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**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS**

**FOR**

**MILL CREEK**

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**DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR  
MILL CREEK**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS FOR MILL CREEK (this "**Declaration**") is made by Standard Pacific of Florida, a Florida general partnership ("**Developer**") and joined in by Mill Creek at Cooper City Homeowners Association, Inc., a Florida not-for-profit corporation ("**Association**").

**RECITALS**

A. Developer is the owner of certain real property in Broward County, Florida, more particularly described in **Exhibit 1** attached to and made a part of this Declaration, upon which Developer intends (although Developer does not obligate itself to do so) to develop a residential community known as Mill Creek ("**Mill Creek**").

B. Developer may unilaterally, in its sole discretion, from time to time, elect to (i) subject additional properties to this Declaration or withdraw portions of properties from this Declaration, (ii) amend this Declaration, and/or (iii) impose additional covenants, conditions, and restrictions not set forth in this Declaration on such additional portions of property.

C. Developer desires to subject Mill Creek to the covenants, conditions and restrictions contained in this Declaration.

D. Association is the owners association for Mill Creek and is responsible for the administration, enforcement and performance of certain duties under this Declaration.

E. This Declaration is a covenant running with all of the land comprising Mill Creek, and each present and future owner of interests therein and their heirs, devisees, personal representatives, successors or assigns are hereby subject to this Declaration.

NOW THEREFORE, Developer, in consideration of the promises and mutual covenants contained in this Declaration, hereby declares that every portion of Mill Creek is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, charges and liens hereinafter set forth.

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated into and form a part of this Declaration.

2. **Definitions.** In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

"**Access Control System**" shall mean any system intended to control access and/or enhance the welfare of Mill Creek.

"**ACC**" shall mean the Architectural Control Committee for Mill Creek established pursuant to Section 26 hereof.



**“Articles”** shall mean the Articles of Incorporation of Association filed with the Florida Secretary of State in the form attached hereto as **Exhibit 2** and made a part hereof, as amended from time to time.

**“Assessments”** shall mean any assessments made in accordance with this Declaration and as further defined in Section 24 hereof.

**“Association”** shall mean Mill Creek at Cooper City Homeowners Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

**“Association Documents”** shall mean this Declaration, the Articles, the By-Laws, the Rules and Regulations and the Community Standards, as amended from time to time.

**“Back Yard”** shall mean the portion of the yard of a Home between the back of the Home and the designated rear property line for such Home. In the event that there is any question about what portion of a Home is part of the Back Yard, Association’s determination shall be final and in Association’s sole and absolute discretion.

**“Board”** shall mean the Board of Directors of Association.

**“By-Laws”** shall mean the By-Laws of Association in the form attached hereto as **Exhibit 3** and made a part hereof, as amended from time to time.

**“Cable Services”** shall mean “basic service tier” as described in Section 623(b)(7)(A) of the Cable Television Consumer Protection Act of 1992, video programming services offered on a per-channel or per-program basis, video programming services offered in addition to basic service tier, any method of delivering video programming to Homes including, without limitation, interactive video programming, and any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax and the Movie Channel. By way of example, and not of limitation, the term Cable Services may include cable television, individual satellite dishes, satellite master antenna television, multipoint distribution systems, video dial tone, open video system or any combination thereof.

**“CBWCD”** shall mean the Central Broward Water Control District.

**“Commercial Vehicle”** shall have the meaning set forth in Section 18.32 hereof.

**“Common Areas”** shall mean all real property interests and personalty within Mill Creek designated as Common Areas from time to time by Plat or recorded amendment to this Declaration and provided for, owned, leased by, or dedicated to, the common use and enjoyment of the Owners within Mill Creek. The Common Areas may include, without limitation, community signage, entrance features, open space areas, internal buffers, improvements, Surface Water Management System, easement areas owned by others, additions, lakes, irrigation pumps, irrigation lines, parks, sidewalks, private roads, streets, street lights, service roads, walls, commonly used utility facilities, project signage, parking areas, other lighting, entrance ways, features, and parks. The Common Areas do not include any portion of a Home. The Common Areas contemplated at this time include open space and/or landscape areas, a community lake, and private roads. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE

CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND, OBLIGATE OR LIMIT DEVELOPER TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN DEVELOPER'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM.

**"Community"** shall mean the residential community known as "Mill Creek".

**"Community Completion Date"** shall mean the date upon which all Homes in Mill Creek, as ultimately planned and as fully developed, have been conveyed by Developer to Owners.

**"Community Enhancement Fee"** shall have the meaning set forth in Section 24.23 hereof.

**"Community Standards"** shall mean such standards of conduct, maintenance or other activity, if any, established by the ACC pursuant to Section 26 hereof.

**"Contractors"** shall have the meaning set forth in Section 26.12.2 hereof.

**"County"** shall mean Broward County, Florida.

**"Data Transmission Services"** shall mean (i) internet access services and (ii) enhanced services as defined in Section 64.702 of Title 47 of the Code of Federal Regulations, as amended from time to time, and without regard to whether the transmission facilities are used in interstate commerce.

**"Declaration"** shall mean this Declaration together with all amendments and modifications thereof.

**"Developer"** shall mean Standard Pacific of Florida, a Florida general partnership, and any of its designees (including its affiliated or related entities which conduct land development, homebuilding and sales activities), successors and assigns who receive a written assignment of all or some of the rights of Developer hereunder. Such assignment need not be recorded in the Public Records in order to be effective. In the event of such a partial assignment, the assignee shall not be deemed Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

**"Development Plan"** shall mean collectively the full or partial concept plan for the development of Mill Creek, as it exists as of the date of recording this Declaration, regardless of whether such plan is currently on file with one or more governmental agencies. The Development Plan is subject to change as set forth herein. The Development Plan is not a representation by Developer as to the development of Mill Creek or its amenities, as Developer reserves the right to amend all or part of the Development Plan from time to time.

**“Front Yard”** shall mean the portion of the yard of a Home between the front of the Home and the road providing access to such Home. In the event that there is any question about what portion of a Home is part of the Front Yard, Association’s determination shall be final and in Association’s sole and absolute discretion.

**“Home”** shall mean each residential home and appurtenances thereto constructed on a Lot within Mill Creek. A Home shall include, without limitation, a townhome, a patio home, zero lot line home, and single family detached estate home. The term Home may not reflect the same division of property as reflected on a Plat. The term “Home” includes any interest in land, improvements, or other property appurtenant to the Home. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty, destruction or remodeling) shall not affect the status of a Home, or the obligation of Owner to pay Assessments with respect to such Home.

**“Immediate Family Members”** shall mean the spouse of the Owner and all unmarried children twenty-two (22) years and younger of either the Owner or the Owner’s spouse. If an Owner is unmarried, the Owner may designate one other person who is living with such Owner in the Home in addition to children twenty-two (22) years and younger as an additional adult Immediate Family Member. Children twenty-two (22) years and younger of such additional adult Immediate Family Member shall also be deemed Immediate Family Members. No unmarried child or other person shall qualify as an Immediate Family Member unless such person is living with the Owner within the Home. In no event shall the Owner and all Immediate Family Members exceed a number equal to two times the number of bedrooms in the Home. Without limiting the foregoing, Immediate Family Members shall not include grandchildren of an Owner or the spouses of the Owner’s children.

**“Individual Assessments”** shall have the meaning set forth in Section 24.2.5 hereof.

**“Initial Capital Contributions”** shall have the meaning set forth in Section 24.12 hereof.

**“Lender”** shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Lot or Home or (ii) Developer and its affiliates, to the extent Developer or its affiliates finances the purchase of a Home or Lot initially or by assignment of an existing mortgage.

**“Lessee”** shall mean the lessee named in any written lease respecting a Home who is legally entitled to possession of any rental Home within Mill Creek.

**“Lot”** shall mean any platted residential lot shown on a Plat.

**“Mill Creek”** shall mean the real property described in **Exhibit 1** attached hereto subject to additions and deletions thereto as permitted pursuant to the terms of this Declaration. Developer may, when amending or modifying the description of real property which is subject to the operation of this Declaration, also amend or modify the definition of Mill Creek.

**“Monthly Assessments”** shall have the meaning set forth in Section 24.2.1 hereof.

**“Operating Costs”** shall mean all costs and expenses of Association and the Common Areas. Operating Costs may include, without limitation, all of the costs of ownership; operation; administration; all amounts payable by Association; all amounts required to maintain the Surface Water Management System; all community lighting including up-lighting and entrance lighting; all amounts payable in connection with any private street lighting agreement entered into by the Association; amounts payable to a Telecommunications Provider for Telecommunications Services furnished to all Owners; utilities; taxes; insurance; bonds; Access Control Systems; salaries; management fees; professional fees; service costs; supplies; maintenance; repairs; replacements; refurbishments; common area landscape maintenance and any and all of the costs relating to the discharge of the obligations hereunder, or as determined to be part of the Operating Costs by Association. By way of example, and not of limitation, Operating Costs shall include all of Association’s legal expenses and costs relating to or arising from the enforcement and/or interpretation of this Declaration.

**“Owner”** shall mean the record owner (whether one or more persons or entities) of fee simple title to any Home. The term “Owner” shall not include Developer or a Lender.

**“Parcel”** shall mean any portion of Mill Creek upon which one or more Homes may be constructed, a platted or unplatted lot, tract, unit or other subdivision of real property upon which a Home has been, or will be, constructed. Once improved, the term Parcel shall include all improvements thereon and appurtenances thereto. The term Parcel, as used herein, may include more than one Home.

**“Permit”** shall mean, collectively, all permits issued by the SFWMD, including but not limited to Permits No. 06-06665-W, 06-06686-P and 06-06666-W (as amended and supplemented), copies of which are attached hereto as **Exhibit 4**.

**“Plat”** have the meaning set forth in Section 16 hereof.

**“Public Records”** shall mean the Public Records of Broward County, Florida.

**“Reserves”** shall have the meaning set forth in Section 24.2.4 hereof.

**“Rules and Regulations”** shall mean collectively the Rules and Regulations governing Mill Creek as adopted by the Board from time to time.

**“SFWMD”** shall mean the South Florida Water Management District.

**“Side Yard”** shall mean those portions of the yard of a Home between the front lot line to the back lot line running along the exterior sides of the Home. In the event that there is any question about what portion of a Home is part of the Side Yard, Association’s determination shall be final and in Association’s sole and absolute discretion.

**“Special Assessments”** shall mean those Assessments more particularly described as Special Assessments in Section 24.2.2 hereof.

**“Surface Water Management System”** shall mean the collection of devices, improvements, or natural systems whereby surface waters are controlled, impounded or

obstructed. This term may include exfiltration trenches, wetland preservation areas, mitigation areas, conservation areas, lakes, retention areas, culverts, water quality monitoring, dams, impoundments, reservoirs, drainage maintenance easements and those works defined in Section 373.403(1)-(5) of the Florida Statutes. The Surface Water Management System includes those works authorized by SFWMD pursuant to the Permit.

**“Telecommunications Provider”** shall mean any party contracting with Association and/or Owners to provide Owners with one or more Telecommunications Services. Developer may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Data Transmission Services, one Telecommunications Provider may provide Association such service while another may own, maintain and service the Telecommunications Systems which allow delivery of such Data Transmission Services.

**“Telecommunications Services”** shall mean delivered entertainment services; all services that are typically and in the future identified as telecommunication services; Telephony Services; Cable Services; and Data Transmission Services. Without limiting the foregoing, such Telecommunications Services include the development, promotion, marketing, advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

**“Telecommunications Systems”** shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to Mill Creek. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, pedestals, wireless cell sites, computers, modems, satellite antenna sites, individual satellite dishes, transmission facilities, amplifiers, junction boxes, trunk distribution, feeder cables, lock boxes, taps, drop cables, related apparatus, converters, connections, head-end antennas, earth stations, appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all or a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

**“Telephony Services”** shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA and interLATA voice telephony and data transmission.

**“Title Documents”** shall have the meaning set forth in Section 37.6 hereof.

**“Toll Calls”** shall have meaning given to such term by the Florida Public Service Commission and/or the Federal Communications Commission.

**“Turnover Date”** shall mean the date on which transition of control of Association from Developer to Owners occurs. Without limiting the foregoing, Developer shall never be obligated to turnover Association prior to the date currently required by law.

**“Use Fees”** shall have the meaning set forth in Section 24.2.3 hereof.

3. Plan of Development. The planning process for Mill Creek is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of Developer's buyers. Subject to the Title Documents, Developer may wish and has the right to develop Mill Creek and any adjacent property now or hereafter owned by Developer into residences, comprised of homes, villas, coach homes, zero lot line homes, patio homes, single-family homes, estate homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings, as well as commercial development, which may include shopping centers, stores, office buildings, showrooms, industrial facilities, technological facilities, and professional offices. The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of Mill Creek as finally developed. Developer shall have the absolute right to plan, develop and construct Mill Creek and the adjacent properties at Developer's sole discretion.

4. Amendment.

4.1 General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Developer, including without limitation any easements that benefit Developer, unless such amendment receives the prior written consent of Developer, which consent may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Declaration benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with Section 10.2.2 hereof which benefits the SFWMD. No amendment shall be effective until it is recorded in the Public Records.

4.2 No Vested Rights. Each Owner by acceptance of a deed to a Home irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Association Documents. It is expressly intended that Developer and Association have the unfettered right to amend this Declaration and the other Association Documents except as expressly set forth herein.

4.3 Amendments Prior to and Including the Turnover Date. Prior to and including the Turnover Date, Developer shall have the right to amend this Declaration as it deems appropriate in Developer's sole and absolute discretion, without the joinder or consent of any person or entity whatsoever. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Mill Creek; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Homes, and maintenance standards for landscaping. Developer's right to amend under this provision is to be construed as broadly as possible. By way of example, and not as a limitation, Developer may create easements over Homes conveyed to Owners provided that such easements do not prohibit the use of such Homes as residential homes. In the event that Association shall desire to amend this Declaration prior to and including the Turnover Date, Association must first obtain Developer's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Developer may be adopted by Association pursuant to the

requirements for amendments after the Turnover Date. Thereafter, Developer shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

4.4 Amendments After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, this Declaration may be amended with the approval of (i) sixty-six and two-thirds percent (66 2/3%) of the Board; and (ii) seventy-five percent (75%) of all of the votes present (in person or by proxy) at a duly noticed meeting of the members of Association at which there is a quorum.

5. Annexation, Merger and Withdrawal.

5.1 Annexation by Developer. Prior to and including the Turnover Date, additional lands may be made part of Mill Creek by Developer, at Developer's sole discretion. Such additional lands to be annexed may or may not be adjacent to Mill Creek. Except for applicable governmental approvals (if any), no consent to such annexation shall be required from any other party (including, but not limited to, Association, Owners or any Lenders of any portion of Mill Creek, including a Home). Such annexed lands shall be brought within the provisions and applicability of this Declaration by the recording of an amendment to this Declaration in the Public Records. The amendment shall subject the annexed lands to the covenants, conditions, and restrictions contained in this Declaration as fully as though the annexed lands were described herein as a portion of Mill Creek. Such amendment may contain additions to, modifications of, or omissions from, the covenants, conditions, and restrictions contained in this Declaration as deemed appropriate by Developer and as may be necessary to reflect the different character, if any, of the annexed lands. Prior to and including the Turnover Date, only Developer may add additional lands to Mill Creek.

5.2 Annexation by Association. After the Turnover Date, and subject to applicable governmental approvals (if any), additional lands may be annexed with the approval of (i) sixty-six and two-thirds percent (66 2/3%) of the Board; and (ii) seventy-five percent (75%) of all of the votes present (in person or by proxy) at a duly noticed meeting of the members of Association at which there is a quorum.

5.3 Withdrawal. Prior to and including the Turnover Date, any portions of Mill Creek (or any additions thereto) may be withdrawn by Developer from the provisions and applicability of this Declaration by the recording of an amendment to this Declaration in the Public Records. The right of Developer to withdraw portions of Mill Creek shall not apply to any Home which has been conveyed to an Owner unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner is obtained. The withdrawal of any portion of Mill Creek shall not require the consent or joinder of any other party (including, but not limited to, Association, Owners, or any Lenders of any portion of Mill Creek). Association shall have no right to withdraw land from Mill Creek.

6. Dissolution.

6.1 Generally. In the event of the dissolution of Association without reinstatement within thirty (30) days, other than incident to a merger or consolidation, any Owner may petition the Circuit Court of the appropriate Judicial Circuit of the State of Florida for the appointment of

a receiver to manage the affairs of the dissolved Association and to manage the Common Areas in the place and stead of Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association. In the event Association is dissolved, and any portion of the Surface Water Management System is part of the Common Areas, the Surface Water Management System shall be conveyed to an appropriate agency of local government, and that if not accepted, then the Surface Water Management System shall be dedicated to a similar non-profit corporation.

6.2 Applicability of Declaration after Dissolution. In the event of dissolution of Association, Mill Creek and each Home therein shall continue to be subject to the provisions of this Declaration including, without limitation, the provisions respecting Assessments. Each Owner shall continue to be personally obligated to the successors or assigns of Association for Assessments to the extent that Assessments are required to enable the successors or assigns to properly maintain, operate and preserve the Common Areas. The provisions of this Section shall only apply with regard to the maintenance, operation, and preservation of those portions of Mill Creek which had been Common Areas and continue to be so used for the common use and enjoyment of the Owners.

7. Binding Effect and Membership.

7.1 Term. This Declaration and all covenants, conditions and restrictions contained in this Declaration are equitable servitudes, perpetual and run with the land. Each Owner, by acceptance of a deed to a Home or Lot, and any person claiming by, through or under such Owner (i) agrees to be subject to the provisions of this Declaration and (ii) irrevocably waives any right to deny, and any claim, that this Declaration and all covenants, conditions and restrictions contained in this Declaration are not enforceable under the Marketable Record Title Act, Chapter 712 of the Florida Statutes. It is expressly intended that the Marketable Record Title Act will not operate to extinguish any encumbrance placed on Mill Creek by this Declaration. It is further expressly intended that no re-filing or notice of preservation is necessary to continue the applicability of this Declaration and the applicability of all covenants, conditions, and restrictions contained in this Declaration. This provision is not subject to amendment, except by Developer.

7.2 Transfer. The transfer of the fee simple title to a Home, whether voluntary or by operation of law, terminating the Owner's title to that Home shall terminate the Owner's rights to the use of and enjoyment of the Common Areas as it pertains to that Home and shall terminate such Owner's membership in Association. An Owner's rights and privileges under this Declaration are not assignable separately from a Home. The Owner of each Home is entitled to the benefits of, and is burdened with the duties and responsibilities set forth in, the provisions of this Declaration. All parties acquiring any right, title and interest in and to any Home shall be fully bound by the provisions of this Declaration. In no event shall any Owner acquire any rights that are greater than the rights granted to, and limitations placed upon its predecessor in title pursuant to the provisions of this Declaration. In the event that any Owner desires to sell or otherwise transfer title of his or her Home, such Owner shall give the Board at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board may reasonably require. The transferor shall remain jointly and severally liable with the transferee



for all obligations of the Owner and the Home pursuant to this Declaration including, without limitation, payment of all Assessments accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for Assessments accruing subsequent to the date of transfer. Except for conveyances to governmental entities, every deed of any portion of Mill Creek shall incorporate by reference this Declaration. In the event that upon the conveyance of a Home an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Home, the transferring Owner shall remain liable for Assessments accruing on the Home from and after the date of conveyance.

7.3 Membership. Upon acceptance of title to a Home, and as more fully provided in the Articles and By-Laws, each Owner shall be a member of Association. Membership rights are governed by the provisions of this Declaration, the deed to a Home, the Articles and By-Laws. Membership shall be an appurtenance to and may not be separated from, the ownership of a Home. Developer's rights with respect to Association are set forth in this Declaration, the Articles and the By-Laws.

7.4 Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to occupancy of the Home, designate one or more persons who are to be the occupants of the Home and register such persons with Association. All provisions of this Declaration and the other Association Documents shall apply to both such Owner and the designated occupants.

7.5 Voting Interests. Voting interests in Association are governed by the provisions of the Articles and By-Laws.

7.6 Document Recordation by Owners Prohibited. Neither Association nor any Owner, nor group of Owners, may record any documents which, in any way, affect or restrict the rights of Developer, or conflict with the provisions of this Declaration or the other Association Documents.

7.7 Composition of Board. Developer reserves the right to change, from time to time prior to and including the Turnover Date, the composition of the Board. Without limiting the foregoing, Developer may change the number of Board members, the effect of a vote by a Board member, or how a Board member is elected or appointed prior to and including the Turnover Date.

7.8 Conflicts. In the event of any conflict among this Declaration, the Articles, the By-Laws or any of the other Association Documents, this Declaration shall control.

8. Paramount Right of Developer. Notwithstanding anything to the contrary herein, prior to the Community Completion Date, Developer shall have the paramount right to dedicate, transfer, and/or convey (by absolute conveyance, easement, or otherwise) portions of Mill Creek for various public purposes or for the provision of Telecommunications Systems, or to make any portions of Mill Creek part of the Common Areas, or to create and implement a special taxing district which may include all or any portion of Mill Creek. In addition, the Common Areas of Mill Creek may include decorative improvements, berms, fountains and waterbodies. Notwithstanding anything to the contrary herein, the waterbodies may be dry during certain

weather conditions or during certain times of the year. Developer may remove, modify, eliminate or replace these items from time to time in its sole discretion. SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT FACILITIES, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. DEVELOPER SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS AT ANY TIME WITHOUT NOTICE AT ITS DISCRETION.

9. Operation of Common Areas.

9.1 Prior to Conveyance. Prior to the conveyance, identification and/or dedication of the Common Areas to Association as set forth in Section 9.4 herein, any portion of the Common Areas owned by Developer shall be operated, maintained, and administered at the sole cost of Association for all purposes and uses reasonably intended, as Developer in its sole discretion deems appropriate. During such period, Developer shall own, operate, and administer the Common Areas without interference from any Owner or Lender of a Parcel or any portion of Mill Creek or Home or any other person or entity whatsoever. Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to, leased by, dedicated to, and/or maintained by Association. The current conceptual plans and/or representations, if any, regarding the composition of the Common Areas are not a guarantee of the final composition of the Common Areas. No party should rely upon any statement contained herein as a representation or warranty as to the extent of the Common Areas to be owned, leased by, or dedicated to Association. Developer, so long as it controls Association, further specifically retains the right to add to, delete from, or modify any of the Common Areas referred to herein at its discretion and without notice.

9.2 Construction of Common Areas Facilities. Developer has constructed or will construct, at its sole cost and expense, certain facilities and improvements as part of the Common Areas, together with equipment and personalty contained therein, and such other improvements and personalty as Developer determines in its sole discretion. Developer shall be the sole judge of the composition of such facilities and improvements. Prior to the Community Completion Date, Developer reserves the absolute right to construct additional Common Areas facilities and improvements within Mill Creek, from time to time, in its sole discretion, and to remove, add to, modify and change the boundaries, facilities and improvements now or then part of the Common Areas. Developer is not obligated to, nor has it represented that it will, modify or add to the facilities or improvements of Common Areas as they are contemplated as of the date hereof. Developer is the sole judge of the foregoing, including the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, improvements, appurtenances, personalty (e.g., furniture), color, textures and finishes of the Common Areas, or changes or modifications to any of them.

9.3 Use of Common Areas by Developer. Until the Community Completion Date Developer shall have the right to use any portion of the Common Areas, without charge, for any purpose deemed appropriate by Developer.

#### 9.4 Conveyance.

9.4.1 Generally. Within sixty (60) days after the Turnover Date, or earlier as determined by Developer in its sole discretion, or as may be required by law, all or portions of the Common Areas may be dedicated by Plats, created in the form of easements, or conveyed by written instrument or by Quitclaim Deed recorded in the Public Records from Developer to Association. Association shall pay all of the costs of the conveyance. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership operation, maintenance, and administration of the conveyed portions of Common Areas and other obligations relating to the Common Areas imposed herein. Association shall, and does hereby, indemnify and hold Developer harmless on account thereof. Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED.

9.4.2 Form of Common Area Deed. Each deed of the Common Areas shall be subject to the following provisions:

9.4.2.1 this Declaration;

9.4.2.2 matters reflected in the Plat(s) of Mill Creek;

9.4.2.3 perpetual non-exclusive easements in favor of Developer, its successors, and assigns in, to, upon and over all of the Common Areas for the purposes of vehicular and pedestrian ingress and egress, installation of utilities, landscaping and/or drainage, without charge, including, without limitation, the right to use such roadways for construction vehicles and equipment. The easements reserved in the deed shall run in favor of Developer, and its employees, representatives, agents, licensees, guests, invitees, successors and/or assigns;

9.4.2.4 all restrictions, easements, covenants and other matters of record;

9.4.2.5 in the event that Association believes that Developer shall have failed in any respect to meet Developer's obligations under this Declaration or has failed to comply with any of Developer's obligations under law or the Common Areas conveyed herein are defective in any respect, Association shall give written notice to Developer detailing the alleged failure or defect. Once Association has given written notice to Developer pursuant to this Section, Association shall be obligated to permit Developer and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by Developer to respond to such notice at all reasonable times. Association agrees that any inspection, test and/or repair/replacement scheduled on a business day between 9

a.m. and 5 p.m. shall be deemed scheduled at a reasonable time. The rights reserved in this Section include the right of Developer to repair or address, in Developer's sole option and expense, any aspect of the Common Areas deemed defective by Developer during its inspections of the Common Areas. Association's failure to give the notice and/or otherwise comply with the provisions of this Section will damage Developer. At this time, it is impossible to determine the actual damages Developer might suffer. Accordingly, if Association fails to comply with its obligations under this Section in any respect, Association shall pay to Developer liquidated damages in the amount of \$250,000.00 which Association and Developer agree is a fair and reasonable remedy; and

9.4.2.6 a reservation of right in favor of Developer (so long as Developer owns any portion of Mill Creek) to require that Association reconvey all or a portion of the Common Areas conveyed by quitclaim deed in favor of Developer in the event that such property is required to be owned by Developer for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise.

9.5 Operation After Conveyance. After the conveyance or dedication of any portion of the Common Areas to Association, the portion of the Common Areas so dedicated shall be owned, operated and administered by Association for the use and benefit of the owners of all property interests in Mill Creek including, but not limited to, Association, Developer, Owners and any Lenders. Subject to Association's right to grant easements, and other interests as provided herein, Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to and including the Turnover Date, the approval of (a) a majority of the Board; and (b) the consent of Developer, or (ii) from and after the Turnover Date, approval of (a) sixty-six and two-thirds percent (66 2/3%) of the Board; and (b) seventy-five percent (75%) of all of the votes in Association.

9.6 Paved Common Areas. The Common Areas may contain certain paved areas. Without limiting any other provision of this Declaration, Association is responsible for the maintenance and/or resurfacing of all paved surfaces including, but not limited to, roads, pathways, bicycle paths, and sidewalks forming a part of the Common Areas, if any. Although pavement appears to be a durable material, it requires maintenance. Association shall have the right, but not the obligation, to arrange for an annual inspection of all paved surfaces forming a part of the Common Areas by a licensed paving contractor and/or engineer. The cost of such inspection shall be a part of the Operating Costs of Association. Association shall determine annually the parameters of the inspection to be performed, if any. By way of example, and not of limitation, the inspector may be required to inspect the roads and sidewalks forming part of the Common Areas annually for deterioration and to advise Association of the overall pavement conditions including any upcoming maintenance needs. Any patching, grading, or other maintenance work should be performed by a company licensed to perform the work. From and after the Community Completion Date, Association should monitor the roads and sidewalks forming the Common Areas monthly to ensure that vegetation does not grow into the asphalt and that there are no eroded or damaged areas that need immediate maintenance.

9.7 Delegation. Once conveyed or dedicated to Association, the Common Areas and facilities and improvements located thereon shall, subject to the provisions of this Declaration and the document of conveyance or dedication, at all times be under the complete supervision,

operation, control, and management of Association. Notwithstanding the foregoing, Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company. Association specifically shall have the right to pay for management services on any basis approved by the Board (including bonuses or special fee arrangements for meeting financial or other goals). Developer, its affiliates and/or subsidiaries shall have the right to manage Association. Owners and Association acknowledge that it is fair and reasonable to have Developer, its affiliates and/or subsidiaries manage Association. Further, in the event that a Common Area is created by easement, Association's obligations and rights with respect to such Common Area may be limited by the terms of the document creating such easement.

#### 9.8 Use.

9.8.1 Nonexclusive Use. The Common Areas shall be used and enjoyed by the Owners on a non-exclusive basis in common with other persons, entities and corporations (who may, but are not required to be, members of Association) entitled to use those portions of the Common Areas. Prior to the Community Completion Date, Developer, and thereafter Association, has the right, at any and all times, and from time to time, to further additionally provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements or obligations to be performed hereunder.

9.8.2 Right to Allow Use. Developer and/or Association may enter into easement agreements or other use or possession agreements whereby the Owners, Telecommunications Providers, Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be Operating Costs. Any such agreement by Association prior to the Community Completion Date shall require the consent of Developer. Thereafter, any such agreement shall require the approval of the majority of the Board of Directors.

9.8.3 Obstruction of Common Areas. No portion of the Common Areas may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by Association.

9.8.4 Waterbodies. BY ACCEPTANCE OF A DEED TO A HOME OR LOT, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL WATERBODIES MAY VARY. THERE IS NO GUARANTY BY DEVELOPER OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. AT TIMES, WATER LEVELS MAY BE NONEXISTENT. Developer and Association shall not be obligated to erect fences, gates, or walls around or adjacent to any waterbody within Mill Creek or adjacent to Mill Creek. Notwithstanding the foregoing, an Owner may erect a fence adjacent to the boundary of a waterbody but within the boundary of a Home (but outside any easement in favor of SFWMD or CBWCD) with the prior approval of the ACC. No fence or other structure may be placed within

any waterbody maintenance easement. Prior to the Community Completion Date, no private docks may be erected within any waterbody forming part of the Common Areas. It is not anticipated that there will be a boat ramp within Mill Creek; however, Developer may install one or more in its sole and absolute discretion. As further provided in Section 9.8.5 of this Declaration, each Owner and such Owner's guests, invitees and agents assume all risk in using any waterbody within Mill Creek. DANGEROUS WILDLIFE (INCLUDING ALLIGATORS) MAY BE PRESENT IN WATERBODIES WITHIN MILL CREEK. DEVELOPER AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING THE PRESENCE OF SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE.

9.8.5 Assumption of Risk. Without limiting any other provision herein, each person within any portion of the Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Areas including, without limitation: (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within any portion of the Common Areas, (e) design of any portion of the Common Areas, (f) injury, damage, destruction and/or loss of life arising from the presence of waterbodies within Mill Creek or the exercise of any privilege permitted by this Declaration, and (g) the use of effluent in the irrigation or fertilization of the Common Areas or other portions of Mill Creek. Each person entering onto any portion of Mill Creek also expressly indemnifies and agrees to defend and hold harmless Developer, Association, and all employees, directors, representatives, officers, agents, subsidiaries, affiliates and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas, including for attorneys' fees, paraprofessional fees and costs, pre-trial and at all levels of proceedings, including appeals. Without limiting the foregoing, all persons using the Common Areas, including without limitation, all waterbodies, lakes, pools or areas adjacent to a waterbody, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, DOGS, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS AND FOXES. DEVELOPER AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

9.8.6 Owner's Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless Developer and Association, their officers, partners, agents, employees, affiliates, directors, and attorneys (collectively, "**Indemnified Parties**") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("**Losses**") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas including, without limitation, use of the waterbodies and other waterbodies within Mill Creek by Owners, and their guests, family members, invitees, or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Developer, Association, or of any of the Indemnified Parties. Should any Owner bring suit against Developer, Association, or any of the Indemnified Parties for any claim or matter and fail

to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals.

10. Maintenance by Association.

10.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, Association shall at all times own, maintain, repair, replace and insure the Common Areas, including all improvements placed thereon.

10.2 Surface Water Management System.

10.2.1 Duty to Maintain. Association acknowledges that the Surface Water Management System will be owned by Association. The Association's duty of maintenance of the Common Areas expressly includes the duty to operate, maintain, and repair the Surface Water Management System including, without limitation any signage required by the Permit, in a manner which complies with the Permit. Copies of the Permit and any future SFWMD permit actions shall be maintained by Association and the Association's registered agent for the benefit of the Association. The costs of the operation and maintenance of the Surface Water Management System within the Common Areas are part of Operating Costs of Association and each Owner shall pay Assessments (regular and special) which shall include a pro rata share of such costs. Association will take any action against Owners as necessary to enforce the conditions of the Permit, including, without limitation, any monitoring required by the Permit. SFWMD shall also have the right to take enforcement action, including, a civil action for an injunction and penalties against Association to compel it to correct any outstanding problems with the Surface Water Management System or any mitigation under the responsibility or control of Association.

10.2.2 Amendments to Association Documents. Association shall submit to SFWMD any proposed amendment to Association Documents which will affect the Surface Water Management System, including any environmental conservation area and the water management portions of the Common Areas. SFWMD shall then inform Association as to whether the amendment requires a modification of the Permit. If a modification of the Permit is necessary, SFWMD may so advise Association. Once Association receives the modification to the Permit and any conditions to the Permit, both shall be attached as an exhibit to an amendment to this Declaration, which amendment shall not require the approval of the Owners. Association shall maintain copies of all water management permits and correspondence respecting such permits for the benefit of Association.

10.2.3 Association to Notify Owners. Association shall notify Owners of any mitigation and/or monitoring and/or financial assurances undertaken by Association with regard to the Permit. It is Association's perpetual responsibility to complete the tasks set forth in the Permit.

10.2.4 Signage. Owners shall be responsible for the perpetual maintenance of any signage required by the Permit.

10.3 Negligence. The expense of any maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner, or persons utilizing the Common Areas through or under Owner, shall be borne solely by such Owner and the Home owned by that Owner shall be subject to an Individual Assessment for that expense. By way of example, and not of limitation, an Owner shall be responsible for the removal of all landscaping and structures placed within easements or Common Areas without the prior written approval of Association.

10.4 Adjoining Areas. Association shall also maintain those drainage areas, swales, waterbody maintenance easements, driveways, and landscape areas that are within the Common Areas and immediately adjacent to a Home, provided that such areas are readily accessible to Association. Maintenance of driveways within the boundaries of a Lot shall be the responsibility of the Owner of such Lot. Association shall be responsible for repairing any driveway which must be removed in order to maintain the Surface Water Management System within the Common Areas.

10.5 Right of Entry. Developer and Association are granted a perpetual and irrevocable easement over, under and across Mill Creek for the purposes herein expressed including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitled to perform. Without limiting the foregoing, Developer specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Developer may construct, maintain, repair, alter, replace and/or remove improvements; install landscaping; install utilities; and/or remove structures on any portion of Mill Creek if Developer is required to do so in order to obtain the release of any bond posted with any governmental agency.

10.6 Maintenance of Property Owned by Others. Association shall, if designated by Developer by amendment to this Declaration or by other notice or direction, maintain vegetation, landscaping, sprinkler system, community identification/features and/or other areas or elements designated by Developer upon areas which are within or outside of Mill Creek, so as to enhance the appearance of Mill Creek. Such areas may abut, or be proximate to, Mill Creek, and may be owned by, or be dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity, or a condominium association. These areas may include (by way of example and not limitation) swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or entrance features, community signage or other identification and/or areas within canal rights-of-ways or other abutting waterways. Without limiting the foregoing, Association specifically has the right and obligation to perform the maintenance and management requested by the SFWMD, CBWCD or other governmental agency with respect to Common Areas.

10.7 Maintenance of Roads, Lighting, and Landscaping. Without limiting any provision herein to the contrary, Association shall maintain the roads, lighting and landscaping within the Common Areas of Mill Creek in conformity with the maintenance standards determined by Developer. Association shall not have the right to reduce the level of maintenance and shall increase the level of maintenance, at Developer's written request, so long



as Developer owns any property within Mill Creek. The provisions of this Section cannot be amended without Developer's prior written consent, which consent may be withheld for any reason.

10.8 Lawn Maintenance. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Homes, together with all other improvements thereon or therein and driveways and grounds on and within a Lot or Home, shall be the responsibility of the Owner of such Lot or Home. Each Owner shall maintain his or its own Home and Lot including, without limitation, structures, boundary walls and fences, driveways, parking areas, the irrigation system and other improvements comprising the Home and Lot in neat, clean and sanitary condition and in good repair in a manner consistent with the Community Standards, the Lawn Maintenance Standards and this Declaration. The cost and expense of obtaining utilities exclusively serving a particular Lot or Home shall be the responsibility of the Owner of such Lot or Home. The Owner's responsibility shall include the maintenance and care of all exterior surfaces of all Homes, buildings and other structures. As provided in Section 18.26.10 hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item that is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge.

Each Owner shall properly irrigate and fertilize any lawn areas and landscaping on such Owner's Lot and shall make adjustments to the irrigation system cycles as may be recommended by the Association from time to time. Failure to properly irrigate, fertilize or to properly maintain the irrigation system may result in severe damage to the lawn and landscaping and shall constitute a violation of this Declaration and the Rules and Regulations of the Association. In addition, each Owner shall be solely responsible for all costs of repair or replacement of lawn and/or landscaping caused by the Owner's failure to properly irrigate as recommended by the Association. If any Owner fails to properly irrigate or to properly maintain the irrigation system in accordance with this Section, the Association may enter the Lot and conduct the necessary irrigation and/or maintenance and assess all costs incurred by the Association against the Home and the Owner thereof in accordance with the further provisions of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry. Each Owner is specifically responsible for maintaining all landscaping within any portion of a Home that is fenced or walled in and inaccessible to Association and any other property, whether or not comprising part of the Home, which is within such fenced or walled area (e.g., a lake bank). EACH OWNER ACKNOWLEDGES THAT SOME HOMES MAY NOT HAVE FRONT YARDS, SIDE YARDS AND/OR BACK YARDS, OTHER HOMES MAY HAVE FRONT YARDS, SIDE YARDS AND/OR BACK YARDS THAT ARE LARGER OR SMALLER THAN THE FRONT YARDS, SIDE YARDS AND/OR BACK YARDS OF OTHER HOMES.

# 11. Rules and Regulations.

11.1 Generally. Prior to and including the Turnover Date, the Developer, and thereafter, Association, shall have the right to adopt Rules and Regulations governing the use of the Common Areas and Mill Creek. The Rules and Regulations need not be recorded in the

Public Records. The Common Areas shall be used in accordance with this Declaration and Rules and Regulations promulgated hereunder.

11.2 Developer Not Subject to Rules and Regulations. The Rules and Regulations shall not apply to Developer or any property owned by Developer and shall not be applied in a manner which would adversely affect the interests of the Developer. Without limiting the foregoing, Developer shall have the right to: (i) develop and construct commercial, club uses and industrial uses, Homes, Common Areas, and related improvements within Mill Creek, and make any additions, alterations, improvements, or changes thereto; (ii) maintain sales and/or rental offices, for the sale, re-sale and rental of (a) Homes and (b) residences and properties located outside of Mill Creek, general offices and construction operations within Mill Creek; (iii) place, erect or construct portable, temporary or accessory buildings or structures within Mill Creek for sales, construction storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any portion of Mill Creek; (v) post, display, inscribe or affix to the exterior of any portion of the Common Areas or portions of Mill Creek owned by Developer, signs and other materials used in developing, constructing, selling or promoting the sale of any portion of Mill Creek including, without limitation, Lots and Homes; (vi) excavate fill from any waterbodies or waterways within and/or contiguous to Mill Creek by dredge or dragline, store fill within Mill Creek and remove and/or sell excess fill; (vii) grow or store plants and trees within, or contiguous to, Mill Creek and use and/or sell excess plants and trees; and (viii) undertake all activities which, in the sole opinion of Developer, are necessary for the development and sale of any lands and improvements comprising Mill Creek.

11.3 Default by Another Owner. No default by any Owner in the performance of the covenants and promises contained in this Declaration or by any person using the Common Areas or any other act or omission by any of them shall be construed or considered (a) a breach by Developer or Association or a non-defaulting Owner or other person or entity of any of their promises or covenants in this Declaration; or (b) an actual, implied or constructive dispossession of another Owner from the Common Areas; or (c) an excuse, justification, waiver or indulgence of the covenants and promises contained in this Declaration.

12. Special Taxing Districts. For as long as Developer controls Association, Developer shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas to a special taxing district or a public agency or authority under such terms as Developer deems appropriate in order to create or contract with special taxing districts and community development districts (or others) for lighting, perimeter walls, wing walls, entrance features, roads, landscaping, irrigation areas, waterbodies, waterways, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by Developer including, without limitation, the maintenance and/or operation of any of the foregoing. As hereinafter provided, Developer may sign any taxing district petition as attorney-in-fact for each Owner. Each Owner's obligation to pay taxes, special assessments, fees and charges associated with such district shall be in addition to such Owner's obligation to pay Assessments. Any special taxing district shall be created pursuant to all applicable ordinances of Broward County, and all other applicable governing entities having jurisdiction with respect to the same.

13. Water Transmission and Distribution Facilities Easement. Developer hereby reserves the right to grant and convey to any governmental agency or utility company and its successors and assigns, the non-exclusive right, privilege and easement to construct, re-construct, lay, install, operate, maintain, relocate, repair, replace, improve and inspect water transmission and distribution facilities and sewer collection facilities and all appurtenances thereto, and all appurtenant equipment, with the full right of ingress thereto and egress therefrom, within Mill Creek (excluding such facilities located inside a Home) in accordance with plans approved by Developer or Association.

14. Water Mains. In the event County or any of its subdivisions, agencies and/or divisions must remove any portion of a Home driveway which is constructed of pavers within any portion of the Common Areas, then Association will be responsible to replace or repair the driveway at each affected Owner's expense as an Individual Assessment, if such expenses are not paid for by County or other entity.

15. Public Facilities. Mill Creek may include one or more facilities which may be open and available for the use of the general public, e.g., lift stations.

16. Site Plans and Plats. Mill Creek may be subject to one or more plats (each individually, a "Plat"). The Plat may identify some of the Common Areas within Mill Creek. The description of the Common Areas on a Plat is subject to change (contingent upon receipt of the appropriate plat approvals) and the notes on a Plat are not a guarantee of what facilities will be constructed on such Common Areas. Site plans used by Developer in its marketing efforts illustrate the types of facilities which may be constructed on the Common Areas, but such site plans are not a guarantee of what facilities will actually be constructed. Each Owner should not rely on a Plat or any site plans used for illustration purposes as the Declaration governs the rights and obligations of Developer and Owners with respect to the Common Areas.

17. Association's Obligation to Indemnify. Association and Owners each covenant and agree jointly and severally to indemnify, defend and hold harmless Developer and its officers, directors, shareholders, and any related persons or corporations and their employees, successors and assigns from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Areas, or other property serving Association, and improvements thereon, or resulting from or arising out of activities or operations of Association or Owners, and from and against all costs, expenses, court costs, attorneys' fees and paraprofessional fees (including, but not limited to, all pre-trial, trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered relating thereto. The costs and expense of fulfilling this covenant of indemnification shall be Operating Costs to the extent such matters are not covered by insurance maintained by Association.

18. Use Restrictions. Each Owner must comply with the following:

18.1 Alterations and Additions. No material alteration, addition or modification to a Parcel, Lot or Home or other improvement or structure or material change in the appearance

thereof, shall be made without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration.

18.2 Artificial Vegetation. No artificial grass, plants or other artificial vegetation, markers, memorials, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Home or Lot, unless approved by the ACC.

18.3 Swimming, Boating, Docks and Fishing. Swimming, boating, jet skis and fishing will not be permitted in any waterbody within Mill Creek. No private docks are permitted. Boats must be stored in garages or outside of Mill Creek. DANGEROUS WILDLIFE (INCLUDING ALLIGATORS) MAY BE PRESENT IN WATERBODIES WITHIN MILL CREEK. DEVELOPER AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING THE PRESENCE OF SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE.

18.4 Casualty Destruction to Improvements. In the event that a Home or other improvement is damaged or destroyed by casualty loss or other loss, then within a reasonable period of time after such incident, Owner thereof shall either commence to rebuild or repair the damaged Home or improvement and diligently continue such rebuilding or repairing until completion, or properly clear the damaged Home or improvement or restore or repair the Home as set forth in Section 22 herein and as approved by the ACC. As to any such reconstruction of a destroyed Home or improvements, the same shall only be replaced as approved by the ACC.

18.5 Commercial Activity. No Owner may actively engage in any solicitations in person or by flyer or similar modality for commercial purposes within Mill Creek. No solicitors of a commercial nature shall be allowed within Mill Creek, without the prior written consent of Association. No garage or yard sales are permitted except as permitted by the Association. No day care center, group babysitting service or day care facility may be operated out of a Home. Prior to the Community Completion Date, Association shall not permit any garage or yard sales without the prior written consent of Developer. Subject to any provisions and restrictions in any applicable ordinance, law or regulation pertaining to the occupation and use of homes in Mill Creek, an Owner may maintain a home business within a Home in strict compliance with such ordinances, laws and regulations. Notwithstanding the foregoing, in no way shall a home occupation cause a Nuisance as defined in this Declaration.

18.6 Completion and Sale of Units. No person or entity shall interfere with the completion and sale of Homes within Mill Creek. WITHOUT LIMITING THE FOREGOING, EACH OWNER, BY ACCEPTANCE OF A DEED TO A HOME, AGREES THAT ACTIONS OF OWNERS MAY IMPACT THE VALUE OF HOMES; THEREFORE, EACH OWNER IS BENEFITED BY THE FOLLOWING RESTRICTION: PICKETING AND POSTING OF NEGATIVE SIGNS OR POSTING OF NEGATIVE WEBSITES ON THE INTERNET IS STRICTLY PROHIBITED IN ORDER TO PRESERVE THE VALUE OF THE HOMES IN MILL CREEK AND ITS RESIDENTIAL ATMOSPHERE THEREOF.

18.7 Control of Contractors. Except for direct services which may be offered to Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association officer or representative of the management

company retained by Association shall direct, supervise, or in any manner attempt to assert any control over any contractor of Association.

18.8 Cooking. No cooking shall be permitted in the Common Areas, other than in areas specifically designated therefor in writing by the Association. The ACC shall have the right to prohibit or restrict the use of grills or barbecue facilities throughout Mill Creek.

18.9 Decorations. No decorative objects including, but not limited to, birdbaths, light fixtures, sculptures, statues, weather vanes, or flagpoles shall be installed or placed within or upon any portion of Mill Creek without the prior written approval of the ACC. Notwithstanding the foregoing, holiday lighting and decorations shall be permitted to be placed upon the exterior portions of the Home and upon the Lot in a manner permitted hereunder commencing on Thanksgiving and shall be removed not later than January 15<sup>th</sup> of the following year. The ACC may establish standards for holiday lights. The ACC may require the removal of any lighting that creates a nuisance (e.g., unacceptable spillover to an adjacent Home).

18.10 Disputes as to Use. If there is any dispute as to whether the use of any portion of Mill Creek complies with this Declaration, such dispute shall, prior to the Community Completion Date, be decided by Developer, and thereafter by Association. A determination rendered by Developer or Association, as applicable, with respect to such dispute shall be final and binding on all persons concerned.

18.11 Drainage System. Drainage systems and drainage facilities may be part of the Common Areas and/or Homes. The maintenance of such systems and/or facilities within the Common Areas shall be the responsibility of Association. Once drainage systems or drainage facilities are installed by Developer, the maintenance of such systems and/or facilities thereafter within the boundary of a Home shall be the responsibility of the Owner of the Home which includes such system and/or facilities. In the event that such system or facilities (whether comprised of swales, pipes, pumps, waterbody slopes, or other improvements) is adversely affected by landscaping, fences, structures (including, without limitation, pavers) or additions, the cost to correct, repair, or maintain such drainage system and/or facilities shall be the responsibility of the Owner of each Home containing all or a part of such drainage system and/or facilities. By way of example, and not of limitation, if the Owner of one Home plants a tree (pursuant to ACC approval) and the roots of such tree subsequently affect pipes or other drainage facilities within another Home, the Owner that plants the tree shall be solely responsible for the removal of the roots which adversely affects the adjacent Home. Likewise, if the roots of a tree located within the Common Areas adversely affect an adjacent Home, Association shall be responsible for the removal of the roots and the costs thereof shall be Operating Costs. Notwithstanding the foregoing, Association and Developer shall have no responsibility or liability for drainage problems of any type whatsoever.

18.12 Driveway Repair. Each Owner shall be responsible to timely repair, maintain and/or replace the driveway comprising part of a Home including, without limitation, any damage caused by Developer, Association or by the holder of any easement over which such driveway is constructed. Each Owner, by acceptance of a deed to a Home, shall be deemed to indemnify, defend and hold harmless Association and the holder of any such easement, including without limitation, all applicable utility companies and governmental agencies, their agents,

servants, employees and elected officials, from and against any and all actions or claims whatsoever arising out of the use of the Common Areas and any easement or the construction and/or maintenance of any driveway in that portion of the Common Areas, easement area, or in a public right-of-way between the boundary of such Owner's Home and the edge of the adjacent paved roadway. Further, each Owner agrees to reimburse Association any expense incurred in repairing any damage to such driveway in the event that such Owner fails to make the required repairs, together with interest at the highest rate allowed by law.

**18.13 Extended Vacation and Absences.** In the event a Home will be unoccupied for an extended period, the Home must be prepared prior to departure by: (i) notifying Association in writing; (ii) removing all removable furniture, plants and other objects from outside the Home; and (iii) designating a responsible firm or individual to care for the Home, should the Home suffer damage or require attention, and providing a key to that firm or individual. The name of the designee shall be furnished to Association. Neither Association nor Developer shall have responsibility of any nature relating to any unoccupied Home.

**18.14 Fences and Walls.** No walls or fences shall be erected or installed without prior written consent of the ACC. No chain link fencing of any kind shall be allowed, except for perimeter areas screened by landscaping. All enclosures of balconies or patios including, without limitation, addition of vinyl windows and decks shall require the prior written approval of the ACC. Fences on the sides or rear of a Home shall be five (5) feet or less, made of black or bronze rail aluminum only.

**18.15 Fuel Storage.** No fuel storage shall be permitted within Mill Creek, except as may be necessary or reasonably used for swimming pools, spas, barbecues, fireplaces, generators or similar devices.

**18.16 Garages.** Each Home may have its own garage. No garage shall be converted into a general living area unless specifically approved by the ACC. Garage doors shall remain closed at all times except when vehicular or pedestrian access is required.

**18.17 Garbage Cans.** Trash collection and disposal procedures established by Association shall be observed. It is possible Association may provide for garbage pick-up, the cost of which shall be Operating Costs. No outside burning of trash or garbage is permitted. No garbage cans, supplies or other similar articles shall be maintained on any Home so as to be visible from outside the Home or Parcel. Each Owner shall be responsible for properly depositing his/her garbage and trash in garbage cans and trash containers sufficient for pick-up by the appropriate collection agencies in accordance with the requirements of any such agency. All such trash receptacles shall be maintained in a sanitary condition and shall be shielded from the view of adjacent properties and streets. Garbage cans and trash containers shall not be placed outside the Home for pick-up earlier than 6:00 p.m. on the day preceding the pick-up, and must be returned to the Home so that they are not visible from outside the Home on the day of pick-up.

**18.18 General Use Restrictions.** Each Home, the Common Areas and any portion of Mill Creek shall not be used in a manner contrary to the Association Documents.

18.19 Generators. The Board shall have the right to promulgate Rules and Regulations governing the size, specifications, location, and operation of generators within Mill Creek. No generator shall be operated within Mill Creek in a manner that constitutes a nuisance to other Owners.

18.20 Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Home shall be of a type as approved in writing by the ACC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season (nor at any other time). Any such approved hurricane shutters may be installed or closed up to seventy-two (72) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event. Any approval by the ACC shall not be deemed an endorsement of the effectiveness of hurricane shutters.

18.21 Irrigation. Due to water quality, irrigation systems may cause staining on Homes, other structures, paved areas or vehicles. It is each Owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners adopt systems to prevent stains (e.g., automatic deionization systems). No Owner whose Home adjoins a waterway or waterbody may utilize the waterway or waterbody to irrigate unless so provided by Developer as part of original construction, subject to applicable permitting. Developer and/or Association may use waterways, waterbodies and/or effluent to irrigate Common Areas subject to applicable permitting. Developer, Owners (if provided by Developer as part of original construction), Association and/or SFWMD shall have the right to use one or more pumps to remove water from waterways and waterbodies for irrigation purposes at all times, subject to permitting. Developer may utilize a computerized loop system to irrigate the Common Areas and/or Homes. BY ACCEPTANCE OF A DEED TO A HOME OR LOT, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL WATERWAYS AND WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DEVELOPER OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. Developer and/or Association shall have the right to use one or more pumps to remove water from waterbodies for irrigation purposes at all times, subject to applicable permitting. No Owner shall be permitted to install an individual water well on his or her Lot.

18.22 Lake and Canal Slopes. Homes may border lakes and canals. The Owner of each Home bordering on the lake and canals shall ensure that lake and canal banks and slopes remain free of any structural or landscape encroachments so as to permit vehicular access for maintenance when needed. Each Owner hereby grants Association an easement of ingress and egress across his or her Home to all adjacent lake and canal areas for the purpose of insuring compliance with the requirements of this Section. All lakes within Mill Creek shall be maintained by Association.

18.23 Landscaping and Irrigation of Lots; Removal of Sod and Shrubbery; Additional Planting.

18.23.1 All grass and landscaping located anywhere on a Lot shall be maintained by the Owner of such Lot. No gardens, Jacuzzis, fountains, playground equipment, pools, screened rooms, or other permitted improvements shall be constructed within the rear yard of a Lot without the prior written approval of the ACC. Each Owner understands that Lots within this Community may not be large enough to accommodate the foregoing items.

18.23.2 Without the prior consent of the ACC, no sod, topsoil, tree or shrubbery shall be removed from Mill Creek, and there shall be no change in the plant landscaping or elevation of such areas shall be made, and no change in the condition of the soil or the level of the land of such areas shall be made which results in any change in the flow and drainage of surface water which the ACC, in its sole discretion, considers detrimental or potentially detrimental to person or property. Notwithstanding the foregoing, Owners who install improvements to the Home (including, without limitation, concrete or brick pavers) which result in any change in the flow and/or drainage of surface water shall be responsible for all costs of drainage problems resulting from such improvement. Further, in the event that such Owner fails to pay for such required repairs, each Owner agrees to reimburse Association for all expenses incurred in fixing such drainage problems including, without limitation, removing excess water and/or repairing the Surface Water Management System.

18.23.3 No landscape lighting shall be installed by an Owner without the prior written approval of the ACC.

18.23.4 Association may designate one or more portions of the Common Areas for community gardens. The use of any community garden shall be governed by the Rules and Regulations.

18.24 Laundry. Subject to the provisions of Section 163.04 of the Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung or exposed so as to be visible outside the Home or Parcel. No clothes drying area may be placed in Mill Creek except within the boundaries of a Lot. No clothes drying area may be placed on any Lot until its location and material for the clotheslines have been submitted to and approved by the ACC. No outdoor clothes drying area shall be allowed on any Lot except in the rear of the Lot. In the case of corner Lots, the clothes drying area shall not be placed within twenty-five (25') feet of the Lot's street side property line. The clothes drying area shall be located and screened so it is not readily visible from abutting or nearby Lots or streets.

18.25 Lawful Use. No immoral, improper, offensive, unlawful or obnoxious use shall be made in any portion of Mill Creek. All laws, zoning ordinances and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification or repair of a portion of Mill Creek shall be the same as the responsibility for maintenance and repair of the property concerned.



18.26 Lawn Maintenance Standards. The following maintenance standards (the "Lawn Maintenance Standards") apply to landscaping maintained by Owners.

18.26.1 Trees. Trees are to be pruned as needed.

18.26.2 Shrubs. All shrubs are to be trimmed as needed.

18.26.3 Grass.

18.26.3.1 Cutting Schedule. Grass shall be maintained in a neat and appropriate manner. In no event shall an Owner's lawn get in excess of five inches (5") in height.

18.26.3.2 Edging. Edging of all streets, curbs, beds and borders shall be performed as needed.

18.26.3.3 Dead Grass. Owners shall be responsible to replace dead grass.

18.26.4 Mulch. Owners shall replenish mulch at least once annually at a predetermined timeframe for all Homes. The ACC shall specify the color of all mulch to be used within Mill Creek. No mulch of any color other than the color specified by the ACC shall be used within Mill Creek.

18.26.5 Insect Control and Disease. Disease and insect control shall be performed on an as needed basis.

18.26.6 Fertilization. Fertilization of all turf, trees, shrubs, and palms shall be performed at a minimum of three (3) times a year.

18.26.7 Irrigation. Owners shall be responsible to irrigate grass and maintain sprinkler heads.

18.26.8 Weeding. All beds are to be weeded upon every cut. Weeds growing in joints in curbs, driveways, and expansion joints shall be removed as needed. Chemical treatment is permitted.

18.26.9 Trash Removal. Dirt, trash, plant and tree cuttings and debris resulting from all operations shall be removed and all areas left in clean condition before the end of the day.

18.26.10 Right of Association to Enforce. Each Owner grants Association an easement over his or her Home for the purpose of ensuring compliance with the requirements of this provision and the Lawn Maintenance Standards. In the event an Owner does not comply with any of the Owner's responsibilities in this Section, Association may perform the necessary maintenance to the lawn and charge the costs thereof to the non-complying Owner as an Individual Assessment. Association shall have the right to enforce the foregoing Lawn Maintenance Standards by all necessary legal action. In the event that Association is the prevailing party with respect to any litigation respecting the Lawn Maintenance Standards, it

shall be entitled to recover all of its attorneys' fees and paraprofessional fees, and costs, pre-trial and at all levels of proceedings, including appeals.

18.26.11 Weeds and Refuse. No weeds, underbrush, or other unsightly growth shall be permitted to be grown or remain upon any Home. No refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Home.

18.26.12 Maintenance of Lots. No weeds, underbrush, dead or dying trees and landscape materials, or other unsightly growths shall be permitted to grow or remain on any Lot, and no refuse, trash, junk or other unsightly objects shall be allowed to be placed or suffered to remain anywhere on any Lot. All lawns shall be neatly edged and all landscaping material shall be maintained in good and living condition at all times. "**Good and Living Condition**" for the landscaping material shall mean the proper irrigation, fertilizing, grooming and trimming thereof and the replacement of dead, diseased and/or missing landscaping material with the material of the same species, height, width, and quality as the remaining landscaping material on the applicable Lot, unless a variation is approved in writing by the ACC. Failure by an Owner to maintain the landscaping as required herein and/or to keep the Lot free of weeds, underbrush, dead or dying trees, unsightly growths, refuse, trash, junk or other unsightly objects, shall be cause for Association to enter upon the Lot to maintain such landscaping and/or to remove such objectionable material and (i) such entry shall not be deemed a trespass; and (ii) the disposal of removed material shall not be deemed a conversion. Any costs incurred by Association shall be borne by Owner as an Individual Assessment and shall be due and payable within fifteen (15) days after written request from Association for payment.

18.27 Leases. Homes may be leased, licensed or occupied only in their entirety and no fraction or portion may be rented. No bed and breakfast facility may be operated out of a Home. Individual rooms of a Home may not be leased on any basis. No transient Lessees may be accommodated in a Home. All leases or occupancy agreements shall be in writing and a copy of all leases of Homes shall be provided to and must be approved by Association in writing prior to the commencement thereof. No Home may be subject to more than two (2) leases in any twelve (12) month period, regardless of the lease term. No time-share or other similar arrangement is permitted. The Owner must make available to the Lessee or occupants copies of the Association Documents. Notwithstanding any lease of a Home, the Owner and the Lessee shall be jointly and severally liable to Association for all actions of the Lessee and their guests and invitees, including but not limited to any injury or damage to property caused by the Lessee or their guests and invitees.

18.28 Lot Lights. Lighting, if any, installed within the perimeter of a Lot shall be maintained in good working order and replaced by the Owner of such Lot. All lighting must have the prior written approval of the ACC.

18.29 Minors' Use of Facilities. Persons who are not eighteen (18) years of age or older shall not be permitted to use the Common Areas unless under the supervision of an adult Owner or lawful occupant over the age of eighteen (18) years, except in such cases and under such conditions as Association may from time to time establish and require. Each Owner shall be responsible for all actions of minor children dwelling in and/or visiting his/her Home. Neither

Developer nor Association shall be responsible for any use of the facilities by anyone, including minors.

18.30 Nuisances. No nuisance or any use or practice that is the source of unreasonable annoyance to others or which interferes with the peaceful possession and proper use of Mill Creek is permitted. No firearms or fireworks shall be discharged within Mill Creek. Nuisance shall include, without limitation, the playing of loud music or the gathering in front of Homes or Common Areas by any Owner or permitted occupant, his or her immediate family, guests, tenants and invitees. Nothing shall be done or kept within the Common Areas, or any other portion of Mill Creek, including a Home or Lot which will increase the rate of insurance to be paid by Association.

18.31 Paint. Homes shall be repainted at least once every seven (7) years or more often, as needed as determined by the ACC, but in any event within forty-five (45) days of notice by the ACC.

18.32 Parking. Owners' automobiles shall be parked in the garage or driveway. Each Home will contain its own garage. On-street parking will be permitted for domestic cars and Commercial Vehicles only during daylight hours, but in no event shall such cars or vehicles be parked on the grass within Mill Creek or parked so as to prevent or impede access to the driveway of any Home. No vehicle (i) without valid registration, or (ii) which cannot operate on its own power shall remain on Mill Creek for more than twelve (12) hours, except in the garage of a Home. No repair, except emergency repair, of vehicles shall be made within Mill Creek, except in the garage of a Home. No Commercial Vehicle (i) shall be permitted to be parked in Mill Creek for a period of more than four (4) hours per day unless such Commercial Vehicle is temporarily present and necessary in the actual construction, maintenance, or repair of a Home or other improvements in Mill Creek or (ii) shall be permitted to be parked overnight or stored in Mill Creek unless fully enclosed within a garage. As used in this Declaration, the term "**Commercial Vehicle**" shall mean any vehicle designed, intended, or used for transportation of people, goods, or things, other than private passenger vehicles. A Commercial Vehicle shall include, but is not limited to: (i) a semitrailer or any two- or more wheeled vehicles designed to be coupled to and drawn by a motor vehicle, (ii) a motor vehicle designed with or modified to contain a bed, platform, cabinet, ladder, rack or other equipment for the purpose of carrying items or things or performing commercial activities and weighing 4,000 pounds or more, including but not limited to, wreckers, tow trucks, dump trucks, utility or service vehicles, and moving vans, (iii) a motor vehicle having four or more wheels and equipped with a fifth wheel for the purpose of drawing a semitrailer, (iv) any vehicle designed or modified for transportation of ten (10) or more people in seats permanently placed in the vehicle, and (v) any vehicle upon which a business name or logo is displayed, including but not limited to, taxis, limousines, ambulances, and vans, but excluding police and security vehicles which are providing security services to Mill Creek. Notwithstanding the foregoing, a vehicle with a sign or logo that is covered or removed, shall not, as long as the sign or logo is covered or removed, be considered to be a Commercial Vehicle unless the vehicle meets the definition of Commercial Vehicle even when the sign or logo is removed. No recreational vehicle of any kind shall be parked overnight in Mill Creek, and no boats, boat trailers, trailers of any kind, campers, motor homes, mobile homes or buses shall be permitted to be parked in Mill Creek unless kept fully enclosed within a garage; provided, however, from time to time Association may allow Owners to store such items

on designated portions of the Common Areas in return for the payment of a license fee. No vehicle shall be used as a domicile or residence, either temporary or permanent.

18.33 Personal Property. All personal property of Owners or other occupants of Homes shall be stored within the Homes. No personal property may be stored on, nor any use made of, the Common Areas, any Lot or Home, or any other portion of Mill Creek which is unsightly or which interferes with the comfort and convenience of others.

18.34 Pets and Animals. Three (3) commonly accepted household pets such as dogs and cats may be kept. Association may prohibit breeds of dogs that the Board considers dangerous in its sole discretion. No household pets over one hundred (100) pounds are permitted. Swine, goats, horses, pigs, cattle, sheep, chickens, and the like, are hereby specifically prohibited. Animals, fowl and reptiles which are deemed by the Board to be obnoxious are prohibited. The determination of what is or what may be obnoxious shall be determined by Association in its sole discretion. No animals shall be raised, bred or kept within Mill Creek for commercial purposes. A determination by the Board that an animal or pet kept or harbored in a Home is a nuisance shall be conclusive and binding on all parties. No pet or animal shall be "tied out" on the exterior of the Home or in the Common Areas, or left unattended in a yard or on a balcony, porch, or patio. No dog runs or enclosures shall be permitted on any Home. All pets shall be walked on a leash which shall not exceed twenty (20) feet. No pet shall be permitted outside a Home except on a leash or in the fenced portion of a yard. When notice of removal of any pet is given by the Board, the pet shall be removed within forty-eight (48) hours of the giving of the notice. All pets shall urinate and defecate in the "pet walking" areas within Mill Creek designated for such purpose, if any, or on that Owner's Home. The person walking the pet of the Owner shall clean up all matter created by that pet. Each Owner shall be responsible for the activities of his/her pet. Notwithstanding anything to the contrary, seeing eye dogs shall not be governed by the restrictions contained in this Section.

18.35 Pools. No above-ground pools shall be permitted. All in-ground pools, hot tubs, spas and appurtenances installed shall require the prior written approval of the ACC as set forth in this Declaration. The design must incorporate, at a minimum, the following: (i) the composition of the material must be thoroughly tested and accepted by the industry for such construction; (ii) any swimming pool constructed on any Lot shall have an elevation at the top of the pool of not over two (2) feet above the natural grade unless approved by the ACC; (iii) pool cages and screens must be a design, color and material approved by the ACC and shall be no higher than twelve (12) feet unless otherwise approved by the ACC; and (iv) pool screening shall in no event be higher than the roof line of the Home. Pool screening shall not extend beyond the sides of the Home without express approval by the ACC. All pools shall be adequately maintained and chlorinated (or cleaned with similar treatment). Unless installed by Developer, no diving boards, slides or platforms shall be permitted without ACC approval. Above-ground spas shall be permitted within Mill Creek upon approval of the ACC as set forth in this Declaration and only if the spas are located within an enclosed area, such as, a courtyard, screened enclosure or walled enclosure.

18.36 Removal of Soil. Without the prior consent of the ACC, no Owner shall remove soil from any portion of Mill Creek or change the level of the land within Mill Creek, or plant landscaping which results in any permanent change in the flow and drainage of surface water

within Mill Creek. Owners may not place additional plants, shrubs or trees within any portion of Mill Creek without the prior approval of the ACC.

18.37 Rights to Stormwater Runoff, Effluent and Water Reclamation. By conveyance of a Home within Mill Creek, each Owner understands and irrevocably consents to the possibility of irrigation of the Common Areas, other areas within Mill Creek and adjacent areas, with treated effluent, provided that the effluent emanates from an approved treatment plant with an operating permit from the appropriate governmental agencies. Developer, its agents, successors and/or assigns, shall have the exclusive right to develop and utilize the ground and surface water resources of Mill Creek for any legal purpose, including the distribution and use of such water beyond Mill Creek. Such right shall include an easement over Mill Creek for access and for installation and maintenance of facilities and equipment to capture and transport ground water, surface water and storm water runoff. The conveyance of any Home to an Owner by Developer does not include the right to develop or utilize the ground, surface or storm water resources within such Home. Developer or its designee may establish programs for reclamation of storm water runoff and wastewater for appropriate uses within or outside Mill Creek and may require Owners and occupants of Homes to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from his or her Home. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within Mill Creek. A non-exclusive easement is hereby created over Mill Creek in favor of Association for overspray of water from any irrigation system serving the Common Areas. Association may use treated effluent in the irrigation of any Common Areas. Association shall not be held liable for any damage or injury resulting from such overspray or the exercise of this easement. This Section may not be amended without the consent of Developer, and the rights created in this Section shall survive the termination of this Declaration.

18.38 Roofs and Pressure Treatment. Roofs and/or exterior surfaces and/or pavement, including, but not limited to, walks and drives, shall be pressure treated within thirty (30) days of notice by the ACC. No surface applications to driveways shall be permitted without the prior written approval of the ACC, as to material, color and pattern. Such applications shall not extend beyond the front Lot line or include the sidewalk. Each Owner shall be responsible to pressure clean between paintings. The Board may decide to have annual window washing, sidewalk pressure cleaning or roof repair and may collect the costs thereof as part of operating Costs or Reserves.

18.39 Satellite Dishes and Antennas. No exterior visible antennas, radio masts, towers, poles, aerials, satellite dishes, or other similar equipment shall be placed on any Home or Lot without the prior written approval thereof being first had and obtained from the ACC as required in this Declaration. The ACC may require, among other things, that all such improvements be screened so that they are not visible from adjacent Homes, or from the Common Areas. Each Owner agrees that the location of such items must be first approved by the ACC in order to address the welfare of the residents of Mill Creek. No Owner shall operate any equipment or device which will interfere with the radio or television reception of others. All antennas not covered by the Federal Communications Commission ("**FCC**") rules are prohibited. Installation, maintenance and use of all antennas shall comply with restrictions adopted by the Board and shall be governed by the then current rules of the FCC.

18.40 Screened Enclosures. No screened enclosures, for pools or otherwise, shall be permitted without the prior written approval of the ACC.

18.41 Servants. Servants and domestic help of any Owner may not gather or lounge in or about the Common Areas.

18.42 Signs and Flags. No sign (including brokerage or for sale/lease signs), flag, banner, sculpture, fountain, outdoor play equipment, solar equipment, artificial vegetation, sports equipment, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in or upon any portion of Mill Creek that is visible from the outside without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration; provided, however, signs required by governmental agencies and approved by the ACC may be displayed (e.g., permit boards). No lawn ornament, fountain, solar equipment, artificial vegetation, shall be placed in or upon any part of a Home that is visible from the outside without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration. Developer is exempt from this Section. No in-ground flag poles (except as Developer may use) shall be permitted within Mill Creek, unless written approval of the ACC is obtained. Notwithstanding the foregoing, no ACC approval is required for the installation of one portable, removable United States of America Flag or official flag of the State of Florida displayed in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, Owners may display, in a respectful manner, portable, removable official flags, not larger than 4½ feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard. In addition, notwithstanding the foregoing, no ACC approval is necessary for the installation of an American Flag, up to two feet (2') by four feet (4') in size, posted on a three foot (3') pole and attached at a forty-five (45) degree angle from the Home.

18.43 Sports Equipment. No recreational, playground or sports equipment shall be installed or placed within or about any portion of Mill Creek without prior written consent of the ACC. No basketball backboards, skateboard ramps, or play structures will be permitted without written approval by the ACC. Such approved equipment shall be located at the rear of the Home or on the inside portion of corner Homes within the setback lines. Tree houses or platforms of a similar nature shall not be constructed on any part of a Home. No basketball hoops shall be attached to a Home and any portable basketball hoops must be stored inside the Home when not in use. No play courts, game courts or tennis courts are permitted within Lots.

18.44 Storage. No temporary or permanent utility or storage shed, storage building, tent, or other structure or improvement shall be permitted and no other structure or improvement shall be constructed, erected, altered, modified or maintained without the prior approval of the ACC, which approval shall conform to the requirements of this Declaration. Water softeners, trash containers, propane tanks and other similar devices shall be properly screened from the street in a manner approved by the ACC.

18.45 Subdivision and Regulation of Land. No portion of any Home or Lot shall be divided or subdivided or its boundaries changed without the prior written approval of Association. No Owner shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning,

or any other development orders or development permits applicable to Mill Creek, without the prior written approval of Developer, which may be granted or denied in its sole discretion.

18.46 Substances. No flammable, combustible or explosive fuel, fluid, chemical, hazardous waste, or substance shall be kept on any portion of Mill Creek or within any Home or Lot, except those which are required for normal household use. All propane tanks and bottled gas for household and/or pool purposes (excluding barbecue grill tanks) must be installed underground or in a manner to be screened from view by landscaping or other materials approved by the ACC.

18.47 Surface Water Management System. Association acknowledges that the Surface Water Management System within the Common Areas will be owned by Association. The duty of maintenance of the Common Areas expressly includes, without limitation, the duty to operate, maintain, and repair the Surface Water Management System. The costs of the operation and maintenance of the Surface Water Management System within a Common Area is part of Operating Costs and each Owner shall pay Assessments which shall include a pro rata share of such costs. No structure of any kind shall be constructed or erected, nor shall any Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the ditches, canals, channels, lakes, retention areas, ponds or other water bodies reserved for, or intended by Developer to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits, or Plat, without the specific written consent of Association and Developer. An Owner shall not deny or prevent ingress and egress by Developer, Association or any governmental agencies to such drainage areas for maintenance or landscape purposes.

18.48 Swimming Prohibited. Swimming in the waterbodies within Mill Creek is prohibited.

18.49 Use of Homes. Each Home is restricted to residential use as a residence by the Owner, his or her Immediate Family Members, guests, Lessees and invitees.

18.50 Visibility on Corners. Notwithstanding anything to the contrary in these restrictions, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the ACC and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs or other planting shall be placed or permitted on a corner Lot where such obstruction would create a traffic problem.

18.51 Water Intrusion. Florida experiences heavy rainfall and humidity on a regular basis. Each Owner is responsible for making sure his or her Home remains watertight including, without limitation, checking caulking around windows and seals on doors. Each Owner acknowledges that running air conditioning machinery with windows and/or doors open in humid conditions can result in condensation, mold and/or water intrusion. Neither Developer nor Association shall have liability under such circumstances for any damage or loss that an Owner may incur.

18.52 Windows or Wall Units. No window or wall air conditioning unit may be installed in any window or wall of a Home.

18.53 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no tinting (except for non-reflective tinting which is required to be approved by the ACC prior to installation), newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an Owner or Lessee first moves into a Home or when permanent window treatments are being cleaned or repaired. No security bars shall be placed on the windows of any Home without prior written approval of the ACC. No awnings, canopies or shutters shall be affixed to the exterior of a Home without the prior written approval of the ACC. No reflective tinting or mirror finishes on windows shall be permitted unless approved by the ACC. Window treatments facing the street shall be of a neutral color, such as white, off-white or wood tones.

19. Paramount Right of Developer. Notwithstanding anything to the contrary herein, prior to the Community Completion Date, Developer shall have the paramount right to dedicate, transfer, and/or convey (by absolute conveyance, easement, or otherwise) portions of Mill Creek for various public purposes or for the provision of Telecommunications Systems, or to make any portions of Mill Creek part of the Common Areas. In addition, the Common Areas of Mill Creek may include decorative improvements, berms, waterfalls, and waterbodies. Developer may remove, modify, eliminate or replace these items from time to time in its sole discretion. Developer specifically reserves the right to change the layout, composition, and design of all Common Areas. Sales brochures, site plans, and marketing materials are not guarantees or representations as to what facilities, if any, will be included within the Common Areas.

20. Easement for Unintentional and Non-Negligent Encroachments. If any other building or improvement on a Home shall encroach upon another Home by reason of original construction by Developer, then an easement for such encroachment shall exist so long as the encroachment exists. It is contemplated that each Home shall contain an improvement with exterior walls, footing and other protrusions which may pass over or underneath an adjacent Home. A perpetual nonexclusive easement is herein granted to allow the footers for such walls and other protrusions and to permit any natural water run off from roof overhangs, eaves and other protrusions onto an adjacent Home.

21. Insurance.

21.1 Association. Association shall maintain the following insurance coverage:

21.1.1 Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("**NFIP**"), coverage in appropriate amounts, available under NFIP for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.

21.1.2 Liability Insurance. Commercial general liability insurance coverage providing coverage and limits deemed appropriate. Such policies must provide that they may not be canceled or substantially modified by any party, without at least thirty (30) days' prior written notice to Developer (until the Community Completion Date) and Association.



21.1.3 Directors and Officers Liability Insurance. Each member of the Board shall be covered by directors and officers liability insurance in such amounts and with such provisions as approved by the Board.

21.1.4 Other Insurance. Such other insurance coverage as appropriate from time to time. All coverage obtained by Association shall cover all activities of Association and all properties maintained by Association, whether or not Association owns title thereto.

21.1.5 Developer. Prior to and including the Turnover Date, Developer shall have the right, at Association's expense, to provide insurance coverage under its master insurance policy in lieu of any of the foregoing.

21.2 Homes. Each Owner shall be required to obtain and maintain adequate property insurance of his or her Home. Such insurance shall be sufficient for necessary repair or reconstruction work, and/or shall cover the costs to demolish a damaged Home, as applicable, remove the debris, and to resod and landscape land comprising the Home. Upon the request of Association, each Owner shall be required to supply the Board with evidence of insurance coverage on his Home which complies with the provisions of this Section. Without limiting any other provision of this Declaration or the powers of Association, Association shall specifically have the right to bring an action to require an Owner to comply with his or her obligations hereunder.

22. Requirement to Reconstruct or Demolish. In the event that any Home is destroyed by fire or other casualty, the Owner of such Home shall do one of the following: the Owner shall commence reconstruction and/or repair of the Home ("**Required Repair**"), or Owner shall tear the Home down, remove all the debris, and resod and landscape the property comprising the Home as required by the ACC ("**Required Demolition**") to the extent permitted under law. If an Owner elects to perform the Required Repair, such work must be commenced within thirty (30) days of the Owner's receipt of the insurance proceeds respecting such Home. If an Owner elects to perform the Required Demolition, the Required Demolition must be completed within six (6) months from the date of the casualty or such longer period of time established by the Board in its sole and absolute discretion, subject to extension if required by law. If an Owner elects to perform the Required Repair, such reconstruction and/or repair must be completed in a continuous, diligent, and timely manner. Association shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of Association, Association shall have a right to bring an action against an Owner who fails to comply with the foregoing requirements. By way of example, Association may bring an action against an Owner who fails to either perform the Required Repair or Required Demolition on his or her Home within the time periods and in the manner provided herein. Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

22.1 Standard of Work. The standard for all demolition, reconstruction, and other work performed as required by this Section shall be in accordance with the Community

Standards and any other standards established by Association with respect to any casualty that affects all or a portion of Mill Creek.

22.2 Additional Rights of Association. If an Owner refuses or fails, for any reason, to perform the Required Repair or Required Demolition as herein provided, then Association, in its sole and absolute discretion, by and through its respective Board is hereby irrevocably authorized by such Owner to perform the Required Repair or Required Demolition. All Required Repair performed by Association pursuant to this Section shall be in conformance with the original plans and specifications for the Home, subject to approved modifications. Association shall have the absolute right to perform the Required Demolition to a Home pursuant to this Section if any contractor certifies in writing to Association that such Home cannot be rebuilt or repaired. The Board may levy an Individual Assessment against the Owner in whatever amount may be sufficient to adequately pay for Required Repair or Required Demolition performed by Association.

22.3 Association Has No Liability. Notwithstanding anything to the contrary of this Section, Association, its directors and officers, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on a Home. Moreover, Association, its directors and officers, shall not be liable to any person if Association does not enforce the rights given to Association in this Section.

22.4 Fidelity Bonds. If available, a blanket fidelity bond for all officers, directors, trustees and employees of Association, and all other persons handling or responsible for funds of, or administered by Association. In the event Association delegates some or all of the responsibility for the handling of the funds to a professional management company or licensed manager, such bonds shall be required for its officers, employees and agents handling or responsible for funds of, or administered on behalf of Association. The amount of the fidelity bond shall be based upon reasonable business judgment. The fidelity bonds required herein must meet the following requirements (to the extent available at a reasonable premium):

22.4.1 The bonds shall name Association as an obligee.

22.4.2 The bonds shall contain waivers, by the issuers of the bonds, of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee" or similar terms or expressions.

22.4.3 The premiums on the bonds (except for premiums on fidelity bonds maintained by a professional management company, or its officers, employees and agents), shall be paid by Association.

22.4.4 The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to Developer (until the Community Completion Date) and Association.

22.5 Association as Agent. Association is irrevocably appointed agent for each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by Association, and to execute and deliver releases upon the payment of claims.

22.6 Casualty to Common Areas and Homes. In the event of damage to the Common Areas, or any portion thereof, Association shall be responsible for reconstruction after casualty. In the event of damage to a Home, or any portion thereof, the Owner shall be responsible for reconstruction after casualty.

22.7 Nature of Reconstruction. Any reconstruction of improvements hereunder shall be substantially in accordance with the plans and specifications of the original improvement, or as the improvement was last constructed, subject to modification to conform with the then current governmental regulation(s).

22.8 Additional Insured. Developer and its Lender(s), if any, shall be named as additional insured on all policies obtained by Association, as their interests may appear.

22.9 Cost of Payment of Premiums. The costs of all insurance maintained by Association hereunder, and any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof are Operating Costs.

## 23. Property Rights.

23.1 Owners' Easement of Enjoyment. Every Owner and Lessee, and his or her Immediate Family Members, tenants, guests, invitees and every owner of an interest in Mill Creek shall have a non-exclusive right and easement of enjoyment in and to those portions of the Common Areas which he or she is entitled to use for their intended purpose, subject to the following provisions:

23.1.1 Easements, restrictions, reservations, conditions, limitations and declarations of record, now or hereafter existing, and the provisions of this Declaration, as amended.

23.1.2 The right of Association to suspend an Owner's rights hereunder or to impose fines in accordance with Section 720.305 of the Florida Statutes, as amended from time to time.

23.1.3 The right to suspend the right to use all (except vehicular and pedestrian ingress and egress and necessary utilities) or a portion of the Common Areas by an Owner, his or her immediate family, etc, for any period during which any Assessment against that Owner remains unpaid.

23.1.4 The right of Developer and/or Association to dedicate or transfer all or any part of the Common Areas. No such dedication or transfer shall be effective prior to the Community Completion Date without prior written consent of Developer.

23.1.5 The perpetual right of Developer to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. Association and each Owner shall give Developer unfettered access for ingress and egress to the Common Areas so that Developer and/or its agents can perform all tests and inspections deemed necessary by Developer. Developer shall have the right to make all repairs and replacements deemed necessary by Developer. At no time shall

Association and/or an Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Developer relative to any portion of the Common Areas.

23.1.6 The right of Developer and/or Association to modify the Common Areas as set forth in this Declaration.

23.1.7 The rights of Developer and/or Association regarding Mill Creek as reserved in this Declaration, including the right to utilize the same and to grant use rights, etc. to others.

23.1.8 Rules and Regulations adopted governing use and enjoyment of the Common Areas.

23.1.9 An Owner relinquishes use of the Common Areas at any time that a Home is leased to a Lessee.

23.2 Ingress and Egress. An easement for ingress and egress is hereby created for pedestrian traffic over, through and directly across sidewalks, paths, walkways, driveways, passageways, and lanes as the same, from time to time, may exist upon, or be designed as part of, the Common Areas, and for vehicular traffic over, through and across such portions of the Common Areas as, from time to time, may be paved and intended for such purposes.

23.3 Development Easement. In addition to the rights reserved elsewhere herein, Developer reserves an easement for itself or its nominees over, upon, across, and under Mill Creek as may be required in connection with the development of Mill Creek and other lands designated by Developer and to promote or otherwise facilitate the development, construction and sale and/or leasing of Homes, any portion of Mill Creek, and other lands designated by Developer. Without limiting the foregoing, Developer specifically reserves the right to use all paved roads and rights of way within Mill Creek for vehicular and pedestrian ingress and egress to and from construction sites and for the construction and maintenance of any Telecommunications Systems provided by Developer. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Common Areas. Developer shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of Association payable by all Owners as part of Operating Costs. Without limiting the foregoing, at no time shall Developer be obligated to pay any amount to Association on account of Developer's use of the Common Areas for construction purposes. Developer intends to use the Common Areas for sales of new and used Homes. Further, Developer and its affiliates may market other residences and commercial properties located outside of Mill Creek from Developer's sales facilities located within Mill Creek. Developer has the right to use all portions of the Common Areas in connection with its marketing activities including, without limitation, allowing members of the general public to inspect model Homes, installing signs and displays, holding promotional parties and picnics, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of new and used residential Homes. The easements created by this Section, and the rights reserved herein in favor of Developer, shall be construed as broadly as possible and supplement the rights of Developer set forth this Declaration. At no time shall

Developer incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

23.4 Public Easements. Fire, police, school transportation, health, sanitation and other public service and utility company personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas. In addition, Telecommunications Providers shall also have the right to use all paved roadways for ingress and egress to and from Telecommunications Systems within Mill Creek.

23.5 Delegation of Use. Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas to occupants or lessees of that Owner's Home subject to the provisions of this Declaration and the Rules and Regulations, as may be promulgated, from time to time. Any such delegation or lease shall not relieve any Owner from its responsibilities and obligations provided herein.

23.6 Easement for Encroachments. In the event that any improvement upon Common Areas, as originally constructed, shall encroach upon any other property or improvements thereon, or for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist.

23.7 Permits, Licenses and Easements. Prior to the Community Completion Date, Developer, and thereafter Association, shall, in addition to the specific rights reserved to Developer herein, have the right to grant, modify, amend and terminate permits, licenses and easements over, upon, across, under and through Mill Creek (including Lots, Parcels and/or Homes) for Telecommunications Systems, utilities, roads and other purposes reasonably necessary or useful as it determines, in its sole discretion. To the extent legally required, each Owner shall be deemed to have granted to Developer and, thereafter, Association an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

23.8 Support Easement and Maintenance Easement. An easement is hereby created for the existence and maintenance of supporting structures (and the replacement thereof) in favor of the entity required to maintain the same. An easement is hereby created for maintenance purposes (including access to perform such maintenance) over and across Mill Creek (including Homes, Lots and Parcels) for the reasonable and necessary maintenance of Common Areas, utilities, cables, wires and other similar facilities.

23.9 Drainage Easement. A non-exclusive easement shall exist in favor of Developer, SFWMD, CBWCD, Association, and their designees, and any other applicable water management district, state agency, county agency and/or federal agency having jurisdiction over Mill Creek over, across and upon Mill Creek for drainage, irrigation and water management purposes. A non-exclusive easement for ingress and egress and access exists as shown on the Plat for such parties to enter upon and over any portion of Mill Creek (including Homes) in order to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, conservation areas, mitigation areas, irrigation systems and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of Mill Creek and/or installation or maintenance of utilities or which may obstruct or retard the flow of water

through Mill Creek and/or water management areas and facilities or otherwise interfere with any drainage, irrigation and/or easement provided for in this Section or the use rights set forth elsewhere in this Declaration. Notwithstanding the foregoing, a non-exclusive easement shall exist over, across and upon Mill Creek for property adjacent to Mill Creek for the purpose of surface water flow and surface storm water management.

23.10 Waterbodies. It is the responsibility of Association to maintain any Common Areas that borders on waterbodies or canals. Erosion of slopes and banks is possible due to drainage or roof culvert outfalls and runoff can affect the integrity of the lake or canal bank. Each such Owner shall ensure that banks and slopes of canals and waterbodies that lie within a Lot remain free of any structural or landscape encroachments so as to permit vehicular access for maintenance when needed.

23.11 Easements Dedicated to CBWCD. All drainage easements, lake easements, lake maintenance easements and canal maintenance easements shown on the Plat are dedicated to CBWCD and shall be the perpetual maintenance obligation of the Association, as stated on the Plat. All canal easements shown on the Plat are also dedicated to CBWCD as stated on the Plat. No landscaping, improvements, trees or encroachments, including utilities (except for overhead power, cable or telephone lines with a minimum 25 foot clearance), are allowed within any easements dedicated to CBWCD without the approval of and a permit from CBWCD.

23.12 Easement in Favor of Association. Association is hereby granted an easement over all of Mill Creek, including all Homes and Lots, for the purposes of (a) constructing, maintaining, replacing and operating all Common Areas, including, but not limited to, lakes, perimeter walls and fences, and (b) performing any obligation of an Owner for which Association intends to impose an Individual Assessment.

23.13 Duration. All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary.

#### 24. Assessments.

24.1 Types of Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including any purchaser at a judicial sale, shall hereafter be deemed to have covenanted and agreed to pay to Association at the time and in the manner required by the Board, assessments or charges and any special assessments as are fixed, established and collected from time to time by Association (collectively, the "Assessments"). All Owners shall pay Assessments.

24.2 Purpose of Assessments. The Assessments levied by Association shall be used for, among other things, the purpose of promoting the recreation, health and welfare of the residents of Mill Creek, and in particular for the improvement and maintenance of the Common Areas and any easement in favor of Association, including, but not limited to, the following categories of Assessments as and when levied and deemed payable by the Board and as otherwise provided in this Declaration:

24.2.1 Any monthly or quarterly assessment (as determined by the Board) or charge for the purpose of operating Association and accomplishing any and all of its purposes, as

determined in accordance herewith, including, without limitation, payment of Operating Costs and collection of amounts necessary to pay any deficits from prior years' operation (hereinafter "**Monthly Assessments**");

24.2.2 Any special assessments for capital improvements, major repairs, emergencies, the repair or replacement of the Common Areas, or nonrecurring expenses (hereinafter "**Special Assessments**");

24.2.3 Any specific fees, dues or charges to be paid by Owners for any special services provided to or for the benefit of an Owner or Home, for any special or personal use of the Common Areas, or to reimburse Association for the expenses incurred in connection with that service or use (hereinafter "**Use Fees**");

24.2.4 Assessments of any kind for the creation of reasonable reserves for any of the aforesaid purposes and for the periodic maintenance, repair, and replacement of improvements comprising a portion of the Common Areas. To the extent permitted by applicable law, at such time as there are improvements in any Common Areas for which Association has a responsibility to maintain, repair, and replace, the Board may, but shall have no obligation to, include a "Reserve for Replacement" in the Monthly Assessments in order to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements comprising a portion of the Common Area (hereinafter "**Reserves**"). Assessments pursuant to this Section shall be payable in such manner and at such times as determined by Association, and may be payable in installments extending beyond the fiscal year in which the Reserves are approved. Once established, Reserves may be waived or reduced as provided in Chapter 720 of the Florida Statutes. Except as may otherwise be provided by applicable law, until the Community Completion Date, Reserves shall be subject to the prior written approval of Developer, which may be withheld for any reason; and

24.2.5 Assessments for which one or more Owners (but less than all Owners) within Mill Creek is subject ("**Individual Assessments**") such as costs of special services provided to a Home or Owner or cost relating to enforcement of the provisions of this Declaration or the architectural provisions hereof as it relates to a particular Owner or Home. By way of example, and not of limitation, all of the Owners within a plat may be subject to Individual Assessments for maintenance, repair and/or replacement of facilities serving only the residents of such Plat. Further, in the event an Owner fails to maintain the exterior of his or her Home (other than those portions of a Home maintained by Association) or a lake or canal slope or bank in a manner satisfactory to Association, Association shall have the right, through its agents and employees, to enter upon the Home and to repair, restore, and maintain the Home as required by this Declaration. Such entrance shall not be deemed a trespass. The cost thereof, plus the reasonable administrative expenses of Association, shall be an Individual Assessment. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment. As a further example, if one or more Owners receive optional Telecommunications Services such as Toll Calls, Cable Services and/or Data Transmission Services, and Association pays a Telecommunications Provider for such services, then the cost of such services shall be an Individual Assessment as to each Owner receiving such services. Further, in the event that Association decides it is in the best interest of Mill Creek that Association perform any other obligation of an Owner under this Declaration, the cost of performing such obligation shall be an

Individual Assessment. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment.

24.3 Association Option. Notwithstanding the foregoing, Association may require that an Owner (or all Owners) pay Monthly Assessments on a monthly basis or other basis based on prior payment history or other financial concerns, in Association's sole discretion.

24.4 Designation. The designation of Assessment type shall be made by Association. Prior to the Community Completion Date, any such designation must be approved by Developer. Such designation may be made on the budget prepared by Association. The designation shall be binding upon all Owners.

24.5 Allocation of Operating Costs. For the period until the adoption of the first annual budget, the allocation of Operating Costs shall be as set forth in the initial budget prepared by Developer.

24.5.1 Commencing on the first day of the period covered by the annual budget, and until the adoption of the next annual budget, the Monthly Assessments shall be allocated so that each Owner shall pay his or her pro rata portion of Monthly Assessments, Special Assessments, and Reserves based upon a fraction, the numerator of which is one (1) and the denominator of which is the total number of Homes in Mill Creek conveyed to Owners as of the immediately preceding September 30th or any greater number determined by Developer from time to time. Developer, in its sole and absolute discretion, may change such denominator from time to time. Under no circumstances will the denominator be less than the number of Homes owned by Owners other than Developer.

24.5.2 In the event Operating Costs as estimated in the budget for a particular fiscal year are, after the actual Operating Costs for that period is known, less than the actual costs, then the difference shall, at the election of Association: (i) be added to the calculation of Monthly Assessments, as applicable, for the next ensuing fiscal year; or (ii) be immediately collected from the Owners as a Special Assessment. Association shall have the unequivocal right to specially assess Owners retroactively on January 1st of any year for any shortfall in Monthly Assessments, which Special Assessment shall relate back to the date that the Monthly Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment except to the extent specifically provided herein).

24.5.3 Each Owner agrees that so long as it does not pay more than the required amount it shall have no grounds upon which to object to either the method of payment or non-payment by other Owners of any sums due.

24.6 General Expenses Allocation. Except as hereinafter specified to the contrary, Monthly Assessments, Special Assessments and Reserves shall be allocated equally to each Owner. Notwithstanding the foregoing, the Board may decide to assess Owners at different rates based on the size of the Home or other factors as may be determined by the Board from time to time. By way of example and not of limitation, if Association ever decides to provide lawn maintenance, the Board may elect annually to charge each Home equal Assessments for such lawn service, or base such Assessments on the size of the Lot upon which the Home lies, base it



on the size of the Home, or allocate such Assessments on any other reasonable basis adopted by the Board. The rate of Assessments shall be set forth in an amendment to this Declaration recorded in the Public Records and adopted by the Board at a Board meeting.

24.7 Use Fees and Individual Assessment. Except as hereinafter specified to the contrary, Use Fees and Individual Assessments shall be made against the Owners benefiting from, or subject to the special service or cost as specified by Association.

24.8 Commencement of First Assessment. Assessments shall commence as to each Owner on the day of the conveyance of title of a Home to an Owner.

24.9 Shortfalls and Surpluses. Each Owner acknowledges that because Monthly Assessments, Special Assessments, and Reserves are allocated based on the formula provided herein, or upon the number of Homes conveyed to Owners on or prior to September 30 of the prior fiscal year, it is possible that Association may collect more or less than the amount budgeted for Operating Costs. Except as may be otherwise provided by applicable law, prior to and including the Turnover Date, Developer shall have the option to (i) fund all or any portion of the shortfall in Monthly Assessments not raised by virtue of all income received by Association or (ii) to pay Monthly Assessments on Homes or Lots owned by Developer. If Developer has cumulatively over funded Operating Costs and/or prepaid expenses of Association which have not been reimbursed to Developer prior to and including the Turnover Date, Association shall refund such amounts to Developer on or prior to the Turnover Date or as soon as possible thereafter (e.g. once the amount is finally determined). Except as may otherwise be provided by applicable law, Developer shall never be required to (i) pay Monthly Assessments if Developer has elected to fund the deficit instead of paying Monthly Assessments on Homes or Lots owned by Developer, or (ii) pay Special Assessments, management fees or Reserves. Any surplus Assessments collected by Association may be (i) allocated towards the next year's Operating Costs, (ii) used to fund Reserves, whether or not budgeted (to the extent permitted by applicable law), (iii) retained by Association, and/or (iv) used for any other purpose, in Association's sole discretion, except as prohibited by law. Under no circumstances shall Association be required to pay surplus Assessments to Owners.

24.10 Budgets. The initial budget prepared by Developer is adopted as the budget for the period of operation until adoption of the first annual Association budget. Thereafter, the annual budget respecting Operating Costs shall be prepared and adopted by the Board. To the extent Association has commenced or will commence operations prior to the date this Declaration is recorded or the first Home is closed, the Operating Costs may vary in one or more respects from that set forth in the initial Budget. Developer shall fund entirely all Operating Costs until the month prior to the closing of the first Home. Thereafter, Assessments shall be payable by each Owner as provided in this Declaration. THE INITIAL BUDGET OF ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES); THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESSER OR GREATER THAN PROJECTED. Budgets do not take into account inflation. Because there is no history of operation, it is impossible to predict actual expenses once Association begins operation. It is not intended that you rely on any budget in electing to purchase a Home. Projections in the initial budget are an effort to provide some information regarding future operating costs.

24.11 Establishment of Assessments. Assessments shall be established in accordance with the following procedures:

24.11.1 Monthly Assessments shall be established by the adoption of a twelve (12) month operating budget by the Board. The budget shall be in the form required by Section 720.303(6) of the Florida Statutes, as amended from time to time. Written notice of the amount and date of commencement thereof shall be given to each Owner not less than ten (10) days in advance of the due date of the first installment thereof. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of Association.

24.11.2 Special Assessments and Individual Assessments against the Owners may be established by Association, from time to time, and shall be payable at such time or time(s) as determined. Until the Community Completion Date, no Special Assessment shall be imposed without the consent of Developer.

24.11.3 Association may establish, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company, Use Fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by Association.

24.12 Initial Capital Contributions. The initial purchaser of each Home from Developer, at the time of closing of the conveyance from Developer to the purchaser, shall pay to Developer an initial capital contribution in an amount equal to two (2) months of Assessments (or such other amount as established by Developer from time to time, if any) (the "**Initial Capital Contributions**"). The funds derived from the Initial Capital Contributions shall be used at the discretion of Developer for any purpose whatsoever, including but not limited to, future and existing capital improvements, operating expenses, support costs and start-up costs. Amounts paid for Initial Capital Contributions are not to be considered as advance payment of Assessments and need not be maintained in a separate account. Notwithstanding anything herein to the contrary, Developer shall have the option to waive the payment of Initial Capital Contributions.

24.13 Assessment Estoppel Certificates. No Owner shall sell or convey its interest in a Home unless all sums due Association have been paid in full and an estoppel certificate in recordable form shall have been received by such Owner. Association shall prepare and maintain a ledger noting Assessments due from each Owner. The ledger shall be kept in the office of Association, or its designees, and shall be open to inspection by any Owner. Within ten (10) days of a written request therefor, there shall be furnished to an Owner an estoppel certificate in writing setting forth whether the Assessments have been paid and/or the amount which is due as of any date. As to parties other than Owners who, without knowledge of error, rely on the certificate, the certificate shall be conclusive evidence of the amount of any Assessment therein stated. The Owner requesting the estoppel certificate shall be required to pay Association a reasonable sum to cover the costs of examining records and preparing such estoppel certificate. Each Owner waives its rights (if any) to an accounting related to Operating Costs or Assessments.

24.14 Payment of Home Real Estate Taxes. Each Owner shall pay all taxes and obligations relating to its Home which, if not paid, could become a lien against the Home which is superior to the lien for Assessments created by this Declaration.

24.15 Creation of the Lien and Personal Obligation. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title to a Home, shall be deemed to have covenanted and agreed that the Assessments, and/or other charges and fees set forth herein, together with interest, late fees, costs and reasonable attorneys' fees, paraprofessional fees and costs, pre-trial and at all levels of proceedings, including appeals, shall be a charge and continuing lien in favor of Association encumbering the Home and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien is effective from and after recording a claim of lien in the Public Records stating the legal description of the Home, name of the Owner, and the amounts due as of that date, but the priority of the lien shall relate back to the date that this Declaration was recorded. Notwithstanding the foregoing, Association may not file a claim of lien against a Home for unpaid Assessments unless a written notice of demand for past due Assessments has been made by Association, which notice must comply with Section 720.3085 of the Florida Statutes, as such section may be amended or renumbered from time to time, as long as it may exist. The claim of lien shall also cover any additional amounts which accrue thereafter until satisfied. Each Assessment, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, and other costs and expenses provided for herein, shall be the personal obligation of the person who was the Owner of the Home at the time when the Assessment became due, as well as the Owner's heirs, devisees, personal representatives, successors or assigns. Regardless of how title to a Home is acquired (including but not limited to purchase at a foreclosure sale or by deed in lieu of foreclosure), an Owner is jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of transfer of title to the Home, provided, however, that: (i) such liability is without prejudice to any right the present Owner may have to recover any amounts paid by the present Owner from the previous Owner, and (ii) the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a Home by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that became due before the mortgagee's acquisition of title is limited to the extent specifically set forth in Section 24.16.

24.16 Subordination of the Lien to Mortgages.

24.16.1 The lien for Assessments shall be subordinate to a bona fide first mortgage held by a Lender on any Home if the mortgage is recorded in the Public Records prior to the claim of lien. The lien for Assessments shall be a lien superior to all other liens save and except tax liens and mortgage liens, provided such mortgage liens are first liens against the property encumbered thereby, subject only to tax liens. The lien for Assessments shall not be affected by any sale or transfer of a Home, except in the event of a sale or transfer of a Home pursuant to a foreclosure (or by deed in lieu of foreclosure or otherwise) of a bona fide first mortgage held by a Lender.

24.16.2 Notwithstanding anything to the contrary contained in this Declaration, the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a Home by foreclosure or by deed in lieu of foreclosure for the

unpaid Assessments that became due before the mortgagee's acquisition of title, shall be limited to the maximum amount permitted by Section 720.3085 of the Florida Statutes, as such section may be amended or renumbered from time to time, as long as it may exist. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee.

24.16.3 Any unpaid Assessments for which such acquirer of title is not liable may be reallocated and assessed to all Owners (including such acquirer of title) as a part of Operating Costs included within Monthly Assessments. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure or otherwise), shall not relieve the Owner from liability for, nor the Home from the lien of, any Assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent Assessments from the payment thereof, or the enforcement of collection by means other than foreclosure. A Lender shall give written notice to Association if the mortgage held by such Lender is in default. Association shall have the right, but not the obligation, to cure such default within the time periods applicable to Owner. In the event Association makes such payment on behalf of an Owner, Association shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section shall be added to Assessments payable by such Owner with appropriate interest.

24.17 Acceleration. In the event of a default in the payment of any Assessment, Association may accelerate the Assessments then due for up to the next ensuing twelve (12) month period.

24.18 Non-Payment of Assessments. If any Assessment is not paid within fifteen (15) days (or such other period of time established by the Board) after the due date, a late fee of \$25.00 per month (or such greater amount established by the Board) may be levied. In addition, any Assessments that are not paid when due shall bear interest in an amount equal to the maximum rate allowable by law (or such lesser rate established by the Board), per annum, beginning from the due date until paid in full. The late fee shall compensate Association for administrative costs, loss of use of money, and accounting expenses. Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Home, or both forty-five (45) days after the Owner has been provided with notice of the Association's intent to foreclose the lien against the Home and collect the unpaid amounts. Association shall not be required to bring such an action if it believes that the best interests of Association would not be served by doing so. There shall be added to the Assessment all costs expended in preserving the priority of the lien and all costs and expenses of collection, including attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals. Any payment of past due Assessments received and accepted by Association shall be applied first to any interest accrued, then to any late fee(s) due, then to any costs and reasonable attorneys' fees incurred in collection the Assessment(s). No Owner may waive or otherwise escape liability for Assessments provided for herein by non-use of, or the waiver of the right to use the Common Areas or by abandonment of a Home.

24.19 Exemption. Notwithstanding anything to the contrary herein, and except as otherwise expressly provided herein, Developer shall not be responsible for any Assessments of

any nature or any portion of Operating Costs. Except as may otherwise be provided by applicable law, Developer, at Developer's sole option, may pay Assessments on Homes owned by it, or fund the deficit, if any, as set forth in Section 24.9 herein. In addition, the Developer, prior to the Community Completion Date, and thereafter the Board shall have the right to exempt any portion of Mill Creek subject to this Declaration from the Assessments, provided that such portion of Mill Creek exempted is used (and as long as it is used) for any of the following purposes:

24.19.1 Any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

24.19.2 Any real property interest held by a Telecommunications Provider under this Declaration;

24.19.3 Common Areas or property (other than a Home) owned by Association;

24.19.4 Any of Mill Creek exempted from ad valorem taxation by the laws of the State of Florida; and

24.19.5 Any easement or other interest dedicated or conveyed to not for profit corporations for the use and benefit of residents in Mill Creek.

24.20 Collection by Developer. If for any reason Association shall fail or be unable to levy or collect Assessments, then in that event, Developer shall at all times have the right, but not the obligation: (i) to advance such sums as a loan to Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, which remedies including, but not limited to, recovery of attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings including appeals, collections and bankruptcy, shall be deemed assigned to Developer for such purposes. If Developer advances sums, it shall be entitled to immediate reimbursement, on demand, from Association for such amounts so paid, plus interest thereon at the Wall Street Journal Prime Rate plus three percent (3%), plus any costs of collection including, but not limited to, reasonable attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings including appeals, collections and bankruptcy.

24.21 Rights to Pay Assessments and Receive Reimbursement. Association, Developer, and any Lender of a Home shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Home. If so paid, the party paying the same shall be subrogated to the enforcement rights of Association with regard to the amounts due.

24.22 Mortgagee Right. Each Lender may request in writing that Association notify such Lender of any default of the Owner of the Home subject to the Lender's Mortgage under the Association Documents which default is not cured within thirty (30) days after Association learns of such default. A failure by Association to furnish notice to any Lender shall not result in liability of Association because such notice is given as a courtesy to a Lender and the furnishing of such notice is not an obligation of Association to Lender.

24.23 Community Enhancement Fee. Association has established a community enhancement fee ("**Community Enhancement Fee**"). There shall be collected upon every conveyance of title of a Home by an Owner an amount equal to two hundred fifty dollars (\$250.00) payable to Association (or such other amount as established by Association from time to time, if any). The Community Enhancement Fee shall not be applicable to conveyances from Developer. After the Home has been conveyed by Developer there shall be a recurring assessment payable to Association upon all succeeding conveyances of a Home by an Owner; provided, however, that the Community Enhancement Fee shall not be applicable to (i) conveyances for estate planning purposes where the same individuals occupy the Home both before and after the conveyance, and (ii) conveyances by foreclosure or through deed in lieu of foreclosure. The amount of such Community Enhancement Fee, if any, and the manner of payment may be changed by resolution of the Board from time to time; provided, however, all Homes shall be assessed a uniform amount. The funds from payment of the Community Enhancement Fee shall be used for the payment of any expenses for enhancement of the Community as determined by the Board. Such funds may (but need not be) maintained in a separate account by the Association.

25. Information to Lenders and Owners.

25.1 Availability. There shall be available for inspections upon request, during normal business hours or under other reasonable circumstances, to Owners and Lenders current copies of the Association Documents.

25.2 Copying. Any Owner and/or Lender shall be entitled, upon written request, and at its cost, to a copy of the documents referred to above.

25.3 Notice. Upon written request by a Lender (identifying the name and address of the Lender and the name and address of the applicable Owner), the Lender will be entitled to timely written notice of:

25.3.1 Any condemnation loss or casualty loss which affects a material portion of a Home to the extent Association is notified of the same;

25.3.2 Any delinquency in the payment of Assessments owed by an Owner of a Home subject to a first mortgage held by the Lender, which remains uncured for a period of sixty (60) days;

25.3.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained hereunder; and

25.3.4 Any proposed action (if any) which would require the consent of a specific mortgage holder.

26. Architectural Control.

26.1 Architectural Control Committee. The ACC shall be a permanent committee of Association and shall administer and perform the architectural and landscape review and control functions relating to Mill Creek. The ACC shall consist of a minimum of three (3) members who

shall initially be named by Developer and who shall hold office at the pleasure of Developer. Until the Community Completion Date, Developer shall have the right to change the number of members on the ACC, and to appoint, remove, and replace all members of the ACC. Developer shall determine which members of the ACC shall serve as its chairman and co-chairman. In the event of the failure, refusal, or inability to act of any of the members appointed by Developer, Developer shall have the right to replace any member within thirty (30) days of such occurrence. If Developer fails to replace that member, the remaining members of the ACC shall fill the vacancy by appointment. From and after the Community Completion Date, the Board shall have the same rights as Developer with respect to the ACC.

26.2 Membership. There is no requirement that any member of the ACC be an Owner or a member of Association.

26.3 General Plan. It is the intent of this Declaration to create a general plan and scheme of development of Mill Creek. Accordingly, the ACC shall have the right and authority to approve or disapprove all architectural, landscaping, and improvements within Mill Creek by Owners other than Developer. The ACC shall have the right to evaluate and approve or disapprove all plans and specifications as to harmony of exterior design, landscaping, location, size, type, and appearance of any proposed structures or improvements, relationship to surrounding structures or improvements, topography and conformity with the Community Standards and such other published guidelines and standards as may be adopted by the ACC from time to time. The ACC may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. Prior to the Community Completion Date, any additional guidelines or standards or modification of existing guidelines or standards, including, without limitation, the Community Standards, shall require the consent of Developer, which may be granted or denied in its sole discretion.

26.4 Development Plan. Developer has established an overall Development Plan. However, notwithstanding the above, or any other document, brochures or plans, Developer reserves the right to modify the Development Plan or any site plan at any time as it deems desirable in its sole discretion and in accordance with applicable laws and ordinances. WITHOUT LIMITING THE FOREGOING, DEVELOPER MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS RESPECTING MILL CREEK. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS ARE NOT A GUARANTEE OF HOW MILL CREEK WILL APPEAR UPON COMPLETION AND DEVELOPER RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS DEVELOPER DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

26.5 Community Standards. Each Owner and its contractors and employees shall observe, and comply with, the Community Standards which now or may hereafter be promulgated by the ACC and approved by the Board from time to time. The Community Standards shall be effective from the date of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as set forth herein verbatim. The Community Standards shall not require any Owner to alter the improvements previously

approved and constructed. Until the Community Completion Date, Developer shall have the right to approve the Community Standards, which approval may be granted in its sole discretion.

26.6 Quorum. A majority of the ACC shall constitute a quorum to transact business at any meeting. The action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC. Meetings of the ACC shall be open to all members of Association.

26.7 Power and Duties of the ACC. The ACC shall have the right and authority to review and approve and disapprove plans and specifications for the exterior design, landscaping, location, size, type or appearance of any proposed Home, structure or other improvement on a Lot or Parcel. No structures or improvements shall be constructed on any portion of Mill Creek, no exterior of a Home shall be repainted, no landscaping, sign, or improvements erected, removed, planted, or maintained on any portion of Mill Creek, nor shall any material addition to or any change, replacement, or alteration of the improvements as originally constructed by Developer (visible from the exterior of the Home) be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and the location of same shall have been submitted to and approved in writing by the ACC.

26.8 Procedure. In order to obtain the approval of the ACC, each Owner shall observe the following:

26.8.1 Each applicant shall submit an application to the ACC with respect to any proposed improvement or material change in an improvement, together with the required application(s) and other fee(s) as established by the ACC. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the applicant shall, if requested, submit to the ACC, such site plans, plans and specifications for the proposed improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping and irrigation plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications and the times scheduled for completion, all as reasonably specified by the ACC.

26.8.2 In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Owner shall, within fifteen (15) days thereafter, comply with the request.

26.8.3 No later than thirty (30) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the ACC shall consider the suitability of the proposed improvements, the materials of which the improvements are to be built, the site upon which the improvements are



proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within such thirty (30) day period, the plans and specifications shall be deemed disapproved by the ACC.

26.8.4 Construction of all improvements shall be completed within the time period set forth in the application and approved by the ACC.

26.8.5 In the event that the ACC disapproves any plans and specifications, the applicant may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall take place no later than thirty (30) days after written request for such meeting is received by the ACC, unless applicant waives this time requirement in writing. The ACC shall make a final written decision no later than thirty (30) days after such meeting. In the event the ACC fails to provide such written decision within such thirty (30) days, the plans and specifications shall be deemed disapproved.

26.8.6 Upon disapproval (even if the members of the Board and ACC are the same), the applicant may appeal the decision of the ACC to the Board within thirty (30) days of the ACC's written review and disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the Owner's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed approved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within such sixty (60) days after such meeting, such plans and specifications shall be deemed approved. The decision of the ACC, or if appealed, the Board, shall be final and binding upon the applicant, its heirs, legal representatives, successors and assigns.

26.9 Alterations. Any and all alterations, deletions, additions and changes of any type or nature whatsoever to then existing improvements or the plans or specifications previously approved by the ACC, including, but not limited to, changes relating to exterior design, landscaping, location, size, type and appearance, shall be subject to the approval of the ACC in the same manner as required for approval of original plans and specifications. Notwithstanding the foregoing, the ACC shall have no right to approve any changes to a Home not visible from the exterior of Home.

26.10 Variances. Association or ACC shall have the power to grant variances from any requirements set forth in this Declaration or from the Community Standards, on a case by case basis, provided that the variance sought is reasonable and results from a hardship upon the applicant; provided, however, neither Association nor the ACC shall enforce any policy or restriction that is inconsistent with the rights and privileges of an Owner set forth in this Declaration or the Community Standards. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth in this Declaration or in the Community Standards on any other occasion.

26.11 Permits. The Owner is solely responsible to obtain all required building and other permits from all governmental authorities having jurisdiction.

26.12 Construction by Owners. The following provisions govern construction activities by Owners after consent of the ACC has been obtained:

26.12.1 Each Owner shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Owner. Each construction site in Mill Creek shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roadways, easements, swales, Common Areas and other such areas in Mill Creek shall be kept clear of construction vehicles, construction materials and debris at all times. No construction office or trailer shall be kept in Mill Creek and no construction materials shall be stored in Mill Creek subject, however, to such conditions and requirements as may be promulgated by the ACC. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any canal or waterway or Common Areas or other Homes in Mill Creek or be placed anywhere outside of the Home upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state and local statutes, regulations and ordinances, and shall not be deposited in any manner on, in or within the construction or adjacent property or waterways. All construction activities shall comply with the Community Standards. If a contractor or Owner shall fail in any regard to comply with the requirements of this Section, the ACC may require that such Owner or contractor post security with Association in such form and such amount deemed appropriate by the ACC in its sole discretion.

26.12.2 There shall be provided to the ACC, if requested, a list (name, address, telephone number and identity of contact person) of all contractors, subcontractors, materialmen and suppliers (collectively, "**Contractors**") and changes to the list as they occur relating to construction. All Contractors and their employees shall utilize those roadways and entrances into Mill Creek as are designated by the ACC for construction activities. The ACC shall have the right to require that each Contractor's employees check in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC.

26.12.3 Each Owner is responsible for ensuring compliance with all terms and conditions of these provisions and of the Community Standards by all of its employees and Contractors. In the event of any violation of any such terms or conditions by any employee or Contractor, or, in the opinion of the ACC, the continued refusal of any employee or Contractor to comply with such terms and conditions, after five (5) days' notice and right to cure, the ACC shall have, in addition to the other rights hereunder, the right to prohibit the violating employee or Contractor from performing any further services in Mill Creek.

26.12.4 The ACC may, from time to time, adopt standards governing the performance or conduct of Owners, Contractors and their respective employees within Mill Creek. Each Owner and Contractor shall comply with such standards and cause its respective employees to also comply with same. The ACC may also promulgate requirements to be inserted in all contracts relating to construction within Mill Creek and each Owner shall include the same therein.

26.13 Inspection. There is specifically reserved to Association and ACC and to any agent or member of either of them, the right of entry and inspection upon any portion of Mill Creek at any time within reasonable daytime hours, for the purpose of determination whether there exists any violation of the terms of any approval or the terms of this Declaration or the Community Standards.

26.14 Violation. Without limiting any other provision herein, if any improvement shall be constructed or altered without prior written approval, or in a manner which fails to conform with the approval granted, the Owner shall, upon demand of Association or the ACC, cause such improvement to be removed, or restored until approval is obtained or in order to comply with the plans and specifications originally approved. The Owner shall be liable for the payment of all costs of removal or restoration, including all costs and attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings including appeals, collections and bankruptcy, incurred by Association and/or ACC. The costs shall be deemed an Individual Assessment and enforceable pursuant to the provisions of this Declaration. The ACC and/or Association are specifically empowered to enforce the architectural and landscaping provisions of this Declaration and the Community Standards, by any legal or equitable remedy.

26.15 Court Costs. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement or to cause the removal of any unapproved improvement, Association and/or ACC shall be entitled to recover court costs, expenses and attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings including appeals, collections and bankruptcy, in connection therewith.

26.16 Certificate. In the event that any Owner fails to comply with the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ACC, Association and/or ACC may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Home stating that the improvements on the Home fail to meet the requirements of this Declaration and that the Home is subject to further enforcement remedies.

26.17 Certificate of Compliance. If requested by an Owner, prior to the occupancy of any improvement constructed or erected on any Home by other than Developer, or its designees, the Owner thereof shall obtain a Certificate of Compliance from the ACC, certifying that the Owner has complied with the requirements set forth herein. The ACC may, from time to time, delegate to a member or members of the ACC, the responsibility for issuing the Certificate of Compliance. The issuance of a Certificate of Compliance does not abrogate the ACC's rights set forth in Section 26.13 herein.

26.18 Exemption. Notwithstanding anything to the contrary contained herein, or in the Community Standards, any improvements of any nature made or to be made by Developer or its nominees including, without limitation, improvements made or to be made to the Common Areas, or any Home, shall not be subject to the review of the ACC, Association, or the provisions of the Community Standards.

26.19 Exculpation. The ACC's rights of review and approval or disapproval of plans and other submissions under this Declaration are intended solely for the benefit of the ACC and

Association. Neither the ACC, the Association, the Developer, nor any of their respective officers, directors, shareholders, members, partners, managers, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other party by reason of mistakes in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or non-feasance arising out of or in connection with the approval or disapproval of any plans or submissions except as otherwise expressly provided by Section 720.3035 of the Florida Statutes. Anyone submitting plans or other submissions, by the submission of the same, and any Owner, by acquiring title to a Home, agrees not to seek damages from the Developer, the ACC and/or the Association or any of their respective officers, directors, shareholders, members, managers, employees, agents, contractors, consultants or attorneys arising out of the ACC's review of any plans or other submissions under this Declaration except as otherwise expressly provided by Section 720.3035. Without limiting the generality of the foregoing, the ACC shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans or other submissions from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Each party submitting plans, specifications and other submissions for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto. By way of example, and not of limitation, the approval of hurricane shutters shall not be deemed an endorsement or guarantee of the effectiveness of such hurricane shutters. Further, each Owner agrees to indemnify and hold Developer, Association and the ACC harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and costs, pretrial and at all levels of proceedings, including appeals), arising out of any review of plans by the ACC under this Declaration except as otherwise expressly prohibited by law.

27. Owners Liability.

27.1 Loop System Irrigation. Some or all of the Common Areas may receive irrigation pursuant to a loop system. Owners shall not make any alterations or improvements to a Home that in any way that adversely affects the loop irrigation system. Any damages to the Home resulting from an Owner's failure to comply with the terms set forth herein shall be the sole responsibility of such Owner and Developer shall not be liable for the same.

27.2 Violations. Should any Owner do any of the following:

27.2.1 Fail to perform its responsibilities as set forth herein or otherwise breach the provisions of the Declaration including, without limitation, any provision(s) herein benefiting the SFWMD or CBWCD; or

27.2.2 Cause any damage to any improvement or Common Areas; or

27.2.3 Impede Developer or Association from exercising its rights or performing its responsibilities hereunder; or

27.2.4 Undertake unauthorized improvements or modifications to a Home or the Common Areas; or

27.2.5 Impede Developer from proceeding with or completing the development of Mill Creek.

Then Developer and/or Association, after reasonable prior written notice, shall have the right, through its agents and employees, to cure the breach, including, but not limited to, the entering upon the Home and causing the default to be remedied and/or the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof, plus reasonable overhead costs and attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings including appeals, collections and bankruptcy, incurred shall be assessed against the Owner as an Individual Assessment.

27.3 Non-Monetary Defaults. In the event of a violation by any Owner, other than the nonpayment of any Assessment or other monies, of any of the provisions of this Declaration, Developer or Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, the party entitled to enforce same may, at its option:

27.3.1 Commence an action to enforce the performance on the part of the Owner or to enjoin the violation or breach or for equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

27.3.2 Commence an action to recover damages; and/or

27.3.3 Take any and all action reasonably necessary to correct the violation or breach.

27.4 Expenses. All expenses incurred in connection with the violation or breach, or the commencement of any action against any Owner, including reasonable attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings including appeals, collections and bankruptcy, shall be assessed against the Owner, as an Individual Assessment, and shall be immediately due and payable without further notice.

27.5 No Waiver. The failure to enforce any right, provision, covenant or condition in this Declaration, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

27.6 Rights Cumulative. All rights, remedies, and privileges granted to SFWMD, CBWCD, Developer, Association, and/or the ACC pursuant to any terms, provisions, covenants or conditions of this Declaration, or Community Standards, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights or privileges as may be granted or as it might have by law.

27.7 Enforcement By or Against Other Persons. In addition to the foregoing, this Declaration or Community Standards may be enforced by Developer and/or, where applicable, Owners and/or Association, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The

expense of any litigation to enforce this Declaration or Community Standards shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration or the Community Standards.

27.8 Fines. Association may suspend, for reasonable periods of time, the rights of an Owner or an Owner's Lessees, guests and invitees, or both, to use the Common Areas and may levy reasonable fines, not to exceed the maximum amounts permitted by Section 720.305(2) of the Florida Statutes, against an Owner, Lessee, guest or invitee, for failure to comply with any provision of this Declaration including, without limitation, those provisions benefiting the SFWMD.

27.8.1 A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. Fines in the aggregate are not capped to any amount.

27.8.2 A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) persons (the "**Violations Committee**") appointed by the Board who are not officers, directors or employees of Association, or the spouse, parent, child, brother, sister of an officer, director or employee. If the Violations Committee does not by a majority vote approve a fine or suspension the same may not be imposed. The written notice of violation shall be in writing to the Owner, Lessee, guest or invitee and detail the infraction or infractions. Included in the notice shall be the date and time of the hearing of the Violations Committee.

27.8.3 The non-compliance shall be presented to the Violations Committee acting as a tribunal, after which the Violations Committee shall hear reasons why a fine should not be imposed. The hearing shall be conducted in accordance with the procedures adopted by the Violations Committee from time to time. A written decision of the Violations Committee shall be submitted to the Owner, Lessee, guest or invitee, as applicable, by not later than twenty-one (21) days after the meeting of the Violations Committee. The Owner, Lessee, guest or invitee shall have a right to be represented by counsel and to cross-examine witnesses.

27.8.4 The Violations Committee may impose Individual Assessments against the Owner in the amount of \$100 (or any greater amount permitted by law from time to time) for each violation. Each day of non-compliance shall be treated as a separate violation and there is no cap on the aggregate amount the Violations Committee may fine an Owner, Lessee, guest or invitee. Individual Assessment fines shall be paid not later than five (5) days after notice of the imposition of the Individual Assessment. All monies received from fines shall be allocated as directed by the Board of Directors.

## 28. Additional Rights of Developer.

28.1 Sales Office and Administrative Offices. For so long as Developer and its assigns owns any property in Mill Creek, is affected by this Declaration, or maintains a sales office or administrative office within Mill Creek, Developer shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development

of Mill Creek and sales and re-sales of Homes and/or other properties owned by Developer or others outside of Mill Creek. This right shall include, but not be limited to, the right to maintain models, sales offices and parking associated therewith, have signs on any portion of Mill Creek, including Common Areas, employees in the models and offices, without the payment of rent or any other fee, maintain offices in models, and use of the Common Areas to show Homes. The sales office and signs and all items pertaining to development and sales remain the property of Developer. Developer shall have all of the foregoing rights without charge or expense. Without limiting the foregoing, Developer shall have the right, but not the obligation to maintain an office within Mill Creek for administrative purposes including, without limitation, covering warranty work, for up to one (1) year after the Community Completion Date. The rights reserved hereunder shall extend beyond the Community Completion Date.

**28.2 Modification.** The development and marketing of Mill Creek will continue as deemed appropriate in Developer's sole discretion, and nothing in this Declaration or Community Standards, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of Mill Creek to, as an example and not a limitation, amend a Plat and/or the Development Plan, modify the boundary lines of the Common Areas, grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which Developer, or its agents, affiliates, or assignees may deem necessary or appropriate. Association and Owners shall, at the request of Developer, execute and deliver any and all documents, joinders and instruments which Developer deems necessary or convenient, in its sole and absolute discretion, to accomplish the same.

**28.3 Promotional Events.** Developer and its assigns shall have the right, at any time, to hold marketing, and/or promotional events within Mill Creek and/or on the Common Areas, without any charge for use. Developer, its agents, affiliates, or assignees shall have the right to market Mill Creek and Homes in advertisements and other media by making reference to Mill Creek, including, but not limited to, pictures or drawings of Mill Creek, Common Areas, Lots and Homes constructed in Mill Creek. All logos, trademarks, and designs used in connection with Mill Creek are the property of Developer and/or its affiliates, and Association shall have no right to use the same after the Community Completion Date except with the express written permission of Developer.

**28.4 Use by Prospective Purchasers.** Developer shall have the right, without charge, to use the Common Areas for the purpose of entertaining prospective purchasers of Homes, or other properties owned by Developer outside of Mill Creek.

**28.5 Franchises.** Developer may grant franchises or concessions to commercial concerns on all or part of the Common Areas and shall be entitled to all income derived therefrom.

**28.6 Management.** Developer may manage the Common Areas by contract with Association. Developer may contract with a third party ("**Manager**") for management of Association and the Common Areas.

28.7 Commercial Uses. Developer may designate portions of Mill Creek for commercial purposes including, but not limited to, bed and breakfast facilities and shopping centers.

28.8 Easements. Until the Community Completion Date, Developer reserves the exclusive right to grant, in its sole discretion, easements, permits and/or licenses for ingress and egress, drainage, utilities service, maintenance, Telecommunications Services, and other purposes over, under, upon and across Mill Creek so long as any such easements do not materially and adversely interfere with the intended use of Homes previously conveyed to Owners. By way of example, and not of limitation, Developer may be required to take certain action, or make additions or modifications to the Common Areas in connection with an environmental program. All easements necessary for such purposes are reserved in favor of Developer, in perpetuity, for such purposes. Without limiting the foregoing, Developer may relocate any easement affecting a Home, or grant new easements over a Home, after conveyance to an Owner, without the joinder or consent of such Owner, so long as the grant of easement or relocation of easement does not materially and adversely affect the Owner's use of the Home as a residence. As an illustration, Developer may grant an easement for Telecommunications Systems, irrigation, drainage lines or electrical lines over any portion of a Lot so long as such easement is outside the footprint of the foundation of any residential improvement constructed on such portion of Mill Creek. Developer shall have the sole right to any fees of any nature associated therewith, including, but not limited to, license or similar fees on account thereof. Association and Owners will, without charge, if requested by Developer: (a) join in the creation of such easements, etc. and cooperate in the operation thereof; and (b) collect and remit fees associated therewith, if any, to the appropriate party. Association will not grant any easements, permits or licenses to any other entity providing the same services as those granted by Developer, nor will it grant any such easement, permit or license prior to the Community Completion Date without the prior written consent of Developer which may be granted or denied in its sole discretion.

28.9 Right to Enforce. Developer has the right, but not the obligation, to enforce the provisions of this Declaration and the Community Standards and to recover all costs relating thereto, including attorneys' fees and paraprofessional fees pre-trial and at all levels of proceedings, including appeals, collections and bankruptcy. Such right shall include the right of Developer to perform the obligations of Association and to recover all costs incurred in doing so.

28.10 Additional Development. If Developer withdraws portions of Mill Creek from the operation of this Declaration, Developer may, but is not required to, subject to governmental approvals, create other forms of residential property ownership or other improvements of any nature on the property not subjected to or withdrawn from the operation of this Declaration. Developer shall not be liable or responsible to any person or entity on account of its decision to do so or to provide, or fail to provide, the amenities and/or facilities which were originally planned to be included in such areas. If so designated by Developer, owners or Lessees of such other forms of housing or improvements, upon their creation, may share in the use of all or some of the Common Areas and other facilities and/or roadways which remain subject to this Declaration. The expense of the operation of such facilities shall be allocated to the various users thereof, if at all, as determined by Developer.



28.11 Representations. Developer makes no representations concerning development within or outside the boundaries of Mill Creek including, but not limited to, the number, design, boundaries, configuration and arrangements, prices of all Lots or Homes and buildings in all other proposed forms of ownership and/or other improvements on Mill Creek or in Mill Creek or adjacent or near Mill Creek, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of homes, number of buildings, location of easements, parking and landscaped areas, services and amenities offered other than any representations or contractual obligations set forth in a purchase and sale agreement respecting a Home.

29. Telecommunications Services.

29.1 Right to Contract for Telecommunications Services. Association shall have the right, but not the obligation, to enter into one or more contracts for the provision of one or more Telecommunications Services for all or any portion of Mill Creek. Prior to the Community Completion Date, all contracts between a Telecommunications Provider and Association shall be subject to the prior written approval of Developer. Developer and/or its nominees, successors, assigns, affiliates, and licensees may contract with Association and act as a Telecommunications Provider for one or more Telecommunications Services, subject only to the requirements of all applicable laws, statutes, and regulations. If Developer is not the Telecommunications Provider for any particular Telecommunications Service, Developer shall have the right to receive, on a perpetual basis, all or a portion of access fees and/or the revenues derived from such Telecommunications Service within Mill Creek as agreed, from time to time, between the Telecommunications Provider and Developer.

29.2 Easements. Developer (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunications Provider providing Telecommunications Services to all or a portion of the Mill Creek pursuant to an agreement between Association and such Telecommunications Provider, a perpetual right, privilege, easement and right-of-way across, over, under and upon Mill Creek for the installation, construction and maintenance of Telecommunications Systems together with a perpetual right, privilege and easement of ingress and egress, access, over and upon Mill Creek for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting such systems. If, and to the extent, Telecommunications Services provided by such Telecommunications Systems are to serve all of the Mill Creek, then the cost of the Telecommunications Services may be Operating Costs and shall be assessed as a part of the Assessments.

29.3 Restoration. Upon the completion of any installation, upgrade, maintenance, repair, or removal of the Telecommunications Systems or any part thereof, each Telecommunications Provider shall restore the relevant portion of the Common Areas and/or any Home to as good a condition as that which existed prior to such installation, maintenance, repair or removal. Failure by Telecommunications Provider to complete such restoration within ten (10) days after receiving written notice from Association of such failure shall vest in Association the right (but not the obligation) to restore or cause to be restored such portion of the Common Areas and/or Home disturbed by such work, all at such Telecommunications Provider's sole cost and expense, except for in emergency situations whereby Association may restore or cause to be