

This Instrument Prepared By:  
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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HEARTWOOD COMMUNITY**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS ~~AND~~ AND RESTRICTIONS\_

FOR HEARTWOOD COMMUNITY, is made this        day of \_\_\_\_\_, 2021, by\_

The City of Gainesville, a municipal corporation of the State of Florida (hereinafter\_ referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Alachua County, Florida, which was platted as Heartwood Subdivision, per plat thereof recorded in Plat Book 34, Pages 21-22 of the Public Records of Alachua County, Florida and is more particularly described in **Exhibit A** attached hereto (hereinafter the "Property"); and;

WHEREAS, Declarant desires to create a residential community known as Heartwood Community on said Property; and

WHEREAS, Declarant ~~wishes to provide~~desired to establish covenants, conditions and restrictions for the preservation and maintenance of the appearance, values and amenities of Heartwood Community and, to that end, ~~desires to subject~~ed the Property to the terms, conditions, rights and obligations of the Declaration of Covenants, Conditions and Restrictions for Heartwood Community, ~~previously which was dated January 4, 2018 and~~ recorded on January 19, 2018, in Official Records Book 4570, at Page 1751, in the Public Records of Alachua County, Florida (hereinafter the "Original Declaration"); and

WHEREAS, the Original Declaration provided in Section 10.1, entitled "Amendment by Declarant", that Declarant reserved the right unilaterally to amend the Declaration in its sole discretion by preparing and recording amendments thereto which amendments shall relate back to and become effective as of the date of the recording of the Original Declaration; and

WHEREAS, Declarant wishes to amend and restate the Original Declaration (hereinafter the "Amended and Restated Declaration") which Original Declaration and Amended and Restated Declaration shall hereinafter be referred to collectively as the "Declaration"; and

WHEREAS, Declarant has created a not-for-profit membership corporation known as the Heartwood Community Homeowners' Association, Inc. (hereinafter the "Association"), to be given the power and duties described herein including the power to enforce this Declaration; and

WHEREAS, Declarant intends for the Heartwood Community to be subject to the provisions of the Florida Homeowners Association Act, Florida Statutes Chapter 720 (the "Act"), as same may be amended from time to time; and

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for

the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of such Owner thereof.

ARTICLE I

DEFINITIONS

1.1. "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of Heartwood Community Homeowners' Association, Inc., as filed with the Florida Department of State, as the same may be amended from time to time. A copy of the current Articles is attached hereto as **Exhibit B** and incorporated herein by reference.

1.2. "Assessment" shall mean money paid by Owners for Association expenses as provided for herein, which money shall be used without limitation, for promoting the recreation, common benefit, and enjoyment of the Owners and occupants of Heartwood Community and for owning, maintaining, improving, repairing, replacing, insuring, managing, leasing and/or operating the Common Areas within Heartwood Community; all as may be specifically authorized from time to time by the Board of Directors which, if not paid by an Owner, can result in a lien against the Owner's Lot that may be foreclosed.

1.3. "Association" shall mean and refer to the Heartwood Community Homeowners' Association, Inc., its successors and assigns.

1.4. "Board of Directors" or "Board" shall mean and refer to the representative body that is responsible for administering the Association.

1.5. "Bylaws" shall mean the Bylaws of the Association, as the same may be amended

from time to time. A copy of the current Bylaws of the Association are attached hereto as **Exhibit C**, and are incorporated herein by reference.

1.6. "Common Areas" shall mean all real property and all improvements thereon to be owned or leased by the Association for the common use and enjoyment of the Owners, their guests, agents, assigns, employees and invitees, as well as all real property which is dedicated to the Association by recorded plat or otherwise. Without limiting the foregoing, the Common Areas shall specifically include all "common open space" "conservation easement" and "drainage easement" areas, as well as Loop Road "B", East Alley Road-Way and West Alley RoadWay, all as shown on the Plat, as amended from time to time.

1.7. "Declarant" shall mean and refer to The City of Gainesville, Florida, and its municipal corporation successors and assigns and any successors or assigns to which Declarant transfers or assigns its rights as Declarant.

1.8. "Heartwood Community" shall mean the residential community to be developed upon the Property including the Property and all improvements now or hereafter located thereon, and any lands or improvements hereafter added and submitted to this Declaration, pursuant to the right to add additional lands as set forth herein.

1.9. "Governing Documents" shall mean and refer to the Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association, as filed or recorded as may be necessary and as same may be adopted or amended from time to time. In the event of conflict or inconsistency among the documents, the governing provision shall be that first appearing in the following sequence: the Declaration, the Articles, the Bylaws and the Rules and Regulations.



1.10. "Lot" shall mean a portion of the Property, whether improved or unimproved, which may be independently owned and conveyed, and which may be improved with a dwelling unit. The term shall refer to the land, if any, which is part of the Lot as well as any improvements on the Lot. The boundaries of each Lot are shown on the Plat, as may be amended from time to time.

1.11. "Member" shall mean and refer to all persons who are members of the Association as provided in this Declaration, and the Articles and Bylaws of the Association.

1.12. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property, but shall not mean or refer to any mortgagee, unless and until any such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.13. "Plat" shall mean and refer to the HEARTWOOD SUBDIVISION PLAT, according to the plat thereof recorded in Plat Book 3+4, Pages 21 and 22 of the ~~p~~Public ~~r~~Records of Alachua County, Florida.

~~1.14.~~ 1.14. "Property" shall mean and refer to that certain real property described in Exhibit A, known as Heartwood Community, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and submitted to this Declaration.

1.15. "Rules and Regulations" shall mean and refer to the rules and regulations governing the conduct, maintenance and use of the Property, as the same may be adopted by the Board from time to time. The Board may not adopt Rules and Regulations affecting any portion of the Property owned by

Declarant, unless expressly consented to by Declarant.

1.16. "Surface Water Management System" shall mean any real property together with improvements thereon required or described in any permits issued by the City of Gainesville, St. Johns River Water Management District, Department of Environmental Protection, the U.S. Army Corps of Engineers, or any other applicable governmental agency as may be amended from time to time, for the management and storage of surface waters, drainage and flood protection for the Property, including work or features such as swales, ditches, canals, inlets, impoundments, berms, ponds, lakes, retention/detention areas, wetlands, mitigation areas, conservation areas, flow ways, culverts and pumps.

## ARTICLE II

### DEVELOPMENT AND PROPERTY RIGHTS

#### 2.1. Development.

a. Development of the Property. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot, to make improvements or changes to all Common Areas, or the Lots owned by Declarant, including without limitation: (i) installation and maintenance of any improvements to the Common Areas; (ii) changes in the location of the boundaries of any Common Areas or Lots owned by Declarant; and (iii) changes in the maintenance of any Surface Water Management System, water, sewer, drainage, irrigation or other utility systems or facilities, if any.

b. Platting. Declarant reserves the right to record, modify, amend, revise and add to, at any time, and from time to time, one or more subdivision plats or re-subdivision plats

setting forth such information as Declarant may deem necessary with regard to the Property including, without limitation, the locations and dimensions of the Lots, Commons Areas, additional property, roads, utility systems, Surface Water Management System, utility easements, drainage easements, access easements and set back line restrictions.

2.2. Common Areas. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, together with a non-exclusive easement of ingress and egress over the common roadway and any access easements identified on the Plat as being on the Property, which right and easement of enjoyment shall be appurtenant to and shall pass with title to every Lot subject to the following provisions:

a. The right of the Association to charge all Owners Assessments for the ownership, operation, maintenance, replacement and repair of the Common Areas, and as otherwise provided herein;

b. The right of the Association to dedicate, transfer or grant an easement or property rights to all or any part of the Common Areas to any public agency, authority, or utility for such purposes, and subject to such conditions, as may be set forth in the Governing Documents;

c. The right of the Association to modify any governmental authorizations or permits for any of the Common Areas on the Property;

d. The right of the Association to enter into such easements and/or cost-sharing agreements with adjacent property owners for operation, maintenance, replacement and repair of Common Areas or other shared infrastructure improvements, including, without limitation, the



Surface Water Management System;

e. The right of the Board to promulgate, modify, amend and enforce reasonable rules and regulations relating to the use and enjoyment of the Common Areas; and,

f. Easements for ingress and egress and right of way are reserved for pedestrian traffic over, through, on and across all Common Areas and upon all sidewalks, paths, walkways, lanes, streets and avenues, as the same from time to time exist upon the Common Areas; and for vehicular, through and across such portions of the Common Areas as from time to time may be installed for such purposes.

2.3. Conveyance of Common Areas. Declarant shall not be required to convey the legal and equitable title and ownership to the Common Areas or any part thereof until such time as Declarant no longer owns any Lot on the Property. Declarant may convey title, and the Association shall accept title, at any time prior to Declarant's conveyance of the last Lot owned by Declarant, at Declarant's sole option.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1. Qualification. Every person or entity who is a record fee simple Owner, including Declarant, at all times as long as it owns all or any part of the Property, shall be a Member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a Member. If any such Owner is not a

natural person, the subject entity shall designate a natural person who shall act as the Member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to Assessment. When any Lot is owned of record by two or more persons or other legal entity, all such persons or entities shall be Members.

3.2. Voting. The Members of the Association shall be entitled to one (1) vote for each Lot owned. The total votes shall not exceed the total number of Lots. A vote shall not be divisible. If a Lot is owned by one natural person, his or her right to vote shall be established by the record title to the Lot. If a Lot is owned jointly by two or more natural persons, that vote may be cast in the manner described in the Bylaws. If two or more Owners of a Lot are present and cannot agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If an Owner is not a natural person, the vote shall be cast by the person named in a voting certificate signed by all of the individual owners or the appropriate, authorized official(s) or representative(s) of such entity.

3.3. Approval or Disapproval of Matters. Whenever the decision or approval of the Owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote as provided in section 3.2 above if present in person at an Association meeting, unless the joinder of all record Owners is specifically required.

3.4. Termination of Membership. The termination of membership in the Association does not relieve or release any former Member from liability or obligation incurred under or in any way connected with the Association during the period of his/her membership, nor does it impair any rights or remedies which the Association may have against any former Owner or Member arising out of or in any way connected with such ownership and membership and the covenants and obligations

incident thereto.

3.5. Membership Roster. The Association shall maintain a current roster of names and mailing addresses of Owners. A copy of the up-to-date roster shall be available to any Owner upon request.

3.6. Board of Directors. Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its Officers, and no vote of the Members shall be required. The Officers and Directors of the Association have a fiduciary relationship to the Members.

#### ARTICLE IV

##### COVENANTS FOR ANNUAL AND SPECIAL ASSESSMENTS

4.1. Assessments. Subject to the provisions of Sections 4.16 and 4.17 herein, Declarant (for each Lot owned by it within the Property) hereby covenants and agrees, and each Owner (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association Annual, Special, Initial Capital and Maintenance Assessments, all as hereinafter defined to be fixed, established and collected from time to time as hereinafter provided. All Assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such Assessment is made, and shall also be the personal obligation of the Owner. The Owners of each Lot shall be jointly and severally liable for all Assessments, together with interest, cost of collection and reasonable attorneys' fees that are owed in connection with such Lot.

4.2. Initial Capital Assessment. An Initial Capital Assessment of one hundred dollars (\$100.00) per Lot may be levied against all Owners, including initial Owners (other than Declarant), and all successor Owners, and shall be collected at closing of the purchase of the Lot.

4.3. Annual Assessments. The Annual Assessments levied and collected by the Board and shall be used for the purpose of promoting the health, safety and welfare of the residents of the Property, which may include, but shall not be limited to, the following:

a. Improving, maintaining, replacing, and repairing the Common Areas, including, but not limited to the following, except to the extent any item located in the Common Areas is to be maintained, replaced, and repaired by the City of Gainesville, Florida, in its capacity as a municipality and not as Declarant:

1. All streets, alleyways, driveways, parking areas, sidewalks, rights of way and access easements, to the extent that such improvements are a part of the Common Areas;
2. All landscaped areas, including lawns, shrubs, trees, and other plantings located on the Common Areas;
3. All equipment and facilities owned by or acquired by the Association located on the Common Areas;
4. All sewer utility facilities, including pipes; lines , grinder stations, lift stations, easements/tracts and facilities in the Common Areas;

5. All walls, fences, signs, street lights and fountains located on the Common Areas;
6. All storm drains, drainage courses, and drainage easements dedicated to the Association;
7. Any necessary utility services for the Common Areas and water to service the sprinkler system in the Common Areas; and,
8. Operation, repair and maintenance of the Surface Water Management System;

b. Hiring professional advisors, attorneys, accountants, insurance agents, and/or managers or management companies, and paying associated consulting, legal, -and/or management fees and charges;

c: Maintaining casualty insurance covering the full insurable replacement value of any insurable Common Areas with extended coverage subject to such deductibles as the Board determines appropriate;

d. Maintaining liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the guests, invitees, or tenants of any Owner arising out of their occupation or use of the Common Areas. The policy limits and deductibles shall be set by the Board and shall be reviewed at least annually, and increased or decreased at the discretion of the Board;

e. Worker's compensation insurance to the extent necessary to comply with Florida and/or Federal law, and any other insurance deemed necessary by the Board;

f. Acquiring equipment for the Common Areas as may be determined necessary or appropriate by the Board, including, without limitation, all equipment and personnel necessary or proper for use or maintenance of the Common Areas;

g. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes or Assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Common Areas for the benefit of the Owners, or for the enforcement of these restrictions;

h. Establishment of reserve accounts for capital expenditures and deferred maintenance for the Common Areas; and

i. Payment of real property taxes (if any), personal property taxes, and other assessments levied against the Common Areas.

j. Maintaining liability insurance insuring the Association and its Directors and its Officers against any and all liability and/or claims for breach of fiduciary duty or negligence in connection with the exercise of their authority or powers or their duties as Officers or Directors of the Association.



4.4. Special Assessments. In addition to the Annual Assessments, the Board may levy Special Assessments. Special Assessments include those Assessments which are levied for (a) capital improvements to construct or acquire improvements for the Common Areas or areas to be maintained by the Association; (b) the reconstruction or replacement of improvements on the Common Areas or areas to be maintained by the Association, and (c) other items of expense not accounted for in Annual Assessments as a result of, among other things, the following: (i) extraordinary items of expense under this Declaration; or, (ii) such other reason or basis determined by the Board which is not inconsistent with the Governing Documents. Special Assessments are in addition to the Annual Assessments, and shall be paid in such manner and at such time as the Board determines. Special Assessments need not be levied at a uniform rate, but may be allocated to a specific Lot or Lots which are specially benefited by the Special Assessment.

4.5. Determination of Assessments. The Board shall fix the date of commencement, and the amount of the Assessments against each Lot (except Maintenance Assessments) at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Owners and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Member. No later than fourteen (14) days after fixing the date of commencement and amount of Assessments, the Association shall notify Owners by sending written notice of such commencement date and amount to said Owners at the address shown on the current roster of Members, which notice shall be conclusive as to delivery to Owners. The Association shall, on demand and for a reasonable charge, furnish to any Owner liable for said Assessment a certificate in writing signed by an Officer of the Association setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.6. Apportionment of Assessments. In determining the Annual Assessments, the Board shall take into consideration the actual costs of maintaining specific portions of the Property and may assess different Lots in different portions of the Property at different rates. In addition, the Board may assess vacant Lots at different rates than improved Lots, all at the Board's discretion.

4.7. Payment of Annual Assessments. The Annual Assessments, for which provision is herein made, shall be paid monthly, quarterly, semi-annually or annually, in advance, as determined by the Board of Directors. The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year when the first Annual Assessment is levied.

4.8. Establishment of Liens. Any and all Assessments levied by the Board in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to interest, late charges, reasonable costs and attorneys' fees) are hereby declared to be a charge and continuing lien against the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of each Lot assessed. Said lien shall be perfected from and after the recording of a Claim of Lien in the Public Records of Alachua County, Florida, by the Association setting forth the amount, due date of each unpaid Assessment as of the date the Claim of Lien is recorded, and such other information as required by law.

4.9. Priority of Liens. The Association's lien is effective from and shall relate back to the date on which the Declaration was recorded. However, as to a First Mortgagee holding a first mortgage of record, the lien is effective from and after the recording of a Claim of Lien in the Public Records of Alachua County, Florida, unless the Association's Claim of Lien is recorded

prior to said Institutional First Mortgage.

4.10. Obligation of First Mortgagees. A lien of the Association hereunder shall not be affected by the sale or transfer of a Lot. However, the liability of each Institutional First Mortgagee, or its successor or assignee as a subsequent holder of an Institutional First Mortgage, who acquires title to a Lot by foreclosure or deed in lieu of foreclosure for the unpaid Assessments that become due before the Institutional First Mortgagee's acquisition of title, shall be in accordance with Florida law.

4.11. Collection of Assessments. If any Owner fails to pay any Assessment, or installment thereof, within thirty (30) days after the same becomes due, then the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

a. To charge interest on such Assessment or installment, from the date each Assessment installment becomes due until paid, at the highest rate allowed by law, as well as to impose a late payment penalty of not more than the greater of Twenty-Five Dollars (\$25.00) or Five Percent (5%) of the amount of each installment that is paid past the due date;

b. To accelerate the due date for the entire remaining unpaid amount of the Annual Assessment against the Owner's Lot for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments;

c. To record a claim of lien and file an action to foreclose the lien. The lien may

be foreclosed by an action in the name of the Association in the same manner as provided by Florida Statutes, as amended from time to time, for the foreclosure of liens for unpaid homeowners' assessments, without waiving any right to bring an action for damages against the Owner. The lien shall secure all unpaid assessments, as well as any and all interest, late fees, and all administrative charges, attorney's fees, and costs, incurred in collection. The Association, acting on behalf of the Owners, shall have the power to bid its judgment for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period a Unit is owned by the Association following foreclosure: (a) No right to vote shall be exercised with respect to the Lot; (b) No assessment shall be assessed or levied on the Lot; and (c) Each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged to such foreclosed Lot had it not been acquired by the Association as a result of foreclosure;

d. To bring an action at law for a money judgment against the Owner without waiving any lien or foreclosure rights of the Association; and,

e. To charge to the Owner all attorneys' fees and other administrative fees and collection costs incurred by the Association to collect such delinquent Assessment or installment, regardless of whether or not an action is brought, and regardless of whether such administrative fees or costs are incurred by the Association's attorneys, management, or otherwise.

4.12. Additional Remedies. In addition to all other rights or remedies of the Association under Section 4.11 above or pursuant to Florida law, the Association shall, subject to compliance with any procedural requirements mandated by Florida law, also have the following rights and remedies:

a. If an Owner fails to pay any regular Annual Assessment or installment thereof

within ninety (90) days after the same becomes due, the Association shall have the right to suspend the voting rights of the Owner in the Association.

4.13. Certificate. The Association shall, within ten (10) business days after the request for the same by an Owner or mortgagee of a mortgage encumbering the Lot, or their respective designee(s), furnish a certificate in writing signed by an Officer or authorized agent of the Association setting forth all Assessments and other moneys owed to the Association by the Owner with respect to the Owner's Lot, and those moneys which will accrue during the time that the certificate is valid. The Association may charge a fee for the preparation of the certificate and must indicate the amount of the fee on the certificate.

4.14. Capital Contributions. Declarant and, after turnover of control of the Association to Members other than Declarant, the Board may establish Initial Capital Assessments and other capital contributions to be paid upon the initial sale or subsequent resale of a Lot. The sum shall be used and applied for startup costs and for as a working fund in connection with any and all operating expenses of the Association after turnover. All such Initial Capital Assessments and other capital contribution money shall be maintained in an account separate from the Association's general operating account.

4.15. Unconditional Obligation of Owner. Suspension of a Member's rights hereunder by the Board shall not relieve a Member from the obligation to pay any Assessment as it becomes due. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or other item(s) regarding which an Assessment is levied.

4.16. Exempt Property. The following property is exempted from the Assessments, charges, and liens created herein:

a. All properties subject to any easement or other interest therein dedicated and accepted by the City of Gainesville, Florida, or Alachua County, Florida, and devoted to public use; and

b. All Common Areas owned in fee simple by Declarant or thereafter by the Association.

4.17. Declarant's Rights and Obligations; Guaranty Period. Notwithstanding any provisions of this Declaration or the Association's Articles or By-Laws to the contrary, Declarant shall be excused from payment of its share of any Assessments as to the Lots owned by Declarant during the "Guaranty Period." The "Guaranty Period" shall be the period commencing upon the recording of this Declaration and ending upon the earlier of (i) Declarant providing sixty (60) days written notice to each Member of the Association terminating the Guaranty Period or (ii) the date Declarant turns over the control of the Association to Members other than Declarant (hereinafter "Turnover"). During the Guaranty Period when Declarant is excused from paying its share of any Assessments, Declarant shall be obligated to pay the difference between the Association's expenses of operation and the sums collected for Annual Assessments from Owners other than Declarant and other non-assessment income of the Association, if any. Prior to each year in which the guaranty described in this Section 4.18~~7~~ is in effect, the Board of Directors of the Association shall determine the level of Annual Assessments to be paid by each Lot owned by an Owner other than Declarant.

## ARTICLE V

### MAINTENANCE OF PROPERTY; OTHER OBLIGATIONS



5.1. Duties of Association. The Association shall maintain, repair, operate, manage, insure, and take commercially reasonable action to replace as often as reasonably necessary, the Common Areas and any and all improvements situated on the Common Areas, whether currently owned by, dedicated to, or subsequently dedicated or transferred to the Association, including, but not limited to the following improvements which may exist on or within the Common Areas: - the Surface Water Management System, open space areas, drainage areas, conservation easement areas, landscaping, parking areas, paving, utilities, irrigation systems, pipes and sprinklers, perimeter walls and/or fences, any wall and/or landscaped buffer, sidewalks, and structures. All such work shall be done as ordered by the Board of Directors of the Association.

5.2. Duties of Lot Owners. Each Owner of a Lot shall be responsible for the cleaning, and general maintenance and repair of their Lots as well as the interior and exterior of or any improvements located entirely on their Lot.

5.3. Association Intervention. In addition to maintenance of the Common Areas, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board of Directors, to preserve the beauty, quality and value of the neighborhood, any maintenance, repair or replacement that is otherwise the responsibility of the Owner as described herein, if the Owner fails to replace, restore, repair or perform the required maintenance after ten (10) days written notice by the Board of Directors to the Owner of the need of such replacement, restoration, repair or maintenance.

5.4. Maintenance Assessment.

The cost of

~~The cost of~~ such maintenance shall be assessed against the Lot upon which such

maintenance is performed, or at the option of the Board of Directors, against the Lots benefiting from the maintenance (“Maintenance Assessment”). The Maintenance Assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. Any such Maintenance Assessment shall not be considered a part of the Annual or Special Assessment. Any such Maintenance Assessment shall be a lien on the Lots affected and the personal obligation of the Owner(s), and shall become due and payable in all respects, together with interest, reasonable attorneys' fees, and cost of collection, in the same manner and under the same conditions as provided for the other Assessments of the Association.

## ARTICLE VI

### ARCHITECTURAL CONTROL AND RECONSTRUCTION

6.1. Approval of Architecture. No improvement, addition or deletion of a structure of any kind, including, without limitation, any building, fence, wall, screen enclosure, awning, or other improvement shall be commenced, erected, placed or maintained upon any part of the Property, including any Lot, nor shall any addition, change, alteration, repair or replacement 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 Declarant or, by the Board after Turnover from Declarant. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography, in accordance with the provisions of this Article VI and the Heartwood Design Guidelines, attached hereto and made part hereof as **Exhibit D**. Approval shall not be unreasonably withheld.

6.2. Architectural Review Committee (“ARC”). No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the

nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural review committee composed of three (3) or more representatives appointed by the Board. The Board of Directors shall be responsible to preserve the conformity and harmony of design of the improvements located on the Properties.

6.3. ARC Approval. The following list summarizes those design guidelines that ARC requires for submitted plans:

- a. Use of professionals qualified - and to the extent allowed by Florida law, licensed - in the fields of architecture, landscaping, engineering, and surveying.
- b. Compliance with all covenants and requirements as found in this Declaration.
- c. Preservation of the natural character of the building site to the maximum extent possible including trees, natural terrain, common open space, and conservation easement areas.
- d. Emphasis on aesthetics of exterior architectural and landscape designs.
- e. Requirements for minimum 3:12 to maximum 6:12 primary pitch of roof.
- f. Minimum of ~~one~~two-car garage.
- g. Minimum 30" finished floor elevation.
- h. A drainage / erosion control plan that incorporates best practices to assure appropriate drainage occurs as a result of the construction in accordance with industry standards and law. The ARC will not approve any construction and/or drainage plan that includes pumping or otherwise removing sewage from the primary building lot to another non-adjacent "drain field lot", or any such arrangement that will detrimentally affect the Common Areas. Foundation drains, gutter down spouts, and/or rain gardens shall be properly drained away from the house. Such plan shall be followed by the contractor in all respects.
- i. Integration of the exterior house lighting and landscape lighting into an arrangement

that is aesthetically pleasing and gives full consideration to human safety in and around the system, and does not infringe upon the enjoyment of neighboring Lots..

j. Submitted plans must address all exterior materials and surface treatments, including without limitation, roof, doors and decks. Approval of exterior design will be based upon overall design themes and consider:

1. Mass and scale;
2. Materials, textures, colors, and finishes;
3. Continuity between primary design elements and secondary surface treatments; and
4. Vertical and horizontal lines and roof pitches;

The ARC may disapprove any proposed new construction or changes to existing homes for purely aesthetic reasons if, in its judgment, such action is required to maintain the architectural standards of the Heartwood Community.

6.4. Preliminary Architectural Review. A preliminary design review may be requested by an Owner or an Owner's agent. The ARC will conduct a review with the Owner and/or the Owner's agent to review the proposed plans. A preliminary review may include the following documents, as applicable:

- a. Proposed to-scale site plan and landscaping plan including all rights of way, easements, and off-sets/ set-backs;
- b. Two sets of large plans (24" x 36") and two set of small plans (8 1/2 "x 11") of all exterior elevations (all sides) and floor plans [one eighth (1/8") or one quarter (1/4) drawings are

acceptable]; and

c. All proposed exterior materials, colors and finishes, on a single board approximately 24" X 36".

6.5. Final Architectural Review. The Owner or the Owner's agent must submit final construction plans (3 copies), material samples, product photos or brochures, and color chips, as applicable, as follows:

a. Application forms for residential construction or improvements, as appropriate.

b. Site plan, including house location by scale within the building envelope and a topographical survey showing current topography of the Lot as well as proposed topographical changes to the Lot, if any, and how the finished grades affect adjacent Property, roadways, culverts, and waterways. Regulations (including impervious calculations and finished floor elevation) must be strictly followed pertaining to any land disturbing activity and the location of a silt fence on three (3) sides of the Lot.

c. Detailed landscape plan include irrigation intake pipe and pump with the proposed housing if part of the proposal.

d. Floor plans.

e. Building sections and wall section details.

f. Exterior elevations (all sides).

- g. Roofs: structure, materials, color.
- h. Exterior Walls: structure, materials.
- i. Fascia and trim: construction materials, color.
- j. Doors/garage doors: specifications, materials, color.
- k. Patio/decks/screened porches: structure, materials, finish.
- l. Fences/walls: structure, materials, proposed color.
- m. Mechanical equipment: location of all exterior apparatus, including appropriate screening details.
- n. Driveways: materials, finish, and colors where appropriate.
- o. Proposed swimming pools: plans, layouts, fencing, and landscaping, if applicable.
- p. Proposed satellite dishes, antennae, etc., if any.
- q. Proposed bulkheads and docks where appropriate or applicable.
- r. Proposed geo-thermal systems and locations, if any.
- s. Proposed sub-surface drainage system and locations, if any.
- t. Proposed accessory structures, if applicable.

6.6. Approval by ARC. Approval by the ARC shall in no way relieve the contractor or



Owner of their responsibility and liability for adherence to all applicable Federal, State or local government laws, rules, regulations, ordinances, and codes. All Federal, State or local government approvals must be obtained prior to ARC approval.

The ARC will review all design documents, sample materials and color chips. All copies of plans shall be signed and dated by the contractor and ARC. If there is a difference between the approved plans and the written application, the plans shall be the standard considered by the ARC. One set of ARC approved plans shall be returned to the contractor with ARC comments.

To the extent land disturbing activities are considered, the contractor and Owner shall also abide by the rules and regulations of the City of Gainesville, Florida.

6.7. Design Document Changes. During the construction process, the contractor must submit any proposed changes to the ARC for review prior to deviating from the plans approved by the ARC. A letter from the Owner and contractor, supported by additional documentation as required, must be submitted to the ARC. Any deviations from ARC-approved plans require prior ARC written approval. Approved changes to ARC-approved plans must be noted on the master design document and initialed by the Owner, the contractor, and the ARC. Failure to comply with the requirements of this Section 6.6 may result in the requirement of removal at the Owner's expense of any change made in violation hereof.

6.8. Variations. All requests for variances from the provisions of this Article VI, including without limitation, the provisions or the Heartwood Design Guidelines contained in Exhibit D attached hereto, shall be submitted to the ARC by an Owner or an Owner's agent. Variances will be granted only in extraordinary circumstances where hardship has been demonstrated. Each variance granted applies solely to the unique circumstances of the individual request and shall not be deemed to

set a precedent for future requests. Variances shall not be granted to the extent they encroach upon or violate applicable legal requirements.

a. Setback Variances. All requests for setback variances must be submitted along with normal ARC submittals. Setback variances will not be granted if they can be avoided (usually by altering plans, submitting alternate floor plans, or submitting same plans for a different or larger lot size).

6.9. Periodic Observations. The ARC reserves the right, but is not obligated, to periodically observe construction projects in progress to attempt to determine whether or not the construction is in conformance with approved design documents and materials and compliance with these standards and the approved plans. All Owners and contractors agree to cooperate fully with the ARC and grant access as required. ARC representatives will review cleanliness of the work site, adherence to permits, water/silt/soil runoff and silt fencing as required, conformance to approved plans, adherence to acceptable construction practices and standards and appropriate on-site vehicle parking. If any sedimentation or erosion control issues are observed, the ARC representative will report the matter to the ARC with a copy to the contractor and the Owner.

6.10. Fees, Deposits and Fines. ~~An access permit will not be issued until the following fees are paid:~~

a. Fines may be levied against the Owner and/or the contractor for work performed without a required ARC permit.

b. Fees, deposits, and fines may be established and changed by the Association from time to time without notice.

- c. The Declarant is exempt from the provisions of this Section ~~6.10.-6.9.~~

6.11. Termination/Replacement of Contractor. The ARC shall be given written notification of a decision by an Owner to terminate or replace a contractor during the construction phase.

6.12. Design Documents. In order to facilitate a consistent review process, the design documents should adhere to the criteria outlined below to the extent applicable.

- a. Site Plan. The scale shall be a minimum of 1"= 10' and include:
  1. Lot lines with dimensions and bearings;
  2. Existing contours at one foot (1') maximum intervals, indicating elevation above sea level;
  3. Existing tree location for every tree six inches (6") or over in diameter at ground level and species;
  4. North arrow;
  5. Building setback lines;
  6. Easements;
  7. Rights of way;

8.        Driveways/Walkways;

~~8. \_\_\_\_\_~~

9. Patios/Decks;

10. Swimming Pools;

11. Culverts;

12. Drainage plan both inflowing and out flowing as needed and where required by the ARC in its discretion. Such plan must be submitted by a licensed professional engineer and certified to the Association. The ARC may allow other duly licensed professionals to satisfy this requirement so long as the professional is competent to handle drainage matters, and has current malpractice insurance coverage in force;

13. Dwelling perimeters (1st /2nd floors) and finished floorelevation;

14. Roof line overhangs;

15. Total impervious square footage for the structure and all other improvements on the Lot, as measured by the footprint of the structure, walkways, patios, accessory structure, driveways, etc.; and

16. Survey of landform (topography) and vegetation is required before grading or clearing of the Lot will be approved.

b. Floor Plans:

1. The scale shall be 1/4" = 1.0'.

c. Exterior Elevations:

1. The scale shall be:  $1/4" = 1.0'$ ;
2. Topographic elevations at building corners;
3. All exterior views of all structures including materials; and
4. Rendering of exterior color samples for all elevations if not consistent throughout.

d. Building Sections:

1. The scale shall be  $1/4" = 1.0'$ ;
2. Wall/roof sections; and
3. Roof pitch.

e. Exterior colors, finishes, materials:

1. Specifications;
2. Manufacturers; and
3. Materials/samples/photos/models/color chips.

f. Detailed landscape plans, scale shall be a minimum of  $1" = 10'$ :

1. Easements;
  2. Rights of way should be landscaped with grass;
  3. Plant materials (description of plantings with common names and sizes);
  4. Surface materials (e.g. pine straw, mulch, or other); and
  5. Irrigation plans.
- g. Landscape Lighting

Particular attention to screening of outdoor appliances (e.g. heat pumps) should be noted in landscape plans. Height, depth, and width of screening/plantings must be identified.

## ARTICLE VII

### USE RESTRICTIONS

7.1. Rules and Regulations. The Association, acting through its Board of Directors, shall have the authority to make and to enforce reasonable Rules and Regulations which provide standards governing the use of the Lots and Property, in addition to those contained herein.

7.2. Maintenance of Lawns and Structures. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly object shall be placed or allowed to remain on any Lot. Any property, structure, improvements and appurtenances, including driveways and sidewalks, be kept in a safe, clean, orderly and attractive condition, and all

structures shall be maintained in a finished, painted and attractive condition. All lawns, landscaping and sprinkler systems shall be installed and maintained in a neat, orderly and live condition. Xeriscape landscaping is encouraged.

7.3. Garbage. No rubbish, trash, garbage or other waste materials shall be kept or permitted at the driveway area of any Lot. All rubbish, trash, garbage or other waste materials shall be kept in sanitary containers which shall be kept in a neat condition and stored either (i) in the garage or (ii) on the side or in rear of a residence, provided any such container is screened from view **of** **of** neighboring Lots and Common Areas. Sanitary containers may not be placed outside the driveway area of any Lot, except for 12 hours before, and the calendar day when, refuse pickup is scheduled to be accomplished. An Owner shall also not allow items other than rubbish, trash, garbage, or other waste to accumulate on a Lot, in any area which can be viewed from outside the Lot.

7.4. Retention, Drainage and Conservation Easement Areas. No Lot shall be increased in size by filling in any water retention, drainage or conservation easement area on which it abuts. An Owner of a Lot shall not fill, dike, rip rap, block, divert or change the established water retention, drainage and conservation easement areas that have been or may be created by easement. An Owner may not change any conservation easement area or in any way alter or modify it. An Owner may not alter any permitted Surface Water Management System or portion thereof, or interfere with its function.

7.5. Declarant's Right to Intervene: Maintenance Assessment. In order to promote the health, safety and general welfare of all members of the Association, Declarant, for itself and for the

Association, reserves the right to enter upon any Lot for the purpose of mowing, clearing or cutting underbrush, removing trash which has accumulated, or maintaining the improvements. However, this provision shall not create an obligation on the part of Declarant and the Association to provide such service.

The cost of any maintenance performed by the Association pursuant to this Section 7.5 shall be assessed against the Lot upon which such maintenance is performed, or at the option of the Declarant, against the Lots benefiting from the maintenance ("Maintenance Assessment"). The Maintenance Assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Association. Any such Maintenance Assessment shall not be considered a part of the Annual or Special Assessment. Any such Maintenance Assessment shall be a lien on the Lots affected and the personal obligation of the Owner(s), and shall become due and payable in all respects, together with interest, reasonable attorneys' fees, and cost of collection, in the same manner and under the same conditions as provided for the other Assessments of the Association.

7.6. Utility Lines. All utility lines and lead-in wires, including, but not limited to, electrical lines, cable television lines, telephone lines, water and sewerage located within the confines of any Lot shall be located underground.

7.7. Each Lot shall only be used as a residence for a single family and for no other purpose.

7.8. No Lot, the improvement thereon, or any portion thereof, shall be leased or rented, whether for cash payment or not, and whether short term or long term.



7.9. No Lot shall be re-divided unless approved by the Association.

7.10. No Lot or any portion of the Property nor any improvement(s) erected thereon, shall be used, or occupied in a manner injurious to the use, occupation or value of the adjacent residential uses.

7.11. No structure may be located in violation of the setback line described in the Plat. Setbacks in excess of those established on the Plat may be required by the ARC.

7.12. Any construction commenced upon any Lot shall be completed within one (1) year from the date of first delivery of any materials to the Lot unless an extension thereof is granted by the ARC. After commencement of construction of any improvements on any Lot, the improvements shall not remain in a partly finished condition any longer than reasonably and normally necessary for completion thereof. The Owner of the Lot on which improvements are being constructed shall at all times keep rights of way contiguous to the Lot free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the improvements. Should the Owner leave such improvement(s) in an incomplete condition for a period of more than six (6) months, the Association is authorized and empowered, but not required, either to tear down and clear from the Lot the uncompleted portion of such structure or to complete same at its sole discretion and in either event, the expense incurred shall be charged against the Owner's interest therein and shall be a lien upon the Lot involved.

7.13. No building used for dwelling purposes shall be constructed on any Lot, except one single-family detached dwelling. Outbuildings, carports, utility sheds, lanais and outdoor

kitchens may be allowed to be constructed on a Lot if ARC approval is obtained.

7.14. No trade, business, service, professional care, instruction, or manufacture of any kind or nature whatsoever shall at any time be conducted on any Lot or any portion of the Property, nor shall any building erected thereon be used for those purposes; provided, however, that Declarant or its successors or assigns, may construct, operate and maintain model home centers within the Heartwood Community. Provided further, businesses that are not detectable to the public, such as work from home situations, are permitted to be conducted within the dwelling by the Owner or other resident of the dwelling.

7.15. All Lots and improvements thereon shall be kept in a good state of repair and appearance. No waste or damage shall go unrepaired, whether such damage or waste be to the Lot or the improvements thereon.

7.16. No animals or pets of any kind shall be kept upon any Lot except for ordinary household pets which shall not be a nuisance or annoyance to the Heartwood Community or its residents. The term "ordinary household pets" shall be deemed to mean and refer to dogs and cats of which no more than two (2) such animals shall be permitted to be kept on a Lot which shall include any emotional support and assistance animal.

7.17. No repairs or restoration of any motor vehicle, boat, camper, trailer, or other vehicle shall be permitted on any Lot unless such repairs are conducted in an enclosed carport or garage. Nor shall any truck or van larger than 3/4 tons in weight be parked, stored, or kept on any Lot except in an enclosed carport or garage out of public view.

7.18. Unless approved by the ARC, no outside antennae of any type, including, but not limited, to satellite dishes, shall be maintained or constructed on any Lot except antennae and/or satellite dishes that are in strict compliance with Federal FCC Regulations. If the ARC approves an outside antennae and/or satellite dish, such shall be placed to the extent possible, so as not to be visible from any right of way.

7.19. The keeping, maintaining, or storing of any recreational vehicle (“Recreational Vehicle”) on any Lot is prohibited unless the same is housed completely within a structure which has been architecturally approved in accordance with this Declaration, or unless a special exception has been granted by the ARC. The term “Recreational Vehicle” shall be deemed to mean and refer to [a pickup camper, mobile home or travel trailer, either with or without wheels, or any motor boat, sailboat, house boat, boat trailer, personal watercraft, kayak, canoe or similar water borne vehicle]

7.20. All driveways and parking areas must be constructed of asphalt, concrete, interlocking pavers, or similar material approved by the ARC. All driveways and parking areas must be paved to the curb line and shall be continuously paved in any area meant for driving or automobile storage.

7.21. No motor vehicles or Recreational Vehicles shall be parked, stored, or otherwise left on any unpaved area of a Lot. Any ARC application seeking authorization to build a paved area to store the items listed in this Section 7.21 shall expressly disclose that purpose for the proposed construction.

7.22. No aluminum carports shall be allowed to be constructed on any Lot.

7.23. No trailer, tent, garage, carport or other outbuilding erected shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

7.24. No individual water supply system, irrigation wells or individual sewage disposal system shall be permitted on any Lot except for porta-potties which may be utilized while ARC approved construction is conducted on a Lot.

7.25. No trash, garbage or other waste material or refuse shall be placed or stored on any Lot except in covered or sealed sanitary containers. All such sanitary containers must be stored within each building, buried underground, or placed within an enclosure or concealed by means of a screening wall of material similar to and compatible with that of the construction approved by the ARC. No trash, garbage or other waste materials or refuse shall be placed or stored on any portion of the Property except an Owner's Lot.

7.26. No air conditioning equipment, which is visible on the exterior of any building or other improvement, shall be permitted on any Lot unless approved by the ARC. Approval shall be based upon adequacy of screening and/or landscaping of such equipment. The ARC may prohibit window air conditioning units altogether or impose stricter standards.

7.27. No clearing or excavation shall be made except in connection with the construction, maintenance, or repair of an improvement; and, upon completion thereof, exposed openings shall be backfilled, and disturbed ground shall be leveled, graded and seeded, as provided on the approved plans for landscaping.

7.28. No signs, flags, pennants, advertisements, billboards, other solicitation or advertising structures of any kind or material, including paper, plastic or cardboard, shall be erected, modified or maintained on any Lot, unless prior written approval of the ARC is obtained. When each Lot shall be for sale, only one "For Sale" sign no larger than 6 square feet will be permitted for each Lot, provided, however, a builder or real estate broker may erect a sign of up to 32 square feet to advertise a newly constructed residence for sale during the construction and sales period. The restrictions of this Section shall not apply to the Declarant.

7.29. No clothing or household fabrics shall be hung in open view to the public on any Lot, unless the same are hung on umbrella or retractable clothes hanging devices which are located directly behind the residence and removed from view when not in use in a manner consistent with State Law.

7.30. No building shall have any aluminum foil placed in any window or glass door or any reflective substance placed on any glass.

7.31. Any protective screening constructed along exterior Lot lines as a buffer against the encroachment of noise, dust, and/or visual pollution, or other adverse influence, shall be maintained by the Owner of such Lot, at such Owner's expense, including the repair and replacement thereof from time to time, for so long as such buffer shall continue to be necessary by virtue of the continued adverse influence on the adjacent Lot, which such necessity shall be determined by the ARC.

7.32. All fixed basketball backboards and any other fixed games shall be located at the

side or rear of the residential structure. All play and athletic structures and yard accessories shall be located to the rear of any building and within the applicable building setback lines. For any such structure exceeding six (6) feet in height, prior written approval must be first obtained from the ARC.

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7.33. Living trees measuring eight inches (8") or more in diameter at three feet (3') or more above ground level shall not be cut down or removed from any Lot or portion of the Property without the prior written consent of the ARC, unless the trees are located within six feet (6') of the residence or its proposed location as approved by the ARC or the tree constitutes an immediate threat to an improvement or building located on any Owner's Lot. The Owner shall obtain all required City of Gainesville Tree Removal permits prior to removing any tree for which removal require such a permit. Nothing herein is intended to preclude an Owner from trimming and otherwise maintaining overhanging limbs and branches from trees located on the Lot of another Owner or on the Property.

7.34. Perpetual easements for the installation and maintenance of utilities and drainage facilities are dedicated as shown on the Plat. Within these easements, no structure, planting or other material may be placed or permitted to remain which interferes with vehicular traffic, or prevents the maintenance of utilities. All utilities within the Property, whether in street rights of way or utility easements, shall be installed and maintained underground. Easements are hereby reserved unto the Declarant, its successor or assigns forever, perpetually to install, and to maintain, such utilities and drainage, upon any portion of the Lots and improvements thereon.

7.35. Nothing shall be done on a Lot or the Common Areas which is illegal or which may be or may become noxious, offensive, an annoyance, or otherwise a nuisance to the Members or residents of the Association. In the event of any questions as to what may be (or become) a nuisance, such

questions shall be submitted to the Association for a decision which shall be final and conclusive. Generally, a nuisance is anything which would cause significant annoyance or offense to a reasonable person.

## ARTICLE VIII

### EASEMENTS FOR MAINTENANCE, CONSTRUCTION AND REPAIR

8.1. Access and Repair. Declarant hereby reserves unto itself, its agents, employees, invitees and assigns, and for the benefit of the Association, and the Association's agents, employees, invitees and assigns, a non-exclusive easement for ingress and egress over any Lot in order to gain access to the Common Areas or to any Lot, in order for the Association to discharge its duties to construct, maintain and repair the Common Areas, utilities, Surface Water Management System, or other improvements and for the purpose of maintaining the Property by the Association in a manner consistent with the Association's maintenance obligations or rights provided for herein, together with an easement for the maintenance of sprinkler systems owned by the Association, if any.

8.2. Driveway. The Owner of each Lot shall have a non-exclusive easement over any portion of the Common Areas crossed by the Owner's driveway, if any, to the extent reasonably necessary to connect with common roadways.



8.3. Utilities. Each Lot and the Common Areas may be subject to easements for construction, development, repair and maintenance of utilities, systems and facilities (including, but not limited to, fire, emergency management and police protection, garbage and trash removal, water and sewage system, electric and gas service, drainage, surface water management, irrigation, cable television, water drainage and telephone), roadways, and utilities. Applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Lot or the Common Areas in furtherance of such easements. No structure, planting, fill or other material shall be placed or permitted to remain which may damage or interfere with the use of such easements.

8.4. Termination. No easement herein reserved, shown on the Plat or subsequently reserved by Declarant or the Board may be removed from its intended use or otherwise terminated by any subsequent Owners or any other persons, other than by the Declarant or its designee (so long as Declarant or said designee owns any Lot) or by the Board.

## ARTICLE IX

### ENFORCEMENT OF COVENANTS

9.1. Obligations of Owners. Every Owner and the Owner's tenants, guests, invitees and agents shall comply with all of the terms and conditions of this Declaration, the Articles of Incorporation, and the Bylaws for Heartwood Community Homeowner's Association, Inc, and the Association's Rules and Regulations, all as same exist and as same may be amended or adopted in the future.

9.2. Remedies. Failure to comply herewith or with any Rules and Regulations



promulgated by the Association's Board of Directors, shall be grounds for immediate action which may include, without limitation, an action to recover sums for damages, an action for injunctive and/or declaratory relief, an action for sanctions, or any combination thereof, against the individual(s) who failed to comply, and against the Owner of the non-compliant Lot or the Owner whose tenants, guests, invitees or agents have failed to comply. The prevailing party in any action to enforce the Governing Documents of Heartwood Community shall be entitled to recover all administrative costs, attorneys' costs, and attorneys' fees incurred in connection therewith, regardless of whether an action for enforcement is filed.

9.3. Cause of Action. The Association, Declarant, Owners and beneficiaries of any dedicated property or property rights contained herein shall have an action for damages, injunctive relief, or both to enforce all of the terms and conditions of the Governing Documents, including this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations against the responsible person or entity.

9.4. No delay in enforcing the Association's Governing Documents as to any breach or violation thereof shall impair, damage or waive the Association's right to enforce its Governing Documents, to obtain relief against or recovery for continuation or repetition of such breach or violation, or of any similar breach or violation thereof, at a later time or times.

## ARTICLE X

### AMENDMENTS

10.1. Amendment by Declarant. Declarant reserves the right unilaterally to amend or terminate this Declaration and to do so at any time or times upon such conditions, in such form

and for such purposes as it shall, in its sole discretion, deem appropriate by preparing and recording amendments hereto, provided however, that this right of unilateral amendment shall expire upon Turnover of control of the Association to Members other than Declarant. Any amendment shall relate back to and become effective as of the date of recording of this Declaration.

10.2. Restrictions on Amendment by Declarant. Declarant's rights shall include, without limitation, the right to amend this Declaration in order to correct any errors or omissions, or the dimensions of any Lots or Common Areas not previously conveyed, as long as any such amendment does not (a) change the dimensions of any Lot or Common Areas previously conveyed; or (b) restrict the integrity of the lien of any lender who holds a mortgage on any previously conveyed Lot.

10.3. Amendment by Owners. After Turnover of control of the Association to Members other than Declarant, this Declaration may be amended at any time at any regular or special meeting of the Owners called and held in accordance with the Bylaws by the affirmative vote of not less than a majority of the Members, including Declarant for any Lots owned by Declarant. However, no amendment to this Declaration, the Articles of Incorporation of the Association, or the Bylaws of the Association, shall be valid, if such amendment would affect Declarant's rights under this Declaration. An amendment to the Declaration shall be evidenced by a certificate executed by the Association. The amendment shall become effective upon the recording of the certificate in the Public Records of Alachua County.

## ARTICLE XI

### GENERAL PROVISIONS

11.1. Duration of Covenants. 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 Declarant, the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) 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 ~~four-fifths (4/5)~~ a majority 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 conditions, covenants or restrictions herein contained shall give Declarant and/or Association and/or the 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 or 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 or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Declarant and/or the Association in seeking such enforcement.

11.2. Assignment of Declarant's Rights. The Declarant shall have the right to assign all of its rights, obligations and duties to a purchaser of all or a portion of the Property by written recorded instrument. In the event of such assignment, the original Declarant shall be relieved and discharged of all liabilities and obligations under this Declaration, and the purchaser shall proceed as Declarant.

11.3. Eminent Domain Proceeds. Any awards for the taking of all or any part of the Common Areas by condemnation or eminent domain shall be used to make the remaining portion of the Common Areas usable in the manner approved by Board. The balance of such awards, if

any, shall be distributed to the Owners equally or reserved at the election of the Board to defray future expenses of the Association or to afford a reserve to the Association.

11.4. Mailing of Notices. Any notices required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the address of the party to which the notice is directed.

11.5. Savings Clause. Invalidation of any one or more of these covenants and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

11.6. Release or Addition of Property. Notwithstanding any of the provisions contained in this Declaration, neither Declarant nor its successors or assigns shall be obligated to develop all of the Property submitted to this Declaration, and Declarant may release any of the Property submitted in this Declaration from the terms and conditions hereof, or subject additional property to the terms of this Declaration, except any properties conveyed to the Association or Owners. Such deletions or additions shall be made by Declarant by filing in the Public Records of Alachua County an amendment to this Declaration providing for the release or addition of the property from this Declaration. However, such unilateral right to release or subject additional property to the terms and conditions of this Declaration shall expire upon Turnover of control of the Association to Members other than Declarant.

11.7. Effective Date. This Declaration shall become effective upon its recording in the Public Records of Alachua County, Florida.

11.8 Notice to City of Dissolution. In the event of the dissolution, termination or final

liquidation of Association other than incident to a merger or consolidation, written notice shall be provided to the City of Gainesville at least thirty (30) days prior to such dissolution, termination or final liquidation.

11.9 Precedence Over Less Stringent Governmental Regulations. In the event that any covenants, conditions, or restrictions set forth herein set standards which exceed those of the ordinances, regulations or requirements of the applicable government authorities (including without limitation, building and zoning regulations), the covenants, conditions, or restrictions stated herein shall take precedence and prevail over any such less stringent ordinances, regulations and requirements.

## ARTICLE XII

### TURNOVER

12.1. Time of Turnover. Members other than Declarant shall be entitled to elect at least a majority of the members of the Board of Directors of the Association not later than three (3) months after ninety percent (90%) of the Lots which will ultimately be operated by the Association have been conveyed to Members other than Declarant. At the Turnover Meeting, the Members other than Declarant shall elect a Board of Directors and the Directors appointed by Declarant shall resign. However, Declarant may retain the right to elect at least one (1) member of the Board of Directors of the Association as long as Declarant holds for sale in the ordinary course of business, at least one Lot.

12.2. Procedure for Calling Turnover Meeting. No more than forty-five (45) days and no less than thirty (30) days prior to the Turnover Meeting, the Association shall notify the

Members in writing of the date, time and place of the Turnover Meeting.

12.3. Early Turnover. Declarant may turn over control of the Association to Members other than Declarant prior to the Turnover. date set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than Declarant to elect Directors and assume control of the Association; provided, however; that at least thirty (30) days notice of Declarant's decision to cause its appointees to resign is provided to the Members. Declarant shall not be liable in any manner in connection with such resignations, even if the Members other than Declarant refuse or fail to assume control.

[Signatures to follow on next page]

IN WITNESS WHEREOF, Declarant has executed this instrument as of this day  
of \_\_\_\_\_, 2021.

DECLARANT:

THE CITY OF GAINESVILLE,  
A Municipal Corporation of the  
State of Florida

By: \_\_\_\_\_

Approved as to form and legality:

Attest:

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online  
notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_,  
as \_\_\_\_\_, a \_\_\_\_\_ corporation, of  
the State of Florida. He/she is personally known to me or has  
produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

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

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

### Legal Description

A tract of land situated in the NW 1/4 of Section 10, Township 10 South, Range 20 East, Alachua County, Florida, said tract of land being more particularly described as follows:

Commence at the Northwest corner of Section 10, Township 10 South, Range 20 East, and run S 89°51'23" East, along the North line of said Section 10, 430.00 feet to the Point of Beginning; thence run S 00°15'07" West 780.80 feet; thence run S 89°45'53" East 610.00 feet; thence run N 00°15'07" East 113.57 feet; thence run S 89°50'45" East 341.81 feet; thence run N 00°15'07" East 668.06 feet to the North line of said Section 10; thence run N 89°51'23" W, along the North line of said Section 10, 951.81 feet to the Point of Beginning.

LESS the North 50 feet thereof dedicated for street right-of-way.