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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**HAMILTON PLACE TOWNHOMES**

Collier County, Florida

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HAMILTON PLACE TOWNHOMES**

THIS DECLARATION, is made this 10<sup>th</sup> day of October, 2019, by **TOLL SOUTHEAST LP COMPANY, INC.**, a Florida corporation, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the fee simple owner of certain real property located in the City of Naples, Collier County, Florida, the same being more particularly described on Exhibit "A", attached hereto and made a part hereof (the "Property") and depicted on the plat of *Hamilton Place* (the "Plat"), a copy of which is attached hereto as Exhibit "A-1" which Plat shall be recorded in the Public Records of Collier County, Florida after this Declaration.

WHEREAS, Declarant intends to develop and improve the Property with up to sixty-five (65) residential townhomes together with certain associated common areas and improvements, said development to be hereafter known and referred to as *Hamilton Place Townhomes* ("Hamilton Place Townhomes").

WHEREAS, Declarant wishes to provide for the preservation and maintenance of the appearance, values and amenities of the Hamilton Place Townhomes and, to this end, desires to subject the Property to the terms, covenants, easements, conditions, rights and obligations of this Declaration of Covenants, Conditions and Restrictions for Hamilton Place Townhomes, herein called the "Declaration," and has created a non-profit membership corporation, herein called the "Association," to be given the power and duty of maintaining and administering the Common Areas (as defined herein) and enforcing this Declaration of Covenants, Conditions and Restrictions for Hamilton Place Townhomes.

NOW, THEREFORE, Declarant hereby declares that all of the Property, as described above, 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 real 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 "Architectural Review Requirements" means the design criteria and building guidelines promulgated by the Architectural Review Committee as more particularly described in Article VII of this Declaration.

1.2 “Area of Common Responsibility” those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or by contract become the responsibility of the Association.

1.3 “Articles of Incorporation” shall mean the Articles of Incorporation for Hamilton Place Townhomes Homeowners Association, Inc., attached hereto as **Exhibit “B”**.

1.4 “Assessments” shall mean a sum or sums of money for common expenses provided for herein, or by any subsequent amendment, which shall be used for the purposes of promoting the recreation, common benefit, and enjoyment of the Owners and occupants of Hamilton Place Townhomes, for establishing and providing services to Owners and occupants and for maintaining the Property or Common Areas within Hamilton Place Townhomes, and areas common to overall campus (i.e. main entrance, water maintenance, etc.) all as may be specifically authorized from time to time by the Board of Directors of the Association (as defined below), which, if not paid by an Owner, can result in a lien against the Lot. The Assessments shall include Monthly Assessments, Special Assessments, and Specific Assessments.

1.5 “Association” shall mean and refer to the Hamilton Place Townhomes Homeowners Association, Inc., its successors and assigns.

1.6 “Board of Directors” or “Board” shall mean and refer to the representative body that is responsible for the administration of the Association.

1.7 “Builder” means Toll Southeast LP Company, Inc. (“Toll”). Declarant designates Toll as a “Builder,” and as a person authorized by Declarant to conduct development, construction and sales activities within the Property.

1.8 “By-Laws” shall mean the By-Laws of Hamilton Place Townhomes Property Owners Association, Inc., attached hereto as **Exhibit “C”**.

1.9 “Common Areas” means all real and personal property within the Community, which are declared herein or in any Supplemental Declaration to be the “Common Areas” or on any recorded subdivision plat of the Community, and all improvements thereto, which are designated for the use and enjoyment of all Owners, or which are otherwise dedicated, conveyed, leased or for which a license or use right is granted to the Association and which are intended to be devoted to the common use and enjoyment of some or all of the Owners, as more specifically provided herein. Each Common Area shall be designated, dedicated, conveyed, leased, licensed or have a use right granted to the Association at such time as is provided in the instrument that designates, dedicates, conveys, leases, licenses or grants a use right for such area of land to the Association. As used herein, “Common Areas” shall include, among other things, (i) all improvements and equipment located in or on the Common Areas, including, without limitation, private roadways, signage, entry features, swales and berms, pedestrian paths and irrigation systems, (ii) parking facilities designated as Common Areas in this Declaration, any Supplemental Declarations or on the Plat, (iii) the Water Management System, as permitted by SFWMD, including, but not limited to, all retention areas, conservation areas, water management areas, ditches, culverts, structures and related appurtenances, but shall exclude (w) any public

utility installation located in or on the Common Areas thereon, including but not limited to water and sewer infrastructure (to the extent not conveyed to the city) (x) all portions of any Community Systems (as defined below), unless specifically designated as part of the Common Areas pursuant to a Supplemental Declaration by the Declarant, and (y) any other property of Declarant not intended to be made Common Areas.

1.10 “Common Expenses” means the actual and estimated expenses of operating the Association, including, but not limited to, maintenance of the Common Areas, and Area(s) of Common Responsibility, services and any reasonable reserve, all as may be found necessary and appropriate by the Board pursuant to this Declaration, the Articles and the Bylaws.

1.11 “Community” and/or “Property” means the real property and all other property described in **Exhibit “A”** attached hereto and incorporated herein by reference and interests therein, which is subject to this Declaration, together with such additional property now or hereafter made subject to this Declaration in accordance with the terms and conditions herein.

1.12 “Community Systems” means and refers to any and all television (cable, satellite or otherwise), telecommunication, alarm/monitoring, electronic surveillance and/or monitoring systems intended to control access, internet, telephone, utility or other lines, conduits, wires, amplifiers, towers, antennae, satellite dishes, equipment, materials, installations and fixtures (including those based on, containing and serving future technological advances not now known), installed by Declarant, the Association or a third party provider, or pursuant to any grant of easement or authority by Declarant and/or the Association within the Community.

1.13 “Declarant” shall mean and refer to Toll Southeast LP Company, Inc., its successors and assigns, by specific written assignment, acting pursuant to this Declaration. It shall not include any person or entity who purchases a Lot, unless such purchaser is specifically assigned some or all rights of Declarant by a separate, recorded instrument. It is intended that Toll Southeast LP Company, Inc. will develop the project and succeed to some of the rights and obligations of Declarant, upon the recording of an assignment of Declarant’s rights and obligations.

1.14 “Guest” means any person who is physically present in, or occupies a Lot at the invitation of the Owner without the payment of consideration or rent.

1.15 “Institutional Mortgagee” shall mean and refer to the holder of a first mortgage against a Lot, which holder is a bank, savings and loan association, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration or any agency of the United States of America, and their successors and assigns, or any entity recognized in the community as an institutional lender. The mortgage may be placed through and closed in the name of a mortgage broker.

1.16 “Lease” means the grant by a Lot Owner of a temporary right of use of the Owner’s Lot for valuable consideration.

1.17 “Limited Common Area” shall mean any and all real and personal property, easements, improvements, facilities and other interest which are reserved for the use of Owners of certain Units to the exclusion of other Owners of certain Units.



1.18 “Lot” shall mean a platted residential Lot as shown on the Plat of Hamilton Place Townhomes, as set forth on Exhibit “A-1” attached hereto and to be recorded in the Public Records of Collier County, Florida.

1.19 “Member” shall mean and refer to all those Owners who are members of the Association.

1.20 “Monthly Assessment” shall mean and refer to monthly assessments levied on all Units subject to assessment under this Declaration, to fund Common Expenses for the general benefit of all Units.

1.21 “Occupant,” when used in connection with a Lot, means any person who is physically present in a Lot on two (2) or more consecutive days, including staying overnight.

1.22 “Owner” or “Lot Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot within the Properties, 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.

1.23 “Party Wall” shall mean and refer to any wall common to two Units which shall be owned equally by the Owners of such Units.

1.24 “Plat” shall mean that certain Plat titled the Hamilton Place as set forth on Exhibit “A-1” attached hereto and to be recorded in the Public Records of Collier County, Florida.

1.25 “Primary Occupant” shall mean the natural person approved for occupancy when title to the Lot is held in the name of a trustee, a corporation, or other entity which is not a natural person.

1.26 “Properties” or “Property” shall mean and refer to that certain real property described in Exhibit “A” attached hereto and incorporated herein, known as Hamilton Place Townhomes and such additions thereto as may hereafter be brought within the jurisdiction of the Association and submitted to this Declaration.

1.27 “Special Assessments” means assessments levied in accordance with Article V, Section 5.4 of this Declaration.

1.28 “Specific Assessments” means assessments levied in accordance with Article V, Section 5.5 of this Declaration.

1.29 “Water Management System” shall mean and refer to the surface water management system and storm water management system for the Community including, but not limited to, all on-site and off-site inlets, ditches, swales, culverts (including the off-site culvert system conveying discharge to the downstream receiving conveyance system), water control structures, retention and detention areas, ponds, lakes, flood plain compensation areas, wetlands, and any associated buffer areas, and wetland mitigation areas, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating

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

1.30 “Unit” shall mean and refer to a single-family residence and ancillary structures such as garages, decks, and screen enclosures.

1.31 “Supplemental Declaration” shall mean an amendment or supplement to this Declaration filed pursuant to Article XV which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

1.32 “SFWMD” shall mean the South Florida Water Management District.

## **ARTICLE II**

### **COMMON AREA; COMMUNITY SYSTEMS**

2.1 Common Areas. The Common Areas are as designated on the Plat, in this Declaration, or in any other documents recorded from time to time by the Declarant. Declarant shall have the right to add property to the Common Areas at Declarant’s sole option and in its sole discretion. Declarant hereby initially designates the following tracts on the Plat as the Common Areas for the use and benefit of all Owners within the Community: Tracts R, C, D, L, A, and P.

A. The Declarant shall have the right in its sole discretion to convey additional real estate improved or unimproved and/or personal property as additional Common Area which conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of the Members. The boundaries of the Common Area may from time to time be modified by Declarant as deemed necessary or appropriate by Declarant for development and sale of the Community. The Association shall, without approval of a person, execute any such instrument deemed necessary to accomplish any boundary modification.

2.2 Easements for Use and Enjoyment of Common Areas. Every Owner of a Unit shall have a right to an easement of ingress and egress, use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to the Unit, subject to the following provisions:

A. the right of the Association to borrow money for the purpose of improving the Common Areas, or any portion thereof or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a mortgage encumbering all or any portion of the Common Areas; provided, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner, or a holder of any mortgage, irrespective of when executed or given by Declarant or any Owner, encumbering any Unit or other property located within the Community;

B. the right of the Association to grant easements across the Common Areas to persons who are not Owners;

C. the right of the Association to dedicate or transfer all or any portion of the Common Areas subject to such conditions as may be agreed to by a majority of the Members of the Association and subject to the approval requirements of Declarant;

D. this Declaration, the Bylaws and any other applicable covenants;

E. any restrictions or limitations contained in any deed conveying such property to the Association;

F. the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area or rules restricting the access of the Members over certain Common Areas (including without limitation certain conservation, drainage and landscape areas) which are solely deemed Common Areas for the Association's maintenance responsibilities for such areas;

G. the right of the Board to levy reasonable fines, as further provided in Article XI, Section 11.4 of this Declaration, of up to \$100 per violation against an Owner and/or any tenant, guest or invitee; provided that that a fine may not be imposed without an opportunity for notice and hearing pursuant to Article IV, Section 23 (a) and Section 23(b) of the Bylaws and Article, XI, Section 11.4 of this Declaration;

H. the right of the Board to suspend the right of an Owner and/or any tenant, guest or invitee to use Common Areas and recreational facilities within the Common Areas, and the right of the Board to suspend the voting rights of an Owner, for the failure to pay any monetary obligation imposed against such Owner or such Owner's Unit that remains delinquent for more than ninety (90) days, said suspension to be in force until such time as the obligation is paid in full; and

I. the right of the Board to permit use of any recreational facilities situated on the Common Area by a person other than Owners, their families, lessees and guests upon payment of use fees established by the Board.

Any Owner may delegate his or her right of use and enjoyment in and to the Common Areas and facilities located thereon to the members of his/her family, tenants, guest and invitees.

2.3 Assumption of Risk. Without limiting any other provision herein, each person within any portion of the Community, including but not limited to the Common Areas, Limited Common Areas or Areas of Common Responsibility ("User") accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of the Community, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers as permitted by applicable law, (c) view restrictions caused by maturation of trees or shrubs, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees, and (e) design of any portion of the Common Areas or Areas of Common Responsibility. Each Owner and User also expressly indemnifies and agrees

to hold harmless Declarant, the Association, and all employees, directors, representatives, officers, agents, affiliates, attorneys and partners of the foregoing (the "Indemnified Parties") from any and all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, including without limitation, attorneys' fees, paraprofessional fees, and costs at trial and upon appeal, arising from or related to use of the Community, including, but not limited to the Common Areas, Limited Common Areas or Areas of Common Responsibility, by Owners, Users and/or their guests, family, members, invitees or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of any of the Indemnified Parties. Should any Owner bring suit against any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including but not limited to, attorneys' fees and paraprofessional fees at trial and upon appeal. Without limiting the foregoing, all Users using any portion of the Community, including but not limited to the Common Areas, Limited Common Areas and Areas of Common Responsibility, do so at their own risk.

2.4 Redesignation of Common Areas. Notwithstanding anything contained herein to the contrary and provided that the Site Plan of the Community is not substantially modified, Declarant shall have the right, in its reasonable discretion, to alter or modify the Common Areas and any improvements, easements and use rights thereon or appurtenant thereto, including, but not limited to, the right to redesignate, modify, alter, increase or decrease (collectively, "Redesignate") the specified uses(s) of any Common Areas in any manner deemed reasonably appropriate by Declarant without the consent of the Association, any applicable neighborhood associations, Owners, or any lenders for so long as Declarant shall own any portions of the Property. In the event Declarant exercises its right to Redesignate the specified use(s) of the Common Areas, Declarant shall record an amendment to this Declaration in the public records, setting forth the portion of the Common Area subject to redesignation and the redesignated use thereof.

2.5 Conveyance of Common Areas and Limited Common Areas. At any time as determined by Declarant in its sole discretion, all or portions of the Common Areas and Limited Common Areas may be dedicated by plat, created in the form of easements or conveyed by Quitclaim Deed from Declarant to the Association. The dedication, creation by easement or conveyance shall be subject to the terms and provisions of this Declaration and all other Community documents; easements, restrictions, reservations, conditions, limitations and/or declarations of record or common to the Community; real estate taxes for the year of recordation of this Declaration and subsequent years; and zoning, land use regulations, and survey matters. The Association shall be deemed to have assumed and agreed to pay all continuing obligations and any and all service and similar contracts relating to the ownership, operation, maintenance and administration of the conveyed portions of the Common Areas and any and all other obligations relating thereto, and the Association shall and does indemnify and hold Declarant harmless from and against same. The Association by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition or qualification of any nature. The Common Areas, Limited Common Areas and the personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition

WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREA OR LIMITED COMMON AREA BEING CONVEYED.

2.6 Community Systems. The Declarant shall have the right, but not the obligation, to install and provide Community Systems and to provide the services available through the Community Systems to any and all Units within the Community. If the Declarant installs and provides the Community Systems, neither the Association nor any Owner shall have any interest in the Community Systems. Any or all of such services may be provided either indirectly, through the Association and paid for as a Common Expense, or directly, by the Declarant, an affiliated entity or a third party and paid for by the recipient of the services. The Community Systems shall be the property of the Declarant (or an affiliated entity) unless transferred by the Declarant (or such affiliated entity), whereupon any proceeds of such transfer shall belong to the Declarant (or such affiliated entity). The Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems, or all or any portion of the rights, duties or obligations with respect thereto to the Association or any other person (including an Owner, as to any portion of the Community System located on such Owner's Unit).

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

3.1 Membership. Every person, including Declarant, who is a record owner of a fee or undivided fee interest in any Unit in the Community shall be a Member of the Association, provided that any person who holds such interest merely as a security for the performance of an obligation shall not be a Member. Change of membership shall be established by recording in the Public Records of Collier County a deed or other instrument which conveys fee title to a Unit within the Community, and by the delivery to the Association of a copy of such recorded instrument. If a copy of said instrument is not delivered to the Association, the new Owner shall become a Member, but shall not be entitled to voting privileges. Membership in the Association by all Owners is mandatory and automatic with the ownership of any Unit and is appurtenant to, runs with, and shall not be separated from, the Unit upon which membership is based.

3.2 Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

A. Class "A". Class "A" Members shall be all Owners, with the exception of the Declarant. Class "A" Members shall be entitled to one (1) equal vote for each Unit owned in the Community. When more than one (1) person holds an ownership interest in any Unit, all such persons shall be Members, provided that only one vote may be cast on behalf of all such Members holding an ownership interest in any one Unit. The vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one (1) person seeks to exercise it.

B. Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions

proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may appoint a majority of the members of the Board prior to the Turnover Date, as defined in the Articles. Following the Turnover Date, the Declarant shall have a right to disapprove actions of the Board and committees as provided in Article IV, Section 18 of the Bylaws. Additionally, prior to the Turnover Date, the Class "B" Member shall be entitled to three (3) votes for each Unit owned. After the Turnover Date, the Declarant shall be entitled to one (1) vote for each Unit owned.

#### **ARTICLE IV** **EASEMENTS**

In addition to the easements which appear on the Plat, the respective rights and obligations of the Unit owners, the Association, Declarant and others concerning easements affecting the Community shall include the following, which may not be removed except as authorized herein:

4.1 Easements for Utilities and Community Systems. Declarant hereby reserves for the benefit of itself, its successors and assigns and the Association, perpetual blanket easements upon, across, above and under the Community, which easements shall be for access, ingress, egress, installation, construction, repair, operation, maintenance, expansion and replacement of utility services and Community Systems for the Community or any portion thereof, including, but not limited to water, sewer, gas, drainage, irrigation, fire protection, electricity, any Community Systems, and other services, such as trash disposal roads and walkways. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or to the occupant of the Unit. Use of the Community for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration and said plats.

4.2 Easement for Entry. The Association shall have an easement to enter into any Unit for emergency, security, safety and for other purposes reasonably necessary for the proper maintenance and operation of the Community, which right may be exercised by the Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after 24 hours' notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon the request by the Board.

4.3 Easement for Maintenance. The Association shall have a non-exclusive and perpetual easement to enter upon, across, above and under each Unit within the Community, including the Common Areas and Limited Common Areas, at reasonable hours to perform its responsibilities of maintenance, inspection and repair, including, without limitation, the right to enter upon each Unit for the purpose of maintaining and landscaping the yards of all Units and for the purposes of exterior pest control. Notwithstanding the foregoing, the parties acknowledge and agree that the Association shall not have the right to enter into the courtyard of

any Unit, except in the case of an emergency, and the Owners shall be responsible for the maintenance of all landscaping in said courtyards.

Each Owner of a Unit shall have a non-exclusive and perpetual easement to enter upon and across the Units adjacent to such Owner's Unit, at reasonable hours, to perform its responsibilities of maintenance, landscaping, inspection and repair of said Owner's Unit.

4.4 Damages. The use of any easement granted under the provisions of this Article shall not include the right to disturb any building or structure in the Community, and any damage caused to same shall be repaired at the expense of the party causing such damage.

4.5 Easement for Collection for Stormwater Runoff and Flood Water. The Declarant reserves for itself, its successors and assigns, and the Association and SFWMD, the non-exclusive right and easement, but not the obligation, to enter upon any part of Community to (a) install, keep, maintain and replace pumps in order to provide water for the irrigation of any of the Association property and Common Areas; (b) construct, maintain and repair any structure designed to divert, collect or retain water; and (c) remove trash and other debris. This easement shall not entitle the holders to construct or install any drainage systems or facilities over, under or through any existing Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by and at the expense of the person exercising this easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or the Owner's occupant. Further, every Unit and the Common Area shall be burdened with easements for natural drainage or stormwater runoff from other portions of the Community; provided, no persons shall alter the natural drainage on any Unit so as to materially increase the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner of the affected Property.

4.6 Encroachments. Any portion of any Unit encroaching upon any other Unit or on any of another Unit, Common Area or Limited Common Area, or any encroachment that shall hereafter occur as a result of (i) construction or reconstruction of any improvement; (ii) settling or shifting of an improvement; (iii) any addition, alteration or repair to the Common Area made by or with the consent of the Association, or (iv) any repair or restoration of any improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit, Common Area or Limited Common Area, then in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand. Such easement shall exist to a distance of not more than three (3) feet as measured from any common boundary between contiguous Units and between each Unit and any adjacent Common Area along a line perpendicular to such boundaries at such points. Any such easement or encroachment shall include an easement for the maintenance and use of the encroaching improvements in favor of each of the Unit Owners and their respective designees.

4.7 Easements for Cross-Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Community; provided, no person shall alter the natural drainage on any Unit after the development of the Community pursuant to approved permits, so as to materially increase the

drainage of storm water onto adjacent portions of the Community without the consent of the Owner of the affected property.

4.8 Platted Easements. For the benefit of each Unit Owner and the Association, each Lot is encumbered by the easement depicted on the Plat dedicated to the Association for access, ingress, egress, installation, construction, repair, operation, maintenance, expansion and replacement of utility services, landscaping, drainage facilities and Community Systems for the Community or any portion thereof, including, but not limited to water, sewer, gas, drainage, irrigation, fire protection, electricity, and other services, such as trash disposal and walkways.

## **ARTICLE V**

### **COVENANTS FOR MAINTENANCE ASSESSMENT**

5.1 Assessments. Subject to the provisions of Article V, Section 5.13 herein, the Owner of any Lot (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 Monthly Assessments or charges and any Special Assessments or Specific Assessments to be fixed, established and collected from time to time as hereinafter provided. All such Assessments, together with interest thereon from thirty (30) days after the due date at the highest rate as allowed by law, costs of collection and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot(s) against which each such Assessment is made, and shall also be the personal obligation of the Owner. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or services, or by abandonment or otherwise.

5.2 Monthly Assessments. The Monthly Assessments levied by the Association shall be collected by the Board and shall be used for the Common Expenses, including for the purpose of management, provision of services, maintenance and repair and promoting the health, safety and welfare of the residents in the Properties, including, but not limited to, the following:

A. Payment of all fees incurred by the Association under one or more agreements that the Association may from time to time enter into for the provision of maintenance, cleaning, and other services, to the Owners and residents of Hamilton Place Townhomes.

B. Improvements, maintenance and repair of the Common Areas and Areas of Common Responsibility, including, but not limited to, the cost of maintaining:

1. All streets, driveways, parking areas and sidewalks, to the extent that such improvements are a part of the Common Areas;

2. All landscaped areas including lawns, shrubs, trees and other planting located on Common Areas;

3. All equipment and facilities owned by or acquired by the Association located on the Common Areas or recreation areas, if any;



4. Fences, signs, street lights and fountains located on the Common Areas;

5. Operation, maintenance and repair of the Water Management System located within the Property which serves only the Property. The Association shall be responsible for the operation, maintenance and repair of the master Water Management System;

6. Painting and general upkeep of fences and entry gates that are part of improvements constructed on the Common Areas;

7. Maintenance or repair of the automatic entry system and gates into the Properties, electrical lighting, and other necessary utility services for the Common Areas, and non-potable water to service the sprinkler system in the Common Areas and on the Lots;

C. Hiring professional advisors, management companies, service providers and payment of management and service fees and charges;

D. Flood and fire insurance covering the full insurable replacement value of the Common Areas with extended coverage;

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

F. Worker's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board;

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

H. 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;

I. Establishment of reserve accounts for capital expenditures and deferred maintenance for the Common Areas and for the roof of the building and painting of the building;

J. Payment of real property taxes, personal property taxes and other Assessments levied against the Common Areas; and

K. Improvement, maintenance and repair of any portion of a Lot which is the responsibility of the Association pursuant to the terms of this Declaration.

5.3 Intentionally Omitted.

5.4 Special Assessments. In addition to the Monthly Assessments, the Association may levy in any Assessment year a Special Assessment, applicable to that year only, for reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, or for any other expenditure approved by the Board. All Special Assessments shall become due and payable upon reasonable terms and conditions as set forth at the discretion of the Board upon levying the Special Assessment.

5.5 Specific Assessments. In addition to the Monthly Assessments, the Association may levy a Specific Assessment, against one or more Units, for extraordinary maintenance, reconstruction, or repairs to a Unit that are undertaken by the Association pursuant to this Declaration, including the maintenance of a Lot Owner's lawn and landscaping if the Lot Owner fails to so do. All Specific Assessments shall become due and payable upon reasonable terms and conditions as set forth at the discretion of the Board upon levying the Specific Assessment.

5.6 Apportionment of Assessments. All Monthly Assessments and Special Assessments for items pertaining to the Common Areas and Association maintenance responsibilities shall be at a uniform rate for each Lot in the Properties, except as set forth in Article V below; provided, however, the Association may assess additional costs against any Lot to correct maintenance deficiencies, or to enforce the provisions of this Declaration, or which contains special plantings or landscaping, such as rose gardens, orchids, etc., which require extra care, maintenance and expense by the Association.

5.7 Determination of Assessments. The Board shall fix (a) the date of commencement and (b) the amount of the Assessments against each Lot 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. Not 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 as 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.

5.8 Payment of Monthly Assessment. The Monthly Assessment for which provision is herein made shall be paid monthly, in advance, unless otherwise determined by the Board. The first Monthly Assessment shall be adjusted according to the number of months remaining in the fiscal year.

5.9 Right to Lien. If any Assessments are not paid within thirty (30) days from its due date as determined by the Board pursuant to this Declaration, the Association may, at any time thereafter, record a lien against said Lot in the Public Records of Collier County, Florida, and bring an action to foreclose the lien in a like manner as a foreclosure of a mortgage on real

property and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such Assessment the cost of any such action (including reasonable attorneys' fees), and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and reasonable attorneys' fees to be fixed by the Court, together with costs of the action.

5.10 Priority of Lien. Liens for delinquent Assessments shall be effective as of the date of recording the claim of lien in the Public Records Collier County, Florida, and shall be prior to and superior to the creation of any homestead status on the property and any subsequently recorded liens or encumbrances.

5.11 Subordination of Lien to Institutional Mortgage. Notwithstanding anything to the contrary contained in this section, the liability of a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure for the unpaid assessment that became due before the mortgagee's acquisition of title, shall be the lessor of:

A. The Lot's unpaid common expenses and regular periodic or special assessments that accrued or became due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

B. One percent (1%) of the original mortgage debt.

The limitations on first mortgagee liability provided by this paragraph apply only if the first mortgagee filed suit against the Lot Owner and initially joined the association as a defendant in the mortgagee foreclosure action.

5.12 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments charges and liens created herein:

A. All properties to the extent of any easement or other interest therein dedicated and accepted by the City of Naples or Collier County and devoted to public use.

B. All Common Areas as defined in Article I, Section 1.9.

C. All Lots owned by the Declarant prior to initial conveyance.

5.13 Payment of Deficiency by Declarant. Notwithstanding any provision of this Declaration or the Association's Articles or By-Laws to the contrary, prior to the Turnover Date or such earlier date as noted below, the Declarant shall not be obligated for, nor subject to, any Monthly Assessment for any Lot which it may own, provided the Declarant shall be responsible for paying the difference between the Association's expenses of operation otherwise to be funded by Monthly Assessments and the amount received from Owners other than the Declarant in payment of the Monthly Assessments levied against their respective Lots. Such difference, herein called the "deficiency," shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments. The Declarant shall not be responsible for any of said reserves, capital expenditures or Special Assessments.

The Declarant may, at any time, give sixty (60) days' written notice to the Association of its intention to terminate its responsibility for the deficiency and waiving its right to exclusion from Monthly Assessments. Upon the conclusion of the sixty (60) day period, each Lot owned by the Declarant shall thereafter be assessed the Monthly Assessment established for Lots owned by Members other than the Declarant. Upon transfer of title of a Lot owned by the Declarant, the Lot shall be assessed in the amount established for Lots owned by Owners other than the Declarant, prorated as of and commencing with the date of transfer of title.

## **ARTICLE VI** **ASSOCIATION**

6.1 Duties of Association. The Association shall be responsible for maintenance of Common Areas, for the exclusive right to painting of the exterior of the residence on each Lot (but excluding entry doors), for repair, maintenance and replacement of the roof of the residence on each Lot, and for irrigation, repair, replacement, and maintenance of the utility easements located outside of the Lots, landscape maintenance, including but not limited to the mowing, edging, weeding, fertilizing and maintenance of front yards (but excluding repairing or replacing any trees, shrubs, lawns or landscape areas within the Lots), rear yards and side yards of Lots, the right to maintain irrigation systems in the yards on individual Lots and within the Common Areas; and other maintenance responsibilities, as determined by the Board.

6.2 Authority to Contract for Services by Third Parties. In order to fulfill its obligations under this Declaration, the Association shall have the power and authority to execute one or more maintenance or service contracts providing for maintenance and/or other services to Members, Lots and the Property.

6.3 Responsibility of Owner. The Owner shall provide exterior maintenance as follows, the cost for which each Owner shall be individually responsible: (i) the exterior maintenance of his or her Lot and Unit not maintain by the Association; (ii) maintaining, replacing and pressure washing lead walks, driveways and exterior building surfaces; (iii) repair or replacement of screens and windows including all glass surfaces on his/her Lot; (iv) replacement and painting of exterior doors; (v) replacement of any trees, shrubs, lawns or landscape areas within the Lots, or entry area including the rear patios of an owner's respective Lot; (vi) any repair or replacement which is not the responsibility of the Association; and (vii) repair or replacement of any property whether upon such Owner's Lot or any other Lot, or the Common Areas, which repair or replacement is required because of any gross negligence or the willful act of such Owner or any member of such owner's family or household, any guest or invitee of such Owner. The Owner of the Lot shall be responsible for all maintenance thereon, including exterior maintenance of the residence.

6.4 Failure of Owner to Repair. The Association may perform maintenance or make repairs and assess the costs of any required exterior maintenance or repairs to the Owner of any Lot under the following circumstances: (i) such Owner does not maintain in a reasonable condition any lawn or landscaped area on such Owner's Lot or does not maintain in a reasonable condition the exterior of the Unit; or (ii) such Owner does not when reasonably necessary replace any glass surfaces or exterior doors on such Owner's Lot; or (iii) any maintenance, repair or replacement, whether upon such Owner's Lot, or any other Lot or Common Area, is required

because of any willful act of such Owner or any member of such Owner's family or household or any invitee of such Owner; or (iv) any Owner fails promptly to repair or replace, as the case may be, any casualty damage to such Owner's Lot; and (v) such Owner has failed to undertake the necessary maintenance or replacement within a reasonable period of time following written notice from the Association. Upon the occurrence of the foregoing, and after reasonable prior notice to such Owner, and a reasonable opportunity to be heard, the Association's Board of Directors by a vote of not less than sixty-seven percent (67%) of the full Board may undertake such maintenance, replacement or repairs and may assess by specific assessment the costs of such maintenance, replacement or repairs, as the case may be, against such Owner's Lot in the manner provided by this Declaration.

6.5 Association Intervention. In addition to the regular maintenance responsibilities of the Association, 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 Properties, any additional maintenance, repair or replacement that is otherwise the responsibility of the Lot Owner hereunder and which the Lot Owner fails to replace, restore, repair or perform after thirty (30) days' written notice to the Lot Owner of the need of such replacement, restoration, repair or maintenance.

6.6 Reimbursement of Association. The cost of such additional maintenance set forth above shall be assessed against the Lot upon which such maintenance is performed, or at the option of the Board of Directors, against the Lot or Lots benefiting from the maintenance. The Assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board. Any such additional maintenance Assessments shall not be considered a part of the Monthly or Special Assessment. Any such additional maintenance Assessment shall be a lien on the Lots affected and the personal obligation of the Owners 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.

6.7 Reconstruction. In the event that any of the improvements located on any Unit are destroyed or damaged as a result of any cause, including, but not limited to, aging, fire, windstorm, flood or tornado, the Owner of such improvements shall cause repair or replacement of such improvements to be commenced within thirty (30) days from the date of insurance settlement, and to complete the repair or replacement within one (1) year thereafter. All such repairs or replacement must be performed in accordance with standards promulgated pursuant to Article VII below.

6.8 Failure of Owners to Repair. In the event that the Owner of any Unit fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for herein, the Association shall be deemed to have been granted the right by the Owner to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements.

6.9 Assignment of Insurance Proceeds. In the event that the Association exercises the rights afforded to it in this section, the Owner of the subject Lot shall be deemed to have

assigned to the Association any right the Owner may have to insurance proceeds that may be available to the Owner arising from the damage or destruction of the improvements.

For this purpose, the Owners of the Lots agree to provide for the Association to be named as an additional insured under any hazard and flood insurance policies relating to their Lots and the improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements provided for above, taking into account local construction costs and property values as they may, from time to time, exist. In the event that an Owner refuses to increase such insurance coverage deemed reasonably necessary to replace the residence by the Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason causes the same to become null and void, the Association may purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs so incurred by the Association shall become due and payable in all respects, together with interest, reasonable attorneys' fees and costs of collection, as provided for in connection with and under the same terms and conditions as the other Assessments of the Association.

6.10 Payment of Costs. Any and all costs incurred by the Association in effectuating the repair or replacement of damaged or destroyed improvements shall become due and payable in all respects, together with interest, reasonable attorneys' fees and costs of collection, as provided for in connection with and under the same terms and conditions as other Assessments of the Association.

## **ARTICLE VII**

### **ARCHITECTURAL REVIEW REQUIREMENTS**

7.1 Creation and Composition. Until all the Units in Hamilton Place Townhomes have been fully developed, permanent improvements constructed thereon, and sold to third party Owners, the "Architectural Control Committee" shall mean the Declarant (or its successor in interest/assignee), and shall not be a committee of the Association. At such time as all of the Units in Hamilton Place Townhomes have been fully developed, permanent improvements constructed thereon, and sold to third party Owners, the Declarant shall notify the Association and all the Owners of Units in Hamilton Place Townhomes to that effect, and, thereupon, the Declarant's rights and obligations as the Architectural Control Committee shall forthwith terminate. Thereafter, the Association shall have the right, power, authority and obligation to establish a successor Architectural Control Committee as a committee of the Association in accordance with the Association Documents and prescribe rules and regulations pursuant to which such Committee shall act.

7.2 Design Standards. The Architectural Control Committee shall from time to time, subject to this Declaration and the Association Documents, adopt, promulgate, amend, revoke, and enforce guidelines, hereinafter referred to as the "Design Standards" for the purpose of: (a) governing the form and content of plans and specifications to be submitted to the Architectural Control Committee for approval pursuant to this Declaration; (b) governing the procedure for such submission of plans and specifications; (c) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of any structure, and all other matters that require

approval by the Architectural Control Committee pursuant to this Declaration; and (d) establishing guidelines for approval of landscaping changes and maintenance of structures, including roof replacement.

Generally, exterior modifications to the structures constructed by Declarant are discouraged and will not be approved. In reviewing any particular application, the Committee shall consider whether its actions will: (i) assure harmony of external design, materials and location in relation to surrounding buildings and topography within the Property; (ii) preserve the value and desirability of the Property as a residential community; and (iii) be consistent with the provisions of this Declaration; and (iv) be in the best interest of all Owners in maintaining the value and desirability of the Property as a residential community.

**7.3 Review and Approval of Plans.** No exterior change shall be commenced, erected, or maintained on any Lot (including, without limitation the installation of new or additional landscaping or improvements within a front yard of a Lot), nor shall any exterior addition to or alteration to any Building be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been first submitted to the Architectural Control Committee for review and either approval or disapproval as to: (a) the conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of Hamilton Place Townhomes; (b) the size, height, and location of the structures in relation to surrounding structures and topography and finished ground elevation; and (c) consistency with the provisions of this Declaration. All such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Control Committee. In the event the Architectural Control Committee fails to render its approval or disapproval, in writing, of a request submitted by an Owner or Occupant, within thirty (30) days after receipt of such request, the same shall be deemed to be rejected and disapproved by the Architectural Control Committee. The Committee may impose a review fee for the costs involved with any requested review.

Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, a copy of the same, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy bearing a notation of such approval, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or structure of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its sole reasonable discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or structure. Approval of any such plans and specifications relating to any Lot or structure, however, shall be final as to that Lot or structure and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

Notwithstanding anything to the contrary, the Architectural Control Committee may request changes in any plans or structures that are completed or being built, if required by Law, and neither the Declarant nor the Architectural Control Committee shall be liable for any costs, expense and/or damages in connection therewith.

In regards to any plans and specifications approved by the Architectural Control Committee neither Declarant, nor any member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications, nor for any structural defects in any work done according to such plans and specifications nor for the failure of plans and specifications to comply with any Law. Further, neither Declarant, nor any member of the Architectural Control Committee shall be liable in damages to anyone by any reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the exercise of any other power or right the Architectural Control Committee provided for in this Declaration. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he or she will not bring any action or suit against Declarant, or any member of the Architectural Control Committee, to recover for any such damage.

Prior to the issuance of a certification as set out in section 7.4 below, any employee or agent of the Architectural Control Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and structure thereon for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of any structure or the use of any Lot or structure is in compliance with the provisions of this Declaration; and neither the Architectural Control Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**7.4 Certification by Architectural Control Committee.** At the request of any Owner, the Association from time to time will issue, without charge, a written certification that the improvements, landscaping, and other exterior items situated upon such Owner's Lot have been approved by the Architectural Control Committee, if such is the case.

**7.5 Violations.** If any structure shall be erected, placed, maintained, or altered upon any Lot otherwise than in accordance with the plans and specifications approved by the Architectural Control Committee pursuant to the provisions of this Article, such erection, placement, maintenance, or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Control Committee such violation shall have occurred, the Architectural Control Committee shall notify the Board. If the Board shall agree with the determination of the Architectural Control Committee with respect to the violation then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the violation and the specific action or actions required nature of the violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have and be entitled to, in addition to any other rights set forth in this Declaration, all rights and remedies at law or in equity. Actions of the Board are final.

**7.6 Partial Delegation to Association.** At any time prior to the termination of Declarant's responsibilities as provided herein, Declarant may delegate to a committee of the Association the responsibilities of the Architectural Control Committee with regard to any



activities on individual Lots which have been fully developed, permanent improvements constructed thereon, and sold to permanent residents. The Declarant may then retain all other duties of the Architectural Control Committee with regard to new construction.

## **ARTICLE VIII**

### **WATER MANAGEMENT SYSTEM.**

8.1 Dedication. The Water Management System is hereby dedicated as part of the Common Areas. The Water Management System shall be the perpetual responsibility of the Association and may in no way be altered from their natural or permitted state.

8.2 Maintenance and Monitoring. The Association shall be responsible for the maintenance, operation and repair of the Water Management System. Maintenance of the Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by SFWMD. Any repair or reconstruction of the Water Management System shall be as permitted or if modified, as approved by SFWMD.

8.3 Use Restrictions. The Association shall enforce the use restrictions for the Water Management System. Activities prohibited within the Water Management System shall include, but not be limited to:

- A. Digging or excavation;
- B. Depositing fill, debris, or any other material or item;
- C. Constructing or altering any water control structure; or
- D. Any other construction that would modify the Water Management System.

If the Property contains a wetland mitigation area or a wet detention pond (as defined in SFWMD regulations), no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from SFWMD.

8.4 Construction. Construction and maintenance activities which are consistent with the design and permit conditions approved by SFWMD in the Environmental Resource Permit may be conducted without specific written approval from SFWMD.

8.5 Enforcement by SFWMD. SFWMD shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration and take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel the Association to correct any outstanding problems with the Water Management System.

8.6 Dissolution of Association. If the Association ceases to exist, then all Owners shall be jointly and severally responsible for operation and maintenance of the Water

Management System in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility for such system.

8.7 Covenant for Maintenance Assessments for Association. Assessments shall also be used for the maintenance and repair of the Water Management System including but not limited to work within retention areas, drainage structures and drainage easements.

8.8 Easement for Access and Drainage. The Association shall have a perpetual non-exclusive easement over all areas of the Water Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Unit which is a part of the Water Management System at a reasonable time and in a reasonable manner to operate, maintain or repair the Water Management System as required by the SFWMD permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Water Management System. No person shall alter the drainage flow, the Water Management System, including buffer areas or swales, without the prior written approval of SFWMD.

8.9 Amendment. Any amendment to this Declaration which alters any provisions relating to the Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Areas, must have the prior approval of SFWMD.

## **ARTICLE IX** **USE RESTRICTIONS**

The use of the Lots shall be in accordance with the following provisions.

9.1 Single Family. The Property may be used for single-family residential living and for no other purpose. No trade, business, profession or other type of commercial activity may be conducted on any part thereof.

9.2 Unauthorized Structures. No tents, trailers, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot or the Common Areas without the written consent of the Declarant or of the Association after Declarant has conveyed the last Lot which Declarant owns in the Property.

9.3 Communication Equipment. To the extent permitted by law, no aerial, antenna, antenna poles, antenna masts, citizen band or amateur band antennas, or satellite dish shall be placed or erected upon any Lot, or affixed in any manner to the exterior of any building in the Property, without the prior written consent of the Association.

9.4 Recreational Vehicles. No boats, commercial vehicles, trailers, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles and non-commercial trucks or vans, as determined by the Board, shall be placed, parked or stored upon any Lot (except in the garage) or in the Common Areas for a period of more than eight (8) hours, unless such vehicle is necessary in the actual construction or repair of a structure or for ground maintenance, nor shall any maintenance or repair be performed upon any boat or motor vehicle not owned or controlled by the Association or the Declarant in the Properties, except within a

building where totally isolated from public view. All garage doors must remain closed, except upon entering or exiting the garage.

9.5 Parking. All vehicles must be parked in the garage and/or the driveway located on each Lot. No vehicles may be parked on the street located within the Property. Only Guests may utilize the parking spaces available on Tract "R" and as more particularly set forth on the site plan attached hereto as **Exhibit "D"**; and in no event in excess of six (6) hours. All vehicles must have a current license. No vehicle repairs of any type shall be permitted on the Properties. No water craft may be parked or stored on the Properties.

9.6 Sprinkler Systems. All areas not covered by structures, walkways, or paved parking facilities shall be maintained as a lawn or landscape areas with underground sprinkler systems to the pavement edge of any abutting streets and to the water line of any abutting lakes or water management areas. No stones, gravel or paving of any types shall be used as a lawn.

9.7 Nuisance. Nothing shall be done or maintained on any Lot, or the Common Areas which may be or become unsightly or a nuisance to Hamilton Place Townhomes. In the event of a dispute or question as to what may be or become unsightly or a nuisance, such dispute or question shall be submitted in writing to the Board whose decision shall be dispositive of such dispute or question.

9.8 Signs. No sign of any kind, including "For Sale" signs, shall be displayed to public view on any Lot or Common Area, including signs placed in windows, except a sign identifying Hamilton Place Townhomes, street or traffic control signs, or except as placed by the Declarant or approved by the ARB or the Association as the case may be. After Declarant no longer owns any portion of the Properties, Owners may maintain one "For Sale" sign which meets Association approval.

9.9 Maintenance of Lawn Structures. No weed 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, improvement or appurtenance shall 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.

9.10 Declarant's Rights. The sale, rental or other disposition of Lots in the Property is essential to the establishment and welfare of the Properties as an on-going residential community. In order that the development of the Properties be completed and the Property established as a fully occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Declarant, Declarant's transferees or employees, agents and assigns, contractor or subcontractors of Declarant, or of Declarant's transferees, from taking any action they may determine to be reasonable, necessary or advisable for the completion of the work and the sale and establishment of the Properties as a residential community, including, but not limited to, constructing, maintaining and operating a construction office and a sales facility or model homes, together with appropriate signage. As used in this section, the words "its transferees" specifically exclude purchasers of Lots to a party other than a Builder.

9.11 Garbage. No rubbish, trash, garbage or other waste materials shall be kept or permitted at the driveway area of any Lot. Waste shall be kept in sanitary containers, which shall be kept within the garage of each Unit. Sanitary containers may not be placed outside the driveway area of any Lot, except for a reasonable period for refuse pickup to be accomplished.

9.12 Gas Tanks. Gas tanks shall not be allowed other than propane tanks attached to a grill.

9.13 Fences. Except as initially installed by Declarant, no fences of any kind may be constructed or installed on any portion of any Lot without prior approval from the Architectural Control Committee pursuant to Article VII herein.

9.14 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. The Owner of each Lot may keep a maximum of two (2) pets of a normal, domesticated, household-type, such as a cat or dog on the Lot, subject to the behavioral criteria set forth below. All pets shall be registered with the Association and pets are limited to Owners only. All pets are to be walked in designated areas only, if any. The pets must be leashed at all times while on any of the Common Areas outside the Lot. Each pet owner shall be responsible for the removal and disposal of their pet's body waste. The Board of Directors is empowered to order and enforce the removal of any pet that becomes a reasonable source of annoyance to other residents in the Property. All pets must meet the following strict behavioral criteria:

A. The pet shall not make disturbing noises such as barking or crying that interfere with other residents' quiet enjoyment of the Property;

B. The pet shall not be permitted to damage any Common or Limited Common Area of the Property;

C. The pet shall not be permitted to defecate except in permitted areas. When using permitted areas, Owners will clean up after their pets every time without exception;

D. The Owner will obey any and all use and health regulations concerning pets on the Property;

E. Their Owners whenever outside the residence will securely leash pets. No pet shall be allowed to run free for any amount of time;

F. No pet shall behave in any fashion, which reasonably disturbs the enjoyment of the property by other Owners and their guests;

G. Aggressiveness, viciousness, biting or any behavior causing injury to any person shall be grounds for immediate removal of the pet from the property without the notice requirements below;

H. If an owner's pet behaves in a fashion, which violates the behavioral criteria, the Board is permitted to exercise the following remedies:

1. On the first offense, the Association will send written notice to the homeowner via registered mail asking that the behavior be changed.

2. If a second behavioral problem occurs during any twelve-month period, the Board of Directors may vote to order the pet removed at any regularly scheduled meeting via a simple majority of the Board.

9.15 Retention Drainage Areas. No Lot shall be increased in size by filling in any water retention or drainage area on which it abuts. Owners shall not fill, dike, rip rap, block, divert or change the established water retention and drainage areas that have been or may be created by easement or by the Declarant.

9.16 Wells. No wells may be placed, maintained or used on any Lot.

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

9.18 Declarant's Right to Intervene. In order ensure the health, safety and general welfare of all Members of the Association, the 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 the Declarant to provide such service.

## **ARTICLE X** **DECLARANT'S RIGHTS**

10.1 Declarant's Rights. The Declarant and its successors or assigns will undertake the work of constructing Units and related amenities on the Lots and improvements on the Common Areas. The completion of that work and the sale, rental and other disposal of Lots is essential to the establishment and welfare of the Community as a community. As used in this, Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of completed Units. In order that said work may be completed and the Community established as a fully occupied Community as rapidly as possible, no Owner or the Association shall do anything to interfere with the Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration or the Articles or Bylaws shall be understood or construed to:

A. Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them or on any Common Areas whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation, the alteration of its construction plans and designs as the Declarant deems advisable in the course of development (all models or sketches showing plans for future development of The Community may be modified by the Declarant at any time and from time to time, without notice); or

B. Prevent the Declarant, its successors or assigns, or its or their contractors, subcontractors or representatives, from erecting, constructing and maintaining on any property owned or controlled by the Declarant or on any Common Areas, or its successors or assigns or its

or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing The Community as a Community and disposing of the same by sale, lease or otherwise; or

C. Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors or representatives, from conducting on any property owned or controlled by the Declarant or its successors or assigns, its or their business of developing, subdividing, grading and constructing improvements within The Community and of disposing of Lots therein by sale, lease or otherwise; or

D. Prevent the Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be constructed as part of The Community

The Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas so long as the Declarant owns any property in The Community; provided, no such easement shall structurally weaken or otherwise interfere with the use of the Common Area by Owners. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sales of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area and Lots owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model Units, and sales offices and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use any Lot owned by the Declarant, as models and sales offices, respectively and to utilize such facilities exclusively from time to time. The Declarant also expressly reserves the right to retain one or more Units in the Community as a guest house, to be used and enjoyed by the Declarant, its affiliates, employees, invitees, and licensees for any lawful purpose. Any or all of the special rights and obligations of the Declarant may be transferred to other parties, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records of Collier County, Florida. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any property in any manner whatsoever.

Each Owner on his, her or its own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the completion of the development of the Community may occur over an extended period of time and that incident to such development and the construction associated therewith the quiet use and enjoyment of the Community and each Lot therein may be temporarily interfered with by the development and construction work occurring on those Lots owned by the Declarant or its successors and assigns and each Owner, on such Owner's own behalf and on behalf of such Owner's heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns does hereby waive all claims for interference with such quiet enjoyment and use as a result of the development and construction of the balance of the Community. Each Owner, on such Owner's own behalf and on behalf of such Owner's heirs, personal representatives, successors,

mortgagees, lienors and assigns agrees that the development, construction and completion of the balance of the Community may interfere with such Owner's original and existing views, light and air and diminish the same and each such Owner on such Owner's behalf and on behalf of such Owner's heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns does hereby release the Declarant and its successors in interest and others involved from all claims that they may have in connection therewith.

10.2 Common Areas. So long as the Declarant owns land in the Community for development or for sale in the ordinary course of business:

1. Declarant may in its sole discretion, set aside, convey, lease, grant an easement, license or other use right to real property to the Association within or without the Community for such purposes as may be expressed in the instrument of conveyance, lease or grant of easement, license or other use right. The Association must accept from Declarant any such conveyance, designation, dedication, lease, grant of easement or license, or grant of other use right. No such real property shall be considered to be Common Areas until actually so conveyed, designated, dedicated by platting, leased or a grant of easement, license or other use right is created by a written instrument. The written instrument shall also provide when the area(s) of land are designated, dedicated, conveyed, leased, licensed or a use right is granted to the Association.

2. The Association shall not accept from any person other than Declarant a conveyance, dedication, lease, grant of license or grant of use right except upon the prior written consent of the Declarant or the Board of Directors after the Declarant is no longer selling Units in the ordinary course of business of developing said Units.

3. Declarant shall have the right and the power to regulate and control the external design and appearance of the Common Areas in such a manner as Declarant deems appropriate as to promote a quality environment which will preserve the value of the Units and to foster the attractiveness and functional utility of the Community as a place to live.

4. Any type use of the Common Areas shall be subject to the prior written approval of Declarant or the Board of Directors after the Declarant is no longer selling Units in the ordinary course of business or developing said Units.

5. Declarant shall have the right in its sole discretion to grant easements, licenses or use rights for the Common Areas to persons that are not Members. The Board of Directors shall have the right to grant easements, licenses and use rights for the Common Areas to persons that are not Members after the Declarant is no longer selling Units in the ordinary course of business or developing said Units.

B. Prior to any conveyance, designation, dedication, lease or grant of easement, license or other use right by Declarant to the Association of any property, Declarant shall have the right to charge reasonable fees for the use of such property; thereafter, the right to use such property may be subject to reasonable rents, fees and other charges in favor of the Association; in any event, rents, fees and other charges required to be paid to Declarant under the leases, grants, license or contracts creating the use right shall continue to be paid.

C. Any real property conveyed, leased or the use of which has been granted by Declarant or any third party to the Association as Common Areas is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members, their guests and tenants unless otherwise provided by the Declarant.

D. No nuisance or obnoxious or offensive activity shall be conducted or permitted on any Common Areas. So long as Declarant owns any Unit located in the Community for development or for sale in the ordinary course of business, the Declarant shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances or obnoxious or offensive activity and thereafter the Board of Directors of the Association shall make such determination. Nothing shall be done within the Common Areas which may be or become a nuisance to residents or Members.

E. Neither the execution and recordation of this Declaration, nor the creation of the Association or other entity, nor the recordation of any other instrument subjecting any land in the Community to protective covenants and restrictions shall obligate or require Declarant or any other person to grant any right, power, duty or privilege of any nature or kind to the Association or other entity; or obligate or require Declarant to perform any act permitted under this Declaration or to enforce any covenants, condition, restriction or other provision thereof.

F. The Declarant and its affiliates shall have the right from time to time to enter upon the Common Areas and other portions of the Community for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on the Common Areas or elsewhere in the Community as the Declarant and its affiliates, employees and agents, as appropriate, elect to effect. Further, the Declarant and its affiliates, guests and invitees shall have right to use the Common Areas for sales, customer parking, displays and signs during the period of construction and sale of any of the land owned by the Declarant and its affiliates within the Community, including the operation of a sales office. All of the foregoing shall apply notwithstanding the fact that the Association holds title to the applicable Common Areas as of any relevant time.

### 10.3 Enforcement and Inaction.

A. So long as the Declarant owns land in the Community for development or for sale in the ordinary course of business, Declarant shall have the right and power, but not the obligation, to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any person violating or attempting to violate such provision, to restrain any violation or attempted violation of such provisions, to require performance of such provisions, to recover damages for violations of such provisions, to levy against the land to enforce any lien created by this Declaration, and to delegate or assign either exclusively or non-exclusively any or all of its rights, powers, duties or privileges hereunder to the Association, or to an Owner, or to any other person. In the event Declarant expends any sum of money to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration, the Association shall immediately reimburse the Declarant for such expenditure. Failure by Declarant, or by the Association or any other Owner or any other person to enforce any of such provisions shall in no event be deemed a waiver of their right to do so



thereafter. After Declarant no longer owns any land in the Community for development or sale in the ordinary course of business, the Association shall have the right and power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration.

B. The costs and reasonable attorneys' fees, including those resulting from any appellate proceedings, incurred by Declarant or the Association in any action against an Owner to enforce any provisions of this Declaration shall be a personal obligation of such Owner which shall be paid by such Owner and any amount which remains due and unpaid shall be a continuing lien upon the Owner's Unit collectible in the manner provided in Article XI.

C. Notwithstanding anything to the contrary in this Declaration, the terms and provisions of this Article shall not be amended, modified or terminated without the prior written consent of the Declarant so long as Declarant owns any Unit(s) in the Community.

## **ARTICLE XI**

### **ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS**

11.1 Compliance by Owners. Every Owner, Owner's family, guests, invitees, tenants and employees shall at all times comply with all Bylaws, Rules and Regulations, community-wide standards, Architectural Review Requirements, Use Restrictions, and with the covenants, conditions and restrictions set forth herein and in the deed to his Unit (as hereinafter referred to in this Article, the "Rules"). All violations shall be reported immediately to a member of the Board. Disagreements concerning violations, including interpretation of the Rules, shall be presented to and determined by the Board of Directors, whose interpretation and whose remedial action shall control. In the event that an Owner fails to abide by the Rules, then he or she may be subject to any action, right of entry, fine, or other remedy contained in this Declaration. Each remedy shall be non-exclusive and in addition to all other rights and remedies to which the Declarant or the Association may be entitled. Failure by the Association to enforce any Rules or exercise any right or remedy contained herein shall not be deemed a waiver of the right to do so thereafter.

11.2 Actions. The Board of Directors may bring an action at law and/or in equity (including an action for injunctive relief), or both, in the name of the Association to enforce the Rules. In such an event, the Association additionally shall be entitled to recover costs and attorneys' fees.

11.3 Right of Entry. Violation of the Rules shall give the Association or its duly authorized agent the right to enter a Unit or any portion of the Common Area to summarily abate or remove, at the expense of the Owner, any structure, thing or condition which violates the Rules. The Association shall not be liable in any manner for trespass, abatement or removal, and all costs and fees incurred by the Association may be specifically assessed against the violating Owner and shall be treated as a Specific Assessment otherwise due the Association.

11.4 Fines. The Board, in its sole discretion, may impose a fine or fines upon an Owner for failure to comply with any obligation, requirement or rule, provided the following procedures are adhered to:

A. Notice: The Association shall notify the Owner in writing of the non-compliance. Included in the notice shall be the date and time of the next meeting at which the non-compliance will be heard and considered. The notice of the non-compliance to the Owner shall provide, at a minimum, at least fourteen (14) days' notice prior to the meeting.

B. Hearing: The noncompliance shall be presented at a meeting before a committee of at least three (3) members appointed by the Board, who are not officers, directors or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee, where the Owners may protest any allegation of non-compliance and any imposition of fines. A written decision of the committee shall be submitted to the Owner not later than twenty-one (21) days after the meeting. The committee must approve, by a majority vote, the proposed fine, prior to it being imposed.

C. Fines: The Board of Directors may impose reasonable fines, not to exceed \$100 per violation per day, against any Owner, tenant, guest or invitee for the failure of the owner of the Unit, or its occupant, licensee, or invitee to comply with any provision of the Declaration, the Bylaws, or reasonable rules of the Association. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing as provided pursuant to paragraphs (a) and (b) of Article IV, Section 23 of the Bylaws and as provided in this Declaration, and there shall be no aggregate ceiling on the total fine which may be imposed for a recurring violation.

D. Payment of Fines: Fines shall be paid not later than thirty (30) days after notice of the imposition.

E. Assessments: Fines shall be treated as a Specific Assessment otherwise due to the Association. All fines in the aggregate amount of \$1,000 or more shall be a charge and continuing lien upon each Unit against which the fine(s) is made until paid. Upon recording of a Notice of Lien, there shall exist a perfected lien for unpaid fines in the aggregate amount of \$1,000 or more on the respective Unit prior and superior to all other liens, except all taxes, bonds, assessments and other levies which by law would be superior thereto, a lien or charge of any first mortgage of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value, but subject to the limitations provided in Section 5.11 of Article V hereof. Such lien may be enforced by suit, judgment and foreclosure.

F. Application: All monies received from fines shall be allocated as directed by the Board of Directors.

G. Non-Exclusive Remedy: Any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

11.5 Suspension of Use & Voting. The Board of Directors may suspend, for a reasonable period of time, the right of a Member, or a Member's tenant, guest, or invitee, to use the Common Areas and/or facilities for the failure of the Owner or its occupant, licensee or invitee to comply with any provision of the Declaration, the Bylaws, or reasonable rules of the Association, provided that the Association must provide notice and an opportunity for a hearing

as provided under Section 11.4(a) and (b) of this Article and under Article IV, Section 23 of the Bylaws.

If an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend, until such monetary obligation is paid in full, the rights of any Owner, tenant, guest or invitee to use any Common Area and/or facilities. The notice and hearing requirements provided under Section 11.4(a) and (b) of this Article and under Article IV, Section 23 of the Bylaws do not apply to a suspension of use rights due to a monetary delinquency.

The Association may also suspend the voting rights of a Member for nonpayment of any monetary obligation due to the Association that is delinquent in excess of ninety (90) days. The notice and hearing requirements provided under Section 11.4(a) and (b) of this Article and under Article IV, Section 23 of the Bylaws do not apply to a suspension of voting rights due to a monetary delinquency.

Notwithstanding any other provision to the contrary, but only as to this subsection, if Chapter 720, Florida Statutes, is ever amended to provide that the Association shall have the right to exercise the suspension rights (for either use of Common Areas/facilities and/or voting rights) enumerated in this subsection for a monetary delinquency of less than ninety (90) days, or in the event that Chapter 720, Florida Statutes, is ever amended to provide that the Association shall have the right to exercise the suspension rights (for either use of Common Areas/facilities and/or voting rights) enumerated in this subsection for other types of violations, then such rights shall automatically be bestowed upon the Association without need for amending this Declaration or providing any notice.

11.6 Enforcement. Failure to comply herewith or with such rules and regulations shall be grounds for immediate action. The enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms, or to prevent violation or breach of any of the covenants or terms herein. The Declarant, the Association, or any Owner may, but shall not be required to, seek enforcement of this Declaration. Any Owner who seeks enforcement of this Declaration shall, by his actions, be deemed to have indemnified the Declarant and the Association from all liabilities resulting from his actions. In an action to enforce this Declaration, the non-prevailing party shall pay to the prevailing party all costs and reasonable attorneys' fees at all trial and appellate levels.

## **ARTICLE XII**

### **TRANSFER OF OWNERSHIP AND LEASING OF LOTS**

12.1 Forms of Ownership. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Lots and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership and leasing of a Lot by an Owner shall be subject to the following provisions, which provisions each Owner covenants to observe.

- A. Individual Ownership. A Lot may be owned by an individual person.

B. Co-ownership. Co-ownership of Lots is permitted, but all Owners must be members of a single family or living together as a single-family housekeeping unit. If co-ownership is to be by more than two persons, the Owners shall designate one natural person as "Primary Occupant," and the use of the Lot by other persons shall be as if the Primary Occupant is the actual Owner.

C. Entity Ownership. A Lot may be owned in trust or by a corporation, partnership, or other entity which is not a natural person. However, the intent of this provision is to allow flexibility in estate or tax planning, and not to create circumstances in which the Lot may be used as short term transient accommodations for several individuals or families. The corporation, trustee or any entity which is not a natural person shall designate one natural person to be the "Primary Occupant," and the use of the Lot by other persons shall be as if the Primary Occupant is the only actual Owner.

D. Life Estates. A Lot may become subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, during the life estate, the life tenant shall be the only Member in the Association from such Lot, and occupancy of the Lot shall be as if the life tenant was the only Owner. The life tenant and remaindermen shall be jointly and severally liable for all Assessments and charges against the Lot. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. If there is more than one life tenant, they shall be treated as if they were co-owners for purposes of voting and occupancy rights.

## 12.2 Transfers.

A. There shall be no restrictions on transfers of Lots, however, any Owner desiring to sell or otherwise transfer title to his Lot shall give the Association at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Association may reasonably require.

B. The Association must be notified of any transfer of title to a Lot as provided in the By-Laws.

C. There shall be no restrictions on the mortgaging of Lots. All mortgages, other than a first mortgage of record, shall be subject to and inferior to the Association lien for Assessments as hereafter provided, regardless of when recorded.

## 12.3 Leases.

A. All leases of Lots must be in writing, and a copy of any lease shall be delivered to the Board upon commencement of the lease. All leases shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration.

B. No Lot may be leased for a period of less than thirty (30) days, nor more than two (2) times per year. No subleasing or assignment of lease rights is allowed unless approved by the Board. No individual rooms may be rented, and no transient tenants may be accommodated.

C. If a Lot is leased, no one but the lessee, his family within the first degree of relationship by blood, adoption or marriage, and their Guests may occupy the Lot.

### **ARTICLE XIII** **INSURANCE**

13.1 The Association's Insurance Obligations. Insurance, other than title insurance, shall be carried by the Association in accordance with the following provisions:

A. Common Areas. All improvements in the Common Areas and all personal property of the Association included in the Common Areas shall be insured by the Association in such an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined by the Board. Such coverage shall afford protection against: (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and (ii) Such other risks as from time to time shall be customarily covered with respect to building similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief. All insurance policies upon the Common Areas shall be purchased by the Association for the benefit of the Association. It shall not be the responsibility or the duty of the Association to obtain insurance coverage upon the personal liability, Unit, personal property or living expenses of any Owner and such Owner shall obtain such insurance at his own expense provided such insurance may not be of a nature to affect policies purchased by the Association.

B. General Liability. The Association shall purchase and maintain general public liability insurance in such amounts and having such coverage as may be required by the Board.

C. Other Risks. The Association shall purchase and maintain such other insurance as the Board Directors of the Association shall determine from time to time to be desirable. Premiums for the described insurance shall be a common expense, collected from Owners as part of the Annual Assessment. Premiums shall be paid by the Association. The insurance policies identified in (b), (c) and (d) above shall be for the benefit of the Association and its mortgagees as their interests may appear, and shall be paid to the Association and distributed and used by the Association as the Board may determine.

13.2 Owner's Insurance Obligations. Each Owner of a Lot shall obtain insurance coverage upon the Lot insuring the Unit located thereon in an amount equal to the maximum insurable replacement value. Such coverage shall afford protection against: (i) loss or damage by fire, hurricane, tornado, wind-storm, and other hazards covered by a standard extended coverage endorsement, and (ii) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the land including but not limited to vandalism and malicious mischief.

Additionally, the Owner shall furnish proof of such insurance to the Association at the time of purchase of a Lot and shall furnish proof of renewal of such insurance on each anniversary date thereof. If an Owner shall fail to provide such insurance the Association may,

but shall not be required to, obtain such insurance and shall assess the owner for the cost of same in accordance as a specific assessment as defined herein.

The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association. Each Owner shall be responsible for insuring the interior improvements, appliances, fixtures, contents and furnishings of his or her Unit, and the Association shall have no liability and/or responsibility with respect to any losses thereto or thereof.

13.3 Condemnation. In the event that any portion of the Common Areas shall be made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the taking of any portion of the Common Areas by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Association and shall be distributed to the Association and to any Owner who is directly adversely affected by the condemnation, as their respective interests may appear.

#### **ARTICLE XIV** **PARTY WALL**

14.1 Subject to Declaration. It is hereby declared that any Party Wall, and any extensions of it, shall be subject to the covenants, restrictions and easements set forth in this Declaration.

14.2 Examination of Party Wall. Any Owner who purchases a Unit with a Party Wall acknowledges that they have physically examined the Party Wall prior to closing on the purchase of the Unit and it is mutually agreed that both owners of the Party Wall (hereinafter referred to as the "co-owner") waive any and all claims, damages, demands, actions, proceedings, rights or remedies that each may have as against the other arising out of or relating to the Party Wall, including the construction of chimneys and flues therein already constructed as of the date of closing of the purchase of the Unit.

14.3 Duty to Repair or Rebuild. In the event of damage or destruction of the Party Wall from any causes, other than the negligence of either party, the then co-owners shall, at joint and equal expense, repair or rebuild the Party Wall on the same spot and on the same line, and be of the same size, and of the same or similar material and of like quality with the present wall, and each co-owner, his heirs, successors, and assigns shall have the right to the use of the Party Wall so repaired or rebuilt. The parties agree that repairs and reconstruction of the Party Wall shall be undertaken if a condition exists which may result in damage or injury to any person or property if repair or reconstruction work is not undertaken. Either co-owner, upon discovering the possibility of damage or destruction, shall notify the other of the nature of the damage, the work required to remedy the situation, and the estimated cost of the repair or reconstruction. The other co-owner shall then have twenty (20) days from the receipt of the notice either to object to the repairs or reconstruction or to pay the co-owner's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons

or property) the other co-owner shall then have five (5) days from the receipt of the notice, which notice shall state that an emergency exists, either to object to the repairs or reconstruction or to pay the co-owner's share of the cost of the work.

A. If either co-owner's negligence shall cause damage to or destruction of the Party Wall, the negligent co-owner shall bear the entire cost of repair or reconstruction.

B. If either co-owner shall neglect or refuse to pay the co-owner's share, or all of the cost in case of negligence, the other co-owner may have the wall repaired or restored and shall be entitled to have a mechanics' lien and lis pendens on the Unit of the co-owner failing to pay for the amount of such defaulting co-owner's share of the repair or replacement cost.

14.4 Establishment of Easement. Each co-owner and his respective successors, heirs, or assigns shall have any easement over that part of the Lot of the other co-owner on which the Party Wall is located, as may be necessary or desirable to carry out the terms of this Article.

A. Each co-owner and his respective successors, heirs, assigns, contractors, licensees, agents, and employees shall have an easement over that part of the Lot of the other co-owner necessary or desirable to repair, restore, or extend the Party Wall.

B. Each co-owner shall permit the other co-owner and the other co-owner's contractors, licensees, agents and employees to enter his property for the purpose of repairing or restoring the Party Wall and shall secure the permission of the tenants, if any, occupying the Unit for such entrance.

14.5 Notice. Any notice or report required under this Article shall be sent to a co-owner at the address of the co-owner, as indicated in the records of the Association, unless the address is changed by written notice to the other co-owner, in which event the new address given shall be used for the sending of the notice or report. In addition, any notice or report shall be sent by certified mail, properly addressed and postage pre-paid.

14.6 Insurance. Each Owner shall be required to obtain, and maintain, "All Risks" insurance for his respective Unit in an amount equal to one hundred percent (100%) of the full replacement value of their Unit, without deductions for depreciation. Each Owner shall not do or permit any act or thing to be done in or to a Party Wall contrary to law or which invalidates or is in conflict with the Owner's insurance policy.

14.7 Indemnification. Each co-owner agrees to indemnify and hold the other co-owner harmless against any liability or personal or property damage, when such liability or damage shall result from, arise out of, or is attributable to the acts of omissions of such co-owner.

14.8 Liability for Unpaid Expenses pertaining to Party Wall. Upon any transfer of title to a Unit, the selling co-owner ("Grantor") and the purchaser ("Grantee") of such Unit shall be jointly and severally liable for all unpaid amounts pertaining to the Party Wall accrued up to the date of the conveyance without prejudice to the rights of the Grantee but the Grantee shall be exclusively liable for those accruing after the conveyance.

14.9 Arbitration. The co-owners agree and consent that any controversy or difference arising between the co-owners with respect to any of the provisions of this Article shall be submitted to the decision of three arbitrators, one to be chosen by each co-owner and the third to be chosen by the two chosen by the co-owners. If a co-owner fails to choose an arbitrator within ten days after the first one is chosen, then two other arbitrators shall be chosen by the American Arbitration Association. If the two arbitrators chosen by the co-owners fail to choose a third arbitrator within ten days after they have been selected, then a third arbitrator shall be chosen by the American Arbitration Association. Each co-owner will pay the cost of its experts, evidence, and legal counsel, but the other expenses of the arbitration will be borne equally by the co-owners. The arbitration will be governed by the Commercial Rules of the American Arbitration Association then in effect. A decision of a majority of arbitrators shall be final and conclusive on the co-owners. Judgment upon any award of the arbitrators may be entered in any court of competent jurisdiction. Any co-owner may institute arbitration under this section upon 10 days' notice.

14.10 Use of Party Wall. Either co-owner shall have the right to use the side of the Party Wall facing the co-owner's Lot in any lawful manner, including attaching structural or finishing materials to it; however, a co-owner shall not create windows or doors in the Party Wall without the written consent of the other co-owner. Any consent given to one of the co-owners to make openings in the Party Wall shall be subject to the right of the other co-owner to close up such openings at such times as that co-owner desires to use that part of the Party Wall.

## **ARTICLE XV** **COMMON ROOF**

15.1 Subject to Declaration. Each Unit shares a common roof with one or more Units. It is hereby declared that the roof of each Unit shall be subject to the covenants, restrictions and easements set forth in this Declaration.

15.2 Duty to Repair. The Association shall be responsible for the maintenance, repairs and replacement of the roof of each Unit, and shall maintain appropriate hazard insurance to cover the costs of such repairs. The Association shall establish reserve accounts for the replacement of the roofs of the Units. Payments into the reserve accounts shall be made by the Owners as an Assessment. In the event of damage or destruction of the common roof from any causes, other than the negligence or willful act of any co-owner, the Association shall repair or rebuild the common roof on the same line, and be of the same size, and of the same or similar material and of like quality with the current roof and each co-owner, his heirs, successors and assigns shall have the right to use the common roof so repaired or rebuilt. The repairs and reconstruction of the common roof shall be undertaken whenever a condition exists which may result in damage or injury to any person or property. Any co-owner, upon discovering the possibility of damage or destruction, shall notify the other co-owner and the Association of the nature of the damage, the work required to remedy the situation and the estimated cost of the repair or reconstruction. If any co-owner's negligence or willful act shall cause damage to or destruction of the common roof, the negligent co-owner shall bear the entire cost of the repair or reconstruction. If any co-owner shall neglect or refuse to pay the costs in the case of negligence or willful act, then the Association or other co-owner(s) shall have the roof repaired or restored and shall be entitled to have a construction lien and lis pendens on the Unit of the co-owner



failing to pay for the amount of such defaulting co-owner's share of the repair or replacement cost.

### 15.3 Easement.

A. Each co-owner and his respective successors, heirs or assigns, shall have an easement over the other co-owner(s)' Unit as may be necessary or desirable to carry out the terms of this Article.

B. Each co-owner and his respective successors, heirs, assigns, contractors, licensees, agents and employees shall have an easement in that part of the Lot of the other co-owner(s) necessary or desirable to repair, restore or replace the common roof.

C. Each co-owner shall permit the other co-owner(s) and the other co-owner's contractors, licensees, agents and employees to enter his property for the purpose of repairing, restoring or replacing the common roof and shall secure the permission of the tenants, if any, occupying the property for such entrance.

15.4 Notice. Any notice or report required under this Article shall be sent to the co-owner at the address of the co-owner, as indicated in the records of the Association, unless the address is changed by written notice to the other co-owner, in which event the new address given shall be used for the sending of the notice or report. In addition, any notice or report shall be sent by certified mail, properly addressed and postage pre-paid.

15.5 Insurance. Each Owner shall be required to obtain, and maintain, "All Risks" insurance for his respective Unit in an amount equal to one hundred percent (100%) of the full replacement value of their Unit, without deductions for depreciation. The co-owners shall not do or permit any act or thing to be done in or to the common roof contrary to law or which invalidates or is in conflict with the co-owner's insurance policy.

15.6 Indemnification. Each co-owner agrees to indemnify and hold the other co-owner(s) harmless against any liability or personal or property damage, when such liability or damage shall result from, arise out of, or is attributable to the acts of omissions of such co-owner(s).

15.7 Liability for Unpaid Amounts for Repair or Replacement. Upon any transfer of title to a Unit, the selling co-owner ("Grantor") and the purchaser ("Grantee") of such Unit shall be jointly and severally liable for all unpaid amounts pertaining to the common roof accrued up to the date of the conveyance without prejudice to the rights of the Grantee but the Grantee shall be exclusively liable for those accruing after the conveyance.

15.8 Arbitration. The co-owners agree and consent that any controversy or difference arising between the co-owners with respect to any of the provisions of this Article shall be submitted to the decision of arbitrators, one to be chosen by each co-owner and an additional arbitrator to be chosen by the arbitrators chosen by the co-owner(s). If a co-owner fails to choose an arbitrator within ten days after the first one is chosen, then any other required arbitrators shall be chosen by the American Arbitration Association. If the arbitrators chosen by the co-owners fail to choose the additional arbitrator(s) within ten days after they have been selected, then the

additional arbitrator(s) shall be chosen by the American Arbitration Association. Each co-owner will pay the cost of its experts, evidence, and legal counsel, but the other expenses of the arbitration will be borne equally by the co-owners. The arbitration will be governed by the Commercial Rules of the American Arbitration Association then in effect. A decision of a majority of arbitrators shall be final and conclusive on the co-owners. Judgment upon any award of the arbitrators may be entered in any court of competent jurisdiction. Any co-owner may institute arbitration under this section upon 10 days' notice.

## **ARTICLE XVI** **DISCLOSURES**

16.1 Mildew. Given the climate and humid conditions in Florida, molds, mildew, toxins and fungi may exist and/or develop within the Unit, and/or the Property. Each Owner is hereby advised that certain molds, mildew, toxins and/or fungi may be, or if allowed to remain for a sufficient period may become, toxic and potentially pose a health risk. By acquiring title to a Unit, each Owner shall be deemed to have assumed the risks associated with molds, mildew, toxins and/or fungi and to have released the Declarant from any and liability resulting from same.

16.2 Mitigation of Dampness and Humidity. No Unit Owner shall install, within his or her Unit, or upon the Common Areas, non-breathable wall-coverings or low-permeance paints. Additionally, any and all built-in casework, furniture, and or shelving in a Unit must be installed over floor coverings to allow air space and air movement and shall not be installed with backboards flush against any gypsum board wall. Additionally, all Unit Owners, whether or not occupying the Unit, shall periodically run the air conditioning system to maintain the Unit temperature, whether or not occupied, at 78°F, to minimize humidity in the Unit. While the foregoing are intended to minimize the potential development of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of molds or mycotoxins. The Declarant does not make any representations or warranties regarding the existence or development of molds or mycotoxins and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from the existence and/or development of same. In furtherance of the rights of the Association as set forth in this Declaration, in the event that the Association reasonably believes that the provisions of this Section are not being complied with, then, the Association shall have the right (but not the obligation) to enter the Unit (without requiring the consent of the Owner- or any other party) to turn on the air conditioning in an effort to cause the temperature of the Unit to be maintained as required hereby (with all utility consumption costs to be paid and assumed by the Unit Owner). To the extent that electric service is not then available to the Unit, the Association shall have the further right, but not the obligation (without requiring the consent of the Owner or any other party) to connect electric service to the Unit (with the costs thereof to be borne by the Unit Owner, or if advanced by the Association, to be promptly reimbursed by the Owner to the Association, with all such costs to be deemed charges hereunder).

16.3 Warranty Disclosure. To the maximum extent lawful, Declarant hereby disclaims any and all and each and every express or implied warranties, whether established by statutory, common, case law or otherwise, as to the design, construction, sound and/or odor transmission,

existence and/or development of molds, mildew, toxins or fungi, furnishing and equipping of the Property, including, without limitation, any implied warranties of habitability, fitness for a particular purpose or merchantability, compliance with plans, all warranties imposed by statute and all other express and implied warranties of any kind or character. Declarant has not given and the Unit Owner has not relied on or bargained for any such warranties. Each Unit Owner, by accepting deed to a Unit, or other conveyance thereof, shall be deemed to represent and warrant to Declarant that in deciding to acquire the Unit, the Unit Owner relied solely on such Unit Owner's independent inspection of the Unit. The Unit Owner has received nor relied on any warranties and/or representations from Declarant of any kind, other than as expressly provided herein. All Unit Owners, by virtue of their acceptance of title to their respective Units (whether from the Declarant or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages. The foregoing shall also apply to any party claiming by, through or under a Unit Owner, including a tenant thereof. All Unit Owners, by virtue of their acceptance of title to their respective Units shall be deemed to acknowledge and agree that Declarant does not guarantee, warrant or otherwise assure, and expressly disclaims, any right to view and/or natural light.

16.4 Unit Measurements. Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that there are various methods for calculating the square footage of a Unit, and that depending on the method of calculation, the quoted square footage of the Unit may vary by more than a nominal amount. Additionally, as a result of in the field construction, other permitted changes to the Unit, and settling and shifting of improvements, actual square footage of a Unit may also be affected. By accepting title to a Unit, the applicable Owner(s) shall be deemed to have conclusively agreed to accept the size and dimensions of the Unit, regardless of any variances in the square footage from that which may have been disclosed at any time prior to closing, whether included as part of Declarant's promotional materials or otherwise. Without limiting the generality of this Section, Declarant does not make any representation or warranty as to the actual size, dimensions or square footage of any Unit, and each Owner shall be deemed to have fully waived and released any such warranty and claims for losses or damages resulting from any variances between any represented or otherwise disclosed square footage and the actual square footage of the Unit.

16.5 Building Area. Units adjacent to water bodies within the Community may actually contain less building area than reflected on the Plat, and no Owner shall have any claim(s), cause(s) of action or basis for any demand(s) against Declarant and/or the Association as a result thereof or in relation thereto.

16.6 Security. The Association will strive to maintain the Community as a safe, secure residential environment. HOWEVER, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL HAVE ANY OBLIGATION TO AFFIRMATIVELY TAKE ANY ACTION IN ORDER TO MAINTAIN THE COMMUNITY AS A SAFE, SECURE RESIDENTIAL ENVIRONMENT, AND NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER,

AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD, THE DECLARANT AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT GUARANTORS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, LOTS, UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THE ASSOCIATION, ITS BOARD, THE DECLARANT AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

16.7 Notices and Disclaimers as to Community Systems. Declarant, its affiliated entity, the Association, their successors or assigns may enter into contracts for the provision of security services through any Community Systems. DECLARANT, ITS AFFILIATED ENTITY, THE ASSOCIATION, THEIR SUCCESSORS OR ASSIGNS DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, NOTIFY AUTHORITIES OF FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY RECEIVING SECURITY SERVICES THROUGH THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DECLARANT, ITS AFFILIATED ENTITY, THE ASSOCIATION, ANY SUCCESSOR OR ASSIGN ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE UNIT, DO NOT HAVE ANY OBLIGATION TO AFFIRMATIVELY TAKE ANY ACTION TO PREVENT SUCH OCCURRENCES, AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the party of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services through the Community Systems agrees that Declarant, its affiliated entity, the Association, any successor or assign assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every owner or occupant of a Unit obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of the Declarant, its affiliated entity, the Association, their

successors or assigns for loss, damage, injury or death shall be limited to a sum not exceeding Two Hundred Fifty U.S. Dollars (\$250.00), which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Declarant, its affiliated entity, the Association, their successor or assign of any of same. Further, in no event will Declarant, its affiliated entity, the Association, their successors or assigns be liable for consequential damages, wrongful death, personal injury or commercial loss.

In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

## **ARTICLE XVII** **GENERAL PROVISIONS**

17.1 Duration of Covenants. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the 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 fifty (50) years from the date this Declaration is recorded, after which time, this Declaration shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded agreeing to change or terminate this Declaration in whole or in part. Violation or breach of any conditions, covenants or restrictions herein contained shall give the Declarant, Association and Owner(s), in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of such 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 the 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.

17.2 Eminent Domain Proceedings. Any awards for the taking of all or any part of the Association 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 of Directors. The balance of such awards, if any, shall be distributed to the Owners equally, in relation to the number of Lots owned by each.

17.3 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. Notices sent to Owners shall be mailed to the address of such Owner as set forth in the records of the Association. Each Owner is responsible for notifying the Association of any address corrections or changes.

17.4 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.

17.5 Amendment of Declaration by Declarant. The Declarant reserves the right unilaterally to amend 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. Declarant's rights shall include, without limitation, the right to amend this instrument at any time prior to turnover 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 purport to limit or alter the rights afforded any Owners then holding title to Lots in the Properties, purport to change the dimensions of any Lot or Common Areas previously conveyed, or purport to restrict the integrity of the lien of any institutional lender who holds a mortgage on any previously conveyed Lot. Any amendment shall relate back to and become effective as of the date of recording of this Declaration, and all Owners, by acceptance of their deed, agree to be bound not only by the terms and conditions of this Declaration, but all amendments hereto, regardless of when such amendments are made.

After turnover of control of the Association to Members other than the Declarant, this Declaration may be amended at any time upon the execution and recordation of an instrument evidencing the adoption of the amendment by Owners holding not less than two-thirds (2/3) of the voting interest of the membership.

17.6 Release or Addition of Property. Notwithstanding any of the provisions contained in this Declaration, Declarant, its successors or assigns, shall not be obligated to develop all of the Property submitted to this Declaration, and Declarant may, in its sole discretion, add to or release any of the property submitted in this Declaration from the terms and conditions hereof, except any properties conveyed to the Association or Owners, provided, however, that this unilateral right to release shall expire upon turnover of control of the Association to Members other than the Declarant. Such addition or release shall be made by the Declarant filing in the Public Records of Collier County an amendment to this Declaration providing for the addition or the release of the property from this Declaration. Such amendment shall include any provisions necessary to assure that the property being added to or released from this Declaration shall be entitled to use the roads, water, sewer, irrigation, telephone, cable television, water management and all other infrastructure serving Hamilton Place Townhomes, which the Declarant determines is necessary for the development of the property removed from the Declaration. Such amendment need only to be executed by the Declarant and shall not require the joinder or the consent of the Association or its members.

17.7 Declarant's Sales Center. As long as the Declarant owns any portion of the Properties, Declarant shall have the exclusive right to maintain a sales center, model homes or signs on the Properties.

17.8 Construction. Whenever the singular is used, it shall include the plural and the singular, and the use of any gender shall include all genders.

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

[Signatures on following page]

NOT A  
CERTIFIED  
COPY

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed as of this 10<sup>th</sup> day of October, 2019.

WITNESSES:

**TOLL SOUTHEAST LP COMPANY, INC.,** a Florida corporation

[Signature]  
Printed Name: Cliff Peterson

[Signature]  
Printed Name: JAMES HEDLER

By: [Signature]  
Printed Name: Kevin R Brown  
Its: Sr. Vice President

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of October, 2019, by Kevin Brown, as Sr. Vice President of **TOLL SOUTHEAST LP COMPANY, INC.**, a Florida corporation, on behalf of the corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public  
(Seal) Printed Name: Joan Badali  
My Commission Expires: 9-4-2023





**EXHIBIT "A"**

**(Legal Description)**

***LEGAL DESCRIPTION***

BEING THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 49 SOUTH, 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 49 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA; THENCE ALONG THE SOUTH LINE OF SAID FRACTION SOUTH 89°34'46" WEST, FOR 1288.55 FEET TO THE SOUTHWEST CORNER OF SAID FRACTION; THENCE ALONG THE WEST LINE OF SAID FRACTION NORTH 0°14'03" WEST, FOR 330.58 FEET TO THE NORTHWEST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 18; THENCE ALONG THE NORTH LINE OF SAID FRACTION NORTH 89°39'07" EAST, FOR 1288.00 FEET TO THE NORTHEAST CORNER OF SAID FRACTION; THENCE ALONG THE EAST LINE OF SAID FRACTION SOUTH 0°19'46" EAST, FOR 328.95 FEET TO THE POINT OF BEGINNING.

CONTAINING 9.75 ACRES, MORE OR LESS

**EXHIBIT "A-1"**

**(Plat)**

NOT A  
CERTIFIED  
COPY



# HAMILTON PLACE

A SUBDIVISION LOCATED IN SECTION 18,  
TOWNSHIP 49 SOUTH, RANGE 26 EAST,  
COLLIER COUNTY, FLORIDA.

THIS INSTRUMENT WAS PREPARED BY:  
**GradyMinor**  
Civil Engineers  
Land Surveyors • Planners  
144 GradyMinor  
P.O. Box 1111  
Fort Myers, FL 33902  
Phone: 813.486.4880  
Fax: 813.486.4881  
www.gradyminor.com  
AUGUST 2006

PAGE  
SHEET 2 OF 3

CURVE TABLE

CHUCK	BEARS	LENGTH	BEARS	CHUCK BEARS	CHUCK LENGTH
C1	188.00	172.5	871.34	5.471511° E	12.97
C2	25.00	26.86	47.9302	5.471511° E	20.37
C3	8.00	5.87	6.8941	5.471511° E	9.91
C4	124.00	24.67	113.27	5.471511° E	24.67
C5	124.00	24.67	113.27	5.471511° E	24.67
C6	124.00	24.67	113.27	5.471511° E	24.67
C7	124.00	24.67	113.27	5.471511° E	24.67
C8	124.00	24.67	113.27	5.471511° E	24.67
C9	124.00	24.67	113.27	5.471511° E	24.67
C10	124.00	24.67	113.27	5.471511° E	24.67
C11	124.00	24.67	113.27	5.471511° E	24.67
C12	124.00	24.67	113.27	5.471511° E	24.67

CURVE TABLE

CHUCK	BEARS	LENGTH	BEARS	CHUCK BEARS	CHUCK LENGTH
C1	188.00	172.5	871.34	5.471511° E	12.97
C2	25.00	26.86	47.9302	5.471511° E	20.37
C3	8.00	5.87	6.8941	5.471511° E	9.91
C4	124.00	24.67	113.27	5.471511° E	24.67
C5	124.00	24.67	113.27	5.471511° E	24.67
C6	124.00	24.67	113.27	5.471511° E	24.67
C7	124.00	24.67	113.27	5.471511° E	24.67
C8	124.00	24.67	113.27	5.471511° E	24.67
C9	124.00	24.67	113.27	5.471511° E	24.67
C10	124.00	24.67	113.27	5.471511° E	24.67
C11	124.00	24.67	113.27	5.471511° E	24.67
C12	124.00	24.67	113.27	5.471511° E	24.67

CURVE TABLE

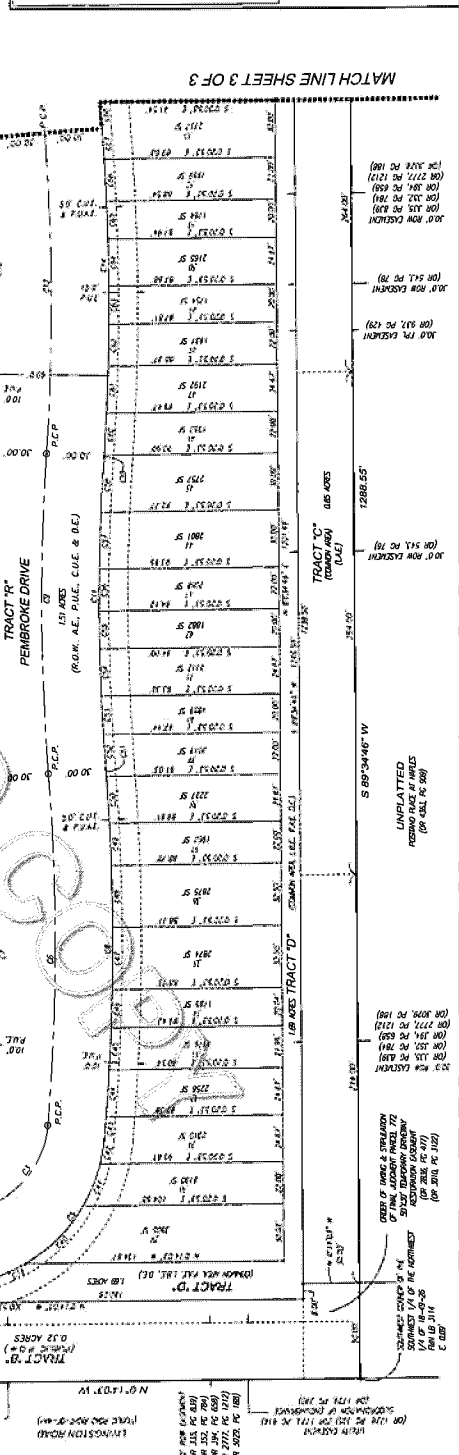
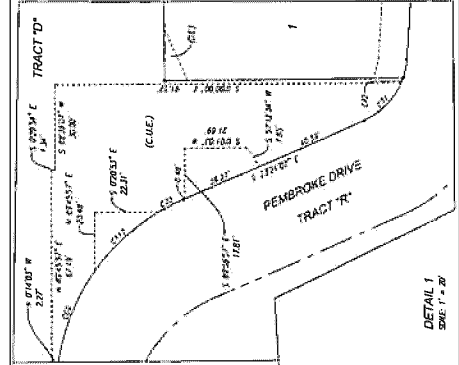
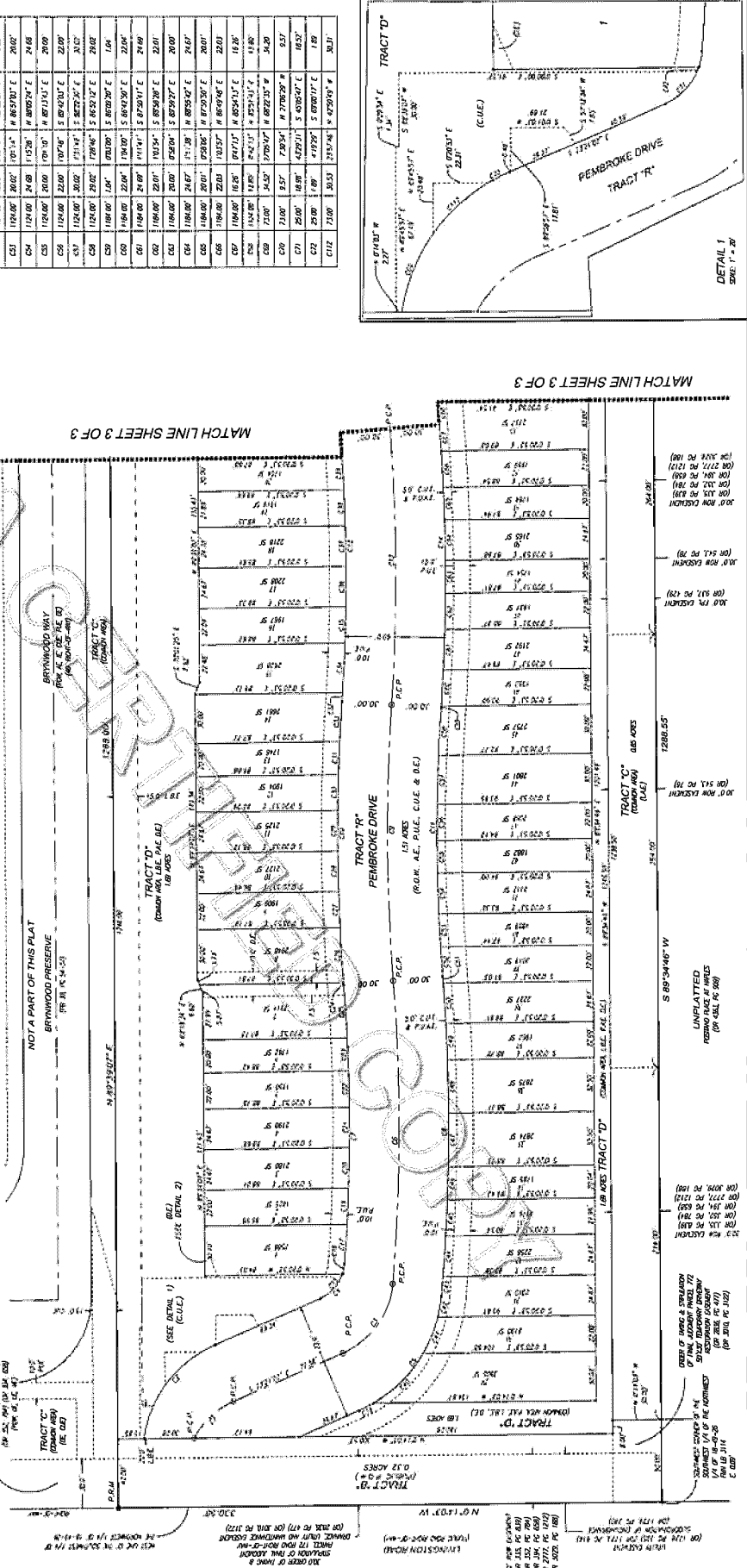
CHUCK	BEARS	LENGTH	BEARS	CHUCK BEARS	CHUCK LENGTH
C1	188.00	172.5	871.34	5.471511° E	12.97
C2	25.00	26.86	47.9302	5.471511° E	20.37
C3	8.00	5.87	6.8941	5.471511° E	9.91
C4	124.00	24.67	113.27	5.471511° E	24.67
C5	124.00	24.67	113.27	5.471511° E	24.67
C6	124.00	24.67	113.27	5.471511° E	24.67
C7	124.00	24.67	113.27	5.471511° E	24.67
C8	124.00	24.67	113.27	5.471511° E	24.67
C9	124.00	24.67	113.27	5.471511° E	24.67
C10	124.00	24.67	113.27	5.471511° E	24.67
C11	124.00	24.67	113.27	5.471511° E	24.67
C12	124.00	24.67	113.27	5.471511° E	24.67

CURVE TABLE

CHUCK	BEARS	LENGTH	BEARS	CHUCK BEARS	CHUCK LENGTH
C1	188.00	172.5	871.34	5.471511° E	12.97
C2	25.00	26.86	47.9302	5.471511° E	20.37
C3	8.00	5.87	6.8941	5.471511° E	9.91
C4	124.00	24.67	113.27	5.471511° E	24.67
C5	124.00	24.67	113.27	5.471511° E	24.67
C6	124.00	24.67	113.27	5.471511° E	24.67
C7	124.00	24.67	113.27	5.471511° E	24.67
C8	124.00	24.67	113.27	5.471511° E	24.67
C9	124.00	24.67	113.27	5.471511° E	24.67
C10	124.00	24.67	113.27	5.471511° E	24.67
C11	124.00	24.67	113.27	5.471511° E	24.67
C12	124.00	24.67	113.27	5.471511° E	24.67

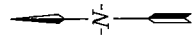
CURVE TABLE

CHUCK	BEARS	LENGTH	BEARS	CHUCK BEARS	CHUCK LENGTH
C1	188.00	172.5	871.34	5.471511° E	12.97
C2	25.00	26.86	47.9302	5.471511° E	20.37
C3	8.00	5.87	6.8941	5.471511° E	9.91
C4	124.00	24.67	113.27	5.471511° E	24.67
C5	124.00	24.67	113.27	5.471511° E	24.67
C6	124.00	24.67	113.27	5.471511° E	24.67
C7	124.00	24.67	113.27	5.471511° E	24.67
C8	124.00	24.67	113.27	5.471511° E	24.67
C9	124.00	24.67	113.27	5.471511° E	24.67
C10	124.00	24.67	113.27	5.471511° E	24.67
C11	124.00	24.67	113.27	5.471511° E	24.67
C12	124.00	24.67	113.27	5.471511° E	24.67



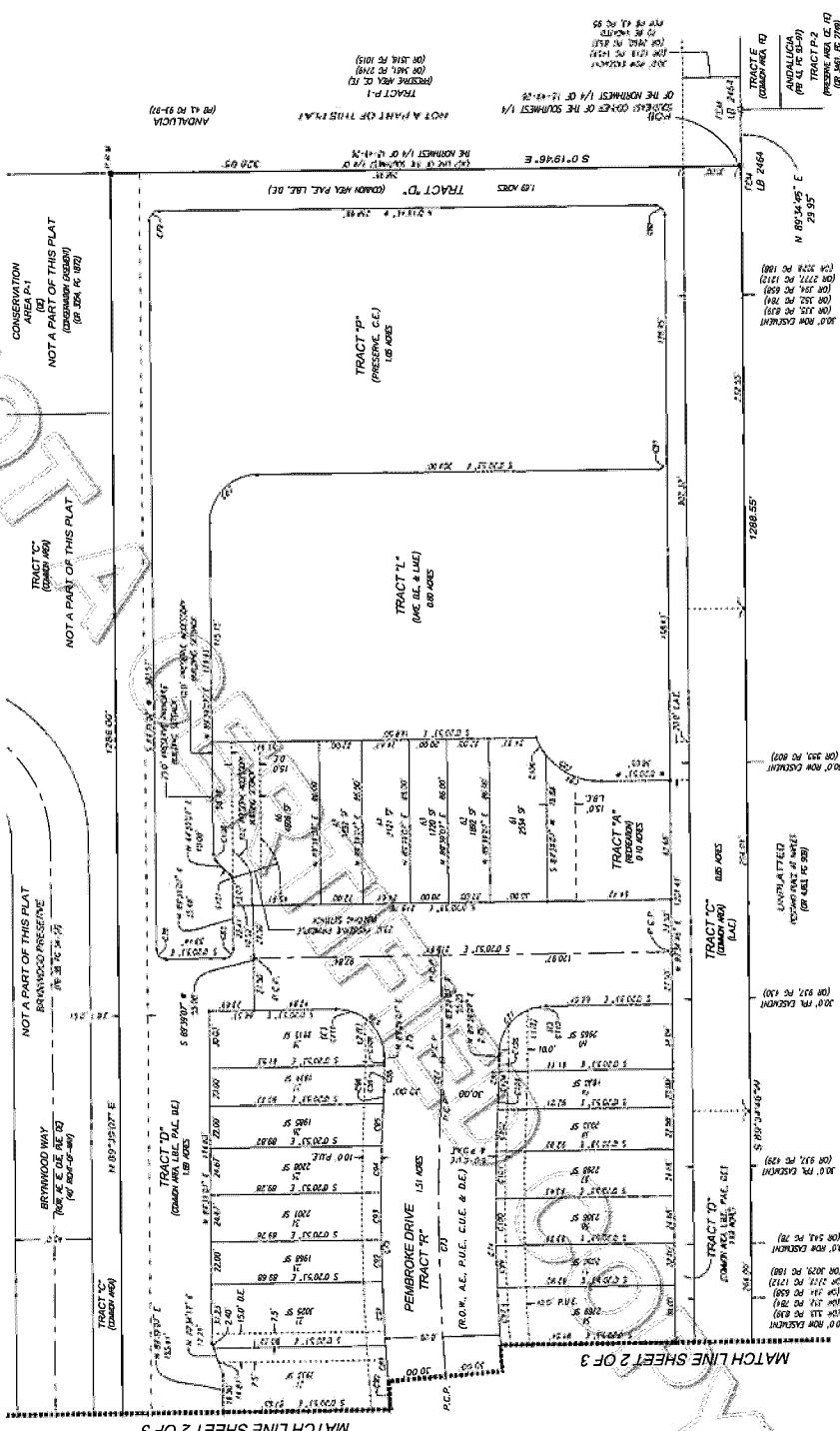
A SUBDIVISION LOCATED IN SECTION 18,  
TOWNSHIP 49 SOUTH, RANGE 26 EAST,  
COLLIER COUNTY, FLORIDA

GradyMinor



CURVE TABLE						CHORD STATION	
NAME	LENGTH	DELTA	CHORD BEARING	CHORD BEARING	CHORD STATION	CHORD STATION	
C15	154.00	44.71°	S 89°12'07" E	S 89°12'07" E	148.61	148.61	
C16	124.00	144.63°	S 89°13'51" E	S 89°13'51" E	144.25	144.25	
C17	168.00	152.56°	S 89°13'07" E	S 89°13'07" E	152.47	152.47	
C18	25.00	30.37°	N 43°30'15" E	N 43°30'15" E	25.16	25.16	
C19	58.00	30.37°	N 43°30'15" E	N 43°30'15" E	58.16	58.16	
C20	58.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.07	7.07	
C21	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.11	7.11	
C22	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.16	7.16	
C23	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.21	7.21	
C24	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.26	7.26	
C25	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.31	7.31	
C26	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.36	7.36	
C27	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.41	7.41	
C28	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.46	7.46	
C29	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.51	7.51	
C30	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.56	7.56	
C31	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.61	7.61	
C32	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.66	7.66	
C33	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.71	7.71	
C34	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.76	7.76	
C35	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.81	7.81	
C36	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.86	7.86	
C37	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.91	7.91	
C38	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	7.96	7.96	
C39	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.01	8.01	
C40	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.06	8.06	
C41	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.11	8.11	
C42	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.16	8.16	
C43	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.21	8.21	
C44	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.26	8.26	
C45	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.31	8.31	
C46	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.36	8.36	
C47	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.41	8.41	
C48	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.46	8.46	
C49	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.51	8.51	
C50	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.56	8.56	
C51	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.61	8.61	
C52	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.66	8.66	
C53	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.71	8.71	
C54	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.76	8.76	
C55	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.81	8.81	
C56	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.86	8.86	
C57	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.91	8.91	
C58	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	8.96	8.96	
C59	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.01	9.01	
C60	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.06	9.06	
C61	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.11	9.11	
C62	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.16	9.16	
C63	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.21	9.21	
C64	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.26	9.26	
C65	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.31	9.31	
C66	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.36	9.36	
C67	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.41	9.41	
C68	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.46	9.46	
C69	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.51	9.51	
C70	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.56	9.56	
C71	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.61	9.61	
C72	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.66	9.66	
C73	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.71	9.71	
C74	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.76	9.76	
C75	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.81	9.81	
C76	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.86	9.86	
C77	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.91	9.91	
C78	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	9.96	9.96	
C79	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.01	10.01	
C80	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.06	10.06	
C81	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.11	10.11	
C82	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.16	10.16	
C83	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.21	10.21	
C84	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.26	10.26	
C85	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.31	10.31	
C86	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.36	10.36	
C87	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.41	10.41	
C88	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.46	10.46	
C89	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.51	10.51	
C90	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.56	10.56	
C91	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.61	10.61	
C92	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.66	10.66	
C93	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.71	10.71	
C94	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.76	10.76	
C95	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.81	10.81	
C96	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.86	10.86	
C97	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.91	10.91	
C98	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	10.96	10.96	
C99	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.01	11.01	
C100	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.06	11.06	
C101	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.11	11.11	
C102	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.16	11.16	
C103	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.21	11.21	
C104	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.26	11.26	
C105	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.31	11.31	
C106	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.36	11.36	
C107	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.41	11.41	
C108	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.46	11.46	
C109	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.51	11.51	
C110	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.56	11.56	
C111	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.61	11.61	
C112	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.66	11.66	
C113	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.71	11.71	
C114	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.76	11.76	
C115	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.81	11.81	
C116	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.86	11.86	
C117	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.91	11.91	
C118	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	11.96	11.96	
C119	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.01	12.01	
C120	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.06	12.06	
C121	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.11	12.11	
C122	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.16	12.16	
C123	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.21	12.21	
C124	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.26	12.26	
C125	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.31	12.31	
C126	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.36	12.36	
C127	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.41	12.41	
C128	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.46	12.46	
C129	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.51	12.51	
C130	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.56	12.56	
C131	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.61	12.61	
C132	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.66	12.66	
C133	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.71	12.71	
C134	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.76	12.76	
C135	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.81	12.81	
C136	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.86	12.86	
C137	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.91	12.91	
C138	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	12.96	12.96	
C139	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.01	13.01	
C140	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.06	13.06	
C141	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.11	13.11	
C142	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.16	13.16	
C143	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.21	13.21	
C144	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.26	13.26	
C145	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.31	13.31	
C146	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.36	13.36	
C147	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.41	13.41	
C148	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.46	13.46	
C149	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.51	13.51	
C150	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.56	13.56	
C151	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.61	13.61	
C152	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.66	13.66	
C153	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.71	13.71	
C154	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.76	13.76	
C155	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.81	13.81	
C156	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.86	13.86	
C157	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.91	13.91	
C158	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	13.96	13.96	
C159	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	14.01	14.01	
C160	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	14.06	14.06	
C161	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	14.11	14.11	
C162	50.00	7.85°	N 43°30'15" E	N 43°30'15" E	14.16	14.16	
C163	50.00	7.85°	N 43°30'15" E	N 43			

LINE	BEARING	DISTANCE
1	N 89°39'07" E	25.65'



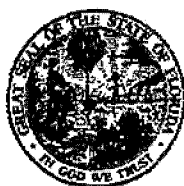
**EXHIBIT "B"**

**(Articles of Incorporation)**

NOT A  
CERTIFIED  
COPY

850-617-6381

10/4/2019 10:50:39 AM PAGE 2/002 Fax Server



October 4, 2019

FLORIDA DEPARTMENT OF STATE  
Division of Corporations

HAMILTON PLACE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.  
C/O 24201 WALDEN CENTER DR., SUITE #204  
BONITA SPRINGS, FL 34314

The Articles of Incorporation for HAMILTON PLACE TOWNHOMES HOMEOWNERS ASSOCIATION, INC. were filed on October 3, 2019, and assigned document number N19000010503. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H19000295236.

To maintain "active" status with the Division of Corporations, an annual report must be filed yearly between January 1st and May 1st beginning in the year following the file date or effective date indicated above. It is your responsibility to remember to file your annual report in a timely manner.

A Federal Employer Identification Number (FEI/EIN) will be required when this report is filed. Apply today with the IRS online at:

<https://sa.www4.irs.gov/modiein/individual/index.jsp>.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at (850) 245-6052.

Tyrone Scott  
Regulatory Specialist II  
New Filings Section  
Division of Corporations

Letter Number: 019A00020457

# State of Florida

## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of HAMILTON PLACE TOWNHOMES HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on October 3, 2019, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H19000295236. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N19000010503.

Authentication Code: 019A00020457-100419-N19000010503-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Fourth day of October, 2019



*Randy R. Lee*  
Secretary of State



**ARTICLES OF INCORPORATION  
OF  
HAMILTON PLACE TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**

THE UNDERSIGNED, in accordance with the provisions of Chapter 617, *Florida Statutes*, hereby makes, subscribes and acknowledges these Articles of Incorporation for the purpose of forming a not for profit Florida corporation.

**ARTICLE I**

The name of the corporation is HAMILTON PLACE TOWNHOMES HOMEOWNERS ASSOCIATION, INC. (the "Association"), and its mailing address and principal office address is c/o 24201 Walden Center Dr., Suite #204, Bonita Springs, Florida 34134.

All undefined terms appearing in initial capital letters herein shall have the meaning ascribed to them in that certain Declaration of Covenants, Conditions and Restrictions for Hamilton Place Townhomes (the "Declaration"), as it may be amended from time to time.

**ARTICLE II**

This corporation does not contemplate pecuniary gain or profit, direct or indirect to its members, and its primary purposes are:

Section 1. To promote the health, safety and social welfare of the owners of all lots located within Hamilton Place Townhomes, a planned community within the City of Naples in Collier County, Florida (the "Community");

Section 2. To maintain all portions of the Community and improvements thereon for which the obligation to maintain and repair has been delegated to the corporation by the Declaration which is to be recorded in the public records of Collier County, Florida;

Section 3. To contract for the operation and maintenance of the Common Areas or Water Management System and to delegate any powers and duties of the Association in connection therewith, except such as specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

Section 4. To operate and maintain the Water Management System, including all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plan compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas. Moreover, the Water Management System shall be operated, maintained and managed in a manner consistent with the South Florida Water Management District's (the "District") permit requirements and applicable District rules and regulations, and the terms and conditions of the Declaration (including enforcement provisions) which relate to the Water Management System. Additionally, the Association shall levy and collect adequate assessments against Members for the cost of maintenance and operation of the Water Management System;

Section 5. To exercise all rights and powers of a not for profit corporation permitted by Chapter 617, *Florida Statutes*; and

Section 6. To exercise any other powers necessary and proper for the governance and operation of the Association, including those powers set forth in the Declaration.

### ARTICLE III

The term for which the corporation is to exist is perpetual unless the corporation is dissolved pursuant to any applicable provision of the *Florida Statutes*. Any dissolution of the corporation shall comply with the Declaration. In the event of dissolution, the control or right of access to any portion of the Properties containing the Water Management System shall be conveyed or dedicated to an appropriate governmental unit or public utility. If the Water Management System are not accepted by governmental or public utility, then they shall be conveyed to a not for profit corporation similar to the Association. Furthermore, subject to the terms of the Declaration, in the event the corporation is dissolved commercially reasonable efforts will be made to transfer ownership, operation and maintenance obligations of the Association to a similar non-profit organization. Such ownership, operation and maintenance obligations will include but not be limited to any obligations or rights connected with any dedicated property or infrastructure, lake tracts, lake maintenance or drainage easements, rights-of-way, roads, streets or access easements, utility easements/tracts or facilities, conservation or preservation easements/areas, common landscape areas, recreational areas, common areas and/or any other property owned by or dedicated to the Association.

### ARTICLE IV

The name and address of the Incorporator is:

Thomas M. Little

Foley & Lardner, LLP  
100 N. Tampa Street, Suite 2700  
Tampa, FL 33602

### ARTICLE V

The name and address of the initial Registered Agent is:

F&L Corp.  
One Independent Drive, Suite 1300  
Jacksonville, FL 32202

### ARTICLE VI

The corporation shall be governed by a Board of Directors consisting of not less than three (3) nor more than seven (7) persons. The members of the Board of Directors shall be elected in accordance with the provisions of Article IV of the Bylaws of the corporation. The initial Board of Directors shall consist of three (3) persons whose names and addresses are:

Chad Peterson

c/o 24201 Walden Center Dr., Suite #204,  
Bonita Springs, Florida 34134

Kevin Brown

c/o 24201 Walden Center Dr., Suite #204,  
Bonita Springs, Florida 34134

Ron Haislip

c/o 24201 Walden Center Dr., Suite #204,  
Bonita Springs, Florida 34134

In the event of a vacancy on the Board of Directors, the vacancy shall be filled by the majority vote of the remaining Directors.

#### ARTICLE VII

The affairs of the corporation are to be managed by a President, a Vice President, a Secretary, a Treasurer and such other Officers as the Bylaws of the corporation may provide for from time to time. All Officers shall be elected by the Board at the first meeting of the Board of Directors following the annual meeting of the corporation and shall hold office until the next succeeding annual election of Officers or until their successors are elected and qualify.

The names of the Officers who are to serve until the first meeting of the Board following the annual meeting of the corporation are:

Chad Peterson	President
Kevin Brown	Vice President
Ron Haislip	Secretary/Treasurer

In the event of a vacancy in any office, the vacancy shall be filled by a majority vote of the Board of Directors.

#### ARTICLE VIII

Each Owner of a Unit within the Community shall be entitled to one (1) vote for each owned Unit or as otherwise more fully set forth in the Declaration.

#### ARTICLE IX

**Voting Rights.** The Association shall have two (2) classes of membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of the Declarant. Class "A" Members shall be entitled to one (1) equal vote for each Unit owned in the Community. When more than one (1) person holds an ownership interest in any Unit, all such persons shall be Members, provided that only one vote may be cast on behalf of all such Members holding an ownership interest in any one Unit. The vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting.

In the absence of such advice, the Unit's vote shall be suspended in the event more than one (1) person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may appoint a majority of the members of the Board prior to the Turnover Date, as defined below. Following the Turnover Date, the Declarant shall have a right to disapprove actions of the Board and committees as provided in the Bylaws. Additionally, prior to the Turnover Date, the Class "B" Member shall be entitled to three (3) votes for each Unit owned. After the Turnover Date, the Declarant shall be entitled to one (1) vote for each Unit owned, and shall be entitled to all rights and privileges associated with Class "A" membership in addition to all rights reserved to the Declarant as enumerated in the Declaration, these Articles of Incorporation, and the Bylaws.

The Class "B" Member shall terminate upon the earlier of (the "Turnover Date"):

(i) Three (3) months after ninety percent (90%) of the Units in the Community that will ultimately be operated by the Association have been conveyed to Owners other than Declarant, as provided in the Declaration.

(ii) 20 years after the date on which the Declaration is recorded in the public records of Collier County, Florida;

(iii) Earlier, when the Declarant, in its discretion, so determines and declares in a recorded instrument;

(iv) When Declarant elects, in its sole discretion, to relinquish control of the Association to the Members;

(v) Upon Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the governing documents of the Community;

(vi) Upon Declarant filing a petition seeking protection under Chapter 7 of the federal Bankruptcy Code;

(vii) Upon Declarant losing title to the Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or

(viii) Upon a receiver for Declarant being appointed by a circuit court and not being discharged within thirty (30) days after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or its members.

## ARTICLE X

Fifty percent (50%) of the total vote that could be cast at any annual or special meeting, represented in person or by proxy, shall constitute a quorum at any meeting of the Members. If a quorum cannot be reached at any meeting of the membership, the meeting may be adjourned and reconvened without notice other than announcement at the meeting. Adjourned and reconvened meetings shall be at least three (3) days apart and, if a quorum is reached, any business may be transacted which might have been transacted at the adjourned meeting.

## ARTICLE XI

This corporation shall never have nor issue any shares of stock, nor shall this corporation distribute any part of the income of this corporation, if any, to its Members, Directors or Officers. However, the corporation shall not be prohibited from reasonably compensating its Members, Directors, or Officers for services rendered, nor shall the corporation be prohibited from making any payments or distributions to members of benefits, monies or properties permitted by Chapter 617, *Florida Statutes*.

## ARTICLE XII

The corporation shall have all the powers set forth and described in Chapter 617, *Florida Statutes*, as presently existing or as may be amended from time to time, together with those powers conferred by the Declaration, these Articles of Incorporation and the Bylaws of the corporation, including, but not limited to, assess members for all expenses incurred in connection with maintaining and operating the Water Management System and the right to enforce that assessment pursuant to the imposition of liens.

## ARTICLE XIII

The corporation shall indemnify all persons who may serve or who have served at any time as Director or Officers, and their respective heirs, administrators, successors and assigns against any and all expenses, including amounts paid upon judgments, counsel fees, and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred in connection with the defense or settlement of any claim, action, suit or proceeding in which they or any of them are made a party, or which may be asserted against any of them, by reason of having been a Director or Officer of the corporation, except in such cases where the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. Such indemnification shall be in addition to any rights to which such Director or Officer may otherwise be entitled.

## ARTICLE XIV

In the absence of fraud, no contract or other transaction between this corporation or any other person, firm, association, corporation or partnership shall be affected or invalidated by the fact that any Director or Officer of this corporation is pecuniarily or otherwise interested in, or is a director, member or officer of any such firm, association, corporation or partnership. Any director may vote and be counted in determining the existence of a quorum at any meeting of the Board of Directors for the purpose of authorizing contract or transaction with like force and

effect as if he were not so interested, or not a director, member or officer of such other firm, association, corporation or partnership.

#### ARTICLE XV

The Bylaws of this corporation are to be made and adopted by a majority vote of the Directors and said Bylaws may not be altered, amended, rescinded or added to except as provided in the Bylaws.

#### ARTICLE XVI

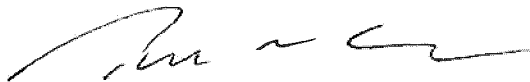
These Articles of Incorporation may be amended, altered, rescinded, or added to by appropriate resolution approved by a three-quarters (3/4) vote of the voting interest of the Members present at any duly convened membership meeting or, alternatively, by appropriate resolution adopted by a two-thirds (2/3) vote of the Board of Directors at any duly convened meeting of the Board and accepted by a three-quarters (3/4) vote of the voting interest of the Members present at any duly convened membership meeting. Any Member of this corporation may propose an amendment to the Articles of Incorporation to the Board or the membership, as the case may be. Notwithstanding the foregoing, until termination of the Class B Membership, any changes in the Articles of Incorporation may be made by a majority vote of the Board of Directors. Any proposed amendment to these Articles, which would affect the Water Management System (including environmental conservation areas and the water management portions of the Common Elements), must be submitted to the District or its successors for a determination of whether the amendment necessitates a modification of the applicable permit.

#### ARTICLE XVII

To the extent any provisions contained herein conflict with the Declaration, the provisions contained in the Declaration shall supersede such conflicting provisions contained herein.

***I submit this document and affirm that the facts stated herein are true. I am aware that any false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S***

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation, this 3rd day of October, 2019.



Thomas M. Little, Incorporator

**DESIGNATION OF REGISTERED AGENT  
AND REGISTERED OFFICE**

The initial registered agent of this corporation shall be F&L Corp. The initial registered office of this corporation shall be One Independent Drive Suite 1300 Jacksonville, FL.

**ACCEPTANCE**

*Having been named as registered agent to accept service of process for the above stated corporation at the place designated in these Articles of Incorporation, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.*

**F&L CORP.**

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

*R. J. Wolfe*

Print Name: Randolph J. Wolfe

Title: Authorized Signatory