedications granted by the Declarant pursuant to and in compliance with Chapter 170 (h) of the Internal Revenue Code of 1954, as amended from time to time.
10. "Declarant" shall mean the original developer of the community, Magnolia Pointe Development, Inc., a Florida Corporation.
11. "Declaration" shall mean and refer to the Declaration of Master Covenants, Conditions and Restrictions of Magnolia Pointe recorded on February 19, 1998 in Official Records Book 1585, Pages 327-505, the Public Records of Lake County, Florida and include the same as it may, from time to time, be amended.
12. "Exclusive Common Area" shall mean certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all, Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed against the Owners of Units in only those Neighborhoods which are benefitted thereby as a Neighborhood assessment, as defined herein. Initially, any Exclusive Common Areas shall be designated as such by the Declarant and the exclusive use thereof shall be assigned in the deed conveying the Exclusive Common Area to the Association. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods upon the vote of a majority of the total Association vote, including a majority of the votes of Unit Owners within the Neighborhood(s) to which the Exclusive Common Areas are assigned.

- 13.** "Institutional Lender" shall mean and refer to the owner and holder of a Mortgage encumbering a Residential Unit or Residential Property, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, private or public pension fund, Veteran's Administration, the Federal Home Loan Mortgage Corporation & Federal Housing Association, a credit union, real estate or mortgage investment trust or a lender generally recognized in the community as an institutional lender.
- 14.** "Lakes" shall mean natural or artificial water bodies identified as Lakes on the Master Plan of Magnolia Pointe, as amended from time to time. The Lakes may be conveyed to the Association as Common Property, but subject to the Surface Water Management System.
- 15.** "Lot" shall mean any parcel of land shown upon any recorded subdivision map or plat of the Properties upon which in the future will be located an attached or detached single-family residential dwelling.
- 16.** "Magnolia Pointe" shall mean the property developed pursuant to the Master Plan.
- 17.** "Master Plan" shall mean and refer to the most recent PUD approved by Lake County, Florida, for the development of Magnolia Pointe.
- 18.** "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof.
- 19.** "Mortgage" shall mean a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.
- 20.** "Mortgagee" shall mean a beneficiary or holder of a Mortgage.
- 21.** "Neighborhood" shall mean each separately developed and denominated residential area comprised of one or more housing types subject to this Declaration, whether or not governed by an additional owners association, in which owners may have Common Interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or Common Areas and facilities which are not available for use by all Association Members. For example, and by way of illustration and not limitation, each condominium, townhome development, cluster home development, and single-family detached housing development shall constitute a separate Neighborhood. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.
- 22.** "Neighborhood Association" shall mean a condominium, cooperative, or homeowners' association formed to operate and maintain a number of Residential Units and property common to such Residential Units.

**23.** "Neighborhood Committee" shall mean the committee in a particular Neighborhood which is authorized by the Association to act with respect to matters in a particular Neighborhood which does not have a Neighborhood Association.

**24.** "Neighborhood Expenses" shall mean the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board and as more particularly authorized herein.

**25.** "Neighborhood Representative" shall mean the senior elected officer (e.g., Neighborhood Committee Chairman or Neighborhood Association President) from each Neighborhood who shall be the person responsible for casting all votes attributable to Residential Units in the Neighborhood. The next senior officer of each Neighborhood Committee/Association shall be the alternate Neighborhood Representative.

**26.** "Notice" shall mean delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association. If available from the records of the Association, notices to an Owner will be sent to a tenant of Owner occupying the Residential Unit. Notice to one of two or more co-owners shall constitute notice to all Owners.

**27.** "Open Space" shall mean an exterior open area from the ground upward devoid of residential and commercial buildings, accessory structures and impervious areas; except however, those buildings and structures or areas used exclusively for recreational purposes may be included in the Open Space.

**28.** "Owner" shall mean and refer to the owner as shown by the records of the Association (whether it be one or more persons, firms, or legal entities) of fee simple title to any Residential Unit or Residential Property located within the Properties. Owner shall not mean or refer to the holder of a mortgage or security deed its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

**29.** "Parks" shall mean lands so designated on the Master Plan, which lands may or may not be further designated as Common Property.

**30.** "Properties" or "Property" shall mean and include the real property described in Exhibit "A" attached hereto and, when added in accordance with the terms and conditions hereof, shall also include real property which is in the future subjected to the Declaration under the provisions of Article II hereof.

**31.** "Public Areas" shall mean areas dedicated for use by the general public and not limited to use by residents of Magnolia Pointe.

**32.** DELETED.

**33.** "Residential Property" or "Residential Unit" shall mean any parcel of land (whether or not platted) located within the Properties intended for use or actually used as a site for a residential dwelling, including,

but not limited to, any single family attached or detached dwelling home, patio or zero-lot line home, condominium unit, garden home, townhouse unit, or rental or cooperative apartment unit located within the Properties.

**34.** DELETED.

**35.** "Supplemental Declaration" shall mean any supplement, amendment or modification of this Declaration.

**36.** "Single-Family Unit" shall mean and refer to any Residential Unit which is designed and intended for occupancy for not more than one family and is not a part of any building with other Residential Units.

**37.** "Surface Water Management System" shall mean that portion of the Open Space consisting of swales, inlets, culverts, retention ponds, Lakes, outfalls, storm drains and the like, and all connecting pipes and easements, used in connection with the retention, drainage and control of surface water.

**38.** "Turnover" shall refer to the transfer of operation of the Association by the Declarant as described in Article X hereof which took place on November 6, 2002.

**39.** "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted Lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Properties. The term shall include all portions of the Lot owned including any structure thereon. In the case of an apartment building or other structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land or land in which improvements are under construction, the parcels shall be deemed to contain the numbers of Units designated for such parcel on the master plan or site plan, whichever is more recent, until such time as a certificate of occupancy is issued on all or a portion thereof by a local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above, and the number of Units in the remaining land, if any, shall continue to be determined in accordance with this paragraph.

**40.** "Voting Member" shall mean any Residential Property Owner (as to the votes allocated to such Owner) and the President or other authorized designee of a Neighborhood Association (as to all the votes allocated to Residential Unit Owners in such Neighborhood Association); provided that if a Residential Unit Owner is not a member of a Neighborhood Association, such Residential Unit Owner shall be the sole Voting Member as to such Member's allocated votes. All vote allocations are as provided in Article III hereof.

## **ARTICLE II**

### **PROPERTY SUBJECT TO DECLARATION**

**Section 1. Declaration.** The real property subject to this Declaration is described in Exhibit "A" attached hereto and made a part hereof by reference.

**Section 2. Acquisition of Additional Common Property.** The Association may purchase, acquire, accept, or otherwise obtain additional real property, improved or unimproved, which is, or may become pursuant to Section 1, above, subject to this Declaration, which real property, upon conveyance or dedication to the Association, shall be accepted by the Association at its expense for the benefit of all its Members.

**Section 3. Further Restrictive Covenants.** The Owner of Residential Property may record further restrictive covenants, Declarations of Condominium or Cooperative, Declaration of Covenants, Conditions, and Restrictions pertaining to homeowners associations, or plats as to any of the Properties possessed by the Owner. The Association shall have the right of written approval of all such documents and where appropriate and necessary, may require the formation of a Neighborhood Association to serve such Residential Property.

### **ARTICLE III**

#### **MASTER ASSOCIATION**

**Section 1. Members of Master Association.** Every Owner shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing ownership interest, each Owner accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and other rules and regulations of the Association. In addition to the foregoing, the family, guests, invitees, and tenants of said Owners shall, while in or on the Property, abide and be bound by the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and other rules and regulations of the Association.

**Section 2. Allocation of Votes.**

Owners of improved or unimproved Residential Units that have been conveyed by a builder or developer of Residential Property shall be allocated one vote for each improved or unimproved Residential Unit in which they hold the interest required for membership by Article III, Section 1 of this Declaration.

**A.** When any property entitling the Owner to membership in the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or Common Ownership, or if two or more persons or entities have the same fiduciary relationships respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote of each individual shall be considered to represent the will of all the Owners of that property. In the circumstance of such Common Ownership, if the Owners fail to designate their voting representative then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Member(s). Upon such notification the Owner may not vote until the Owner(s) appoint their representative pursuant to this paragraph.

**B.** The voting rights of any Owner may be assigned (for the duration of the lease only) by an Owner to its tenant, if the tenant has entered into a lease with a term of two (2) years or more; provided, however, that the Owner may not assign to such tenant any vote or votes not attributable to the property actually leased by such tenant. No such assignment shall be effective until written notice thereof has been received by the Association.

**C.** When the Neighborhood in which a Member owns a Residential Unit has a duly appointed or elected Neighborhood Representative, the Neighborhood Representative shall have the exclusive right to exercise the voting rights of such Member.

**D.** For purposes of determining voting rights hereunder the membership roster shall be set as of sixty (60) days prior to the commencement of the Association's fiscal year.

**Section 3. Change of Membership.** Change of membership in the Association shall be established by recording in the Public Records of Lake County, Florida, a deed or other instrument conveying record fee title to any Residential Unit or Residential Property, and by the delivery to the Association of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Association, said Owner shall become a Member, but shall not be entitled to voting privileges enjoyed by its predecessor in interest until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Residential Unit acquired; provided, however, that if an Owner constructs Residential Units that the Owner intends to rent to tenants, the Owner shall become liable for and shall pay all fees and assessments attributable to such Residential Units on the date of receipt of the certificate of occupancy therefore. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

## ARTICLE IV

### FUNCTIONS OF MASTER

**Section 1. Common Area.** The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including, without limitation, furnishings, equipment related thereto and Common Landscaped Areas), and shall keep the Common Areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.



**Section 2. Personal Property & Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property.

**Section 3.** . The Association shall have the following powers and may provide the following services:

**A.** Maintenance of all Parks, Lakes, Open Space, Surface Water Management Systems (including those within the boundaries of commercial tracts which are conveyed by the Declarant to third parties), Common Property, recreation areas, landscaping, irrigation systems, lands covered by the Master Plan and all city, county, district or municipal properties and rights of way (to the extent permitted by any governmental authority) which are located within or in a reasonable proximity to the Properties where deterioration of any of the described items would adversely affect the appearance of the Properties or the operation of systems appurtenant to Magnolia Pointe. The Association shall adopt standards of maintenance and operation required by this and other subsections within this Section which are consistent with the Community-Wide Standard.

**B.** Maintenance of any real property located within Magnolia Pointe upon which the Association has accepted an easement for said maintenance.

**C.** Maintenance of beaches, lakes, and canals owned by or dedicated for the use of the Association within the Properties, as well as maintenance of water bodies not owned by the Association within the Properties if and to the extent permitted by an governmental authority having jurisdiction thereof. Maintenance shall include, but not be limited to, the preservation of any shorelines or beaches, (together with lakes and bodies of water) in an ecologically sound condition so that they can be used for such water activities as may be determined and allowed from time to time by the Association.

**D.** Insect, pest and aquatic control where necessary or desirable in the judgment of the Association to supplement the service provided by the state and local governments. The Association reserves a perpetual right on, over and under all Properties to dispense pesticides and take other action which in the opinion of the Association is necessary or desirable to control insects and vermin. The provisions of this paragraph shall not be construed as an obligation on the part of Association to provide such services.

**E.** Taking any and all actions necessary to enforce all covenants, conditions, and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants, conditions, or restrictions applicable to the Properties or in the Articles or By-Laws.

**F.** Conducting business of the Association including, but not limited to, administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events. The Association shall have the right to enter into management agreements with companies in order to provide its services and perform its functions.

**G.** Purchasing general liability and hazard insurance covering improvements and activities on the Common Property at a current replacement cost basis in an amount no less than one hundred (100%) percent of the insurable value, directors and officers liability, and such other insurance as the Board deems

necessary. Hazard insurance proceeds for losses to any Common Property may not be used other than for repair, replacement, or reconstruction of such property unless the Board decides otherwise.

- H.** Establishing and operating the Architectural Review Board as hereinafter defined.
- I.** Adopting, publishing, and enforcing such Rules and Regulations as the Board deems necessary.
- J.** Lighting of roads, sidewalks, and walking and bike paths throughout the Properties as deemed necessary by the Board.
- K.** At the sole option and direction of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.
- L.** Constructing improvements on Common Property and easements as may be required to provide the services as authorized in this Article.
- M.** Employment of guards, maintenance of control centers for the protection of persons and property within the Properties, installation, operation and maintenance of communication systems by the Association or a contractual designee of the Association, and assistance in the apprehension and prosecution of persons who violate the laws of any applicable city, county, state, federal, or other official governmental or regulatory authority, within the Properties. However, neither the Association nor any Neighborhood Association Committee shall be obligated to provide any security measures to the Properties nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association and any Neighborhood Association(s) or Neighborhood Committee(s) established by any of the foregoing entities, are not insurers and that each Owner, tenant, guest, and invitee assumes all risk or loss or damage to persons, to Units, and to the contents of Units and further acknowledge that Declarant has made no representations or warranties nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, express or implied, including any warranty of merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken.
- N.** In addition to maintenance herein provided, the Master Association may provide maintenance of Common Areas of Neighborhood Associations or exterior maintenance upon any Residential Unit or upon any structure containing Residential Units which, in the Association's opinion, requires such maintenance because said Neighborhood Common Areas, Residential Unit, or structure is not being maintained consistent with the Community-Wide Standard.

The Association shall notify the Neighborhood Association or the Owner of said Unit or Units in writing, specifying the nature of the condition to be corrected, and if the Neighborhood Association or Owner has not corrected same within fifteen (15) days after date of said notice, the Association (after approval of a majority affirmative vote of the Board) may correct such condition. Said maintenance shall include but not be limited to painting, repairs, replacement and maintenance of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Residential Unit or exterior of any Residential Unit or other structures or improvements located in Magnolia Pointe at reasonable hours on any day, except Saturday and Sunday. The cost of such maintenance shall be assessed against the Neighborhood Association or Residential Unit upon which such maintenance is performed, but shall not be considered part of the annual maintenance assessment or charge. Any such special assessment or charge shall be a debt of the Neighborhood Association and a lien upon the Residential Unit and an obligation of the Residential Unit Owner and shall become immediately due and payable in all respects, together with attorney's fees, court costs, interest, and other fees or costs of collection as provided for other assessments of the Association.

**O.** The Association may cancel out any of the functions and services specified in Section 1 of this Article to the extent such maintenance and services can be provided with the proceeds first from annual assessments and then, if necessary, from special assessments. The functions and services allowed in Section 1 of this Article to be carried out or offered by the Association at any particular time shall be determined by the Board of the Association taking into consideration proceeds of assessments and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or to provide may be added to or reduced at any time upon the affirmative vote of a majority of the Board. The Association may provide the permitted services by contract with third parties, including agreements with applicable governmental agencies.

**P.** Establish use fees and promulgate rules and regulations respecting the use of Common Property and Association facilities by Members and persons other than Members.

**Q.** Engage in any activities reasonably necessary to remove from the Common Property, Lakes, and Surface Water Management System, and Open Space any pollutants, hazardous waste or toxic materials, and by Special Assessment, recover costs incurred from the Owner(s) causing or upon whose property such materials were located or generated. The functions and services allowed in this Section to be carried out or offered by the Association at any particular time shall be determined by the Board taking into consideration proceeds of assessments and the needs of the Members of the Association. The functions and services of the Association is authorized to carry out or to provide, may be added to or reduced at any time upon the affirmative vote of a majority of the Board. The Association may provide the permitted services by contract with third parties, including agreements with applicable governmental agencies.

**Section 4. Mortgagee and Property.** The Board shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its functions.

**Section 5. Conveyance by Association.** Subject to the provisions of Article V, Section 6(E), the Association shall be empowered to delegate or convey any of its functions or properties to any governmental unit or public utility or for other public purposes consistent with the intended use of such property.

## **ARTICLE V**

### **EASEMENTS**

**Section 1. Appurtenant Easements.** All Owners (and their guests, lessees and invitees), as an appurtenance to and as part of the ownership held by such Owner, but subject to this Declaration, the Articles and By-Laws of the Association, and the rules promulgated by the Association, a perpetual nonexclusive easement for ingress and egress over, across, and through and for the use and enjoyment of all Common Property, which Common Property is an intrinsic and appurtenant part of the value of the Residential Units; such use and enjoyment to be shared in common with the other Owners, their guests, and lessees and invitees.

**Section 2. Utility Easements.** The Board reserves the right to grant easements to any private company, public or private utility, or governmental authority providing utility and other services within the Properties and the Common Property upon, over, under and across the Properties. Said easements shall only be given for the purpose of maintaining, installing, repairing, altering, and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent, disposal lines and systems, pipes, wires, power lines, telephone service, gas lines, siphons, valves, gates, pipelines, cable television service, alarm systems, and all machinery and apparatus appurtenant thereto to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Properties, and Common Property. All such easements to be of a size, width and location as the Board, in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Properties.

**Section 3. Declarant Easements.** DELETED.

**Section 4. Service Easements.** The Board hereby grants to delivery, pickup, and fire protection services, police and other authorities of the law, United States mail carriers, and representatives of electrical, telephone, cable television and other utilities authorized by the Board to service the Properties, and to such other persons as the Board from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Common Property for the purposes of performing their authorized services and investigation.

**Section 5. Drainage Easements.** Drainage flow shall not be obstructed or diverted from drainage easements. The Association may, but shall not be required to, cut drainage for surface water wherever and whenever such action may appear to Association to be necessary to maintain reasonable standards of health, safety and appearance. These easements include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other action reasonably necessary to install utilities and to maintain reasonable standards of health and appearance but shall not include the right to disturb any improvements erected within the Properties which are not located within the specific easement area designated on the plat or in this Declaration. Except as provided herein, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. The Association shall have the sole control over elevations and slopes within drainage easements and no Owner or Neighborhood Association may alter any such elevations except upon written consent of the Association.

**Section 6. Conservation Easements.** The Association reserves the right to grant Conservation Easements to qualified grantees over and across Common Property, Lakes, Open Space, Public Areas, or Surface

Water Management Systems. The rights and easements of enjoyment created in this Article V shall be subject to the following:

**A.** The right of the Association, in accordance with its By-Laws, to borrow money from any lender for the purpose of improving and/or maintaining the Parks, Lakes, Surface Management Systems and Common Property and providing services authorized herein and, in aid thereof, to mortgage said properties.

**B.** The right of the Association to suspend the rights and easements of enjoyment of any member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.

**C.** The Right of the Association to charge reasonable admission and other fees for the use of any recreational facility that may be situated on or in the Parks, Lakes, and Common Property.

**D.** The Board of Directors of the Association shall have the power to place (and remove after notice) any reasonable restrictions upon any roadways owned by the Association including, but not limited to, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulation, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of such roads shall be more restrictive than the laws of any state, or local government having jurisdiction over the Properties, shall not make such restrictions unreasonable.

**E.** The right of the Association to give, dedicate, mortgage, or sell all or any part of the Common Property (including leasehold interests therein) to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be determined by the Association; provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized by the affirmative vote of two-thirds (2/3) of the votes cast by the Members at a duly called meeting of the Designated Representatives for Association, and unless written notice of the meeting and of the proposed agreement and action hereunder is sent at least thirty (30) days prior to such meeting to every Designated Representative entitled hereunder to vote. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

**Section 8. Discharge into Water Bodies.** Nothing other than storm water irrigation waters may be discharged into any lake, canal, or other body of water located within or adjacent to the Properties. Any device through which water is drawn (other than pumping device from any lake, canal, or other body of water onto) or within any portion of the Properties must not be visible unless necessary or unless its non-visibility would pose a hazard to navigation or water recreation. The construction and/or installation of any such device through which water is drawn shall be subject to the prior written approval of the Architectural Review Board as herein below established in Article VIII of this Declaration. Irrigation water may not be withdrawn from any body of water within the Properties or the ground without the consent of the Association, which consent may be withheld in the sole discretion of the Association.

**Section 9. Right of Entry.** The Association shall have the right, but not the obligation, to enter into any Residential Unit or onto any Residential Property for emergency, security, and safety, which right may be exercised by the Board, the Association's officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in any emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

**Section 10. Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each Residential Unit or Residential Property and such portion or portions of Common Property adjacent thereto or as between adjacent Residential Units and/or Properties, including Commercial Property, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the Common Boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to a willful and knowing conduct on the part of an Owner, tenant, or the Association.

## ARTICLE VI

### ASSESSMENTS

**Section 1. Lien and Personal Obligations of Assessment.** Each Owner of any Residential Unit or Residential Property shall by acceptance of a deed therefore, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association: (1) annual assessments; (2) special assessments, (3) specific assessments, and (4) individual assessments and all fees established and collected from time to time as hereinafter provided. The annual, special, specific and individual assessments together with such interest thereon and costs of collection therefore shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment together with such interest thereon and cost of collection shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the property against which the assessment was made. In the case of co-ownership of a Residential Unit or Residential Property, all of such Co-Owners shall be jointly and severally liable for the entire amount of the assessment. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 2. Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, and operation of the Parks, Lakes, Surface Water Management Systems, and Common Property and to provide services which the Association

is authorized or required to provide including, but not limited to, the payment of taxes and insurance thereon, construction, repair or replacement of improvements, payments of the costs to acquire labor, equipment, materials, management, and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions. The Association may establish reserve funds to be held in reserve in an interest drawing account or investments as a reserve for (a) major rehabilitation or major repairs to Common Property that must be replaced on a periodic basis, (b) for emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss and (c) insurance premiums or taxes.

**Section 3. Special Assessments.** In addition to the annual assessments authorized by Section 2 hereof, the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the costs of any acquisitions, constructions or reconstruction, unexpected repair or replacement of a described capital improvement upon Common Property or easements including the necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for that purpose.

**Section 4. Specific Assessments.** In addition to the assessments as provided for in this Article, the amenities and other features solely particular to a specific Neighborhood Association shall be controlled and assessed by that particular Neighborhood Association, notwithstanding any other assessments which are provided for in this Article. Notwithstanding the foregoing, nothing contained herein shall limit, bar, or otherwise prohibit the Association from enforcing its assessments rights as provided for in this Article.

**Section 5. Individual Assessments.** The Association may impose an individual assessment upon any Neighborhood Association or Owner whose use or treatment of Common Areas, Residential Unit, or Residential Property is not in conformance with the standards as adopted by the Association or which increases the maintenance cost to the Association above that which would result from compliance by the Owner with the use restrictions imposed by this Declaration. The amount of such assessment shall be equal to such cost incurred plus 10% of the costs for administration and may be enforced in the manner provided for any other assessment.

**Section 6. Commercial Assessments.** Upon approval of the Board the non residential, commercial portions of Magnolia Pointe may be given the right to use the Parks, Open Space, Common Areas and Recreational Facilities of the Association. In such events the Board may determine the conditions under which the use shall occur, including an equitable assessment (the "Commercial Assessment") payable in consideration of the privilege granted. The Commercial Assessment shall be annually determined by the Board and once assessed against the benefitting property shall be collected under the same time, conditions and lien enforcement remedies provided with respect to other assessments herein provided. Owners of such non-residential, commercial property shall not be Members of the Association.

**Section 7. Maximum Annual Assessment.**

**A.** The maximum annual assessment may be increased each year without a vote of the Neighborhood Representatives for the Membership by a sum not more than 15% above the sum of: (i) the maximum assessment for the previous year, adjusted to reflect price increases based on the U.S. Government's current

Consumer Price Index ("All Items"), plus (ii) increases mandated by governmental agencies and/or increased costs incurred to obtain services from utility entities.

**B.** From and after January 1 of the year immediately following the conveyance of the first Residential Unit to an Owner, the maximum annual assessment may be increased above the provisions as described in Section 7(a) by a vote of two-thirds (2/3) of the Members who are voting (acting through the Neighborhood Representatives), at a meeting duly called for this purpose.

**C.** The Board shall fix the annual assessment at an amount not in excess of the maximum above described.

**D.** Notwithstanding anything contained in this Section 7 to the contrary, the maximum assessment applies only so long as the Properties consist of the real estate described by Exhibit A attached to this Declaration. As and when additional real estate is added to or removed from this Declaration, the maximum assessment may be modified as required by the Board.

**Section 8. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall be due and payable on the first days of such months as may be set by the Board. The Board, pursuant to the By-Laws, shall further determine the date of the commencement of the annual assessments. The due date of any special assessment under Section 3 hereof shall be fixed in the resolution authorizing such Assessment.

**Section 9. Duties of the Board of Directors.** The Board shall prepare a roster of Owners and Neighborhood Associations and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner or Neighborhood Association subject thereto. The Association shall, upon demand at any time, furnish thereto any Owner or Neighborhood Association liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be prima facie evidence of payment of any assessment therein stated to have been paid.

**Section 10. Determination of Annual Assessments.** The Board shall determine the total annual assessment for the Properties. Written notice of any meeting of the Board at which the Board shall consider determination of the annual assessment or any special assessment shall be sent to all voting members not less than thirty (30) days or more than sixty (60) days in advance of the Board Meeting. At the first such meeting called, the presence of voting members, proxies or the Neighborhood Representatives entitled to cast 60% of all of the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called of the Board subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. At such subsequent meeting of the Board if the required membership quorum is not present, but there is a quorum of the Board present, the Board shall be authorized to act with respect to determining the total annual assessments or any special assessments.

**Section 11. Allocation of Assessments.** All Members shall pay equal Annual Assessments.

**Section 12. Assessment of Declarant.** DELETED.



**Section 13. Determination of Allocation of Assessments.** The number of Residential Units or Residential Units allowable to Residential Property used for the calculations of the allocation of assessments shall be determined as of the ownership of record sixty (60) days prior to the commencement of the fiscal year of the Association and once so determined shall be controlling for the entire fiscal year.

**Section 14. Effect of Non-Payment of Assessment: The Personal obligation of the Neighborhood Association and Owner: The Lien: Remedies of Association.** If the assessments are not paid on the date due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and the entire annual assessment shall, together with interest thereon and cost of collection thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. The obligation of the Owner to pay such assessment, however, shall remain a personal obligation. The Association may record a notice of lien for delinquent assessments in the public records and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent bona fide purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments thereafter until satisfied of record. Assessments applicable to Owners that are members of a Neighborhood Association shall be billed to such Neighborhood Association. The Neighborhood Association shall have the initial responsibility for billing the Owner and collecting such assessments, which assessment will be deemed a debt of the Neighborhood Association. If the Neighborhood Association pays the assessment applicable to an Owner, but the Owner does not promptly reimburse the Neighborhood Association, such association shall be subrogated to the lien rights herein provided. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum rate permitted by law or at such other rate as set forth by the Board, whichever is less, and the Association may bring an action at law against the Neighborhood Association or the Owner personally obligated to pay the same or foreclose the lien against the property and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

**Section 15. Subordination of the Lien to the Mortgagees: Mortgagees' Rights.** The lien of the assessments provided for herein is subordinate to the lien of any first mortgage given to an institutional lender now or hereafter placed upon a Residential Unit or Residential Property; provided, however, that such subordination shall apply only to the assessments which 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 property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. An institutional first mortgagee, upon request, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the institutional mortgagee. An institutional first mortgagee may pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Property and mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

**Section 16. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Property as defined in Article I hereof; (c) all property dedicated for recreational use pursuant to Article VIII, Paragraph I, (d) Property designated as Parks, Lakes, or which is used in the Surface Water Management Systems.

**Section 17. Collection of Assessments.** Owners of Residential Units or Residential Property shall pay all Master Association assessments directly to the Master Association.

**Section 18. Costs of Collection.** The Association shall be entitled to its costs of collection and attorney's fees from any Owner or Neighborhood Association against whom an assessment must be enforced.

**Section 19. Capital Contribution.** The Board shall annually prepare a capital budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and time by Annual Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the budget and assessment. Any reserve fund established by the Board shall be held in an interest-bearing account or investments.

## ARTICLE VII

### NEIGHBORHOOD ASSOCIATIONS

**Section 1. Mandatory Neighborhood Associations.** All Owners of Residential Units shall become members of the mandatory Neighborhood Association formed by Owners of Residential Property prior to the sales of Residential Units therein. The Association shall have the right of specific approval or veto of annual budgets and all legal documents (and amendments thereof) associated with all Neighborhood Associations, including, but not limited to, Articles of Incorporation, By-Laws, Declarations of Covenants, Conditions and Restrictions, Declaration of Condominium, Declaration of Cooperative, and Plats. No improvements shall be commenced on any Residential Property until all legal documents for the Neighborhood Association have been submitted to and approved in writing by the Association. All such documents shall be consistent and compatible with this Declaration and the Association. It is the Associations intent, although not its obligation, to authorize four individual Neighborhood Associations within Magnolia Pointe: (1) the Magnolia Pointe Custom Homeowner's Association comprising quarter acre section lots (66 lots) and patio home section lots (78 lots) ("Custom Association"); (2) Magnolia Pointe Lakefront Homeowner's Association comprising 64 lakefront lots ("Lakefront Association"); (3) the Chateau Condominium Association, a Condominium, comprising \_\_\_\_\_ condominium units pursuant to Chapter 718, Florida Statutes ("Condominium Association"), and (4) Magnolia Pointe Sweetwater Ridge consisting of 225 approved townhome units ("Sweetwater Association").

**Section 2. Neighborhood Representation on Association Board.** The Association shall be governed by eight (8) directors or such other number as may be set forth in the Bylaws, as amended from time to time.

The Custom Association, Lakefront Association, Condominium Association, and Sweetwater Association shall be each entitled to appoint an equal number of directors to the Association Board of Directors.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

**Section 1. Establishment of Architectural Review Board.** There is hereby established an Architectural Review Board ("ARB").

**Section 2. Duties of and Functions of ARB.** The duties, powers and responsibilities of the ARB shall be as follows:

**A.** The ARB shall consist of three (3) or more persons designated by the Association which may be appointed, removed, and replaced by the Board in its sole and absolute discretion. The Board shall appoint the members of the ARB and shall provide for the terms of the members of the ARB. Members of the ARB need not be officers, directors, or members of the Association. The Association shall have the right, but not the duty, to create a subcommittee of the ARB for the Lakefront HOA, Custom HOA, and Condominium.

**B.** The ARB shall have the right of specific approval or veto of all architectural, engineering, platting, planning, and landscaping aspects of any improvement or development of individual units or buildings as well as the general plan for development of any individual lot or subdivision, tract, or parcel of land within the Properties. All construction and development within the Properties is subject to local governmental control, provided, further, that the ARB may, in its sole discretion, impose standards of architectural and landscaping design, building setback lines, or the general plan for development, which standards are greater or more stringent than standards prescribed in applicable building, zoning, planning, or other local governmental codes.

**C.** No building, sign outside lighting, fence, hedge, wall, walk, dock, or other structure or planting shall be constructed, erected, removed, planted, or maintained nor shall any addition to or any change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and the location of same shall have been submitted to and approved in writing by the ARB. Any change in the outward appearance of any improvement including but not limited to repainting the same in a different color, adding decorative sculptures, wrought iron grills, or the like, shall also require approval in writing by the ARB before any work is commenced. Refusal of the approval of plans, specifications, or location may be based upon any grounds, including purely aesthetic considerations, which the ARB, in its sole and uncontrolled discretion, deems sufficient.

**D.** All plans for the construction of any improvements within the Properties shall contain a drainage plan which shall be consistent with the master drainage plan for Magnolia Pointe.

**E.** As part of the application process, two (2) complete sets of plans and specifications prepared by an architect or other person found to be qualified by the ARB shall be submitted for approval by written application on such form as may be provided or required by the ARB. In the event the information

submitted to the ARB is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

**F.** The ARB shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the ARB shall consider the suitability of the proposed building, improvements, structure, or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area, and the effect thereof on adjacent or neighboring property.

**G.** Unless specifically excepted by the ARB, all improvements for which approval of the ARB is required under this Declaration shall be completed within a reasonable time from the date of commencement of said improvements or within the time set by the ARB in the event that the approval is so conditioned.

**H.** The ARB shall in all cases have the right to determine and designate building set back lines necessary to conform to the general plan of Magnolia Pointe in order to preserve the integrity of the Properties and the Master Plan. In this respect the ARB's judgment and determination shall be final and binding.

**I.** In the event the ARB shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form within thirty (30) days after written request for approval or disapproval such plan and specification shall be deemed approved.

**J.** There is specifically reserved unto the ARB, the right of entry and inspection upon any Residential Unit or Residential Property for the purpose of determination by the ARB whether there exists any construction of any improvement which violates the terms of any approval by the ARB 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 ARB 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 conjunction therewith. The Association shall indemnify and hold harmless the ARB from all costs, expenses and liabilities including attorney's fees incurred by virtue of any member of the ARB's service as a member of the ARB.

**K.** The ARB may delegate any portion or all of its powers reserved hereunder to a Neighborhood Association that enacts and enforces architectural control standards as stringent as set forth herein. The ARB has the further right to appoint a subcommittee of the ARB for any Neighborhood Associations that may be formed, which said subcommittee shall be known as the "Neighborhood ARB." For example, the ARB may appoint a Neighborhood ARB for the Magnolia Pointe Custom Homeowner's Association, Inc., and a separate Neighborhood ARB for the Magnolia Pointe Lakefront Homeowner's Association, Inc. Any such Neighborhood ARB's so appointed shall be subordinate to and governed by this Declaration and the ARB's rights hereunder.

**L.** A majority of the ARB may take any action of the full ARB Board and may designate a representative to act for it. In the event of death, disability, or resignation of any member of the ARB, the remaining members shall designate a successor.

**M.** The ARB may adopt further rules and regulations as it deems necessary to carry out its functions and purposes hereunder, provided all such rules and regulations shall be filed with and made a part of this Association's minutes.

**N.** The ARB may impose reasonable fees and charges upon Owners to enable it to carry out its functions.

**O.** In each instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration or any other covenants which the ARB has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the ARB reserves the right to release the property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ARB, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Properties.

**P.** The ARB may require that any portion of the Residential Properties and any improvements thereon within the Properties be pre-wired for cable television and/or security in such a manner as the ARB shall specify.

**Q.** The ARB has the right, but not the obligation, to grant waivers for minor deviations and infractions of these Master Covenants. The granting of any waiver for any portion of the Properties may be given or withheld in the ARB'S sole discretion and a prior grant of a similar waiver shall not impose upon the ARB the duty to grant new or additional requests for such waivers.

**R.** Neither the Association nor the ARB (or any officer, employee, director, or member thereof) shall be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval, disapproval, or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or ARB to recover any such damages.

**S.** The ARB shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the open space, if any, appurtenant thereto; provided, however, the ARB may delegate this authority to the appropriate board or committee of any Neighborhood Association subsequently created or subsequently subjected to this Declaration so long as the ARB has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the ARB. Such delegation may be revoked at any time and for any reason, and jurisdiction re-assumed at any time by written notice. The ARB shall promulgate detailed standards and procedures governing modifications to existing Units or structures, consistent with local government standards and codes. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARB for approval as to quality of workmanship and

design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a Unit or to paint the interior of his Unit any color desired. In the event that the ARB fails to approve or to disapprove such plans or to request additional information reasonably required within thirty (30) days after submission, the plans shall be deemed approved.

## ARTICLE IX

### ENFORCEMENT OF RULES AND REGULATIONS

**Section 1. Compliance by Owners. Initial Rules and Regulations.** Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations adopted by the Board. The following are the initial Rules and Regulations of the Association which may be amended, modified or added to from time to time as provided in the Bylaws:

**A. RESIDENTIAL USE:** Magnolia Pointe, subject to these Restrictions and except as shown on the Master Plan, shall be used for residential living units and related recreational facilities only and for no other purposes. Provided, however, upon approval of the board and subject to the regulations of applicable governmental authority, designated home occupations may be permitted.

**B. TEMPORARY BUILDING:** No tents, trailers, vans, shacks, tanks, or temporary or accessory buildings or structures shall be erected or permitted to remain on the Properties; however, the foregoing shall not restrict or prevent the Construction and maintenance of temporary sales models and such other temporary facilities as are essential to the development, construction, and sale of the housing facilities created, provided that such are in compliance with appropriate governmental requirements applicable thereto.

**C. TRASH AND GARBAGE:** No lumber, metals, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on the Properties except building materials during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made at such place as will be accessible to persons making such pick-up. At all other times, such containers shall be stored so that they cannot be seen from surrounding property. The Architectural Review Board, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

**D. BURIAL OF PIPES AND TANKS:** No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained on the Properties above the surface of the ground, except hoses and movable pipes used for irrigation purposes. No property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth. Provided, however, that nothing contained herein shall prohibit or restrict removal of fill or earth materials to construct or create approved drainage structures (including lakes) or landscaped berms.

**E. NUISANCE:** Nothing shall be done on the Properties which is illegal or which may be or may become an annoyance or nuisance to the neighborhood. In the event of any questions as to what may be or become a nuisance, such questions shall be submitted to the Association for a decision in writing and its decisions shall be final.

**F. WEEDS AND UNDERBRUSH:** No weeds, underbrush, or other unsightly growths shall be permitted to grow or remain upon the Properties and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. In the event an Owner shall fail or refuse to keep his Residential Property or Residential Unit free of weeds, underbrush, sight obstructions, refuse piles, or other unsightly growths or objects, then the Association may enter upon said property and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass; except, however, that the Owner shall be given 15 days prior written notice of such action.

**G. VEHICLE PARKING:** The Board or a Neighborhood Association may from time to time promulgate rules which restrict, limit, or prohibit the use of any driveway or parking area which may be in front of, adjacent to or part of any Residential Unit as a parking place for personal passenger vehicles, commercial vehicles, trailers, recreational vehicles, self-propelled motor homes, motorcycles, and boats. Such rules, if and when promulgated, shall have the same force and effect as if promulgated and initially made a part of this Declaration. Overnight parking or storage of trucks or commercial vehicles in excess of one-half ton rated capacity is prohibited. No unregistered or inoperable motor vehicle or trailer of any kind may be disassembled, serviced, or repaired on the Properties in such a manner as to be visible from any point on adjacent property or the street.

**H. CLOTHES DRYING AREA:** No portion of any of the Properties shall be used as a drying or hanging area for laundry of any kind unless the area is fully screened by fencing or landscaping from view from adjacent property or streets.

**I. SHUTTERS AND AERIALS:** Without the express prior written consent of the ARB, no exterior radio, television, dish, antenna, or other antenna or device for sending or receiving electromagnetic signals may be erected or maintained in Magnolia Pointe except that a master antenna system or systems may be constructed and maintained by the Association or its designee. No hurricane or storm shutters shall be installed unless the same be of a type approved by the Association.

**J. DRAINAGE:** No changes in elevations of property subject to these restrictions shall be made which will cause undue hardship to adjoining property.

**K. UNDERGROUND WIRES:** No lines or wires for communication or other transmission of electrical current shall be constructed, placed, or permitted to be placed on Residential Property unless the same shall be underground, or unless specifically permitted in writing by the ARB.

**L. ANIMALS:** No horses, cattle, swine, goats, poultry, fowl, or any other animals not commonly considered household pets shall be kept on the Properties. Under no circumstances shall any commercial or business enterprises involving the use, care, or treatment of animals be conducted on the Properties. All pets shall be kept on a leash when not on the pet owner's lot or unit and no pet shall be allowed to roam unattended. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on the Properties.

**M. BUSINESS:** Except where indicated on the Master Plan (as amended from time to time) and except as allowed by Article IX, Section 1, Paragraph A, no manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever will be conducted or carried on upon the Properties or in any building or other structure erected thereon, with the exception of home offices where no clients or customers visit for business and its use is authorized by local government .

**N. MAINTENANCE OF PARKING AREAS, ETC.:** All setback areas, yards, walkways, driveways, and parking areas and drainage swales shall be maintained and kept in a neat and clean condition free of refuse and debris. All landscaped areas (to the paved public right of way) shall be maintained in live, healthy, and growing condition and kept properly watered and trimmed. Any planting of grass, shrubs, or trees which become dead or badly damaged shall be replaced with similar, sound, healthy plant materials.

**O. MAINTENANCE AND LANDSCAPED AREAS, ETC.:** All landscaped areas (to the paved public right of way) shall be maintained in live, healthy and growing condition, properly watered and trimmed. Any planting of grass, shrubs or trees which become dead or badly damaged shall be replaced with similar, sound, health plant materials.

**P. USE AND MAINTENANCE OF WATER BODIES:** The use of all lakes and water bodies existing or created in Magnolia Pointe will be in accordance with rules and regulations adopted from time to time by the Association. There will be no construction of any dock or other facility in any lake or water body without written approval of the ARB procured in accordance with standards and requirements set by the ARB from time to time. Maintenance of lakes and water bodies is the exclusive obligation and function of the Association. No motorboats shall be allowed on any of the internal lakes without the consent of the Association.

**Q. MAINTENANCE OF LANDSCAPING TO WATER'S EDGE OR PUBLIC RIGHT OF WAY:** Any Owner or Neighborhood Association within the Properties that owns or has the maintenance responsibility for property adjoining any public right of way or water body shall maintain the landscaping to the public right of way or water's edge regardless of the property boundaries on the plat.

**R. CABLEVISION:** The Association shall have the right to install a cablevision system providing cablevision entertainment, business, and safety services. In connection with the installation, maintenance, and operation of such systems the Association reserves access, installation, and service easements over, across, and under Common Property and Residential Property necessary to provide such cablevision services to all Owners of Residential Units; provided, however, such easements shall be reasonably located by the Association so as to not unreasonably impair the value of use of Residential Property or the Residential Units.

**S. FENCES:** The composition, location, and height of fences and walls must be approved by the ARB prior to installation. Except for fences around tennis courts, such fences and walls must be not more than six feet high and no painted block fences, wood fences, PVC fences, chain-link fences or walls shall be allowed. The purpose and intent of this subsection is to provide a uniform look to the community through use of wrought-iron fencing (or materials which appear to be wrought iron).



**T. MAILBOXES:** No mailbox, paper box, or other receptacles of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected on any Residential Unit unless and until the size, location, design, and type of material for said boxes or receptacles shall have been approved by the ARB. If and when the United States mail service and the newspaper or newspapers involved shall indicate a willingness to make delivery to wall receptacles attached to the residence, such Owner, upon the request of the ARB, shall replace the boxes and receptacles previously employed for such purposes with wall receptacles attached to the residence.

**U. TREES AND SHRUBS:** Removal of existing trees and shrubbery from any Lot shall not be permitted (except within the foundation perimeter line for the dwelling) unless landscaping of an equivalent or higher quality is substituted therefore.

**V. AIR CONDITIONERS:** No window air conditioning units shall be permitted. Permanently mounted wall air conditioning units shall not be permitted unless first approved by the ARB.

**W. SIGNS:** No sign of any kind shall be displayed to the public view on any Residential Property or Residential Unit except those which shall be in compliance with the guidelines established by the ARB. The ARB shall have the right to establish guidelines so as to require a uniform standard for signs in the Properties.

**X. EXTERIOR LIGHTING:** No exterior lighting fixtures shall be installed on any Residential Unit without adequate and proper shielding of fixtures. No lighting fixture shall be installed that may be or become an annoyance or a nuisance to the residents of adjacent Residential Units.

**Y. STORM WATER:** Lake County, Florida has required Declarant to install a storm water drainage and retention system within the boundaries of the Properties. No structure, fence, or landscaping that interferes with the flow or retention of storm water shall be permitted and no refuse shall be placed upon or allowed to remain on any part of any Residential Unit within any easement area for storm water drainage or retention and the storm water drainage and retention areas, including drainage swales or retention ponds, shall not be filled or otherwise changed so as to alter or block the flow or the quantity of water. Owners of Residential Units within which any easement for storm water drainage or retention lines are located shall be responsible for the maintenance of such areas to permit the flow and retention of water in accordance with the storm water drainage and retention system plan required and approved by Lake County, Florida. If any Owner shall fail to comply with any part or all of the restrictions contained in this Section, the Association shall notify the Owner in writing, have the right to correct such failure to comply herewith, and assess and collect the cost thereof and have a lien upon the Residential Unit upon which the work was performed.

**Z. SWIMMING POOLS AND TENNIS COURTS:** Any swimming pool, tennis court and screening or fencing of either to be constructed on any Residential Unit shall be subject to the approval and requirements of the ARB, which shall include, but which shall not be limited to the following:

1. Above-ground swimming pools normally will not be allowed;
2. Lighted tennis courts normally will not be allowed;

3. Materials, design and construction shall meet standards generally accepted by the industry and shall comply with applicable governmental regulations; and

4. The location shall be approved by the ARB.

**AA. TIME SHARES:** No Residential Property or Residential Unit shall be owned or used in multiple or time share ownership requiring registration pursuant to the provisions of Chapter 721 of the Florida Statutes, as amended from time to time.

**BB. MINIMUM RESTRICTIONS:** These restrictions are intended to be minimum restrictions applying to the Properties. A Residential Property Owner will have the right to subject property to further restrictions and covenants by way of Declaration of Condominium or Declaration of Protective Covenants and Restrictions as set forth herein provided, however, that the ARB must approve such restrictions prior to recording and such restrictions will be deemed of no force and effect and unenforceable unless the recorded instrument is executed by the chairman of the ARB.

**CC. NON-WAIVER:** No delay in enforcing these covenants and restrictions as to any breach or violation thereof shall impair, damage, or waive the right of the Association to enforce the same, to obtain relief against or recovery for continuation or repetition of such breach or violation or of any similar breach or violation thereof at a later time or times.

**DD. LEASING:** Any Owner of a Residential Unit shall be entitled to rent or lease such Unit if:

1. There is a written rental or lease agreement specifying that (a) the tenant shall be subject to all provisions of this Declaration, and (b) a failure to comply with any provision of this Declaration shall constitute a default under the rental or lease agreement;

2. The period of the rental or lease is not less than six months; and

3. The Owner gives notice of the tenancy to the Association and is otherwise in compliance with the terms of this Declaration.

**Section 2. Enforcement.** Failure of the Owner to comply with such restrictions, covenants, or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof, including costs and attorneys' fees incurred in bringing such actions and if necessary, costs and attorneys' fees for appellate review. The Association shall have the right to suspend voting rights and use of Common Areas and Lakes for any Owner violating these Covenants and Restrictions for a period of time which is the longer of sixty (60) days or the term of continued violation. Both the Association and the Neighborhood Association (where violation has occurred with respect to a Residential Unit within such Neighborhood Association) shall have the right to enforce the provisions of this Declaration.

**Section 3. Fines.** In addition to all other remedies set forth herein or provided by Florida law, in the sole discretion of the Board of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction, rule, or

regulation contained herein or promulgated pursuant to these Declarations provided the following procedures are adhered to:

**A. NOTICE:** Association shall notify the Owner of the infraction or infractions. Included in the notice shall be date and time of the next Board meeting at which time the Owner shall present reasons why penalty(ies) should not be imposed.

**B. HEARING:** The noncompliance shall be presented to the Board after which time the Board shall hear reasons why penalties should not be imposed. A written decision of the Board shall be submitted to the Owner by not later than twenty-one (21) days after the Board's meeting.

**C. SPECIAL ASSESSMENTS:** The Board may impose special assessments against the Residential Unit or Residential Property owned by the Owner as follows:

1. First noncompliance or violation: a fine not in excess of One Hundred Dollars (\$100.00)
2. Second noncompliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00)
3. Third and subsequent noncompliance, or violation or violations that are of a continuing nature: a fine not in excess of One Thousand Dollars (\$1,000.00) for each week of continued violation or non-compliance.

**D. PAYMENT OF PENALTIES:** Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.

**E. COLLECTION OF FINES:** Fines shall be treated as an assessment otherwise due to the Association, and as such will be a lien again the Owner's Residential Unit on Residential Property.

**F. APPLICATION OF PENALTIES:** All monies received from fines shall be allocated as directed by the Board.

**G. NONEXCLUSIVE REMEDIES:** Any fine imposed under this Section shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association or the Neighborhood Association may be otherwise legally entitled; however, any penalty paid by the offending Owner shall be deducted from or offset against any damages that the Association or Neighborhood Association may otherwise be entitled to recovery by law from such Owner.

## **ARTICLE X**

### **TURNOVER**

DELETED.

## **ARTICLE XI**

### **CABLE TELEVISION AND SECURITY SERVICES**

The Board of Directors of the Association shall have the right to enter into contracts for the exclusive provision of cable television services upon such terms as the Board of Directors shall deem, in its sole discretion, to be in the best interests of the Association and all Owners within the Properties. The agreement may provide that basic services shall be mandatory for all Residential Unit Owners within the Properties. No Owner or Neighborhood Association shall place or allow to be placed on the Properties any multi-party use electro-magnetic receivers or transmitters, dish antenna, or similar devices without the express prior written consent of the Association.

## **ARTICLE XII**

### **DECLARANT'S RIGHTS**

DELETED.

## **ARTICLE XIII**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Residential Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Residential Unit number, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Residential Units on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any Eligible Holder, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residential Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

**Section 2. Voting Rights of Mortgagee.** For purposes of this Section, an Eligible Holder of a Mortgage shall be entitled to one (1) vote for each first Mortgage owned.

**A.** Unless at least two-thirds (2/3) of the first Mortgagees or Voting Members representing at least two thirds (2/3) of the total Association Members (other than Declarant) consent, the Association shall not:

(a) by act or omission abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Property which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection.);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Any election to terminate the legal status of Magnolia Pointe as a Planned Unit Development shall require:

(i) The approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is the result of substantial destruction or a substantial taking in condemnation of the Properties; or

(ii) The approval of at least sixty-seven (67%) of the total voting members of the Association and sixty-seven percent (67%) of the Eligible Holders.

**B.** In the event a portion of the Properties is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the project unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

**C.** The vote or written consent of sixty-seven percent (67%) of the total Voting Members of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-

management of the Association if professional management of the Association has been required by an Eligible Holder at any time.

**Section 3. Voluntary Payments by Mortgagee.** First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section 4. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Residential Unit in case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

**Section 5. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residential Unit.

**Section 6. Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

**Section 7. Applicability of this Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, the By-Laws, or Florida corporate law for any of the acts set out in this Article.

**Section 8. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE XIV

### INSURANCE AND CASUALTY LOSSES

**Section 1. Insurance.** The Association's Board or its duly authorized agent shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing full and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to casualty insurance on the Common Area, the Association may, upon request of a Neighborhood, but shall not under any circumstances be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance, if reasonable and available, and if not reasonably available,

then at a minimum, fire and extended coverage, in such form as the Board deems appropriate for one hundred percent (100%) of the replacement cost of all structures located on Units within the Neighborhood and/or Common Property of the Neighborhood Association, and charge the costs thereof to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessments.

The Association shall have no insurance responsibility for any part of Commercial Property.

Insurance obtained on the properties within any Neighborhood, whether obtained by such Neighborhood or the Association, shall at a minimum comply with the applicable provisions of this Section 1, including the provisions of this article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

To the extent available on commercially reasonable terms and conditions, the Board may also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability shall have at least a One Million Dollar (\$1,000,000.00) limit for bodily injury, personal injury, and property damages from a single occurrence, and, if reasonably available, a Five Million Dollar (\$5,000,000.00) umbrella liability policy.

Premiums for all insurance on the Common Area shall be Common Expenses of the Association and shall be included in the Annual Assessment, as described in Article VI; provided, in the discretion of the Board, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood benefitted thereby. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Florida which holds -a Best's rating of A or better and is assigned to a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Association, its Members, and Mortgagees providing construction financing on the Common Area; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Orlando, Florida, area.

(f) The Association's Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers'



liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, and employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' assessments on all Units, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

**Section 2. Individual Insurance.** By virtue of taking title to a Unit which is subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon meeting the same requirements as set forth in Section 1 of this Article XIV for insurance on the Common Area, unless the Association at the request of the Neighborhood Committee or the Neighborhood Association for the Neighborhood in which the Unit is located carries such insurance (which they are not obligated to do hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of the construction and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

A Neighborhood Association may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units subject to its jurisdiction and the standard for returning the Units to their natural state in the event the structures are not rebuilt or reconstructed.

### **Section 3. Damage and Destruction.**

**A.** Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

**B.** Any damage or destruction to the Common Area or to the Common Property of any Neighborhood Association shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total vote of the Neighborhood whose Common Property is damaged, if Common Property of a Neighborhood Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are to made available to the Association within said period, then the period shall be extended until such information shall be made available; provide, however, such extension shall not exceed sixty (60)

additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area or Common Property of a Neighborhood shall be repaired or reconstructed; provided, however, this provision shall not apply to construction Mortgagees providing construction financing for such damaged property.

C. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area or to the Common Property of any Neighborhood shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, or the Neighborhood Association, as applicable, in a neat and attractive condition consistent with the Community-Wide Standard.

**Section 4. Disbursement of Proceeds.** If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

**Section 5. Repair and Reconstruction.** If the damage or destruction to the Common Area or to the Common Property of a Neighborhood Association for which insurance proceeds are paid is to be repaired or constructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Voting Members, levy a Special Assessment against all Owners on the same basis as provided for Annual Assessments, provided, if the damage or destruction involves the Common Property of a Neighborhood, only the Owners of Units in the affected Neighborhood shall be subject to assessment therefore. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE XV**

### **NO PARTITION**

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person or entity acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property from acquiring title to real property which may or may not be subject to this Declaration.

## **ARTICLE XVI**

### **CONDEMNATION**

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least two-thirds (2/3) of the total Association vote) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, Voting Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article XIV hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are not funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

**Section 1. Duration.** The covenants, conditions and restrictions if this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association and any Owner and their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least sixty (60) days advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Lake County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. Termination of the Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or

terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

**Section 2. Amendments by Members.** This Declaration may be amended at any time provided that three-fourths (3/4) of all the votes cast by each Member (acting through their Designated Representative) represented at a duly called and held meeting (with a quorum established by the By-Laws represented) of the Association vote in favor of the proposed amendment; provided, however, that if the affirmative vote required for approval of action under the specific provision to be amended is a higher or lower percentage, then such higher or lower percentage shall be required to approve amendment of that provision. Notice shall be given at least sixty (60) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above the President and Secretary of the Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective date of the amendment, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt the amendment, the total number of votes cast for the amendment, and the total number of votes cast against the amendment. Such amendment shall be recorded in the Public Records of Lake County, Florida.

**Section 3. Amendments by Declarant.** DELETED.

**Section 4. Assignment of Rights and Duties.** Any and all of the rights, powers and reservations of the Association may be assigned to any person, corporation or association (including the Neighborhood Associations) which will assume the duties of the Association pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, be or it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association. Further, the Association may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

**Section 5. FHANA Approval.** DELETED.

**Section 6. Withdrawal of Properties.** DELETED.

**Section 7. Density Transfers.** DELETED.

**Section 8. Special Exceptions and Variations.** Unless the written consent of the Association is first obtained, no Owner shall file a request for zoning variations, special exceptions, or zoning changes affecting or relating to land within the Properties.

**Section 9. Municipal Service Taxing Units.** DELETED.

**Section 10. Surface Water Management System.** The Declarant has caused or will cause to be constructed within the geographic area shown by the Master Plan drainage canals, lakes and drainage retention/detention ponds. These drainage structures are part of the overall drainage plan for Magnolia Pointe. The Association shall have unobstructed ingress to and egress from all retention/detention ponds

and lakes at all reasonable times to maintain said ponds and lakes in a manner consistent with its responsibilities as provided in Section 1 of Article IV and any rules and regulations promulgated by the Association under authority thereof. No Neighborhood Association, Owner, or any owner of any commercial tract whose surface water management system is connected with the Surface Water Management System ("Commercial Tract Owner") shall cause or permit any interference with such access and maintenance. Should any Neighborhood Association, Owner, or Commercial Tract Owner fail to sufficiently maintain any portion of the Surface Water Management System within its boundaries or control (or any portion of a surface water management system which connects with the Surface Water Management System), the Association shall have the authority to maintain such portion and the cost of such maintenance shall be assessed against and become a debt of the Neighborhood Association, Owner, or Commercial Tract Owner and shall become immediately due and payable as provided for other assessments of the Association. In any conveyance of a commercial tract within Magnolia Pointe to a third party, the Owner shall prepare its site plan so that the utilization of its property will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

**Section 11. Reclaimed Water.** If the Owner of Residential Property shall have provided to the Residential Unit or Units therein an irrigation system capable of using reclaimed water for irrigation purposes, and reclaimed water shall become available, then in such events, the Association may: (I) require the Owner of each such Residential Unit to use the reclaimed water for irrigation purposes in lieu of the potable water otherwise supplied to the Residential Unit and (ii) charge a reasonable uniformly applied fee for the use of such reclaimed water. Costs of connection to the Reclaimed Water Source shall be paid by the Association if the Association has requested such connection.

**Section 12. Signs.** No sign, lettering, advertising, lighting, flags or banners of whatsoever type or nature shall be erected, altered or placed on any portion of the Properties without the express prior approval of the Association. The Association specifically retains the right to limit, prohibit and remove signs within the Properties and the approval by the Association of signs may be withheld for any reason including purely aesthetic reasons.

**Section 13. Enforcement.** Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition, or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Owner or the Company to enforce any covenant, condition, or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

**Section 14. Severability.** Should any covenant, condition or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 15. Interpretation.** The Board shall have the right, except as limited by any other provisions of this Declaration or the By-Laws, to determine all questions arising in connection with this Declaration of

Covenants, Conditions and Restrictions and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

**Section 16. Authorized Action.** All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association as approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

**Section 17. Termination of Declaration.** Should the Members of the Association vote not to renew and extend this Declaration as provided for herein, all Common Property owned by the Association at such time shall be transferred to another association or appropriate public agency having similar purposes. If no other association or agency will accept such property then it will be conveyed to a Trustee appointed by the Circuit Court of Lake County, Florida, which Trustee shall sell the Common Property free and clear of the limitations imposed hereby upon terms established by the Circuit Court of Lake County, Florida. That portion of the Open Space or Common Property consisting of the Surface Water Management System cannot be altered, changed or sold separate from the lands it serves. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting alien on the Common Property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Property. The excess of proceeds, if any, from Common Property shall be distributed among Owners in a proportion which is equal to the proportionate share of such Owners in Common Expenses.

**Section 18. Execution of Documents.** The Master Plan for the development of the Properties may require from time to time the execution of certain documents required by governmental authorities. To the extent that said documents require the joinder of Owners, the Board by its duly appointed representative may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge, and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute, and appoint the Board by its duly appointed representative, as their proper and legal attorney-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section.

**Section 19. Prohibited Actions.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

**Section 20. Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular and the use of any gender shall be deemed to include all genders. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of Properties.

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[SIGNATURES AND NOTARIAL JURAT FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, this Declaration was adopted by the Members of the Association on December \_\_\_\_, 2009 at a meeting called for this purpose and noticed on October \_\_\_\_, 2009 and has been executed on the day and year first above-written.

**Witnesses:**

**Magnolia Pointe Master Homeowners' Association, Inc.**

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

\_\_\_\_\_  
By: \_\_\_\_\_, President

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

\_\_\_\_\_  
By: \_\_\_\_\_, Secretary

STATE OF FLORIDA  
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of December, 2009 by \_\_\_\_\_, President and \_\_\_\_\_, Secretary of Magnolia Pointe Master Homeowners' Association, Inc. They [ ] are personally known to me or [ ] produced Florida drivers' licenses as identification.

(SEAL)

\_\_\_\_\_  
Notary Public