

Prepared by and return to:
Tyrone T. Bongard, Esq.
Gunster, Yoakley & Stewart, P.A.
Phillips Point
777 South Flagler Drive, Suite 500
West Palm Beach, FL 33401

FIFTH AMENDMENT
TO
DECLARATION FOR GRANDE OAKS

THIS FIFTH AMENDMENT TO DECLARATION FOR GRANDE OAKS (“Amendment”) is made and executed this 23rd day of May, 2017 by **HEATHROW OAKS LLC**, a Delaware limited liability company (“Developer”).

WHEREAS, the Grande Oaks community is governed by that certain Declaration for Grande Oaks recorded in Official Records Book 6444, Page 693, as amended by that certain First Amendment to Declaration for Grande Oaks recorded in Official Records Book 7037, Page 263, that certain Second Amendment to Declaration for Grande Oaks recorded in Official Records Book 8190, Page 1745, that certain Third Amendment to Declaration for Grande Oaks recorded in Official Records Book 8371, Page 664, and that certain Fourth Amendment to Declaration for Grande Oaks recorded in Official Records Book 8428, Page 437, all of the Public Records of Seminole County, Florida (collectively the “Declaration”); and

WHEREAS, pursuant to the terms of Section 4.3 of the Declaration, Developer has the right to unilaterally amend the Declaration without the joinder or consent of any person or entity whatsoever; and

WHEREAS, Developer desires to amend the Declaration as hereinafter set forth.

NOW THEREFORE, Developer does hereby amend, and by these presents does cause the Declaration to be amended as follows:

1. **Recitals; Definitions.** The foregoing recitals are true and correct and are incorporated herein by reference. Terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration.

2. **Club Owner.** Section 2 of the Declaration is hereby amended to delete the definition of “Club Owner” in its entirety and replace it with the following:

““Club Owner” shall mean the owner of the Club, its successors and assigns. Presently, the Club Owner is Grande Oaks Club LLC, a Florida limited liability company.”

WPB_ACTIVE 7758303.1

3. **Club Plan.** Section 2 of the Declaration is hereby amended to delete the definition of “Club Plan” in its entirety and replace it with the following:

““Club Plan” shall mean that certain Club Grande Oaks Club Plan recorded in Official Records Book 6778, Page 122, of the Public Records of Seminole County, Florida, as the same may be amended from time to time. This Declaration is subordinate in all respects to the Club Plan.”

4. **Mandatory Binding Arbitration of Disputes.** Section 23.13 of the Declaration is deleted in its entirety and replaced with the following:

““23.13. Mandatory Binding Arbitration of Disputes.

- (a) Mandatory Binding Arbitration of Disputes Between Owner and Association. All “Disputes” (as hereinafter defined) between Association and an Owner or Owners shall be submitted for resolution by binding arbitration to the American Arbitration Association (www.adr.org) (“AAA”) in accordance with Section 23.13(d) through (k) of this Declaration. “Dispute”, for purposes of this Section 23.13(a), means any dispute, disagreement, action, claim or controversy between two or more parties that involves: (a) the authority of the Board, under any law or under this Declaration, the Articles or By-Laws to: (1) require any Owner to take any action, or not to take any action, involving that Owner’s Home; or (2) alter or add to a Common Area; or (b) the failure of the Association, when required by law or this Declaration, the Articles or By-Laws to: (1) properly conduct elections; (2) give adequate notice of meetings or other actions; (3) properly conduct meetings; or (4) allow inspection of books and records. “Dispute” shall not include any disagreement that primarily involves title to any Home or Common Area; the interpretation or enforcement of any warranty; the levy of a fee or Assessment or the collection of an Assessment levied against a party; the eviction or other removal of a tenant from a Home; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a Home based upon the alleged failure of the Association to maintain the Common Areas.
- (b) Mandatory Binding Arbitration of Disputes Between Owner and Developer. All disputes, disagreements, actions, claims or controversies between Developer and an Owner or Owners, other than a claim seeking injunctive relief, shall be submitted for resolution by binding arbitration to the AAA in accordance with Section 23.13(d) through (k) of this Declaration.
- (c) Mandatory Binding Arbitration of Disputes Between Association and Developer. All disputes, disagreements, actions, claims or controversies between Association and Developer arising out of or

relating to: (i) the use, condition, design or construction of all or any portion of the Common Areas or the Homes; (ii) the management and operation of the Association prior to the Turnover Date, including the administration of this Declaration, or (iii) any other agreements, duties or liabilities as between Developer and Association including disputes which allege strict liability, negligence or breach of implied, express or statutory warranties, shall be submitted for resolution by binding arbitration to the AAA in accordance with Section 23.13(d) through (k) of this Declaration.

(d) EXCEPTION. NOTWITHSTANDING THE FOREGOING, EACH OWNER, ASSOCIATION AND DEVELOPER AGREE THAT DISPUTES RELATING TO THE SCOPE, VALIDITY, OR ENFORCEABILITY OF SECTION 23.13 WILL NOT BE SUBJECT TO ARBITRATION.

(e) Arbitration Procedures. The arbitration will take place in the county in which Grande Oaks is located. The arbitration will be conducted under the Commercial Arbitration Rules of the AAA. A single arbitrator will be used. Developer (or the Association, if Developer is not a party to the dispute) shall provide a list of at least five (5) AAA arbitrators and the party or parties opposing Developer in the dispute (or opposing the Association, if Developer is not a party to the dispute) shall select the arbitrator from such list. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect the parties' information and other confidential or proprietary information. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and reasonable attorneys' fees and costs incurred in connection with the proceedings. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which Grande Oaks is located.

If there is a conflict between this Section 23.13 and the Commercial Arbitration Rules of the AAA, this Section 23.13 shall govern. If the AAA will not administer a proceeding under this Section 23.13 as written, it cannot serve as an arbitration organization. If this situation arises, the parties shall agree on a substitute arbitration organization. If the parties are unable to agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under Section 23.13 as written. If there is a conflict between this Section 23.13 and any other provision of

this Declaration, or any document contemplated to be executed in conjunction herewith, this Section 23.13 shall govern.

- (f) Choice of Law and Scope of Arbitrator's Authority. The Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") shall govern this Section 23.13. Interpretation and application of these procedures shall conform to federal court rulings interpreting and applying the FAA. References to state law shall not be construed as a waiver of any rights of the parties under the FAA or the right of the parties to have the procedures set forth in Section 23.13 interpreted and enforced under the FAA. However, to the extent necessary, and whenever such laws are not in conflict with other provisions of Section 23.13, the arbitrator shall apply the laws of the state in which Grande Oaks is located. The arbitrator's award may be enforced in any court of competent jurisdiction.

- (g) WAIVER OF JURY TRIAL. WHETHER IN COURT OR IN ARBITRATION, EACH OWNER, THE ASSOCIATION AND DEVELOPER AGREE TO WAIVE, TO THE FULLEST EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS TO A JURY TRIAL. THESE WAIVERS ARE MADE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY. THIS WAIVER OF JURY TRIAL SHALL APPLY TO ANY ACTION ARISING OUT OF OR IN ANY WAY CONNECTED TO GRANDE OAKS, REGARDLESS OF WHETHER IT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THIS SECTION 23.13.

- (h) DISPUTES TO BE RESOLVED INDIVIDUALLY. EACH OWNER, THE ASSOCIATION AND DEVELOPER KNOWINGLY WAIVE ANY RIGHT TO PARTICIPATE IN ANY LITIGATION OR ARBITRATION OF ANY DISPUTE ON A CLASS, CONSOLIDATED, JOINT, OR REPRESENTATIVE BASIS (INCLUDING IN ANY PRIVATE ATTORNEY GENERAL CAPACITY).

- (i) Severability. If any clause within Section 23.13 is found to be illegal or unenforceable, that clause will be severed from it, and the remainder of Section 23.13 will be given full force and effect.

- (j) Amendment. Without limiting the generality of this Section 23.13 hereof, Section 23.13 shall not be added to, amended, or deleted without the prior written consent of the Developer.

- (k) Interpretation. For purposes of Section 23.13(a), the term "**Association**", in addition to the definition found in Section 2, shall include the following: any director, officer, manager,

employee, agent, authorized signatory, or representative of the Association, and any contractor, subcontractor, consultant, design professional, engineer, or supplier who provided labor, services, or materials. For purposes of Sections 23.13(b) and 23.13(c), the term “**Developer**”, in addition to the definition found in Section 2, shall include the following: any director, officer, shareholder, partner, member, manager, employee, agent, authorized signatory, or representative of the Developer, any parent, subsidiary, or affiliate of the Developer (other than an affiliated mortgage lender), and any contractor, subcontractor, consultant, design professional, engineer, or supplier who provided labor, services, or materials.”

5. **Effective Date; Effect of Amendment.** This Amendment shall become effective upon its recordation in the Public Records of Seminole County, Florida. Except as modified or amended by this Amendment, the terms and provisions of the Declaration are hereby ratified and confirmed and shall be in full force and effect. In the event of any conflict or inconsistency between the terms of this Amendment and the terms of the Declaration, the terms of this Amendment shall control.

[Signature page follows]

