

This Instrument Prepared  
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FN: 2-15-021

**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF MOSES CREEK ESTATES**

This Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements of Moses Creek Estates (“Amended and Restated Declaration”) is made this 16<sup>th</sup> day of January, 2015, by Moses Creek Estates Developers, Inc., a Florida corporation (the “Declarant” or “Developer”).

**Recitals**

A. The Developer is the developer of certain real property is referred to Moses Creek Estates located in St. Johns County, Florida.

B. The real property located within Moses Creek Estates is subject to all of the terms and conditions set forth in the Declaration of Covenants, Conditions, Restrictions and Easements of Moses Creek Estates Phase 1 dated August 24, 1999 and recorded on September 29, 1999 at Official Records 1444, Page 32, et. seq., of the public records of St. Johns County, Florida (the “Original Declaration”), and as amended by that certain Notice of Amendment of Declaration of Covenants, Conditions, Restrictions and Easements of Moses Creek Estate Phase 1 dated November 10, 1999, and recorded on November 16, 1999 and Official Records 1455, Page 466 et. seq., of the public records of St. Johns County, Florida.

C. The property (“Property”) encumbered by the Declaration is now described as set forth on the plat maps of Moses Creek Estate Phase 1 and Moses Creek Estates Phase 2 which are recorded at Map Book 36, Pages 12 through 17, and Map Book 49, Pages 21 through 27, all of the public records of St. Johns County, Florida.

D. Pursuant to Article XII, Section 5 of the Original Declaration, so long as the Developer owns a Lot in Moses Creek Estates, the Developer reserves the right, without the consent or joinder of any Owner or Mortgagee, to amend the Declaration.

E. Developer is the owner of one or more Lots contained within the Property as of the date of this instrument and desires to restate the Declaration in its entirety for the purposes of amending certain sections of that document, as more fully set forth herein.

F. The terms of this Amended and Restated Declaration shall run with the land and shall be binding upon the Developer and all parties acquiring any interest in Moses Creek Estates after the recording of this Amended and Restated Declaration in the public records of St. Johns County, Florida.

NOW THEREFORE, the Developer does hereby amend and restate the covenants and restrictions of Moses Creek Estates in their entirety to read as follows:

**THESE DECLARATIONS**, made on the date hereinafter set forth by **MOSES CREEK ESTATES DEVELOPERS, INC.**, a Florida Corporation, (hereinafter referred to as “Declarant” or “Developer”)

WITNESSETH:

**WHEREAS**, Declarant is the owner of the real property in St. Johns County, Florida, known as Moses Creek Estates Phase 1, a subdivision shown on a plat recorded in Map Book 36 Pages 12 through 17 of the public records of St. Johns County, Florida (“Moses Creek Estates Phase 1”), and Moses Creek Estates Phase 2, a subdivision shown on a plat recorded in Map Book 49, Pages 21 through 27 of the public records of St. Johns County, Florida (“Moses Creek

Estates Phase 2). The real property encumbered by the Amended and Restated Declaration is described on Composite Exhibit “A” attached hereto; and

**WHEREAS**, Declarant desires to provide for the orderly development of Moses Creek Phase 1 and the Moses Creek Subsequent Phases so as to provide for the well being of residents hereafter residing therein, and to maintain the value thereof;

**NOW, THEREFORE**, Declarant hereby declares that all of Moses Creek Estates shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the land and be binding on all parties having any right, title or interest in Moses Creek Estates, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**FURTHER PROVIDED** that Declarant deems it desirable to create a not-for-profit association to manage the Property (as hereinafter defined). The Association, as hereinafter defined, shall own, operate, maintain and administer all the Common Area and Common Property, as hereinafter defined, and shall administer and enforce the covenants, conditions, restrictions and limitations set forth herein. The Association shall enforce the easements created herein and collect and disburse the assessments hereinafter created.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.** “**Articles**” shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

**Section 2.** “**Association**” shall mean and refer to Moses Creek Estates Homeowners Association, Inc., a non-for-profit corporation, its successors and assigns.

**Section 3.** “**Board of Directors**” shall mean and refer to the Board of Directors of the Association.

**Section 4.** “**Bylaws**” shall mean and refer to the Bylaws of the Association as amended from time to time.

**Section 5.** “**Charge**” shall mean any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Parcel Owner, other than Assessments for common expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by the governing documents of the Association.

**Section 6.** “**Common Area**” shall mean all real property designated by Declarant for the common use and enjoyment of the Owners. The Common Area maybe expanded from time to time by annexation as more fully described in Article VIII.

**Section 7.** “**Common Expenses**” shall mean and refer to those items of expense for which the Association is or may be responsible under this Declaration and those additional items of expense approved by the owners in the manner set forth in the Declaration, the Articles and Bylaws.

**Section 8.** “**Common Property**” shall mean and refer to those tracts of land which are deeded to the Association and designated in the deed as “Common Property” and such improvements thereon as are specifically conveyed to the Association. The “Common Property shall also include any personal property acquired by the Association, if the personal property is designated as “Common Property,” as well as certain easements conveyed to the Association. All Common Property is to be devoted t and intended for the common use and enjoyment of the Owners and their guests, lessees or invitees and the visiting general public (to the extent permitted by the Board of Directors of the Association) subject to any operating rules adopted by

the Association and subject to any use rights made or reserved by Declarant prior to conveyance of such Common Property, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development and provided that such rights of Declarant are specifically assigned and the assignee shall specifically assume the obligations of the Declarant under the Declaration, Articles and Bylaws. The Common Property may be expanded from time to time by annexation as more fully described in Article VIII.

**Section 9.** “**Declarant**” or “**Developer**” shall mean and refer to Moses Creek Estates Developers, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development and proved that such rights of Declarant are specifically assigned and the assignee shall specifically assume the obligations of the Declarant under the Declaration, Articles and Bylaws.

**Section 10.** “**Declaration**” shall mean and refer to this Declaration of Covenants, Conditions, Restrictions and Easements of Moses Creek Estates Developers, Inc., applicable to the Property.

**Section 11.** “**Lot**” shall mean and refer to any plot of land together with the improvements thereon shown upon any recorded subdivision plat of the Property

**Section 12.** “**Member**” shall mean and refer to those persons entitled to Class “A” or “B” Membership in the Association as provided in the Declaration and Articles.

**Section 13.** “**Mortgagee**” shall mean and refer to any institutional holder of a first mortgage encumbering a portion of the Property as security for the performance of an obligation; and insurer or guarantor of such mortgage, including without limitation, the Veterans Administration (“VA”), or Federal Housing Administration (“FHA”) and/or a purchaser of such

mortgages in the secondary market including with limitations, Federal National Mortgage Association (“FNMA”) and Governmental National Mortgage Association (“GNMA”); and the Declarant, if it is holding a first mortgage on any portion of the Property.

**Section 14.** “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, which is a part of the Property including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 15.** “**Property**” or “**Properties**” shall mean and refer to the real property within Moses Creek Estates, and any such additional lands as may hereafter be brought within the jurisdiction of the Association by annexation pursuant to the terms hereof.

**Section 16.** “**Structure**” shall mean anything or object, the placement of which upon any lot may alter the appearance of such lot including, by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, swimming pool, fence, curbing, paving, well, house or temporary or permanent living quarters.

**Section 17.** “**Surface Water or Stormwater Management System**” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, a permitted pursuant to Chapters 40C-4 40C-40 or 40C-41 F.A.C.

**ARTICLE II**  
**PROPERTY RIGHTS**

**Section I. Owners' Common Property Easements.** Subject to the provisions of the Declaration, the rules and regulations of the Association, and any prior use rights granted in the Common Property, every Owner (s), their successors and assigns and their families and every guest, tenant, and invitee of such owner (s) is hereby granted a right and easement of ingress and egress and enjoyment in and to Common Property which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Board of Directors, without further consent from owners of their Mortgagees, to dedicate, transfer or grant an easement over all or any part of the Common Property to any public agency, authority or utility company for the purpose of providing utility or cable television service to the property and the right of the Board to acquire, extend, terminate or abandon such easement.
- (b) The right of the Association to sell, convey or transfer the Common Property or any portion thereof to any third party for such purposes and subject to such conditions as may be approved by a majority vote of the Association.
- (c) The right of the Board of Directors to adopt reasonable rules and regulations pertaining to the use of the Common Property.
- (d) The right of the Declarant or the Association to authorize other persons to enter upon or use of the Common Property for uses not inconsistent with Owners' right therein.

(e) The rights of the Board of Directors to mortgage any or all of the Common Property for the purpose of improvement or repair of the Common Property with the approval of a majority vote of the Association.

**Section 2. Delegation of use.** Any Owner may delegate his right of enjoyment of the Common Property to the members of his family, his tenants, or contract purchasers who occupy the Lot within the Property.

**Section 3. Conveyance of Common Property.** The Declarant may convey the Common Property to the Association at such time as all the planned improvements, if any, are complete and in the event the Common Property is unimproved at such time as the Declarant determines, but in all events prior to the termination of the Class B membership. Such conveyance shall be subject to easements and restrictions of record and free and clear of all liens and financial encumbrances other than taxes for the year of conveyance. The Declarant may reserve certain rights to itself for use of the Common Property which are not adverse to the Owners.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Qualification for Membership.** Every Owner of a Lot which is subject to this Declaration shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Declaration.

**Section 2. Classes of Membership.** The Association shall have two classes of voting membership. Class A Members shall be all owners of Lots, with the exception of the Declarant, and there shall be one vote for each Lot. The Class B Member shall be the Declarant who shall

be entitled to the number of votes equal to two times the number of Lots from time to time subject to the Declaration plus one. The Class B Membership shall ease upon transfer of control of the Association from the Declarant to the Owners in accordance with Section 720.307, Florida Statutes, as amended from time to time.

**Section 3.** **Approval by Voting.** Whenever in this Declaration a proposed action or issue must be approved by a specified percentage of the vote of the Association such approval may be obtained by:

(a) The specified percentage of Members casting their respective votes to approve such action or issue in person or by proxy at a duly noticed and constituted meetings of the members at which a quorum is present. For example, if the specified percentage is a two-thirds (2/3) majority vote, and there are forty (40) voting Members present in person or by proxy at the meeting, then the vote necessary to carry the issue is two-thirds (2/3) of the sum of the forty (40) present Members.

(b) The specified percentage of Members holding all votes giving the approval by written consent to approve the action or issue.

**Section 4.** **Suspension of Voting Rights.** The Association may suspend the voting rights of any Member in accordance with the provisions of Section 720.305, Florida Statutes, as amended from time to time.

## **ARTICLE IV**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1.** **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any

Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments as set forth in Section 4, 5 and 13 of the Article, and Section 15 of Article VI, or Section 3 of Article IX, such assessments to be established and collected as hereinafter provided. The annual and special assessments, (sometimes jointly referred to herein as “Assessment”) together with interest, late fees, costs, and reasonable attorney’s fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney’s fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall be the joint obligation of the grantor and grantee under a deed, without affecting the grantee’s right to recover the grantor’s share from the grantor.

**Section 2. Purposes of Assessments.** The Assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the owners and residents of the Property, for the improvement and maintenance of the Common Area and Common Property, including without limitation the surface water or stormwater ,management system, for the operation and administration of the Association, for the establishment of a maintenance, repair and reserve account for the installing and maintaining of street lighting and signage, for payment of taxes and insurance in all Common Property and for such other purposes as are set forth or permitted in this Declaration, the Articles or Bylaws.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment per Lot shall be Four Hundred Twenty and no/100 (\$420.00) Dollars per year.

(a) From and after January 1 of the year immediately following the recording of this Declaration, the maximum Annual Assessment for a Lot may be increased each year not more than 20% above the maximum Assessment for the previous year without approval of the majority vote of each class of membership.

(b) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

(c) The Association in determining the Common Expenses shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property.

**Section 4. Special Assessments.** In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) majority vote of the Association unless the Special Assessment is required due to the inadequacy of the insurance proceeds to cover the cost of a repair to Common Property (See Article VIII, Section 1) wherein no approval shall be required.

**Section 5. Uniform Rate of Assessment.** Subject to the provisions of Section 12 below, both Annual Assessments and Special Assessments, for the purposes set forth in Section 4, above, must be fixed at a uniform rate for all Lots. In the event that an owner or his family, guest or invitees specifically damage the Common Property as elsewhere provided the owners of such Lot may be subjected to a non-uniform Special Assessment for payment of such costs,

which may be assessed by majority vote of the Directors. There shall be no Assessment against the Common Property.

**Section 6. Date of Commencement of Annual Assessments: Due Dates.** The Annual Assessments shall commence upon substantial completion of the installation of the Roads and utilities serving a specified Lot subject to this Declaration. A Lot shall be deemed substantially completed and subject to Assessments when the Common Roads necessary to provide access to a particular Lot have been constructed, utilities for use of Owner are in place and the Owner is able to obtain a building permit therefor. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The Annual Assessment shall be payable annually, quarterly or monthly as determined by the Board of Directors, and the due date shall be the first day of such period unless specifically changed by the Board of Directors.

**Section 7. Association Certificate.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments for a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessment. Remedies of the Associations.** Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate of interest permitted by law. In addition, the Association shall be entitled to a late fee of \$10.00 for any Assessment not paid within ten (10) days from when due. The

Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Property or abandonment of his Lot.

**Section 9. Lien.** Assessments for Common Expenses, including Annual Assessments, Special Assessments, and Charges and installments thereof, with interest thereon and costs and expenses of collection, including reasonable attorney's fees, other expenses of collection, and costs incurred in attempting to collect said Assessments or Charges before suit or after filing of suit, at the trial level, appellate level or otherwise, are hereby declared to be a continuing lien upon the Parcel against which such Assessments or Charges are made. Each Assessment or Charge against a Parcel, together with interest thereon at the highest rate allowed by law, late fees, and costs and expenses of collection thereof, including attorney's fees, shall be the personal obligation of the person, persons, or entity owning the Parcel assessed or charged and shall be the joint and several liability of all Owners of the Parcel. It is the intention of this provision that Assessment or Charge liability is joint and several, and is both the personal obligation of the person owning the Parcel when the Assessment or Charge became due and the obligation of any successors in interest as a covenant running with the land. Said lien shall be effective from the date of recordation amongst the Public Records of St. Johns County, Florida. The lien shall set forth the amounts due to the Association as of the date the statement is signed and shall be acknowledged by an officer or agent of the Association. The lien shall secure additional amounts that become due, as well as interest, late fees, attorney fees, and other costs and expenses of collection. Upon recordation, the lien shall relate back to the date of recording the original Declaration. Upon full payment of all sums secured by the lien and costs and fees

accrued, the party making payment shall be entitled to a recordable satisfaction of lien. If any first mortgagee obtains title to a Parcel as a result of a foreclosure of a first mortgage or a deed (or assignment) is given in lieu of foreclosure of a first mortgage of record, such acquirer of title, shall be liable for the share of Assessments or Charges pertaining to such Parcel or chargeable to the former Owner, and which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure of said first mortgage of record as provided in Section 720.3085, Florida Statutes (2014), as amended from time to time.

**Section 10. Exempt Property.** All properties dedicated to, and accepted by, a local public authority or utility company and serving a public use and all properties owned by the Association shall be exempt from the Assessment created herein.

**Section 11. Reserves.** The Board of Directors shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property. This reserve fund shall constitute a portion of the annual budget. In addition, the Board of Directors may establish reserve funds from the Annual Assessments to be held in reserve in an interest bearing account for:

- (a) Major rehabilitation or major repairs;
- (b) For emergency and other repairs required as a result of storm, fire, mutual disaster or other casualty loss and
- (c) Initial cost, if any, new service to be performed by the Association.

**Section 12. Declarant's Assessments.** Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots and other portions of the Property owned by the Declarant shall not be subject to any annual or special assessments levied by the Association or to any lien for such assessments. During the

Development Period, the Declarant shall pay the balance of the actual operating expenses of the Association (excluding costs of major repairs, deferred maintenance, replacements and reserves) remaining after the levying of and payment of assessments due from Owners other than the Declarant pursuant to assessments levied by the Board of Directors pursuant to this Declaration. The Declarant shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. The Development period shall begin upon the conveyance of the first Lot in the Property to an Owner other than the Declarant and shall continue until (1) the Declarant shall notify the Association that it will no longer pay for operating deficits of the Association; or (ii) the Class B Membership shall cease and be converted to Class A Membership. Upon termination of the Declarant's agreement to pay operating deficits, the Declarant shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as other Owners. In no event shall the Declarant be obligated to pay for operating deficits of the Association after the Declarant no longer owns any Lots within the Property.

**Section 13. Assessments for Failure to Maintain.** In the event that an owner fails to maintain his Lot or the improvements thereupon as required herein, the Association shall give written notice specifying such failure to the Owner and if the Owner fails to correct such unperformed maintenance within ten (10) days from the Association's written notice, the Association may perform such maintenance and the cost of such shall constitute a Special Assessment for which a claim of lien may be filed and enforced.

**Section 14. Failure to revise Budget.** The failure or delay of the Board to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of the Owner's obligation to pay any Assessment as herein provided, whenever the same shall be

determined. In the absence of an annual budget, each Owner shall continue to pay the Assessment as established for the previous year.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

**Section 1. Architectural Review and Approval.** No building, tool or storage shed, fence, sign, wall or other structure, landscaping or exterior lighting plan or any other type of improvement, shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same have been submitted to and approved in writing by the Association. All plans and specifications shall be evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to the specific conformance with architectural criteria set forth herein and which may be imposed from time to time by the Declarant or the Association. It shall be the burden of each Owner to supply two (2) sets of completed plans and specifications to the Architectural Control Board (“ACB”) and no plan or specification shall be deemed approved unless a written approval is granted by the ACB to the Owner submitting same. The ACB may require additional copies be provided to others as they deem necessary. The owner must comply with all the requirements of the ACB prior to submitting an application to the ACB. The ACB shall approve or disapprove plans and specifications properly submitted within thirty (30) days of each submission. Any submission for approval is granted by the ACB to the Owner submitting same.

**Section 2. Architectural Control Board.** The architectural review and control functions of the Association shall be administered and performed by the ACB, which shall

consist of five (5) members who are Members of the Association in good standing. The Board of Directors of the Association shall have the right to appoint all of the members of the ACB. Each member of the ACB shall be appointed to a two year term. A majority of the ACB shall constitute a quorum to transact business at any meeting of the ACB, and the action of a majority present at a meeting at which a quorum, is present shall constitute the action of the ACB. Any vacancy occurring on the ACB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board of Directors.

**Section 3. Powers and Duties of the ACB.** The ACB shall have the following powers and duties.

(a) To recommend amendments to the architectural criteria set forth herein to the Board, which shall have the right to promulgate, amend, eliminate, or replace the architectural criteria. Any amendment of the architectural criteria shall be consistent with the provisions of this Declaration. Notice of any amendment to the architectural criteria, which shall include a verbatim copy of such amendment, shall be delivered to each member of the Association. The delivery to each member of the Association of notice and a copy of any amendment to the architectural criteria shall not, however, constitute a condition precedent to the effectiveness or validity of such amendment. It shall not be necessary for the architectural criteria, or any amendment thereto to be recorded with the County.

(b) To require submission to the ACB of two (2) complete sets of all plans and specifications for any improvement or structure of any kind requiring review and approval of the ACB pursuant to this Article V, the ACB may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonable

may be necessary for the ACB to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable architectural criteria.

(c) To approve or disapprove in accordance with the provision of this Article V, any improvements or structures of any kind, or any change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. Any party aggrieved by a decision of the ACB shall have the right to make a written request to the Board of Directors, within thirty (30) days of such decision, for a review thereof. The determination of the Board upon review of any such decision shall be final.

(d) To adopt a schedule of reasonable fees for processing request for ACB approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the ACB.

(e) Should any member fail to comply with requirements of the ACB, the ACB shall refer the matter to the Board of Directors and the Compliance Committee.

(f) All approvals given by the ACB shall be evidenced by a stamp, seal or similar graphic representation which shall be affixed to the plans for the applicable improvements.

**Section 4. Variance.** The ACB may authorize variances from compliance with any architectural provisions of this Declaration or applicable architectural criteria when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the ACB. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance was granted. The granting of such a

variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions of the Declaration or applicable architectural criteria covered by the variance, nor shall it affect in any way an Owner's obligation to comply with all governmental laws and regulations, including but not limited to, governmental or municipal authority.

**Section 5. Limited Liability.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by the ACB, or the Association as contemplated by this Article V, neither the Declarant, the ACB, nor the Association shall be liable to an Owner or to any other person on account of any claim, liability, damage or expenses suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the ACB, or the Association.

**Section 6. Architectural Criteria.**

**(a) Building Type.** No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residence containing not less than one thousand six hundred (1600) square feet of livable permanently enclosed, heated floor area (exclusive of open or screen porches, patio, terraces, and garages), not to exceed thirty-five (35) feet in height and having a private and enclosed garage (attached or unattached) for not less than two (2) full sized automobiles. No manufactured housing, mobile homes or modular homes shall be allowed. No more than one tool or storage shed may be constructed separate and apart from the residential dwelling. Such accessory building shall be kept in good repair and condition and shall not be located in front of the rear line of the residence constructed on the Lot.

**(b) Set Back Restrictions.** No structure shall be placed closer than twenty-five (25) feet from the front yard property line, ten (10) feet from the rear yard property line, ten (10) feet from an interior side property line, or fifteen (15) feet from a side property line abutting a street. A dwelling may be located upon a single platted lot or on a combination of platted lots and in such event, the set-back lines shall apply to the outermost lot lines.

**(c) Height/Lot coverage Limitations.** No structure shall exceed thirty-five (35) feet in height. Lot coverage will not exceed thirty-five percent (35%).

**(d) Septic Tanks and Wells.** Septic tanks and wells for potable water are not permitted within the Property. Owners will connect to the St. Johns County sewage and water utilities. Water for lawn irrigation purposes may be provided by wells.

**(e) Garages and Automobile Storage.** In addition to the requirements stated in Paragraph (a) above, all garages shall have a minimum width of Twenty (20) feet and a minimum depth of twenty-two (22) feet as measured from the outside walls of the garage. All garages must have either a single overhead door with a minimum door width of sixteen (16) feet or two (2) individual overhead doors, each a minimum of nine (9) feet in width. All overhead doors shall be kept closed when not in use. No carports will be permitted. No garage shall be converted to living space unless a garage in compliance with these provisions is constructed in its stead. The use of side entry garages is encouraged wherever possible.

**(f) Driveway Construction.** All dwellings shall have a paved driveway of stable and permanent construction of at least sixteen (16) feet in width at the entrance to the garage and shall be constructed of concrete or pavers with a concrete base.

**(g) Games and Play Structures.** No platforms, swing sets, monkey bars, doghouse, playhouse or structure of a similar kind or nature shall be constructed outside the fencing parameter stated in Article V, section 7, paragraph (h).

**(h) Fences and Walls.** All fences and walls shall be a maximum height of six (6) feet.

(i) Fencing shall be permitted which covers a maximum area along the rear property line, beginning at the most external rear corner of the house adjacent to the sidewall of the house.

(ii) Fencing for corner houses must not extend past the rear corner of the side of the house that abuts to the street.

(iii) Air conditioning, pool equipment, gas tanks, or generators may be screened by fencing, or a wall matching the exterior of the house, not to exceed more than three (3) feet from the unit or equipment, and not to be more than six (6) feet in height.

(iv) No fencing shall be made of barbed wire, hog wire, chicken wire or like material. Chain-linked fences may be permitted as long as they are coated in green or black vinyl. No fence or wall may be constructed without prior approval of the Architectural Control Board. Notwithstanding the foregoing, houses on any lot abutting a surface water storage area (pond) may use only aluminum or wrought iron fencing in brown or black color and may not exceed four (4) feet in height. Fencing specifications for houses abutting a surface water storage area (pond) are as follows:

Posts: Maximum 3"x 3", spacing 6" minimum

Pickets: 1" maximum, spacing 3 and 1/2" minimum

Stringers: 3 maximum

Gates are not to exceed four (4) feet in height.

**(i) Garbage and Trash Containers.** No Lots shall be used or maintained as a dumping ground for rubbish, trash or other waste. All trash, garbage and other waste shall be kept in sanitary containers which, except for placement at the curb for pickup, shall not be located in front of the front line of the residence located on the lot. All Lots shall be maintained during construction in a neat nuisance-free condition. Owner agrees that the Declarant or the Association shall have the discretion to rectify any violation of this subsection, with or without notice, and that Owner shall be responsible for all expenses incurred, which expenses shall constitute a lien against the Lot enforceable in an appropriate court of equity or law.

**(j) Temporary Structures.** No structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot at any time as a residence either temporarily or permanently.

**(k) Air Conditioning Units.** No window or wall air conditioning units may be placed in any window or wall facing any street.

**(l) Utility Connections.** Building connections for all utilities, including, but not limited to, water, electricity, telephone and television shall be run underground from the proper connecting points to the building structure in such a manner to be acceptable to the governing utility authority.

**(m) Lot Size.** No Lot shall be further subdivided or separated into small lots by any Owner; provided that this provision shall not prohibit corrective deeds or similar corrective instruments. The Declarant shall have the right to modify the subdivision plats of the Property provided that all Owners of the affected Lots consent to such modification, which consent shall not be unreasonably withheld. The Declarant, without the consent of any Owners, may modify a

Lot (s) it owns for the purpose of creating a street or right of way and the restrictions as to use contained herein shall not be applicable to such Lot(s).

**(n) Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sightlines and deviations between two (2) and six (6) feet above the Roads shall be placed or permitted to remain on any corner lot within the triangular area formed by the street and property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sightlines.

**(o) Sheds or other similar structures.** All sheds or similar structures must be approved by the ACB. The following are also applicable to sheds:

- (i) Must be permitted through the County;
- (ii) No metal sheds are allowed;
- (iii) Must be kept to the rear of the property;
- (iv) The color of the siding and the roofing tiles or shingles need to match the house; and
- (v) Houses on any Lot abutting a surface water storage area (pond) must place the structure within 10 feet of the rear of the house.

## **ARTICLE VI**

### **USE RESTRICTIONS**

In order to provide for congenial occupancy of the Property and for the protection of the value of the Lots, the use of the Property and Lots shall be in accordance with the following provisions so long as the Property and Lots are subject to this Declaration.

**Section 1. Residential Uses.** Lots shall be used for residential living units and for no other purpose, and no business or commercial building may be erected on any Lot and no business may be conducted on any part of any Lot.

**Section 2. Satellite Dish/Ham Radio/Above Ground Pools.** No satellite receptor dish shall be placed or erected on the front of any house. No satellite dish may exceed 24" in diameter. If placed on the roof, it must be located from the side midline to the rear of the house, or on the back side of the house, or placed below the roof line on either side of the residence constructed thereon. No Amateur Radio Station (HAM Radio) may be operated on any Lot. No antennas or wind generators may be erected on any Lot. No above ground pools shall be allowed on any Lot.

**Section 3. Clothes Drying Area.** No portion of any Lot shall be used as a drying or hanging area for laundry of any kind.

**Section 4. Nuisances.** Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors of the Association and the written decision of the Board on the dispute or question shall be final and conclusive and binding on all members of the Association.

**Section 5. Signs.** No sign of any kind shall be erected, permitted to remain on or displayed to public view on or from any lot, except a sign no larger than 24" x 24" advertising the premises for sale or rent. Political or garage sale signs shall be no larger than 24"x 24". Political signage is allowed for a 30 day period preceding the date of the election, and must be

removed within 24 hours of the election. Garage sale signs must be removed within 24 hours of the event. Security system signs are allowed.

**Section 6. Window Coverings.** No reflective window coverings or treatments shall be permitted on any building on the Property.

**Section 7. Off-Street Motor Vehicles.** No motorized vehicles including, without limitation, two and three wheel all-terrain vehicles or “dirt Bikes” may be operated off of paved roadways and drives.

**Section 8. Noise.** Exterior noise, and noise emanating from within buildings or other improvements, including without limitation, talking, singing, television, radio, record or tape player or musical instruments shall be maintained from 11:00 pm until 8:30 am at such volume that the noise is not audible beyond the boundaries of the Lot from which it originates and at all times so as not to constitute a nuisance or unreasonable annoyance to neighbors. Any animal creating excessive and unnecessary noise, defined as an animal that barks, bays, howls, squawks, screams continuously, incessantly, intermittently or with great frequency at any time of day or night regardless of whether the animal is physically situated in or upon private property, constitutes a nuisance or unreasonable annoyance to neighbors.

**Section 9. Pets and Animals.** No horse, mules, ponies, donkeys, burros, cattle, sheep, goats, swine, pigeons, game birds, game fowl, poultry, or any other animals or species normally considered “wild” and viewed in zoos or circuses may be kept, maintained or cared for in any Lot or within the Property. No pets shall be allowed to make an unreasonable amount of noise or to become a nuisance; and no pets will be allowed on the Property other than on the Lot of the owner of such pets, unless confined to a leash or under voice control. No pet shall be allowed to run at large. Upon written request of any Owner the Association may conclusively determine at

is sole discretion, in accordance with its rules, whether an animal is a domestic household pet, whether such animal is making an unreasonable amount of noise, whether an animal is being allowed to run at large or whether an animal is a nuisance. The decision of the Association in such matters is conclusive and shall be enforced as other restrictions contained herein. No pet may be maintained, kept, cared for or boarded for hire or compensation on the Property and no kennels for boarding or operation shall be allowed. Household pets shall not exceed five per County ordinance.

**Section 10. Automobiles, Vans, Trucks, Boats or Trailer.**

- (a) No commercial vehicles are to be parked outside of an enclosed garage, unless providing a service to a Member or Members of the community. The term “commercial vehicle”, as restricted under this subsection, is defined as meaning all vehicles of any kind whatsoever which, from viewing the exterior of the vehicle or any portion thereof, shows or tends to show any commercial markings, signs, displays, equipment, or otherwise indicates a commercial use.
- (b) No boat trailers, house trailers, mobile homes, campers, motor homes or other similar vehicles shall be permitted to park outside of an enclosed garage. Nor shall any of the above be permitted to be stored on blocks or maintained outside of an enclosed garage in an inoperable condition.
- (c) No unlicensed, inoperable or restoration vehicles may be stored outside of an enclosed garage.

**Section 11. Parking on Street.** No automobile, truck, boat, boat and trailer, trailer, house trailer, motor home, camper, or other similar vehicle shall be parked on the street

(including the right-of-way thereof) overnight. Temporary parking may be permitted only upon the prior written approval by the Board.

**Section 12. Fuel Tanks.** All propane fuel tanks that are placed above ground must not be in sight of the road. (See Article V, Section 7, h). Such tanks should preferably be located in the rear of the property and enclosed in a manner as not to be visible from any adjoining lot or street. Any tank over 150 gallons must be buried. All other fuel or storage tanks must be approved by the ACB.

**Section 13. Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**Section 14. Additional use Restrictions.** The Board of Directors of the Association may adopt such additional rules or regulations, applicable to all or any portion or portions of the Property and to waive or modify application of the foregoing use restrictions with respect to any Lot (s) as the Board in its sole discretion, deems appropriate.

**Section 15. Maintenance Required and Failure to Maintain.** No unsightly vegetation, including weeds and underbrush, shall be permitted to grow or remain upon any Lot, and no refuse piles or unsightly objects shall be allowed to be placed or suffered to remain anywhere on any Lot. This shall include any Lot purchased by an Owner without intent to build on said Lot within 6 months. These Lots must be maintained at least once a month during the months of March through November. The landscaping and maintenance of all storm water drainage and utility easements and all road easements or rights-of-way (to the road pavement), shall be maintained by the Owner of the Lot on which the easement exists or to which the right-of-way abuts. No structure, planting, or other material shall be placed or permitted to remain in

any easement or road right-of-way which may cause inaccessibility for maintenance or utilities within the easement or road right-of-way or which is inconsistent with any state or local governmental statute, rule or regulation pertaining to the maintenance of road rights-of-way and safety. The Owner shall maintain the exterior of all buildings and improvements on his Lot in good and workmanlike manner, and shall present a neat and clean appearance upon the Lot including painting, repairing, replacing and caring for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. In the event that any Owner fails or refuses to keep his Lot free of refuse piles, debris or other unsightly growth or objects; fails to maintain the easements and/or road rights-of-way as provided for herein; or fails to keep the buildings or improvements on his Lot in a good and workmanlike manner, or in a neat and clean appearance, the Board of Directors of the Association may authorize its agents to enter upon the Lot and perform any necessary maintenance at the expense of the Owner, and such entry will not be deemed as trespass. During construction of a dwelling or other improvement, each Owner will be required to maintain his Lot in a clean condition, providing for trash and rubbish receptacles and disposal. Construction debris shall not be permitted to remain upon any Lot.

**Section 16. Surface Water or Storm water Management Systems.**

(a) The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system (s) shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the

surface water or storm water management system shall be as permitted, or if modified as approved by the St Johns River Water Management District. This Article shall be deemed for the additional benefit of the County of St. Johns, State of Florida, which may enforce the Association's legal responsibility for the maintenance and operation of the surface and storm water management system by appropriate action including injunctive relief.

(b) Notwithstanding the responsibilities of the Association set forth in subparagraph (a) above, all Lots abutting a surface water storage area shall be maintained by their Owners so that the grass, planting or other lateral support shall prevent erosion of the embankment adjacent to the surface water storage area. The height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. If the Owner of any Lot abutting a surface water storage area fails to maintain the embankment as part of his or her landscape maintenance obligations in accordance with this paragraph, the Association shall enter upon such Lot to perform such maintenance which may reasonably be required, all at the expense of the Owner of such Lot. No docks, bulkheads, or other structures shall be constructed on such embankments.

(c) The Association shall have the exclusive right to manage, maintain and control the surface water storage areas and to prescribe rules and regulations pertaining to its recreational use. Only the Association shall have the right to pump or otherwise remove any water from said areas, for the purpose of irrigation or such other use. The Association shall have the sole and absolute right to control the water quality and level of such areas and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in such areas.

**Section 17. Vegetative Natural Buffers.**

(a) “Vegetative Natural Buffer: (Buffer) means all such areas designated as such in the Plat of Phase 1 of Moses Creek Estates or in the Plat of any subsequent Phase of Moses Creek Estates.

(b) Each Buffer is a part of the Surface Water Management System permitted by the St. Johns River Water Management District. The purpose of the Buffer is to detain and treat storm water prior to drainage offsite. The following activities are prohibited within any Buffer: filling or excavation; planting, sodding or clearing, irrigation, or construction of fences which impede the flow of surface water.

(c) No alteration of a Buffer shall be authorized without prior written authorization from the St. Johns Water Management District. Any damage to any Buffer, whether caused by natural or human-induced phenomena, shall be repaired and the Buffer returned to its former condition as soon as possible by the Owner (s) of the Lot (s) upon which the Buffer is located.

**Section 18. Deed Restricted Wetland Areas.**

(a) “Deed Restricted Wetland Area” means all such areas designated as such in the Plat of Phase 1 of Moses Creek Estates.

(b) The Deed Restricted Wetland Areas shall and are hereby declared to be subject to a Conservation Deed Restriction pursuant to Section 704.06, F.S., in favor of the St. Johns River Water Management District (“District”), for the purpose of retaining and maintaining the Areas in their predominantly natural condition and a wooded water recharge, detention, percolation and environmental conservation area. In furtherance of this Conservation Deed Restriction, all the following uses of the areas are hereby prohibited and restricted without the prior written consent of the St. Johns Water Management District, to wit:

(i) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

(ii) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

(iii) Removal or destruction of trees, shrubs, or other vegetation.

(iv) Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

(v) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

(vi) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(vii) Acts or uses detrimental to such retention of land or water areas.

(c) The Deed Restricted Wetland Areas hereby created and declared shall be perpetual.

(d) The District, its successors or assigns, shall have the right to enter upon the Deed Restricted Wetland Areas at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restriction.

(e) The Association, and all subsequent owners of the Deed Restricted Wetland Areas shall be responsible for the periodic removal of trash and other debris which may accumulate on such Deed Restricted Wetland Area.

(f) The prohibitions and restrictions upon the Deed Restricted Wetland Areas as set forth in this section may be enforced by the St. Johns River Water Management District or its successor agency by proceedings at law or in equity including, without limitation, actions for

injunctive relief. The provisions of the prohibition and restrictions set forth in this section may not be amended without prior approval from the St. Johns River Management District.

(g) All rights and obligations arising hereunder are appurtenances and covenants running with the land of the Deed Restricted Wetland Areas, and shall be binding upon and shall inure to the benefit of the District and its successors and assigns. Upon conveyance by the Declarant to the third parties of any land affected by this easement, the Declarant shall have no further liability or responsibility hereunder, provided the deed restriction covering the Deed Restricted Wetland Areas is properly recorded.

**Section 19. Conservation Easement Areas.**

(a) “Conservation Easement Area” means all such areas designated as such in the Plat of Phase 1 of Moses Creek Estates or in the Plat of any subsequent Phase of Moses Creek Estates.

(b) The Conservation Easement Areas shall and are hereby declared to be subject to a Conservation Deed Restriction pursuant to Section 704.06, F.S., in favor of the St. Johns River Water Management District (“District”), for the purpose of retaining and maintaining the Areas in their predominantly natural condition and a wooded water recharge, detention, percolation and environmental conservation area. In furtherance of this Conservation Deed Restriction, all the following uses of the Areas are hereby prohibited and restricted without the prior written consent of St. Johns River Water Management District, to wit:

(i) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.

(ii) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

(iii) Removal or destruction of trees, shrubs, or other vegetation.

(iv) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

(v) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

(vi) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(vii) Acts or uses detrimental to such retention of land and water areas.

(c) The Conservation Easement Areas hereby created and declared shall be perpetual.

(d) The District, its successors or assigns, shall have the right to enter upon the Conservation Easement Areas at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions.

(e) The Association, and all subsequent owners of the Conservation Easement Areas shall be responsible for the periodic removal of trash and other debris which may accumulate on such Conservation Easement Area.

(f) The prohibitions and restrictions upon the Conservation Easement Areas as set forth in this section may be enforced by the St. Johns River Water Management District or its successor agency by proceedings at law or in equity including, without limitation, actions for injunctive relief. The provisions of the prohibition and restrictions set forth in this section may not be amended without prior approval from the St. Johns River Water Management District.

(g) All rights and obligations arising hereunder are appurtenances and covenants running with the land of the Conservation Easement Areas, and shall be binding upon and shall inure to the benefit of the District and its successors and assigns. Upon conveyance by the Declarant to the third parties of any land affected by this easement, the Declarant shall have no

further liability or responsibility hereunder, provided the deed restriction covering the Conservation Easement Areas is properly recorded.

## **ARTICLE VII**

### **RIGHTS OF MORTGAGEES**

**Section 1. Mortgagee Notice Rights.** Upon written request to the Association, identifying the name and address of a Mortgagee, such Mortgagee will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Property or any lot on which there is a first mortgage held, insured or guaranteed by such Mortgagee.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first mortgage held, insured or guaranteed by such Mortgagee, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Mortgagees.

**Section 2. Mortgage Information.** The Association shall make available to Owners and Mortgagees current copies of this Declaration, Articles, Bylaws and rules and regulations of the Association, as well as books, records and financial statements of the Association. “Available” means available for inspection, upon written request during normal business hours of the association or under other reasonable circumstances.

## ARTICLE VIII

### ANNEXATION OF PROPERTY

**Section 1. Annexation.** The Declarant shall have the right until twenty (20) years from the date of recording of this Declaration, from time to time in its sole discretion, to annex to the Property and to include within this Declaration all or part of the Moses Creek Estates Phases. Such annexation shall be evidenced by a statement in writing, signed by Declarant and recorded in the public records of St. John County.

**Section 2. Supplemental Declarations.** Any such additions authorized in Section 1 above may be made by filing of record one or more supplemental declarations with respect to the annexed property. A supplemental declaration shall contain a statement that the real property that is the subject of the supplemental declaration constitutes additional property which is to become a part of the Property subject to this Declaration. Such supplemental declaration shall become effective upon being recorded in the public records of St. Johns County, Florida.

**Section 3. Effect of Annexation.** In the event that any additional property is annexed to the Property pursuant to the provisions of this Article, then such lands shall be considered within the definition of Property for all purposes of this Declaration and each Owner of a Lot shall be a Class A member and the votes of Class A and Class B members shall be adjusted accordingly. In the event that the Moses Creek Estates Subsequent Phases are not annexed as provided herein, this Declaration shall not be construed as a lien, encumbrance or defect on said lands.

## ARTICLE IX

### INSURANCE AND RECONSTRUCTION

**Section 1. Damage to Common Property.** In the event that any portion of the Common Property is damaged or destroyed by casualty, it shall be repaired or restored by the Association to substantially its condition prior to the damage or destruction.

Repair or reconstruction of the Common Property shall be substantially in accordance with the plans and specifications pursuant to which the same was originally specified. All insurance proceeds shall be applied to the restoration and repair. If the insurance proceeds and any reserve maintained by the Association for such purpose are insufficient, the deficit shall be assessed against all owners as a Special Assessment. If there is a surplus of insurance proceeds, it shall become the property of the Association.

**Section 2. Damage to the Lots.** In the event of damage or destruction to any portion of the improvements on a Lot, the improvements shall be repaired or restored by the Owner. In the event that the damage or destruction renders the improvements uninhabitable or the damage is so substantial that the owner determined not to rebuild the improvements on the Lot, the Owner shall clear the debris and have the Lot leveled within sixty (60) days from the date of destruction or damage.

**Section 3. Damage to Common Property Due to Owner Negligence.** In the event that the Common Property is damaged as a result of the willful or negligent acts of the owner, his tenants, family, guest or invitees, such damage shall be repaired by the Association and the cost thereof shall be a Special Assessment as described in Article IV, Sections 4 and 5.

**Section 4. Insurance.** The policy of property insurance shall cover all of the Common Property (except land, foundation, excavation and other items normally excluded from coverage)

but including fixtures and building service equipment, to the extent that they are part of the Common Property.

The policy shall afford, as a minimum, protection against the following.

(a) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement.

(b) all other perils which are customarily covered with respect to projects similar in construction, location and use, including flood insurance, if applicable, and all perils normally covered by the standard “all risk” endorsement, where such is available. If flood insurance is required, it must be in an amount of 100% of current replacement cost of the improvement or the maximum coverage under the National Flood Insurance Program.

(c) losses covered by general liability insurance coverage covering all Common Property, including surface water drainage and storage areas, in the amount of at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal ability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of Common Property and any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

The hazard policy shall be in an amount equal to 100% of the current replacement cost of the insured properties exclusive of land, foundation, excavation and items normally excluded from coverage. The policy shall provide that it may not be canceled or substantially modified without at least 10 days’ prior written notice to the Association. The Board may obtain such additional insurance as it in its sole discretion deems reasonable, convenient or necessary. In the event that any of the coverage required herein becomes unavailable or prohibitively expensive,

the Association may make such changes in coverage as it deems reasonable and prudent such coverage is consistent with the then applicable FNMA standards.

## **ARTICLE X**

### **EASEMENTS**

**Section 1. Utility Easements.** For so long as the Declarant is a Class B member, the Declarant hereby reserves the right to grant perpetual nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Property for ingress, egress, installation, replacement, repair and maintenance of utility and service lines and service systems, public and private. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on such easements. Upon termination of the Declarant's right to grant such easements, the Association shall have the right to grant the easements described herein.

**Section 2. Declarant's Easements of Correct Drainage.** For so long as the Declarant is a Class B member, Declarant hereby reserves the blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance.

**Section 3. Easement for Unintentional Encroachment.** The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any Lot upon the Common Property or vice-versa caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment, which easement is appurtenant to the encroaching Property to the extent of such encroachment.

## ARTICLE XI

### GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, the Declarant for so long as it is a Class B Member, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association, the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the use, maintenance, operation and repair of the surface water or storm water management system, the Vegetative Natural Buffers, the Deed Restricted Wetland Areas, and the Conservation Easement Areas.

**Section 2. Fines/Suspensions.** The Association may levy reasonable fines, not to exceed \$100.00 per violation, against any Member or any tenant, guest, or invitee for a violation of this Declaration, the Articles of Incorporation, the Bylaws, or any rule or regulation of the Association. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000.00 in the aggregate. No fine may be imposed without notice of at least fourteen (14) days to the person sought to be fined and an opportunity for a hearing before the Association's Compliance Committee. The Compliance Committee shall be composed of at least three Members appointed by the Board of Directors who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the Committee, by

majority vote does not approve a proposed fine, it may not be imposed. Fines and suspensions shall be imposed in accordance with the provisions of Section 720.305, Florida Statutes, as amended from time to time.

**Section 3. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 4. Term.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless a termination thereof is approved by ninety percent (90%) of the votes of the Association.

**Section 5. Amendment.** For so long as Declarant retains its Class B Membership, Declarant reserves the right, without consent or joinder of any Owner or Mortgagee to (a) amend this Declaration, provided that such amendments shall conform to the general purposes and standards of the covenants and restrictions, herein contained, (b) amend this Declaration for the purpose of curing any ambiguity in or inconsistency between the provisions herein contained, (c) include in any supplemental declaration or other instrument hereafter made any additional covenants and easements herein contained and (d) release any Lot from any part of the covenants and restrictions which have been violated, if Declarant, in its sole judgment determines such violation to be a minor or insubstantial violation. Except as provided above, this Declaration may be amended by an instrument signed by Owners representing not less than two-thirds (2/3) of the voting members of the Association. Notwithstanding the above, any amendment to the Declaration which alters the provisions herein relating to Vegetative Natural Buffers, Deed Restricted Wetland Areas, and Conservation Easement Areas or which alters the surface water or

storm water management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District. Any amendment must be recorded in the public records of St. Johns County, Florida.

**Section 6. Good Standing.** In order to vote, run for office, serve as an officer, or serve on a committee, you must be a Member in good standing. A Member in good standing is defined and Owner whose dues are current, and is free from any and all fines and violations.

**IN WITNESS WHEREOF**, the undersigned being the Declarant herein, has set his hand and seal this 16<sup>th</sup> day of January, 2015.

Witnesses:

MOSES CREEK ESTATES  
DEVELOPERS, INC.

\_\_\_\_\_  
Printed Name\_\_\_\_\_

By:\_\_\_\_\_  
Thomas Migliaccio  
Its: President

\_\_\_\_\_  
Printed Name\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

**THE FOREGOING** instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by Thomas Migliaccio, as President of Moses Creek Estates Developers, Inc., who ( ) is personally known to me or ( ) has produced valid drivers' licenses as identification.

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

\_\_\_\_\_  
(Name of notary, typed/stamped/printed)  
My commission number:\_\_\_\_\_  
My commission expires:\_\_\_\_\_