

**REVISED DECLARATION OF PROTECTIVE COVENANTS FOR  
EAST ST. CLOUD COMMERCE PARK**

**WHEREAS**, a Declaration of Protective Covenants for East St. Cloud Commerce Park was recorded on May 23, 2005 in Official Records Book 2784, Page 1462, Osceola County, Florida, Public Records, for the purpose of enhancing and protecting the value, attractiveness and desirability of the Property described in Exhibit “A,” attached hereto;

**WHEREAS**, that Declaration of Protective Covenants recorded May 23, 2005 was not executed, thereby calling into question the enforceability of the restrictions contained therein against some or all of the Lots within the Property;

**WHEREAS**, the Owners of Lots within the Property are desirous of subjecting the Property to the covenants, conditions, standards, and restrictions set forth herein in order to ensure the Property will be an attractive setting for business and industry with high quality improvements for the mutual benefit and protection of all present and future Owners;

**WHEREAS**, the Owners of Lots within the Property are also desirous of having the East St. Cloud Commerce Park Property Owners Association, Inc., (hereinafter “Association”) operate the Property according to the covenants and restrictions contained herein;

**NOW THEREFORE**, the undersigned Owners hereby declare that the Property shall be held, owned, sold, transferred, conveyed and occupied subject to the covenants, conditions and restrictions hereinafter set forth, which shall be binding upon persons having any right, title or interest in or to the subject real property, and their heirs, successors and assigns and shall constitute covenants running with the land.

**ARTICLE I**

**DEFINITIONS**

**1. DEFINITIONS.**

1.1 “**Architectural Review Committee**” or “**ARC**” means and refers to the Board of Directors of the Association, or a Committee appointed by the Board of Directors of the Association, for the purposes set forth in this Declaration as to the Architectural Review Committee.

1.2 “**Articles**” means the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit “B” and made a part hereof, and as they may be amended from time to time.

1.3 “**Assessment**” means the Assessments levied by the Association against the Lots, and shall be deemed to include both Annual Assessments and Special Assessments.

**1.4 “Association”** shall mean and refer to EAST ST CLOUD COMMERCE PARK PROPERTY OWNERS ASSOCIATION INC, a Florida Corporation Not for Profit, its successors and assigns.

**1.5 “Board”** means the Board of Directors of the Association.

**1.6 “Bylaws”** means the Bylaws of the Association, a copy of which is attached hereto as Exhibit “C” and made a part hereof, and as they may be amended from time to time.

**1.7 “Building”** means a commercial structure built upon a Lot and its related improvements.

**1.8 “Charge”** means any legal or equitable indebtedness to the Association incurred by, or on behalf of, an Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by the Governing Documents.

**1.9 “Common Areas”** means and refers to the real property owned by the Association for the common use and enjoyment of the Owners, or property which has been dedicated, leased, or in which use rights have otherwise been granted to the Association for common use or enjoyment of Owners or the administration of the Association. The Common Areas shall include, without limitation, Tracts “A,” “B,” and “C” as depicted on the Plat attached hereto as Exhibit “D.”

**1.10 “Declaration”** means this Declaration of Protective Covenants and all other terms and provisions contained in this document, as the same may be amended from time to time.

**1.11 “Governing Documents”** means this Declaration; the Plat, a copy of which is attached hereto as Exhibit “D;” the Articles of Incorporation for East St Cloud Commerce Park Property Owners Association Inc, attached as Exhibit “B;” the Bylaws attached hereto as Exhibit “C;” and the Rules and Regulations as may be adopted and amended from time to time by the Board of Directors. The Rules and Regulations need not be recorded in the Osceola County Public Records in order to be valid.

**1.12 “Lot”** refers to any parcel of land located on the Property which is designated as a numbered “Unit” on the Plat and intended for commercial use. The term “Lot” shall not include the Common Areas as herein defined or other property owned by the Association.

**1.13 “Maintenance”** means the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted.

**1.14 “Member”** means those Owners who are holders of membership interests in the Association.

**1.15 “Owner” or “Lot Owner”** means the record Owner of fee simple title to any Lot and the portion of the Building located thereon. Wherever a portion of the Governing Documents, including, without limitation, the Rules and Regulations, proscribes, restricts, prohibits, governs

or requires that an “Owner” or “Lot Owner” take or refrain from taking any action, or engage or refrain from engaging in any conduct, or providing for liability to the Association arising from such acts or conduct or the failure to take required action or engage in required conduct, the term Owner shall be deemed to include, unless the context specifically suggests otherwise, the Owner’s Tenants, Guests, Licensees and Invitees, as well as employees or agents of such Owners.

**1.16 “Plat”** shall mean and refer to the Plat for East Saint Cloud Commerce Center recorded at Plat Book 17, Pages 118-119 of the Osceola County Public Records.

**1.17 “Property”** shall mean the real property described in the Plat, including Lots and Common Areas, that is subject to this Declaration.

**1.18 “Rules and Regulations”** shall mean and refer to those Rules and Regulations promulgated by the Board of Directors, and amended from time to time, concerning the transfer, use, appearance, and maintenance of the Lots and Common Areas and the administration and operation of the Association (including policies and procedures), subject to any limitations contained in this Declaration.

**1.19 “Surface Water Management System”** means the portions of the Common Areas which comprise the water management system authorized by the Permit serving the Property including, but not limited to, berms, detention/retention areas, swales, culverts, weirs, outfall structures and any other water control device or conveyance providing water quality treatment and stormwater attenuation as well as any conservation areas that are or may be required as a result of any modifications to the Surface Water Management System. The Surface Water Management System shall be operated and maintained by the Association. Additionally, if wetland mitigation or monitoring is required, the Association shall be responsible for successfully carrying out this obligation, including meeting all Permit conditions associated with wetland mitigation, maintenance and monitoring.

**1.20 “Utility Easements”** shall mean and refer to easements within which sewers, storm sewers, water mains, gas mains, electric cables, telephone cables and other utilities may be constructed, maintained and used. The initial utility easements are either graphically depicted on the Plat, described herein, or described in written grant.

## **2. MEMBERSHIP AND VOTING RIGHTS.**

**2.1 Membership.** Every Owner of a Lot subject to Assessment shall be a Member of the Association. Membership is appurtenant to and not divisible from ownership of a Lot that is subject to Assessment.

**2.2 Transfer.** Transfer of ownership, whether voluntary or by operation of law, shall terminate membership in the Association and said membership shall then be vested in the transferee.

**2.3 Voting Rights.** Members shall be entitled to one indivisible vote for each Lot. If a Lot is owned by multiple individuals, any record Owner may vote on behalf of the Lot. If a Lot is owned by a corporation, any officer may vote on behalf of said corporation. If a Lot is owned

by a partnership, any general partner may vote on behalf of the partnership. If a Lot is owned in trust, any grantor, or trustee of a trust shall be entitled to vote. If a Lot is owned by a limited liability company, any member, manager, or officer may vote on behalf of the limited liability company. If multiple Owners or non-individual Owners of a Lot cannot agree on how a vote is to be cast, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Lot where the voting rights assigned to the Lot are suspended pursuant to the terms of this Declaration. Votes may be cast in person or by proxy.

### **3. ASSESSMENTS.**

**3.1 Common Expenses.** The costs and expenses incurred by the Association with regard to the ownership, operation, maintenance and repair of the Common Areas and the administration of the affairs of the Association shall constitute Common Expenses.

**3.2 Allocation of Assessments.** Except for any maintenance or utility charge which may be imposed on any Lot or Owner pursuant to this Declaration, Assessments shall be apportioned equally.

**3.3 Purpose of Assessments.** There is hereby imposed upon each Lot and its Owner, the affirmative covenant and obligation by acceptance of a deed or title to a Lot to pay to the Association assessments, and upon the Association, the obligation to assess, collect and expend for the Association's Common Expenses, including, but not limited to:

**3.3.1** Charges levied for utility services to the Common Areas, including without limitation, charges for water, gas, electricity, sewer and any other type of utility or service charge for Common Areas.

**3.3.2** The premiums on any policy or policies of insurance, together with the costs of such other policies of insurance, as the Board shall determine to be in the best interest of the Association.

**3.3.3** Expenses necessarily incurred in maintaining, preserving, repairing and replacing and improving the Common Areas and other facilities within the jurisdiction of the Association, including but not limited to the operation, maintenance, and if necessary, replacement of the Surface Water Management System.

**3.3.4** Expenses incurred by the Association in performing maintenance on the Lots as set forth in the Governing Documents, including but not limited to, exterior painting, pressure washing, maintenance and repair of common roofs, exterior lighting, landscaping, and pest control.

**3.3.5** The costs of administration for the Association necessary to carry out the obligations and covenants of the Association under the Governing Documents.

**3.3.6** Expenses properly incurred by the Association, including but not limited to expenses of the operation, maintenance, repair, replacement, protection of the Common Area, costs

of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as Common Expenses by the Declaration or Bylaws.

**3.3.7** Any other costs and expenses determined by the Board to be reasonable and necessary in carrying out and accomplishing the purposes, duties and obligations of the Association that are not inconsistent with the Governing Documents.

**3.4 Budget.** The Board shall prepare and adopt an estimated annual budget which shall reflect the estimated Common Expenses for the next succeeding year. Adjustments to the annual budget may be made by the Board in Assessments from time to time to allow for any changes for Common Expenses.

**3.5 Special Assessments.** In addition to the Annual Assessments, the Board may levy a Special Assessment for defraying in whole or in part Common Expenses not met or expected to be met by Annual Assessments.

**3.6 Utility Service Charges.** The term “assessments” shall be deemed to include any legal or equitable indebtedness or sums owed to or due to the Association, incurred by, or on behalf of, one or more Owners, as specifically set forth in this Declaration, including but not limited to, the water utility service charges imposed pursuant to Section 12 herein.

**3.7 Time of Payment.** Annual and Special Assessments shall be payable by Lot Owners to the Association as determined by the Board.

**3.8 Lien.** Assessments for Common Expenses, including Annual Assessments, Special Assessments, and Charges and installments thereof, with interest thereon and costs and expenses of collection, including reasonable attorney’s fees, other expenses of collection, and costs incurred in attempting to collect said Assessments or Charges before suit or after the filing of suit, at the trial level, appellate level or otherwise, are hereby declared to be a continuing lien upon the Lot against which such Assessments or Charges are made. Each Assessment or Charge against a Lot, together with interest thereon at the highest rate allowed by law, late fees, and costs and expenses of collection thereof, including attorney’s fees, shall be the personal obligation of the person, persons or entity owning the Lot assessed or charged and shall be the joint and several liability of all Owners of the Lot. It is the intention of this provision that Assessment or Charge liability is joint and several, and is both the personal obligation of the person owning the Lot when the Assessment or Charge became due and the obligation of any successors in interest as a covenant running with the land. Said lien shall be effective from the date of recordation amongst the Public Records of Osceola County, Florida. The lien shall set forth the amounts due to the Association as of the date the statement is signed and shall be acknowledged by an Officer or agent of the Association. The lien shall secure additional amounts that become due, as well as interest, late fees, attorney fees, and other costs and expenses of collection. Upon recordation, the lien shall relate back to the date of recording the Declaration. Upon full payment of all sums secured by the lien and costs and fees accrued, the party making payment shall be entitled to a recordable satisfaction of lien. If any first mortgagee obtains title to a Lot as a result of a foreclosure of a first mortgage or a deed (or assignment) is given in lieu of foreclosure of a first mortgage of record, the liability of such acquirer of title for the unpaid assessments that became due before the mortgagee’s acquisition of title shall be limited to the lesser of (1) the Lot’s unpaid common expenses and

regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (2) one percent of the original mortgage debt.

**3.9 Remedies for Delinquency.** In the event any Owner fails to pay Assessments or any installment thereof charged to the Lot fifteen (15) days after the same becomes due, an administrative late charge as provided by law or \$25.00 or 5 percent of the installment, whichever is more, shall become due along with interest at the maximum rate permitted by law, and the Association, through its Board, shall have, but not be limited to, the following remedies:

**3.9.1** To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property or as otherwise provided by law.

**3.9.2** To file an action at law to collect said Assessments, plus interest at the highest rate allowable by law plus court costs, without waiving any lien rights and/or rights of foreclosure by the Association.

**3.9.3** The Association may apply to a court of competent jurisdiction, either in connection with the institution of a foreclosure suit, a personal suit, or otherwise to have rental proceeds of a Lot in default paid directly to the Association, the court registry, or a receiver, as the court may direct.

**3.9.4** The Association may elect to terminate any existing leases with respect to Lots in default and prohibit the Parcel from being leased in the future until the default is cured

**3.9.5** The Association may choose any of these courses of action, as the Board deems appropriate, without same constituting a waiver or election of remedies. Tenants who lease Lots in this Property are deemed to assent to terms of this provision.

**3.9.6** Payments received after the due date established by the Board shall be applied first to interest, late fees, costs and attorney fees and then to the principal owed regardless of any restrictive endorsement included with the payment.

**4.1 Association Rights.** The Association shall have the following rights, titles, easements and interests:

**4.1.1 Assessments.** The right to make assessments against each Lot to provide funds for the Association, and a lien, encumbrance or security interest in each Lot for the purpose of securing the payment of assessments against the Lot, interest thereon from the date due and the costs of collection of the assessment.

**4.1.2 Maintenance.** The right to maintain the Common Areas and make, maintain, repair, replace and use improvements within the Common Areas. The Association shall also have the exclusive right to maintain the exterior of the Buildings, including but not limited to exterior painting, pressure washing, maintenance and repair of common roofs, exterior lighting, landscaping, and pest control.

**4.1.3 Enforcement.** The right to enforce the terms and provision of the Declaration and the Governing Documents, including the Rules and Regulations by any and all lawful means. The Board shall have the authority to adopt and modify from time to time Rules and Regulations concerning fining and other enforcement procedures.

**4.1.4 Rules.** The right to adopt, amend, repeal and enforce Rules and Regulations concerning the transfer, use, appearance, and maintenance of the Lots and Common Areas and the administration and operation of the Association (including policies and procedures).

**4.1.5 Right of Entry.** The reasonable right of entry upon any Lot to make emergency repairs; perform maintenance, repair and replacement to the exterior of the Buildings as set forth herein; perform necessary maintenance upon Owner's failure to do so; and to do other work reasonably necessary for the maintenance or operation of the Property.

**4.1.6 General.** The right to do all those things reasonably necessary to promote the health, safety, welfare, and enjoyment of all persons within the Property.

**4.2 Owner's Rights.** The Owners shall have the following rights, titles, easements and interests:

**4.2.1 Common Areas.** The right to use the Common Areas, subject to Rules and Regulations promulgated by the Association.

**4.2.2 Easements.** Easements over the Common Areas for ingress and egress to the Lots and public ways.

**4.2.3 Enforcement.** The right to enforce the terms and provisions of this Declaration by any and all lawful means.

**4.2.4 Association.** The right to control the Association, through election of a Board of Directors, as provided by the Declaration, the Articles of Incorporation, and By-Laws.

**5. USE RESTRICTIONS.** The use, enjoyment and maintenance of the Property will be subject to the restrictions which are set forth in this paragraph and Rules and Regulations promulgated by the Board of Directors. These restrictions may be enforced by any lawful means by either the Association or any Lot Owner, or by both. In addition and not in lieu of any other remedies which may be available to the Association, the Association may, but is not required to, go upon any Lot and take such action as the Association may deem appropriate and reasonable, under the circumstances, to correct any violation of these restrictions, at the cost and expense of the Lot Owner violating these restrictions, and as a Charge against the Lot. Sums owed to the Association by a Lot Owner by reason of the foregoing will be deemed to be an assessment against the Lot(s) owned by the Lot Owner within the meaning of this Declaration.

**5.1 Permitted Uses.** All commercial and industrial uses for the Property shall conform to those uses listed in the zoning document approved by the city of St. Cloud, a copy of which is attached as Exhibit "E," or, if not listed on Exhibit "E," must specifically be approved by the appropriate government agency and the Association.

**5.2 Annoyance or Nuisance.** No noxious or offensive trades, services, or activities shall be conducted on the Property, nor shall anything be done thereon that may be or may become an annoyance or nuisance, as determined by the Board in its sole discretion, by reason of unsightliness or excessive emission of odors, fumes, smoke, vibrations, dirt dust, glare, waste or noise.

**5.3 Parking Spaces.** Parking spaces are shown on the Plat attached hereto as Exhibit "D." Parking spaces shall be used in accordance with Rules and Regulations promulgated by the Board of Directors. The Association shall not assign parking spaces, which shall be left open for use by all Owners, guests, invitees. Overnight and long-term parking shall be prohibited.

**5.4 Outside Storage.** Storage of any items or materials outside of buildings is prohibited.

**5.5 Hazardous Materials.** Materials classified as hazardous shall not be allowed on the Property.

## **6. MAINTENANCE, REPAIR AND REPLACEMENT.**

**6.1 Maintenance of Common Area.** Maintenance of the Common Area shall be the responsibility of the Association and shall be a common expense. The Association shall be responsible for the repair and maintenance of landscaping, trees, shrubs, grass, sprinkler heads, walks, drives and parking areas situated in the Common Area or upon any Lot.

### **6.2 Maintenance of Lots.**

**(a) Responsibility of the Association.** The Association shall provide maintenance upon each Lot, including but not limited to the exclusive right to conduct exterior maintenance of the Buildings, including but not limited to the maintenance, repair and replacement of common roofs and gutters, exterior painting, pressure washing, exterior lighting, interior and exterior pest control, and such other items as determined by the Board. The costs associated with such maintenance, repair and replacement upon the Lots by the Association shall be deemed a Common Expense. The Association's duty of exterior maintenance does not include the maintenance, repair, or replacement of any windows (including window frames and glass surfaces) and doors located on the Buildings. The Association's exclusive right to conduct exterior maintenance, repair and replacement as described above means that Owners shall not be required or entitled to conduct such activities, it being the intent of the Association to control such activities for purpose of maintaining uniformity within the Property.

**(b) Responsibility of Owners.** Except for those maintenance responsibilities reserved exclusively to the Association, every Owner must keep and maintain his Lot and all improvements located thereon, in a clean, orderly, attractive and safe condition as determined by the Board of Directors, so as not to detract from the overall appearance of the Property. Owners shall provide exterior maintenance on Lots as follows, the cost for which each Owner shall be individually responsible: (i) repair or replacement of all windows including window frames and glass surfaces; (ii) repair or replacement of exterior doors; (iii) maintenance, repair, or replacement resulting from any fire, wind, flood,



tornado, hurricane or other casualty damage; (iv) repair or replace any property whether upon such Owners Lot or any other Lot, or the Common Property, which repair or replacement is requirement because of any negligence or the willful act of such Owner or guest or invitee or the Owner. If the aforementioned are not maintained in such condition in the opinion of the Board of Directors, the Association shall have the right to enter upon said Lot, after reasonable notice, and cause the required maintenance, repairs or replacement to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof shall be added to and become a Charge to which the Owner is subject, and shall be due and payable within fifteen (15) days after rendition of a bill therefore by the Association. The costs incident to said repair, maintenance or removal shall be the personal obligation of the Owner to the Association and become a lien against the subject Lot and Improvements thereon with the same force and effect of the lien that would be created by the said Owner's failure to pay Assessments hereunder when due.

**6.3 Permits, Licenses and Easements.** The Association shall have the right to grant permits, licenses and easements over, upon, across, under and through the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Property, as so determined by the Board.

**6.4 Prohibition.** Each Owner is prohibited from improving, modifying or maintaining any portion of the Common Areas or from performing any maintenance duties of the Association without the prior written consent of the Board of Directors. Any costs incurred by the Association to correct any damage or unauthorized modification or maintenance to the Common Areas or Lots shall be added to and become a Charge to which such Owner is subject and shall be a lien against the Owner's Lot pursuant to Section 3.8 herein.

## **7. ASSOCIATION INSURANCE.**

**7.1** To the extent available, the Board of Directors shall be authorized to obtain the types of insurance covering the Association and the Property it deems appropriate in the amounts it deems necessary.

**7.2** Insurance policies covering the Common Areas shall be purchased by the Association and be issued by an insurance company authorized to do business in Florida.

**7.3** The named insured shall be the Association itself and as agent for Owners without naming them and as agent for their mortgagees without naming them.

**7.4** The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within or upon an Owner's Lot. It shall be the obligation of the individual Owner if such Owner so desires to purchase and pay for insurance as to such risks.

**7.5** At its option, and to the extent available, the Association may obtain broad "all risk" coverage insurance, including, without limitation, damage from fire, high winds, hurricanes and tornadoes, in the amount of 100% of the full insurance replacement cost value of all Buildings and other improvements located upon the Property.

**8. OWNER INSURANCE.** Each Lot Owner shall be responsible for purchasing and maintaining casualty insurance in an amount equal to the full replacement cost of the Building and improvements located upon his Lot. Additionally, each Lot Owner shall be responsible for purchasing and maintaining such policies of liability for accident or injury occurring on or about his Lot, as he may deem appropriate.

**9. SURFACE WATER MANAGEMENT SYSTEM.**

**9.1 Maintenance.** The Surface Water Management System shall be maintained by the Association or its agents, in compliance with all approvals, codes, and regulations of governmental authorities and the South Florida Water Management District.

**9.2 Easements.** The Property shall be burdened with easements for drainage and flow of surface water in a manner consistent with the approved and constructed Surface Water Management System and, to the extent applicable, the Governing Documents. Additionally, the Property shall be burdened with easements for ingress and egress in favor of the Association and all appropriate governmental or quasi-governmental agencies for the purpose of operating and maintaining the Surface Water Management System. An Owner shall in no way deny or prevent ingress and egress by the Association or any governmental or quasi-governmental agencies to any Surface Water Management System for the purpose stated herein.

**9.3 Modification.** Neither the Association nor any Owner within the Subdivision shall take any action which modifies the Surface Water Management System in a manner which changes the flow of drainage of surface water, except to the extent the same is approved by the requisite governmental or quasi-governmental authorities and the Association. No Owner may draw water for irrigation or other purposes from any Surface Water Management System.

**10. ENFORCEMENT.**

**10.1** In the event of a violation of the Governing Documents or Rules and Regulations by an Owner, Tenant, Guests or Invitees, (other than the non-payment of any Assessment or other Charges), the Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable after receipt of such written notice, or if any similar violation is thereafter repeated, the Association may, at its option:

**10.1.1** Impose a fine against the Lot; and/or

**10.1.2** Commence an action to enforce the performance on the part of the Owner or other party, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

**10.1.3** Commence an action to recover damages; and/or

**10.1.4** Take any actions reasonably necessary to correct such failure which action may include, when applicable, but shall not be limited to, removing any addition, alteration, improvement or change which has not been approved by the Association or performing any maintenance required to be performed by this Declaration or towing vehicles parked within the Property in violation of the Declaration or the Rules; and/or

**10.1.5** Elect any or all other remedies, restrictions or penalties available under law.

All expenses incurred by the Association in connection with enforcing these Governing Documents and Rules and Regulations, including reasonable attorneys' fees and costs, shall be assessed against the applicable Owner as a Charge, and shall be due upon written demand by the Association. The Association shall have a lien for any such Charge and any interest, costs or expenses associated therewith, including attorneys' fees and costs incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided herein. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of Osceola County.

**10.2** Enforcement of the Governing Documents or Rules and Regulations may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein. The Association or any individual may seek enforcement, and should the party seeking enforcement be the prevailing party, then the person against whom enforcement has been sought shall pay costs and reasonable attorney's fees at trial and appellate levels to the prevailing party.

**10.3** Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person occupying or present on his Lot, including Tenants, Guests and Invitees. If any act or omission shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association, but without rights of subrogation as to the Association's carrier. Furthermore, any violation of any of the provisions of these Governing Documents or Rules and Regulations, by a Tenant, Guest or Invitee, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

**11. ARCHITECTURAL CONTROL.** The Architectural Review Committee (ARC) shall consist of at least three Members of the Association, appointed by the Board of Directors. The Board may act as the ARC and in the absence of the Board's appointment of an ARC, the Board shall be the ARC. The Board of Directors in its sole and absolute discretion may remove members of the ARC at any time, with or without cause.

**11.1 Approval.** The ARC shall review all plans, specifications and associated material for improvements, as well as exterior alterations, to determine their compatibility with the aesthetic theme of the Property. No improvement shall be erected, constructed, placed, altered, or permitted to remain on any portion of the Property until such plans and specifications have been submitted to and approved in writing by the ARC. Improvements and any alterations thereto must be constructed in accordance with guidelines and specifications as adopted and amended from time to time by the ARC. The ARC shall approve or disapprove plans within thirty (30) days of submittal. Plans not approved or disapproved within thirty (30) days shall be deemed approved. Any member of the ARC or person appointed by the ARC shall have the right of entry upon a Lot to inspect the improvements thereon.

**11.2 Setbacks.** Setbacks within the Property shall be in accordance with those set for the highway business district of the City of St. Cloud Land Development District.

**11.3 Buildings.** All original construction and future additions or modifications must comply with the standard Building Code used by the appropriate governmental authority. The materials used in the constructions of buildings shall be as follows:

(a) Brick, precast concrete, concrete block and other architectural masonry unit construction will be allowed, subject to approval by the ARC.

(b) Metal buildings may be allowed, subject to approval by the ARC, where appearance and design of facing material is harmonious to other buildings on the Property.

**11.4 Signs.** Signs must be reviewed and approved by the ARC which shall take into consideration the overall integration with other signs on the Property marquee. Signs shall also comply with any applicable provisions with the City of St. Cloud Land Development Code.

**11.5 Utilities.** Individual utility services to all buildings shall be placed underground. Temporary overhead utility service may be allowed during construction of buildings, in emergencies, or during construction or repair of the underground system. For protection of underground cables and facilities, the grade or contour of the land above and adjacent to said facilities shall not hereafter be substantially increased, decreased or otherwise changed or altered without the written consent of the utility company providing such services.

**11.6 Restoration in Event of Damage or Destruction.** In the event any Building on a Lot is damaged or destroyed, in whole or in part, the Owner shall take action deemed necessary by the ARC to correct any unsightly or dangerous condition resulting from such damage or destruction. The Owner shall take corrective action to either restore or remove the condition. The work shall be completed within three (3) months after the date of the damage or destruction, which may be extended by the ARC for good cause shown. The Owner shall undertake such corrective action as soon, as is practicable in order to avoid an unsightly or dangerous conditions. In the event the Owner fails or refuses to take the required corrective action, as deemed appropriate by the ARC, or in the aftermath of a catastrophic event, such as hurricane, the Association shall have the right, but not the obligation, to go upon the Lot and remove or correct the damaged or destroyed property, which shall be accomplished at the sole cost and expense of the Owner of the property, in which event, the Association shall have the right to place a lien on the Lot for the full amount of the corrective work, together with attorneys' fees and costs, if any, which lien shall be enforceable in the same manner as other liens created by this Declaration.

**12. WATER UTILITY CHARGES.** So long as the Association owns the water utility facilities providing water to the Lots, it shall require users of the utility services to pay for such services in accordance with a schedule of Charges which may be amended from time to time by the Association. Such water utility service Charges shall be of equal priority to, shall accrue interest and late fees, and shall be collected and foreclosed by the Association in the same manner as assessments, including the right to recover attorneys' fees, costs and expenses of collection.

**13. AMENDMENTS.** This Declaration may be amended by the approval of seventy-five percent (75%) of the voting interests of the Association, present and voting, in person or by proxy, at a duly convened meeting of the Association at which a quorum is present. No amendment may

be made, however, which would affect the surface water management system, including the water management portions of the Common Areas, without the prior approval of the South Florida Water Management District, or its successor.

#### **14. GENERAL PROVISIONS.**

**14.1 Enforcement.** The Association, or any Owner, has the right to enforce, by any proceeding at law or in equity, restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of the Governing Documents or the Rules and Regulations. Failure by the Association or any Owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter.

**14.2 Invalidity.** The invalidity in whole or in part of any covenant or restriction, or any Article, subsection, sentence, clause, phrase, word, or other provisions of the Governing Documents or Rules and Regulations shall not affect the validity of the remaining portions.

**14.3 Annexation.** Additional property and Common Area may be annexed to the Property only by amendment of this Declaration.

**14.4 Notices.** Except as provided specifically by law, notices to the Association required or desired hereunder may be sent by first class mail or hand delivery to the address as may be designated by from time to time, in writing to the Owners. Except as provided specifically by law, notices to any Owner may be sent by electronic transmission, first class mail or hand delivery to the address as may be designated by him from time to time, in writing to the Association.

**14.5 Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the exhibits annexed hereto or the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida, and venue shall lie in Osceola County.

**14.6 Severability.** The invalidity in whole or in part of any covenant or restriction, or any Article, sub-section, sentence, clause, phrase or word, or other provision of the Governing Documents or the Rules and Regulations adopted as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof.

**14.7 Waiver.** No provisions contained in this Governing Documents or Rules and Regulations shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

**14.8 Plurality; Gender.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

**14.9 Captions.** The captions herein and in the exhibits annexed hereto are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the particular document or any provision thereof.