

**DECLARATION  
OF COVENANTS AND RESTRICTIONS  
FOR  
THE SANCTUARY ON SPRUCE CREEK**

THIS DECLARATION is made on the 1st day of September, 1995, by MHK of Volusia County, Inc., a Florida Corporation, hereinafter referred to as "Declarant".

**W I T N E S S E T H:**

WHEREAS, Declarant is the record Owner of certain real property located in Volusia County, Florida, more particularly described on the attached Exhibit "A" (the "Property"); and

WHEREAS, Declarant desires to subject all of the Property to the terms and conditions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following restrictions, covenants and conditions, which are created and established for the purpose of protecting the value and desirability of the Property, and enhancing and preserving the welfare of the residents and owners thereof. The restrictions, covenants and conditions contained herein shall run with the land and be binding upon all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Association" shall mean and refer to THE SANCTUARY ON SPRUCE CREEK HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation.

Section 2. "Owner" shall mean and refer to the record title owner of fee simple title to any Lot (whether one or more persons or entities), including contract purchasers, but excluding parties holding such interest merely as security for the performance of an obligation.

Section 3. “Property” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association pursuant to the annexation provisions set forth in Article X, Section 6 below.

Section 4. “Common Area” shall mean all real property (including the private roads and other improvements thereon) owned by the Association, including the common areas shown on the plat of The Sanctuary on Spruce Creek, Phase I, and the Parcels described as Parcels A through D, inclusive, and F through P, inclusive, for the common use and enjoyment of the Owners; Declarant shall have the right, but not the obligation, to convey additional property to the Association, and upon such conveyance said property (including the improvements thereon) shall also become Common Area.

Section 5. “Lot” shall mean and refer to any separate numbered plot of land as shown upon any recorded subdivision plat of the Property, excluding the Common Area.

Section 6. “Declarant” shall mean and refer to MHK of Volusia County, Inc., a Florida Corporation, and its authorized successors and assigns.

Section 7. “Declaration” shall mean and refer to this Declaration of Covenants and Restrictions, and any amendments or modifications made in accordance with the provisions hereof.

Section 8. “Structure” shall mean any improvement upon the Property, including but not limited to paving and parking lots, signs, residences, garages, storage buildings and play structures but not including improvements providing electric, telephone, television, water, sewer or other utilities services.

Section 9. “Architectural Review Committee” or “ARC” shall mean and refer to the committee created and established in accordance with the provisions of Article VIII hereof.

Section 10. “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, overdrainage, environmental degradation, and water

pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

Section 11. “Conversion Date” has that meaning described in Article III, Section 2.

Section 12. “Institutional Mortgage” shall mean a mortgage held by bank, savings and loan association, credit union, pension fund, real estate investment trust, or any other similar residential lender.

Section 13. “The Sanctuary on Spruce Creek” when used without a phase designation, shall mean The Sanctuary on Spruce Creek, Phase I and any future phases as well as any other property annexed pursuant to Article X, Section 6 below even if not denominated as a phase of The Sanctuary on Spruce Creek.

## **ARTICLE II PROPERTY RIGHTS**

Section 1.     Owner’s Easement of Enjoyment.     Every Owner shall have a right and easement to use and enjoy all or any portion of the Common Area for its intended purpose, which right and easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a)     The Association may charge reasonable fees for the use of any recreational lot or facility which may be located within or upon the Common Area;

(b)     The Association may suspend an Owner’s voting rights and the right to use the Common Areas, except for the use of the private roads, for any period during which any assessment against such Owner’s lot remains unpaid; or, for a period not to exceed sixty (60) days for each infraction of the Association’s rules and regulations concerning the Common Area;

(c)     The Association may dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument consenting to such transfer by two-thirds (2/3) of the total votes entitled to be cast, has been recorded.

(d) Children under the age of ten (10) may not use the recreational Lots or Common Area unless accompanied by a parent or legal guardian who is an Owner, or by a parent or legal guardian who is the guest of an Owner.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Members. Every Owner, including Declarant, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Classes of Membership. The Association shall have two classes of membership, as outlined below, which shall have the voting rights specified below:

Class A: Class A shall consist of all Owners with the exception of Declarant and any person or entity to which Declarant assigns its rights hereunder. Class A members shall be entitled to one (1) vote for each Lot owned. Following the Conversion Date, both Class A and Class B members shall be entitled to vote in the affairs of the Association on the basis of one vote for each Lot owned. In the event that two or more parties hold an interest in any Lot, the vote for such Lot shall be exercised as such parties may determine, but in no event may more than one vote be cast with respect to any Lot nor any fractional votes be cast. Decisions of the members shall be rendered in accordance with the provisions of the Bylaws of the Association.

Class B: Class B shall consist of Declarant and any person or entity to which Declarant assigns its rights hereunder. Until the Conversion Date, Class B members shall be entitled to cast two (2) votes for each vote that the Class A members are entitled to cast. Upon the occurrence of the Conversion Date, the Declarant shall have one (1) vote for each Lot it owns and the Association shall succeed to all of the rights, obligations and powers of Declarant hereunder except the power to appoint the members of the Architectural Review Board. The Conversion Date shall be defined as the earlier of the following to transpire:

(a) within three (3) months after the Declarant conveys 90% of the Lots in all phases of THE SANCTUARY ON SPRUCE CREEK to Class A members. A total of 355 Lots

are proposed for all phases. In the event Declarant elects not to submit a future phase or to include more or fewer Lots in future phases, it may amend this section to reflect the revised number of total units anticipated, and such amendment shall not require the joinder or consent of any other person or entity.

(b) the date Declarant (or its assignee) voluntarily relinquishes control of the Association to the Class A members; or

(c) September 1, 2008.

## **ARTICLE 1V**

### **COVENANT FOR MAINTENANCE OF SURFACE WATER FACILITIES**

Section 1. Creation of Obligation. The Association shall, at all times, maintain the Common Area in a presentable manner which promotes the health and welfare of the Owners. The Association hereby assumes responsibility for maintenance of the private roads, walls, landscaping, drainage facilities and appurtenant structures now or hereafter located on Property.

#### Section 2. Surface Water or Stormwater Management System.

The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater 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 stormwater management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District.

Any amendment to the Covenants and Restrictions which alters the surface water or stormwater 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.

Section 3. Conservation Easements on Lots. Lots I through 16 are subject to Conservation Easements in favor of the St. Johns River Water Management District and the City of Port Orange. Lots 17 through 32 are subject to a Conservation Easement in favor of the City of Port Orange and a Drainage Easement in favor of the St. Johns River Water Management District. Those portions of Lots which are shown as conservation easements have been set aside as a permanent vegetative natural buffer ("Buffer"). This Buffer extends across Lots 1 through 32 inclusive. This buffer is a part of the surface water management system approved by the City of Port Orange and in accordance with the permit issued by the St. Johns River Water Management District. The purpose of this Buffer is to detain and treat stormwater prior to drainage offsite. The following activities are prohibited within this Buffer: filling or excavation, planting, sodding or removing vegetation, irrigation, or construction of fences which impede the flow of surface water, provided however that elevated walkways can be constructed across the buffer on Lots 28 through 32, inclusive if done pursuant to plans and construction techniques approved by the City of Port Orange and the St. Johns River Water Management District.

Except as specifically provided herein, no alteration of the Buffer shall be permitted without prior written authorization from the City of Port Orange, the Association and the St. Johns River Water Management District. Any damage to the 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 4. Conservation Easements on Common Areas. Declarant hereby declares, imposes and grants to the City of Port Orange a Conservation Easement pursuant to Section 704.06, Florida Statutes, over, under and upon all of the conservation easements shown on The Sanctuary on Spruce Creek Phase I Plat which lie outside of the Lots, provided, however, that Declarant specifically reserves the right for itself and its successors in title to construct elevated walkways and docks within that portion of the conservation easement located on 'Parcel H', between "Parcel I" and Spruce Creek, subject to approval by the City of Port Orange and securing proper permits. The construction of such walkways or docks is strictly discretionary

with Declarant and nothing herein shall be deemed to be a representation by Declarant that it will construct any such walkways or docks.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation for Assessments. Declarant, on behalf of each Owner, hereby covenants and agrees to pay to the Association: (1) Annual assessments or charges, and (2) Special assessments for capital improvements, such assessments to be assessed and collected as hereinafter provided. The Annual and Special assessments, together with any interest due as hereinafter provided, an late penalty, and reasonable attorney fees shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made, and the personal obligation of the Owner of such Lot (jointly and severally if more than one party).

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for such purposes as may be determined by the Association, including promotion of the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Area. Without limiting the generality of the foregoing, the Association shall have the obligation to pay the cost of acquiring and installing as well as maintaining the special street lighting systems within THE SANCTUARY and to maintain any common recreational facilities, to maintain each entrance, including, but not limited to, the: masonry walls which may be located at each entrance, the entrance signs, electronic security gates, landscaping, entrance irrigation, electricity, pumps and maintenance of sod areas and berms, private roads, Parcels A through D, inclusive, Parcels F through P, inclusive, (common areas) as set forth on the Plat of THE SANCTUARY on Spruce Creek, Phase I, recorded concurrently herewith in the Public Records of Volusia County, Florida and any other similar maintenance responsibilities called for in subsequent plats of lands annexed into this Declaration under the terms hereof, in the manner required by any and all governmental authorities having jurisdiction, including, but not limited to, all storm water maintenance requirements of the St. Johns River Water Management District.

Section 3. Annual Assessments. Annual assessments shall initially be levied at \$432.00 per Lot, for each year commencing January 1 and ending the succeeding December 31. Thereafter the Board of Directors of the Association shall fix the Annual assessment on or before November 30 of each year, and shall determine whether such annual assessment shall be payable in one or more installments. An increase in the assessments in excess of 25% over the previous year's assessments shall require approval by a majority of the total votes eligible to be cast. Written notice of the Annual assessments for each Lot and the due date(s) therefor shall be mailed to the Owner of such Lot at the address shown on the rolls of the Association. Annual assessments shall be due and payable to the Association on the date(s) specified in such notice.

Section 4. Special Assessments. In addition to the Annual assessments authorized above, the Board of Directors of 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, replacement or maintenance of any capital improvements on the Property which are the responsibility or obligation of the Association. Such Special assessments shall be due and payable at such times, and in such installments, as the Board of Directors may determine. Special assessments must be affirmed by two-thirds (2/3) of the total votes eligible to be cast prior to such Special assessment becoming collectable.

Section 5. Uniform Rate of Assessment. Annual and Special assessments shall be fixed at a uniform rate for all Lots.

Section 6. Liability for Payment of Assessments. Liability for payment of all Annual and Special Assessments provided for herein shall commence immediately upon conveyance of a Lot from Declarant. Upon the purchase of a Lot from Declarant, the Owner shall, at the closing of such purchase, pay to Declarant the annual assessment for such Lot, prorated if such closing takes place during an assessment year Notwithstanding anything contained herein to the contrary, Declarant shall not be liable for, nor be required to pay, any Annual or Special assessments levied against any Lots owned by Declarant.



Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any Annual or Special assessment not paid within 15 days after the due date shall bear interest from the due date at the highest rate allowed by law. A late charge of Twenty Five Dollars (\$25.00) per assessment shall also be due if payment of the assessment is not received within fifteen (15) days after the due date. The Association may bring an action at law against an Owner to enforce payment of any assessment, or may foreclose the lien of such assessment as provided herein against the Lot upon which such assessment was levied. No Owner may avoid liability for assessments levied hereunder by nonuse of the Common Area, failure to take possession of such Owner's Lot, abandonment of his Lot, or for any other reason.

Section 8. Subordination of Assessment Lien to Certain Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Institutional First Mortgage on any Lot unless the Association's claim of lien is recorded prior to the recording of such mortgage. Sale or transfer of any Lot shall not affect the validity, priority or enforceability of an assessment lien on such Lot.

Section 9. Prohibited Uses of Assessments. Anything herein to the contrary notwithstanding, the Association shall not have the power or authority to use, make, levy, impose, enforce, or collect any assessment for the purpose, in whole or part, or directly or indirectly, of financing the prosecution of or otherwise supporting actual or contemplated litigation against the Declarant or any of its officers or directors, with respect to matters arising out of or relating to the operation and management of the Association, or the development or construction of THE SANCTUARY ON SPRUCE CREEK. This protection shall extend to any assignee-transferee of the Developer. Any attempted assessment for the foregoing purpose shall be null and void, and all Lots are hereby exempted and exonerated from same, and Declarant shall have standing to assert this defense.

## ARTICLE VI

### INDEMNIFICATION AND INSURANCE

Section 1. Indemnification. The Association covenants and agrees to indemnify and hold harmless Declarant from and against any and all claims, suits, actions, causes of actions, and damages rising from any injury, loss of life or damage occurring upon or within the Property and the improvements thereon, except those arising from actions or negligence on the part of Declarant and from and against all loss, cost, expense, court costs and attorneys fees incurred by Declarant arising from any such claims, the investigation thereof or the defense of any actual proceedings brought thereon. The Association also indemnifies Declarant for any expense Declarant may incur in bringing any suit or action for the purpose of enforcing the rights of Declarant hereunder or under any other THE SANCTUARY ON SPRUCE CREEK HOMEOWNERS ASSOCIATION, INC. documents. The cost and expense of fulfilling the covenant of indemnification set forth in this Section shall be considered an operating expense of the Association.

## ARTICLE VII

### OPERATING EXPENSES OF THE ASSOCIATION

Section 1. Administrative and Operating Expenses. The costs of administration of the Association and the performance of its functions and duties hereunder shall be considered operating expenses. In addition, the Association may retain a management company or contractors (any of which may be a subsidiary, affiliate or other related entity of Declarant) to assist in the operation of the Property and the performance of the obligations of the Association. The cost of any management company or contractors so retained shall be deemed to be part of the operating expenses of the Association.

Section 2. Insurance. Premiums on insurance policies which the Association in its discretion determines to obtain shall also be operating expenses of the Association. Insurance which the Association may obtain from time to time may include the following:

(a) Property insurance for improvements in the Common Area in such amounts as may be determined by the Association, covering loss or damage by fire and other hazards covered by standard extended coverage endorsement.

(b) Comprehensive public liability insurance insuring against claims or demands made by any person or persons for injuries received in connection with, or arising from, the operation, maintenance and use of the Property and any improvements thereon, with limits not less than FIVE HUNDRED THOUSAND AND NO/100 THS DOLLARS (\$ 500,000.00) for personal injury and not less than FIVE HUNDRED THOUSAND AND NO/100 THS DOLLARS (\$ 500,000.00) for property damage.

(c) Without limiting applicable general law, the Association shall indemnify every officer and director against any and all expenses, including trial and appellate attorney's fees and costs, reasonably incurred by or imposed upon any such officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors), to which they are made a party by reason of being or having been such officer or director, whether or not said individual still holds such capacity at the time such claim is made or expenses incurred. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to a mistake of judgment, or any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer or director harmless (including attorney's fees and court costs) from and against any and all liability to others and any and all costs and attorneys fees incurred on account of any such mistake of judgment, contract or commitment, whether or not said individual is still in such capacity at the time such claim is made or expenses incurred. Any right to indemnification provided for herein shall not be exclusive of any other right of indemnification to which any officer or director or former officer or director may be entitled by common law, statute or otherwise. The Association may, at the discretion of the Board of Directors, as an operating expense, maintain adequate

insurance for this purpose, if such insurance is available at reasonable cost. Notwithstanding anything contained herein to the contrary, in instances where an officer or director admits, or is adjudged guilty of, willful malfeasance in the performance of his or her duties, the indemnification provisions contained herein shall not apply. In suits where willful malfeasance is alleged as a cause of action and the suit is proposed to be settled, the indemnification provisions set forth herein shall not be automatic and shall apply only when the Board of Directors approves their application to the settlement.

(d) Such other types of insurances with such coverages as the Association may determine are necessary or beneficial for the protection of the Association or Common Area and any improvements thereon.

## **ARTICLE VIII**

### **ARCHITECTURAL REVIEW COMMITTEE (“ARC”)**

**(As amended November 12, 2015)**

Section 1. Creation of ARC. The ARC shall be composed of not less than three (3) nor more than five (5) persons, appointed by Declarant. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the ARC, Declarant shall appoint a successor member who shall serve for the duration of the unexpired term. The membership, rules of procedure and duties of the ARC shall be prescribed by and, from time to time, amended or modified by the Board of Directors of the Association.

Section 2. Review of Proposed Construction Plans by ARC. No Structure shall be erected, placed upon, altered, or permitted to remain on any Lot unless and until the Owner of such Lot has submitted to the ARC an application (hereinafter referred to as an “Application”) for approval, together with two sets of construction plans, exterior specifications, site plan, drainage plan, irrigation and landscaping plan, and such other information as the ARC may require, and such Application has been approved by the ARC. The Board reserves the right to require applicants to pay a deposit of \$500.00 at the time of submittal to cover property damage by the

applicant during his construction. The deposit will be refunded to applicant upon completion of his work and satisfactory inspection by the ARC less the cost of damage to common area property. For purposes hereof, no Application shall be deemed submitted to the ARC unless a written receipt therefor has been signed by a majority of the ARC. The ARC shall review the Application and other materials submitted with respect to (i) the quality of workmanship and materials to be used in such construction, (ii) the harmony of the external design and location of the proposed Structure with respect to existing structures within the Property, (iii) the location of the proposed structure with respect to topography, vegetation and the finished grade elevation of the Lot, (iv) the proposed drainage and landscaping plan for the Lot, (v) consistency of such Structure with the provisions of this Declaration and (vi) any other relevant considerations, including aesthetic factors.

Section 3. The ARC shall respond in writing to all Applications and shall mail or deliver a copy of such response upon the applicant, either approving the application or specifying the reasons for any disapproval. If the ARC fails or refuses to take action on an application within forty-five (45) days after a complete Application is properly submitted, then such Application shall be deemed to have been approved by the ARC, and no further action of the ARC shall be required for the approval thereof. Decisions of the ARC may be appealed in writing to the Board within ten (10) days after delivery of the ARC's decision. If the applicant fails to file an appeal within said ten (10) day period, the decision of the ARC shall be final. In the event of an appeal, Board shall take action on such appeal and either approve or disapprove in writing the decision of the ARC within thirty (30) days after receipt of the appeal. Board shall deliver a copy of its decision to the applicant and the ARC. If Board fails to take action on an appeal within thirty (30) days after such appeal is properly submitted, then the decision of the ARC shall stand. If the Board overturns the decision of the ARC, then the decision of the Board shall be final.

**ARTICLE IX**  
**ARCHITECTURE AND BUILDING STANDARDS**

**(As amended February 9, 2016)**

Guidelines to be used by the ARC in reviewing Applications include, but are not limited to, the following:

Section 1. Dwelling Height and Setback Requirements. Residences shall not exceed thirty-five (35) feet in height. Unless otherwise specifically approved by the ARC in writing, no tool shed, storage room or other detached structure may be constructed on any Lot without the express written consent of the ARC. Set back requirements for the Lots shall be as specified in the Master Development Agreement with the City of Port Orange and the plat.

Section 2. Building Quality and Materials. The ARC shall have final approval of exterior building materials for all Structures. Exposed concrete block shall not be permitted on the exterior of any residence. The ARC may consider the use of imitation stone or imitation brick for the exterior of the residences and other Structures, as an accent, and shall permit the use of exterior materials such as cultured stone, stucco, brick and wood, or a combination of the foregoing. Plywood and Masonite siding is prohibited on the exterior of any Structure without prior approval of the ARC.

Section 3. Exterior Trim and Color Plan. The ARC shall have final approval of exterior color plans for all Structures, and each Owner shall submit to the ARC along with such Owner's Application a color scheme, showing the proposed color of the roof, exterior walls, shutters, garage door, front door, fascia and trim of such Structure. No Owner shall install any additional shutters, awnings, exterior trim or any exterior ornamentation or decorations of any kind without the prior written approval of the ARC. Hurricane shutters may not be placed over the windows, doors or other openings earlier than 72 hours prior to anticipated local landfall of a named storm. Hurricane shutters must be removed from windows, doors and other openings no later than 72 hours after a named storm has passed the local area.

Section 4. Roofs. Flat roofs shall not be permitted on the main body of any Structure unless specifically approved in writing by the ARC. The ARC shall have discretion to permit flat roofs on Florida rooms, porches and patios, and on the main body of a home if such roof is modern or contemporary in design and the overall look is harmonious with other approved homes. The composition of all pitched roofs shall be either concrete or clay tile or a dimensional fiberglass or asphalt shingle creating an architectural detail of a type, style and color specifically approved by the ARC. The color of replacement fiberglass or asphalt shingles shall match, as close as possible, the original color. Minimum roof pitch, unless otherwise approved in writing by the ARC, shall be 5/12.

Section 5. Garages. All residences shall be constructed with an attached garage for two (2) or more cars with a minimum sixteen (16) foot wide garage door. Unless otherwise approved by the ARC, all garage doors must be maintained in a usable condition. All garage doors shall be constructed of wood, metal or Masonite. No corrugated metal or corrugated translucent fiberglass style garage doors shall be permitted. Garages shall not be used for any purpose other than the storage of equipment and vehicles. Garage doors may not be removed or altered. Garage doors shall be maintained in a closed position when the garage is not in use. Garage doors shall be painted the same color as the body of the house unless specifically approved by the ARC. Garage door screens may only be those installed above the door to be rolled down vertically and shall be hidden in within an enclosure painted to provide minimal color contrast with the wall to which it is attached. Horizontal sliding garage screen doors are prohibited.

Section 6. Driveways. No driveway, roadway or parking area shall be constructed, maintained, altered or permitted to exist on any Lot except as approved by the ARC. The location, size and shape of all driveways shall be approved by the ARC, and all driveways shall be installed in such a manner as to minimize the removal of trees from any Lot. Unless prior written approval is obtained from the ARC, all driveways shall be constructed of gray concrete or decorative pavers to coordinate in color with the house colors. Subsequent changes of the house color may warrant a change in the paver colors. No driveways or sidewalks are permitted to be painted or topped unless specifically approved by the ARC. If a driveway is painted, stained or

topped, the ARC may require reapplication on periodic basis in order to maintain the originally intended appearance.

Section 7. Swimming Pools. Any swimming pool to be constructed on any Lot shall be subject to the following requirements, as well as such additional requirements the ARC may from time to time specify: (a) Composition of the pool shall be of material thoroughly tested and accepted by the industry for such construction, (b) The pool shall be constructed behind the residence on any Lot, and the outside edge of any pool wall may not be closer than eight feet to the rear or side property lines, (c) unless specifically approved in writing by the ARC, the screen enclosure framework for every pool shall be of a bronze or white color to match the adjoining house window frames and the screening material shall be of bronze color, (d) the screen enclosure may not be located any closer to the rear and side property line than five feet, (e) No above ground pool shall be permitted, (f) all pool equipment shall be screened from view from the street.

Section 8. Fencing, Walls, Gates and Hedges. (See 2<sup>nd</sup> Amendment to the Declaration of Covenants and Restrictions) Section 9. Air Conditioning Units. No window air conditioning units shall be permitted.

Section 10. Jalousie Windows. No jalousie or similar windows shall be permitted in any Structure.

Section 11. Mailboxes. No mailboxes, paper boxes or other receptacles of any kind for use in the delivery of mail, newspapers, magazines or similar materials shall be installed on any Lot unless and until the size, location design and type of material for said receptacle has been approved by the ARC. Cluster mailboxes shall be maintained by the U. S. Postal Service. Individual mailboxes and street # plates shall be maintained by each resident. Mailbox posts shall be maintained by Association.

Section 12. Landscaping. A landscape and irrigation plan for each residence shall be submitted to the ARC along with such Owner's Application for such residence. No changes shall be made to the landscape plan for any Lot until such changes have received the prior written approval of the ARC. In reviewing landscape plans, the ARC shall take into consideration the natural landscaping of the Lot, such as trees, shrubs and palmettos, and shall encourage the Owner to incorporate the



same into the landscape plan. No fence, wall, hedge or shrubbery may exceed two feet in height on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty five (25) feet from the intersection of the street lines. No trees shall be permitted to remain within such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. Sodding with St. Augustine or Zoysia sod, or other alternative specifically approved in writing by the ARC, will be required on all disturbed areas of front, side and rear yards on any Lot. Each residence shall have shrubs along the front elevations. Vegetable gardens or other plantings outside the approved landscape plan that are visible from the street, including those on corner lots, are not permitted.

Section 13. Exterior Lighting. All exterior lighting with the exception of not more than two (2) entry door lights, not more than two (2) garage wall lights, and not more than two (2) rear wall lights must be approved by the ARC prior to installation. The ARC shall review all exterior lighting plans in order to assure that said lighting does not unreasonably interfere with the use or enjoyment of other Lots.

Section 14. Repair and Maintenance. It is the obligation of all Owners to maintain their Lots and the structures located on said Lots in good and clean condition and repair. It is expected that Owners shall mow and edge their property weekly during the growing season and bi-weekly during the fall and winter. The turf and beds shall be generally free of weeds. Trees and shrubs will be trimmed at least once per year. Pest control and fertilization shall be performed in accordance with generally accepted local standards. If any Lot is not maintained in such condition (including but not limited to exterior painting, landscaping and sod and trash removal), the Board may give the Owner of said Lot written notice of his failure to provide the necessary repair and maintenance, specifying the deficiencies therein. If appropriate repair or maintenance is not performed by such Owner within fifteen (15) days after the giving of such notice, then the Board shall have the power but not the obligation to enter upon such Lot, and make the necessary repairs, and bill the Owner for the costs incurred. Said Owner shall be personally liable for the reimbursement of such costs, and the amount thereof together with interest thereon at the highest rate allowed by law commencing five (5) days after billing shall become a lien against such

Owner's Lot. If such costs are not paid within thirty (30) days of billing, the Board may collect the same, along with the costs of such action, by an action at law against the Owner personally, or by foreclosing upon the lien accorded herein.

Section 15. Subsequent Modifications or Changes. These guidelines may be amended by the ARC, so long as said changes do not materially alter the character, nature or general scheme of the property. Written notice of said modification of these guidelines shall be distributed to all Owners.

Section 16. Residential Use Only. No Lot shall be used for any purpose except residential. The term "residential" is intended to prohibit any commercial use, including professional or other office use of any portion of any Lot. This restriction is not meant to preclude a home Owner from having an office in his residence if otherwise permitted by the land development regulations of Port Orange. There shall be no more than one residential dwelling house per Lot. No Owner may subdivide any Lot. Notwithstanding the foregoing, nothing contained herein shall prohibit an Owner from building upon a portion of two (2) Lots so long as both portions constitute a Lot conforming to applicable zoning regulations.

Section 17. Sidewalks. Sidewalks shall be constructed as required by the City of Port Orange.

Section 18. Parking Restrictions. No passenger vehicle, commercial truck, boat, trailer, house trailer, mobile home, camper, recreational vehicle, or any other vehicle shall be parked on any street right-of-way within THE SANCTUARY ON SPRUCE CREEK between 12:00 midnight and 6:00 A.M. on any day.

Section 19. Storage Restrictions. No boat, trailer, house trailer, mobile home or camper shall be stored on any Lot except in an enclosed garage. No automobile, truck, or commercial vehicle which contains any form of lettering or advertising thereon, or which is identified with a business or commercial activity, shall be stored or otherwise permitted to remain on any Lot, except in a closed garage. Non-commercial passenger vehicles and non-commercial trucks may be

parked upon the driveway, or within a garage, but not upon any grassed area of the lot or right-of-way.

Section 20. Livestock and Animal Restrictions. No livestock, poultry or other animals of any kind or size shall be raised, bred or kept on any Lot; provided, however, that dogs, cats and other common domesticated household pets, exclusive of “pot-bellied” pigs or similar breeds of pigs, may be kept, provided the same are not kept, bred or maintained for any commercial purposes. Not more than four (4) domestic household pets (two of any one kind) may be kept or maintained at any dwelling. Dogs, cats or other permitted pets shall be kept inside the house, on a leash or within a fenced area on a Lot. Owners, tenants or guests who walk their pets must use a leash and cleanup any defecation made by their pets on any property owned by the Association or another Owner.

Section 21. Dumping; Incineration. No Lot shall be used or maintained for dumping or discharge of rubbish, trash, garbage or other waste material. All Lots shall be kept free of the accumulation of rubbish, trash, garbage, waste materials and all unsightly weeds and underbrush. Except during construction, no equipment shall be used or placed on any Lot for the collection, storage or disposal of waste materials except for approved residential “type” trash containers which shall be kept in a sanitary condition. Trash containers shall be kept within the enclosed portion of the house, except when placed curbside for pick up.

Section 22. Restrictions on Activities. No obnoxious or offensive activity shall be conducted or permitted to exist upon any Lot, nor shall anything be done or permitted to exist on any Lot that may be or may become a nuisance to any Owner.

Section 23. Clotheslines. Clotheslines must be located within a screen enclosure, garage, or other enclosed area of the home, screened from view from any street and from the first floor of any adjacent home.

Section 24. Retention Areas and Drainage Easements. (See 2<sup>nd</sup> Amendment to the Declaration of Covenants and Restrictions)

Section 25. Berms, Swales and Natural Vegetation Areas. No Owners shall remove, destroy or in any way impair any berm or swale or drainage system or areas designated on the plat as Conservation Easements which is located upon or within such Owner's Lot. Owners shall maintain in good and clean condition all grass areas located between the front property line of the Lot and the paved surface of the road. The Association shall have the right to enter any Lot in order to maintain any drainage system. The Owner will be liable for any damage caused to said drainage system resulting from the negligence or intentional act(s) of Owner.

Section 26. Vehicles and Repair. Motorcycles, mopeds and other motorized two or three wheel vehicles shall not be operated over or across any common areas within THE SANCTUARY ON SPRUCE CREEK. Inoperative cars, trucks, trailers, vehicles without current tags, or any other such vehicles shall not be permitted to remain on any Lot or roadway within the Property for a period in excess of forty-eight (48) hours, except within an enclosed garage. There shall be no major repair performed on any motor vehicle within the Property except in an enclosed garage.

Section 27. Antenna Restrictions. No Owner shall install or maintain on any Lot any television or radio antennas, masts, aerials, satellite dishes, other than satellite dishes one meter or less in diameter unless said antennas are located within the enclosed portion of the Structure.

Section 28. Insect and Fire Control, and Yard Maintenance. In order to implement effective insect, reptile and fire control, the Association and its authorized agents, employees and contractors, shall have the right, but not the duty, to enter upon any Lot, with tractors or other equipment for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth. Such entrance shall not be deemed a trespass, but shall be deemed a license coupled with an interest. The Association and its agents may likewise enter upon any Lot to remove any trash which has collected on such Lot or mow an unkempt yard without being deemed a trespass. The provisions in this section shall not be construed as an obligation on the part of the Association to mow, clear, cut or otherwise prune any Lot, nor to provide garbage or trash removal services. The costs incurred by the Association shall become a Special Assessment

against the subject Lot, and shall in every respect constitute a lien on the Lot as would any other Special Assessment.

Section 29. Signs. Except as hereinafter set forth, no commercial or other signs, shall be installed or maintained on any Lot except with the written permission of the Association, except as may be required by statute regulation or judicial decree. A sign of not more than one square foot with letters not more than three inches in height and of a design approved by the ARC showing the address of a Lot and the Owner's name is permitted: If permission is granted for any sign, the Association shall have the right to restrict the size, color and content of such sign. No "for Sale" signs of any kind shall be displayed on any Lot except a single sign for the purpose of advertising the house and Lot for sale that meets the requirements of local codes. Political signs are limited to one sign per lot, no more than 24 inches wide and 18 inches tall, being displayed no more than 30 days prior to election day and 7 days after election day for bona fide candidates running for public office. The Association will not grant permission for signs unless their installation is necessary to avert serious hardships for an Owner.

Section 30. Ornamental Statuary. No ornamental statuary of any type will be permitted on any Lot which can be seen from the street or the first floor of any home on any other Lot.

Section 31. Window Coverings. No reflective foil or other reflective film material shall be permitted on the glass of any windows, except for smoke or bronze colored film or glass.

Section 32. Access at Reasonable Hours. For the sole purpose of performing any maintenance or repairs authorized by this Declaration, the Association, through its duly authorized agents, contractors or employees shall have a license and easement to enter into any Lot at reasonable hours, upon reasonable notice to the Owner.

Section 33. Tree Removal Restrictions. Trees situated on any Lot between building setback lines and the property lines having a diameter of six (6) inches or more at a level of two (2) feet above ground level shall not be removed without prior written approval of the ARC. All requests for tree removal shall be submitted in writing to the ARC along with a plan showing the location of such tree(s) and specifying the reason for such removal. Any Owner violating the

provisions of this Section will be required to replace any trees removed or harmed with trees of a like kind, size and condition within thirty (30) days after written demand by the ARC. If the Owner fails or refuses to replace the tree(s) as demanded, the ARC may cause suitable replacements to be planted and the cost thereof shall become a lien against such Owner's Lot. The Owner grants to the ARC, its agents, employees and assigns an easement for ingress or egress over and across said Owner Lot to enable the Association to comply with this Section.

Section 34. Games and Play Structures. (See 2<sup>nd</sup> Amendment to Declaration of Covenants and Restrictions)

Section 35. Utility Connections. Connections for all utilities, including, but not limited to water, sewer, electricity, gas, propane tanks, telephone, television and private wells and irrigation systems shall be installed underground in a manner acceptable to the applicable utility authority and the ARC. All private wells shall be located a minimum of five (5) feet within the Lot, and shall use either a submersible pump or an above ground pump located within the garage or in an approved structure or screened from view through the use of landscaping. The Owner of each Lot shall be responsible for and shall pay when due the costs of installation and maintenance of all underground utility systems for his Lot.

Section 36. Easements. Easements shall be established for the installation, construction, maintenance and repair of the Common Areas, utility facilities, communication facilities, and other similar services within the property. Such easements may be established by one or more of the following methods:

- (a) By a specific designation of an easement on a recorded Plat;
- (b) By a reservation or specific statement providing for such easement in the Deed of Conveyance of a given Lot;
- (c) By specific reference in these Covenants and Restrictions or any amendment or supplement hereto;

- (d) By a separate instrument recorded by the Association.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right, but not the responsibility, to enforce all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration by proceedings at law or in equity.

**Book : 4035**  
**Page : 878**

The Association shall have the right to impose reasonable fines upon, and collect costs incurred with the enforcement of such fines, from Owners who violate the provisions of this Declaration. Such fines shall become liens on the Owner's property if not paid by the Owner. Failure by the Association or an 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 maintenance, operation and repair of the surface water or stormwater management system.

Section 2. Enforcement and Attorneys' Fees. Enforcement shall be by action against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. The party bringing the action shall be entitled to recover, in addition to costs

and disbursements allowed by law, such sum as the court may adjudge to be reasonable for the services of his or its attorney, including attorney's fees for appeals from lower court judgments. The Homeowners' Association shall have the power to undertake such enforcement action, in addition to any Lot Owner.

Section 3. Severability. Invalidation of any one of these covenants and restrictions by judgment of court order shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods often (10) years each, unless and until terminated by a written termination agreement signed by the Owners of not less than seventy-five percent (75%) of the Lots subject to this Declaration, and is recorded against the Property in the Public Records of Volusia County, Florida.

Section 5. Amendment. Declarant hereby reserves the right to amend, modify, waive or rescind whatever parts of this Declaration as it, in its sole discretion, may deem necessary or desirable, so long as such amendment or modification does not substantially change the character, nature or general scheme of development of the Property. Any said change or modification made by Declarant shall not in any way waive Declarant's right to enforce this Declaration as written. After the Conversion Date, this Declaration may be amended by a written amendment signed by the Owners of not less than two-thirds (2/3) of the Lots subject to this Declaration, and recorded against the Property in the Public Records of Volusia County, Florida, so long as such amendment or modification does not substantially change the character, nature or general scheme of development of the Property.

Section 6. Annexation. Declarant may, in its sole discretion and judgment, subject additional phases of real property to the terms of this Declaration as future phases of THE SANCTUARY ON SPRUCE CREEK by recording an annexation amendment in the public

Book: 4035  
Page: 879

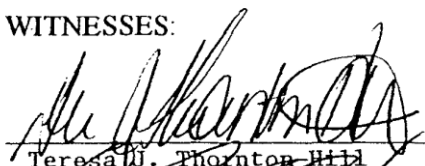
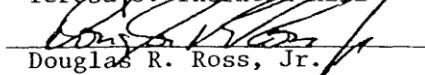


records of Volusia County, Florida. Notice of said annexation stating the number of Lots and a description of common property added, the number of votes allocated to Declarant, and the total number of votes in the Association after said annexation, shall be delivered to all Owners.

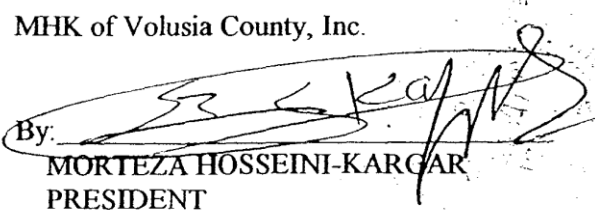
Section 7. Notices. Any notice provided for in this Declaration shall be given in person or by U.S Postal Service (mail) with postage prepaid, addressed appropriately to Declarant, an Owner or the Association at the address shown for such party on the rolls of the Association. Notices shall be deemed to have been given when delivered in the case of personal delivery and three (3) days after mailing when mailed in compliance with the requirements of this Section.

IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal the day and year first above written.

WITNESSES:

  
\_\_\_\_\_  
Teresa J. Thornton-Hill  
  
\_\_\_\_\_  
Douglas R. Ross, Jr.

MHK of Volusia County, Inc.

By:   
\_\_\_\_\_  
MORTEZA HOSSEINI-KARGAR  
PRESIDENT