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**DECLARATION OF COVENANTS  
FOR  
PALM SPRINGS SQUARE**

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**DECLARATION OF COVENANTS  
FOR  
PALM SPRINGS SQUARE**

**THIS DECLARATION OF COVENANTS** (this "**Declaration**") is made this \_\_\_ day of \_\_\_\_\_, 2022, by **ATLAS 87<sup>TH</sup> AVENUE, LLC**, a Florida limited liability company ("**Declarant**") joined by **FRANCISCO J. PINES, AS TRUSTEE OF THE 115 PRESERVATION LAND TRUST**, who declares hereby that "**The Properties**" described on **Exhibit "A"** hereto and in Article II of this Declaration are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I  
DEFINITIONS**

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

(a) "**Assessments**" shall mean and refer to the sums payable by Owners as to their Lots as more particularly described in Article V of this Declaration.

(b) "**Board**" or "**Board of Directors**" shall mean the board of directors of the POA elected as provided in its Articles of Incorporation and By-Laws.

(c) Intentionally Deleted.

(d) "**County**" shall mean and refer to Miami-Dade County, Florida as a governmental entity and all divisions and departments thereof (specifically including the Department of Regulatory and Economic Resources) or, where the context requires, a geographical location.

(e) "**Declarant**" shall mean **ATLAS 87<sup>th</sup> AVENUE, LLC**, a Florida limited liability company, its successors and assigns. Declarant may assign all or only a portion of its rights, benefits and protections hereunder and may do so on an exclusive or non-exclusive basis. Any such assignment shall be in writing and recorded in the Public Records of Miami-Dade County, Florida.

(f) "**Governmental Requirement**" shall mean and refer to any obligation, requirement, condition, restriction or other term imposed upon The Properties by any governmental or quasi-governmental agency (including, without limitation, the County and the hereinafter defined SFWMD) by way of development order, permit, approval, plat, statute, law, rule, code, ordinance or other means. Notwithstanding the foregoing, none of the foregoing shall be deemed to be within the definition of Governmental Requirement in the form of a later adopted or imposed matter if The Properties would otherwise be deemed "grandfathered" under such later matter.

(g) **"Ground Lease"** shall mean and refer to a long-term lease of a Lot(s) or any portion thereof. The Lessor under a Ground Lease shall be referred to herein as a Ground Lessor, the Lessee under a Ground Lease shall be referred to herein as a **"Ground Lessee"**, and the premises leased under a Ground Lease shall be referred to as a **"Ground-Leased Premises"**.

(h) **"Maintenance Areas"** shall mean and refer to The Properties legally described in **Exhibit "B"** attached hereto and made a part hereof, the Surface Water Management System (as defined below and wherever located) plus all property designated as Maintenance Areas per Article IV, Section 2 hereof; together with the landscaping and any improvements thereon, including, without limitation, all signage, private roadways and sidewalk areas, open space, walkways, irrigation systems and street lights, if any, but excluding any public utility installations thereon, and any other property of Declarant not intended to be made Maintenance Areas.

(i) **"Mitigation Area"** shall mean and refer to the land subject to the Mitigation, Monitoring and Maintenance Plan described in Article XI, Section 5 of this Declaration, the legal description of which land is contained in **Exhibit "A"** to this Declaration.

(j) **"Owner"** shall mean and refer to all those persons or entities who are Owners of the Lots as provided in Article III hereof.

(k) **"Owner's Permittees"** shall mean and refer to a person or entity described in **Article III, Section 4** of this Declaration.

(l) **"Parcel" and/or "Lot"** shall mean and refer to a segment of property within the Properties constituting a separate, platted parcel of land, capable of separate ownership.

(m) **"Plat"** shall mean and refer to that certain Plat(s) entitled \_\_\_\_\_, described on **Exhibit "A"** to this Declaration, including any future re-plats of same or any portion thereof and any additional plat made subject hereto as provided in Article II of this Declaration.

(n) **"POA"** shall mean and refer to **THE PALM SPRINGS SQUARE PROPERTY OWNERS' ASSOCIATION, INC.**, a Florida corporation not-for-profit. The Articles of Incorporation and By-Laws of the POA are attached hereto as **Exhibits "C"** and **"D"**, respectively and reference herein to this Declaration shall be deemed to include such Exhibits, as amended from time to time. The POA shall not be dissolved without the prior written consent of the South Florida Water Management District and, absent such consent, shall exist in perpetuity.

(o) Intentionally Deleted.

(p) **"Surface Water Management System" or "SWMS"** shall mean and refer to the 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, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted by the South Florida Water Management District (the **"SFWMD"**).

(q) **"The Properties"** shall mean and refer to all land and improvements subject to this Declaration.

## **ARTICLE II**

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

### **SUPPLEMENTAL DECLARATIONS**

#### **Section 1. Legal Description.**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Miami-Dade County, Florida, and is more particularly described in **Exhibit "A"** attached hereto, which Exhibit also specifically describes the Mitigation Area, all of which real property (and all improvements thereto) is herein referred to collectively as **"The Properties"**.

In the event that a Lot is subdivided as contemplated in this Declaration, then Declarant (or, if Declarant no longer owns any portion of The Properties), the POA joined by the Owner(s) of the applicable property shall execute and record a Supplemental Declaration allocating the votes and assessments attributable to the original Lot to the Lots resulting from the subdivision process and such resulting Lots shall then and thereafter have such assessment and voting allocations.

#### **Section 2. Supplements.**

Declarant may from time to time bring additional real property under the provisions hereof by recorded supplemental declarations (which shall not require the consent of then-existing Owners, the POA, or any mortgagee other than that of the land intended to be added to The Properties) and thereby add to The Properties. To the extent that such additional real property shall be made a part of The Properties as a common scheme, reference herein to The Properties shall be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate the Declarant to add to the initial portion of The Properties, to develop any such future portions under such common scheme, nor to prohibit Declarant (or the applicable Declarant-affiliated Owner) from rezoning and changing plans with respect to such future portions. All Owners, by acceptance of a deed to or other conveyance of their Lots, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by the Declarant (or the applicable Declarant-affiliated Owner thereof) and shall evidence such consent in writing if requested to do so by

the Declarant at any time (provided, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

### **Section 3. Withdrawal.**

Declarant reserves the right to also use a supplemental declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of The Properties then owned by the Declarant or its affiliates or the POA from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for The Properties desired to be effected by the Declarant; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for The Properties. Any withdrawal of land not owned by Declarant shall require the written consent or joinder of the then-owner(s) and mortgagee(s) of such land and of the SFWMD if any portion of the Surface Water Management System is located thereon, if the land is all or any part of the Mitigation Area or if either is otherwise affected by such withdrawal.

## **ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE POA: OWNER'S PERMITTEES**

### **Section 1. Membership.**

Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the POA. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the POA.

### **Section 2. Voting Rights.**

The POA shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Declarant (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the single vote for such Lot shall be exercised as they among themselves determine but, subject only to the following subsection, in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B member shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast in the aggregate at any time and from time to time by the Class A Members. The Class B membership shall cease and terminate ninety (90) days after all of the Lots within or intended to be included

within The Properties have been sold and conveyed by the Declarant (or its affiliates) to parties other than Declarant or its assignees, or sooner at the election of the Declarant.

### **Section 3. General Matters.**

When reference is made herein, or in the Articles, By-Laws, rules and regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members present in person or by proxy at a duly constituted meeting thereof (*i.e.*, one for which proper notice has been given and at which a quorum exists) and not of the Members themselves or of their Lots.

In the event of any conflict among the various documents creating, governing or administered by the POA, the following order of priority and control shall apply: this Declaration, the Articles of Incorporation of the POA, the By-Laws of the POA and any rules and regulations adopted by the POA. Additionally, should any recorded covenants, restrictions, easements or other instruments applicable to a specific Parcel(s) exist, then such instrument shall have first priority with respect to its subject matter as it effects the applicable Parcel(s).

### **Section 4. Owner's Permittees.**

The use restrictions provided for herein and any rules and regulations of the POA shall extend to and include not only the Owners but also the invitees, tenants, employees and others using The Properties with the permission of any Owner (or such Owner's tenants), each of such parties being referred to in this Declaration as an Owner's Permittee.

## **ARTICLE IV MAINTENANCE AREAS; CERTAIN EASEMENTS**

### **Section 1. Nature of Maintenance Areas.**

The Maintenance Areas, may consist of tracts or easements dedicated to the POA on the Plat of The Properties or by separate recorded instrument or in this Declaration. Accordingly, it is not contemplated that there will not necessarily be a conveyance of the fee simple title to all or any of the Maintenance Areas to the POA.

### **Section 2. Maintenance.**

Subject to the other provisions of this Section 3, the POA shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, Maintenance Areas including, without limitation, rights of way, roads, streets or access easements not constituting part of a Lot; utility easements/tracts or facilities not maintained by a public utility provider; and conservation or preservation easements/areas, if any and, to the extent not otherwise provided for, the drainage



structures, landscaping, improvements and other structures situated on the Maintenance Areas, if any, all such work to be done as ordered by the Board of Directors of the POA. Without limiting the generality of the foregoing, the POA shall assume all of Declarant's and its affiliates' responsibility to the County, the SFWMD, and all other state and local governmental entities of any kind with respect to the Maintenance Areas and shall indemnify and hold the Declarant and its affiliates harmless with respect thereto.

In any instance in which a Ground Lease obligates a Ground Lessee to perform, with respect to the applicable Ground-Leased Premises, any maintenance function assigned to the POA herein, such Ground Lessee shall have the right and obligation hereunder to perform such function (solely as it relates to the applicable Ground-Leased Premises) unless and except to the extent the POA notifies the applicable Owner and Ground Lessee in writing that the POA intends to perform such function with regard to the applicable Ground-Leased Premises.

To the extent a Maintenance Area consists of an easement over, under or through a Lot, the POA's responsibility for the maintenance thereof shall be limited to maintaining the functionality of the easement for its intended purpose (e.g., drainage as part of the SWMS to the extent the Owner of the Lot fails to do so) and not the lands subject to the easement (e.g., landscaping or pavement), except to the extent damaged or altered by the POA's activities thereon.

The Owner of the majority of The Properties or the POA, as determined by mutual agreement of such Owner and the POA, shall provide sufficient full time maintenance personnel to ensure the maintenance of the Surface Water Management System as provided in, and required by, this Declaration and all applicable permits and approvals affecting The Properties. An obligation of the POA's perpetual operation and maintenance will be to cause for resources and forces to be available that have dedicated full time maintenance staff in order to monitor and cause for the maintenance of the underground exfiltration systems that are part of the Surface Water Management System.

All work pursuant to this Section and all expenses incurred or allocated to the POA pursuant to this Declaration shall be paid for by the POA through assessments (either general or special) imposed in accordance herewith.

No Owner may waive or otherwise escape liability for assessments by non-use (whether voluntary or involuntary) of any Maintenance Areas or abandonment of the right to use any Maintenance Areas.

### **Section 3. Public Easements.**

Fire, police, health, sanitation, postal service and other public service and public utility personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across The Properties designed and used for such use and appropriate portions of the Parcels in the performance of their respective duties.

#### **Section 4. Delegated Maintenance Area Duties.**

Declarant may, from time to time, delegate to individual Owners of Parcels the duty and obligation to maintain Maintenance Areas within their Parcels primarily for, but not necessarily limited to, cutting, pruning, irrigating of, and providing pest control and fertilization to, landscaped open spaces. It is the intent hereof that any such delegated duties shall be for the purpose of causing such portions of the Maintenance Areas to have an appearance consistent with the rest of the Parcel.

#### **Section 5. Disclaimer of Warranties.**

DECLARANT, ON BEHALF OF ITSELF AND ITS SUCCESSORS, ASSIGNS, CONTRACTORS, SUBCONTRACTORS, ENGINEERS, PLANNERS, ATTORNEYS AND OTHER PROFESSIONALS PARTICIPATING IN THE DESIGN, DEVELOPMENT AND CONSTRUCTION OF THE PROPERTIES (COLLECTIVELY, THE "**DISCLAIMING PARTIES**") HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF FITNESS, MERCHANTABILITY, COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS AND OTHERWISE WITH RESPECT TO ALL MAINTENANCE AREAS. EACH OWNER AND OWNER'S PERMITTEE, BY VIRTUE OF ACCEPTING TITLE TO A LOT OR MAKING USE THEREOF OR OF ANY MAINTENANCE AREA, SHALL BE DEEMED TO HAVE WAIVED AND RELEASED THE DISCLAIMING PARTIES FROM ANY AND ALL, CLAIMS, DAMAGES AND LIABILITIES ARISING FROM OR CONNECTED WITH THE DESIGN, DEVELOPMENT OR CONSTRUCTION OF THE MAINTENANCE AREAS.

### **ARTICLE V COVENANT FOR ASSESSMENTS**

#### **Section 1. Creation of the Lien and Personal Obligation for Assessments.**

Except as provided elsewhere herein, Declarant, for all Lots within The Properties, hereby covenants and agrees, and each Owner owning or administering a Lot shall be deemed to covenant and agree, to pay to the POA annual Assessments and other charges provided for in this Declaration. Such Assessments and other charges are for the operation of, and for payment of expenses allocated or assessed to or through, the POA, the maintenance, management, operation and insurance of the Maintenance Areas and Surface Water Management System, including such commercially reasonable reserves as the POA may deem commercially reasonably desirable, as well as for all other reasonable costs incurred by the POA in the performance of its functions. All Assessments and other charges hereinafter referred to or lawfully imposed by or on the POA, are to be fixed, established and collected from time to time as herein provided. The Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Such lien to be effective as of the date of this Declaration.

## **Section 2. Assessment Types.**

Assessments hereunder shall be of the following types:

**"Base Assessments"** shall be the Assessments for expenses which are common to all Owners.

**"Benefited Assessments"** shall be the Assessments for expenses which are for the primary (though not necessarily sole) benefit of one or one type of Lot or to a subgroup of same. Only those Owners benefited by the expenses for which the Benefited Assessments are levied shall pay such Benefited Assessments. The Board of Directors' determination of what constitutes an expense for which a Benefited Assessment is to be levied, as well as upon which Lots they are to be so levied, shall be binding and conclusive as long as not wholly unreasonable.

**"Special Assessments"** shall be those Assessments for expenses resulting from unforeseen occurrences (e.g., uninsured casualty loss) or which are otherwise of such a nature that they occur less frequently than annually but which, in the reasonable discretion of the Board of Directors, is properly collected in a manner other than through the other types of Assessments designated herein. Special Assessments shall also include those charges specified elsewhere in this Declaration as Special Assessments. The Board of Directors shall also determine those Owners liable for Special Assessments in accordance with the nature of the expense for which they are levied. By way of example only, if the POA is to install improvements primarily benefiting, and particularly if requested by, one type of Owner, then the Special Assessment for same shall be levied only against the benefited Owner(s). On the other hand, and, again, only by way of example, if a Special Assessment is for an expense benefiting all of the Owners, then the Special Assessment shall be allocated in the same manner as Base Assessments.

## **Section 3. Assessment Rates.**

Base Assessments shall be allocated to the Lots in whole units of assessments, based upon the gross acreage of each Lot, rounded up or down to result in a whole number divided by the total gross acreage of all Lots (as so rounded).

In the event that any Parcel is subdivided by re-plat or other method (including a portion thereof being subjected to a Ground Lease thereby creating a functionally separate Parcel), then the foregoing assessment allocation shall be based upon gross acreage as provided in the first paragraph of this Section 3, less any portion thereof dedicated to the County, district or other governmental entity.

Benefited Assessments shall be allocated (i) 100% to the benefited Lot, if only one (1) or (ii) per the percentages determined per the first paragraph of this Section 3.

Special Assessments shall be allocated in the same manner as Base Assessments or Benefited Assessments, as applicable.

#### **Section 4. Purpose of Assessments.**

The Assessments levied by the POA shall be used exclusively for the purposes expressed in this Declaration including, without limitation, for the enforcement of this Declaration, the maintenance, repair and insurance of the Maintenance Areas and the Surface Water Management System and the administration of the POA. Commercially reasonable reserves for capital improvement, deferred maintenance and/or other purposes may be established and collected as Assessments at the option of the Board of Directors.

#### **Section 5. Capital Improvements.**

Funds which, in the aggregate, exceed thirty percent (30%) of the total amount of the then-current operating budget of the POA in any one fiscal year which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Maintenance Areas under the jurisdiction of the POA and which have not previously been collected as reserves or are not otherwise available to the POA (e.g., by borrowing) shall be levied by the POA as Assessments only upon approval of a majority of the Board of Directors of the POA and upon approval by two-thirds (2/3<sup>rds</sup>) of the votes cast by the Owners voting per Article III, hereof at a meeting or by proxy as may be provided in the By-Laws of the POA. Assessments for capital improvements, unless collected in the form of revenues, shall be deemed Special Assessments to be levied in accordance with Section 2 of this Article V.

#### **Section 6. Date of Commencement of Assessments; Due Dates.**

The various Assessments provided for in this Article V, other than those of a nonrecurring nature, shall commence on the first day of the month next following the recordation of this Declaration and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31.

The Base Assessments and Benefited Assessments shall be payable in advance in monthly installments, or in annual, semi-annual or quarter-annual installments if so determined by the Board of Directors of the POA (absent which determination such assessments shall be payable quarterly).

The Assessment amount (and applicable installments) may be changed at any time by said Board from that originally stipulated or from any other Assessment that is in the future adopted. The original Assessments for any year shall be levied for the calendar year, but the amount of any revised Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year.

The due date of any Special Assessment shall be fixed in the Board resolution authorizing such Assessment.

**Section 7. Duties of the Board of Directors.**

The Board of Directors of the POA shall fix the amount of the Assessments against the Lots subject to the POA's jurisdiction for each Assessment period, to the extent practicable, in advance of such period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the POA and shall be open to inspection by any Owner.

Written notice of the Assessment shall thereupon be sent to every Owner subject thereto at least thirty (30) days prior to the due date of the first installment thereof, except as to Special Assessments. In the event no such notice of the Assessments for a new Assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

Subject to other provisions hereof, the POA shall upon demand (and in any event within twenty (20) days of the POA's receipt of such written request) at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the POA, setting forth whether such Assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the POA therein stated to have been paid. The POA may charge a commercially reasonable fee for such certificate or, alternatively, its management company (if any) may do so.

**Section 8. Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the POA.**

If the Assessments (or installments) provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such Assessments (or installments) shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot as to which the Assessment was not paid, which lien shall bind and encumber such property.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Board, a late charge not greater than five percent (5%) of the amount of such unpaid installment may be imposed. However, only one late charge may be imposed on any one unpaid installment. If such installment is not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges. Each other installment thereafter coming due shall be subject to one late charge each as aforesaid. All unpaid assessments due hereunder shall bear interest at the rate of eighteen percent (18%) per annum from the date when due until paid. All sums collected hereunder shall be applied first to interest, then to late charges, then to collection costs and then to assessments, beginning with the oldest which are unpaid.

In order to collect any sums due hereunder, the POA may: (i) bring an action at law against the Owner(s) obligated to pay the same; (ii) record and foreclose a claim of lien (as evidence of its lien rights as hereinabove provided for); or (iii) pursue one or more of such remedies at the same time or successively. All reasonable attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same, in any such action shall be added to the amount of such Assessments, late charges and interest, as shall any reasonable attorneys' fees and costs incurred in enforcing such judgment and right to collection. In the event a judgment is obtained, such judgment shall include all such sums as above provided and reasonable attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels.

All Assessments, late charges, interest, penalties, fines, attorneys' fees and other sums provided for herein shall accrue to the benefit of the POA.

#### **Section 9. Subordination of the Lien.**

The lien of the Assessments provided for in this Article V shall relate back to the date of the recording of this Declaration but shall be subordinate to real property tax liens and the lien of any first mortgage (recorded prior to recordation by the POA of a claim of lien) held by an institutional mortgage lender, as well as any Ground Lease, which is now or hereafter placed upon a Lot, provided, however, that any such mortgage lender or Ground Lessor when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure) or termination of the ground lease. Any unpaid Assessment which cannot be collected by way of a lien by reason of the provisions of this Section 9 shall be deemed to be an Assessment divided equally among, payable by and a lien against all Lots subject to Assessment by the POA, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. No mortgagee shall be required to collect Assessments. Notwithstanding the foregoing, if the POA has been notified in writing of the existence of a tenant under a Ground Lease or mortgagee on any Parcel, then prior to the POA foreclosing on any lien under this Declaration, the POA shall first provide such tenant and/or mortgagee written notice of such claim for the lien and an opportunity to cure such lien within thirty (30) days following such tenant's and/or mortgagee's receipt of such written notice from the POA.

The POA shall promptly upon request (and in any event within twenty (20) days of the POA's receipt of such written request), provide written confirmation (in recordable form, if requested) to any mortgage holder or Ground Lessor that they have the status of such under this provision as well as the balance of this Declaration and such confirmation shall be binding and conclusive not only as to the POA but also any other party affected hereby.

## **Section 10. POA Funds.**

The Base Assessments collected by the POA shall be held by the POA (or by a management entity in the POA's name) and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or other financial institutions, the deposits of which are insured by an agency or chartered corporation of the United States.

### **ARTICLE VI DAMAGE OR DESTRUCTION TO MAINTENANCE AREAS**

Damage to or destruction of all or any portion of any Maintenance Areas shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) In the event of damage to or destruction of the Maintenance Areas, if the insurance proceeds are sufficient to effect total restoration, then the POA shall cause such portions of the Maintenance Areas to be repaired and reconstructed substantially as they previously existed.

(b) If the insurance proceeds are within Five Hundred Thousand Dollars (\$500,000.00) or less of being sufficient to effect total restoration of the Maintenance Areas, then the POA shall cause the damaged or destroyed portions of the Maintenance Areas to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a capital improvement assessment against all of the Owners in their respective shares in accordance with the provisions of Article VII of this Declaration.

(c) If the insurance proceeds are insufficient by more than Five Hundred Thousand Dollars (\$500,000.00) to effect total restoration of the Maintenance Areas, then by written consent or vote of the holders of at least two-thirds (2/3rds) of the votes in the POA, subject to Article VII hereof, the POA shall decide whether: (1) to rebuild and restore in a way which is less expensive than replacing the Maintenance Areas in substantially the same manner as they existed prior to being damaged; or (2) subject to the approval of the Board, to not rebuild and to retain the available insurance proceeds. Anything to the contrary herein notwithstanding, the decision not to rebuild or to rebuild in a manner which would result in a change in the Maintenance Areas shall not be effective without the written approval of the Board and any Owner that would be materially adversely affected by the decision to not rebuild the affected Maintenance Areas, which can require rebuilding as it deems appropriate. If the requisite vote for either of the options set forth above, as well as the Board's approval, is not obtained, then the POA shall proceed with rebuilding per subsection (b), above.

(d) Each Owner shall be liable to the POA for any damage to the Maintenance Areas not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Owner or any Owner's Permittees.

Notwithstanding the foregoing, the POA reserves the right to charge such Owner an assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner or Owner's Permittee. In the case of joint ownership of a Parcel, the liability of such Owner shall be joint and several. The cost of correcting such damage shall be an assessment against the Owner and may be collected as provided herein for the collection of assessments.

## **ARTICLE VII** **INSURANCE**

### **Section 1. Maintenance Areas.**

The POA shall, unless insurance is provided as described in Section 5, below, keep all insurable improvements, facilities and fixtures, if any, located within the Maintenance Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters), and may obtain insurance against such other hazards and casualties as the POA may deem reasonably desirable. The POA may also insure any other property, whether real or personal, owned by the POA, against loss or damage by fire and such other hazards as the POA may deem reasonably desirable, with the POA as the owner and beneficiary of such insurance for and on behalf of itself and all Owners. The insurance coverage with respect to the Maintenance Areas shall be written in the name of, and the proceeds thereof shall be payable to, the POA. Insurance proceeds shall be used by the POA for the repair or replacement of The Properties for which the insurance was carried. Premiums for all insurance carried by the POA are common expenses included in the Assessments made by the POA. All such insurance policies shall contain standard mortgagee clauses, if applicable.

### **Section 2. Replacement or Repair of Property.**

In the event of damage to or destruction of any portion of the Maintenance Areas, the POA shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article VI of this Declaration.

### **Section 3. Waiver of Subrogation.**

As to each policy of insurance maintained by the POA which will not be voided or impaired thereby, the POA hereby waives and releases all claims against the Board, the Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.



#### **Section 4. Liability and Other Insurance.**

The POA shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of at least \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the POA or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Owner against liability to each other Owner and to the POA and vice versa and coverage for legal liability resulting from lawsuits related to employment contracts shall also be maintained. The POA may also obtain Worker's Compensation insurance and other liability insurance as it may deem reasonably desirable, insuring each Owner and the POA and its Board of Directors and officers, from liability, the reasonable premiums for which shall be common expenses and included in the assessments made against the Owners. The POA may also obtain such other insurance as the Board deems reasonably appropriate. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its reasonable discretion.

The Board of Directors of the POA may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems reasonably advisable, insuring the Board or any management company engaged by the POA against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their Ownership on the Board or any committee thereof. At a minimum, however, there shall be blanket fidelity bonding/crime insurance of anyone (compensated or not) who handles or is responsible for funds held or administered by the POA, with the POA to be an obligee thereunder. Such bonding shall cover the maximum funds to be in the hands of the POA or management company during the time the bond is in force.

#### **Section 5. Alternative Insurance.**

In the event that Declarant or, if different, the owner of a majority of The Properties so elects, such party may maintain insurance providing the coverage required by this Article, in which case the POA shall not be required to maintain its own separate coverage; provided, however, that the policies maintained by Declarant or such majority Owner shall be endorsed to name POA as loss payee for additional insured, as applicable.

### **ARTICLE VIII** **MORTGAGEE PROTECTION**

The following provisions included herein hereto (and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control):

(a) The POA shall be required to make available to all Owners and Mortgagees, and to insurers and guarantors of any first Mortgage, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this

Declaration (with all amendments) and the Articles, By-Laws and rules and regulations and the books and records of the POA. Furthermore, such persons shall be entitled, within thirty (30) days of written request, to: (i) receive a copy of the POA's financial statement for the immediately preceding fiscal year; (ii) receive notices of and attend the POA meetings; (iii) receive notice from the POA of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or the By-Laws of the POA, which default is not cured within thirty (30) days after the POA learns of such default; and (iv) receive notice of any substantial damage or loss to the Maintenance Areas.

(b) Any holder, insurer or guarantor of a Mortgage on a Parcel shall have, if first requested in writing, the right to timely written notice of: (i) any condemnation or casualty loss affecting a material portion of the Maintenance Areas; (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot; (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the POA; and (iv) any proposed action which requires the consent of a specified number of Mortgage holders.

(c) Unless at least 66-2/3% of first Mortgagees (based upon one vote for each Mortgage owned), and the Owners holding at least two-thirds (2/3rds) of the votes entitled to be cast by them, have given their prior written approval, neither the POA nor the Owners shall:

(1) by act or omission seek to sell or transfer the Maintenance Areas and any improvements thereon which are owned by the POA (the granting of easements for utilities or for other such purposes consistent with the intended use of such property by the POA or the Declarant or the transfer of the Maintenance Areas to another similar POA of the Owners in accordance with the Articles of Incorporation of the POA or dedication of such property to the public shall not be deemed a transfer within the meaning of this clause);

(2) change the basic methods of determining the obligations, assessments, dues or other charges which may be levied against a Lot, except as provided herein with respect to future Lots;

(3) by act or omission, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of The Properties;

(4) fail to maintain fire and extended insurance on insurable portions of POA-Maintenance Areas as provided herein; or

(5) use hazard insurance proceeds for losses to any Maintenance Areas for other than the repair, replacement or reconstruction of the improvements.

**ARTICLE IX**  
**SURFACE WATER MANAGEMENT SYSTEM**

**Section 1. Operation.**

The POA shall be responsible for the maintenance, operation and repair of the Surface Water Management System and Mitigation Area in perpetuity. Maintenance shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted and required by the SFWMD. The POA shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved, by the SFWMD. In the event that any portion of the Surface Water Management System is located on a Lot, the applicable portion of the Lot is hereby declared to be subject to an easement for the performance of the aforesaid activities by the POA.

The POA shall have a perpetual non-exclusive easement over all areas of the Surface Water Management System and Mitigation Area for access to operate, maintain or repair the Surface Water Management System and Mitigation Area. By this easement, the POA shall have the right to enter upon any portion of any Lot which is a part of the Surface Water Management System and any portion of the Mitigation Area, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water Management System and Mitigation Area as required by the South Florida Water Management District permit. Additionally, the POA shall have a perpetual non-exclusive easement for drainage over the entire Surface Water Management System. No person shall alter the drainage flow of the Surface Water Management System, including buffer areas or swales, without the prior written approval of the South Florida Water Management District and the POA.

**Section 2. Ownership.**

The Surface Water Management System is to be deemed to be owned by the POA at all times, notwithstanding that it may not hold fee simple title to all of the land within which a portion(s) of the SWMS is located, which may instead be a Lot. Until final certification and transfer to operational phase under the Environmental Resource Permit described below, no portion of the Properties (including, without limitation, the Surface Water Management System and Mitigation Area) shall be conveyed separately from any other portion of the Properties. Upon final certification and transfer to operational phase under the Environmental Resource Permit described below, the Mitigation Area shall be conveyed to the POA. Following such conveyance, the POA shall retain such ownership of the SWMS and Mitigation Area in perpetuity.

**Section 3. Costs.**

The POA is responsible for assessing and collecting fees for the operation maintenance, and, if necessary, replacement of the Surface Water Management System.

Fees shall be assessed and collected through the fee assessment process as set forth in Article V.

#### **Section 4. Amendments.**

Any amendment proposed to these documents which would affect the Surface Water Management System, Mitigation Area, other conservation areas or water management portions of Maintenance Areas shall be submitted to the SFWMD for review prior to finalization of the amendment. The SFWMD shall determine if the proposed amendment will require a modification of the environmental resource or surface water management permit. If a permit modification is necessary, the modification must be approved by the SFWMD prior to the amendment of this document.

#### **Section 5. Mitigation.**

The POA shall be responsible, at its sole cost and expense, for the successful completion of all of the wetlands mitigation, maintenance and monitoring responsibilities, particularly those relating to the Mitigation Area, assigned to it by Declarant, such responsibilities including meeting all conditions set forth in the Environmental Resource Permit described below and the Mitigation, Monitoring and Maintenance Plan for same. Notwithstanding the foregoing, in that regard, Declarant or the co-applicant with regard to SFWMD Environmental Resource Management Permit No. [REDACTED] has posted certain bonds, letters of credit or other security (collectively, "**Bonds**") related to the performance of the aforesaid obligations.

#### **Section 6. Permit.**

The SFWMD Environmental Resource Management Permit No. [REDACTED] is made a part of this document and is described in a separate notice thereof recorded or to be recorded by SFWMD in the Public Records of the County. Copies of the permit and any future permit actions of the SFWMD shall be maintained by the Registered Agent of the POA for the benefit of the POA, all as required by this Declaration.

#### **Section 7. Enforcement.**

The SFWMD has the right to take any enforcement action, including a civil action for an injunction and penalties, against the POA to compel it to correct any outstanding problems with the Surface Water Management System facilities or in mitigation or conservation areas under the responsibility or control of the POA.

#### **Section 8. Indemnification.**

The POA shall indemnify, defend and hold the Declarant harmless in the event that the POA's failure to perform its obligations under this Article IX results in the applicable governmental agency drawing on such Bonds as a result of such failure, such indemnification to include promptly reimbursing Declarant for, or replacing, any sums

drawn as aforesaid as well as all legal and other professional fees and expenses incurred by Declarant as a result of the failure of the POA to comply with this Section, such legal and professional fees to include fees and costs incurred by Declarant in all administrative (whether formal proceedings or not), pre-trial, trial and appellate levels, including those incurred in enforcing Declarant's right to such reimbursement.

## **ARTICLE X**

### **DISCLAIMER OF LIABILITY OF THE POA**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE POA OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE POA (COLLECTIVELY, THE "**POA DOCUMENTS**"), THE POA SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, OWNERS, ANY OWNER'S PERMITTEE OR FOR ANY PROPERTY OF ANY SUCH PERSONS, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE POA.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(a) IT IS THE EXPRESS INTENT OF THE POA DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE POA AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

(b) THE POA IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, MIAMI-DADE COUNTY, AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

(c) ANY PROVISIONS OF THE POA DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE POA TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER OF ANY PORTION OF THE PROPERTIES (BY VIRTUE OF THE ACCEPTANCE OF TITLE THERETO) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO

HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE POA ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE POA HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "**POA**" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE POA'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DECLARANT AND ALL PARTIES RELATED THERETO, ALL OF WHICH SHALL BE FULLY PROTECTED HEREBY.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

#### **Section 1. Duration.**

The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of the POA, and the Owner of any Lot or other land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date that this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of all the Lots subject hereto has been recorded, agreeing to revoke said covenants and restrictions; provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

#### **Section 2. Notice.**

Any notice required to be sent to any Owner or Owners under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, certified and postpaid, to the last known address of the person who appears as Owner or Owner on the records of the POA at the time of such mailing.

#### **Section 3. Enforcement.**

Enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Such right of enforcement shall include the right of all Owners to take action against the POA to enforce its covenants to maintain the applicable portions

of The Properties and otherwise enforce, and perform its other duties under, this Declaration as provided herein or otherwise. The South Florida 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 maintenance, operation and repair of the Surface Water Management System.

**Section 4. No Third Party Beneficiaries.**

The right to enforce the covenants and restrictions set for herein, as well as the authority, rights and benefits afforded the POA, Declarant and Owners hereunder, shall not accrue to any other party including, without limitation, any Ground-Lessee or lessee or other party occupying or otherwise making use of The Properties.

**Section 5. Severability.**

Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

**Section 6. Amendment.**

The covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed, deleted or added to at any time and from time to time upon the execution and recordation of an instrument executed by the Declarant alone, for so long as it or its affiliates holds title to any Lot affected by this Declaration; or alternatively by approval at a meeting of Owners holding not less than 66-2/3% of the votes cast by the Members of the POA (as opposed to only those Owners represented at a meeting of the POA), provided, that so long as the Declarant or its affiliates is the Owner of any Lot affected by this Declaration, the Declarant's consent must be obtained if such amendment, in the sole opinion of the Declarant, affects its interest; and further provided, however, no amendment shall be effective if it increases the burdens, obligations, or restrictions on a Parcel or diminishes the rights, privileges or benefits on a Parcel, unless consented to and approved by the Owner of such Parcel. The foregoing sentence and the provisions of this Section reserving amendment powers in the Declarant may not be amended.

Any amendment to this Declaration which alters the Surface Water Management System or amends or conflicts with the permit described in Article IX, Section 6, of this Declaration (including, without limitation, the conditions thereof pertaining to the Mitigation Area), must have the prior approval of the South Florida Water Management District as provided in Article IX, Section 4 hereof.

**Section 7. Effective Date.**

This Declaration shall become effective upon its recordation in the County Public Records.

**Section 8. Conflict.**

This Declaration shall take precedence over conflicting provisions in any rules and regulations and in the Articles of Incorporation and By-Laws of the POA and said Articles shall take precedence over the By-Laws.

**Section 9. Interpretation.**

This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the POA or the counsel having drafted this Declaration rendered in good faith that a particular interpretation is not unreasonable shall conclusively establish the validity of such interpretation.

**Section 10. Easements.**

Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the POA as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate hereby the Declarant and the POA (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

**Section 11. Notices and Disclaimers as to Water Bodies.**

NEITHER DECLARANT, THE POA NOR ANY OF THEIR OFFICERS, DIRECTORS, OWNERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "**LISTED PARTIES**") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE PROPERTIES, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR



OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK.

ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTIES LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN OR NEARBY THE PROPERTIES AND MAY POSE A THREAT TO PERSONS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

**Section 12. Covenants Running With the Land.**

Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 1 hereof, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the land and with title to the properties. Without limiting the generality of Section 4 hereof, if any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the land; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties (that these covenants and restrictions run with the land as aforesaid) be achieved.

**EXECUTED** as of the date first above written.

**WITNESSES:**

**ATLAS 87<sup>th</sup> AVENUE, LLC**, a Florida limited liability company

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

By: \_\_\_\_\_  
Alberto Micha-Buzali, Manager

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

STATE OF FLORIDA )

) )

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Commission No.: \_\_\_\_\_

**JOINDER**

**FRANCISCO J. PINES, AS TRUSTEE OF THE 115 PRESERVATION LAND TRUST** hereby joins in the foregoing Declaration for the sole purpose of subjecting the Mitigation Area (as defined in such Declaration) to the Declaration solely for the purposes described therein.

\_\_\_\_\_  
Francisco J. Pines, as Trustee of the 115  
Preservation Land Trust

STATE OF FLORIDA                    )  
  )  
COUNTY OF MIAMI-DADE        )

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2022, by Francisco J. Pines, as Trustee under the 115 Preservation Land Trust , on behalf of the said Trust, who is ☐ personally known to me or has ☐ produced a \_\_\_\_\_ as identification.

(Notary Seal)

\_\_\_\_\_  
Notary Public State of Florida at Large  
Name Printed:\_\_\_\_\_  
My Commission Expires:\_\_\_\_\_  
Commission No.:\_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF THE PROPERTIES**

Palm Springs Square according to the Plat thereof recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Public Records of Miami-Dade County, Florida.

**MITIGATION AREA**

Together with, for the purposes set forth in the foregoing Declaration, the "Mitigation Area" legally described as:

[Legal Description to be Inserted Here]

**EXHIBIT "B"**  
**LEGAL DESCRIPTION OF MAINTENANCE AREAS**

To Be Determined and Reflected in an Amendment to this Declaration

## **EXHIBIT "C"**

### **ARTICLES OF INCORPORATION OF THE PALM SPRINGS SQUARE PROPERTY OWNERS' ASSOCIATION, INC.**

(A corporation not-for-profit organized under the laws of the State of Florida)

The undersigned incorporator, desiring to form a corporation not for profit under Chapter 617, Florida Statutes, as amended, hereby adopts the following Articles of Incorporation:

#### **ARTICLE I NAME PRIMARY ADDRESS**

The name of the corporation shall be THE PALM SPRINGS SQUARE PROPERTY OWNERS' ASSOCIATION, INC., which is hereinafter referred to as "the Association". The primary address of the Association shall be 336 E. Dania Beach Boulevard, Dania Beach, FL 33004.

#### **ARTICLE II PURPOSES AND POWERS**

The objects and purposes of the Association are those objects and purposes as are authorized by the Declaration of Covenants for PALM SPRINGS SQUARE recorded (or to be recorded) in the Public Records of Miami-Dade County, Florida, as hereafter amended and/or supplemented from time to time (the "Declaration"). The further objects and purposes of the Association are to preserve the values and amenities in The Properties and to maintain the Common Areas for the benefit of the Members of the Association. The definitions set forth in the Declaration are incorporated herein by this reference.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm or corporation.

The Association shall have the power to contract for the management of the Association and to delegate to the party with whom such contract has been entered into (which may be an affiliate of the Declarant) the powers and duties of the Association, except those which require specific approval of the Board of Directors or Members.

The Association shall have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles and the Declaration identified above, including the power to own and convey property, to operate and maintain common property, including the SWMS, to establish rules and regulations, to assess Members and enforce Assessments, to sue and be sued, and to contract for services. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Declaration and to provide for the welfare of its membership.

The Association shall operate, maintain and manage the SWMS in a manner consistent with, and successfully complete the wetland mitigation, maintenance and

monitoring conditions contained in, the South Florida Water Management District Environmental Resource Permit No. \_\_\_\_\_ attached hereto and applicable District rules and shall assist in the enforcement of the Declaration of Covenants which relate to the SWMS and such wetlands.

### ARTICLE III MEMBERS

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership set forth in the Declaration, each having the voting rights provided for therein.

Section 3. Meetings of Members. The By-Laws of the Association shall provide for an annual meeting of Members, and may make provisions for regular and special meetings of Members other than the annual meeting. A quorum for the transaction of business at any meeting of the Members shall exist if thirty percent (30%) of the total number of Members in good standing shall be present or represented by proxy at the meeting.

Section 4. General Matters. When reference is made herein, or in the Declaration, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

### ARTICLE IV CORPORATE EXISTENCE

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association shall not be dissolved without the prior written consent of the South Florida Water Management District and, absent such consent, shall exist in perpetuity.

In the event of any dissolution of the Association, the responsibility for the operation and maintenance of the SWMS, the property containing such system and water management portions of common areas must be transferred to local government determined to be acceptable by the South Florida Water Management District. If the local government declines to accept such transfer, then responsibility for the operation and maintenance of the SWMS, the property containing such system and water management portions of common areas must be transferred to a similar non-profit corporation.

ARTICLE V  
BOARD OF DIRECTORS

Section 1. Management by Directors. The property, business and affairs of the Association shall be managed by a Board of Directors, which shall consist of not less than three (3) persons, but as many persons as the Board of Directors shall from time to time determine. A majority of the directors in office shall constitute a quorum for the transaction of business. The By-Laws shall provide for meetings of directors, including an annual meeting.

Section 2. Original Board of Directors. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of Members and thereafter until qualified successors are duly elected and have taken office, shall be as follows:

<u>Name</u>	<u>Address</u>
_____	_____, FL _____
_____	_____, FL _____
_____	_____, FL _____

Section 3. Election of Members of Board of Directors. Except as otherwise provided herein and for the first Board of Directors and their Declarant appointed replacements, directors shall be elected by a plurality vote of the Members of the Association at the annual meeting of the membership as provided by the By-Laws of the Association, and the By-Laws may provide for the method of voting in the election and for removal from office of directors. All directors shall be members of the Association residing in The Properties or shall be authorized representatives, officers, or employees of corporate members of the Association, or designees of the Declarant. Notwithstanding the foregoing, until such time as the Class B Membership in the Association terminates, the Declarant shall have the right to appoint the Directors of the Association by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Association.

Section 4. Duration of Office. Members elected to the Board of Directors shall hold office until the next succeeding annual meeting of Members, and thereafter until qualified successors are duly elected and have taken office.

Section 5. Vacancies. If a director elected by the general membership shall for any reason cease to be a director, the remaining directors so elected may elect a successor to fill the vacancy for the balance of the term.

ARTICLE VI



## OFFICERS

Section 1. Officers Provided For. The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect.

Section 2. Election and Appointment of Officers. The officers of the Association, in accordance with any applicable provision of the By-Laws, shall be elected by the Board of Directors for terms of one (1) year and thereafter until qualified successors are duly elected and have taken office. The By-Laws may provide for the method of voting in the election, for the removal from office of officers, for filling vacancies and for the duties of the officers. The President shall be a director; other officers may or may not be directors of the Association. If the office of President shall become vacant for any reason, or if the President shall be unable or unavailable to act, the Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy.

Section 3. First Officers. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and thereafter until successors are duly elected and have taken office, shall be as follows:

<u>Name and Office</u>	<u>Address</u>
President: _____	_____, FL _____
Vice-President: _____	_____, FL _____
Secretary-Treasurer: _____	_____, FL _____

## ARTICLE VII BY-LAWS

The Board of Directors shall adopt By-Laws consistent with these Articles of Incorporation. Such By-Laws may be altered, amended or repealed in the manner set forth in the By-Laws.

## ARTICLE VIII AMENDMENTS AND PRIORITIES

Section 1. Amendments to these Articles of Incorporation shall be proposed and approved by the Board of Directors and thereafter submitted to a meeting of the membership of the Association for adoption or rejection by affirmative vote of 66-2/3% of the Members, all in the manner provided in, and in accordance with the notice provisions of, Florida Statute

617.017. No amendment of Article IV shall be permitted unless approved in writing by the South Florida Water Management District.

Section 2. In case of any conflict between these Articles of Incorporation and the By-Laws, these Articles shall control; and in case of any conflict between these Articles of Incorporation and the Declaration, the Declaration shall control.

#### ARTICLE IX INCORPORATOR

The name and address of the incorporator of this Corporation is:

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#### ARTICLE X INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against all expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (i) it is determined by a court of competent jurisdiction, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or that he acted in a manner he believed to be not in or opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court further determines specifically that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he believed to be not in or opposed to the best interest of the Association, and with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 2. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 above or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually incurred by him in connection therewith.

Section 3. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of Members or otherwise, both as to action in his official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 4. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of



CERTIFICATE DESIGNATING PLACE OF BUSINESS OR  
DOMICILE FOR THE SERVICE OF PROCESS WITHIN THIS  
STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, at the City of Boca Raton, County of Palm Beach, State of Florida, the corporation named in said Articles has named Tobin & Reyes, P.A., 225 NE Mizner Blvd., Suite 510, Boca Raton, FL 33432, as its statutory registered agent.

Having been named the statutory agent of the above corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

\_\_\_\_\_  
REGISTERED AGENT

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023

**EXHIBIT "D"**  
**BY-LAWS**