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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS  
FOR  
MADEIRA AT ST. AUGUSTINE**

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is made as of the 6<sup>th</sup> day of June, 2008, by PONCE ASSOCIATES, LLC, a Florida limited liability company, which declares hereby that the "Property" described in Article 2 of this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

**Article 1**  
**DEFINITIONS AND INTERPRETATION**

1.1 Definitions.

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

(a) "ARB" shall mean and refer to the committee of the Master Association responsible for performing the architectural review and approval functions set forth in Article 8 of this Declaration and in the Design Guidelines.

(b) "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Master Association, as amended from time to time. A copy of the initial Articles of Incorporation of the Master Association is attached hereto as **Exhibit "B"**.

(c) "Assessments" shall mean and refer to the various forms of payment to the Master Association which are required to be made by Owners, as more particularly defined in Article 7 of this Declaration.

(d) "Assessment Charges" means all Assessments currently owed by each Owner, together with any late fees, interest and costs of collection, including reasonable attorneys' fees.

(e) "Board" or "Board of Directors" shall mean and refer to the duly constituted Board of Directors of the Master Association.

(f) "Bylaws" mean the Bylaws of the Master Association, as amended from time to time. A copy of the initial Bylaws of the Master Association is attached hereto as **Exhibit "C"**.

(g) "CDD" means the Madeira Community Development District described in Article 18 of this Declaration.

(h) "Common Property" shall mean and refer to the property depicted and/or described in **Exhibit "D"** attached hereto and made a part hereof, plus all property designated as Common Property in any future recorded supplemental declaration or deed of conveyance, together with the landscaping and any improvements thereon.

(i) "Community Systems" shall mean and refer to any and all cable television, telecommunication, alarm/monitoring or other lines, conduits, wires, amplifiers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known) installed by Developer or Developer's designees or pursuant to any grant of easement or authority by Developer within the Property and serving more than one Lot/Unit/Parcel.

(j) "County" shall mean and refer to St. Johns County, Florida.

(k) "Design Guidelines" shall mean and refer to the architectural design guidelines promulgated by the Developer and revised by the ARB and the Board of Directors from time to time.

(l) "Developer" shall mean and refer to PONCE ASSOCIATES, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Property. In the event of such a partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a nonexclusive basis. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Master Association, and, accordingly, shall not be deemed waived, transferred or assigned to the Owners, the Board or the Master Association upon the transfer of control of the Master Association.

(m) "Declaration" means this instrument and all exhibits attached hereto, as same may be amended from time to time.

(n) "Future Development Property" shall mean and refer to any property located adjacent or contiguous to the Property, any or all of which may, but none which shall be obligated to, be brought within the Property, including without limitation the real property described in Exhibit "E" attached. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE FUTURE DEVELOPMENT PROPERTY SHALL NOT BE DEEMED BURDENED BY THE TERMS AND CONDITIONS OF THIS DECLARATION UNLESS AND UNTIL SAME (OR ANY PORTION THEREOF) IS BROUGHT HEREUNDER BY A SUPPLEMENTAL DECLARATION DULY EXECUTED AND RECORDED IN THE PUBLIC RECORDS OF THE COUNTY.

(o) "Improvements" means any Unit and any and all horizontal or vertical alterations or improvements installed or constructed on Lots, Parcels or the Property.

(p) "Initial Improvements" means the initial, original construction of Lots, Parcels and Units and related Improvements and the initial landscaping upon the Lots or Parcels constructed or installed by Developer.

(q) "Kurth Parcel" means the certain parcel or tract within the Future Development Property that will be identified as the Kurth Parcel, which the Developer may annex into the Property.

(r) "Lot" shall mean and refer to an individual parcel of land within the Property which is shown as an individual lot on the various site plans (or similar plans) adopted by the Developer from time to time and, after the conveyance thereof by Developer to an Owner other than the Developer, the lot legally described in the deed of such conveyance. A Lot refers to land that is to be used for residential purposes.

(s) "Madeira Community" shall mean any and all land which is from time to time subjected to this Declaration.

(t) "Master Association" shall mean and refer to Madeira at St. Augustine Master Owners' Association, Inc.

(u) "Member" shall mean and refer to all those Owners who are Members of the Master Association as hereinafter provided, including, without limitation, the Developer.

(v) "Member's Permittees" shall mean and refer to the following persons and such persons' families (provided that the Owner or other permitted occupant must reside with his/her family): (i) an individual Owner(s), (ii) an officer, director, stockholder or employee of a corporate owner, (iii) a partner in or employee of a partnership owner, (iv) a fiduciary or beneficiary of an ownership in trust, (v) occupants and tenants named or described in a lease or sublease, but only if approved in accordance with this Declaration and (vi) family members of the Owner, so long as the family member resides on the Lot or Parcel or in the Unit. As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting on the Lot or Parcel or in the Unit as or together with the Owner or permitted occupant. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Lot, Parcel or Unit.

(w) "Mortgage" means any bona fide first Mortgage encumbering a Lot, Unit or Parcel as security for the repayment of a debt obligation.

(x) "Mortgagee" means any bank, savings and loan association or other recognized institutional lender, and insurer or guarantor of Mortgages and any holder of Mortgages in the secondary market (including without limitation, the Veteran's Administration, the Federal Housing Administration, the Federal Loan Mortgage Corporation, the Federal National Mortgage Association), holding a Mortgage now or hereafter placed upon any Lot, Unit, or Parcel, including Developer, or its assignee.

(y) "Neighborhood" shall mean a group of Lots, Units, Parcels or portion of the Property which has as an appurtenance thereto the right to receive additional services or which is benefited by Improvements which do not benefit or service other Lots, Units, Parcels or portions of the Property. Any Lots, Units, Parcels or Property subject to this Declaration after the date hereof may be designated as a Neighborhood in a Supplemental Declaration and shall be subject to Neighborhood Assessments. As of the commencement of this Declaration, no Neighborhoods have been designated, but the Developer and following turnover, the Master Association, reserves the right to create Neighborhoods.

(z) "Neighborhood Assessment" shall have the meaning given in Section 7.6 of this Declaration.

(aa) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, Unit, or Parcel situated upon or within the Property.

(bb) "Parcel" shall mean and refer to all Property subject to this Declaration that is not Common Property, a Lot or a Unit or property owned by the CDD, if any.

(cc) "Permits" means the permits, easements, and other approvals secured from various governmental agencies and regulatory bodies which govern the development of the Property including, without limitation, the Permits issued by the Florida Department of Environmental Protection, St. Johns River Water Management District, the Army Corps of Engineers and the Florida Department of Transportation.

(dd) "Property" shall mean and refer to all properties described in **Exhibit "A"** attached hereto and made a part hereof, and all additions, now or hereafter made subject to this Declaration, unless such property is withdrawn from the provisions of this Declaration in accordance with the procedures set forth in this Declaration.

(ee) "Public Park" means the land depicted on Exhibit D as the Public Park. The land will be subject to a pedestrian ingress, egress, use and enjoyment easement in favor of the



general public. The Public Park will be part of the Property at such time as the land containing the Public Park is made subject to the terms and conditions of this Declaration.

(ff) "SJRWMD" shall mean the St. Johns River Water Management District.

(gg) "Stormwater Management System" shall mean a system which is designed, constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or to otherwise affect the quality and quantity of discharge from the system as permitted pursuant to Chapter 40C-4, 40C-40, or 40C-42, Florida Administrative Code.

(hh) "Sub-Association" shall mean any association created or to be created to administer specific portions of the Property and Common Property or common elements lying within such portions pursuant to a declaration of condominium or declaration of covenants and restrictions affecting such portions of the Property.

(ii) "Sub-Association Declaration" shall mean the declaration(s) governing the applicable Sub Association(s).

(jj) "Supplemental Declaration" shall mean and refer to an instrument executed by the Developer (or the Master Association, if permitted by Section 2.4 hereof) and recorded in the public records of the County, for the purpose of adding to the Property, withdrawing any portion(s) thereof from the effect of this Declaration, designating a portion of the Property as Common Property or for such other purposes as are provided in this Declaration.

(kk) "Unit" shall mean and refer to any dwelling unit constructed on a Lot or Parcel or any condominium unit in any building that may be erected on any portion of the Property, which land is designated by Developer by recorded instrument to be subject to this Declaration (and to the extent Developer is not the Owner thereof, then by Developer joined by the Owner thereof).

## 1.2 Interpretation.

The provisions of this Declaration and the Articles, Bylaws and the rules and regulations of the Master Association shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Master Association and the Property, the preservation of the values of the Lots, Parcels and Units and the protection of Developer's rights, benefits and privileges herein contemplated.

## Article 2 PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS AND WITHDRAWALS

### 2.1 Legal Description.

The initial real property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of St. Augustine, St. Johns County, and is more particularly described in **Exhibit "A"** attached hereto and made a part hereof, all of which real property (and all improvements), together with additions to the Property but less any withdrawals from the Property, is herein referred to collectively as the "Property".

### 2.2 Supplements.

Developer may from time to time subject other land within the Future Development Property to the provisions of this Declaration by Supplemental Declarations (which shall not require the consent of then existing Owners, the Master Association or any Mortgagee other than that, if any, of the land intended to be added to the Property) and thereby add to the Property. To the extent that such additional real property shall be made a part of the Property, reference herein to the Property shall be deemed to refer to all such additional property. Nothing herein, however, shall obligate Developer to add to the initial Property, to develop any such future portions under a common scheme, nor to prohibit Developer from rezoning and changing plans with respect to such future portions. A Supplemental Declaration may vary the terms of this Declaration by addition, deletion or modification so as to reflect any unique characteristics of a particular portion of the Property identified in the Supplement Declaration; provided, however, that no such variance shall be directly contrary to the uniform scheme of development of the Property.

### 2.3 Withdrawal.

Developer reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Property (including, without limitation, Lots, Units, Parcels and/or Common Property) then owned by the Developer or its affiliates or the Master Association (if the Developer controls the Master Association at such time) from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Developer.

If withdrawal of any portion of the Property includes parts of the surface water or stormwater management system authorized by a permit from the SJRWMD, then the withdrawal must have the SJRWMD's advance written approval and shall be considered an amendment to the Declaration that amends a provision relating to the surface water or stormwater management system beyond maintenance in its original condition.

### 2.4 Lands Owned by Others.

From time to time the Developer may permit lands to be annexed which are owned by other persons. Any supplemental declaration which subjects lands owned by other persons, irrespective of whether such lands are part of the Future Development Property, may be annexed provided that the owner of such land and the Developer consent to such annexation. Following turnover of control of the Master Association, the Master Association must also consent to such annexation.

### 2.5 Kurth Parcel.

Developer may subject the Kurth Parcel to the provisions of this Declaration by Supplemental Declaration (which shall not require the consent of then existing Owners, the Master Association, or any Mortgagee other than that, if any, of the Kurth Parcel). In the event the Developer elects to subject the Kurth Parcel to the provisions of this Declaration, the general public shall have a perpetual non-exclusive easement for ingress and egress (pedestrian only), use and enjoyment of the Kurth Parcel and the rights of use and enjoyment of the Members, and each Member's Permittees, shall be subject to the rights of the general public to access (pedestrian access only), use and enjoy the Kurth Parcel. Notwithstanding the foregoing, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Kurth Parcel to the public, or for any public use except as otherwise specifically identified on any plat containing the Kurth Parcel. Further, the Kurth Parcel shall not be deemed burdened by any term or condition of this Declaration, including this Section 2.5, unless and until the Kurth Parcel (or any portion thereof) is brought hereunder by a Supplemental Declaration.

**Article 3**  
**MEMBERSHIP AND VOTING RIGHTS IN THE MASTER ASSOCIATION**

**3.1 Membership.**

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

**3.2 Voting Rights.**

The Master Association shall have such Members, who shall cast such votes, as are provided in the Articles of Incorporation.

**3.3 Powers of the Master Association.**

The Master Association shall have all the powers, rights and duties as set forth in this Declaration, the Articles of Incorporation and the Bylaws.

**3.4 General Matters.**

When reference is made herein, or in the Articles, Bylaws and rules and regulations, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members represented at a duly constituted meeting of the Members (i. e., one for which proper notice has been given and at which a quorum exists) and not of the Members themselves or of the total numbers of Lots, Units or Parcels.

**Article 4**  
**COMMON PROPERTY; EASEMENTS**

**4.1 Members' Easements.**

Each Member, and each Member's Permittee, shall have a non-exclusive permanent and perpetual easement over and upon the Common Property for the intended use and enjoyment of the Common Property in common with all other Members and Member's Permittees, but in such manner as may be regulated by the Master Association. Such rights of use and enjoyment are made subject to the following:

(a) The right and duty of the Master Association to levy Assessments against each Lot, Parcel or Unit for the purpose of maintaining the Common Property and any facilities located on the Common Property in compliance with the provisions of this Declaration.

(b) The right of the Master Association to suspend the Member's (and the Member's Permittees') right to use the Common Property recreational facilities for any period during which any Assessment against his Lot, Parcel or Unit remains unpaid for more than forty-five (45) days until such Assessment is made current.

(c) The right of the Master Association to charge reasonable admission and other fees for the use of recreational facilities situated on the Common Property.

(d) The right of the Master Association to adopt at any time and enforce rules and regulations governing the use of the Common Property and all facilities situated on the Common Property, including the right to fine Members. Any rule and/or regulation adopted by the Master

Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(e) The right of Developer and the Master Association to permit such persons as Developer and the Master Association shall designate to use the Common Property.

(f) The right of Developer and the Master Association to have, grant and use blanket and specific easements over, under and through the Common Property.

(g) The right of the Master Association to grant easements and rights of way, dedicate or convey portions of the Common Property to any other association having similar functions, or any public or quasi-public agency, community development district or similar entity under such terms as the Master Association deems reasonably appropriate and to create or contract with other associations for purposes deemed appropriate by the Master Association.

(h) The right of the Master Association to mortgage the Common Property with the consent of the Members holding two thirds of the votes present in person or by proxy at a duly called meeting at which a quorum is present or by written approvals of Members holding two thirds of the total votes.

(i) The rights of the general public to access, use and enjoy the Public Park within the Madeira at St. Augustine Community.

(j) The rights of the Developer to withdraw portions of the Common Property as provided in Section 2.3 above.

(k) All easements, covenants and conditions of record affecting the Property, including without limitation the Planned Unit Development (PUD) Ordinance adopted and approved by St. Johns County and the City of St. Augustine.

#### 4.2 Easements Appurtenant.

The easements provided in Section 4.1 shall be appurtenant to and shall pass with the title to each Lot, Parcel or Unit.

#### 4.3 Easements for Vehicular Traffic.

The Developer hereby reserves and covenants for itself and all future Owners of Lots, Parcels or Units within the Property, a non-exclusive easement appurtenant for vehicular traffic over all private streets within the Common Property.

#### 4.4 Utility Easements.

Use of the Common Property for utilities, as well as use of the other utility easements as shown on any plats of the Property, shall be in accordance with the applicable provisions of this Declaration. Developer and its affiliates and designees shall have a perpetual easement over, upon and under the Common Property and the unimproved portions of the Lots, Parcels or Units for the installation, operation, maintenance, repair, replacement, alteration and expansion of utilities; provided however that such utility easement shall not exist on, over, through or under any portion of the Property that is subject to a Conservation Easement.

#### 4.5 Public Easements.

