

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MISTY WAY
HOMEOWNER'S ASSOCIATION, INC.**

THIS AMENDED AND RESTATED DECLARATION, made on this date hereinafter set forth by the Misty Way Homeowner's Association Inc, herein after the "Association" and defined under Article I, Section I.

WITNESSETH:

WHEREAS Declarant was the owner of certain property in the City of Melbourne, County of Brevard, State of Florida, and now the Association is the owner and possesses all ownership interest of the certain property as was originally contemplated by the Declarant which is more particularly described as:

Lots 1 through 32 and Lots 112 through 154, Misty Way, Phase One, P.U.D., according to the plat thereof as recorded in Plat Book 36, Page 25, Public Records of Brevard County, Florida.

WHEREAS, in compliance with Florida's Marketable Record Title Act (Chapter 712 of the Florida Statutes), this Declaration is hereby amended and restated.

WHEREAS this Declaration is intended to be the controlling Declaration and supersedes all prior declarations.

WHEREAS this Declaration was approved by the membership of the Association on November 12, 2022.

WHEREAS, the Association has been established to represent the collective interests of the Owners and to own, operate, maintain, and manage the Common Areas.

WHEREAS the Owners and the Association desire to amend the original declaration for the mutual benefit and protection of all parties.

NOW THEREFORE, the Association hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Misty Way Homeowner's Association, Inc., its successors, and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of a fee simple title to any Lot which is a part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of The Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tracts A, B, C, D, E, F and G, Misty Way, Phase One, according to the plat thereof, as recorded in Plat Book 36 Page 15, Public Records of Brevard County, Florida.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties except for the Common Area and the dedicated streets.

Section 6. "Dwelling", "Unit" or "Dwelling Unit" shall mean and refer to any building or portion thereof constructed on a Lot and intended for use and occupancy as a residence by a single family susceptible to ownership in fee simple as to which Dwelling Unit a certificate of occupancy has been issued by the applicable governmental authorities, whether such Dwelling Unit is detached from or connected by a party wall or other structural elements to other Dwelling Units. Dwellings in this subdivision shall be limited to single family detached residential -units subject to use regulations -set forth -by- the City of Melbourne.

Section 7. "ARC" shall mean and refer to the Misty Way Architectural Review Committee as designated by the Association.

ARTICLE II

-PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) all provisions of this Declaration, any plat of all or any part or parts of the Properties, and the Articles of Incorporation and By-Laws of the Association.

(b) rules and regulations adopted by the Association governing use and enjoyment of the Common area.

(c) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility that may at some time become part of the Common Property owned by the Association.

(d) the right of the Association to suspend the voting rights and/or the right to use of any recreational facility by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulation; and.

(e) the right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless an instrument agreeing to such dedication, sale or transfer signed by two-thirds (2/3) of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment to the Common Area, to the members of his family, his tenants or contract purchasers who reside on the property.

Section 3. Permitted Uses. The Common Area shall be restricted to the following uses:

The Common Area, now and forever, shall be restricted such that it shall be maintained as drainage areas, open green space, recreation areas, and/or landscaped entryway.

Section 4. Private Maintenance and Utility Easement: Since some Dwellings or Units or other structures within Misty Way may be constructed in close proximity to one or more boundary lines of such Unit's Lot, it is necessary to assure that the Owner of any such Unit, Dwelling or other structure, together with his guests, employees, servants, invitees, and were

necessary, the Association, shall have the right of ingress, egress and access to all portions that are in close proximity to a Lot line (where access might otherwise be restricted), for maintenance and utility purposes. Therefore, as noted on the Plat of Misty Way, a private, nonexclusive easement is hereby reserved for maintenance and utility purposes, together with the right of ingress and egress thereto, over that portion of all Lots, Tracts or Parcels contained within Misty Way, which are located within six (6) feet, measured at right angles, from the exterior wall(s) of any house, building, Dwelling Unit or similar structure, constructed on any adjacent Lot in favor of and for the benefit of the Owner of such adjacent Lot, his guests, servants, employees, invitees and, where appropriate, the Association. The foregoing easement is intended to include the right of ingress and egress to the easement area so that an Owner shall, at all times, have ~~fe~~and unobstructed access to the easement area. As noted on the plat and herein, the easement area shall be measured at right angles to all portions of Dwellings, Units or other structures located within six (6) feet of an adjacent Lot line, including at right angles to the corners of such structures, the result of which will be a fan shaped easement area on the adjacent Lot or Parcel, the outside boundary of which is six (6) feet from any structure on an adjacent Lot or parcel.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall consist solely of Class "A" voting membership as the original and sole purpose of Class "A" and Class "B" membership is no longer necessary. Furthermore, the Class "B" membership ceased and was converted to Class "A" membership as originally planned and outlined on the happening of either of the following events, whichever occurred earlier:

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which may be collected on a monthly, quarterly or semi-annual basis or other time periods as established by the Board of Directors, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless

expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Misty Way subdivision and for the improvement and maintenance of the Common Areas and for all amenities constructed thereon.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, there is no maximum annual assessment.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year with a vote of the Board of Directors of 2/3.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessment for Capital Improvement. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year-only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repaving, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, if any. Provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or Section 4 shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast a majority of all the votes shall constitute a quorum.

~~Section 6. Uniform Rate of Assessment~~ Both annual and special assessments must be fixed at a uniform rate for all Lots, as there is no longer any Class "B"

(a) Memberships and all memberships are now Class "A".

Section 7. Single Dwelling Assessments. In addition to the annual and special assessments authorized above, the Association may levy single unit assessments applicable only to a specific lot and unit that has failed to meet its maintenance obligations set forth in Article IX. The Single Dwelling Assessments shall have the assent of two-thirds (2/3) of the Board of Directors.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The semi-annual assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty

(30) days in advance of each semi-annual assessment period. Either written or email notice of the semi-annual assessment shall be sent to every Owner subject thereto. The due dates shall be January 31st and July 31st. The assessments, at the election of the Board of Directors, may be collected on a semi-annual basis. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance. The Association may delegate to a mortgage company or financial institution responsibility for collection of assessments.

Section 9. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days of the due date shall bear interest from the due date at the highest rate allowable by law per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the payment of any assessment which is not cured within sixty (60) days.

Section 10. Subordination of the Lien to Mortgages. A lien assessment provided for herein shall be superior to all other liens, except tax liens and the lien of any first mortgage held or insured by an Institutional Mortgagee regardless of the period of amortization. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure or any proceeding in lieu thereof of a first mortgage meeting the above qualifications, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. For purposes of this section, Institutional Mortgagee shall mean a bank, savings and loan association, insurance company or union pension fund authorized to do business in the United States of America, an agency of the United States Government, or real estate or mortgage investment trust, or a lender generally recognized in the community as an institutional type of lender. The term "Institutional Mortgagee" shall also include the Developer or a designee of the Developer where the Developer or its designee is the holder of a mortgage on a Lot or on any portion of the initial Properties.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Review by Architectural Review Committee. No building, fence, wall or other structure shall be commenced, erected, altered (including alteration of exterior colors or roof material) on any Lot or maintained upon any Lot unless it is approved by the ARC, in compliance with the zoning code of the City of Melbourne, Florida, and other applicable regulations, codes, or laws of Brevard County or the State of Florida. Furthermore, unless and until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, requiring that the style shall not clash with surrounding structures, and topography by the Misty Way Architectural Review Committee hereinafter known as ARC.

Section 2. Procedure for Review. Any Owner needing the approval of the ARC shall deliver an application or request for action to the ARC by certified mail with return receipt requested or by hand delivery with signed receipt together with a floor plan, elevation plan, landscaping plan, site clearing plan and abbreviated specifications, including exterior material and colors.

As soon as reasonably possible, but not later than thirty (30) days after receipt, the ARC shall indicate its approval or disapproval of the matters required to be acted upon by them by a written instrument and served personally or by certified mail upon the Owner and all interested parties, identifying the proposed building or structure and either stating approval or giving and making recommendations for changes to gain approval.

Section 3. Composition of Architectural Review Committee. The ARC shall have at least three (3) members who were initially be appointed by the Association as originally contemplated. The ARC shall now be made up of members who are also Owners. The directors of the Association shall become the ARC members, or the directors may appoint ~~three (3) or more representatives to serve as the ARC committee.~~

ARTICLE VI

EASEMENT RESERVED TO ASSOCIATION

Section 1. Easement over Common Area. For so long as Association is the owner of a Lot in the Property, the Association hereby reserves unto itself the right to grant an easement in perpetuity over, upon, under and across all Common Areas shown on the recorded subdivision plat of the Property together with the right to grant easements to others and such easement shall include, but shall not be limited to, the right to use the said Common Area to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, cable television, water or other public conveniences or utilities, drainage and retention and the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to provide for drainage

and retention and to maintain reasonable standards of health, safety and appearance and the right to locate wells, pumping stations and tanks; provided, however, that said reservation and right shall not be considered an obligation of the Association to provide or maintain any such utility or service.

Section 2. Easement over Lots. For so long as Association is the owner of any Lot, the Association hereby reserves unto itself the right to reserve an easement to itself or grant an easement to any other entity over each Lot owned by the Association for purposes of ingress and egress, to include drainage, utility, gas, telephone, cable TV and electrical services. With respect to an easement thus granted, the Association shall have and does hereby retain and reserve the right to release the Lot from the encumbrance of the easement; provided however, that the Association shall not have the power to release any portion of a utility easement on a Lot without the consent of the utility company providing the utilities served by that utility easement.

Section 3. Establishment of Easements. All easements, as provided for in this Article, shall be established by one or more of the following methods, to wit:

- (a) By a specific designation of an easement on the recorded plat of Misty Way.
- (b) by a reservation or specific statement providing for an easement in the deed of conveyance of a given Lot or Dwelling Unit.
- (c) by a separate instrument, said instrument to be subsequently recorded by the Association.
- (d) by virtue of the reservation of rights set forth in Section 2 of this Article and Section 21 of Article IX

Section 4. Easement Restrictions. Easements for installation and maintenance of utilities and drainage facilities are reserved as designated in Section 3 of this Article. Within these easements, no structure, planting or other material shall be placed or permitted to remain which would damage or interfere with the installation or maintenance of the utilities or which may change the direction of flow or drainage channels in the easements.

ARTICLE VII

DUTIES OF THE ASSOCIATION REGARDING TAXES, MAINTENANCE, SIGN MAINTENANCE AND STREET LIGHTING

Section 1. Taxes on Common Property. The Association shall govern, operate, control and manage the Lots and Common Properties pursuant to the terms and provisions of this Declaration and the Association's Articles of Incorporation and By-Laws. The Association shall at all times pay the real property ad valorem taxes on the Common Properties if said taxes are billed to the Association as differentiated from being billed to the Lot Owners. The Association shall also pay any governmental lien on the Common Properties.

Section 2. Maintenance. The Association shall have the obligation and responsibility for hiring of certain personnel to perform maintenance and upkeep of the Common Properties.

Section 3. Property Sign Maintenance. The Association shall maintain and repair such sign in a first- class condition and shall repair and replace such sign as may be required.

Section 4. Streetlights. The Association shall pay all the costs and expenses for electricity for any streetlights which are installed by the developer or the utility company, unless a special lighting district is established for the community. The Association shall further be responsible for the maintenance and repair of such streetlights, including replacing the light bulbs located thereon, unless the obligations described herein are performed by and at the expense of the applicable power and light company.

Section 5. Assessments. Funds for the above stated duties of the Association shall be provided through the regular assessments to Owners set forth in Article IV of this Declaration.

Section 6. Repairs. The Association shall pay for unforeseen repairs. The Board of Directors shall be able to spend no more than \$2,500 without the approval of the homeowners. For any repair or maintenance that exceeds \$2,500, the Board must hold a meeting and a vote will be taken by the homeowners in attendance and will rule by majority.

ARTICLE VIII

-INSURANCE FOR COMMON AREA

Section 1. Standard Risk. The Association shall keep any buildings in the Common Area insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof, and all personal property owned by the Association insured with coverage in the maximum insurable fair market value of such personal property as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Common Area and any personal property owned by the Association shall be paid to the Association. In the event of any loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Common Area. In the event the cost of such replacement, repair or rebuilding of improvements on the Common Area exceeds the insurance proceeds available therefor, or no insurance proceeds are available therefor, the deficiency or full cost thereof shall be assessed to the Owners.

Section 2. Public Liability. The Association shall procure and keep in force public liability insurance in the name of the Association against any liability for personal injury or property damage resulting from occurrence in or about the Common Area, in such amounts as the Board of Directors so designates.

Section 3. Policy Requirements. Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and made available for inspection by Owners at any reasonable time. All such insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days prior notice in writing to the Association and contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.

Section 4. VA/FHA Insurance requirements. Anything contained herein to the contrary notwithstanding, the Association shall maintain such insurance coverage as may be required by the Veterans Administration ("VA"), the Federal Housing Administration ("FHA"), or the Federal National Mortgage Association ("FNMA") so long as VA, FHA or FNMA holds a mortgage on or owns any Lot.

Section 5. Other Insurance. In addition, the Board shall have the right to obtain Directors' and Officers' liability insurance, fidelity insurance and other insurance it may deem proper to protect the Association, its members and property. All insurance premiums for such coverage shall be paid for by the Association and assessed as appropriate to all Owners.

ARTICLE IX

-GENERAL RESTRICTIONS

Section -1. General Restrictive Covenants. The general restrictive covenants contained in this Article shall apply uniformly to all Lots in the Property.

Section 2. Residential Use Only. No lot shall be used for any purpose except residential. The term "residential" is intended to prohibit any commercial use, including professional office use of any portion of any Lot or Dwelling Unit. No building shall be erected, altered, placed or permitted to remain on any Lot other than the Dwelling Unit designated for residential use and a private garage for not less than one (1) or more than three (3) cars, and a maid's room, storage room or tool room attached to the ground floor of the garage. The foregoing shall not prohibit the Declarant from using Dwelling-Units as models or offices.

Section 3. Temporary Structures and Use. No structure of a temporary character, including but not limited to, trailer, house trailer, mobile home, camper, tent, shed, boat, recreational vehicle, basement, shack, garage, barn or other building shall be moved to, erected on, or used on any Lot at any time for a residence, workshop, office, storage room, either permanently or temporarily unless approved by the ARC. This prohibition shall not apply to shelters used by the Declarant or his assigns during the construction of any Dwelling Unit. No canvas, pipe or other type of carport shall be placed between the front Lot line and the front building line on any Lot. Except during the delivery to homes, no commercial vehicles shall be parked in areas zoned for residential uses, including the streets adjacent to the residential lots.

Section 4. Signs. No commercial signs, or other signs, shall be erected or maintained

on any Lot or Dwelling Unit except with the written permission of the ARC or except as may be required by legal proceedings, it being understood that the ARC will not grant permission for said signs unless their erection is reasonably necessary to avert serious

hardship to the Owner. Such prohibition shall not apply to common-commercial real estate signs advertising that a particular Lot or Dwelling Unit is for sale provided that such signs are not illuminated and do not exceed four (4) square feet. However, the ARC shall have the right to restrict size, color and content of such signs. Property identification and like signs exceeding a combined total of more than two (2) square feet may not be erected without the written permission of the ARC. These restrictions shall not apply to restrict the Declarant or its agents from erecting such signs as the Declarant deems in its sole discretion to be necessary to assist the Declarant in selling any Lot or Dwelling Unit.

Section 5. Restriction on Activity. No obnoxious or offensive activity shall be conducted or permitted to exist upon any Lot, nor shall anything be done or permitted to exist on any Lot that may be or may become an annoyance or private or public nuisance. A nuisance is defined as a condition or situation that interferes with the use or enjoyment of property and shall be interpreted in accordance with the laws of the state of Florida. No Lot, driveway or Common Area shall be used for the purpose of vehicle repair or maintenance, and this includes all equipment or machinery used in said vehicle repair and maintenance.

Section 6. Antenna and Aerials. Unless the ARC has given its prior written approval, no antenna, aerial or satellite receiving dish shall be placed upon a Unit or within a Lot. The granting by the ARC of its approval in one instance shall not affect the ability of the Committee to withhold its approval in other instances for any reason whatsoever. All written approvals shall be determined on a case-by-case basis and evaluated independently of each other.

Section 7. Pets. No animals, livestock or poultry of any kind, other than common, traditional domesticated house pets (i.e. dogs, cats, fish and caged birds), shall be kept by an Owner or his family members, guests, invitees or lessees, provided, however, that (a) no animals whatsoever may be kept or maintained for commercial purposes, (b) no animals shall be permitted to remain on any portion of the Properties which become an unreasonable nuisance or annoyance to other owners and (c) any animal kept by an Owner shall be kept subject to any rules and regulations which may be promulgated from time to time by the Board. In no event shall dogs be permitted upon the open areas unless under leash. It is the Owner's responsibility to control all animals under their care and maintain command. Any Owner who keeps a pet thereby agrees to indemnify the Association and hold it harmless against any loss or liabilities of any kind or character whatsoever arising from or growing out of the keeping of any such pet. No permitted pet shall be allowed to make noise in a manner or of such volume as to annoy or disturb other Owners or to the extent that such noise creates a nuisance as restricted under Section 5 above.

Section 8. Visibility in Corner Lots. 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 Department of Public Works. This

includes driveways.

Section 9. Hurricane or Storm Shutters. Shall not be attached or affixed to the exterior of a building unless such hurricane or storm shutters have been approved by the ARC, which approval shall be based on the aesthetic appearance. They are only allowed up during Hurricane Season June 1st through November 30.

Section 10.-Additions to Units: Fences. No Unit shall be enlarged by any addition or remodeling thereto, including garages, porches, Florida rooms or detached utility buildings without the prior written consent thereto from the ARC. Nor shall any fence be erected or permitted to remain on any Lot.

Section 11. Parking of Vehicles. Each Owner has the right to the exclusive use of the parking spaces which are located within that Owner's property lines. Lot Owners are prohibited from making major repairs on vehicles on any Lot or adjacent streets. No vehicles may be parked on any grassed area of the Lots. No vehicles which extend beyond the length of the Owner's parking spaces may be parked in such spaces. Permission must be obtained in writing from the ARC for the parking of any commercial or recreational vehicles, trailers, boats or campers on any Lot. There shall be no parking on the streets or the street right of way area.

Section 12. Garbage and Litter. No Owner shall sweep or throw from his Unit any dirt or other materials, or litter in any way the Properties. No articles shall be hung from the windows or doors of the Dwelling Units. No garbage, trash, refuse or rubbish shall be kept on any part of the Properties except in closed containers in a manner prescribed by the rules and regulations of the Association as promulgated by the Board.

Section 13. Provisions Inoperative as to Initial Construction. Nothing contained in this Declaration shall be interpreted or construed to prevent Developer, its transferees, or its subcontractors, from performing on any part of the Properties owned and controlled by the Developer, or its transferees, whatever functions they may determine to be reasonably necessary or advisable in connection with the completion of the work including without limitation:

(a) erecting, constructing and maintaining thereon such structures as may be reasonably necessary for the conducting of the Developer's business of completing the construction and establishing the Properties as a residential community and disposing of the same by sale, lease or otherwise.

(b) maintaining structures of a temporary character for use as a construction office or storage or sales office.

(c) Maintaining such signs thereon as may be reasonably necessary for the sale, lease, or other transfer of the Properties including those relating to properties to be annexed in the future.

As used in this section, the term "its transferees" specifically does not include purchasers of completed residences.

Section 14. Garage Doors. In order to maintain a harmonious and aesthetic appearance, the garage doors affixed to each Dwelling Unit shall remain closed except when in actual use to allow ingress and egress into the garage.

Section 15. Insect and Fire Control. In order to implement effective insect, reptile and woods fire control, the Association shall have the right, but not the duty, to enter upon any Lot, such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Association detracts from the overall beauty, setting and safety of the Property. Such entrance for the purpose of mowing, cutting, clearing, or pruning shall not be deemed a trespass but shall be deemed a license coupled with an interest. The Association and its agents may likewise enter upon such land to remove any trash which has collected on such Lot or Dwelling Unit without such entrance and removal being deemed a trespass. The provisions in this Section shall not be construed as an obligation on the part of the Association to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services. The costs incurred by the Association in exercising its rights under this Section shall constitute a special assessment against the Owner of the Lot or Dwelling Unit and shall in every respect constitute a lien on the Lot or Dwelling Unit as would any assessment or special assessment.

Section 16. Exterior Maintenance. The Association shall have the right, but not the duty, to provide any exterior maintenance including repairs to walls and roofs, painting, landscaping and lawn maintenance for any Lot which in the opinion of the Association detracts from the overall beauty of the Properties due to the failure of the Owner to properly maintain. The Association shall have the right to make reasonable repairs and perform reasonable maintenance in its sole discretion, after notice to an Owner of a Dwelling Unit to perform maintenance and failure by the Owner to perform such maintenance. Any and all costs incurred by the Association in performing repairs and maintenance under this Section shall be paid out by the Owner and if the Owner fails to pay, then the Association shall have the right to impose a special assessment against said Owner to pay for the cost of repairs and replacements. Such assessment shall in every respect constitute a lien on the Lot or Dwelling Unit as would any other assessment or special assessment by the Association. The Association shall have the right to enter upon any Lot or upon the exterior of any Dwelling Unit for the purpose of providing repairs and maintenance as provided in this Section, and any such entry by the Association or its agent shall not be deemed a trespass.

Section 17. Access at Reasonable Hours. For the sole purpose of performing any maintenance or repairs authorized by this Declaration, the Association, through its duly authorized agents, contractors or employees shall have a license which shall be exercisable after reasonable notice to the Owner to enter upon any Lot or exterior of any Dwelling Unit at reasonable hours on any day of the week.

Section 18. Tree Removal Restrictions. Trees situated on any Lot between building set back lines and the property lines having a diameter of eight inches (8") or more (Measured four feet (4') from ground level) may not be removed without prior approval of the ARC. All requests for approval of tree removal shall be submitted to the ARC along with a plan showing generally the location of such tree(s).

Section 19. Clothes Lines. No clothes lines shall be placed in the common areas, and no fences shall be used as a clothesline.

Section 20. Duty to Repair - Detached Dwelling Units. Each owner of a detached dwelling unit shall have the duty to begin repairs on any damaged unit within ninety (90) days of the casualty. Any change to the exterior of the dwelling unit shall be subject to review by the ARC. In the event the dwelling unit is destroyed by the casualty, Owner shall not be required to rebuild. However, if the Owner does not begin construction, the Owner shall clear the debris from the Lot and grass shall be planted on the lot within ninety (90) days. If the Owner does not clear debris from such lot within the ninety (90) days, the Association may so remove the debris and collect the cost for the same from Owner as a single dwelling pursuant to Article IV, Section 6 hereof. All lots are subject to the assessments of the association whether vacant or occupied.

Section 21. Rental Agreement Properties: No Airbnb or VRBO There is an absolute bar and restriction on utilizing any house(s) subject to this Declaration for any purposes whatsoever related to renting, leasing, or listing of such houses on rental websites. All houses, Properties, and homes shall be utilized solely as residential use by and for owners. Any property being leased as a rental property, as of the date of these Declarations, shall be permitted to continue as a rental property with the reasonable limit of no less than 1 year and provide a copy of the Lease to the HOA. Current homeowners, as of date of these declarations, will be grandfathered in meaning they will have a right to enter rental agreements of their properties. Each homeowner will be responsible to inform the HOA of intent and provide a copy of the Lease, with the reasonable limit of not less than 1 year, to the HOA. The homeowner is still responsible for the upkeep of residence, lawn maintenance and their renter's following the HOA Bylaw's. It is the owners responsibility to maintain all assessments dues.

From a practical standpoint, to protect homeowners and to preserve the character of the community. A quiet neighborhood that all of a sudden has vacationers coming and going on a regular basis stands good chance of losing its quiet nature. Vacation renters tend to be messier and noisier, especially at night, than permanent residents. The commotion can become a nuisance for people who reside in the community. Short term renters also tend to ignore HOA rules or simply not know what the rules are. In a community with common areas and facilities, vacationers can overtax the common areas and facilities, preventing full-time residents from enjoying the benefits for which their assessments pay. Vacationers do not pay HOA fees and are less vested in the long-term condition of the community. Short term renters can increase a neighborhood's traffic and parking problems. And, if travelers regularly use common facilities like a pool, the HOA's insurance is likely to increase, as additional use of the facilities by more people inevitably leads to more damage and risk of premises liability claims.

Military Exception. Any Property owner who is active military and who has received orders for deployment or temporary assignment may lease their property for a period of up to one (1) year, upon request and approval by HOA.

Section 22. No Lot to be Subdivided. No platted lot shall be subdivided.

ARTICLE X

-GENERAL PROVISIONS

Section 1. Restrictions Uniform. These restrictions and covenants are to run with the land and are hereby incorporated by reference in all deeds or other instruments of conveyance which the Subdivider may execute and deliver conveying land in this Subdivision whether or not specific mention of the restrictions is made in such deeds or other instruments of conveyance. The Owner or occupant of each and every Lot or parcel of land in the subdivision, by acceptance of title thereto or by taking of land in the subdivision, thereby covenants and agrees for himself/herself, his/her heirs, executors, administrators, successors and assigns, that he/she will comply with and abide by each of the restrictions contained in this Declaration of Restrictions and that he/she will exert his/her best efforts to keep and maintain the land in this subdivision as an area of high standard.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the Association or any Owner shall seek to enforce the provisions of this Declaration, then said party shall be entitled to collect all fees and costs, including reasonable attorneys' fees and costs, whether incurred before trial, at trial or upon appeal.

Section 3. Severability. Invalidation of any one of these covenants or restrictions or any part thereof by judgment or court order shall in no way affect any other provisions hereof. In such event, the remaining portions of this Declaration not affected by such judgment or order shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty year period by an instrument signed by the Owners of seventy-five percent (75%) or more of the Lots, and thereafter by an instrument signed by the Owners of fifty-one percent (51%) or more of the Lots. Notwithstanding the above, the Association shall have the right, during the first two (2) years from the date the covenants are recorded, to amend this Declaration to clarify any ambiguities or conflicts, subject, however, to approval by the Veterans Administration.

Section 5. Covenants Against Partition and Separate Transfer of Membership Rights.

Recognizing that the full use and enjoyment of any Lot is dependent upon the right to the use and enjoyment of the Common Area and the improvements made thereto, and that it is in the interests of all of the Owners that the right to the use and enjoyment of the Common Area be retained by the Owners of Lots, it is therefore declared that the right to the use and enjoyment of any Owner in the Common Area shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of such right to the use and enjoyment of the Common Area. In addition, there shall exist no right to transfer the right to the use and enjoyment of the Common Area in any manner other than as an appurtenance to and in the same transaction with, a transfer of title to a Lot. Any conveyance or transfer of a Lot shall include the right to use and enjoyment of the Common Area appurtenant to such Lot, subject to reasonable rules and regulations promulgated by the Declarant or the Association or the ARC for such use and enjoyment, whether or not such rights shall have been described or referred to in the deed by which said Lot is conveyed.

Section 6. VA Approval. The following actions will require the prior approval of the Veterans Administration: annexation of additional properties, mergers, consolidations, mortgaging of any common area, dedication of Common Area, amendment of this Declaration and dissolution of the Association.

Section 7. Annexation.

(a) Additional residential property, Common Area and Limited Common Area other than that described in subparagraph (b) below, may be annexed to the property with the consent of two-thirds (2/3) of members.

(b) Additional land described on Exhibit "A" attached hereto may be annexed by the Declarant without the consent of members so long as the Declarant is the Association, provided that the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") consent to such annexation. Upon annexation of said additional land, the owners of lots within the land so annexed for all intents and purposes shall be deemed to be members of Misty Way Homeowner's Association, Inc. in accordance with the provisions of this Declaration. The owners of the lots shall be subject to its rules, regulations and bylaws in the same manner and with the same effect as the original Lot Owners and shall have the same rights and obligations as to the Common Areas and the Limited Common Areas as the original Lot Owners. When said additional land is annexed, the Declarant shall file an Amendment among the public records of Brevard County, Florida, which Amendment shall reference this Declaration and shall contain the legal description of the land annexed. Notwithstanding any other provision of this Declaration to the contrary, the Amendment adding such-annexed land shall not be required to be executed by any existing Lot Owners, other than the Declarant. Provided, however, the annexation provided for in this subparagraph (b) shall occur only after platting of said additional land by the Declarant, and nothing contained herein shall in any way be construed as an encumbrance upon said additional land prior to the platting of the same by the Declarant; provided, however, that said additional land shall not be subject to the assessments of the Association until the

development of said land has been completed as indicated by issuance of a letter of acceptance by the City of Melbourne.

Section 8. Estoppel Certificates. Upon receipt of a written request from a requesting party, the Association shall from time to time upon not less than fifteen (15) days from the receipt of such a written request, acknowledge and deliver a statement in writing to the requesting party certifying that this Declaration is unmodified and in full force and effect or, that if there have been modifications, that the Declaration as modified is in full force and effect. Furthermore, if any documentation is required regarding current status of unpaid or past due assessments, upcoming or ongoing special assessments, any rights of the Association that may affect the sale of Property, notice of any pending litigation against Property or the Association, or any violations or code issues pending will also be addressed as requested by the requesting party to be certified by the Association.

IN WITNESS WHEREOF, the undersigned, being the directors of the Association herein, has hereunto executed and consented to this Declaration this 5th day of December, 2022.

Signed, sealed and delivered in our presence:

Cynthia Chahon
Witness Name: Cynthia Chahon

Lisa Hess
Witness Name: LISA HESS

Shar A. Walter
SHARA. WALTER, as
President of Misty Way Homeowner's
Association, Inc.

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th of December, 2022, by Shar A. Walter, as President
of Misty Way Homeowner's Association, Inc., who is personally known to me or who has produced FLORIDA Driver License as identification.



Carol T. Briggs
Notary Public
Printed Name: CAROL T. BRIGGS
My Commission Expires: June 12, 2026

Signed, sealed and delivered in our presence:

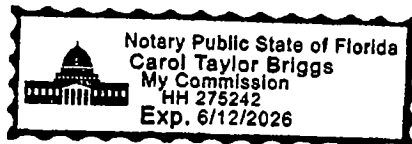
Witness Name: Steph Aulster
Cynthia Chabon
Witness Name: Cynthia Chabon

Lisa Hess
LISA HESS, as Vice President
of Misty Way Homeowner's Association, Inc.

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 5th of December, 2022, by Lisa Hess, as Vice

President of Misty Way Homeowner's Association, Inc., who is personally known to me or who has
produced Florida Driver License as identification.



Carol T. Briggs
Notary Public
Printed Name: CAROL T. Briggs
My Commission Expires: June 12, 2026

Signed, sealed and delivered in our presence:

Lisa Hess
Witness Name: Lisa Hess

Shar Linbster
Witness Name: Shar Walter

Cynthia Chanou
CYNTHIA LYNNE CHANOU, as
Secretary of Misty Way Homeowner's
Association, Inc.

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 5th of December, 2022, by **Cynthia Lynne Chanou, as Secretary of Misty Way Homeowner's Association, Inc.**, who is personally known to me or who has produced Florida Driver's License as identification.



Carol T. Briggs
Notary Public
Printed Name: CAROLT. BRIGGS
My Commission Expires: June 12, 2026

Signed, sealed and delivered in our presence:

Cynthia Chanon
Witness Name: Cynthia Chanon

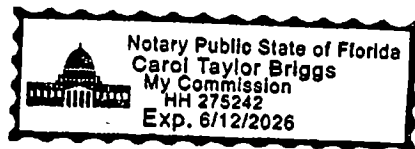
Belinda Joy Morris
Misty Way Homeowner's Association, Inc.

Lisa Hess
Witness Name: LISA HESS

[Signature]

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this 5th of December, 2022, by Belinda Joy Morris as Treasurer Of Misty Way Homeowner's Association, Inc., known to me or who has produced identification.



Notary Public Carol T. Briggs
Printed Name: CAROL T. BRIGGS
My Commission Expires: June 12, 2026

Signed, sealed, and delivered in our presence:

Jennifer Schafeld
Witness Name:

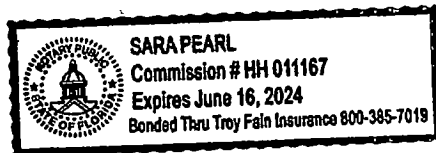
Wfauz
Witness Name:

Carol T. Briggs, Board Member of
Misty Way Homeowner's Association, Inc.

Carol T. Briggs

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 6th of December, 2022, by Carol T. Briggs, as Board
Member of Misty Way Homeowner's Association, Inc., who is personally known to me or who
has produced identification. ELPL



Notary Public Sara Pearl
Printed Name: Sara Pearl
My Commission Expires: June 16, 2024

EXHIBIT A

A parcel of land lying in the South 1/4 of Section 7, Township 27 South, Range 37 East, Brevard County, Florida, being more particularly described as follows: Begin at the South 1/4 corner of said Section 7; thence run S 88°28'44" E along the South line of the SE 1/4 of said Section 7 for a distance of 2652.45 feet to a point on the West line of the East 50 feet of the SE 1/4 of said Section 7; thence run N 0°47'31" E along the West line of the East 50 feet of the SE 1/4 of said Section 7 for a distance of 619.32 feet; thence run N 88° 29'06" W along a line that is parallel with the North line of the South 1/4 of said Section 7 for a distance of 2638.45 feet; thence run N 0° 57'24" E for a distance of 45.62 feet; thence run N 88 ° 27'30" W for a distance of 6.99 feet to the Northeast corner of SUNNY PINES SUBDIVISION NO. 1 according to the plat thereof recorded in Plat Book 12 at Page 21 of the Public Records of Brevard County, Florida; thence run S 1 ° 26'30" W along the East line of said SUNNY PINES SUBDIVISION NO. 1 for a distance of 664.60 feet to a point on the South line of the SW 1/4 of said Section 7; thence run S 88° 28'01" E along the South line of the SW 1/4 of said Section 7 for a distance of 0.40 feet to the point of beginning.

Less and except the following described parcel of land: A tract of land containing 1.54 acres in the Southeast 1/4 of Section 7, Township 27 South, Range 37 East, Brevard County, Florida, being more particularly described as follows: Commence at the Southwest corner of Section 7, Township 27 South, Range 37 East, thence run N 01°26'30" E 1316.21 feet along Wickham Road to the centerline of Lake Washington Road; thence run S 88°29'06" E 3358.05 feet along the centerline of Lake Washington Road; thence run S 00 °52'35" W 698.10 feet to the point of beginning; thence run S 88 °29'06" E 672.59 feet; thence run S 00° 47'45" W 100.00 feet; thence run N 88° 29'06" W 672.73 feet; thence run N 00°52'35" E 100.00 feet to the point of beginning.

Subject parcel contains 36.123 acres more or less.

Less and except the following:

Lots 1 through 32 and Lots 112 through 154, Misty Way, Phase One, P.U.D., according to the plat thereof as recorded in Plat Book 36, Page 25, Public Records of Brevard County, Florida.