

This instrument prepared by
and after recording return to:

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TOWNHOME DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR HAMILTON GARDENS TOWNHOMES

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**TOWNHOME DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR HAMILTON GARDENS TOWNHOMES**

THIS TOWNHOME DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HAMILTON GARDENS TOWNHOMES (this “**Townhome Declaration**”) is made this 4th day of March, 2019 by INDEPENDENCE PARKWAY DEVELOPMENT, LLC, a Delaware limited liability company (the “**Declarant**”) (as further defined below) whose post office address is 1323 Brookhaven Drive, Orlando, Florida 32803 and is joined in by NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC., a Florida corporation not for profit (“**Townhome Association**”) whose post office address is 1323 Brookhaven Drive, Orlando, Florida 32803.

RECITALS:

A. Declarant owns the real Townhome Property described in the plat for Hamilton Gardens, as recorded in Plat Book 98, Pages 79 through 84, inclusive, of the Public Records of Orange County, Florida.

B. The Townhome Property is a proposed residential community known as “**Hamilton Gardens**” (the “**Development**”).

C. Declarant is the developer of the “**community**” (as that term is defined in the Homeowner Association Act) pursuant to the Homeowner Association Act.

D. Declarant has incorporated the Townhome Association, which Townhome Association will be conveyed title to certain Townhome Property, and which Townhome Association will be delegated the powers of and responsibility for maintaining and administering certain Townhome Property and Improvements, administering and enforcing this Townhome Declaration and the other Townhome Association Documents, and collecting and disbursing the monies derived from the Townhome Assessments hereafter levied.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that this Townhome Declaration encumber the Townhome Property and such Townhome Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Townhome Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Townhome Property or any part thereof, their heirs, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. Some of the definitions set forth in the Townhome Association Documents may contain terms, conditions, and provisions that are necessary for: (i) the proper interpretation of the Townhome Association Documents; and (ii) to fully understand the Townhome Members’ rights, privileges, responsibilities, duties, liabilities, and obligations under

the Townhome Association Documents and under the Homeowner Association Act. Capitalized terms used above or herein that are not defined in this Article I shall have the meanings given to such terms elsewhere in this Townhome Declaration. When used above or herein in this Townhome Declaration, the following terms shall have the following meanings:

A. **“ADDITIONAL PROPERTY”** shall mean any real property (other than the Property) that may be submitted by Declarant or any third party authorized by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by a Supplemental Declaration by the fee owner thereof. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term **“Property”** as used herein shall also include the Additional Property.

B. **“AMENDMENT(S)”** shall mean any and all amendments to this Townhome Declaration, all of which shall be consecutively numbered beginning with the **“First Amendment to the Townhome Declaration of Covenants, Conditions and Restrictions for the Community”** and each of which shall be properly adopted pursuant to the terms of the Townhome Association Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. **“Amendment(s)”** shall also mean any and all amendments to any Supplemental Townhome Declaration, as recorded in the Public Records of the County.

C. **“ANNUAL TOWNHOME ASSESSMENTS”** shall mean and refer to the Townhome Assessments levied annually by the Townhome Association pursuant to the Homeowner Association Act, Chapter 720, Florida Statutes **“Association Act”** and the **“Budget”** (as that term is defined in Section 6.03(a) of this Declaration).

D. **“AREA(S) OF COMMON RESPONSIBILITY”** shall mean and refer to any land or Improvement located in or near the Townhome Property which is not intended to be owned by the Townhome Association, but which is intended to be improved, maintained, or operated by the Townhome Association in the manner and to the extent determined from time to time by the Board. Areas of Common Responsibility may be designated by this Townhome Declaration, any Supplemental Townhome Declaration, a contract entered into by the Townhome Association, or by a decision of the Board, but capacity exclude any areas of common responsibility owned, controlled, or maintained by the Master Townhome Association.

E. **“ARTICLES”** shall mean the Articles of Incorporation of the Townhome Association which have been filed in the Office of the Secretary of State of the State of Florida, a true copy of which is attached hereto as **Exhibit “B”** and incorporated herein by this reference, as such Articles may be amended from time to time.

F. **“BLOCK”** shall mean and refer to any group of adjacent Townhome Townhome Lots constituting a block as depicted on any Recorded Plat, including any improvements from

time to time constructed, erected, placed, installed or located thereon. If applicable, a Block may be considered Limited Townhome Common Area.

G. **“BOARD”** shall mean the governing board of director body of the Townhome Association.

H. **“BUILDER”** or **“HOMEBUILDER”** shall mean and refer to any person or legal entity that has acquired or that acquires title to any Townhome Lot expressly in furtherance of: (1) the business of developing the Townhome Lot for eventual construction of Townhomes thereon in the ordinary course of such person’s or entity’s business; or (2) the business of constructing Townhomes thereon, in the ordinary course of such person’s or entity’s business, for later sale to bona fide Third-Party Purchasers that is not a Builder or an affiliate of a Builder. After the Turnover occurs, Declarant shall be considered and deemed a Builder with regard to or concerning any Townhome Lot(s) that Declarant then owns or thereafter acquires title to, and with Declarant, as a Builder, automatically being deemed to and having all rights, powers, benefits, easements, and reservations afforded to a Builder under the Governing Documents or that may be delegated to a Builder by Declarant under the Governing Documents.

I. **“BYLAWS”** shall mean the Bylaws of the Townhome Association, which have been or will be adopted by the Board, an initial copy of which is attached hereto as **Exhibit “C”** and incorporated herein by this reference, as such Bylaws may be amended from time to time.

J. **“COUNTY”** shall mean Orange County, Florida.

K. **“DECLARANT”** shall mean and refer to Independence Parkway Development, LLC, a Delaware limited liability company, and any successor or assign thereof to which Declarant specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, recorded in the Public Records of the County. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Townhome Property such assignment is applicable. In any event, any subsequent Declarant shall not be liable for any default or obligations incurred by any prior Declarant, except as may be expressly assumed by the subsequent Declarant, and any prior Declarant shall not be liable for any subsequent default or obligations incurred by any subsequent Declarant. An Townhome Owner shall not, solely by the purchase of a Townhome and/or Townhome Lot, be deemed a successor or assign of Declarant under the Townhome Association Documents unless such Townhome Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

L. **“DIRECTOR”** shall mean a member of the Board.

M. **“GOVERNMENTAL AUTHORITY(IES)”** shall mean and refer to any federal, state or local authority, court, department, division, legislature or instrumentality having authority, control or jurisdiction over or concerning the Development, the Townhome Property, the Community, the Areas Common Responsibility, the Townhome Association, the Townhome Members and/or the Townhome Owners, including, but not limited to, the local government.

N. “**IMPROVED TOWNHOME LOT**” shall mean a Townhome Lot on which the construction of any Townhome has been completed and for which Townhome a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency.

O. “**IMPROVEMENT**” shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Community, including, without limitation, buildings, walkways, horse trails, berms, fountains, sprinkler pipes, gatehouses, roads, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, hedges, plantings, poles, swings, tennis courts, swimming pools, covered patios, screen enclosures, jogging, bicycling and walking paths, basketball backboards and hoops, signs, site walls, gazebos, benches, mailboxes, decorative street lights and signs.

P. “**INTEREST**” shall mean the maximum non-usurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

Q. “**LEGAL FEES**” shall mean reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment, bankruptcy and probate proceedings, and (ii) collection of past due Townhome Assessments including, but not limited to, preparation of notices and liens; and shall also include court costs through and including all trial and appellate levels and post-judgment, bankruptcy and probate proceedings.

R. “**LIMITED TOWNHOME COMMON AREA**” means any and all real and personal property, easements, improvements, facilities and other interest, if any, as more particularly described in Article IV, Section 4.03 hereof, which are reserved for the use of Townhome Owner(s) of certain Townhome Lots to the exclusion of other Townhome Owner(s) and/or other Townhome Lots.

S. “**LIMITED TOWNHOME COMMON EXPENSE(S)**” shall mean and refer to Townhome Common Expenses with respect to any Limited Townhome Common Area.

T. “**MONETARY OBLIGATION**” shall mean and refer to any monetary obligations, including, but not limited to, Townhome Assessments, due to the Townhome Association by any Member pursuant to the Governing Documents, the Rules and Regulations, or under the Homeowner Association Act.

U. “**MASTER ASSOCIATION**” shall mean the Hamilton Gardens Homeowners Association Inc., as set forth and established in the Master Declaration.

V. “**MASTER DECLARATION**” shall mean the Declaration of Covenants, Conditions and Restrictions for Hamilton Gardens, dated March 4, 2019 and recorded as Document #20190166757, Public Records of Orange County, Florida.

W. “**PARTY WALL**” shall mean and refer to a structural, fire rated wall between two adjacent Townhomes located within the same Townhome Building, which provides

structural support for each of the Townhomes sharing the Party Wall. Damage to a Party Wall could impair the structural integrity of more than one Townhome.

X. “**PLAT(S)**” shall mean the recorded Plat of Hamilton Gardens, as recorded in Plat Book 98, Pages 79 through 84, inclusive, Public Records of Orange County, Florida. In the event an Additional Plat is recorded in the Public Records of the County, then the term “**Plat**” as used herein shall also mean the Additional Plat or Plats.

Y. “**PUBLIC RECORDS**” shall mean the public records of the County.

Z. “**RULES AND REGULATIONS**” shall mean the use restrictions, rules, and regulations governing the use of and activities on the Townhome Lots and the Townhome Association Townhome Property, as they may be amended from time to time. The initial Rules and Regulations as of the date hereof are set forth in **Exhibit “D”** attached hereto and made a part hereof.

AA. “**SERVICE AREA**” shall mean and refer to each group of Townhome Lots and Townhomes that share a common continuous building structure connected by Party Walls or containing Townhomes constructed on such Townhome Lots. If applicable, Service Area may also refer to the Townhome Lots and Townhomes located in a Block.

BB. “**SUPPLEMENTAL TOWNHOME DECLARATION**” shall mean any instrument executed by the Townhome Owner of any Townhome Property, which, when recorded in the Public Records of the County, shall commit such Townhome Property to the provisions of this Townhome Declaration, and shall be the only method of committing such Townhome Property to the provisions of this Townhome Declaration. Townhome Property not owned by the Declarant may not be committed to the provisions of this Townhome Declaration by Supplemental Townhome Declaration without the prior express written authorization of the Declarant. A Supplemental Townhome Declaration may also add additional restrictions, declare certain properties to be or not to be Townhome Association Townhome Property, or withdraw properties from the Townhome Property and the provisions of this Townhome Declaration. The Townhome Association shall join in the execution of any Supplemental Townhome Declaration at the request of Declarant, but such joinder shall not be required to make any such Supplemental Townhome Declaration effective, unless expressly provided herein. The Townhome Owners shall not be required to join in the execution of any Supplemental Townhome Declaration but shall nevertheless be bound thereby. Supplemental Townhome Declarations shall be numbered consecutively beginning with the Second Supplemental Townhome Declaration to the Townhome Declaration of Covenants, Conditions and Restrictions for Hamilton Gardens Townhomes.

CC. “**THIRD PARTY PURCHASERS**” shall mean a purchaser that is not a Builder or a successor Declarant of a Townhome Lot or Townhome in the Community.

DD. “**TOWNHOME**” shall mean a residential Townhome unit constructed within the Community, within a Townhome Building.

EE. “**TOWNHOME BUILDING**” shall mean and refer to the common continuous building structure with shared roof and other common structural elements, constructed on a

group of Townhome Lots and all structural components thereof. Each Townhome Building is or will be partitioned, by the means of Party Walls, so that an individual Townhome within the subject Townhome Building is located on each Townhome Lot.

FF. **"TOWNHOME ASSESSMENTS"** shall mean and include: (i) Annual Townhome Assessments or charges; (ii) "Special Townhome Assessments" (as that term is defined in Section 6.04(a) of this Townhome Declaration); (iii) "Individual Townhome Assessments" (as that term is defined in Section 6.04(b) of this Townhome Declaration); (iv) if required to be paid pursuant to the terms hereof or hereafter required by the Board from time to time, a one-time only start-up assessment (**"Start-Up Assessment"**); (v) Townhome Assessments or amenity fees permitted pursuant to the Association Act; and (vi) any interest and late charges that may be imposed by the Board at its discretion, and the cost of collection of any of the foregoing, including, without limitation, court costs and expenses/fees and reasonable attorneys' and paralegals' fees before trial, at trial, and on appeal.

GG. **"TOWNHOME ASSOCIATION"** shall mean and refer to the NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and assigns, pursuant to the Articles, filed in the Office of the Secretary of State of the State of Florida, as amended by any amendments thereto, and which Townhome Association is responsible for the maintenance, preservation and architectural control of the Community as provided in this Townhome Declaration.

HH. **"TOWNHOME ASSOCIATION DOCUMENTS"** shall mean in the aggregate this Townhome Declaration, the Articles and the Bylaws, the Plat, the Additional Plat, if any, and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) and Supplemental Townhome Declaration(s).

II. **"TOWNHOME ASSOCIATION TOWNHOME PROPERTY"** shall mean such portions of the Townhome Property which are not included in any Townhome Lot, except those areas dedicated to the public by the Plat or Additional Plat, if any, and which are or shall be owned or maintained by the Townhome Association, as set forth in this Townhome Declaration, for the common use and enjoyment of the Townhome Owners within the Community, together with landscaping and any other Improvements thereon, including, without limitation, the Stormwater Management System, the Utility Systems, all structures, gatehouses, open spaces, private streets, asphalt bike paths, horse trails, sidewalks, irrigation facilities, decorative street lights, perimeter fence, entry or other lighting, if any, and entrance features, buffer tracts, monument walls, site walls, gazebos, retaining walls, fountains, littoral plantings and decorative street signs, but excluding any public utility installations thereon, but expressly excluding any portions of the Townhome Property owned by the Master Association.

JJ. **"TOWNHOME OWNER"** shall mean and refer to the record Townhome Owner, whether one or more persons or entities, of the fee simple title to any Townhome Lot within the Community, upon which a Townhome is permitted to be constructed upon and includes Declarant for as long as Declarant owns fee simple title to a Townhome Lot within the Community, but excluding therefrom those having such interest as security for the performance of an obligation.

KK. **“TOWNHOME COMMON AREA(S)”** or **“TOWNHOME COMMON PROPERTY”** shall mean and refer to the real and personal Townhome Property from time to time owned or intended to be owned by the Townhome Association and devoted to the use and enjoyment of all Townhome Members of the Townhome Association, all at Townhome Common Expense, but expressly excluding any Common Areas or Common Townhome Property owned by the Master Association. Additional Townhome Property may contain Townhome Common Property, but no commitment is made that any Additional Townhome Property will in fact contain Townhome Common Property. The definition of **“Townhome Common Area”** and **“Townhome Common Property”** shall also include the definition of **“Townhome Common Area”** defined in the Homeowner Association Act.

LL. **“TOWNHOME COMMON EXPENSE”** shall mean and refer to the actual and estimated expense of operating the Townhome Association and meeting the costs to be incurred by the Townhome Association in performing its duties and in exercising its prerogatives, including, without limitation, costs incurred for operation, management, administration, maintenance, repairs, replacement, insurance and improvement of the Townhome Common Townhome Property and Areas of Common Responsibility, and for any reserves from time to time established to be set aside by the Board. Except as may be expressly set forth herein, all undertakings or activities of the Townhome Association concerning the Townhome Property, the Community, the Townhome Common Townhome Property, the Areas of Common Responsibility, and enforcing the provisions of the Townhome Association Documents, shall be done at Townhome Common Expense.

MM. **“TOWNHOME DECLARATION”** shall mean this instrument as it may be amended from time to time, together with any Supplemental Townhome Declaration(s) or Amendments thereto, which may be recorded amongst the Public Records in accordance with this Townhome Declaration.

NN. **“TOWNHOME LOT”** shall mean and refer to any parcel of land within the Community as shown on the Plat or any Additional Plat upon which a Townhome is permitted to be constructed, together with the Improvements thereon, and any portion of the Townhome Property within the Community that is declared to be a Townhome Lot by a Supplemental Townhome Declaration and is not subsequently withdrawn from the provisions of this Townhome Declaration by a Supplemental Townhome Declaration.

OO. **“TOWNHOME MEMBERS”** shall mean and refer to all of the Townhome Owners who are also Townhome Members of the Townhome Association, as provided herein.

PP. **“TOWNHOME PROPERTY”** shall mean the Initial Townhome Property and Additional Townhome Property, if any, which is submitted to and encumbered by this Townhome Declaration.

QQ. **“TOWNHOME SPECIAL ASSESSMENT”** shall mean the assessment set forth in Section 6.04(a) hereof.

RR. **“TURNOVER”** shall mean and refer to the transition of control of the Townhome Association by Declarant pursuant to Section 720.307 of the Homeowner Association Act.

SS. **“TURNOVER MEETING”** shall mean and refer to the meeting at which Townhome Members other than Declarant elect a majority of the Directors pursuant to Section 720.307 of the Homeowner Association Act.

TT. **“UTILITY SYSTEMS”** shall mean and refer to any and all Townhome Property, real and otherwise, utilized to furnish potable water, non-potable water, sanitary sewer, and reuse water, if so provided, to the Townhome Owners and residents of the Townhome Property, in addition to the Townhome Association Townhome Property and Townhome Common Areas within the Townhome Property. Utility Systems shall include all mechanical and electronic equipment and systems utilized to provide water and sewer services to the Townhome Property, including but not limited to piping, lift stations, water treatment plants, sewer treatment plants and sprayfields, and reuse facilities; provided, however, Utility Systems shall not include any portion of any system to provide utilities that is located within the boundaries of an individual Townhome Lot, from the terminus of the meter(s) for the individual Townhome Lot. The Utility System shall stop on each Townhome Lot at the exit flow from the meter(s) for such Townhome Lot.

ARTICLE II

DESCRIPTION OF THE COMMUNITY

Section 2.01 MASTER DECLARATION. THE PROPERTY, EACH TOWNHOME LOT, AND EACH TOWNHOME OWNER, SHALL BE, AND IS SUBJECT TO THE TERMS AND PROVISIONS OF THE MASTER DECLARATION, INCLUDING WITHOUT LIMITATION, THE OBLIGATION TO PAY ASSESSMENTS IMPOSED BY THE MASTER ASSOCIATION, AND TO COMPLY WITH THE RESTRICTIONS, RULES, AND REGULATIONS OF THE MASTER DECLARATION AND AS PROMULGATED BY THE MASTER ASSOCIATION FROM TIME TO TIME.

Section 2.02 MASTER ASSOCIATION MEMBERSHIP. IN ADDITION TO BEING A MEMBER OF THE TOWNHOME ASSOCIATION, EACH TOWNHOME OWNER SHALL ALSO BE A MEMBER OF THE MASTER ASSOCIATION, AND AN OWNER AS THAT TERM IS DEFINED IN THE MASTER DECLARATION.

Section 2.03 Initial Townhome Property. The Initial Townhome Property is and shall be owned, improved, held, controlled, transferred and occupied subject to this Townhome Declaration.

Section 2.04 Additional Townhome Property. Declarant shall have the right, but not the obligation, to bring within the scope of this Townhome Declaration, as Additional Townhome Property, lands lying adjacent to or in the vicinity of the Initial Townhome Property, at any time and from time to time within twenty (20) years after the Effective Date (the **“Potential Additional Townhome Property”**). Unless and until annexed, this Townhome Declaration shall

not encumber or bind in any way any of the Potential Additional Townhome Property. Except as provided in this Declaration, annexation of any or all of the Potential Additional Townhome Property as Additional Townhome Property may be accomplished by Declarant without the consent of the Townhome Association, the Townhome Owners, the Townhome Members, any mortgagee or other lien holder, or anyone else.

Section 2.05 Method of Annexation. Additions authorized under this Article II shall be made, if at all, by recording a Supplemental Townhome Declaration extending this Townhome Declaration to the Additional Townhome Property. The Supplemental Townhome Declaration shall describe the Potential Additional Townhome Property annexed as Additional Townhome Property and shall state that it is being made pursuant to the terms of this Townhome Declaration for the purpose of annexing the Potential Additional Townhome Property to this Townhome Declaration and extending the jurisdiction of the Townhome Association to such Additional Townhome Property. The Supplemental Townhome Declaration may contain additional terms not inconsistent with this Townhome Declaration to reflect the different character, if any, of the Additional Townhome Property then being annexed, or of the housing or development approaches being implemented with respect to such Additional Townhome Property. Upon the recordation of any Supplemental Townhome Declaration in the Public Records, the Townhome Owners shall also have: (i) a right and non-exclusive easement of use and enjoyment in and to the Townhome Common Townhome Property, if any, located on the Additional Townhome Property; and (ii) the obligation, as a Townhome Common Expense, to contribute to the cost of operating, management, maintaining, repairing, operating, administering, replacing, insuring and improving: (a) the additional Townhome Common Townhome Property located within the Additional Townhome Property; and (b) any additional Areas of Common Responsibility located within the vicinity of the Additional Townhome Property. Any Supplemental Townhome Declaration recorded in the Public Records in accordance with the terms hereof shall be conclusive in favor of all persons who rely on such Supplemental Townhome Declaration in good faith. From and after recordation of any Supplemental Townhome Declaration in the Public Records, the Additional Townhome Property described therein shall be subject to the provisions of this Townhome Declaration and to the jurisdiction of the Townhome Association.

Section 2.06 Withdrawal. Declarant reserves the right to unilaterally amend this Townhome Declaration at any time and for any reason for the purpose of removing any portion of the Townhome Property (including, without limitation, Townhome Lots and Townhome Common Townhome Property) without notice and without the consent of any person or entity whatsoever, other than the Townhome Owner of the portion of the Townhome Property to be withdrawn or the District, if consent by the District is required; provided, however, that no such withdrawal may impair vehicular or other access to any Townhome Lot as established by the applicable recorded Plat.

Section 2.07 Townhome Community.

A. Declarant intends that the Townhome Property be approved and developed as a Community of Townhomes. As such, each residence must be a Townhome, with at least one (1) Party Wall, and located within a Townhome Building.

B. At the option of Declarant, or the Townhome Association following Turnover, reclaimed water provided for irrigation to the Townhome Lots may be provided through a master meter at the Townhome Property, Townhome Building, or Service Area level, controlling the flow of such reclaimed water to the entire Townhome Property, Townhome Building, or Townhome Lots within such Service Area, respectively, and all costs, fees, and expenses incurred by the Townhome Association for such reclaimed water service may be allocated and assessed only to the subject Townhome Building or Service Areas and deemed Limited Townhome Common Expenses incurred in connection with such Townhome Building or Service Areas, all as reasonably determined by the Declarant or Townhome Association from time to time, as the case may be.

C. BY VIRTUE OF ACCEPTING TITLE TO ANY TOWNHOME LOT AND TOWNHOME CONSTRUCTED OR TO BE CONSTRUCTED THEREON, EACH TOWNHOME OWNER SHALL BE ON NOTICE THAT: (I) PUNCTURING OR OTHERWISE DAMAGING ANY PARTY WALL OR STRUCTURAL APPURTENANCE THERETO WILL IMPAIR, AT MINIMUM, THE FIRE-WALL FUNCTION OF SUCH PARTY WALL, AND MAY IMPACT, MINIMALLY OR MORE SIGNIFICANTLY, THE STRUCTURAL INTEGRITY AND GENERAL SAFETY OF THE SUBJECT TOWNHOME BUILDING AND THE TOWNHOMES LOCATED THEREIN; AND (II) EACH TOWNHOME OWNER AND OCCUPANT OF A TOWNHOME IS EXPRESSLY PROHIBITED FROM DIRECTLY OR INDIRECTLY (INCLUDING, BUT NOT LIMITED, THROUGH TENANTS, CONTRACTORS, TRADESMAN, OR OTHERWISE) PUNCTURING, PIERCING, PERFORATING, OR OTHERWISE DAMAGING IN ANY WAY ANY PARTY WALLS IN ANY MANNER WHATSOEVER, UNLESS HAVING FIRST OBTAINED THE TOWNHOME ASSOCIATION'S EXPRESS WRITTEN CONSENT AND THEREAFTER COMPLYING STRICTLY WITH THE TERMS, CONDITIONS, AND PROVISIONS OF ANY SUCH WRITTEN CONSENT. EACH TOWNHOME OWNER SHALL FOREVER HOLD HARMLESS AND INDEMNIFY DECLARANT, THE BOARD, THE TOWNHOME ASSOCIATION, AND ALL OTHER TOWNHOME OWNERS FROM ANY AND ALL LOSS, CLAIM, LIABILITY, EXPENSES, CAUSES OF ACTION OR DAMAGES WHATSOEVER CONNECTED WITH SAID TOWNHOME OWNER'S DIRECT OR INDIRECT PUNCTURING, PIERCING, PERFORATING, OR OTHERWISE DAMAGING, IN ANY WAY, ANY PARTY WALL IN VIOLATION OF THIS PARAGRAPH.

ARTICLE III

CONVEYANCE OF TOWNHOME ASSOCIATION TOWNHOME PROPERTY

Section 3.01 Title To The Townhome Association Townhome Property. To the extent herein provided, the Townhome Association Townhome Property is hereby dedicated to the joint and several use in common of the Townhome Owners of all Townhome Lots that may, from time to time, constitute part of the Townhome Property. Upon the completion of construction of a Townhome on each Townhome Lot located within the Townhome Property and any Additional Townhome Property to be added by Declarant, or at such earlier time determined by Declarant, in Declarant's sole discretion, the Declarant or its successors and assigns shall convey and transfer to the Townhome Association, by quit claim deed, the fee simple title to the Townhome

Association Townhome Property free and clear of any liens, and the Townhome Association shall accept such conveyance, holding title for the Townhome Owners as aforementioned. Such conveyance shall be subject to any real estate taxes and Townhome Assessments due with respect to such Townhome Association Townhome Property from and after the date of recording this Townhome Declaration; any covenants, conditions, restrictions, permits, reservations and limitations then of record; the easements herein set out; any zoning ordinances then applicable; and this Townhome Declaration, as the same may be amended from time to time.

Section 3.02 Acceptance of Townhome Association Townhome Property. At the time of conveyance of the Townhome Association Townhome Property or any portion thereof, the Townhome Association shall be required to accept such Townhome Property and the personal property, if any, and Improvements appurtenant thereto. The Townhome Association hereby agrees to accept the Townhome Association Townhome Property and the personal property and Improvements appurtenant thereto in “AS IS” “WHERE IS” condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Townhome Association Townhome Property or any portion thereof, and the personal property and Improvements appurtenant thereto.

The Townhome Association shall accept any such conveyance of the Townhome Association Townhome Property and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way the Declarant’s rights and easements as set forth in this Townhome Declaration.

The Townhome Owners (including Declarant as to Townhome Lots owned by it) shall have no personal liability for any damages for which the Townhome Association is legally liable or arising out of or connected with the existence or use of any Townhome Association Townhome Property or any other property required to be maintained by the Townhome Association.

Subject to the foregoing, the Declarant may mortgage any or all portions of the Townhome Association Townhome Property to finance construction and development expenses, provided that the mortgagee recognizes the rights of Townhome Owners under this Townhome Declaration and neither the Townhome Association nor any Townhome Owner is personally liable for paying the mortgage. In such event, neither the Townhome Association nor the Townhome Owners shall be required to join in or be entitled to consent to such mortgage. The Townhome Association Townhome Property shall be released from any such mortgage no later than the date of conveyance to the Townhome Association.

ARTICLE IV

TOWNHOME PROPERTY RIGHTS IN THE COMMON PROPERTIES AND TOWNHOME PROPERTY

Section 4.01 Easements. The Townhome Association, Declarant and each Townhome Owner shall each have a non-exclusive right and easement of use and enjoyment in and to the

Townhome Common Property. Said right and easement shall be appurtenant to and pass with the title to each Townhome Lot, and shall include, without limitation, the following:

A. Right-of-way for ingress and egress by vehicles and on foot through and across any Streets or walks in the Townhome Common Property for all lawful purposes; and

B. Rights to connect to, maintain and make use of Utility Systems, wires, pipes, conduits, cable television lines, telephone lines and equipment, sewers and drainage lines, which may from time to time be in or within the vicinity of the Townhome Common Property, but only in accordance with all laws and the requirements of the applicable Governmental Authorities or entities which regulate said utilities; and

C. Every Townhome Owner and family member, guest, lessee, agent or invitee of an Townhome Owner shall, except as may otherwise be provided in this Townhome Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of the Townhome Common Area within the Townhome Property, except as may otherwise be specifically provided elsewhere in this Townhome Declaration, in common with all other Townhome Owners, their family members, guests, lessees, agents and invitees, located outside another Townhome Owner's Townhome which easement shall be appurtenant to, and shall pass with title to each Townhome Owner's Townhome Lot. The exercise of these rights and interests shall be subject to and subordinate to the terms and provisions of the Townhome Declaration, the Articles, the Bylaws, any recorded Plats, the Rules and Regulations, and applicable laws.

Section 4.02 Title to Townhome Common Property. Declarant may convey to the Townhome Association or dedicate to the local government for the uses and purposes set forth in this Townhome Declaration or in any Plats, fee-simple title in and to the Townhome Common Property, free and clear of all encumbrances except current real estate taxes and Townhome Assessments not yet due and payable, any Plats, this Townhome Declaration and any easements or matters recorded in the public records prior to such conveyances to the Townhome Association. Once conveyed to the Townhome Association, the Townhome Common Property may not be mortgaged, liened or further conveyed without the consent of at least two-thirds (2/3) of the Townhome Members (excluding Declarant).

Section 4.03 Limited Townhome Common Area. Certain portions of the Community may be designated by Declarant in its sole and absolute discretion as Limited Townhome Common Area and reserved for the exclusive use or primary benefit of the Townhome Owners, occupants and invitees of certain Townhome Lots. By way of illustration and not limitation, Limited Townhome Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, and lakes. Except as otherwise provided herein, all costs associated with the maintenance, repair, replacement, and insurance of Limited Townhome Common Areas shall be Limited Townhome Common Expenses to be assessed against and paid by the Townhome Owners of those Townhome Lots to which the Limited Townhome Common Area is assigned. Declarant reserves the right in its sole discretion to designate any initial or additional Limited Townhome Common Areas and assign the exclusive use thereof in Supplemental Townhome Declaration(s), the deed conveying the Townhome Common Area to the Townhome Association, or on the Plat relating to such Townhome Common Area; provided, any such

assignment shall not preclude the Declarant from later assigning use of the same Limited Townhome Common Area to additional Townhome Lots, so long as the Turnover Meeting has not occurred. Any matter arising under this Townhome Declaration and pertaining to the Limited Townhome Common Area and requiring a vote of Townhome Members, shall be decided by a vote of only those Townhome Members that have been identified by Declarant as being authorized and entitled to utilize and realize the benefits of the Limited Townhome Common Area. The Townhome Association may adopt Rules and Regulations which govern, among other things, the use of the Limited Townhome Common Area. Prior to the Turnover Meeting, the Declarant, shall have the right in its sole discretion to convey additional real estate, improved or unimproved and/or personal property as additional Limited Townhome Common Area which conveyance or dedication to the Townhome Association shall be accepted by the Townhome Association and thereafter shall (except as may otherwise be set forth herein) be maintained by the Townhome Association at Limited Townhome Common Expenses.

Section 4.04 Extent of Easements. The rights and easements in and around the Townhome Common Area created in this Article IV shall be governed by the following:

A. Subject to any rights of Declarant, Builders and the Townhome Owners set forth in this Townhome Declaration, except as to any part of the Townhome Common Property that is required to be conveyed to local government, the Townhome Association shall be responsible for the exclusive operation, management, administration, control, maintenance, repairing, replacing and insuring of the Townhome Common Property;

B. Declarant, until conveyance of fee-simple title to the Townhome Association, and the Townhome Association thereafter, may reserve unto itself or grant or dedicate to Declarant, any Townhome Owner, any Governmental Authority and/or to any utility companies, easements and rights-of-way, over, under, in or through the Townhome Common Townhome Property for installation, use, maintenance, repair, replacement, and inspection of utility lines and appurtenances for public or private utilities, surface water drainage improvements and areas, or for completion of the development of the Townhome Property. No Improvements or materials may be placed upon any such easements which may damage or interfere with the installation, maintenance, repairing or replacement of such utilities or the easement area or that may alter or impede the direction or flow of drainage, or that may interfere with completion of development of the Townhome Property;

C. The right of the Townhome Association to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Townhome Common Area.

D. The right of the Townhome Association in accordance with its Articles, Bylaws, and this Townhome Declaration, with the vote or written assent of two thirds (2/3) of the total voting interests, to borrow money for the purpose of improving the Townhome Common Area and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property or pledge Townhome Assessments as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Townhome Owners.

E. The right of the Townhome Association to dedicate, release, alienate, or transfer all or any part of the Townhome Common Area to any public agency, authority, or utility for such purposes and subject the Townhome Common Area to such conditions as may be agreed to by the Townhome Association. No such dedication, release, alienation or transfer shall be effective unless Townhome Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation, or transfer.

F. The right of the Townhome Association to, without any vote of the Townhome Owners, to grant easements and rights of way or strips of land, where necessary or desirable, for utilities, water and sewer facilities, cable television, and other services over the Townhome Common Area to serve the Townhome Common Area and other portions of the Townhome Property.

G. The right of Declarant, Declarant's affiliates, Builders and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Townhome Common Area within the Townhome Property and the facilities thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes and to grant (without consent of the Townhome Association and/or vote of the Townhome Owners) easements and rights-of-way as provided in this Townhome Declaration.

H. The right of the Townhome Association and Declarant and their respective employees, agents, licensees, and invitees to come upon the Townhome Property (including, without limitation, Townhome Common Area as well as a Townhome Lot even after the same has been conveyed to an Townhome Owner) as may be necessary or convenient for the Townhome Association and/or the Declarant to carry on its respective duties, obligations, responsibilities under, and all other work referred to in, this Townhome Declaration (including, without limitation, Declarant's and/or Builders' development and construction of the Community and Townhomes therein).

I. Declarant's rights reserved in this Townhome Declaration;

J. Matters shown in the Public Records or on any recorded Plats; and

K. Applicable laws.

Section 4.05 Delegation. Any Townhome Owner (including Declarant) may grant the benefit of any easement, right or privilege to tenants and guests for the duration of their tenancies or visits, but the same shall not be construed to create any rights in the general public or any other party.

Section 4.06 Grant and Reservation of Easements. Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Townhome Property as covenants running with the Townhome Property for the benefit of the Townhome Owners, the Townhome Association and Declarant as hereinafter specified for the following purposes:

(1) **Utility and Services Easements.**

1. Declarant hereby reserves to itself (and its successors or assigns) for so long as the Declarant owns any of the Townhome Property, and for the Townhome Association thereafter, the right to grant to any private company, public or private utility, or governmental authority providing utility and other services within the Townhome Property, including the individual Townhomes and Townhome Buildings, and the Townhome Common Area (collectively, “**Utility Providers**”), certain easements upon, over, under, across, and through the Townhome Property as are reasonably necessary from time to time for the sole purpose of maintaining, installing, repairing, altering, and operating any “**Utility Lines and Systems**” (as that term is defined below), as may be necessary, convenient, or desirable for the installation and maintenance of said utilities and providing services to Townhome Owners, the Townhome Property, and Townhome Common Area, all pursuant to and in compliance with, all applicable permits, rules, and regulations of any applicable governmental authorities (collectively, “**Utility Easements**”). All such Utility Easements shall be of a size, width, scope, and location as Declarant (or the Townhome Association, after Turnover), in its discretion, deems best, but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon any Residential Townhome Property. Townhome Owners are expressly prohibited from directly or indirectly disturbing or otherwise interfering with the Utility Easements.

2. For purposes of this Townhome Declaration, the term “**Utility Lines and Systems**” shall mean and refer to any sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, storm and ground water drainage pipes, pipes, wires, fiber optics lines, electrical lines, power lines, telephone service, gas lines, syphons, valves, gates, pipelines, HVAC systems and ductwork, cable television service, Internet service, alarm systems and all utility infrastructure, machinery, and apparatus appurtenant to any of the foregoing, necessary or desirable to service the Townhome Property. Townhome Owners are expressly prohibited from directly or indirectly disturbing or otherwise interfering with any Utility Lines and Systems.

3. Any Utility Easement granted to any Utility Provider concerning any Utility Lines and Systems, which Utility Easement runs through, across, or under any Townhome Building (“**Benefitted Townhome Building**”), shall also automatically be deemed an easement for reasonable access and use in favor of, and benefitting, the Townhome Association and each Townhome within said Benefitted Townhome Building, and in favor of, and benefitting, any other Townhome in any other Townhome Building which Townhome accesses said utility infrastructure or Utility Lines and Systems via the Benefitted Townhome Building.

4. Declarant hereby reserves for itself and grants to the Townhome Association, the individual Townhome Owners within a Townhome Building,

utility providers providing service, and any and all service or repair providers, a perpetual blanket easement for the provision of utility services, installation, operation, maintenance, repair and replacement of all Utility Lines and Systems (“**Townhome Utility Easement(s)**”), which Townhome Utility Easement shall be located: (y) within the designated (or to be designated) utility chases under, attached to, through, or within each Townhome and servicing one or more Townhomes within a Townhome Building, as such chases are located and designated on any approved plat or site and/or building/construction plans for the Townhome Property, any Townhome Building, or any Townhome; and (x) under or through each Townhome Lot (i.e., generally in the front of or in the back/rear of the Townhome located on said Townhome Lot), via the designated (or to be designated) conduit, piping, or direct-bury (or other) method, as necessary to service said Townhome (through the Townhome’s garage or otherwise) and to service any other Townhomes located within the same Townhome Building, as such conduit, piping, or direct-bury (or other) method are located and designated on any approved plat or site and/or building/construction plans for the Townhome Property, any Townhome Building, or any Townhome. Townhome Owners are expressly prohibited from directly or indirectly disturbing or otherwise interfering with the Townhome Utility Easements.

5. Declarant further reserves for itself and grants to the Townhome Association, the individual Townhome Owners within a Townhome Building, service or repair providers, and utility providers providing service, a perpetual blanket easement for HVAC systems, electrical/gas/water meters and other electrical, gas, and water equipment, mounted on the end of any Townhome Building and benefiting one or more Townhomes within the particular Townhome Building. To the extent the mounted systems, equipment, and meters are not located on Townhome Common Area, the Townhome Owner of the individual Townhome where the systems, equipment, and meters are located, is specifically taking title subject to the foregoing easements for access, repair, use, maintenance, replacement, operation, and installation granted to each individual Townhome Owner within any particular Townhome Building, the Townhome Association, utility providers, and service or repair providers. The easements granted in this Section 4.06(1)(5) are further subject to the rights and obligations set forth in Section 4.06(1)(6) directly below.

6. As they relate to servicing each Townhome within a Townhome Building, all Utility Providers shall install, operate, maintain, and repair, as applicable, the subject Utility Lines and Systems, including all infrastructure, meters, machinery, and apparatus appurtenant thereto: (i) within designated utility chases under, attached to, or within the Townhome, and serving one or more Townhomes within the subject Townhome Building; (ii) under or through each Townhome Lot via the designated conduit, piping, or direct-bury (or other) method, and servicing said Townhome and servicing any other Townhomes located within the same Townhome Building; (iii) mounted to the exterior of, or adjacent to, the Townhome Building, and serving one or more individual Townhomes within the subject Townhome Building; and/or (iv) within the

concrete slab foundation of each Townhome Building and serving one or more Townhomes within the subject Townhome Building and “**daylighting**” into each Townhome under such Townhome. Further, said Utility Easement granted pursuant to Section 4.06(1)(5) directly above, and as set forth in this Section 4.06(1)(6), shall include the right of the subject Utility Providers, in a reasonable manner and at reasonable times, to access such utilities described above from garage areas in each Townhome Building or Townhome.

7. No Utility Provider shall disrupt, interfere with, or damage the Utility Lines and Systems of another Utility Provider without the prior written consent of such other Utility Provider, and in the event of any such disruption, interference or damage, whether consented to or not, the disrupting, interfering or damaging Utility Provider shall be responsible for all costs and expenses incurred by the other Utility Provider or otherwise in connection with the disruption or repair and/or replacement of such affected Utility Lines and Systems, and shall release, indemnify, defend, and hold Declarant, the Townhome Association, and all affected Townhome Owners harmless from any and all costs, liabilities, claims, and expenses incurred in connection with the disruption, interference or damage to such affected Utility Lines and Systems.

8. Notwithstanding the foregoing, Declarant hereby reserves to itself (and its respective successors or assigns) for so long as the Declarant owns any portions of the Townhome Property, and the Townhome Association thereafter, the right to amend, replace, or restrict the location or parameters of the Utility Easements, the Townhome Utility Easements, and any other easements granted or reserved pursuant to this Article IV, without the joinder and consent of the Townhome Owners or other Townhome Members, provided none of the foregoing unreasonably interfere with the use of any improvements which are now, or will be, located upon any Residential Townhome Property.

(2) **Easement for Encroachment**. All of the Townhome Property shall be subject to an easement or easements for encroachment in favor of each Townhome Owner in the event any portion of such Townhome Owner’s Townhome or appurtenant Improvements installed by Declarant such as a fence, stucco, underground footer or sidewalk, now or hereafter encroaches upon any of the Townhome Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Townhome Owner thereof or such Townhome Owner’s designees. Such encroachment will likely constitute a violation of the County’s regulations. The County does not expressly or by implication authorize such encroachment. This Section does not limit the County’s ability to pursue all available remedies to prevent or remove such encroachments. The County will not permit or allow such encroachments into any easement of land dedicated to or owned by the public for utility, drainage or roadway purposes.

(3) **Easement to Enter Upon Townhome Lots and Townhomes.** An easement or easements for ingress and egress in favor of the Townhome Association, including the Board or the designee of the Board, to enter upon the Townhome Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Governing Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Townhome Common Area and to maintain any Townhome Lot in the event the Townhome Owner thereof fails to do so.

(4) **Easement for Roof Overhang.** An easement or easements, as shown on the Plat and Additional Plat, if any, to provide for the roof overhang of a Townhome in favor of the Townhome Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang.

(5) **Irrigation Easement.** An easement for irrigation over, under and upon the Townhome Property, including each of the Townhome Lots, in favor of the Townhome Association and each Townhome Owner, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the irrigation pipes.

(6) **Plat Easement(s).** The Plat and/or Additional Plat, if any, may contain additional easements not discussed herein, granted in favor of the Townhome Association, Townhome Owners or others, for the specific purposes as described therein.

Section 4.07 Access Easement. Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across: (i) any and all streets dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private roads and driveways, if any, within or upon the Townhome Property and all other portions of the Townhome Property which are necessary or convenient for enabling Declarant to carry on the work referred to in this Townhome Declaration. All of the foregoing easements shall be for the use of Declarant, Builders, Declarant's employees, contractors and agents, Declarant's successors and assigns, the Townhome Owners, and the respective lessees, employees, agents, invitees, and licensees of Declarant and the Townhome Owners.

Section 4.08 Assignments. The easements reserved hereunder may be assigned by Declarant or the Townhome Association in whole or in part to any city, county or state government or agency thereof, or any water management district, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Townhome Property or portions thereof (including the portion of Townhome Lots where no physical structure of the Townhome is located) which may be necessary or desirable by Declarant. The Townhome Owners hereby authorize Declarant and/or the Townhome Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Townhome Property or portions thereof in accordance with the provisions of this Townhome Declaration.

Notwithstanding anything in this Townhome Declaration to the contrary, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

Section 4.09 Declarant's Rights. Declarant, its successors and assigns shall have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown on the Plat of the Townhome Property or described herein, (ii) to plat or replat all or any part of the Townhome Property owned by Declarant, and (iii) to widen or extend any right of way shown on the Plat of the Townhome Property or convert a Townhome Lot to use as a right of way, provided that Declarant owns the lands affected by such change. Townhome Owner of Townhome Lots subject to easements shown on the Plat of the Townhome Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Townhome Owners of Townhome Lots subject to any easements shall not construct any improvements on the subject easement areas, alter the flow of drainage, or landscape on such areas with hedges, trees, or other landscaping items that might interfere with the exercise of the easement rights. Any Townhome Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Declarant, the Townhome Association, or the grantee of the easement.

ARTICLE V

THE TOWNHOME ASSOCIATION

Section 5.01 The Townhome Association; Directors; Officers; Meetings; Official Records.

A. **Townhome Association.** The Townhome Association is and shall remain a Florida nonprofit corporation. The Townhome Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by the Townhome Association by virtue and authority of the Townhome Association Documents and applicable law, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Townhome Association for the benefit of the Townhome Owners and for the operation, maintenance, administration, repairing, replacing, insuring and improvement of the Townhome Property, the Community, the Townhome Common Townhome Property, Limited Townhome Common Areas and all Areas of Common Responsibility. Neither the Articles, the Bylaws or any of the other Townhome Association Documents shall be amended or interpreted so as to be or become inconsistent with this Townhome Declaration. In the event of any such inconsistency, the provisions of this Townhome Declaration shall prevail. The Board, and such Officers as the Board may appoint from time to time, shall conduct the affairs of the Townhome Association.

B. Directors.

(1) **Number.** At all times, the Board shall consist of at least (3) Directors, and shall always be an odd number. Prior to Turnover: (y) the Board shall consist of three (3) Directors unless Declarant, by notice to the Townhome Association, increases the Board;

and (z) the number of Directors may not be increased or decreased without Declarant's prior written consent, which consent may be granted or denied by Declarant in its sole and absolute discretion. The term of office of the initial Directors appointed herein by Declarant shall expire at the time of Turnover, unless otherwise required by Florida law. After Turnover, Directors shall be elected to the Board by a vote of the Townhome Members. Notwithstanding anything in the foregoing to the contrary, Declarant shall, without regard to the number of votes allocated to Declarant, be entitled to appoint one (1) Director for as long as Declarant is the Townhome Owner of at least five percent (5%) of the total number of Townhome Lots within the Townhome Property. Nothing contained in the foregoing, however, is intended, nor shall be deemed, to create any obligation upon Declarant to exercise such right to appoint such one (1) Director.

(2) **Appointment; Election.** Prior to Turnover, Declarant, as the Class B Member, shall have the sole and absolute right to appoint, remove, and recall all of the Directors; provided, however, that if at any time Declarant is not permitted under Florida law to appoint, remove, or recall such Directors, then the Class B Member shall have the sole and absolute right to elect, remove, and recall all such Directors, which election, removal or recall, to the fullest extent permitted under the Homeowner Association Act, may be conducted via written consent of the Class B Member, in lieu of a meeting of the Class B Member. Notwithstanding the foregoing, Townhome Members other than Declarant are entitled to elect at least one (1) Director if fifty percent (50%) of the Townhome Lots in all phases of the Community, which will ultimately be operated by the Townhome Association, have been conveyed to Townhome Members other than Declarant. Any Directors appointed by Declarant or elected by the Class B Member prior to Turnover, or appointed or elected by Declarant pursuant to this Section, need not be Townhome Members and need not be residents of the State of Florida. All other Directors shall be Class A Townhome Members or designated representatives of the Class B Member, and residents of the State of Florida. After Turnover, no Member or Townhome Owner may serve as a Director if: (i) such Member or Townhome Owner is more than ninety (90) days delinquent or deficit with regard to payment of any Monetary Obligation owed to the Townhome Association, or (ii) such Member or Townhome Owner has been convicted of any felony in the State of Florida or in a United States District, or has been convicted of any offense in another jurisdiction would be considered a felony in the State of Florida, unless such individual's civil rights have been restored for at least five (5) years as of the date such individual seeks election to the Board. Any Director charged by information or indictment with a felony theft or embezzlement offense involving the Townhome Association's funds or Townhome Property shall immediately be deemed removed from office. The Board shall fill the vacancy according to the provision of this Townhome Declaration until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as a Director.

(3) **Meetings.** A meeting of the Board occurs whenever a quorum of the Board gathers to conduct Townhome Association business. All meetings of the Board

shall be open to the Townhome Members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Townhome Members have the right to attend all meetings of the Board. The right to attend such meetings includes the right to speak at such meetings with reference to all designated items. The Townhome Association may adopt written reasonable Rules and Regulations expanding the right of Townhome Members to speak and governing the frequency, duration, and other manner of Member statements, which Rules and Regulations may include a sign-up sheet for Townhome Members wishing to speak. Notwithstanding any other law, meetings between the Board or a committee and the Townhome Association's attorneys to discuss proposed or pending litigation or meetings of the Board held for the purpose of discussing personnel matters are not required to be open to the Townhome Members other than Directors.

C. **Officers.**

(1) **General.** The officers of the Townhome Association (the "**Officers**") shall be a President, who shall be selected from the Board, a Vice President, a Treasurer, and a Secretary. Prior to Turnover, all Officers shall be appointed/elected by the Declarant and may only be removed and replaced by Declarant pursuant to the terms hereof. After Turnover, all Officers shall be elected annually by the Board of Directors and each Officer may be removed by vote of the Directors at any meeting with or without cause. After Turnover, no Member or Townhome Owner may serve as an Officer if such Member or Townhome Owner is delinquent or deficit more than ninety (90) days with regard to payment of Townhome Assessments or any other any Monetary Obligation. Any person may hold two or more offices except that the President shall not also be the Vice President or the Secretary. The Board shall from time to time elect such other Officers and designate their powers and duties as the Board shall find necessary or convenient to manage properly the affairs of the Townhome Association. Officers shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Townhome Association.

(2) **President.** The "**President**" shall be the chief executive officer of the Townhome Association. He shall have all of the powers and duties which are usually vested in the office of a president of a Florida not for profit corporation and a Townhome Owners' Townhome Association. He shall serve as chairman of all Board and Townhome Members' meetings.

(3) **Vice President.** The "**Vice President**" shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed from time to time by the Board or the President.

(4) **Secretary.** The "**Secretary**" shall keep the minutes of all proceedings of the Directors and the Townhome Members. He shall attend to the giving and serving of all notices to the Townhome Members and Directors and other notices required by law.

He shall keep the official records of the Townhome Association, except those of or to be maintained or kept by the Treasurer, and shall perform all other duties incident to the office of a secretary of a Florida not for profit corporation, to the office of a secretary of a Townhome Owners' Townhome Association, and as may be required by the Directors or the President. From time to time, the duties of the Secretary may be fulfilled by a manager or management company employed by the Townhome Association.

(5) **Treasurer.** The “**Treasurer**” shall have custody of all funds, securities, and evidences of indebtedness regarding or concerning the Townhome Association. He shall keep the books of the Townhome Association in accordance with good accounting practices, and shall perform all other duties incident to the office of a treasurer of a Florida not for profit corporation and a Townhome Owners' Townhome Association. From time to time, the duties of the Treasurer may be fulfilled by a manager or management company employed by the Townhome Association.

(6) **Removal.** Any Officer charged by information or indictment with a felony theft or embezzlement offense involving the Townhome Association's funds or Townhome Property shall immediately be deemed removed from office. As applicable, the Board shall fill the vacancy according to the provision of this Townhome Declaration until the end of the period of the suspension or the end of the Officer's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Officer shall be reinstated for any remainder of his or her term of office. A Member who has such criminal charges pending may not be appointed or elected to a position as an Officer.

D. Member Meetings.

(1) **Annual Meetings.** The annual meeting of the Townhome Members of the Townhome Association shall be held at such place, at such time and on such date each year as is from time to time designated by the Board. Failure to hold an annual meeting timely shall in no way affect the terms of Officers or Directors or the validity of actions of the Directors, the Officers, or the Townhome Association.

(2) **Special Meetings.** Special meetings of the Townhome Members may be called by any one of the following persons or groups:

1. The President;
2. A majority of the Board of Directors;
3. Prior to Turnover, Townhome Members representing at least fifty percent (50%) of total voting interests of the Townhome Association;
4. After Turnover, Townhome Members representing at least ten percent (10%) of total voting interests of the Townhome Association; or
5. The Declarant, so long as Declarant has the right to elect a Director pursuant to Section 720.307 of the Homeowner Association Act.

E. **Official Records.**

(1) Section 720.303(4) of the Homeowner Association Act defines the “**official records**” of the Townhome Association. The official records shall be made available to a Townhome Owner for inspection within ten (10) business days after receipt by the Board or its designee of a written request. This subsection may be complied with by having a copy of the official records available for inspection or copying in the Community or, at the option of the Townhome Association, by making the records available to an Townhome Owner electronically via the internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. From time to time, the Townhome Association may adopt reasonable Rules and Regulations governing the frequency, time, location, notice, official records to be inspected, and manner of inspections by the Townhome Owners, but may not require an Townhome Owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit an Townhome Owner’s right to inspect records to less than one 8-hour business day per month. From time to time, the Townhome Association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour.

Section 5.02 Townhome Membership. Each Townhome Owner (including Declarant) shall be a Member of the Townhome Association. The Townhome Association Townhome Membership of each Townhome Owner (other than Declarant) shall be appurtenant to and inseparable from the Townhome Lot giving rise to such Townhome Membership, and any transfer of title to a Townhome Lot shall automatically transfer to the new Townhome Owner the Townhome Membership in the Townhome Association appurtenant to that Townhome Lot, without any further action required whatsoever of the Board, the Townhome Association, the old Townhome Owner or the new Townhome Owner.

Section 5.03 Voting Rights and Turnover of Townhome Association.

A. **Voting Rights.** The Townhome Association shall have two (2) classes of voting Townhome Membership as follows:

(1) **Class “A”.** “Class ‘A’ Townhome Members” or “Class A Townhome Members” shall be all Townhome Owners, with the exception of Declarant for so long as Declarant retains Class “B” voting rights. Each Class “A” Member shall have one (1) vote for each Townhome Lot owned by that Member.

(2) **Class “B”.** The sole “Class ‘B’ Member” or “Class B Member” shall be Declarant, or its specifically designated (in writing) successor(s) or assign(s). The Class “B” Member shall be allocated the number of votes equal to the total number of Class “A” Member votes, plus one (1). Class “B” Townhome Membership shall cease and become converted to Class “A” Townhome Membership upon Turnover.

B. **Termination of Class “B” Townhome Membership.** The Class “B” Townhome Membership, in its entirety, shall terminate and become converted to Class “A” Townhome Membership upon the earlier of the following events:

(1) When Declarant, in its sole and absolute discretion, elects to convert the last of its Class “B” Townhome Membership interests, to Class “A” Townhome Membership interests; or

(2) At the Turnover Meeting.

C. **Turnover of Townhome Association.** Any other provision of this Article V to the contrary notwithstanding, Townhome Members Other Than Declarant (as that term is defined below), shall be entitled to elect at least a majority of the Townhome Members of the Board of Directors not later than Turnover, which shall be: (i) three (3) months after ninety percent (90%) of the Townhome Lots in all phases of the Development that will or may ultimately be operated by the Townhome Association have been conveyed to Class “A” Townhome Members, which Turnover shall occur at the Turnover Meeting; (ii) upon Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Townhome Association Documents, with there being a rebuttable presumption that Declarant has abandoned and deserted the Townhome Property if Declarant has unpaid Townhome Assessments or guaranteed amounts under Florida Statutes, Section 720.308, for a period of more than 2 years; (iii) upon Declarant filing a petition seeking protection under Chapter 7 of the U.S. Federal Bankruptcy Code; (iv) upon Declarant losing title to the Townhome Property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor Townhome Owner has accepted an assignment of Declarant’s rights and responsibilities hereunder first arising after the date of such assignment; or (v) upon a receiver for the Declarant being appointed by a circuit court and not being discharged within 30 day after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the Townhome Association or the Townhome Members. For purposes of this Townhome Declaration, the term “**Member(s) Other Than Declarant**” shall not include Builders, contractors or other parties who purchases or holds the title to a Townhome Lot for the purpose of constructing a Townhome thereon for resale.

D. **Turnover of Documents.** No later than the Turnover Meeting, Declarant, at Declarant’s expense, shall deliver to the Board the documents that Declarant is required to deliver pursuant SubSection 720.307(4) of the Homeowner Association Act.

Section 5.04 Multiple Townhome Owners. When any Townhome Lot entitling an Townhome Owner to Townhome Membership in the Townhome Association is owned of record in the name of more than one person, party, or entity, whether such persons or entities own said Townhome Lot as fiduciaries, joint tenants, tenants in common, tenants in partnership, partners, or in any other manner of joint or common Townhome Ownership, or if two or more persons or entities aforesaid or otherwise shall have the same fiduciary relationship or rights respecting the same Townhome Lot, then unless the instrument, document, or order appointing them or creating the subject tenancy or relationship otherwise directs and it or a copy thereof is filed with the Secretary of the Townhome Association or has been recorded in the Public Records, such Townhome Owner shall: (i) select one official representative to represent such Townhome Lot

(**“Representative”**), which Representative shall be the only person, or party, or entity with the right to exercise any rights of Townhome Membership in the Townhome Association with respect to such Townhome Lot, including, but not limited to, voting with respect to such Townhome Lot; and (ii) shall notify the Secretary of the Townhome Association in writing of the Representative’s name and of any change in same as it occurs. The vote of each Representative shall be considered to represent the will of all the Townhome Owners of the subject Townhome Lot. In the circumstance of such common or joint Townhome Ownership or rights, if the Townhome Owners fail to properly designate a Representative, then the Townhome Association may accept the person, party, or entity asserting the right to vote on behalf of the subject Townhome Lot as the voting Townhome Owner, until notified to the contrary by the other person(s), party(ies), or entity(ies) that also make up the Townhome Owner. Upon such notification no Townhome Owner of said Townhome Lot may vote until the Townhome Owner appoints its Representative pursuant to this paragraph.

ARTICLE VI

COVENANT FOR MAINTENANCE TOWNHOME ASSESSMENTS

TOWNHOME ASSESSMENTS ARE IN ADDITION TO ANY AND ALL ASSESSMENTS IMPOSED BY THE MASTER ASSOCIATION PURSUANT TO THE MASTER DECLARATION.

Section 6.01 Lien and Personal Obligation Nonpayment.

A. **Personal Obligation.** Declarant, for each Townhome Lot owned by it on the Townhome Property, and each Townhome Owner other than Declarant, by acceptance of fee-simple title to any Townhome Lot, whether or not it shall be so expressed in any deed or other conveyance of title to such Townhome Lot, covenants and agrees to pay to the Townhome Association the Townhome Assessments, which Townhome Assessments shall be fixed, established, assessed, and enforced as herein provided and as permitted by the Homeowner Association Act. Townhome Assessments shall be a charge and a continuing lien upon the Townhome Lot against which such Assessment is made, and upon any Townhome located on said Townhome Lot, from and after the date on which such Assessment is due. Each Assessment shall also be the personal obligation of each person or entity who was an Townhome Owner of the Townhome Lot at the time the Assessment fell due. Declarant will never be obligated to pay any Individual Assessment or Start-Up Assessment.

B. **Assessment Lien.** If any Assessment or installment thereon is not paid when due, then such Assessment shall be delinquent and the delinquent Assessment shall be secured by a continuing lien on the Townhome Lot as to which the Assessment accrued, and upon any Townhome located thereon. The Townhome Association may record a lien against any Townhome Lot to secure payment of Townhome Assessments that remain unpaid for a period of thirty (30) days or longer after becoming due (the **“Assessment Lien”**). Any Assessment Lien shall be prior to all other liens created except: (i) ad valorem real estate taxes and Townhome Assessments levied by any Governmental Authority, (ii) the lien of any mortgage (expressly subject to the mortgagee’s compliance with Florida Statutes, Section 720.3085(2)(c), and said mortgagee’s payment of all unpaid Townhome Assessments resulting from said mortgagee’s

compliance with, or failure to comply with, said statute), and (iii) other liens which by law would be superior. To the fullest extent permitted by law, any Assessment Lien shall be prior to and superior in dignity to the Townhome Owner's homestead status. Any Assessment Lien shall bind the Townhome Lot and any Townhome located thereon in the hands of the then Townhome Owner and of each subsequent Townhome Owner. The personal obligation of the Townhome Owner to pay such delinquent Assessment shall remain that Townhome Owner's personal obligation for the statutory limitations period and personal liability shall not pass to successors in title of the Townhome Lot unless expressly assumed by them.

C. **Interest on Townhome Assessments.** If the delinquent Assessment or installment thereon is not paid within thirty (30) days after the due date, the same shall bear interest from the date due at the highest lawful rate in Florida, or at such lesser rate as may be determined by the Board and uniformly applied, and the Townhome Association may bring an action for collection against the Townhome Owner personally obligated to pay the same and to foreclose the lien against the Townhome Lot and any Townhome located thereon by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such delinquent Assessment the aforesaid interest, late charges, collection costs, expenses and attorneys' and paralegals' fees, and all of the foregoing shall be recoverable whether or not suit be brought. The Townhome Owner shall also be required to pay to the Townhome Association any Townhome Assessments against the Townhome Lot which become due during any period of foreclosure by the Townhome Association. The Townhome Association, acting on behalf of the Townhome Owners, shall have the right and power to bid for any Townhome Lot at any foreclosure sale and to acquire the same via foreclosure or a deed in lieu thereof and thereafter hold, lease, mortgage, and convey the same. During the period in which a Townhome Lot is owned by the Townhome Association following foreclosure or a deed in lieu thereof: (x) no right to vote shall be exercised on said Townhome Lot; (y) no Assessment shall be assessed or levied on said Townhome Lot; and (z) each other Townhome Lot shall be charged, in addition to its Townhome Assessments, its pro rata share of the Assessment that would have been charged the subject Townhome Lot had it not been acquired by the Townhome Association as a result of foreclosure or a deed in lieu thereof. Suit to recover a money judgment against an Townhome Owner or Townhome Lot for unpaid Townhome Common Expenses, Townhome Assessments, and all costs, expenses, and fees incurred by the Townhome Association in connection with such action, including, but not limited to, interest as provided herein, along with reasonable attorneys' and other legal fees to be fixed by the court, together with all other costs, expenses, and fees of the action, shall be maintainable by the Townhome Association without foreclosing or waiving the lien securing the same.

D. **Late Fees.** In addition to any other rights and remedies of the Townhome Association hereunder or under Florida law in connection with an Townhome Owner's or Member's failure to timely pay Townhome Assessments or any installments thereof, the Townhome Association may also charge an administrative late fee ("**Late Fee**") not to exceed the greater of Twenty-Five and no/100 Dollars (\$25.00) or five percent (5%) percent of the amount of each installment that is paid past the due date. If in the future, Section 720.3085(3)(a) is amended to permit the Townhome Association to charge a higher Late Fee, then the immediately preceding sentence shall be deemed automatically amended to permit the Townhome Association to charge such higher Late Fee.

E. **Exempt Townhome Property.** The following Townhome Property shall be exempt from the Townhome Assessments, charges and liens created herein: (1) Townhome Common Townhome Property; (2) lands owned by Declarant which have not been annexed to the Townhome Property by this Townhome Declaration or any Supplemental Townhome Declaration; (3) lands conveyed or dedicated to the local government or other Governmental Authority, any public or quasi-public utility company, or the public; (4) to the fullest extent permitted by the Homeowner Association Act, Townhome Lots owned by Declarant during the period of time that Declarant subsidizes the Townhome Common Expenses of the Townhome Association pursuant to Section 6.07 hereof, and to the fullest extent permitted by the Homeowner Association Act, Townhome Lots owned by a Builder during the time period that the Declarant subsidizes the Townhome Common Expense of the Townhome Association pursuant to Section 6.07 hereof. No other land or Improvements in the Townhome Property shall be exempt from the Townhome Assessments, charges or liens stated above. No Townhome Owner may avoid Assessment obligations by virtue of non-use or abandonment of the Townhome Common Townhome Property or any Area of Common Responsibility, as applicable.

Section 6.02 Purpose; Powers. The Townhome Assessments levied by the Townhome Association shall be used to promote the recreation, health, safety and welfare of the Townhome Owners, to perform the Townhome Association's duties and obligations hereunder and under the Homeowner Association Act, to exercise the powers conferred on the Townhome Association hereunder and under the Homeowner Association Act, to manage, improve, operate, administrate, insure, maintain, repair and replace the Townhome Common Townhome Property and the Areas of Common Responsibility (as may be determined by the Board), and to pursue any other purpose deemed desirable, necessary, convenient or appropriate by the Board, including, without limitation, any one or more of the following, or as otherwise stated herein or as permitted by the Homeowner Association Act: (a) payment Townhome Common Expenses; (b) acquisition, maintenance, repair and replacement of community identification signs and traffic control devices, and control and regulation of traffic in the Townhome Property; (c) payment, contest or compromise of real and personal Townhome Property taxes and Townhome Assessments separately levied upon or assessed against the Townhome Association or the Townhome Common Townhome Property; (d) operation, management, insurance, replacement, maintenance, repair, beautification and improvement of the Townhome Common Townhome Property, Areas of Common Responsibility (as may be determined by the Board), and all easement areas benefiting the Townhome Association or the Townhome Property as shown on any recorded Plat, or otherwise properly established; (e) repayment of any deficits previously incurred by the Townhome Association; (f) funding of reserves for future Townhome Common Expenses; (g) procurement and maintenance of all insurance; (h) employment of accountants, attorneys and other professionals, administration, and experts to represent or advise the Townhome Association; and (i) doing anything necessary, desirable, or convenient in the judgment of the Board to keep the Townhome Property neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Townhome Owners. At all times, the Townhome Association, acting by and through the Board, shall, in addition to those general and specific powers elsewhere referenced in the Townhome Association Documents or imposed upon it by law, have the following specific powers:

A. Except as may be limited by the terms of the Townhome Association Documents, to acquire, own, hold, control, administer, manage, operate, regulate, care for, maintain, repair, replace, restore, preserve, protect, insure, buy, sell, lease, transfer, convey, encumber or otherwise deal in or with real or personal Townhome Property (or any interest therein, including easements) (i) which is, or upon its acquisition by the Townhome Association shall thereupon become, Townhome Common Area as defined in this Townhome Declaration, including the power to enter into any leases or other arrangements with appropriate governmental agencies necessary for the use of sovereignty lands associated with any of the Townhome Common Area, or (ii) the responsibility for which is delegated to the Townhome Association pursuant to the terms and provisions of this Townhome Declaration, and further including the power to direct, conduct, maintain or support activities within or upon the Townhome Property in order to limit or control access to said Townhome Common Area.

B. To establish, make, levy, impose, enforce and collect all Townhome Assessments and impose, foreclose and otherwise enforce all liens for Townhome Assessments for which provision is made in this Townhome Declaration in accordance with the terms and provisions of the Townhome Association Documents.

C. To establish, make, levy, impose, enforce and collect fines and temporarily suspend rights of use of Townhome Common Area against any Townhome Owner and Townhome Lot for any violation of the covenants, conditions and restrictions set forth in the Townhome Association Documents or in the Rules and Regulations, all in accordance with the terms hereof and of the Homeowner Association Act.

D. To create, establish, maintain, and administer such capital expenditure reserves and other reserve funds or accounts as shall, in the discretion of the Board, be reasonably necessary to provide and assure the availability of funds necessary for the care, maintenance, repair, replacement, restoration, preservation, and protection of all Townhome Common Area, including all easements and facilities, and for such other purposes as the Board, in its reasonable discretion, shall deem necessary or appropriate.

E. To sue and be sued and to defend any suits brought against it.

F. Subject to any limitations set forth in the Townhome Association Documents or imposed by the Homeowner Association Act, to borrow such money as may reasonably be required to discharge and perform the duties, responsibilities and obligations imposed upon the Townhome Association pursuant to the Townhome Association Documents or the Homeowner Association Act.

G. To employ such persons or to contract with such independent contractors or managing agents as shall be reasonably required in order for the Townhome Association to carry out, perform and discharge all or any part of its duties, obligations and responsibilities pursuant to the Townhome Association Documents and the Homeowner Association Act; provided, however, that any such employment contract or contract with any independent contractor or managing agent for a term of more than one (1) year shall, by its express terms, be terminable: (i) for cause at any time upon not more than thirty (30) days written notice by the Townhome Association; and (ii) without cause at any time after one (1) year upon not more than sixty (60)

days written notice by either party; and, provided further, that any such contract shall otherwise be subject to the provisions of this Section.

H. To provide equipment, facilities and personnel or to contract with an independent contractor or independent contractors, for such public or quasi-public services as may be deemed by the Townhome Association to be reasonably necessary or desirable for the common health, safety and general welfare of the residents, including, without limitation, internal security and protection services, garbage and trash pickup and disposal services, cable television/Internet services and street lighting services.

I. To take such steps as may be necessary to enforce the provisions of the Townhome Association Documents and the Rules and Regulations, including, without limitation, the employment of counsel and the institution and prosecution of litigation to enforce said provisions including, without limitation, such litigation as may be necessary to collect Townhome Assessments and foreclose liens for which provisions are made in the Townhome Association Documents.

J. To encourage, cause, facilitate, assist and cooperate in the formation, establishment and operation of a Community Development District and/or MSBUs/MSTUs.

K. To establish, undertake, and promote, from time to time, social activities or programs; educational programs; cultural, artistic and environmental programs; charter and other similar services, activities or programs designed, intended, or implemented to further a sense of community among Townhome Owners and residents thereof. Nothing in this subSection shall ever be construed as a representation or promise by Declarant or the Townhome Association as to which, if any, of the foregoing may be established, undertaken, promoted, or (as applicable) continued by the Townhome Association from time to time.

Section 6.03 Determination of Annual Townhome Assessments.

A. **Budgets and Reserve Fund Contribution.** The Board shall annually prepare a budget that sets out the Townhome Association's annual operating expenses ("**Budget**"), which Budget must: (i) reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year; (ii) set out separately all fees or charges paid for by the Townhome Association for recreational amenities, whether owned by the Townhome Association, the Declarant, or another person or entity; (iii) include reserve accounts for capital expenditures and deferred maintenance for which the Townhome Association is responsible, including, but not limited to, the Townhome Common Townhome Property; and (iv) shall comply with Florida Statutes, Sections 720.303(6)(a) and (b), taking into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost to be incurred by the Townhome Association, and shall establish a reserve fund for such anticipated expenditures. The Board shall set the required reserve fund, if any, in an amount sufficient to permit meeting the projected capital needs of the Townhome Association, as shown on the Budget, with respect both to amount and timing of Annual Townhome Assessments over the period of the Budget. The reserve funds required, if any, shall be fixed by the Board and included within and distributed with the Budget and any applicable notice of Annual Assessment. Any reserve funds established by the Board shall be held in an interest-

bearing account or investments. The first Budget promulgated or adopted by the Declarant on behalf of the Townhome Association must designate therein the components for which reserve accounts and funds may be used.

B. **Adoption of Operating Budget.** The Townhome Association shall mail to each Member a copy of the Budget and projected Annual Townhome Assessments approved by the Board to be levied for the next fiscal year at least thirty (30) days prior to the end of the Townhome Association's current fiscal year. The Budget and Annual Townhome Assessments set forth therein shall become effective unless disapproved at a special meeting of the Townhome Members held not later than sixty (60) days after the proposed Budget and Annual Townhome Assessments are mailed to the Townhome Members. To be effective, the disapproval of the proposed Budget and Annual Townhome Assessments must be by a vote of two-thirds (2/3) of the Townhome Membership of the Townhome Association, without regard to Townhome Membership class. If the Townhome Membership so disapproves the Budget for the succeeding year, or if the Board fails to propose a Budget or the Annual Townhome Assessments, then the Budget and Annual Townhome Assessments for the preceding year shall continue in effect until a new Budget with Annual Townhome Assessments is determined or adopted.

C. **Allocation of Annual Townhome Assessments Among Townhome Townhome Lots.** The Budget and Annual Townhome Assessments of the Townhome Association shall be assessed against all Townhome Owners and Townhome Lots within the Townhome Property in an equal amount per Townhome Lot. At the discretion of the Board, the Annual Townhome Assessments for any year may be paid by Townhome Owners in monthly installments, due and payable on the first (1st) day of each month; in bi-annual installments, due and payable by the first (1st) day of January and July of each year; or in quarterly installments, due and payable by the first (1st) day of January, the first (1st) day of April, the first (1st) day of July, and the first (1st) day of October of each year. In the event of such deferred payments, the Board may, but shall not be required to, charge a uniform, lawful rate of interest on the unpaid balance. The Board may accelerate the balance of any Annual Assessment upon default in the payment of any installment thereon or any other Assessment due hereunder. Absent any such determination by the Board permitting payment in monthly, bi-annual, or quarterly installments, the Annual Assessment for any year shall be due and payable by January 1 of such year. Any Annual Assessment not paid by January 15, if payable in one lump sum, not paid by the fifteenth (15th) day of January and July, if allowed to be paid bi-annually, or paid by the fifteenth (15th) day of January, April, July, and October, if allowed to be paid quarterly, or on the fifth (5th) day of any month, if allowed to be paid monthly, shall be considered delinquent.

Section 6.04 Special Townhome Assessments and Individual Townhome Assessments.

A. **Special Townhome Assessments.** In addition to Annual Townhome Assessments, the Board may levy at any time a Townhome Special Assessment for the purpose of defraying the cost of any construction, maintenance, repair, replacement or insurance of any improvement on the Townhome Common Townhome Property, any Areas of Common Responsibility, or on any easement benefiting the Townhome Association or the Townhome Property as shown on any recorded Plat, or otherwise properly established, for the purpose of covering any budget deficits of the Townhome Association, or for any other purpose deemed

necessary, desirable or appropriate by the Board (collectively, “**Townhome Special Assessment(s)**”).

B. **Individual Assessment.** The Board may levy an individual assessment against any Townhome Owner and that Townhome Owner’s Townhome Lot and, if applicable, any Townhome located thereon in order to cover any costs, expenses and fees whatsoever incurred by the Townhome Association due to: (i) that Townhome Owner’s failure to maintain its Townhome Lot or Townhome pursuant to the standards set forth in this Townhome Declaration or as otherwise established by the Board, or (ii) to reimburse the Townhome Association for loss or damage to the Townhome Association or to any Townhome Common Townhome Property, Area of Common Responsibility or easement area benefiting the Townhome Association or the Townhome Property caused by that Townhome Owner or that Townhome Owner’s lessee, sublessee, licensee, agent, contractor, subcontractor, invitee, domestic help or guest, and not covered by insurance maintained by the Townhome Association, or (iii) for any other purpose expressly permitted by this Townhome Declaration or permitted under applicable law (each assessment levied pursuant to (i), (ii), or (iii), above, an “**Individual Assessment**”).

Section 6.05 Certificate. Upon request, the Townhome Association, pursuant to Florida Statutes, Section 720.30851, shall furnish to any Townhome Owner a certificate setting forth whether all required Townhome Assessments have been paid. Such certificate, subject to the limitations and terms of Florida Statutes, Section 720.30851, shall be conclusive evidence in favor of bona-fide third parties relying thereon of the payment of any Assessment therein stated to have been paid. The Townhome Association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate. Unless sold or conveyed by or to Declarant, no Townhome Lot or parcel may be sold or conveyed unless an estoppel certificate pursuant to Florida Statutes, Section 720.30851 is obtained and all amounts set forth therein are paid prior to the sale or conveyance.

Section 6.06 Subordination. Expressly subject to the mortgagee’s compliance with Florida Statutes, Section 720.3085(2)(c) and said mortgagee’s payment of all unpaid Townhome Assessments resulting from said mortgagee’s compliance with, or failure to comply with, said statute, all Assessment Liens shall be subordinate to the lien of any mortgage. Any mortgagee which obtains title to a Townhome Lot by lawful foreclosure of a mortgage or by lawful and proper voluntary conveyance by deed in lieu of such foreclosure, shall not be liable for the uncollected Townhome Assessments or interest, late charges or collection costs pertaining to such Townhome Lot or chargeable to the former Townhome Owner thereof which became due prior to the acquisition of title of the Townhome Lot by said mortgagee. Such unpaid Assessment amounts shall be deemed a Townhome Common Expense collectible from all Townhome Owners, including the acquiring mortgagee, on a pro-rata basis. Any such transfer to a mortgagee under this Section or otherwise shall not relieve the transferor of personal responsibility for any prior Townhome Assessments nor the Townhome Lot from the lien for Townhome Assessments thereafter falling due.

Section 6.07 Funding by Declarant. Notwithstanding anything contained in this Townhome Declaration to the contrary or otherwise, to the fullest extent permitted by the Homeowner Association Act, Declarant shall not be obligated to pay any Assessment as to any Townhome Lot owned by it during any period of time that Declarant pays the Townhome Common Expense

actually incurred over and above the income derived from the Townhome Assessments collectible from the Class "A" Townhome Members ("**Deficit Fund**"). For purposes of this subsidy arrangement, unless expressly required by applicable law, Declarant need not subsidize or pay any Assessment amounts levied for replacement reserves or capital expenditures. If Declarant elects to Deficit Fund as permitted herein and under the Homeowner Association Act, then for purpose of complying with Florida Statutes, Section 720.308(3), the amount of the Annual Townhome Assessments, as such Annual Townhome Assessments may be increased per fiscal year, shall be the maximum obligation of the Class "A" Townhome Members. If Declarant elects to Deficit Fund, then for purpose of complying with Florida Statutes, Section 720.308(3), the amount above the Annual Townhome Assessments that is necessary to keep the Townhome Association operational shall be the amount of Declarant's guarantee of Townhome Common Expenses. It is the express intent of Declarant that this be an establishment of a guarantee pursuant to Florida Statutes, Section 720.308(2). Unless Declarant otherwise notifies the Board in writing at least thirty (30) days before the beginning of a fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year. Declarant, at its option, may elect by written notice delivered to the Townhome Association at any time to abandon the subsidy approach and commence payment of the Townhome Assessments thereafter falling due for the Townhome Lots then owned by Declarant, prorated as of the date that such notice is delivered to the Townhome Association. Notwithstanding the foregoing, Declarant shall never be obligated to pay any Individual Assessment or Start-Up Assessment.

Section 6.08 Waiver of Use. No Townhome Owner, other than Declarant, may exempt himself, herself or itself from personal liability for Townhome Assessments duly levied by the Townhome Association. No Townhome Owner may release the Townhome Owner's Townhome from the liens and charges hereof either by waiver of the use and enjoyment of the Townhome Property and the facilities thereon or by abandonment of such Townhome Owner's Townhome.

Section 6.09 Declarant's Right to Loan or Advance Funds. Declarant may (but is not obligated to) loan, advance or otherwise make payments to the Townhome Association to assist the Townhome Association in meeting its financial obligations. Notwithstanding anything to the contrary contained in this Section, if Declarant loans, advances or otherwise makes payments to the Townhome Association, other than as a voluntary subsidy, then any such sums shall be repaid to Declarant prior to the Turnover Date.

Section 6.10 Builder Exemption. Notwithstanding anything in this Declaration or the Articles and Bylaws to the contrary, except as provided herein, during the time that a Builder owns any Townhome Lot, the Builder shall not pay any Townhome Assessments with respect to the Townhome Lots owned by the Builder; provided however, Townhome Assessments shall commence and be payable as to a particular Townhome Lot owned by a Builder upon the earlier to occur of (i) the sale of the Townhome Lot by a Builder to an unaffiliated third party; or (ii) three (3) years from the date the Builder acquired the Townhome Lot from Declarant. Further, in the event that Declarant elects to pay Townhome Assessments applicable to the Townhome Lots owned by Declarant rather than pay the Deficit as provided in Section 6.07 of this Article, Declarant covenants, agrees and shall be obligated to pay all Townhome Assessments with respect to Townhome Lots owned by a Builder for which the Builder is not required to pay Townhome Assessments pursuant to this Section 6.10. For the purpose of this Section 6.10, if

there is more than one (1) Builder, each Builder, for the purposes of this Section, shall be treated individually and not collectively with other Builders.

ARTICLE VII

MAINTENANCE AND REPAIR OBLIGATIONS

This Article sets forth the various maintenance and repair obligations of the Townhome Association and the Townhome Owners with respect to the Townhome Property and the Townhome Lots and Townhome Association Townhome Property located therein. Such maintenance and repair obligations may be different than those provided in any Supplemental Townhome Declarations.

Section 7.01 By The Townhome Association.

A. The Townhome Association, all at Townhome Common Expense, acting by and through the Board, shall, in addition to those general and specific duties, responsibilities, and obligations elsewhere referenced in the Governing Documents or imposed upon it by law, have the following specific duties, responsibilities and obligations:

(1) As may be necessary from time to time, to maintain and operate the Townhome Buildings. The Townhome Association may adopt standards of maintenance and operation concerning the Townhome Buildings. In all events, however, the Townhome Buildings be maintained and operated in compliance with any and all governmental permits, rules, regulations, and requirements.

(2) With regard to each Townhome Building, as may be necessary from time to time due to the ordinary wear and tear and customary usage of the Townhomes located within such Townhome Building, to perform general maintenance, pressure cleaning, and painting of all exterior portions thereof, including any carports, garages, garage doors, exterior doors, shutters, and facia, and any fences erected along Townhome Lot boundaries by Declarant or any Builder ("**Boundary Fence(s)**"), and further including caulking around Townhome Building windows prior to painting, as necessary. The maintenance responsibility of the Townhome Association concerning Townhome Buildings shall not extend to or include the glass in individual Townhome windows, and shall not include any screen enclosures, fences, patios, or other improvements constructed by or at the direction of an individual Townhome Owner; such improvements, at all times, shall be insured, maintained, repaired, and replaced by the Townhome Owner of such improvements, at said Townhome Owners sole cost and expense, and pursuant to the terms hereof.

(3) With regard to each Townhome Building, as may be necessary from time to time due to the ordinary wear and tear and customary usage of such roof, to maintain, repair, and/or replace, as necessary, each Townhome Building roof, including the roof deck, surface, flashings, and gutters, if any, and any exterior porch or garage roofs constructed or installed as part of the original construction of the subject Townhome Building. The maintenance, repair, and/or replacement responsibility of the Townhome

Association concerning Townhome Building roofs shall not include the roofs of any patios, screen enclosures, or other improvements constructed by or at the direction of an individual Townhome Owner; such improvements, at all times, shall be insured, maintained, repaired, and replaced by the Townhome Owner of such improvements, at said Townhome Owners sole cost and expense, and pursuant to the terms hereof.

(4) As may be necessary from time to time due to the ordinary wear and tear, to perform general maintenance, repair, and/or replacement of structural components of Party Walls.

(5) As may be necessary from time to time due to the ordinary wear and tear and customary usage of such sidewalks, to perform general maintenance, repair, replacement, and pressure cleaning of all sidewalks on any Townhome Lots, which sidewalks: (A) are not dedicated to the public or any governmental authority, and are not maintained by any governmental authority; and (b) are designed to and in fact connect and serve more than one Townhome Lot.

(6) As may be necessary from time to time due to the ordinary wear and tear and customary usage of such driveways, to perform maintenance, repair, replacement, and pressure cleaning of all Townhome Lot driveways.

(7) As may be necessary from time to time due to the ordinary wear and tear and customary usage of a Boundary Fence, to maintain, repair, and replace any Boundary Fence(s).

(8) As may be necessary from time to time due to the ordinary wear and tear and customary usage of such irrigation equipment, to maintain, repair, and replace any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, rain sensors, and time clocks, wherever located) serving any Townhome Lot and any Townhome Property adjacent to such Townhome Lot for which the Townhome Owner thereof would otherwise be responsible for under the Governing Documents; provided, however, that the Townhome Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Townhome Owner or Tenant of any such Townhome Lot. In the event that the Townhome Association opts to master-meter the irrigation system as to any Townhome Lots, then in addition to the foregoing obligations stated in this subsection, the Townhome Association shall be responsible for watering of Townhome Lots and the operation, maintenance, repair, and replacement of said irrigation system.

(9) Periodic treatment for termites and for obtaining/maintaining a termite bond covering all exterior walls and foundations of all Townhome Buildings and related garages; provided, however, that the Townhome Association shall never be held liable or responsible if any such treatment, for any reason whatsoever, does not occur, or at any time proves to be or becomes ineffective.

(10) Maintenance, repair, and replacement of any other components of any Townhome Building that is insured under the “**Townhome Association Policy**” (as that term is defined below) as of the time of such damage or casualty.

B. The Townhome Association shall perform the foregoing maintenance, cleaning, repair, etc., as set forth Section 7.01 A., pursuant to and in compliance with a schedule of maintenance that may be adopted from time to time by the Townhome Association to maintain the subject Townhome Property and improvements in a manner consistent with this Townhome Declaration, the Planning Criteria, and the Rules and Regulations. The Townhome Association shall never have the obligation to, but reserves and shall always have the power, right, and authority to perform any of the aforementioned maintenance or other obligations set forth in Section 7.01 A. hereof to the extent such maintenance or other obligations are required, caused, or necessitated by or as a result of the willful misconduct, negligence, or other activities not consistent with ordinary wear and tear or usage of the subject Townhome Property or improvements, by any Townhome Owner or any member of such Townhome Owner’s family, or of any Tenants, guests or other invitees of said Townhome Owner. Notwithstanding anything in the foregoing to the contrary or otherwise, to the extent any maintenance, cleaning, repair, etc., or other obligations as set forth Section 7.01 A. pertain to only a specific Townhome Lot or Townhome, or such maintenance, cleaning, repair, etc., or other obligations are performed or necessitated as a direct result of aforementioned willful misconduct, negligence, or activities not consistent with ordinary wear and tear or customary usage, then the Townhome Association’s costs and expenses in connection with such maintenance, cleaning, repair, etc., or other obligations may be assessed as a Townhome Special Assessment or Individual Assessment against only such Townhome Owner and such Townhome Owner’s Townhome Lot.

C. The Townhome Association shall never be responsible for any maintenance of, repairs to, or replacement of any improvement or modification added or made to a Townhome or upon a Townhome Lot after the conveyance of the Townhome Lot to the first Townhome Owner or grantee thereof following completion of any initial improvements thereon by Declarant or a Builder. Except as and to the extent expressly provided in this Section 7.01A, maintenance, repairs, and replacement of or concerning each Townhome Lot and Townhome, including, but not limited to, driveways serving said Townhome, any landscaping or improvements installed by the Townhome Owners or occupants of any Townhome Lot or Townhome, or otherwise, shall always be the sole responsibility, duty, and liability of the respective Townhome Owner. Any and all maintenance, repairs, and replacements of or concerning each Townhome Lot and Townhome shall at all times be performed in a manner consistent with this Townhome Declaration, the Planning Criteria, and the Rules and Regulations.

D. If maintenance, repair, or replacement of any component of a Townhome Building, Townhome Lot, or Townhome for which the Townhome Association is responsible hereunder is necessary due to intentional misconduct, negligence, or failure to comply with the terms of the Governing Documents, the Rules and Regulations, or applicable law, by an Townhome Owner (including, but not limited to, the Townhome Members of said Townhome Owner’s family, tenants or other occupants, guests, or invitees), the Townhome Association shall have the right to assess the Townhome Owner’s Townhome Lot for the cost of necessary maintenance, repair or replacement, as a Townhome Special Assessment or Individual Assessment, to the extent insurance proceeds do not cover the cost of such work, and without

compromise to the rights of subrogation of the insurer. The Townhome Association may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Townhome Owner shall be jointly and severally liable with such party(ies).

E. The Townhome Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Improvements and facilities located upon the Townhome Association Townhome Property as otherwise provided herein. Should any incidental damage be caused to any Townhome by virtue of the Townhome Association's failure to maintain the Townhome Association Townhome Property as herein required or by virtue of any work which may be performed or caused to be performed by the Townhome Association in the maintenance, repair or replacement of any Townhome Association Townhome Property, the Townhome Association shall, at its expense, repair such incidental damage. The Townhome Association shall not, however, be responsible for any loss of use, any hardship, an Townhome Owner's time or any other consequential or punitive damages.

F. The Townhome Association is specifically empowered to own, operate and maintain Utility Systems as defined in this Townhome Declaration, and to make Townhome Assessments as provided in this Townhome Declaration and the Articles and Bylaws to provide for Townhome Ownership, maintenance and operation of the Utility Systems, including but not limited to Townhome Assessments to provide for a reasonable reserve fund for operation and maintenance of such Utility Systems. The Townhome Association may sell, donate, or otherwise devise the Utility Systems to another entity authorized by law to own and operate the Utility Systems, including but not limited to utilities certificated by the Florida Public Service Commission, any applicable Community Development District, or governmental entities.

G. The Townhome Association shall be responsible for the maintenance, repair and replacement of all private streets located upon the Townhome Association Townhome Property and there is hereby reserved in favor of the Townhome Association the right to enter upon any and all parts of the Townhome Association Townhome Property and Townhome Lots for such purpose. To the extent permitted by the appropriate governmental authority, the Townhome Association may, but shall not be obligated to, also provide maintenance of all County, district or municipal properties which are located within or in a reasonable proximity of the Townhome Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Townhome Property, including the right to enhance the landscaping in any public right of way.

H. The Townhome Association shall be responsible for the maintenance, repair and replacement of any street lights located in the Community.

I. The Townhome Association has a reasonable right of entry upon any Townhome Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Townhome Property. The Board may establish rules and regulations regarding the Townhome Association's entry upon the Townhome Lots.

J. The Townhome Association may maintain other Townhome Property which it does not own, including, without limitation, Townhome Property dedicated to the public, (a) if

such maintenance is required by this Townhome Declaration, (b) if the Board determines that such maintenance is necessary or desirable to maintain the standards for the Community promulgated by the ARB or to cause compliance with this Townhome Declaration, (c) if the maintenance is requested by an Townhome Owner, or (d) if the Board determines that maintenance to any privately-owned facility is necessary or desirable and the Board elects to perform such maintenance in lieu of enforcing the respective Townhome Owner(s)'s obligation to perform such maintenance, in which event the respective Townhome Owner(s) shall be assessed the costs incurred.

Section 7.02 By The Townhome Owners.

A. Duties of the Townhome Owners.

(1) Each Townhome Owner shall at all times properly care for and maintain, at the Townhome Owner's sole cost and expense, the interior of the improvements on its Townhome Lot and Townhome such as, without limitation: doors and windows; garage doors; plumbing; individual mailbox (if applicable); electrical, heat and air-conditioning systems serving the Townhome Lot and Townhome; interior finish work, such as sheetrock and drywall; routine maintenance of non-structural components of Party Walls; interior painting of Party Walls; and all other portions and components of the Townhome Lot and improvements thereon, including the Townhome, except those expressly required to be and actually maintained by the Townhome Association pursuant to the terms hereof. Without limiting the generality of the foregoing, each Townhome Owner shall perform the following repairs and maintenance:

1. Maintenance and irrigation of lawns and landscaping lying between the boundary of such Townhome Owner's Townhome Lot and any public right-of-way or any community wall or fence; provided, however, that no Townhome Owner shall remove any trees, shrubs, or other vegetation from these areas outside such Townhome Owner's Townhome Lot without the prior written approval of the Townhome Association.

2. Each Townhome Owner shall be responsible for termite treatment of all interior walls of the improvements on its Townhome Lot and for obtaining and maintaining an annual termite bond with a properly licensed company doing business in Florida for the same.

3. In addition, Townhome owners own and maintain their individual water, sewer, storm and ground water drainage, and reclaimed water lines and services which extend to their homes from public water meters or adjacent to public road right-of-way as applicable and maintain their individual wastewater services which extend to their homes from public cleanout located adjacent to public road right-of-way.

(2) To the extent any maintenance, repair, replacement, or other obligations described in this Section 7.02 A(1)(2) is not performed by the subject Townhome Owner, the Townhome Association may (but is not required to) perform all or any part of such

work, in which event the costs of doing so shall be assessed to said Townhome Owner and the Townhome Lot as an Individual Assessment. In addition to, but not in limitations of, the foregoing, if an Townhome Owner's failure to maintain, repair, or replace those portions of the Townhome Property (including said Townhome Owner's Townhome Lot and Townhome) that are said Townhome Owner's responsibility hereunder endangering or that will or may endanger the structural integrity of another Townhome or any Townhome Building, including, but not limited to, actual or potential water or other damage, the Townhome Association shall have the right (but is not required to) to enter and maintain, repair, replace, or otherwise address the subject defect or issue and charge the cost, plus an administrative fee of 15%, to the subject Townhome Owner as an Individual Assessment. The Townhome Association shall give at least ten (10) calendar days' notice or, in an emergency, such notice (if any) as is reasonable under the circumstances.

Section 7.03 Interpretation. From time to time, the Board may make and consistently apply reasonable rules interpreting the provisions of this Article VIII to determine which portions of the Townhome Property shall be maintained by the Townhome Association and which portions shall be maintained by the Townhome Owners. Notwithstanding anything in the foregoing to the contrary, the Townhome Association shall be responsible for performing, or causing to be performed, all maintenance to the Townhome Common Areas.

ARTICLE VIII

DAMAGE OR DESTRUCTION TO TOWNHOME ASSOCIATION TOWNHOME PROPERTY

Damage to or destruction of all or any portion of the Townhome Association Townhome Property shall, notwithstanding any provision in this Townhome Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Townhome Association Townhome Property, then the Townhome Association shall cause such Townhome Association Townhome Property to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by Twenty-Five Thousand Dollars (\$25,000.00) or less, then the Townhome Association shall cause the Townhome Association Townhome Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Townhome Special Assessment proportionately against each of the Townhome Lots in accordance with the provisions of Articles VI and VII herein.

C. If the insurance proceeds are insufficient to effect total restoration and the cost of restoration of the Townhome Association Townhome Property exceeds said proceeds by over Twenty-Five Thousand Dollars (\$25,000.00), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (a) to rebuild and restore either: (i) in

substantially the same manner as the Improvements existed prior to the damage or destruction; or (ii) in a manner less expensive, and in the event of (i) or (ii) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Townhome Assessments against all Townhome Lots; or (b) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Townhome Association Townhome Property shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded with grass and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements on the Townhome Association Townhome Property shall not be effective without the prior written approval of Declarant as long as Declarant owns any portion of the Townhome Property.

D. Each Townhome Owner shall be liable to the Townhome Association for any damage to the Townhome Association Townhome Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Townhome Owner or of his family, lessees, invitees and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Townhome Assessments as well as insurance proceeds and regular Townhome Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Townhome Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Townhome Assessments and any remaining funds shall be deemed to be the remaining Special Townhome Assessments which shall be returned to the Townhome Owners by means of a pro rata distribution in accordance with the collection of such Special Townhome Assessments.

ARTICLE IX

INSURANCE AND CONDEMNATION

Section 9.01 Townhome Association Insurance. The Townhome Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Townhome Common Expenses:

A. **Insurance and Casualty Losses.**

(1) **Townhome Association Policy.** In addition to the other insurance required to be carried by the Townhome Association pursuant to the terms hereof, the Townhome Association shall obtain and maintain in full force and effect a policy or policies of Townhome Property insurance insuring the structures of the Townhome Buildings, including the internal structure of the Party Walls, for their full insurable value, if and to the extent such insurance is available in the State of Florida, with a company holding a BEST's rated "A" or better, if feasible. Such policy is referred to herein as the "**Townhome Association Policy**". The Townhome Association Policy shall be a master Townhome Property policy, and may be written on the ISO CP 00 10

Townhome Property form, or industry equivalent, or other similar or replacement forms promulgated or available from time to time. The Townhome Association Policy may also be written to include the ISO CP 10 30 causes of loss special form Townhome Property form, or industry equivalent, or other similar or replacement forms promulgated or available from time to time. If necessary or advisable, to avoid coinsurance penalties or otherwise, the Townhome Association Policy may include endorsements such as the ISO CP 14 20 Additional Townhome Property Not Covered endorsement, or industry equivalent, or other similar or replacement endorsement that would have a similar effect, if such endorsements are available. Any such endorsement shall have attached thereto a description of the Townhome Property not covered by the endorsement of the Townhome Association Policy. If reasonably available, necessary or advisable, to avoid coinsurance penalties or otherwise, the Townhome Association Policy may also include blanket insurance, agreed value and/or ordinance or law coverage endorsements. The Townhome Association Policy shall provide for a reasonable deductible, in the discretion of the Board. The Townhome Association Policy shall be on such forms as are approved for use in the State of Florida from time to time for similar developments, and the Townhome Owner of each Townhome Lot and its Mortgagee shall have the right to review the form of the Townhome Association Policy at the office of the Townhome Association upon reasonable request. The premiums for the Townhome Association Policy, and the amount of any deductible required to be paid in the event of a loss, shall be Townhome Common Expenses, except to the extent the Board determines any of such amounts should be deemed Special Townhome Assessments or Individual Townhome Assessments to be assessed against one or more Townhome Owners, Townhome Buildings, or Townhome Lots. If and to the extent allowed under applicable law and available under applicable insurance rules and regulations, and with the purchase of endorsements, if necessary and available, the Townhome Association Policy shall include coverage for the primary structure of the Townhome Buildings, including the roof, exterior walls, Party Walls, interior load-bearing walls, floor structures (but not coverings), sheetrock and drywall, electrical wiring inside of walls and plumbing pipes inside the walls. The Townhome Association Policy shall not be required to cover items that are not structural elements of the Townhome Buildings. Without limiting the generality of the foregoing, the Townhome Association Policy shall not include coverage for: floor coverings (e.g., carpet, pad, tile, linoleum); wall coverings (e.g., paint, wallpaper); ceiling coverings (e.g., paint, "popcorn", texture coating, drop ceilings); electrical fixtures (e.g., lighting, ceiling fans, chandeliers, switch/plug plates); appliances; water heaters; water filters; heating or air conditioning units or equipment; built-in cabinets and countertops (e.g., kitchen and bath); window treatments (e.g., curtains, drapes, blinds, hardware, and similar window treatment components); replacements of any of the foregoing which are located within the boundaries of a Townhome and serve only said Townhome; wear and tear and deterioration over time; faulty materials or workmanship; intentional acts; or damages for the loss of use of the subject Townhome Lot or Townhome.

B. Casualty Insurance. Townhome Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal Townhome Property which are owned by the Townhome Association and now or hereafter located upon the Townhome Association Townhome Property, which insurance shall afford protection against

such risks, if any, as shall customarily be covered with respect to areas similar to the Townhome Association Townhome Property in developments similar to the Community in construction, location and use.

C. **Public Liability Insurance.** A comprehensive policy of public liability insurance naming the Townhome Association and, until completion of construction of a Townhome on each Townhome Lot located within the Townhome Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or Townhome Property damage received in connection with, or arising from, the operation, maintenance and use of the Townhome Association Townhome Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) Townhome Property damage per occurrence with no separate limits stated for the number of claims. The Townhome Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Townhome Association is a party, as it may deem desirable.

D. **Fidelity Coverage.** Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Townhome Association and the Board and all others who handle and are responsible for handling funds of the Townhome Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

E. **Directors' Coverage.** Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Townhome Association is created.

F. **Other Insurance.** The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Townhome Association Townhome Property and any Improvements now or hereafter located thereon or in the best interests of the Townhome Association and/or its Officers and Directors.

G. **Cancellation or Modification.** All insurance policies purchased by the Townhome Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days' prior written notice to the Townhome Association and to each first mortgage holder, if any, named in the mortgage clause.

H. **Flood Insurance.** If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Townhome Association Townhome Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Townhome Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable Townhome Property located in the flood hazard area.

I. **Condemnation.** In the event the Townhome Association receives any award or payment arising from the taking of any Townhome Association Townhome Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Townhome Owners and mortgagees of Townhome Lots as their respective interests may appear.

J. **Waiver of Subrogation.** As to each policy of insurance maintained by the Townhome Association which will not be voided or impaired thereby, the Townhome Association hereby waives and releases all claims against the Board, the Townhome Owners, the Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

Section 9.02 Individual Insurance.

A. Townhome Owners' Insurance.

(i) In addition to, or as a supplement to, the other insurance requirements of each Townhome Owner set forth in this Townhome Declaration concerning said Townhome Owner's Townhome Lot and Townhome, each Townhome Owner of a Townhome Lot and Townhome shall obtain and maintain at all times an ISO form HO-6 insurance policy endorsed to include: (a) Unit Townhome Owners Coverage A Special Coverage utilizing the ISO HO 17 32 form; and (b), personal liability insurance ((a) and (b), collectively, "**Townhome Owner's Policy**"). The Townhome Owner's Policy, at minimum, must provide coverage for: (x) the Townhome Owner's personal belongings/contents (e.g., furniture, clothing, etc.); (y) coverage commonly known as Townhome Owners' additions and alterations or building coverage, endorsed to include replacement cost loss adjustment and special form perils of coverage, of at least \$40 per square foot of living area of the Townhome, for the items such as: floor coverings (e.g., carpet, pad, tile, linoleum); wall coverings (e.g., paint, wallpaper); ceiling coverings (e.g., paint, "popcorn", texture coating, drop ceilings); electrical fixtures (e.g., lighting, ceiling fans, chandeliers, switch/plug plates); appliances; water heaters; water filters; heating or air conditioning units or equipment; built-in cabinets and countertops (e.g., kitchen and bath); window treatments (e.g., curtains, drapes, blinds, hardware, and similar window treatment components); non-load-bearing walls; patios, screen enclosures, and any improvements constructed by or at the direction of an individual Townhome Owner; and replacements of any of the foregoing which are located within the boundaries of the subject Townhome and serve only said Townhome; and (z) personal liability coverage with limits of at least \$300,000.00 to provide protection to the Townhome Owner for injuries or damages they may cause or be responsible for within or outside of their Townhome. Each Townhome Owner shall provide a certificate evidencing such insurance coverage to the Townhome Association: (i) prior to or upon acquisition of record title to the Townhome Lot; (ii) on or about each anniversary of Townhome Owner

having become the fee simple Townhome Owner of said Townhome Lot; and (iii) at any other time, from time to time, upon request of the Board. The Board may promulgate Rules and Regulations concerning the Townhome Owner's Policy requirement, coverage amounts, coverage types, deductibles, etc. The Townhome Owner's Policy shall name the Townhome Association as an additional interest utilizing the ISO HO 04 10 form, or industry equivalent, or other similar or replacement forms promulgated or available from time to time. In the event of any damage casualty loss, the Townhome Association shall be entitled to file a claim on such Townhome Owner's Policy for the cost of any repair or replacement to the Townhome Lot, Townhome, or other improvements thereon, which is the Townhome Association's responsibility hereunder, and the subject Townhome Owner shall pay the amount of any deductible and shall be responsible for any deficiency in the insurance proceeds. The Townhome Association shall be entitled to adjust with the insurance provider the amount of any proceeds payable to the Townhome Association and/or the Townhome Owner under the Townhome Owner's Policy, based upon the funds necessary to enable the subject Townhome Owner and Townhome Association to each repair and replace those portions of the Townhome Lot, Townhome, and other improvements thereon which are their respective responsibilities hereunder. In the event that an Townhome Owner fails to obtain and thereafter continuously maintain such Townhome Owner's Policy, or allows or permits such Townhome Owner's Policy to lapse the Townhome Association may, but shall not be obligated to, obtain such Townhome Owner's Policy on behalf of the Townhome Owner and/or the Townhome Association and assess the costs and expenses thereof to the Townhome Owner and the Townhome Owner's Townhome Lot as a Townhome Special Assessment or an Individual Assessment.

(ii) In addition to, or as a supplement to, the coverage provided by the Townhome Association Policy and the Townhome Owner's Policy, each Townhome Owner may and is encouraged to obtain such additional homeowners' and other Townhome Property insurance as may be desired or required by the Townhome Owner to protect its Townhome Property and interests. Any such insurance policies shall name the Townhome Association as an additional interest. Notwithstanding anything to the contrary set forth herein or otherwise, it is the absolute responsibility of each Townhome Owner to obtain Townhome Property and liability insurance coverage with respect to its own Townhome Lot and Townhome so that the Townhome Owner is fully insured with respect to the full replacement value of the Townhome Lot, Townhome, and improvements thereon, and all of the Townhome Owner's furnishings and other personal Townhome Property within the Townhome Owner's Townhome or on or about its Townhome Lot, whether pursuant to the Townhome Association Policy, the Townhome Owner's Policy, or other insurance coverage obtained by the Townhome Owner. The Townhome Association may (but is not required to) require the Townhome Owners to provide copies of any such Townhome Owners' policies to the Townhome Association upon request. The Townhome Association shall have no obligation, however, to assure that any Townhome Owner obtains or maintains any such insurance coverages.

B. Disbursement of Proceeds; Repair and Reconstruction.

(i) Notwithstanding anything to the contrary set forth herein or otherwise, in the event of casualty or damage to any Townhome Building(s), no insurance proceeds from any insurance benefitting, in favor of, or collected by or on behalf of the Townhome Association, shall be retained by and for the benefit of the Townhome Association and placed in a capital improvements account, unless all costs of repair or reconstruction of the subject Townhome Building(s) has first been paid, unless no repair or reconstruction of the subject Townhome Building(s) is or will be made, pursuant to the terms hereof, in which event, any proceeds remaining after making such settlement, as is necessary and appropriate with the affected Townhome Owner or Townhome Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Townhome Association and placed in a capital improvements account. If required by law, this is a covenant for the benefit of any Eligible Holder and may be enforced by same.

(ii) If the damage or destruction a Townhome Building for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Voting Townhome Members, levy a Townhome Special Assessment against all Townhome Lot Townhome Owners on the same basis as provided for Annual Townhome Assessments; provided, if the damage or destruction involves Limited Townhome Common Area, only the Townhome Owners entitled to the use of the Limited Townhome Common Area shall be subject to Assessment therefor. Additional Townhome Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 9.03 Insurance Premiums. Premiums for all insurance obtained by the Townhome Association pursuant to this Article XI shall be at Townhome Common Expense. The Townhome Association, in its discretion, if permitted by law, may elect to self-insure against any risk.

ARTICLE X

HUD/FHA/VA AND DISTRICT APPROVAL RIGHTS

Notwithstanding anything in this Townhome Declaration to the contrary, as long as there exists a Class "B" Townhome Membership, if any one or more of the U.S. Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA) or the U.S. Department of Veterans Affairs (VA), or any successor department or agency of any of the foregoing, requires approval or consent by it or them to annexation of Additional Townhome Property, any merger or consolidation involving the Townhome Association, the placing of any mortgage lien on the Townhome Common Townhome Property, dedication to the public of any Townhome Common Townhome Property, any Amendment, or dissolution of the Townhome Association, by any one or more of said agencies as a condition of making, insuring or purchasing loans on Townhomes in the Townhome Property, and any such loan has been approved, insured, guaranteed, or purchased by the applicable agency at the time of the proposed annexation, merger, consolidation, mortgaging, dedication, amendment or dissolution, then the required consent or approval shall be obtained.

ARTICLE XI

AMENDMENT

Section 11.01 Amendment by Townhome Members

A. **Amendment by Written Instrument.** This Townhome Declaration may be amended (an “**Amendment**”) at any time by the holders of a simple majority of the votes in the Townhome Association (without regard to Townhome Membership class). Upon approval of an Amendment in accordance with the preceding sentence, the Board shall direct the appropriate Officer, agent or employee of the Townhome Association to have a written instrument prepared in recordable form which instrument shall set forth the text of the approved Amendment, and which Amendment shall also comply with all requirements of the Homeowner Association Act. Upon execution of the Amendment by the holders of at least a simple majority of the votes in the Townhome Association (without regard to Townhome Membership class), the Board shall direct the appropriate Officer, agent or employee of the Townhome Association to record the Amendment in the Public Records. The Amendment will be deemed effective upon recording.

B. **Amendment by Vote at a Duly-Authorized Meeting.** An Amendment may be proposed by Declarant (before or after Turnover), the Townhome Association, or after Turnover, through a petition signed by ten percent (10%) of the Townhome Owners. If a proposed Amendment is to be adopted by a vote, a written copy of the proposed Amendment shall be furnished to each Townhome Owner at least thirty (30) days, but not more than ninety (90) days, prior to a duly-authorized meeting called to discuss the proposed Amendment. To pass, the proposed Amendment shall be approved upon the affirmative vote of at least a simple majority of the Townhome Membership casting votes (either in person or by proxy) at a meeting duly called to consider the proposed Amendment. Upon the approval of an Amendment pursuant to this Section 11.01(b), the President and Secretary shall execute a written instrument in recordable form which shall set forth the text of the Amendment, the effective date of the Amendment, the date of the meeting of the Townhome Association at which such Amendment was adopted, the date that notice of such meeting was given, the total number of votes cast at the meeting (either in person or by proxy), the total number of votes necessary to adopt the Amendment, the total number of votes cast for the Amendment, and the total number of votes cast against the Amendment. The written Amendment executed by the President and Secretary shall be recorded in the Public Records. The Amendment will be deemed effective upon Recording.

C. **Amendment by Declarant.** Until such time as Turnover occurs, Declarant specifically reserves the absolute and unconditional right to alter, modify, change, revoke, rescind, amend, restate, or cancel all or any portion of this Townhome Declaration (or any of the other Governing Documents) or the restrictive covenants contained in this Townhome Declaration (or in any of the other Governing Documents); provided, however, that to be valid and enforceable, any such amendment by Declarant may not be arbitrary, capricious, or in bad faith; destroy the general plan of development of the community; prejudice the rights of existing non-declarant Townhome Members to use and enjoy the benefits of Townhome Common Townhome Property; or materially shift economic burdens from the Declarant to the existing non-declarant Townhome Members. Following Declarant’s relinquishment of control of the

Townhome Association, this Townhome Declaration may only be amended pursuant to the provisions of such Section 11.01(a) and Section 11.01(b) hereof.

Section 11.02 Restrictions on Amendments. Notwithstanding anything to the contrary contained in Section 11.01 hereof, no Amendment to this Townhome Declaration may: (i) remove, revoke, or modify any right or privilege of Declarant without the prior express written consent of Declarant or the assignee of any such right or privilege which consent may be granted, conditioned or denied in such party's absolute and sole discretion; (ii) impair the validity or priority of the lien of any mortgage or impair the rights granted to mortgagees herein without the prior written consent of such mortgagees; (iii) to the extent that any provision of the Townhome Declaration has been included to satisfy a condition of approval of a planned development, preliminary subdivision plan, development order or a subdivision plat of the Townhome Property, such provision shall not be changed, amended, modified or otherwise deleted or eliminated without the prior written consent of the applicable Governmental Authority; (iv) result in or facilitate a termination of the Townhome Association's obligation to maintain the Townhome Common Townhome Property; or (v) change, amend, modify, eliminate or delete the restrictions contained in this Section 11.02. Additionally, any proposed Amendment which would have the effect of materially altering the general plan of development for the Development or which would materially prejudice the Townhome Owners' rights to use and enjoy the benefits of the Townhome Common Townhome Property, shall require the unanimous written consent of all Townhome Owners. No Amendment shall be permitted that would violate the Homeowner Association Act.

ARTICLE XII

DURATION AND TERMINATION

This Townhome Declaration shall run with and bind and benefit the Townhome Property, and shall inure to the benefit of and be enforceable by Declarant, the Townhome Association and any Townhome Owner, and their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the Effective Date, after which time this Townhome Declaration and each Supplemental Townhome Declaration shall be automatically extended for successive periods of ten (10) years unless prior to the commencement of any 10-year extension period an instrument properly executed and signed by the Townhome Owners of eighty percent (80%) of the Townhome Lots and agreeing to terminate this Townhome Declaration is recorded in the Public Records.

ARTICLE XIII

ENFORCEMENT

Section 13.01 Compliance by Townhome Owners. Every Townhome Owner and all guests, tenants, subtenants, occupants, licensees, and guests and invitees of any Member, shall comply with the restrictions and covenants set forth in this Townhome Declaration and any and all Rules and Regulations which from time to time may be adopted.

Section 13.02 Enforcement. Failure of an Townhome Owner or that Townhome Owner's tenants, subtenants, occupants, licensees, invitees and guests to comply with the restrictions and covenants set forth in this Townhome Declaration or the Rules and Regulations applicable to the Townhome Owner, the Townhome Lot, Townhome or the Townhome Property, shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The offending Townhome Owner shall be responsible for all costs and expenses of enforcement, including, but not limited to, attorneys' and paralegals' fees actually incurred and court costs, fees and expenses. If any person shall violate or attempt or threaten to violate the provisions of this Townhome Declaration, it shall be lawful for Declarant, any Townhome Owner, or the Townhome Association: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate the provisions of this Townhome Declaration; (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting or threatening to violate the provisions of this Townhome Declaration, for the purpose of preventing or enjoining all or any such violations or attempted or threatened violations; or (c) to maintain a proceeding for any other equitable or legal recourse or remedy available at law or in equity to address or prevent the violation or attempted or threatened violation of this Townhome Declaration. In addition, whenever there shall have been built or there shall exist on any Townhome Lot any structure, building, thing or condition which violates the provisions of this Townhome Declaration, Declarant or the Townhome Association (but not any Townhome Owner) shall have the right, but not the obligation, to enter upon the Townhome Lot where such violation exists and summarily abate and remove the same, all at the expense of the Townhome Owner of such Townhome Lot, which expense shall constitute an Individual Assessment, and such entry and abatement or removal shall not be deemed a trespass or make Declarant, the Board, or Townhome Association, or the directors, officers, Townhome Members, agents, employees, contractors or subcontractors of any of the foregoing, liable for any damages on account thereof. The remedies contained in this Section 13.02 shall be cumulative of all other remedies now or hereafter provided by law, in equity, or by virtue of this Townhome Declaration. The failure of Declarant, the Board, the Townhome Association, or an Townhome Owner to enforce any covenant, restriction, obligation, right, power, privilege or reservation contained in this Townhome Declaration, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior or subsequent thereto.

Section 13.03 Fines; Suspension. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board, (A) a fine or fines may be imposed upon an Townhome Owner for failure of an Townhome Owner or that Townhome Owner's tenants, subtenants, occupants, licensees, invitees and guests to comply with any condition, covenant or restriction contained in this Townhome Declaration or any Rule or Regulation, and (B) the Townhome Association shall have the right to suspend for a reasonable period of time the rights of use of the Townhome Common Townhome Property and the facilities located thereon (except for vehicular and pedestrian ingress to and egress from the Townhome Lot, including, but not limited to, the right to park of defaulting Townhome Owners) provided that before imposing any fine or suspension, the following procedures are adhered to:

A. **Notice.** The Townhome Association shall notify the Townhome Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a hearing of

a committee of at least three (3) Townhome Members who are appointed by the Board (the “**Committee**”), at which time the Townhome Owner may present reasons why a fine(s) or suspension should not be imposed. The Townhome Members of the Committee shall not be Officers, Directors, or employees of the Townhome Association, or the spouse, parent, child, brother or sister of an Officer, Director, or employee of the Townhome Association. At least fourteen (14) days’ notice of such meeting shall be given.

B. **Hearing.** The alleged non-compliance shall be presented to the Committee after which the Committee shall hear reasons why a fine(s) or suspension should not be imposed. A written decision of the Committee shall be submitted to the Townhome Owner by not later than twenty-one (21) days after the Committee’s hearing. The Townhome Owner shall have a right to be represented by counsel and to cross examine witnesses. If the Committee does not approve a proposed fine or suspension by majority vote, it may not be imposed.

C. **Amounts.** The Board (if the Committee’s findings are made against the Townhome Owner) may impose a suspension or a fine in the form of Special Townhome Assessments against the Townhome Lot owned by the Townhome Owner as follows:

(1) For each separate violation, a fine not exceeding One Hundred Dollars (\$100.00). Each day that there exists on any Townhome Lot any structure, thing or condition which violates this Townhome Declaration shall be considered a separate violation.

(2) Because Declarant intends that the Townhome Property be developed and occupied as a high-end residential development, it is important that the Townhome Association have the authority and leeway to enforce the covenants, conditions, and restriction set forth in the Governing Documents and the Rules and Regulations by meaningful fines. Therefore, fines may exceed One Thousand and No/100 Dollars (\$1,000.00) in the aggregate and there shall be no limit on the aggregate amount of fines that may be levied for continuing violations of the covenants, conditions, and restriction set forth in the Governing Documents or in the Rules and Regulations.

D. **Payment and Collection of Fines.** Any Townhome Owner against whose Townhome Lot fines have been levied shall remit such fines to the Townhome Association within thirty (30) days of receiving notice of such fines from the Townhome Association. The Townhome Association may pursue legal and equitable remedies to recover such fines. Fines shall be treated as an Individual Assessment subject to the provisions for the collection of Individual Townhome Assessments, and the lien securing same, as set forth herein.

E. **Application of Proceeds.** All moneys received from fines shall be allocated as directed by the Board.

F. **Non-exclusive Remedy.** These fines and suspensions shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Townhome Association may be otherwise legally entitled; provided, however, any fines paid by the offending Townhome Owner shall be deducted from or offset against any damages which the

Townhome Association may otherwise be entitled to recover by law from such Townhome Owner.

G. **CPI**. Unless limited by law, specific dollar amounts stated in this Section 13.03 shall increase from time to time by application of a nationally recognized consumer price index chosen by the Board of Directors, using the year of the Effective Date as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

H. **Suspension of Voting Rights**. In accordance with Florida law, the Townhome Association may suspend the voting rights of a Member for the nonpayment of regular Annual Townhome Assessments that are delinquent in excess of ninety (90) days.

ARTICLE XIV

DECLARANT AND BUILDER RESERVATION.

Section 14.01 Declarant and Builder Reservation. Any provision of this Townhome Declaration to the contrary notwithstanding, until Declarant has completed all of the contemplated Improvements and the Townhome Lots have been sold to Third Party Purchasers, neither the Townhome Owners nor the Townhome Association shall interfere with, or allow the interference with, the completion of Declarant's planned Improvements and the sale of the Townhome Lots. Declarant may make such lawful use of the unsold Townhome Lots and the Townhome Common Townhome Property, without charge, as may facilitate such completion and sale, including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Townhome Lots and the display of signs and the use of Townhome Lots for vehicular parking. Without limiting the generality of the foregoing, except only when the express provisions of this Townhome Declaration prohibit Declarant from taking a particular action, nothing in this Townhome Declaration shall be understood or construed to prevent or prohibit Declarant from any of the following:

A. Doing on any Townhome Property or Townhome Lot owned or controlled by it, whatever it determines to be necessary, convenient or advisable in connection with the completion of the development of the Townhome Property, including without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Townhome Property, as same may be expanded, may be modified by Declarant at any time and from time to time, without notice); or

B. Erecting, constructing and maintaining on any Townhome Property or Townhome Lot owned or controlled by Declarant, such structures as may be reasonably necessary for the conduct of its business of completing said development and establishing the Townhome Property as a community and disposing of the same by sale, lease or otherwise; or

C. Conducting on any Townhome Property or Townhome Lot owned or controlled by Declarant, its business of developing, subdividing, grading and constructing Improvements in

the Townhome Property and of disposing of Townhome Lots therein by sale, lease or otherwise; or

D. Determining in its sole discretion the nature of any type of Improvements to be initially constructed as part of the Development or the Townhome Property; or

E. Maintaining such sign or signs on any Townhome Property or Townhome Lot owned or controlled by Declarant as may be necessary or desired in connection with the operation of any Townhome Lots owned by Declarant or the sale, lease, marketing or operation of the Townhome Lots; or

F. Recording Supplemental Townhome Declarations which modify or amend this Townhome Declaration, which add or withdraw Additional Townhome Property, or that otherwise allow or permit Declarant to effect any action which may be required of Declarant by the Local Government or any other Governmental Authority or quasi-governmental agency in connection with the development and continuing operation of the Townhome Property; or

G. Modifying, changing, re-configuring, removing or otherwise altering any Improvements located on the Townhome Common Townhome Property or utilizing all or portions of the Townhome Common Townhome Property for construction access or staging (provided that same does not impair existing platted access (as shown on any recorded Plats) or utility services to the Townhome Lots); or

H. Causing utilities to be available to all portions of the Townhome Property, including, but not limited to, the reserving or granting of easements and rights of way as may be necessary to locate, install and maintain facilities and connections.

Section 14.02 Amendment. This Article may not be suspended, superseded or modified in any manner by any amendment to this Townhome Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Townhome Association Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section, the term “**Declarant**” shall include any “**Lender**” which has loaned money to Declarant to acquire or construct Improvements upon the Townhome Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Townhome Property as a result of the foreclosure of any mortgage encumbering any portion of the Townhome Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Article, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Townhome Association Documents, shall terminate upon Declarant no longer owning any portion of the Townhome Property (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Townhome Association in writing of Declarant’s voluntary election to relinquish the aforesaid rights and privileges.

ARTICLE XV

GENERAL PROVISIONS

Section 15.01 Conflict With Other Townhome Association. In the event of any conflict between the provisions hereof and the provisions of the Articles, Bylaws, or rules and regulations promulgated by the Townhome Association, the provisions of this Townhome Declaration shall supersede and control. In the event of any conflict between the provisions of the Articles and the provisions of the Bylaws or rules and regulations promulgated by the Townhome Association, the provisions of the Articles shall supersede and control. In the event of any conflict between the provisions of the Bylaws and the provisions of the rules and regulations promulgated by the Townhome Association, the provisions of the Bylaws shall supersede and control.

Section 15.02 Notices. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Townhome Owner, at the United States address of the person whose name appears as the Townhome Owner on the records of the Townhome Association at the time of such mailing and, in the absence of any specific address, at the address of the Townhome owned by such Townhome Owner; (ii) the Townhome Association, certified mail, return receipt requested, at 1323 Brookhaven Drive, Orlando, Florida 32803 or such other address as the Townhome Association shall hereinafter notify Declarant and the Townhome Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 1323 Brookhaven Drive, Orlando, Florida 32803, or such other address or addresses as Declarant shall hereafter notify the Townhome Association of in writing, any such notice to the Townhome Association of a change in Declarant's address being deemed notice to the Townhome Owners.

Section 15.03 Interpretation. The provisions of this Townhome Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of recreational facilities and Townhome Association Townhome Property. Article, Section and Paragraph captions, headings and titles inserted throughout this Townhome Declaration is intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Townhome Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa. The term “**include**” and similar terms (e.g., includes, including, included, comprises, comprising, such as e.g., and for example), when used as part of a phrase including one or more specific items, are used by way of example and not limitation.

Section 15.04 Severability. In the event any of the provisions of this Townhome Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Townhome Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term

and scope permitted by law. In the event that any court should hereafter determine that any provision of this Townhome Declaration is in violation of the rule of Townhome Property known as the “**rule against perpetuities**” or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Townhome Association.

Section 15.05 Disputes as to Use. In the event there is any dispute as to whether the use of the Townhome Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Townhome Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Townhome Property shall be deemed a use which complies with this Townhome Declaration and shall not be subject to a contrary determination by the Board.

Section 15.06 Delegation. The Townhome Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

Section 15.07 Rights of Mortgagees.

A. **Right to Notice.** The Townhome Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Townhome Association Documents and the books, records and financial statements of the Townhome Association to Townhome Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Townhome Property. In addition, evidence of insurance shall be issued to each Townhome Owner and mortgagee holding a mortgage encumbering a Townhome upon written request to the Townhome Association.

B. **Rights of Listed Mortgagee.** Upon written request to the Townhome Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a “**Listed Mortgagee**”) of a mortgage encumbering a Townhome Lot and the legal description of such Townhome Lot, the Townhome Association shall provide such Listed Mortgagee with timely written notice of the following:

- (1) Any condemnation, loss or casualty loss which affects any material portion of the Townhome Association Townhome Property;
- (2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Townhome Association;
- (3) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Townhome Lot; and

(4) Any failure by an Townhome Owner owning a Townhome Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Townhome Association Documents, including, but not limited to, any delinquency in the payment of Townhome Assessments, or any other charge owed to the Townhome Association by said Townhome Owner where such failure or delinquency has continued for a period of sixty (60) days.

C. **Right of Listed Mortgagee to Receive Financial Statement.** Any Listed Mortgagee shall, upon written request made to the Townhome Association, be entitled to financial statements of the Townhome Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

Section 15.08 Approval of Townhome Association Lawsuits by Townhome Owners. Notwithstanding anything contained herein to the contrary, the Townhome Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Townhome Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- a. the collection of Townhome Assessments;
- b. the collection of other charges which Townhome Owners are obligated to pay pursuant to the Townhome Association Documents;
- c. the enforcement of the use and occupancy restrictions contained in the Townhome Association Documents;
- d. dealing with an emergency when waiting to obtain the approval of the Townhome Owners creates a substantial risk of irreparable injury to the Townhome Association Townhome Property or to Townhome Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4ths] of the Townhome Owners); or
- e. filing a compulsory counterclaim.

Section 15.09 Compliance with Provisions. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Townhome Lot except as elsewhere herein provided does consent and agree to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such Townhome Property. Declarant shall not in any way or manner be held liable or responsible for any violation of this Townhome Declaration by any person other than Declarant.

Section 15.10 Security. The Townhome Association may, but shall not be obligated to, maintain or support certain activities within the Townhome Property designed to make the Townhome Property safer than it otherwise might be. Additionally, NEITHER DECLARANT

NOR THE TOWNHOME ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL TOWNHOME OWNERS AGREE TO HOLD DECLARANT, THE TOWNHOME ASSOCIATION AND ANY SUCCESSOR DECLARANT HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE TOWNHOME ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE TOWNHOME PROPERTY. NEITHER THE TOWNHOME ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL TOWNHOME MEMBERS, TOWNHOME OWNERS AND OCCUPANTS OF ANY TOWNHOME LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY TOWNHOME OWNER ACKNOWLEDGE THAT THE TOWNHOME ASSOCIATION AND ITS BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ARB MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, TOWNHOME OWNER AND OCCUPANT OF ANY TOWNHOME LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN TOWNHOME OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE TOWNHOME ASSOCIATION, ITS BOARD AND THE ARB, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH MEMBER, TOWNHOME OWNER AND OCCUPANT OF ANY TOWNHOME LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR TOWNHOME OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO TOWNHOME LOTS OR HOMES, AND TO THE CONTENTS OF TOWNHOME LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE TOWNHOME ASSOCIATION, ITS BOARD AND THE ARB, DECLARANT, AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY TOWNHOME OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE TOWNHOME PROPERTY.

Section 15.11 Townhome Owners' Views. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT, OR THEIR AGENTS OR EMPLOYEES IN CONNECTION WITH THE EXISTING OR FUTURE VIEWS THAT WILL BE AVAILABLE TO TOWNHOME OWNERS. EACH TOWNHOME OWNER BY ITS PURCHASE OF A HOME OR A TOWNHOME LOT ASSUMES THE RISK OF VIEW RESTRICTIONS CAUSED BY

MATURATION OF TREES AND SHRUBBERY AND THE CONSTRUCTION OF ANY IMPROVEMENTS.

Section 15.12 Covenant Running With The Land. All provisions of this Townhome Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Townhome Lots and Townhomes and the Townhome Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of the Declarant and subsequent Townhome Owner(s) of the Townhomes, Townhome Lots and Townhome Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Townhome Owners, lessees, and occupants of the Townhome Lots and Townhomes, as applicable, shall be subject to and shall comply with the provisions of this Townhome Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Townhome Lot, or the entering into a lease of or occupancy of a Townhome, shall constitute an adoption and ratification by such Townhome Owner, lessee, or occupant of the provisions of this Townhome Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Townhome Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

Section 15.13 No Public Right or Dedication. Nothing contained in this Townhome Declaration shall be deemed to be a gift or dedication of all or any portion of the Townhome Association Townhome Property to the public, or for any public use.

Section 15.14 No Representations or Warranties. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE TOWNHOME ASSOCIATION TOWNHOME PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS TOWNHOME DECLARATION.

Section 15.15 Townhome Association and Declarant as Attorney-In-Fact. Each Townhome Owner, by reason of having acquired Townhome Ownership of a Townhome Lot, whether by purchase, gift, operation of law or otherwise, and each occupant of a Townhome, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion made in, on or to the Community by Declarant (hereinafter, collectively, “**Modifications**”) and, in respect thereto, each Townhome Owner of a Townhome Lot and occupant of a Townhome hereby designates the Townhome Association to act as agent and attorney-in-fact on behalf of such Townhome Owner or occupant to consent to any such Modification. If requested by Declarant, each Townhome Owner shall evidence his consent to a

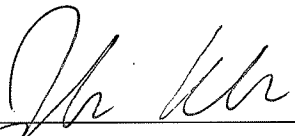
Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Townhome Owner, by reason of acceptance to such Townhome Owner's Townhome Lot, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any government agency to allow Declarant and/or its affiliates to complete the plan of development of the Community, as such plan may be hereafter amended, and each such Townhome Owner hereby further appoints Declarant as such Townhome Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Townhome Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 15.15 may not be amended without Declarant's prior written consent.


IN WITNESS WHEREOF, this Townhome Declaration has been signed by Declarant and Joined in by the Townhome Association as of the date first written above.

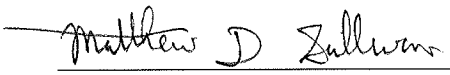
DECLARANT:

WITNESSES AS TO DECLARANT:

INDEPENDENCE PARKWAY
DEVELOPMENT, LLC, a Delaware limited
liability company


Signature
Print Name: Justin Krabben


By: 
Name: _____
Title: Rudy Newell
Vice President

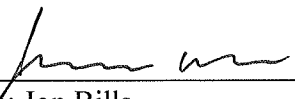

Signature
Print Name: Matthew Sullivan

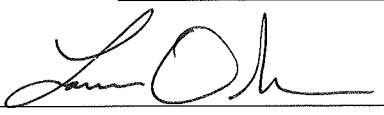
TOWNHOME ASSOCIATION:

WITNESSES AS TO TOWNHOME
ASSOCIATION:

NEW INDEPENDENCE TOWNHOME
OWNERS ASSOCIATION, INC., a Florida
corporation not for profit


Signature
Print Name: Britt Landis

By: 
Name: Jon Bills
Title: President


Signature
Print Name: Lance Oakes



TERI FRANTZ
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 01/06/24

STATE OF ~~FLORIDA~~ Minnesota)
) SS
 COUNTY OF Hennepin)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to make acknowledgments, the foregoing instrument was acknowledged before me by Rudy Newell, the Vice President of INDEPENDENCE PARKWAY DEVELOPMENT, LLC, a Delaware limited liability company, freely and voluntarily under authority duly vested in him. He is personally known to me or has produced U.S. Passport as identification.

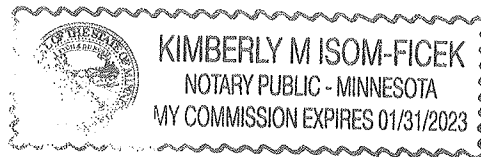
WITNESS my hand and official seal in the County and State last aforesaid this 1 day of March, 2019.



Notary Public, State of ~~Florida~~ Minnesota
Kimberly Isom-Ficek

Typed, Printed or Stamped Name of Notary Public

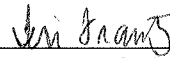
My Commission Expires:




Ohio
 STATE OF ~~FLORIDA~~)
) SS
 COUNTY OF Montgomery)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Jon Bills, the President of NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in him. He is personally known to me or has produced drivers licence as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 4th day of March, 2019.

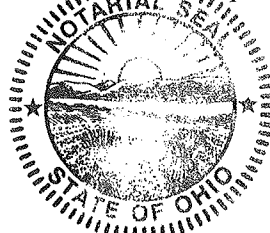


Notary Public, State of ~~Florida~~ Ohio



Typed, Printed or Stamped Name of Notary Public

My Commission Expires: 01/06/24



TERI FRANTZ
 NOTARY PUBLIC - OHIO
 MY COMMISSION EXPIRES 01/06/24

EXHIBIT "A"**LEGAL DESCRIPTION OF THE TOWNHOME PROPERTY**

COMMENCE AT THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN N00°08'31"W, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 300.14 FEET TO A POINT ON THE WESTERLY LINE OF AN EXISTING RIGHT OF WAY AS RECORDED AND DESCRIBED IN SAID OFFICIAL RECORDS BOOK 7034, PAGE 1148 AND THE POINT OF BEGINNING; THENCE RUN SOUTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES; RUN S75°40'56"W, A DISTANCE OF 206.63 FEET; THENCE RUN S41°06'22"W, A DISTANCE OF 72.09 FEET; THENCE RUN S00°32'29"W, A DISTANCE OF 134.36 FEET; THENCE RUN S11°17'03"W, A DISTANCE OF 126.80 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 5379.58 FEET AND A CENTRAL ANGLE OF 03°41'07"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 346.02 FEET TO A POINT; THENCE RUN S75°08'16"E, A DISTANCE OF 256.01 FEET; THENCE RUN S14°51'44"W, A DISTANCE OF 805.83 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY RIGHT OF WAY OF NEW INDEPENDENCE PARKWAY; THENCE RUN S89°41'59"W ALONG SAID RIGHT OF WAY, A DISTANCE OF 225.66 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1286.09 FEET AND A CENTRAL ANGLE OF 15°06'06"; THENCE ON A CHORD BEARING OF S81°05'07"W, RUN 338.98 FEET ALONG THE ARC OF SAID CURVE TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF MCKINNEY ROAD AS RECORDED IN DEED BOOK 881, PAGE 361, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN S89°44'30"W, ALONG THE NORTHERLY RIGHT OF WAY LINE OF MCKINNEY ROAD, A DISTANCE OF 456.19 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20; THENCE CONTINUING ALONG THE NORTHERLY RIGHT OF WAY LINE OF MCKINNEY ROAD, RUN S89°44'33"W A DISTANCE OF 597.74 FEET TO A POINT ON THE EAST LINE OF THE WEST 733 FEET OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20; THENCE RUN N00°05'51"W, ALONG SAID EAST LINE A DISTANCE OF 800.00 FEET; THENCE RUN N89°44'33"E A DISTANCE OF 597.56 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20; THENCE ALONG SAID WEST LINE RUN N00°06'33"W A DISTANCE OF 497.73 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20; THENCE RUN N89°51'28"E, ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, A DISTANCE OF 665.24 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN N00°03'32"W, ALONG THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 1324.61 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN N89°52'55"E, ALONG THE SAID NORTH LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 663.36 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN S00°08'24"E, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 1024.18 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

**ARTICLES OF INCORPORATION
OF
NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC.
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings, or if not defined below as defined in the Declaration:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Individual Assessments" and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the Governing Documents.
3. "Association" means New Independence Townhome Owners Association, Inc., a Florida corporation not for profit. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.
4. "Board" means the Board of Directors of the Association.
5. "Bylaws" means the Bylaws of the Association and any amendments thereto.
6. "County" means Orange County, Florida.
7. "Declarant" means the Declarant as designated in the Declaration, and any successor or assign thereof.
8. "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Hamilton Gardens, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.
9. "Director" means a member of the Board.
10. "District" shall mean the South Florida Water Management District.

11. “Governing Documents” means in the aggregate the Declaration, the Articles and the Bylaws, the Plat, and any additional plat, and all of the instruments and documents referred to therein.

12. “Home” means an attached residential dwelling unit constructed within Hamilton Gardens, which is designed and intended for use and occupancy as a single-family residence.

13. “Lot” shall mean and refer to any parcel of land within Hamilton Gardens as shown on the Plat or any additional plat upon which a Home is permitted to be constructed, together with the Improvements thereon. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in the Declaration and the Governing Documents

14. “Member” means the Owner of a Lot in Hamilton Gardens.

15. “Owner” means the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot or Home within Hamilton Gardens, and includes Declarant for as long as Declarant owns fee simple title to a Lot or Home, but excluding therefrom those having such interest as security for the performance of an obligation.

16. “Plat” means the plat of Hamilton Gardens, according to the plat thereof recorded in the Public Records of Orange County, Florida. In the event an additional plat is recorded in the Public Records of the County with respect to the Additional Property made subject to the Declaration pursuant to a Supplemental Declaration, then the term “Plat” as used herein shall also mean the additional plat. Not all of the property shown on the Plat is subject to the Declaration.

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

ARTICLE II NAME

The name of this corporation shall be **NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC.**, a Florida corporation not for profit, whose principal address and mailing address is 1323 Brookhaven Drive, Orlando, Florida 32803.

ARTICLE III PURPOSES

The purpose for which the Association is organized is to take title to, operate, administer, manage, insure, lease and maintain the Property in accordance with the terms of, and purposes set forth in, the Governing Documents and to carry out the covenants and enforce the provisions of the Governing Documents.

The Association shall operate, maintain and manage the stormwater management system(s) in a manner consistent with the requirement of District Permit No. 48-02644-P and applicable District rules, and shall assist in the enforcement of the restrictions and covenants contained herein.

ARTICLE IV POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the Governing Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the Governing Documents.

2. To make, establish, amend, abolish (in whole or in part) and enforce reasonable rules and regulations governing the use of the Property.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

4. To enforce by legal means the obligations of the Members and the provisions of the Governing Documents.

5. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to professional management of the Property and to delegate to such professional manager certain powers and duties of the Association.

6. To enter into the Declaration and any amendments thereto and instruments referred to therein.

7. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain Hamilton Gardens in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at Hamilton Gardens.

8. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Property in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

9. The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the stormwater management system.

10. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

(a) the collection of Assessments which in part shall be used for the maintenance and repair of the stormwater management systems and mitigation or preservation areas, including but not limited to work within retention areas, drainage structures and drainage easements;

(b) the collection of other charges which Owners are obligated to pay pursuant to the Governing Documents;

(c) the enforcement of any applicable use and occupancy restrictions contained in the Governing Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Property or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Members); or

(e) filing a compulsory counterclaim.

The costs of any legal proceedings initiated by the Association, which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by Special Assessment(s) and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations

ARTICLE V
MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Lots until each such Lot is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Lots owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Lot as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Lot is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Lot shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

D. The Association shall have two (2) classes of voting membership:

1. Class "A" Members shall be all Members, with the exception of Declarant while Declarant is a Class "B" Member, each of whom shall be entitled to one (1) vote for each Lot owned.

2. Class "B" Member shall be Declarant, who shall be entitled to three (3) times the total number of votes of all Class "A" Members plus one (1) vote. Class "B" membership shall cease and be converted to Class "A" membership upon the earlier to occur of the following events ("Turnover Date"):

(a) three (3) months after the conveyance of ninety percent (90%) of the total developed lots by Declarant, as evidenced by the recording of instruments of conveyance of such Homes amongst the Public Records of the County;

(b) upon the Class "B" Member abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the Governing Documents. There is a rebuttable presumption that Declarant has abandoned and deserted the Property if Declarant has unpaid Assessments or guaranteed amounts under Section 720.308 of the HOA Act for a period of more than two (2) years;

(c) upon the Class “B” Member filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code;

(d) upon the Class “B” Member 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;

(e) upon a receiver for the Class “B” Member being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the Association or the Members; or

(f) when, in its discretion, the Class “B” Member so determines.

On the Turnover Date, Class “A” Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.

Notwithstanding the foregoing, Class “A” Members are entitled to elect at least one (1) member of the Board when fifty percent (50%) of the total developed lots have been conveyed to Members other than Declarant.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Lots, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the Governing Documents.

F. No Member may assign, hypothecate or transfer in any manner his/her membership in the Association except as an appurtenance to his/her Lot.

G. Any Member who conveys or loses title to a Lot by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Lot and shall lose all rights and privileges of a Member resulting from ownership of such Lot.

H. There shall be only one (1) vote for each Lot, except for the Class “B” Member as set forth herein. If there is more than one (1) Member with respect to a Lot as a result of the fee interest in such Lot being held by more than one (1) person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Lot owned by more than one (1) natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Lot, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity (“Voting Representative”), and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Association, the vote of such Lot shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Lot is owned by a husband and wife they may, but shall not be required to, designate a Voting Representative. In the event a certificate designating a Voting Representative is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Lot owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Lot vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Lot vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different Proxy by the other spouse, the vote of said Lot shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

ARTICLE VI TERM

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association shall exist in perpetuity. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

In the event and upon dissolution of the Association, if the Veterans Administration ("VA") is guaranteeing or the U.S. Department of Housing and Urban Development ("HUD") is insuring the mortgage on any Lot, then unless otherwise agreed to in writing by HUD or VA, any remaining real property of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that acceptance of such dedication is refused, such assets shall be granted, conveyed and assigned to

any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes. Such requirement shall not apply if VA is not guaranteeing and HUD is not insuring any mortgage; provided if either agency has granted project approval for Hamilton Gardens, then HUD and/or VA shall be notified of such dissolution. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the stormwater management system must be transferred to and accepted by an entity which complies with Rule 62-330.310, F.A.C. and Applicant's Handbook Volume I, Section 12.3, and be approved by the Agency prior to such termination, dissolution or liquidation.

ARTICLE VII INCORPORATOR

The name and address of the Incorporator of these Articles is: Brian M. Jones, 300 S. Orange Avenue, Suite 1600, Orlando, Florida 32801.

ARTICLE VIII OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children or spouses of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two (2) or more offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	Jon Bills
Vice President	Doug Prodoehl
Secretary/Treasurer	Megan Willbur

ARTICLE X
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Association (“First Board”) and the “Initial Elected Board” (as hereinafter defined) shall be three (3). The number of Directors elected by the Members subsequent to the “Declarant’s Resignation Event” (as hereinafter defined) shall be not less than three (3) nor more than five (5), as the Board shall from time to time determine prior to each meeting at which Directors are to be elected. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or officers or directors of Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
Jon Bills	1323 Brookhaven Drive Orlando, Florida 32803
Doug Prodoehl	1323 Brookhaven Drive Orlando, Florida 32803
Megan Willbur	1323 Brookhaven Drive Orlando, Florida 32803

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Upon the Turnover Date, the Members other than Declarant (“Purchaser Members”) shall be entitled to elect not less than a majority of the Board. The election of not less than a majority of the Board by the Purchaser Members shall occur at a special meeting of the membership to be called by the Board for such purpose (“Initial Election Meeting”). The First Board shall serve until the Initial Election Meeting.

E. The Initial Election Meeting shall be called by the Association, through the Board, as provided in Paragraph C hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days prior notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Purchaser Members and the remaining number of Directors designated by Declarant.

F. At the Initial Election Meeting, Purchaser Members, who shall include all Members other than Declarant, the number of which may change from time to time, shall elect two (2) of the Directors, and Declarant, until the Declarant’s Resignation Event, shall be entitled to (but not obligated to) designate one (1) Director (same constituting the “Initial Elected Board”). Declarant reserves and shall have the right, until the Declarant’s Resignation Event, to name the successor, if any, to any Director it has so designated.

G. The Board shall continue to be so designated and elected, as described in Paragraph F above, at each subsequent “Annual Members’ Meeting” (as defined in the Bylaws), until the Annual Members’ Meeting following the Declarant’s Resignation Event or until a Purchaser Member-elected Director is removed in the manner hereinafter provided.

A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members.

H. Upon the earlier to occur of the following events (“Declarant’s Resignation Event”), Declarant shall cause all of its designated Directors to resign:

1. When Declarant no longer holds at least five percent (5%) of the Lots for sale in the ordinary course of business and all Lots sold by Declarant have been conveyed as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County; or

2. When Declarant causes the voluntary resignation of all of the Directors designated by Declarant and does not designate replacement Directors.

Upon Declarant’s Resignation Event, the Directors elected by Purchaser Members shall elect a successor Director to fill the vacancy caused by the resignation or removal of Declarant’s designated Director. This successor Director shall serve until the next Annual Members’ Meeting and until his successor is elected and qualified. In the event Declarant’s Resignation Event occurs prior to the Initial Election Meeting, the Initial Election Meeting shall be called in the manner set forth in Paragraph E of this Article X, and all of the Directors shall be elected by the Purchaser Members at such meeting.

I. At each Annual Members’ Meeting held subsequent to Declarant’s Resignation Event, all of the Directors shall be elected by the Members. At the first Annual Members Meeting held after the Initial Election Meeting, a “staggered” term of office of the Board shall be created as follows:

1. a number equal to fifty percent (50%) of the total number of Directors rounded to the nearest whole number is the number of Directors whose term of office shall be established at two (2) years and the Directors serving for a two (2) year term will be the Directors receiving the most votes at the meeting; and

2. the remaining Directors’ terms of office shall be established at one (1) year.

At each Annual Members’ Meeting thereafter, as many Directors of the Association shall be elected as there are Directors whose regular term of office expires at such

time, and the term of office of the Directors so elected shall be for two (2) years, expiring when their successors are duly elected and qualified.

J. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or Purchaser Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or Purchaser Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

ARTICLE XI INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him/her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he/she becomes involved by reason of his/her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he/she is or is adjudged guilty of willful misfeasance or malfeasance in the performance of his/her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

ARTICLE XII BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII
AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by Declarant of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one (1) meeting.

2. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

3. At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the voting interests.

4. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Home or Lot; and (ii) any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

F. Notwithstanding the foregoing provisions of this Article XIII to the contrary, no amendment to these Articles shall be adopted which shall abridge, prejudice, amend or alter the rights of Declarant hereunder, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X hereof, nor shall any amendment be adopted or become effective without the prior written consent of Declarant so long as Declarant holds either a leasehold interest in or title to at least one (1) Lot.

G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV MERGERS AND CONSOLIDATIONS

Subject to the provisions of the Declaration applicable to the Property and to the extent permitted by law, the Association may participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall be approved in the manner provided by Chapter 617, Florida Statutes, as the same may be amended from time to time. For purposes of any vote of the Members required pursuant to said statutes, for so long as Declarant shall own any portion of the Property, any such merger or consolidation shall require Declarant's prior approval.

ARTICLE XV REGISTERED OFFICE AND REGISTERED AGENT

The name and street address of the initial registered office of the Association is Corporation Company of Orlando, 300 South Orange Avenue, Suite 1600 (BMJ), Orlando, Florida 32801.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed her signature, this _____ day of _____, 2018.

Brian M. Jones, Incorporator

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

CORPORATION COMPANY OF ORLANDO

By: _____
Printed Name: _____
Title: _____
Dated: _____

EXHIBIT "C"
BYLAWS OF NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC.

Section 1. Identification of Association

These are the Bylaws of **NEW INDEPENDENCE TOWNHOME OWNERS ASSOCIATION, INC.**, a Florida corporation not for profit ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at 1323 Brookhaven Drive, Orlando, Florida 32803, and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

Section 2. Explanation of Terminology

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Conditions, Restrictions and Easements for Hamilton Gardens ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at the office of the Association or at such other place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written

request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his last known address as it appears on the books of the Association and shall be mailed or hand delivered to the said address or electronically transmitted to the location furnished by the Member for that purpose not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing, delivery or electronic transmission shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Governing Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members. A quorum of any class of Members shall consist of Class Members of such class entitled to cast thirty percent (30%) of the total number of votes of the class. "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Governing Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Members may vote for Directors in person or by Proxy. Members are not permitted to vote for Directors by absentee ballot. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the

"Chairman" (as hereinafter defined in Paragraph 6.2) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by absentee ballot. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his/her successor is duly elected and qualified or until he/she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with Section 720.303(2) of the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places at the office of the Association or at such other place in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held at the office of the Association or at such other place in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. The Board shall have the power to appoint an "Executive Committee(s)" of the Board consisting of not less than three (3) Directors. The Executive Committee(s) shall have and exercise such powers of the Board as may be delegated to such Executive Committee(s) by the Board.

4.13. Meetings of the Board shall be open to all Members. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.14. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Governing Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

Section 6. Officers of the Association

6.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

6.2. The President shall be the chief executive officer of the Association. He/She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he/she may, in his/her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

6.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. If there is more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President(s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated as "First Vice President", "Second Vice President", etc., and shall exercise the powers and perform the duties of the presidency in such order.

6.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

6.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he/she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

6.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Hamilton Gardens.

Section 7. Resignations

Any Director or officer may resign his/her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Homes owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

Section 8. Accounting Records; Fiscal Management

8.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times and in accordance with, but subject to the limitations of, the HOA Act. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Lot within Hamilton Gardens which shall designate the name and address of the Owner thereof, the amount of Individual Lot Assessments and all other Assessments, if any, charged to the Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

8.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated operating expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November or December of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the operating expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Assessment applicable to his/her Home(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his/her last known address as shown on the records of the Association.

8.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating expenses and for all unpaid Operating expenses previously incurred; and (v) items of Operating expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the accrual basis method of accounting.

8.4. Individual Assessments shall be payable as provided in the Declaration.

8.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Assessment.

8.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

8.7. A report of the accounts of the Association shall be made annually by an accountant and a copy of the report shall be furnished to each Member who requests same in writing no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Member upon its delivery or mailing to the Member at his/her last known address shown on the records of the Association.

Section 9. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of Hamilton Gardens; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Governing Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Property, same shall

be conspicuously posted and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

Section 10. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the Governing Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

Section 11. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his or her ownership of a Lot in Hamilton Gardens. The Association shall maintain such information. The Association shall also maintain the electronic mailing addresses and numbers designated by Owners for receiving notices sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

Section 12. Amendment of the Bylaws

12.1. These Bylaws may be amended as hereinafter set forth in this Section 12.

12.2 After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

12.3. Notwithstanding any of the foregoing provisions of this Section 12 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

12.4. Notwithstanding the foregoing provisions of this Section 12, there shall be no amendment to these Bylaws which shall abridge, prejudice, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (1) Home; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

12.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

Section 13. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

Section 14. Recall of Board Members and Election Disputes

Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

Section 15. Notice and Hearing Procedure.

In those instances which specifically provide an Owner the right of Notice and a hearing, the following procedures and provisions shall apply:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing 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 of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. An Owner shall be responsible for all Legal Fees incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration. A fine of less than One Thousand and No/100 Dollars (\$1,000.00) may not become a lien against a Lot.

E. Failure to Pay Assessments. Notice and hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or imposition of suspension of voting rights upon any Owner because of such Owner's failure to pay Assessments or other monetary obligations or charges which are due for more than ninety (90) days.

F. Access. Suspension of use rights to Association Property shall not impair the right of an Owner or tenant of a Home to have vehicular and pedestrian ingress to and egress from such Home, including, but not limited to, the right to park, nor to provide access to utility services provided to the Home.

Section 16. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

NEW INDEPENDENCE TOWNHOME OWNERS
ASSOCIATION, INC.

By: _____
Jon Bills, President

Attest: _____
Megan Willbur, Secretary

[CORPORATE SEAL]

EXHIBIT “D”

RULES AND REGULATIONS

To be promulgated by the Association’s Board of Directors from time to time.

EXHIBIT “E”

DISTRICT PERMITS

[Full copy of Permit follows]