

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FAIRMONT HOMEOWNERS ASSOCIATION, INC.**

WITNESSETH

WHEREAS, Eastwood Park Investments, Inc. (the Developer) originally platted certain property in Brevard County, Florida, as **FAIRMONT SUBDIVISION**, according to the Plat thereof recorded in Plat Book 51, Pages 66-69, inclusive, Public Records of Brevard County, Florida (the Plat); and

WHEREAS, the Developer caused the original Declaration of Covenants, Conditions and Restrictions for Fairmont Subdivision and Fairmont Homeowners Association, Inc. to be recorded at Official Records Book 5283, Page 2568, *et seq.*, Public Records of Brevard County, Florida, with all properties described in the Plat to be held, sold and conveyed subject to said Declaration, as amended (the Declaration); and

WHEREAS, the Developer caused the Declaration, and the provisions thereof, to run with the land and to be binding on all parties having any right, title or interest in any of the properties described in the Plat, or any part thereof, as such parties' heirs, successors and assigns; and

WHEREAS, the following Amended and Restated Declaration of Covenants, Conditions and Restrictions was approved by greater than the required percentage of owners at a duly noticed meeting of the membership held January 11, 2012.

NOW, THEREFORE, the following Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be in effect from the date of recording of same.

ARTICLE I - COVENANTS RUNNING WITH LAND

All of the properties described in the Plat 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 the property described in the Plat. Further, such easements, restrictions, covenants and conditions shall run with the land and be binding on all persons having any right, title or interest in the properties described in the Plat, or any part thereof, and their respective heirs, successors and assigns, which shall inure to the benefit of each such person.

ARTICLE II - DEFINITIONS

"Association" shall mean and refer to FAIRMONT HOMEOWNERS ASSOCIATION, INC., a not-for-profit corporation organized under the laws of the State of Florida, its successors and assigns.

Section 7. Maintenance and Operation of Surface Water or Storm Water Management System

The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. As such, owners, residents, invitees or other guests are prohibited from accessing, fishing, swimming or otherwise using the surface water and/or storm water management systems or driving or riding within the boundaries of said systems.

The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or storm water management system.

Section 8. Maintenance of Drainage Easements

It shall be the duty of the Association to maintain the drainage easements if said duty is not otherwise assumed by any governmental agency pursuant to any dedication agreement. Said duty includes the obligation to cut grass, cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar actions reasonably necessary to maintain reasonable standards of health, safety and appearance. Drainage flow shall not be obstructed or diverted from drainage easements.

Maintenance of the surface water or storm water management system shall also mean the exercise of practices which allows the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. John's River Water Management District. Any repair or reconstruction of the surface water or storm water management system shall be as permitted or, if modified, as approved by the St. John's River Water Management District.

Section 9. Maintenance of Tracts

The Association shall be responsible for the maintenance, operation and repair of all improvements, Landscape Buffer and Property located within Common Area Tracts and Rights-of-Way. Said maintenance shall include the maintenance and repair of the storm water management system including but not limited to the work within retention areas, ponds, drainage structures and drainage easements. Where an individual lot owner adjoins one of the above tracts, their responsibility for the maintenance, operation and repair within these tracts is as called for within this Declaration.

“Common Area(s)” shall mean those portions of the Subdivision identified as Tracts A, B, C, D, & G, and road right of ways as recorded in the Public Records of Brevard County, Florida, which are intended for the common use and benefit of all Owners of the Association. Additional parcels may be added to the Common Areas in the future.

“Landscape Buffer” shall mean all subdivision walls, fences, gates and landscaping erected by the developer, its successor(s) in interest or the Association, (including the improvements thereto).

“Lot” shall mean each lot platted as such in the Subdivision. Lot shall not mean any common areas.

“Owner” shall mean each person who owns record title to a Lot, excluding those having such title merely as security for performance of an obligation as described in Chapter 697, Florida Statutes.

“Properties” shall mean and refer to all real property located within the Subdivision, and any improvements thereon, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

“Subdivision” shall mean that property platted as Fairmont Subdivision, as recorded in Plat Book 51, Pages 66-69, Public Records of Brevard County, Florida.

“Surface Water or Storm Water Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted by Florida law.

“Tree Preservation Areas” shall mean those tracts or easements designated for perpetual preservation or existing natural conditions, where any alteration of said tracts or easements is prohibited without prior approval of the Association.

**ARTICLE III -
PURPOSE OF ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

Section 1. General Purposes of Association

The Association is organized for the purpose of providing common services to the owners; inspecting, owning, operating, maintaining and repairing the landscaping and lighting of the common areas; inspecting, owning, operating, maintaining and repairing the drainage easements, conservation areas, common areas not otherwise transferred or subject to the jurisdiction of a public entity, surface water and/or storm water management systems; providing enforcement of these covenants and

restrictions; and engaging in activities for the mutual benefit of the owners. In order to pay for these services and activities, the Association will charge assessments against the Lots and their Owners. A Lot may be subject to lien for any unpaid assessments, fines and other charges authorized by law and this Declaration, and additionally, each Owner is personally obligated for assessments, fines and other charges authorized by law and this Declaration coming due during the time such Owner owns a Lot. The functions of the Association shall be performed by a Board of Directors. Provisions relating to the Association and the Board of Directors are also contained in the Articles of Incorporation and By-Laws of the Association.

Section 2. Residential Sites And Resubdivision

- (a) A residential site may consist of one or more lots; all of one lot and part of a contiguous lot or lots, or any combination of contiguous parts of lots as will form an integral unit of land suitable for use as a site for a residence. In the event a lot is divided between two lots to increase the size of such lots, the provisions of this Declaration shall apply to such subdivided lots.
- (b) No resubdivision shall be permitted (except to enlarge lot(s) for purposes of creating a residential site as provided in (a), above). No lot shall be used for the purposes of a road right of way, easement, or other route of ingress or egress to or from property which may abut or be adjacent to this subdivision, except with the written consent of the Association.
- (c) Nothing contained herein shall preclude one owner of adjacent or contiguous lots from constructing on all or a portion of the lot adjacent to the residential lot, a tennis court, or swimming pool, or other recreational facility, which recreational facility must first be approved the Architectural Control Committee. Such tennis court, swimming pool or recreational facility shall be used solely for the residents of such adjacent lot or their guests but not for public use or hire.

Section 3. Easements

Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage, interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage water in the easements, or which are or might be prohibited by the public or quasi-public authority or utility company to whom the easement is given. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 4. Rights-of-Way

No owner shall grant any easement for egress or ingress to any adjoining lot of another owner without the written consent of the Association. The Association reserves the right to give an easement or to grant a public right-of-way over any unsold lot in said subdivision, subject to requisite approval of the City authorities.

Section 5. Membership

Every owner of a lot shall be a member of the Association. Membership in the Association is mandatory and shall be appurtenant to, and may not be separated from, ownership of any lot. When more than one person holds any interest in any Lot, all such persons shall be members. However, each such lot shall be entitled to cast only one vote, and the vote for such Lot shall be exercised as they among them determine. Notice of who is authorized to vote in such circumstance shall be provided in writing to the Association.

Section 6. Membership Vote

Voting will be allowed by certified written mailed-in ballot on all issues that require a vote by the full Association. The maximum number of votes that may be cast on any vote is the sum of all votes held by those owners eligible to vote, either present in person or by written proxy, at the time the vote is taken at a meeting, or by actual record ownership of lots if by certified written ballot. The number of votes needed for a quorum on any vote in person or by proxy/certified written ballot of the Association shall be 50% + 1 of the sum of all owners eligible to vote, unless otherwise provided in this Declaration or by law for adjourned meetings in which a quorum was not present. All matters to be voted on by the Association shall require a quorum and shall be decided by a majority of those votes cast by owners eligible to vote represented by the quorum. Voting shall also be permitted by general or limited proxy at any meeting of the Association and in person by door to door canvassing by Board Members to obtain said votes.

Section 7. Voting Qualifications

To be eligible to vote, an owner must be current in payment of all assessments, fines or other charges which have been levied against that owner(s) and/or the owner's lot as of the date of any vote.

ARTICLE IV - ARCHITECTURAL AND AESTHETIC REQUIREMENTS

Section 1. Architectural Control Review Committee

- (a) There shall exist an Architectural Control Committee (the "Committee") which shall

consist of a minimum of three (3) and a maximum of seven (7) members, who shall be elected by a majority vote of the Board at the annual meeting. Members may include members of the Board of Directors and Association Managers. A minimum of two (2) and a maximum of five (5) elected Committee members must be Owners, and shall serve until their successors are elected at the next annual meeting. Committee members may be re-elected.

- (b) A quorum of the Committee shall consist of a majority of its members; it shall take the affirmative vote of a majority of the members at the meeting at which a quorum is present to approve or perform any action. The Committee shall keep written records of its actions. The Committee shall meet from time to time as necessary.

Section 2. Construction Plan Review

- (a) No dwelling, building, fence or structure of any kind shall be commenced, constructed, erected, altered or maintained on any lot, common area or any part of the subdivision, nor shall any exterior additions, changes or alterations be made, until the plans and specifications showing the nature, kind, color, shape, height, materials, and location thereof until application for same shall have been first submitted to and approved in writing by the Committee as to external design, harmony and location in relation to surrounding structures, topography and regulations set forth herein.
- (b) A set of construction plans and specifications, including but not limited to a site plan, tree survey, landscape plan, sidewalk construction, exterior elevations, paint colors, shingle samples, exterior materials samples, and other descriptions necessary to describe the proposal, shall be submitted to the Committee showing all intended construction and alterations on the subject lot. The Committee shall notify the owner, in writing, within thirty (30) days of receipt of all required documentation, of the Committee's approval or disapproval of any project. Failure to notify the Owner within thirty (30) days of receipt of all required documentation shall be deemed an approval by the Committee.
- (c) Any improvement, addition, change or modification shall be made in accordance with the plans, specifications, and location of same as approved by the Committee, as well as any applicable codes and ordinances of any local governing agency required to issue permits for such activities in effect at the time. The Committee shall have the right, in its sole discretion based upon this Declaration, to approve or disapprove any improvement, addition, change or modification, including but not limited to any building, fence, screened enclosure, grading, floor elevation, drainage plan, mailbox, solar energy device, posts, antennas, fountains, decorative building features, landscaping plan, landscape device or object, yard decorations, or other improvement, whether as new construction or as additions, modifications or changes to any Lot.

- (d) In the event any required permit(s) or necessary approval(s) are not obtained prior to commencement of any contemplated improvements, additions, changes or modifications, or in the event same are made which vary from those approved as provided herein, it shall be deemed that no approvals were given and a violation and/or breach of this Declaration has occurred. A fine up to the maximum amount provided by law per violation per day shall be assessed against the lot and/or owner as provided by law. Any unpaid fines shall accrue interest at the maximum rate allowed by law until the fine is paid full and approval is obtained or improvements corrected to comply with any approval given. If after sixty (60) days from the date the first fine is assessed and the noncompliance has not been corrected, the Committee may re-assess the \$100.00 fine as a second occurrence of the same violation and may continue to do so every 120 days until the violation has been corrected.

Section 3. Sod & Landscaping

- (a) All landscaping must conform to all codes and requirements of all applicable local governments. A landscape plan must be submitted for approval by the Committee. Except for areas reserved for road, driveways, walkways, shrubbery, and planting areas, all lots in the subdivision shall be sodded with St. Augustine sod or other approved sod established by the Committee from the back side of the curb of the street in the front of any residence to the rear lot line of the property, including all easements, right-of-ways and common areas directly in the front and rear of all Lots. All plans shall include an underground sprinkler system adequate to provide sufficient coverage of the front and side yard areas visible from right of ways. Lots that have lake frontage must be sodded, irrigated, and maintained from the rear of the lot to the waterline.
- (b) All lakefront or canal lots must be sodded and irrigated to the normal water line. St. Augustine sod is required. Where existing St. Augustine sod is mature along the lake bank, exceptions can be made to install new St. Augustine sod to the existing St. Augustine sod line.
- (c) No landscaping is permitted between the sidewalk and any street with the exception of the required sod.

Section 4. Roof, Shingle Material and Exterior Elevations

All roofs shall be pitched and composed of 210 (or greater) pound fiberglass shingle. Flat or built up roofs will be permitted only over rear porches and patios. The Committee must approve the type, color, and style of all shingle and roof covering materials. Shingles must be architectural grade, 30 year shingles which are fungus-resistant. The Committee may reject any exterior elevation based

on the roof line, shingle type or exterior elevation appearance that in its judgment is not within character in keeping up with the standards of the subdivision.

Section 5. Exterior Covering, Siding and Painting

Exterior construction on all sides of all dwellings, buildings and similar structures shall be constructed of either stone, brick, stucco, wood or other approved materials. There shall be no artificial brick, stone, stucco, aluminum, vinyl, T-111 or other siding materials used on the exterior of any dwelling, building or similar structure without first receiving written approval of the Committee as to type, color, and texture of the material.

All paint used on the exterior of any dwelling, building or similar structure shall be subdued in tone. Colors should be selected to harmonize with the natural environment of the subdivision and shall be soft and unobtrusive. No colors can be loud or bright. Colors used for exterior walls and/or trim shall be uniformly applied to all exterior walls and trim and shall match or be similar to the acceptable earth tone colors. No more than one paint color may be used for the exterior walls of each dwelling, building or similar structure, and no more than two accent trim colors can be used. Paint colors must be submitted for approval prior to being applied on any dwelling, building or similar structure. A four foot square section of an exterior wall of the house must be painted for inspection if so requested by the Committee. A written approval listing the manufacturer and paint sample number of all paint colors including body and trim paint must be obtained for each dwelling, building or similar structure from the Committee prior to painting any dwelling, building or similar structure.

Storm shutters are allowed with the approval of the Committee. Shutters may be lowered/installed when a "storm warning" is issued for the local area. Shutters must be raised or removed within seven (7) days after the storm has passed.

Section 6. Garages; Driveways; Sidewalks

Each dwelling must contain a two-car enclosed garage. Carports and/or detached garages are prohibited. All overhead garage doors shall be decorative in design and shall complement the exterior elevation of each individual dwelling. Fiberglass, plastic and similar composition garage doors are prohibited. Garage doors must remain shut when garage is not in use.

Driveways shall be constructed of concrete or pavers only pursuant to any code specifications required by all applicable local governments permitting driveways. Sidewalks constructed between any street and any front setback (and other applicable setbacks for corner lots) shall be constructed of concrete only pursuant to any code specifications required by all applicable local governments permitting sidewalks. The painting of, or application or installation of any resin, epoxy or other finish to, sidewalks and driveways is prohibited.

Section 7. Building Location

- (a) No dwelling, building or other structure, other than that allowed by City code, shall be located on any Lot nearer than 25 feet to the front lot line. No dwelling, building or other structure shall be located nearer than 5 feet to an interior lot line, or nearer than 25 feet to the rear lot line.
- (b) Where lots have curved property lines, setback distance shall be taken at right angles with a tangent to the curve. All other setbacks shall be measured at right angles to the property lines.

For the purpose of this Article, eaves, concrete slabs, steps and open porches shall not be considered a part of any structure for purposes of setbacks; provided, however, that this shall not be construed to permit any portion of any dwelling, building, fence or structure or improvement of any kind to encroach upon another Lot or easement. The subdivision is currently located within the City of West Melbourne, and is governed by its land development regulations. If there is any conflict between this Declaration and the City's land development regulations, the more restrictive regulation shall apply unless otherwise noted.

Section 8. Building Type.

- (a) All lots in the subdivision shall be known and described as residential lots.
- (b) One detached single-family dwelling not to exceed two stories in height plus a private enclosed garage for not less than two nor more than three cars and a storage or tool room attached to such garage shall be permitted. No garage or tool room may be constructed separate and apart from the residence/dwelling, nor may a garage, storage or tool room be constructed prior to the construction of the main residence dwelling.

Section 9. Dwelling Quality, Quantity and Size

The floor area of any dwelling, exclusive of any open or screen porches, garage, patios, utility storage or tools rooms shall not be less than 1000 feet.

Section 10. Swimming Pools

A swimming pool may be constructed on a lot within the appropriate setbacks and with the approval of the location and material by the Committee. The pool and deck cannot be located closer than five (5) feet from the rear lot line. Access to a pool from the boundaries of the lot must be controlled from all directions by fencing and the dwelling. If pools are protected by screens, such screens and their structures shall be approved by the Committee. Swimming pools shall be only in-ground type and shall be constructed of fiberglass, concrete, or concrete materials. The pool deck

shall be no higher than two (2) inches below the grade level of the first floor house pad.

- (a) The outside edge of any pool wall may not be closer than five (5) feet to a line extended and aligned with the side walls of the house.
- (b) No screening of the pool area may extend beyond a line extended and aligned with the walls of the house.
- (c) Pool screening may not be higher than fourteen (14) feet.
- (d) No overhead electrical wires shall cross the pool. All pool lights other than underwater lights, must be at least four (4) feet from the edge of the pool.
- (e) In cases where the backyard surrounding the swimming pool is not fenced in, the pool itself must be enclosed with a fence not less than six (6) feet in height, or a screen enclosure. The entrance gate to the back yard or pool itself as the case may be is to be constructed with a self-closing latch placed at least forty (40) inches above the ground.

Section 11. Maintenance and Repair.

All dwellings, structures, buildings, outbuildings, sidewalks, driveways, fences and other improvements placed or maintained on any lot, or any portion, thereof shall at all times be maintained in good condition and repair. All lots shall be maintained in good appearance and free from overgrown weeds and rubbish.

If the owner(s) of any lot fail to maintain said lot and any improvements located thereon as required by this Declaration, the Association, after approval by two-thirds (2/3) vote of the Board of Directors and fifteen (15) days' prior written notice to the owner(s), shall have the right, through its agents and employees, to enter upon said parcel and to the extent reasonably necessary to protect the health or safety of other owners, to make repairs to, or clear the lot or the exterior of the dwelling, buildings and any other improvements erected thereon. The cost of such repairs or clearing shall be added to and become part of a special assessment to which such owner(s) and lot are subject. Any such additional assessment for such work shall be due and payable no later than thirty (30) days from the date said assessment is made. Entry upon any lot to perform any Board approved actions under this Section shall not constitute a trespass.

If not paid by the owner within thirty (30) days after being provided with written notice of such charge, the same will become a lien upon said lot until paid and may be collected in the discretion of the Association by an action to foreclose such lien in any other manner provided by law.

Section 12. Green and Water Retention Areas

- (a) Tracts "A, B, C, D & G" on the Plat are owned by the Association.
- (b) Tracts "E & F" on the Plat are owned by the City of West Melbourne.
- (c) No owner may in any manner alter Tracts "A, B, C, D & G" in any way without the written approval of Association.
- (d) All constructed improvements in Tracts "E & F" shall be maintained by the City of West Melbourne.
- (e) All constructed improvements in Tracts "A, B, C, D & G" shall be maintained by the Association as required by this Declaration.

Section 13. Telephone Service.

All telephone connections between a public easement or street right of way to a lot and any dwelling constructed thereon shall be placed underground.

Section 14. Air Conditioning Unit.

No window or wall air conditioning units shall be permitted in or on any improvements located on any lot within the subdivision. No air conditioning unit shall be placed or located on the front of any residence or otherwise placed or located so as to be visible to or from any public street. If the air conditioning unit is placed at the rear of any residence, but is still visible to or from any public street, it will be permissible to so locate the unit if it is screened with a permanent type of building material approved by the Committee so that it cannot be seen from any street from any angle.

Section 15. Walls & Fences; Vegetative Buffers

Fences shall be six (6) feet in height and wood on wood or shadow box in nature.

- (a) No fence shall be constructed, erected or maintained on or around any portion of a lot that is within the minimum front building setback, nor closer to the front line than a line paralleling the front building wall of the residence where the residence is the set back from the front lot line a distance greater than the required minimum setback. Only fences of wood on wood or shadow box shall be allowed. Walls are prohibited.
- (b) On corner lots, the dwelling shall be deemed to have two front lot lines for the purpose of these fence restrictions. No fence shall be erected on an lot until the type, height, material, design and location have been approved in writing by the

Committee.

- (c) No exposed block shall be used in the front of any exposed side of the residence except for decorative purposes and then only with the written approval of Committee. Fences may be erected from the front building wall of the residence to the rear of the property provided the plans are approved by the Committee.
- (d) No fence, hedge, or mass planting of any type that exceeds six (6') feet in height above the finished graded surface of the grounds upon which they are located shall be constructed, planted, placed or maintained upon any lot without the prior written approval of the Committee.

Section 16. Ground Maintenance.

- (a) Grass, hedges, shrubs, vines and mass plantings of any kind shall at regular intervals be mowed, edged, trimmed, cut and fertilized so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and plants which die shall be promptly removed and replaced.
- (b) No weeds, vegetation, rubbish, debris, garbage, waste materials, or materials or objects of any kind whatsoever shall be placed or permitted to accumulate upon any portion of a lot which would render it unsanitary, unsightly, offensive, or cause a nuisance or be detrimental to other owners, lots and/or the common areas in the vicinity of such lot or to the occupants of any lots in such vicinity.
- (c) No building material of any kind or character shall be placed or stored upon any lot so as to be open to view by the public or neighbors, unless such building material will be used and is used within thirty (30) days after placement on any lot for any improvements approved by the Committee for such lot.

Section 17. Animals, Birds and Fowl.

No horses, cattle, swine, goats, poultry, fowl or other livestock; exotic mammals; reptiles; arachnids; amphibians; or nonindigenous fish shall be kept on any lot or in any dwelling, building or other structure located on any lot. No animals, except household pets as provided herein, shall be raised, bred or kept on any Lot. Household pets, shall not exceed three (3) in number, and shall not be kept, bred or maintained for any commercial purposes. No owner shall allow any animal to run loose in the subdivision. In the event of dispute as to the reasonableness of the number of cats, dogs or household pets kept upon any lot, the decision and opinion of the Board shall control.

Section 18. Laundry.

Clothes, sheets, blankets or other articles may be hung out to dry only in the rear yard of a

Lot , and only where such rear yard is enclosed by a lattice, fence, or other screening device so that such activity is not visible from any street or other lot.

Section 19. Exterior Light Fixtures.

No exterior lighting fixtures shall be installed on any Lot or residential dwelling unless same are shielded in such a manner so the source of light from such fixture is not visible on any other lot. No lighting fixture shall be installed that may become an annoyance or a nuisance to the residents of adjacent properties.

Section 20. Parking.

The parking of any commercial and recreational vehicles on any lot, street, common area or right-of-way located within the subdivision is prohibited, except for loading and unloading purposes or when parked entirely within a closed garage permitted to be built pursuant to this Declaration.

- (a) For purposes of this section, “commercial vehicle” shall mean any vehicle bearing a commercial license plate, a trailer, semi-trailer, truck tractor, semitrailer combination, bus, step-van, tractor, tow truck or any similar vehicle, whether self-propelled or towed and whether currently licensed and/or operational or not, and to the extent not otherwise covered by the foregoing, those vehicles covered by §316.003(66) a., b., c., Florida Statutes (2010)(excluding the proviso for transport vehicles). A commercial vehicle shall also include any vehicle, even if not included or covered in the previous sentence (including any motor vehicle of any kind, including automobiles and motorcycles), where such vehicle contains or displays any sign or advertisement for any business or commercial enterprise of any kind either on or in such vehicle.
- (b) For purposes of this section, “recreational vehicle” shall mean any travel trailer, camping trailer, truck camper, pop-up trailer, motor home, motor coach, conversion van, park trailer, or fifth-wheel trailer of any kind, as well as any dirt bike, boat, vessel or watercraft of any kind (including canoes, ganoes and kayaks), ATV and any trailer (enclosed or unenclosed) designed to transport a dirt bike, ATV, boat, vessel or watercraft, as well as any other similar item designed for recreation, camping or travel.

The parking of any motor vehicle, motorcycle, commercial vehicle or recreational vehicle in the grassy area between the street and the sidewalk or in any front yard, side yard, or back yard is **strictly prohibited within the Subdivision**. Any vehicle so parked will immediately be subject to fines and/or towing.

Section 21. Signs.

No sign shall be displayed or placed upon any lot, on or within any dwelling or on or within any vehicle/vessel of any kind (except any factory installed manufacturer's logo/name), except a "for rent" or "for sale" signs and any other signs that may be permitted by the Association by adopted rule. Any "for rent" or "for sale" sign may refer only to and be located on/in the particular lot/dwelling on which such sign is displayed, shall not exceed four (4) square feet in size, shall not extend more than four (4) feet above the ground, and shall be limited to one (1) sign per lot/dwelling.

Section 22. Refuse.

No trash, garbage, rubbish, debris, waste materials or other refuse shall be deposited or allowed to accumulate or remain on any lot. Unless otherwise approved by the Association's Board of Directors, lightweight containers weighing not more than twenty-five pounds (25 lbs.) are permitted for trash, garbage, rubbish, debris, waste material or other refuse. All garbage containers shall be located either in the garage or at the side of the dwelling within an enclosure of such height and design and construction approved by the Committee that no garbage containers can be seen from the street, except at times when garbage and trash collectors require placement of such containers at the curb. Said containers must be tied or closed at all times and kept from view by the public or residents within the vicinity. Said containers shall not be placed at street-side for removal or refuse prior to the evening before the announced pickup time. Said containers must be returned to their visually restricted storage area within eight (8) hours after announced pickup time.

Section 23. Nuisances.

- (a) No noxious or offensive trade or activity shall be permitted on any lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to any lot, owner or tenant residing in the subdivision.
- (b) Fuel tanks, other storage tanks, swimming pool filters, etc. shall be of the underground type or completely concealed by hedges, fencing, lattice work or screening acceptable to the Committee.
- (c) There shall be no solicitations on any kind in the subdivision, except by lawful permit obtained from any applicable governmental body(ies) and with the permission of the Association.

Section 24. Open Burning.

- (a) Open burning of trash, wooden materials or vegetation or other waste material is not permitted.
- (b) Open burning to reduce solid waste of any kind is not permitted.

Section 25. Right to Inspect.

The Committee may, at any reasonable time or times during periods of construction of any improvements, additions, changes or modifications and within thirty (30) days thereafter, enter upon and inspect any lot and any improvements thereon for the purpose of ascertaining whether the contemplated improvements, additions, changes or modifications comply with the approved plans and otherwise comply with the provisions hereof. Neither the Committee members nor any of its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry and/or inspection.

Section 26. Antennae and Aerials.

No exterior antennae or aerials shall be placed upon residences at a height greater than ten (10) feet above the highest point of the roof. No CB or Ham radios or radio transmission equipment or towers shall be operated or permitted to be operated on any lot. Any earth satellite signal reception shall not be visible from any other lot within the subdivision.

Section 27. Vehicles and Repairs.

There shall be no repair performed on any motor vehicle of any kind on or adjacent to any lot in this subdivision, except emergency repairs completed within the confinement of the garage and if completed within 24 hours of commencement.

Section 28. Street Numbers; Mail Boxes.

The location of street address numbers shall be as uniform as possible on each residence. All mail boxes shall be uniform as to type and design, and black in color. The location and type of the mail boxes shall be determined by the Committee. All mailboxes are to be maintained in good repair at all times. Any mailbox which is dented, missing a front door cover, or flag must be repaired and/or replaced immediately. All mailbox posts must be maintained, free of debris and, if necessary, repainted with black high gloss enamel paint annually.

Section 29. Rear Yard Setback for Accessory Uses.

All lots will have a minimum rear yard setback of five feet for all accessory uses. Accessory uses included, but are not limited to pools, decks, patios and screen enclosures.

Section 30. Excavations.

No mining activities for stone, gravel, dirt, marl or earth shall be allowed on any portion of any lot or the common areas. Excavation shall be allowed only to the extent necessary to accomplish the construction of approved dwellings, foundations, swimming pools, structures and other appurtenances to lots, and to fulfil any stormwater obligations as to the common areas. The plans

and specifications for such excavations must be approved by the Committee in writing prior to undertaking such activities.

Section 31. Oil and Mining Operations.

No oil or gas drilling, oil or gas development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for, or pumping of, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 32. Iron, Tin, ETC., Prohibited

No corrugated iron, rolled siding, tin or other aluminum shall be used in the construction of any dwelling, building or other structure in the subdivision, except that aluminum may be used for trim, flashing, valleys, gutters, or down spouts; however, prefinished aluminum, plastic and other modern materials may be used in the construction of any building with the with the permission of the Committee.

Section 33. Games and Play Apparatus.

All games and play apparatus remaining outdoors for more than three days shall be located at the rear or side of the dwelling, so as not to be visible from any street. The Committee may make exceptions to permit basketball standards and backboards or similar play apparatus that are visible from the street. Any permitted basketball standards/backboards or similar play apparatus must be approved in writing by the Committee and shall not be a permanent structure. Basketball standards must be constructed of uniform black enamel pole and shall, when in use, remain a minimum of 5' from any paved public street.

Section 34. Tanks.

No permanent above ground oil tanks or bottled gas tanks may be placed on lots.

Section 35. No Trade, Business, Profession.

No trade, business or profession or any other type of commercial activity shall be carried on upon any lot, dwelling or common area in the subdivision, except for a home occupation carried on completely within a dwelling and which generates no more traffic than that normally attributable to a dwelling used as a single-family residence. No building or structure any time situated on any lot shall be used as a hospital, sanitarium, church, charitable, religious, scientific, philanthropic or for business or manufacturing purposes and all the building on said lots shall be used exclusively for residential purposes.

Section 36. Water System.

No individual water supply system shall be permitted in or on any lot, unless such system is located constructed and equipped in accordance with the requirements, standards and recommendations of the City of West Melbourne and the Florida State Board of Health. Any individual well on any lot may be used for irrigation, air conditioning, heating systems or swimming pool purposes only.

ARTICLE V **PROPERTY RIGHTS AND REQUIREMENTS**

Section 1. Owner's Easements of Enjoyment

Every Owner shall have a non-exclusive right and easement of enjoyment in and to the common areas, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to dedicate or transfer all or any parts of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association, provided, no such dedication or transfer shall be effective unless approved by a vote of 50% + 1 of the owners eligible to vote and the approval of such dedication or transfer has been properly recorded.
- (b) The right of the Association to suspend the voting rights and rights to common areas of an owner for any period during which any assessment, fine or other charge against such owner/owner's lot remains unpaid.

Section 2. Owner's Use of Lot

An owner's use of his or her lot shall be limited to residential purposes, but nothing herein shall be deemed to prevent an owner from leasing his/her dwelling to a single family for the purpose of a residence, subject to these covenants and restrictions. All owners leasing or renting their dwelling shall be required to incorporate the following provision in their lease or rental agreements, substantially in the following form:

THE LEASED PREMISES ARE A PART OF FAIRMONT SUBDIVISION.
ALL PERSONS OCCUPYING PROPERTY IN FAIRMONT SUBDIVISION
ARE REQUIRED TO OBSERVE THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF FAIRMONT HOMEOWNERS
ASSOCIATION, INC., AS WELL AS ALL RULES AND REGULATIONS

ADOPTED BY THE ASSOCIATION. COPIES OF THE DECLARATION AND ADOPTED RULES AND REGULATIONS ARE TO BE OBTAINED FROM THE LANDLORD. FAIRMONT HOMEOWNERS ASSOCIATION, INC. IS MADE A PARTY TO THIS LEASE FOR PURPOSES OF ENFORCEMENT.

In addition, any owner leasing a dwelling is required to provide the Association with a copy of the lease and the names and addresses of the landlord and the tenant(s) contained in the lease or rental agreement.

Section 3. Notice of Conveyance

At any time an owner conveys a lot, said owner and the transferee shall be jointly obligated to notify the Association of the transferee's name, mailing address and date of transfer. A statement will be provided by the Association to the person closing said transfer of the current status of Association dues and other financial obligations of the owner to the Association upon payment of the then-current administrative fee established by the Association.

Section 4. Others' Use

Any owner may share, in accordance with this Declaration, the By-Laws and any Rules promulgated by the Association, the owner's right or enjoyment to the Common Area and facilities to members of his/her family, his/her tenants, or visiting guests so long as same observe and abide by this Declaration, the By-Laws and the Rules of the Association.

Section 5. Damage by Owners, Including Builders

The owner, including his/her builders/contractors, shall be responsible for any expense incurred by the Association to repair or replace common area vegetation and topography, rights-of-way, swales, drainage facilities and utility lines when such repair or replacement is the result of the negligent or intentional acts, errors or omissions of an owner, his/her builders/contractors, family, tenants, guests, agents or invitees. This shall specifically include repairs or replacements resulting from the actions/ inactions of the owner's builders/contractors in constructing any improvements on an owner's lot. Any such expense, if not paid upon demand, shall be and constitute a special assessment to which the owner and his/her lot is subject to and payable in the same manner as such assessments are due and payable as provided in this Declaration.

Section 6. Motor Board Use Restriction.

No wind-propelled, electric or gas-operated boats or other vessels of any kind shall be allowed on any lakes or retention areas, or on any portion of the surface/stormwater management system, located in the subdivision, including battery-operated remote control vessels used for entertainment purposes.

Section 10. Maintenance of Insurance Policy

The Association shall be responsible for obtaining and maintaining a general liability insurance policy covering all of the subdivision improvements and common areas. This liability policy will cover all of the improvements that are the property of the Association and general liability regarding their use. In addition, the Association shall maintain an Officers and Directors policy for those owners of the Association who are members of the Board of Directors. Such policy shall be reviewed on an annual basis to assure that they meet current governmental rules and standards, and generally acceptable insurance practices. The insurance must be purchased from an insurance company that is certified to do business in the State of Florida and is in good standing with the Department of Insurance.

ARTICLE VI **COVENANT FOR ASSESSMENTS AND OTHER OBLIGATIONS**

Each owner, by acceptance of title to lots in the subdivision, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, (2) special assessments for capital improvements and emergencies as determined by the Association, such assessments to be established and collected as provided herein, and (3) any fines or other charges authorized to be imposed by law or this Declaration. The annual and special assessments, as well as fines or other charges authorized by law or this Declaration, together with interest at the highest rate allowed by law, costs and reasonable attorneys fees shall be a charge on the lot and shall be a continuing lien upon any lot against which such assessments, fines and/or other charges apply. Such assessments, fines and other charges, including interest at the highest rate allowed by law, costs and attorney's fees, shall also be the personal obligation of the owner of any such lot at the time any assessment becomes due, and any successor or assign to such lot shall be jointly and severally liable for same.

Section 1. Assessments

- (a) All lots shall be subject to a continuing lien for annual and special assessments as herein provided in order to fund the costs of fulfilling the purposes of the Association. In the event of a conveyance, the grantee is jointly and severally liable with the grantor for all assessments outstanding against the grantor and subject Lot, without prejudice to any right the grantee may have to recover from the grantor any amounts paid by the grantee. Each Owner is deemed to covenant and agree by acceptance of a deed to a Lot to pay all assessments and no Owner may waive or avoid responsibility for payment of any assessment by not using his Lot or the Common Areas or by disputing the purpose of the assessment for any other reason.
- (b) Both annual and special assessments must be fixed at a uniform rate per Lot subject to assessments and may be collected monthly, quarterly or annually as determined by the Board. As to any individual Lot or Lot owner who has not paid an assessment when due or is in violation of these Covenants and Restrictions, the amount of the

assessment outstanding shall be increased by interest, late charges, costs, fines, damages and attorneys fees, as referenced throughout this Declaration.

Section 2. Annual Assessments

The Association shall fix the amount and the due date of each annual assessment. The Association shall notify the Owner(s) of each Lot of the amount, the date on which the assessments are payable, and the place of payment. Initially, annual assessments shall be payable in one annual installment, payable when the Owner takes title and prorated from that date to the end of the fiscal year. The title company shall forward the proceeds of the prorated annual assessment to the Association.

Section 3. Special Assessments

The Association may levy a special assessment to pay in whole or in part for the cost of any shortfall in the annual budgeted operating revenues without concurrence of the Owners. The Association may also levy a special assessment for maintenance, repair or replacement of an existing capital improvement, or for the construction/acquisition of a new capital improvement or asset, without concurrence of the Owners unless the cost of such maintenance/repair/replacement/acquisition/construction is major. "Major", for purposes of this section, shall mean that the amount of the proposed special assessment per Owner, plus any other special assessments levied during that same fiscal year, exceeds 50% of the then current year's annual assessment. Major capital improvements shall require the special assessment to be approved by a majority of a minimum of 50% + 1 of the owners eligible to vote. Special assessments shall be payable at such time and place determined by the Association and stated in the assessment notice.

The Association may also levy special assessments without limitation or the concurrence of any Owner to pay for the cost, including attorney's fees at trial and for any appeal, of any action to enforce the Declaration or to obtain declaratory relief, with regard to specific lot(s). Assuming the Association prevails in any such enforcement and/or declaratory action, the cost of same, including all attorney's fees, shall constitute a special assessment and shall be levied against the non-prevailing Owner and/or the Lot in question. Such assessment may be collected in the manner provided herein or as provided by law.

Section 4. Maximum Annual Assessment

- (a) The annual assessment for 2012 shall be \$305.00 per Lot. Such annual assessment may be increased each year by up to ten (10%) percent above the maximum allowable assessment for the previous year without a vote of the owners. "Maximum allowable assessments" as referred to herein shall be calculated by assuming a cumulative ten (10%) percent increase per year from and after the year 2011.
- (b) From and after January 1, 2012, the maximum annual assessment may be increased

by more than said ten (10%) percent only by a majority vote of those needed for a quorum of 50% + 1 of owners eligible to vote. The vote shall be by certified written ballot mailed to each Owner 30 days after their receipt of written notification that a vote will be taken on the proposed increase in assessment.

- (c) Written Notice of any meeting called for the purpose of taking any action authorized under the above subparagraphs shall be sent to all owners not less than twenty (20) days nor more than thirty (30) days in advance of any meeting considering such increase, and notice of any such meeting shall be given by personal delivery, electronic transmission via email, or mailing. Mailing or emailing notice by the Association to the owners shall be deemed complete upon depositing such notice in the mail to the address or emailing to the email address provided by the owners to the Association for providing such notices. Fifty percent + 1 of all owners eligible to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting called.

ARTICLE VII **ENFORCEMENT PROVISIONS**

Section 1. Creation of Lien for Assessments; Fines and Other Charges

- (a) Assessments, fines and other charges, including any increases in same due to interest, late charges, costs, damages and attorneys fees, shall be a charge upon each Lot and a continuing lien thereon until paid, unless prohibited by law. Said charge shall also apply to those assessments outlined in Article V. The lien will become effective after recording a Claim of Lien in the Public Records of Brevard County, Florida, stating the Lot description, the name of the record owner(s) , the amount due, and the due date. The lien will remain in effect until all sums due to the Association have been fully paid and the Association is hereby authorized to take any and all actions provided in law or equity to collect such sums. Any payment received by the Association from that payer shall first be applied to any interested accrued, any outstanding penalties and costs, reasonable attorneys fees incurred in collection, and then to the outstanding assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.
- (b) All Lots shall be sold subject to the terms and provisions of the continuing lien described in this paragraph. 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 specific Lot have been paid. A properly executed

Certificate of the Association as to the status of assessments, liens and other charges on a Lot is binding upon the Association as of the date of its issuance.

Section 2. Effect of Non-Payment of Assessment: Remedies of the Association

Any assessment/installment, fine or other charges, including any increases in same due to interest, late charges, costs, fines and other charges, damages and attorneys fees, not paid within 30 days after the due date shall accrue an administrative late charge at the maximum amount allowed by law (in the absence of such rates, the late charge shall be \$75.00 or 5% of the amount due, whichever is greater), plus interest on any outstanding assessments, fines or other charges beginning 30 days from the due date at the highest rate allowed by law until paid. The Association may bring an action against the Owner personally for payment of any assessment, lien or other charges, and any increases in same due to interest, late charges, costs, damages and attorneys fees, and may enforce its lien for same by foreclosure or any other means available under the law. The Association may waive payment of late charges and interest on any assessment, but may not waive payment of the assessment. In any action to collect any assessments, the prevailing party shall be entitled to recover reasonable attorney's fees and costs, including any appeal.

Section 3. Violation and Enforcement of Restriction and Covenants

- (a) The Association and each owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or law. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the rights to do so thereafter. In any action for enforcement, declaratory relief to construe this Declaration, or similar proceeding, the prevailing party shall be entitled to reasonable attorney's fees including attorney's fees through appellate proceedings.
- (b) Upon learning of a violation, the Association shall issue the Owner a written notice either by certified return receipt mail or posting on the property requesting the Owner cure the violation and advising the owner that a fine will begin to accrue if the violation is not cured within 15 days of receipt of the notice and that the Owner's Lot may be subject to a lien for such fine together with any costs expended by the Association for notice, investigation, attorneys fees and costs, and any curative actions the Association may take, including but not limited to demolition and/or storage costs for any construction or items placed on a Lot in violation of this Declaration.
- (c) Should the violation not be cured within said 15 days of receipt of said written violation, a fine may be imposed after a hearing as provided by law or the Association's governing documents. The amount of the fine shall be as provided in Article IV of this Declaration.

- (d) The Association shall have the authority but is not obligated to cure any violation through whatever action it deems reasonable and the expenses thereof shall be chargeable to the Owner of the Lot or Lots on which or in connection with the violation has occurred. Said expense shall be payable forthwith and upon demand. Any funds expended by or on behalf of the Association shall become an assessment upon the Lot or Lots against which such action is taken, as well as a personal obligation of the owner(s) of such lot or lots, collection of which shall be the same as for unpaid assessments.
- (e) The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or equity, the provisions contained in the Declaration which relate to the maintenance, operation and repair of the surface water or storm water management system.

Section 4. Subordination of the Lien to Mortgages

The lien for assessments, fines and other charges provided for herein shall be subordinate to the lien of any recorded institutional first mortgage. The sale or transfer of any lot shall not affect any lien granted to the Association by this Declaration or law. Nothing contained herein shall require mortgagees to collect assessments.

ARTICLE VIII **GENERAL PROVISIONS**

Section 1. Severability and Interpretation

In the event a court of competent jurisdiction shall hold or determine that any part of this Amended and Restated Declaration is invalid or unenforceable, the remainder of this Declaration shall not be affected thereby and it will be presumed that the Association did not intend to enact such invalid or unenforceable provision. It shall further be assumed that the Association would have adopted and approved the remainder of this Declaration without said invalid and unenforceable provision thereby causing said remainder to remain in full force and effect. Should any conflict in interpretation arise between the provisions of this Declaration and of the Articles of Incorporation, the provisions of this Declaration shall prevail.

Section 2. Duration, Modification and Amendment

Except as the same may be changed, modified or amended as provided for hereafter, the covenants and restrictions of this Amended and Restated Declaration shall run with and bind all properties within the subdivision for a term of twenty (20) years from the date this Declaration is recorded, at which time they shall be automatically extended for two (2) successive periods of ten (10) years, unless modified or terminated by a duly recorded written instrument executed in

conformance with the requirements described below. Covenants and Restrictions which apply to the Conservation Tracts shall be perpetual.

Amendments to this Declaration may be proposed by the Board acting upon a vote of the majority of the Directors, or owners owning not less than one-third of the lots whether meeting as owners or by instrument in writing signed by them. Upon an Amendment(s) to this Declaration being proposed by the Board or owners, such proposed amendment or amendments shall be transmitted to the President of the Association or in the absence of the President, such other Officer of the Association, who shall thereupon call a special meeting of the members of the Association for a date not sooner than 20 days nor later than 60 days from receipt by him or her of the proposed amendment(s) in reasonable detailed form, which shall be mailed not less than 10 days nor more than 30 days before the date set for such special meeting. If mailed, such notice shall be deemed to have been given when deposited in the United States mail addressed to the Member at his Post Office address which appears on the records of the Association, the postage thereon prepaid. Any member may waive such notice by written waiver of notice, and, when such waiver of notice is filed in the records of the Association (whether before or after the holding of the meeting), it shall be deemed equivalent to giving of such notice to such member.

At any meeting where an amendment(s) is considered, it must be approved by an affirmative vote of at least 50% + 1 of all owners eligible to vote in order for such Amendment(s) to be transcribed and certified by the President and the Secretary of the Association as having been duly adopted. At any meeting held to consider any Amendment(s), the written vote of any owner shall be recognized if such owner is not in attendance at such meeting or represented there by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting. If approved, the original or an executed copy of such amendment(s) shall be certified and executed with the same formalities as a deed and shall be recorded in the Public Records of Brevard County, Florida within 20 days from the date on which same became effective, such amendment(s) to refer specifically to the recording data identifying the Declaration. Thereafter, a copy of said Amendment(s) shall be mailed or delivered to all members of the Association. The failure to receive a copy of any Amendment by any owner shall not be a condition precedent to the effectiveness of any amendment(s).

The foregoing notwithstanding, any amendments to the covenants and restrictions which alters any provisions relating to the surface water or storm water management system, beyond maintenance in its original condition, including the water management portion of the Common Areas, must have the prior approval of the St. Johns River Water Management District.

Section 3. Enforcement

- (a) If any Owner or Owners, or their tenants, guests, invitees, violate(s) or attempt(s) to violate any of the provisions contained in this Declaration or any of the Association's governing documents, it shall be lawful for any owner or the Association to bring action at law or in equity (including an

action for declaratory relief) against the owner or other such person or persons violating, or attempting to violate any covenant, restriction, rule or other provision of the Association's governing documents and to prevent such person(s) by injunction from doing so or continuing to do such acts. The person(s) bringing such action may recover damages from such violation, if applicable. The prevailing party in any such action shall be entitled to recover the costs and expenses of such action, including reasonable attorneys fees (including any appeals) incurred in any proceedings which result in the successful enforcement or restraint, by injunction or otherwise, of any covenant or restriction contained in this notice; or any proceeding brought for the collection of any assessment authorized by these restrictions, or any declaratory relief action.

- (b) The Association may suspend for a reasonable period of time, the rights of a member or a member's tenants, guests or invitees or both to use common areas and may levy reasonable fines not to exceed \$100.00 per violation, per day, against any such member, tenant, guest, invitee, as provided by law and in this Declaration.

Section 3. Mortgage or Conveyance of Common Areas

In addition to any approvals required of the St. Johns River Water Management District, any mortgage or conveyance of a Common Area, or any portion thereof, shall require the approval of at least 50% + 1 of the Owners eligible to vote.

Section 4. Future Development

The Association reserves to itself the sole and absolute right to determine whether additional property shall be added to the Subdivision. No consent of the Owners shall be required to add any lands, improvements or portions of additional property to the jurisdiction or ownership of the Association or to subject the same to provisions of this Declaration.

Section 5. Expandable Association

- (a) Upon the recording of this Declaration, the Association shall have as members all Owners in that portion of the Subdivision to which this Declaration has been made applicable, and said portion shall be subject to the jurisdiction of the said Association, the provisions of this Declaration of Covenants and Restrictions, and the terms of the Articles of Incorporation and By-Laws of the Association, as amended from time to time.
- (b) If the Association elects to submit additional phases of the subdivision to this Declaration and to the jurisdiction of the Association, the owners included therein

shall also be Members of the Association, and shall enjoy the use of and contribute toward the costs of maintenance, repair and operation of the Common Areas on an equal basis with all other Owners.

- (c) Any additions or portions of the subdivision which Association elects to submit to this Declaration shall be made by filing of record a supplementary declaration of covenants, and restrictions with respect to the additional property, which if applicable shall extend these covenants and restrictions to such property.
- (d) Such supplementary declaration may contain such complementary additions, deletions, changes to this Declaration as may be required to reflect the different character, if any, of the added properties. In no event, however, shall such supplementary declaration revoke, or otherwise modify the covenants and restrictions established by this Declaration upon the existing subject properties unless properly amended in accordance with the amendment procedures set forth herein.

Section 6. St. Johns River Water Management District Requirements and Stormwater Management

- (a) Purpose and Powers of Fairmont Homeowners Association, Inc.
 - (1) The Association shall operate, maintain and manage the surface water or stormwater management system in a manner consistent with the St. Johns Water Management District permit requirements and applicable District rules and shall assist in the enforcement of the Declarations of Covenants and Restrictions which relate to the surface water or stormwater management system.
 - (2) The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system, including retention areas, drainage structures and drainage easements.
- (b) Dissolution: In the event of termination, dissolution or final liquidation of the Association the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F. A. C., as same may be amended from time to time, and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.
- (c) Definitions: “*Surface Water or Stormwater Management System*” means a system which is designed and constructed or implemented to control

discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity or quality of discharges.

- (d) Duties of Fairmont Homeowners Association, Inc.: The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allows the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or if modified as approved by the St. Johns River Water Management District.
- (e) Easement for Access and Drainage: The Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is part of the surface water or stormwater management system, at reasonable time and in a reasonable manner to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales without prior written approval of the St. Johns Water Management District.
- (f) Ownership for Access and Drainage: The Association shall own Tracts “A, B, C, D, & G” which includes all areas of the surface water or stormwater management system for access to operate, maintain or repair the system.
- (g) Amendment: Any amendment to the Declaration which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have prior approval of the St. Johns Water Management District.
- (h) Enforcement: The St. Johns Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the covenants and restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

Section 7. Power and Authority of West Melbourne

- (a) Definition: For the Purposes of this Article, the definitions in the “DEFINITIONS” section of the declaration shall apply. In addition, the term “City” shall mean the municipal corporation known as the City of West Melbourne, Brevard County, Florida.

- (b) Power of the City to Provide Maintenance: The City shall have the power and authority, but not the obligation, to provide maintenance and repairs to the drainage facilities and other Common Areas as necessary to provide to provide for the health, safety and welfare of the Owners and Lots. The power of the City in this regard shall be exercised in the complete and sole discretion of the City Council. As a prerequisite to the exercise of such power and authority, the governing body of the City shall adopt a resolution finding that the Association has failed to maintain or repair a common facility as identified in the resolution to those standards or specifications set forth in the applicable ordinances or construction codes which are generally applicable to similar public facilities.

If the City exercises its power to provide maintenance or repairs in a given instance, nothing herein shall prevent the Association from later resuming viable control of its maintenance responsibilities.

Nothing in this Article shall be deemed to require the City to exercise the power provided herein if the City Council, in its discretion, elects not to provide maintenance and repair work which is the subject of this Section. The exercise by the City of any power described in this Section shall not obligate the City to exercise any similar power in any future circumstance.

The discretionary powers of the City set forth in this Section shall remain available notwithstanding any assignment by the Association of its duties set forth in this Declaration. No such assignment shall affect the City’s ability to exercise any part of its discretionary powers provided for herein.

- (c) Right of Assessment to Pay Cost of Maintenance or repair of Common Area: In the event the City determines, as provided in the preceding subsection, that the City will provide maintenance or repair of any common areas of the Association, the City shall have the power under this Declaration to assess all costs thereof (including, but not limited to inspection, engineering, advertising, legal, construction and administration costs) to the Owners.

Any such assessment may be accomplished by resolution using the methods and procedures set forth for municipal special assessments in Chapter 170,

Florida Statutes, or any other method provided by law; provided, however, that the assessments described herein may, at the discretion of the City's governing body, be made for all purposes generally described in this Section, including those purposes not described in Chapter 170. The assessments described in this Section shall not be construed to be a "Special Assessment" under said Chapter 170, and the reference herein to Chapter 170 is solely for the purpose of defining the methods and procedures to be used by the City for the assessments described herein. Additionally, the "benefit" analysis set forth in Chapter 170 shall be inapplicable, and any assessment by the City pursuant to this Section shall be sufficient to pay all costs of repair or improvements for which the assessment is made.

At a minimum, the resolution establishing the assessment provided for herein shall set forth the total amount of the assessment and shall equally divide the said total assessment among all lots in the subdivision.

No assessment made pursuant to this Section shall become final unless and until all Owners subject to the proposed assessment have been sent notice in writing of the proposed assessment, with such notice being mailed to the Owner's addresses shown in the most recent tax roll, and the City concluding a public hearing at which the Owners had the opportunity to appear and be heard with respect to the assessment. Failure of an Owner to receive said notice shall not be deemed sufficient reason to invalidate any assessment hereunder.

- (d) Declaration of Assessment Interest on Installation Payments: An assessment made by the City as authorized by this Article may be payable in a single installment or in annual installments over a period of not more than five (5) years, in the sole discretion of the City. If the City elects to collect any assessments in installments, the principal sum shall be payable in equal payments, and interest at the rate of twelve percent (12%) per annum shall be payable on the unpaid balance, beginning ninety (90) days after adoption of the resolution confirming the assessment. In no event shall any initial payment of any assessment be due sooner than ninety (90) days after the adoption of the final resolution confirming assessment.
- (e) Lien for Payment of Assessment; Foreclosure: When the final assessment roll for any assessment provided for in this Article is adopted by the City, and a certified copy thereof is recorded in the Public records of Brevard County, the City shall have a lien on each Lot, subject to the assessment in the full amount of the principal assessment and all the interest thereon. Such lien shall have a priority relating back to the date of the recording of the assessment roll.

The City shall have the right to foreclose such lien by bringing an action of foreclosure in the appropriate court in Brevard County. No such action shall be brought unless the payment of the assessment, or any installment thereof, is more than ninety (90) days past due. The City shall be entitled to an award of reasonable attorney's fees and court costs of any such action.

- (f) Authority for Code Enforcement: The City shall have the full right and power to enforce the provisions of its City Code within the Subdivision, and all Owners are subject to enforcement of the City Code by the City's Code Enforcement Board. This Section shall be deemed to be a grant by the Association and the Owners of all Lots of full authority for access to all of the Subdivision for such purposes.
- (g) City's Consent to Modify: This Section 7 shall not be amended, modified, revised or changed in any way without the prior written consent of the City of west Melbourne.

IN WITNESS WHEREOF, the undersigned, being the President and Secretary of the Association, certify the amendments contained in this Amended and Restated Declaration were approved by the requisite number of owners at a duly noticed meeting of the owners held January 11, 2012, and have caused these presents to be executed on behalf of and in the name of the Association for purposes of recording, this 19 day of January, 2012

(Corporate Seal)

FAIRMONT HOMEOWNERS ASSOCIATION,
INC.

ATTEST: [Signature]
Secretary

[Signature]
ROSEANN MCLAUGHLIN, as PRESIDENT

Signed, sealed and delivered in
the presence of:

[Signature]
Witness: Beverly Ann Corsa Larsen

[Signature]
Witness: Kimberly R. Weaver

**STATE OF FLORIDA
COUNTY OF BREVARD**

I HEREBY CERTIFY that on this day, before me an officer duly authorized in the state and in the county aforesaid to take acknowledgments, personally appeared RoseAnn McLaughlin, as President of Fairmont Homeowners Association, Inc., and Gleyner Garden, as Secretary of Fairmont Homeowners Association, Inc., to me known to be the person described in and who executed the foregoing instrument, and each acknowledged before me that he/she executed the same voluntarily under the authority vested in them by the Association and that the seal affixed thereto is the true corporate seal of the Association.

WITNESS my hand and official seal this 18th of January, 2012.



NOTARY PUBLIC, STATE OF FLORIDA



KATHLEEN DINTERMAN
MY COMMISSION # DD 850772
EXPIRES: May 12, 2013
Bonded Thru Budget Notary Services