

Upon recording, return to:

Landeavor, LLC
10930 Crabapple Road, Suite 204
Roswell, GA 30075
Attn: Jennifer Genovese

Clerk: Please cross-reference to Declaration at:
Book 4515, Page 62

STATE OF GEORGIA

COUNTY OF CHEROKEE

**TWELFTH AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR GREAT SKY**

This Twelfth Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Great Sky ("**Amendment**") is made and executed by GREAT SKY LOTS HOLDINGS, LLC, a Delaware limited liability company ("**GS Lots**," also being sometimes referred to herein as "Declarant").

WITNESSETH:

WHEREAS, Fairgreen Capital, L.P. ("**Original Declarant**") filed that certain Declaration of Covenants, Restrictions and Easements for Great Sky which was recorded in the Office of the Clerk of the Superior Court for Cherokee County, Georgia ("**Land Records**") on April 2, 2001 in Deed Book 4515, Pages 62-99, *et seq.* (the "**Original Declaration**"), which has since been amended and supplemented by various instruments filed in the Land Records (the Original Declaration, as amended and supplemented, is referred to herein as the "**Declaration**"); and

WHEREAS, the Original Declarant conveyed certain properties to Fairgreen Great Sky, LLC, a Georgia limited liability company ("**FGS**") pursuant to that Quitclaim Deed dated September 18, 2006, and recorded October 16, 2006 in Deed Book 9133, Page 356, *et seq.*, as superseded and replaced by that Corrective Quitclaim Deed dated effective as of September 18, 2006, filed for record September 24, 2009 and recorded in Deed Book 10791, Page 213, *et seq.* (as corrected, the "**FGS Deed**"), and Original Declarant, as assignor, with FGS, as assignee, executed that Assignment and Assumption Agreement Regarding Rights of Declarant under the

Declaration of Covenants, Restrictions and Easements for Great Sky dated October 17, 2007, recorded in the Land Records on October 24, 2007 in Deed Book 9910, Page 27, *et seq.* ("**FGS Assignment**"), expressly stating in such FGS Deed and FGS Assignment the intent, by such instruments, to transfer, assign, and convey to FGS, and for FGS to assume, all rights of the "Declarant" under the Declaration to FGS; and

WHEREAS, FGS, as assignor, and DB Aster III, LLC, a Delaware limited liability company, as assignee, executed that Assignment and Assumption Agreement Regarding Rights of Declarant under the Declaration of Covenants, Restrictions and Easements for Great Sky dated as of June 5, 2012 and recorded in the Land Records on June 25, 2012 in Deed Book 11879, Page 274, *et seq.* ("**Aster Assignment**"), expressly stating in such Aster Assignment the intent, by such instrument, to transfer, assign and convey to DB Aster III, LLC, and for DB Aster III, LLC to assume, all rights and status of "Declarant" under the Declaration. That certain Deed Under Power of Sale dated July 11, 2012 and recorded July 13, 2012 at Deed Book 11905, Page 348, as amended by Amended Deed Under Power of Sale dated July 30, 2012 and recorded August 8, 2012 at Deed Book 11944, Page 408, *et seq.* ("**Aster Deed**"), expressly stated the purpose and intent of the Aster Deed being to convey to DB Aster III, LLC "all of the right, title, equity and interest of FGS, its legal representatives, heirs, assigns and all persons whomsoever claiming under it" in and to the lands described therein; and

WHEREAS, DB Aster III, LLC assigned all of its rights and status as "Declarant" under the Declaration to GS Lots in that Limited Warranty Deed dated as of April 28, 2017, filed for record May 8, 2017 at Book 14175, Page 2202, *et seq.* ("**GSLH Deed**"), and in that Assignment and Assumption of Declarant's Rights between DB Aster III, LLC and GS Lots dated as of April 28, 2017 and recorded in the Land Records on May 8, 2017 in Deed Book 14175, Page 2381, *et seq.* ("**GSLH Assignment**"); and

WHEREAS, pursuant to Article X, Section 10.02 of the Declaration, during any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, the Declarant may amend the Declaration without the approval of any Owner, Commercial Owner or mortgagee, provided that the amendment does not materially alter any Owner's right to the use and enjoyment of such Owner's Lot or Commercial Property, or of the Common Property as set forth in the Declaration, or adversely affect the title in the Declaration or the title to any Lot or Commercial Property, or materially and adversely affect the security title and interest of any mortgagee in a Lot or Commercial Property, without the consent of the affected Owner or mortgagee;

WHEREAS, GS Lots, as the current Declarant, still holds the right to appoint and remove directors and officers of the Association pursuant to Section 3.11 of the Declaration and desires to amend the Declaration in a manner that does not trigger any requirement for consent of Owners or mortgagees under Section 10.02;

NOW, THEREFORE, the Declarant hereby amends the Declaration as follows:

1.

Article I, Definitions, is amended by deleting Section 1.05 Common Property, and replacing it with the following:

1.05 Common Property. "Common Property" means all real property (together with any and all improvements now and hereafter located thereon) and interests therein, including easements, owned or held by the Association for the common use and enjoyment of the Owners or a subset thereof; a portion of the Common Property designated for the exclusive use or primary benefit of less than all Owners pursuant to Article II is referred to as "Limited Common Property."

and by adding the following new sections to the end of that Article:

1.20 Service Area. "Service Area" means a group of Units designated as a "Service Area" by Supplemental Declaration for purposes of sharing the benefit of Limited Common Property and/or receiving other benefits or services from the Association which the Association does not provide to or for all Units. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Unit may be assigned to more than one Service Area.

1.21 Service Area Assessment. "Service Area Assessment" means assessments levied against the Units in a particular Service Area to fund Service Area Expenses, as described in Section 4.02.

1.22 Service Area Expense. "Service Area Expense" means the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Units within a particular Service Area in providing benefits or services described in the Supplemental Declaration establishing such Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge.

1.23 "Supplemental Declaration": An instrument recorded in the office of the Clerk of the Superior Court of Cherokee County, Georgia pursuant to Article XI hereof which subjects additional property to this Declaration, designates Service Areas, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

2.

Section 2.01, Conveyance of Common Property, is hereby amended by deleting subsection (a) thereof and replacing it with the following:

(a) The Declarant, and with approval of the Declarant, a Builder, may from time to time transfer, convey to the Association, at no expense to the Association, and in accordance with this Section, Common Property, easements, and personal property for the common use and enjoyment of the Owners, a subset of Owners (if Limited Common Property) and, to the extent set forth in this Declaration, the deed of conveyance, or other recorded instruments affecting title thereto, the general public. Any such conveyance shall be free and clear of all deeds of trust and mechanics

liens, but may be subject to covenants, restrictions, and/or easements in addition to those set forth in this Declaration. The Association shall accept from the Declarant and any Builder it authorizes all such conveyances of Common Property, and shall thereafter maintain it in accordance with this Declaration, any applicable Supplemental Declaration, and the By-Laws, subject to the provisions of Section 2.03.

3.

Section 2.03, Rights of the Association, is hereby amended by inserting the following at the end of that Section:

Notwithstanding the above, the rights of the Association under this Section 2.03 as they relate to Limited Common Property shall be subject to the provisions of Section 2.04, in addition to the provisions of this Section.

4.

Section 2.04, Types of Common Property, is hereby amended by deleting that Section and replacing it with the following:

Section 2.04 Types of Common Property. Any Common Property shall be held for the general use and benefit of all Owners unless designated by the grantor as Limited Common Property for the benefit of Lots within a particular Service Area, either in this Declaration, the deed conveying such property to the Association, on a recorded subdivision plat describing such property, or in a Supplemental Declaration applicable to such property. Any portion of the Common Property so designated as Limited Common Property shall be held and maintained for the use and benefit of the Lots within the Service Area to which such Limited Common Property is assigned pursuant to the Supplemental Declaration applicable to such Limited Common Property, and may not be sold, leased, transferred, conveyed, its designation as Limited Common Property changed, or the primary use thereof altered, without the prior written consent of Declarant, so long as Declarant owns any property subject to this Declaration or has a right to annex additional property pursuant to Article XI, and Owners of at least two-thirds (2/3) of the Lots for whose benefit the Limited Common Property has been designated.

5.

Section 4.02, Purpose of Assessments, is amended by deleting that Section and replacing it with the following:

4.02 Purpose and Types of Assessments. The Association is authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles, and the Bylaws, including, but not limited to, Common Expenses and Service Area Expenses. "Common Expenses" shall include all expenses other than Service Area Expenses, including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, insuring and equipping of Common Property, enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards (as hereinafter defined) of the ACC (as hereinafter

defined), the payment of operating costs and expenses of the Association, the payment of the cost of the service contract for the Pump Equipment with the exclusive contractor selected and appointed by the Association, and the payment of all principal and interest when due on all debts owed by the Association.

There shall be several types of assessments: (i) annual General Assessments and Special Assessments for Common Expenses, to be levied at a uniform rate on all Units subject to assessment under Section 4.05; (ii) annual Service Area Assessments and Special Assessments for Service Area Expenses, to be levied only on Units within a particular Service Area in accordance with this Declaration and the Supplemental Declaration establishing such Service Area; and (iii) pump equipment assessments, as described in Section 4.01(b) and elsewhere in this Declaration.

6.

Section 4.04, Maximum Annual Assessment, is amended by changing the heading to "Maximum General Assessment" and by deleting the words "annual assessment" and "Annual Assessment" each time they appear in that Section and replacing them with the words "General Assessment."

7.

Section 4.05 is amended by deleting that Section and inserting the following in its place:

4.05 Special Assessments. In addition to the annual assessments for Common Expenses and annual assessments for Service Area Expenses authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, Special Assessments for the purpose of paying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property, or funding any unbudgeted expenses or expenses in excess of those budgeted, provided that:

(a) any such Special Assessment for Common Expenses shall have been approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and Section 4.06(a) of this Declaration; and

(b) any such Special Assessment for construction, reconstruction, repair or replacement of a capital improvement on the Limited Common Property benefiting a particular Service Area, or for other Service Area Expenses, shall be subject to approval, by any means authorized in the By-Laws, of the Owners of two-thirds (2/3) of the Lots in such Service Area, except that any Special Assessment which the Board determines is necessary to repair, replace, or stabilize any slope or retaining wall which it is obligated to maintain as a Service Area Expense may be levied without approval of the Owners within such Service Area.

8.

Section 4.06, Assessment Procedure, is amended by deleting the words "annual assessment" and "Annual Assessment" each time they appear in that Section and replacing them with the words "General Assessment" and by deleting the "(b)" in front of the second paragraph thereof, and adding the following new subsection (b) immediately following such paragraph:

(b) The Board shall prepare a separate budget for each Service Area (each a "Service Area Budget") reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year, including, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Service Area Expense of such Service Area. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset. Each Service Area budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots in such Service Area, and the amount to be generated through the levy of Service Area Assessments. The Board shall establish the Service Area Assessment at an equal rate per Lot within the Service Area, except as otherwise provided herein or in the applicable Supplemental Declaration. If the applicable Supplemental Declaration is silent as to the allocation of Service Area Expenses, any portion of the Service Area Assessment levied for maintenance, repair, replacement and/or insurance on landscaping and improvements on Lots and reserves related thereto may be levied on each of the benefited Lots in proportion to the benefit received, as the Board may reasonably determine.

All amounts that the Association collects as Service Area Assessments shall be held for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

9.

Section 4.07 is amended by deleting that Section and replacing it with the following:

4.07 Rate of Assessment. The General Assessment, the pump equipment assessment and Special Assessments for Common Expenses must be fixed at a uniform rate for all Lots. Service Area Assessments shall be levied at a rate determined in accordance with Section 4.06(b).

10.

Section 4.08, as previously amended, is further amended by deleting the words "Annual Assessment" each time they appear and replacing them with the words "General Assessment" and by adding the following new sentence to the end of that section:

Unless otherwise specified in the Supplemental Declaration applicable to a particular Service Area, Service Area Assessments shall commence as to each Lot within such

Service Area on the date that the Association's obligations commence with respect to any Lot within such Service Area or any Limited Common Property designated for the benefit of such Service Area.

11.

Article XI, ANNEXATION is amended to change the title of that Article to "ANNEXATION AND SUPPLEMENTAL DECLARATIONS" by inserting after Section 11.01 the following new Section 11.02:

11.02 Any Supplemental Declaration recorded by the Declarant may (a) designate any portion of the real property described in such Supplemental Declaration as "Limited Common Property;" (b) assign some or all of the Lots within the real property described in such Supplemental Declaration to one or more Service Areas; (c) supplement this Declaration by setting forth additional covenants, restrictions, easements, and other provisions applicable to all or portions of the real property described in such Supplemental Declaration, such as covenants obligating the Association to maintain and insure any such Limited Common Property and/or provide services for the benefit of the Lots within any Service Area designated in such Supplemental Declaration as a Service Area Expense. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration; provided, if any property to be made subject to a Supplemental Declaration is owned by someone other than Declarant, then the consent of such Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property subject to such Supplemental Declaration in order to reflect the different character and intended use of such property.

[continued on next page]

IN WITNESS WHEREOF, the Declarant has executed this Amendment by and through its authorized representative this 27 day of June, 2022.

DECLARANT:

GREAT SKY LOTS HOLDINGS, LLC, a Delaware limited liability company

By: Great Sky Holdings, LLC, a Delaware limited liability company, its managing member

By: Landeavor Great Sky Manager, LLC, a Delaware limited liability company, as its managing member

By: Adam Lorry
Adam Lorry, Authorized Signatory

Signed, sealed and delivered this 27 day of June, 2022, in the presence of:

[Signature]
Unofficial Witness
(Print Name): Trudy Azar Sepandan

Monica Krivoruchka
Notary Public
(Print Name): Monica Krivoruchka

[Notary Seal/Stamp]

My commission expires:
Oct 15, 2025

