

Arbor Trace Homeowners Association, Inc.  
Operating Manual

12.0 Master Declaration of Covenants

MASTER DECLARATION OF COVENANTS, CONDITIONS,  
RESERVATIONS AND RESTRICTION  
OF  
ARBOR TRACE SUBDIVISION

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

THIS DECLARATION, made on the date hereinafter set forth by Arbor Trace Development, Inc., its successors or assigns, herein after referred to as “DEVELOPER”,

WITNESSETH THAT:

WHEREAS, Developer holds the fee simple title to the real property described in Article 11 of this Declaration and desires that there be created thereon a community with open spaces, and other common facilities for the benefit of said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and to this end, desires to subject the real property described in Article 11, together with such additions as may hereafter be made thereto (as provided in Article II), to the covenants, restrictions, reservations, easements, charges and liens, hereafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservations of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities including enforcing the covenants and restrictions and collecting and disbursing the charges and fees of property owners, and

WHEREAS, DEVELOPER has incorporated under the laws of the State of Florida, a non-profit corporation, known as ARBOR TRACE HOMEOWNERS' ASSOCIATION OF INDIAN RIVER COUNTY, INC., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article 11, and such additions thereto as may hereafter be made pursuant to article 11 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, reservations, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I  
DEFINITIONS

SECTION 1. Glossary. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

A) “Association” shall mean and refer to the ARBOR TRACE HOMEOWNERS' ASSOCIATION OF INDIAN RIVER COUNTY, INC.

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- B) “The Properties” shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article 11 hereof.
- C) “Common Properties” shall mean and refer to those areas of land specifically designated on any recorded subdivision plat of the properties as common properties, and any non-governmental roads, and the entryway to the subdivision shown on the plat.
- D) “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map or plat of the properties with the exception of common properties as heretofore defined.
- E) “Living Unit” shall mean and refer to any portion of a building situated upon the properties designed and intended for use and occupancy as a residence by a single family.
- F) “Owner” shall mean and refer to the record Owners, whether one or more persons or entities, of the fee simple title to a lot in the subdivision, but not withstanding any applicable provision of any mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or in lieu of foreclosure.
- G) ‘Member’ shall mean and refer to all Owners who are members of the Association as provided in Article 111, Section 1 hereof.
- H) “Developer” shall mean and refer to Arbor Trace Development, Inc., or:
  - i) Any person or entity who succeeds to the title of Developer to all or a portion of the properties by sale or assignment of all of the interest of the Developer in the properties, if the instrument of sale or assignment expressly so provides, or
  - ii) Any person or entity to which the power to enforce the provisions hereof has been assigned, as permitted by this Declaration. Any such person or entity shall be entitled to exercise all rights and powers conferred upon Developer by the Declaration, Articles of Incorporation or By-Laws of the Association.
- I) “Declaration” shall mean and refer to the Master Declaration of Covenants, Conditions, Reservations and Restrictions applicable to the properties recorded in the office of the Clerk of the Circuit Court of Indian River County, Florida.
- J) “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 rouse water to prevent or reduce flooding, over drainage, environmental degradations, and water pollution or otherwise affect the quantity and quality of discharges.

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## ARTICLE 11

### PROPERTY SUBJECT TO THIS DECLARATION ADDITIONS THERETO

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Indian River County, Florida, and is more particularly described as follows: Arbor Trace Phase 1, PD as recorded in Plat Book 1G, Page1-1E, Public Records of Indian River County Florida.

The developer may submit additional lands to this Declaration by recording a written instrument in the Public Records of Indian River County, Florida submitting such additional lands to the terms and conditions of this Declaration.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any lot which is subject to covenants of record assessment by the Association shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. As long as the Developer is the owner of a lot, the Association shall have two classes of voting membership:

Class A: Class A members shall be all those Owners as defined in Section I with the exception of the Developer. Class A members shall be entitled to one vote for each lot which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any lot, all such persons shall be members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot which is owned by more than one person.

Class B. The Class B member shall be the Developer. The Class B member shall be entitled to 300 votes. When the Developer has sold in the aggregate ninety percent (90%) of the Lots in all phases of the Arbor Trace Development that will eventually be encumbered by this Master Declaration of Covenants and Restrictions, the Class B membership shall cease to exist.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any lot or living unit by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association:

- (1) annual assessments or maintenance charges;
- (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon

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the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person, persons or legal entity who was the Owner of such property at the time when the assessment become due and payable.

The Developer shall not be obligated to pay any assessments or maintenance charges until it changes its status from a Class B member to a Class A member as outlined in Article III above.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of the Association and for promoting the health, safety, and welfare of the residents of the properties including the maintenance and improvement of the common properties entry way, non-governmental roads, streets and right of way, the payment of taxes thereof and such other purposes as may be decided by the Association. Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems, including but not limited to, work within retention areas, drainage structures and drainage easements.

Section 3. Basis and Maximum of Annual Assessments. The maximum annual assessment for each lot in the properties shall be payable quarterly, in advance.

- A) The maximum annual assessment for each calendar year shall be established by the Board of Directors and may be increased without approval by the membership by an amount not be exceed the (10%) percent of the maximum annual assessment of the previous year.
- B) The maximum annual assessment may be increased without limit by the affirmative vote of two-thirds (2/3) of those members who are entitled to vote at a duly called meeting of the members. Notice shall be given to all members of the proposed increase not less than (10) ten days prior to the meeting.
- C) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum. When the Board of Directors fixes the annual assessments for each calendar year, the Board shall, at the same time and in connection therewith, prepare, or cause to be prepared, an annual budget showing the services furnished by the Association and the costs thereof per unit.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, 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 or reconstruction, unexpected repair or replacement or a described capital improvement upon the common properties, including the necessary fixture and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each of these members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein as specified, the Association may change that maximum and basis of the assessments fixed by Section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of those

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members who are entitled to vote and are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Quorum of any Action Authorized Under Section 4 and Section 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of members, or of proxies, entitled to cast fifty (50%) percent of all the votes of those members who are entitled to vote shall constitute a quorum.

Section 7. Date of Commencement of Annual, Quarterly and Special Assessments. The annual assessments provided for shall commence as to any lot on the first day of the month following conveyance by the Developer. One-fourth (1/4) of the annual assessment shall be payable to the Association on the first day of each quarter. Quarterly periods of each year shall be on January 1st, April 1st, July 1st, October 1st. The first annual assessments shall be made for the balance of the calendar year, and the first quarterly payment shall become due and payable on the first day of the next quarter.

Annual and quarterly assessments shall be prorated between the Owners and the Association based upon the date of the deed of conveyance to the Owner expects that, prorations shall be made as of the first day of the month following conveyance from the Developer.

The due date of any special assessments under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as herewith after provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the Owners, his heirs, assignees, personal representatives and assigns. (The personal obligation of the then Owner to pay such assessment shall pass to the Owners' successors in title.)

If the quarterly portion of the assessment is not paid within thirty (30) days after the date when due, the full annual assessment shall become at once due and payable without notice, and the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney's fees to be fixed by the court together with the costs of the action including attorney's fees and costs on appeal.

Section 9. Subordination of the Lien Mortgages. The lien of the assessment provided for herein shall be subordinate to the line of any mortgage or mortgages now or hereafter placed on the properties subject to assessment; provided, however, that such subordinate shall apply only to the assessments which have been due and payable prior to a sale or transfer of such property pursuant to the decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

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Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

- a) all properties to the extent of any easement or other interest herein dedicated and accepted by the local public authority and devoted to public use;
- b) all common properties as defined in Article 1, Section 1, hereof.

Section 11. Working Capital. A working capital one time contribution of \$200.00 shall be paid by each purchaser of a lot and/or home within the community. Note: An amendment approved by the membership on September 30, 2006 increased the contribution to \$400.

### ARTICLE V

#### EXTERIOR MAINTENANCE ASSESSMENT

Section 1. Exterior Maintenance. In addition to maintenance upon the common properties, the Association may provide exterior maintenance upon any lot requiring same, when necessary in the opinion of the Board of Directors of the Association to preserve the beauty, quality of the neighborhood, maintenance including paint, repair, roof repair and replacement gutters, down spouts, exterior building surfaces and yard cleanup and/or maintenance.

Before the Association provides any exterior maintenance it shall in writing give notice to the Owner of a specific lot the reasons why the Association intends to provide maintenance and the Owner shall have fifteen (15) days to provide the required maintenance at Owners cost. If the Owner does not provide the necessary exterior maintenance, then the terms of this Article shall apply.

Section 2. Assessments of Costs. The cost of such maintenance shall be assessed against lot or lots upon which such maintenance is performed or, in the opinion of the Board of Directors of the Association, benefiting from same. The assessment shall be apportioned among the lots involved in the manner determined to be appropriate by the Board of Directors of the Association. If no allocation is made the assessment shall be uniformly assessed against all of the lots in the affected area. The exterior maintenance assessments shall be considered part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the lot and the personal obligation of the Owner and shall become due and payable in all respects, together with interest and fees for the cost of collection, and provided for in the other assessments of the Association, and shall be subordinate to mortgage liens to the extent provided by Section 9 of Article IV herein above.

Section 3. Access Reasonable Hours. For the purpose of performing the maintenance authorized by this or any other Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owners, to enter upon any lot or the exterior or any improvements thereon at reasonable times and such access shall not be deemed trespass.

Section 4. Duties of Association. 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(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater 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.

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### ARTICLE VI

#### USE OF COMMON PROPERTIES

Section 1. Members' Easement of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common properties shown on the plat and any non-governmental roads, and the entry way to the subdivision, and such easement of enjoyment shall be appurtenant to shall pass with the title to every lot or living unit.

Section 2. Title of Common Properties. The Developer may retain the legal title to the common properties until such time as the improvements thereon have been completed and until such times as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey the common properties of development to the Association, free and clear of all liens and encumbrances, at such time as Class A members are in full control of the Association or at an earlier date as determined by Developer.

Section 3. Extent of Members' Easements. The rights and easement of enjoyment created hereby shall be subject to the following:

- A) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- B) The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed fifteen (15) days for any infraction of its published rules and regulations;
- C) The right of the Association to dedicate or transfer all or any of the common properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective to and until approved by two-third's (2/3) majority of all of the members of the Association entitled to vote. Notice of any such meeting shall be given to every member not less than ninety (90) days in advance of the meeting.

Section 4. 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 a part of the surface water or stormwater management system, at a 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 River 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, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

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### ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Necessity of Architectural Review and Approval. No improvements or structure of any kind including without limitation any building, fence, well, swimming pool, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the Architectural Criteria of the Association, attached hereto as Exhibit "A" and made a part hereof, as the same may from time to time be adopted and amended.

Section 2. Architectural Review Committee. The architectural control functions of the Association shall be administered and performed by the Architectural Review Committee ('ARC'), which shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association.

Section 3. Powers and Duties of the ARC. The ARC shall have the powers to recommend from time to time to the Board of Directors of the Association modifications and/or amendments to the Architectural Guidelines. Any modifications or amendments to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and voting.

Section 4. Developer Conveyance to Association. Developer shall have the right to grant and convey all its rights to enforce these covenants and restrictions to the Association at such time as in the sole judgment of Developer such Association is ready to undertake the obligation of enforcing them. Upon such conveyance and grant, the Association shall have and succeed to all rights and duties with the same powers as if the Association had been Developer.

Section 5. Contractors and Subcontractors Rules and Regulations. All contractors, subcontractors, and material men shall follow the Contractors and Subcontractors Rules and Regulations, a copy of which is attached hereto as Exhibit 'A', as the same may from time to time be amended.

### ARTICLE VIII RESTRICTIONS

Section 1. Residential Use. The property subject to these covenants and restrictions may be used for residential living units and for no other purpose except that Developer may use one or more lots for sales offices or model homes, and further:

No business or commercial building may be erected on any lot and no business including garage sales, may be conducted on any part thereof.

No building or other improvements shall be erected, altered, or improved upon any lot without the prior ARC approval thereof as elsewhere herein provided. When the construction of any building is once begun, work thereon must be completed within one (1) year.

No outbuilding shall be used for rental purposes separately from the principal structure on the lot.

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Section 2. Pets, No animals, livestock, birds, or fowl shall be kept, bred, raised or maintained on any part of the property except dogs, cats and pet birds which may be owned in reasonable numbers as pets of the occupants, but not for any commercial use or purpose. All animals must be kept on a leash when they are outside the owner's premises and must not become a nuisance to other residents. No animal enclosure shall be erected without the approval of the ARC. All pets must be kept under control at all times and must not become a nuisance by barking or other acts. Parrots and mynah birds will be permitted only if kept in air-conditioned homes with the windows closed. **SEE AMENDMENT PRIOR TO "EHIBIT A" OF THIS DOCUMENT**

Section 3. Clothes Drying Area. There shall be no clotheslines or drying yards on any part of the property.

Section 4. Trucks and Other Vehicles. Only four-wheel passenger vehicles shall be parked upon any lot, except service or construction companies using trucks in the normal course of their business, nor shall any maintenance or repair be performed upon any motor vehicle upon any lot. All other types of vehicles must be kept inside an enclosed garage, i.e., pickup trucks 1 ton or larger of commercial usage, motor homes, RV.'s, and trailers. No heavy equipment, except during construction, shall be kept, stored, or parked on the owners property.

Section 5. Boats. No boats shall be allowed on the property except within enclosed garages.

Section 6. Signs. No sign of any kind shall be displayed to the public view of any lot except for a sign displaying the word "FOR SALE". This sign shall not exceed four (4) square feet, and may be displayed during the time the homeowner or his designated representative is in attendance. The sign shall be subject to the approval of the ARC; provided however, that this Section shall not apply to the Developer or its designees.

Section 7. Condition of Lots Prior to Construction. Vacant lots must be mowed and/or property maintained.

Section 8. Condition of Lots. Upon construction of a dwelling, all owners shall maintain lawns and grounds in a manner in keeping with good husbandry and the general character of the other lots in the subdivision.

- A) All lots must be mowed and properly maintained to avoid unsightly appearance.
- B) No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon at any time.
- C) In the event that any owner shall fail or refuse to keep his lot in accordance with this restriction, then after fifteen days written notice, the Association may enter upon said lot and remove the same at the expense of the owners, and such entry shall not be deemed a trespass.
- D) No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of the property and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon, including vacant lots. Each vacant lot must be mowed or underbrush, regularly, and at no time may growth thereon exclusive of trees, exceed twenty-four (24) inches in height. Should there be a failure to comply with this requirement, then Developer or Association may clean and mow any lot and the cost of the work shall be paid by the lot owner and payment secured by a lien on the owner's lot enforceable in the manner provided by law for the enforcement of mechanics' liens.

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Section 9. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 10. Oil. No oil drilling, oil development, operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, gas or oil tanks, mineral excavations or shafts be permitted upon or any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted above or below the surface of a lot except as such underground tanks required for heating, cooking, or air conditioning.

Section I 1. Alterations, Additions, Etc. All alterations, additions, etc. must be presented to ARC for approval prior to work's beginning on said improvements.

### ARTICLE IX

#### ENFORCEMENT

If the Owners of property covered hereby or any other person or persons or any of them or any of their heirs, personal representatives, successors or assigns shall violate or attempt to violate any of the covenants or restrictions contained herein, it shall be lawful for any other person or persons owning any real property situated herein, the Association or the Developer to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either to prevent him or them by injunction from doing or continuing to do such acts and/or to recover damages and other dues for such violations.

It is expressly understood and agreed that all costs, including reasonable attorney's fees including appeal, incurred by any moving part in any legal proceeding which results in the successful enforcement and/or restraint by injunction or otherwise of any covenants or restrictions contained in this Declaration shall be borne in full by the defendants in such proceedings.

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 the Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

### HEADINGS

It is expressly understood that articles, titles or headings used herein are for convenience purposes only and may not be fully indicative of the meaning or intent of the full article. The entire article should be read as that is what is intended to be binding on the property subject hereto, the Developer, the Association and members thereof.

### ARTICLE XI

#### EFFECTIVE DATE

This Declaration shall become effective upon its being recorded, with appropriate certificates, on the public records in Indian River County, Florida.

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### ARTICLE XII GENERAL PROVISIONS

Section 1. Duration and Remedies for Violations. The covenants and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the Developer, the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the lots has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

Violation or breach of any condition, covenant or restriction herein contained shall give the Developer and/or Association and/or Owner(s) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance With the terms of said conditions, covenants and restrictions and to prevent the violation or breach of any of them and the expense of such litigation shall be borne by the then Owner of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants and restrictions. Expenses of litigation shall include reasonable attorney's fees incurred by the Developer and/or the Association in seeking such enforcement.

Section 2. Speed Limit. The speed limit in Arbor Trace is 15 M.P.H. All traffic directorial signs are to be followed. Association has been directed to void the construction pass of violators.

Section 3. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been property sent when mailed, postage paid, to the last known address of the person who appears as a member or Owner on the records of the Association at the time of such mailing.

Section 4. Amendment. This Declaration may be amended at any time from time to time by a vote of not less than two-thirds (2/3) percent of those voting (Class A and Class B), either in person or by proxy, after no less than thirty (30) days advance notice and written submission of the proposed amendments. Amendments, which may materially and significantly impede the Developers ability to develop the Arbor Trace Subdivision, or its ability to sell improved or unimproved lots shall be submitted to the Developer for prior consent, which it shall not unreasonably withhold. However, any amendments, which would modify or terminate any right or reservations granted to the Developer in this Declaration, must first be given written approval by the Developer.

Any amendment to the Covenants and Restrictions which alter the surface water or stormwater management system, beyond maintenance in its original condition, including the water management Portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

Any amendment to the Covenants and Restrictions which would affect the ability of the Association to make assessments for maintenance of common areas, which assessments would be liens on the property, must be approved by the Association.

Section 5. Usage. Whenever used, the singular shall include the plural and the plural the singular and the use of any gender shall include all genders.

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## ARTICLE XIII

### EASEMENTS

In additions to those matters set forth herein, easements for installation and maintenance of utilities and drainage facilities are reserved as shown in the plats, or as heretofore granted by the said Developer. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of the water through drainage channels in the easements or which are or may be prohibited by the public authority to whom said easements has been given. The easements 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 is reasonable.

## ARTICLE XIV

### DEFAULT

The Developer or other holder of any institutional first mortgage acquiring title to a lot by foreclosure of its mortgage or by acceptance of a voluntary conveyance in lien thereof or a purchaser at a judicial sale, resulting from the foreclosure of said first mortgage and their successors and assigns shall not be liable for prior assessments or liens pertaining to such lots or chargeable for the former lot owner which become due prior to such acquisition of title. Such unpaid liens and assessments shall be collectible from all of the lot owners on a pro-rata basis if the Association deems same necessary.

Any person who acquires an interest in a lot except through foreclosure of an “institutional first mortgage” or “mortgage held by the Developer” shall be personally liable and jointly and severally liable with the grantor for all of the unpaid liens or assessments up to the time of the transfer of ownership.

For the purpose if this instrument, an institutional first mortgage shall be defined as a first mortgage originally executed and delivered to a bank, savings and loan association or insurance company authorized to transact business in the State of Florida or the Developer.

## ARTICLE XV

### SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM

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(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management district. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface or stormwater management system shall be permitted, or if modified as approved by the St. Johns River Water Management District.

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ARTICLE XVI

LAWS GOVERNING

It is expressly understood that the laws of the State of Florida shall govern the interpretation and enforcement of this Declaration and the provisions herein contained.

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 stormwater management system.

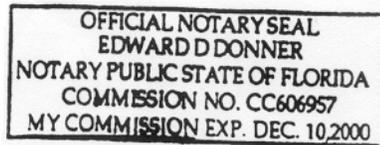
IN WITNESS WHEREOF, the said Developer has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed by its proper offices thereunto duly authorized, this 19<sup>th</sup> day of June, 2000.

Signatures of Developer and Witnesses on file in Indian River County

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

I HEREBY CERTIFY that on this day, before me, an office duly authorized in the state and county aforesaid to take acknowledgments, personally appeared Charles R. Mechling, personally known to me and known to me to be the President of Arbor Trace Development and that they acknowledged executing the same freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true corporate seal of said corporation

WITNESS my hand and official seal in the county and state last aforesaid this 19<sup>th</sup> day of June 2000.



Notary Public

# Arbor Trace Homeowners Association, Inc. Operating Manual

## FIRST AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS, RESERVATION AND RESTRICTIONS OF ARBOR TRACE PHASE I, PD STATE OF FLORIDA, COUNTY OF INDIAN RIVER

This First Amendment to the Master Declaration of Covenant's, Conditions, Reservations and Restrictions of Arbor Trace, made on the date hereinafter set forth by the Arbor Trace Homeowners' Association of Indian River County, Inc., hereinafter referred to as the "ASSOCIATION".

### WITNESSETH

WHEREAS, Arbor Trace Development, Inc. has caused to be recorded the Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Phase 1, PD, in Official Records Book 1341 at page 1608 of the Public Records of Indian River County, Florida ("Declaration"); and

WHEREAS, the property that was initially subject to the Declaration was Arbor Trace, Phase 1, according to the Plat thereof in accordance in Plat Book 16 at Page 1 of the Public Records of Indian River County, Florida; and

WHEREAS, Article XII of the Declaration provides that the Association may amend the Declaration by recording a written instrument in the Public Records of Indian River County, Florida; and

WHEREAS, the Association wishes to amend the Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Phase 1,

NOW therefore the Association hereby amends the Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Phase 1, PD, in Official Records Book 1341 at page 1608 of the Public Records of Indian River County, Florida as follows:

1. A new Section 10 is added to Article VIII to read as follows:
10. The landscape buffer and berm constructed along the exterior property lines of Arbor Trace (Lots 39 thru 53, 58, 59, 60, 64, 65, 69 & 70) were installed as

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required by the Indian River County Board of County Commissioners. They enhance the appearance of the community and benefit all property owners. No individual can alter the buffer in such a manner that would result in a reduction to either the height of the berm or planting density of the buffer without written approval of the Indian River County Planning Department and the Arbor Trace Homeowners' Association of Indian River County, Inc.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its name by its proper officer thereunto duly authorized, this 14th day of June, 2001.

Signature of President and witnesses on file in Indian River County, Florida

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

The person appearing before me, the undersigned authority, Charles Mechling, is President of the Arbor Trace Homeowners' Association of Indian River County, Inc., is personally known to me or who produced \_\_\_\_\_ for identification this 14<sup>th</sup> day of June 2001.

Fredrickson

Amy Schuller-  
Notary Public

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**AMENDMENT  
TO  
MASTER DECLARATION OF COVENANTS, CONDITIONS,  
RESERVATIONS AND RESTRICTIONS OF  
ARBOR TRACE SUBDIVISION**

The following is a proposed amendment to the above referenced Master Declaration of Covenants, Conditions, Reservations and Restrictions. Deletions are struck through with hyphens and additions are underlined.

**Article IV Section 8** shall be amended to read as follows:

Section 8. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such late fees thereon and cost of collection thereof as herewith after provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the Owners, his heirs, assignees, personal representatives and assigns. (The personal obligation of the then Owner to pay such assessment shall pass to the Owner's successors in title.)

If the quarterly portion of the assessment is not paid within thirty (30) days after the date when due, the full annual assessment shall become at once due and payable without notice, and the assessment shall bear a late fee in the amount of twenty-five dollars (\$25) each quarter thereafter. The Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include late fees on the assessments as above provided and reasonable attorney's fees to be fixed by the court together with the costs of the action including attorney's fees and costs on appeal.

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**CERTIFICATE OF AMENDMENT  
TO THE  
MASTER DECLARATION  
OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS  
OF  
ARBOR TRACE SUBDIVISION**

The Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Subdivision has been recorded in the public records of Indian River County, Florida at Official Records Book 1341, Page 1608 et. Seq. and amended at Official Records Book 1412, Page 412, et.seq., OR Book 2088, Page 2497, et. seq., OR Book 2298, Page 878, et. seq. and OR Book 2342, Page 2176, et.seq. The same Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Subdivision is hereby amended as approved by the Membership by vote sufficient for approval at the Members' Meeting held on April 18, 2011.

1. Article VIII, Section 2 is amended to read as follows:

**ARTICLE VIII  
RESTRICTIONS**

Section 2. Pets. No animals, livestock, birds, or fowl shall be kept, bred, raised or maintained on any part of the property except dogs, cats and pet birds which may be owned in reasonable numbers as pets of the occupants, but not for any commercial use or purpose. All animals must be kept on a leash when they are outside the owner's premises and must not become a nuisance to other residents. No animal enclosure shall be erected without the approval of the ARC. All pets must be kept under control at all times and must not become a nuisance by barking or other acts. Parrots and mynah birds will be permitted only if kept in air-conditioned homes with the windows closed. Notwithstanding the foregoing, dangerous pets or pets of a mean or vicious temperament shall be prohibited on the Properties. The determination of a dangerous pet or pet of mean or vicious temperament shall be in the sole discretion of the Board of Directors.

(The balance of Article VIII remains unchanged)

2. The foregoing amendment to the Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Subdivision was adopted by the membership by two-thirds of the voting members, which vote was sufficient for approval at the Members' Meeting on April 18, 2011.
3. The adoption of this amendment appears upon the minutes of said meeting and is unrevoked.

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4. All provisions of the Master Declaration of Covenants, Conditions, Reservations and Restrictions of Arbor Trace Subdivision are herein confirmed and shall remain in full force and effect, except as specifically amended herein.

IN WITNESS WHEREOF, the undersigned has caused these presents to be signed in its name by its President, its Secretary and its corporate seal affixed the 28<sup>th</sup> day of April 2011.

WITNESS AS TO PRESIDENT:

ARBOR TRACE HOMEOWNER'S  
ASSOCIATION OF INDIAN RIVER  
COUNTY INC.

Byron Curcio

By: S.S. Golladay, President

WITNESS AS TO SECRETARY:

ARBOR TRACE HOMEOWNER'S  
ASSOCIATION OF INDIAN RIVER  
COUNTY INC.

Byron Curcio

By: Malcolm Reding, Secretary

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Revised 4/14/00

Exhibit 'A'

ARCHITECTURAL GUIDELINES  
ARBOR TRACE SUBDIVISION

BUILDING POLICIES AND GUIDELINES

- A) Building Setbacks
  - Front: 20 feet
  - Rear: 25 feet
  - Side: 10 feet
- B) Easements: No permanent structures to be built within any easement.
- C) Minimum square foot air-conditioned space: 1,800 S/F.

ARCHITECTURAL STANDARDS

- A) Materials, Colors, and Finishes
  - 1) Exterior wall finishes
    - Recommended:
      - Stone
      - Stucco
      - Brick
    - Not Allowed:
      - Vinyl Siding
      - Exterior Plywood Siding
      - Asphalt Siding
      - Painted Lap Siding
      - Metal Siding
  - 2) Exterior Colors shall be approved by the Architectural Review Board.
- B) Roofs and Roofing Material
  - 1) Minimum roof slope is 6:12
    - Recommended Material:
      - Cement Tile
      - Architectural (Dimensional) Shingle
      - Metal Seam
- C) Doors, Windows
  - 1) Front: Single with side panels, single with glass or double doors required.
  - 2) Garage, minimum two car.
  - 3) Louver windows are not permitted.
- D) Driveways

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- 1) Minimum width 12 feet (excluding motor court area) with 3- foot minimum setback from side property lines and 10-foot radius where drive meets the curb.  
Recommended Materials:  
Concrete  
Concrete with Brick Bands  
Stamped Concrete  
Tabby Concrete  
Locking Brick Pavers  
Not Allowed:  
Asphalt  
Gravel, loose stone
- E) Garages - All garages must accommodate at least two cars.
- F) All exterior elevations to be approved by the Architectural Review Board.

**ADDITIONAL ITEMS:**

- A) Location of Solar Heaters must be approved by the Architectural Review Board.
- B) Screen Enclosures are permitted.
- C) Fences on lakes are permitted between the rear of the house and the rear set back line. They must be a 4' high chain link green vinyl clad with a minimum 2' high shrubbery screen. Color of fence must be approved by ARC as well as plant material. Fences on non lake lots are permitted between the rear of the house and the rear property line provided they are no more than six (6) feet high.  
Fence style and material must be approved by the ARC.
- D) Mailboxes must be mounted on a white 4' X 4" post approved by ARC.
- E) All homes must have a front post light on a photoelectric cell approved by ARC.
- F) Above ground pools are not permitted.
- G) Aluminum patio roofs are not permitted.
- H) 18' dish antennas are permitted as long as they are screened from the street or any adjacent home site.
- I) Parking of recreation vehicles, boats, campers, etc. is permitted only in the enclosed garage.
- J) A four (4) foot concrete sidewalk located within the road right-of- way, one foot off the front property line shall be constructed from side lot line to side lot line in conjunction with the home construction on all lots.
- K) No temporary basketball structures are allowed. Permanent basketball structures allowed provided they receive approval from the ARC.

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**ENGINEERING REQUIREMENTS**

- A) Minimum finish floor elevation shall be 18 inches above the crown of the adjacent roadway, or the minimum floor elevation as established by F.E.M.A. or Indian River County which ever is greater.
- B) The maximum finish floor elevation shall be 1 foot above the minimum.
- C) Lot grading shall be in accordance with the St. Johns River Water Management District Permit.

**LANDSCAPE REQUIREMENTS**

The mission of Arbor Trace will be in keeping with the natural beauty that is there. The following requirements will be used only as a guideline. **ALL LANDSCAPE AND CLEARING PLANS MUST BE APPROVED BY THE ARC.**

- A) Each home shall have a minimum of two Live Oak Trees, 12 to 14 feet high with a 2 inch caliper not closer than 15 feet or further than 20 feet from the front property line at least 25 feet apart. This requirement may be modified at the discretion of the ARC based on a survey of the existing trees on the property.
- B) Total lot area including road right-of-way and to the edge must be sodded or landscaped.
- C) Automatic irrigation systems are required.
- D) All sod must be St Augustine, Floratam
- E) Front yards must have a minimum of 250 square feet of planter beds.
- F) Two (2) Palm trees, six (6) foot minimum trunk height must be planted on each lot within fifteen (15) feet of the water edge. This requirement may be modified at the discretion of the ARC based on a survey of the existing trees on the property. No bald cypress trees.
- G) Prior to clearing a tree survey must be approved.

**ARCHITECTURAL REVIEW COMMITTEE (ARC)**

- A) Purpose  
The ARC does not seek to restrict individual taste or preferences. In general, its aim is to avoid harsh contrasts in architectural themes and maintain harmony between all residences.
- B) Scope of Responsibility  
The ARC has control over all construction within the community.  
All construction must first be approved by the ARC.
- C) Enforcement Powers  
Should an architectural violation occur, the ARC has the right to injunctive relief to require the owner to stop, remove, and or alter any improvement in a manner, which complies with the standards established by the ARC. Approval by the ARC does not relieve the owner of his/her obligation to receive any additional governmental approvals, if required.
- D) Limitation of Responsibilities  
The primary goal of the ARC is to review the application, plans, specifications, materials and samples to determine if the proposed structure conforms to the design criteria and

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guidelines as set forth by the ARC. The ARC does not assume responsibility for such things as structural adequacy, conformance with local or state building codes, safety requirements, or governmental laws and ordinances.

- E) **Committee Members**  
The ARC shall consist of individuals appointed by the Arbor Trace Property Owners Association.
- F) **Variances**  
All variance requests pertaining to an ARC decision must be made in writing to the ARC. Any variance granted shall be considered unique and will not set any precedent for future decisions.
- G) **Appeal**  
If an applicant has been denied, or approval subject to conditions which the owner feels are unacceptable, the owner may request a hearing before the ARC to justify their position. The ARC *will* review its decision and notify the owner of its final decision within (10) days of the hearing.
- H) **Construction Inspections**  
Periodic inspections may be made by the ARC while construction is in progress to determine compliance with the approved plans and specifications.
- I) **Modification to the Design Guidelines**  
The ARC may at any time request a change or modification to the design guidelines. These changes must be approved by the homeowners association with a 2/3 majority vote.

### ARCHITECTURAL REVIEW PROCESS

- 1) The builder and/or owner makes an application to the ARC. The application should include a site plan, floor plans, elevations, specification for the proposed residence and tree survey, (landscape plans may be submitted at a later date but also must obtain ARC approval)
- 2) A member of the ARC reviews the application and submitted data to determine its completeness. If sufficient information exists to enable the ARC to evaluate the proposed project a meeting of the full board is called. If not, the board member may request additional information from the applicant.
- 3) The ARC reviews the proposed project within thirty days and the owner is notified that the application has been approved, approved with stipulations or disapproved. Reasons for stipulations of disapproval are cited. If the ARC does not notify the owner within thirty days the application is deemed to have been approved. A simple majority of the ARC is required to approve or disapprove any project.

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## CONTRACTORS AND SUBCONTRACTORS

### RULES AND REGULATIONS

- 1) There will be no job seekers or salespersons admitted to ARBOR TRACE unless those people have made appointments with the contractor and the contractor has properly notified the Association that a person is expected. All others will be turned away.
- 2) The ARBOR TRACE speed limit is 15M.P.H. All traffic directional signs are to be followed. Security has been directly to void the construction pass of violators.
- 3) Contractors must confine their activities to the lot under construction. All vacant lots are private property and unless permission has been obtained, in writing, from the owner with a copy to Association, any use of such lots is prohibited. Association will not be responsible for vacant lots, but call the proper authorities if trespassing is observed.
- 4) No fill, construction materials or trash may be dumped or stored on adjacent lots.
- 5) Construction sites must be kept neat. There will be no burning of trash. Each site will also be furnished with a 'Port-O-Lets or like equivalent.
- 6) No dogs will be permitted in ARBOR TRACE other than those owned by ARBOR TRACE property owners.
- 7) No subcontractors signs may be placed on construction sites.
- 8) Any damages to adjacent lots, especially swales, must be repaired by the contractor, regraded and reseeded.
- 9) Parking is permitted during construction on the road right-of- way. No overnight parking vehicles or construction equipment is permitted without approval.

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10. Each contractor, prior to commencement of construction, is to ascertain from the appropriate authority the exact location of all underground public utilities. Such utilities are to be effectively marked with flags and/or paint in order that service to adjacent private properties will not be disrupted by construction.
11. All contractors must carry liability insurance.
12. Each contractor will be required to meet with a designated member of the Association prior to the start of construction to review all aspects of the project, including its impact on the community.
13. The Association reserves the right to deny the services of any contractor who previously has not been in compliance with the foregoing.
14. No radios, phonographs or tape decks are permitted.
15. No construction work of any kind will be permitted on Sundays or holidays. Saturday work will be permitted only with approval of Association. Work may not begin before 7:30 am and all employees must be off the property by no later than sunset.
16. Heavy vibrating tamping roller equipment may not be used for compacting fill.
17. Vehicles with noisy mufflers are not permitted.
18. Turning around in property owners driveways will not be permitted.
19. The following will also not be permitted:
  - a) Drinking of alcoholic beverages
  - b) Firearms
  - c) Fishing

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**ARBOR TRACE HOMEOWNERS ASSOCIATION**

**ARCHITECTURAL REVIEW APPLICATION**

Date Received: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_ Landscaping Plan

\_\_\_\_\_ Fence Plan and Detail (attach copy of plan and materials to be used)

\_\_\_\_\_ Pool Plan and Detail (attach copy of plan, proposed screening, etc.)

\_\_\_\_\_ Screen Room or Addition (attach copy of plan and materials to be used)

\_\_\_\_\_ Other (list details and attach copy of plan)

Date: \_\_\_\_\_ Owner's Signature: \_\_\_\_\_

---

Your application is hereby ( ) Approved ( ) Disapproved, subject to the following:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ ARC Committee: \_\_\_\_\_