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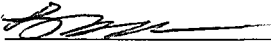
CERTIFICATE OF AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TOWNHOMES AT MARBELLA ON CYPRESS,
THE ARTICLES OF INCORPORATION OF TOWNHOMES AT MARBELLA ON
CYPRESS, INC.,
AND
THE BYLAWS OF TOWNHOMES AT MARBELLA ON CYPRESS, INC.

We hereby certify that the adoption of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Townhomes at Marbella on Cypress, Amended and Restated Articles of Incorporation of Townhomes at Marbella On Cypress, Inc., and Amended and Restated Bylaws of Townhomes at Marbella on Cypress, Inc., (which Declaration was originally recorded in Official Records Instrument #2015000165393, et seq., of the Public Records of Lee County, Florida), which were approved at a meeting of the membership held on November 16, 2021 by not less than a majority of the voting interests of the Association, which is sufficient for adoption under Article 16.3 of the Declaration, Article VII of the Articles of Incorporation, and Article 10.3 of the Bylaws.

DATED this 23rd day of December, 2021.

Witnesses:

TOWNHOMES AT MARBELLA ON CYPRESS, INC.

sign: 

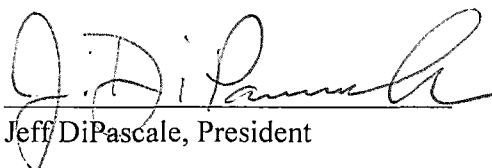
print: Isabel Cruz

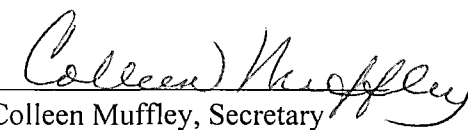
sign: 

print: Julie Lawson

sign: 

print: Isabel Cruz

By: 
Jeff DiPascale, President

Attest: 
Colleen Muffley, Secretary

(Seal)

sign: Julie Lawson
print: Julie Lawson

STATE OF FL
COUNTY OF Lee

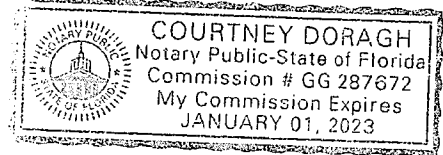
The foregoing instrument was acknowledged before me, by means of ~~X~~ physical presence or ___ mobile notarization, this 23rd day of December, 2021, by Jeff DiPascale, as President of Townhomes at Marbella on Cypress, Inc., a Florida not for profit corporation, on behalf of the corporation. He is personally known to me or has produced ___ as identification.

NOTARY PUBLIC

sign Courtney Doragh
print Courtney Doragh
State of Florida at Large (Seal)

My Commission expires

STATE OF FL
COUNTY OF Lee

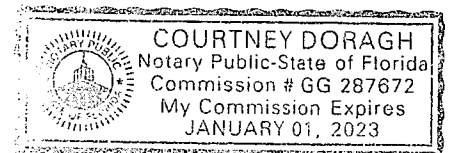


The foregoing instrument was acknowledged before me, by means of X physical presence or ___ mobile notarization, this 23rd day of December, 2021, by Colleen Muffley, as Secretary of Townhomes at Marbella on Cypress, Inc., a Florida not for profit corporation, on behalf of the corporation. She is personally known to me or has produced ___ as identification.

NOTARY PUBLIC

sign Courtney Doragh
print Courtney Doragh
State of Florida at Large (Seal)

My Commission expires



AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
TOWNHOMES AT MARBELLA ON CYPRESS

[Substantial Rewording of Declaration for Townhomes At Marbella On Cypress. See Declaration for the Townhomes At Marbella On Cypress and amendments thereto for present text.]

This Declaration shall govern the Townhomes At Marbella On Cypress, a Subdivision (herein, “the Subdivision”).

ARTICLE 1
DEFINITIONS

For all purposes, the terms used in this Declaration (herein, “Declaration”), the Articles of Incorporation of the Association and Association Bylaws (herein, “the Governing Documents”), shall have the meanings stated in the Florida Homeowners Association Act (Section 720, Florida Statutes) and as set forth below, unless the context otherwise requires. Also, throughout the Governing Documents, whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of either gender shall be deemed to include both genders. In the event any term in the Governing Documents is deemed ambiguous, then the Board of Directors shall define the term, which definition shall be binding. A term shall not be construed in favor of or against the Association or any owner.

The following words and terms, when used in this Declaration (unless the context shall clearly indicate otherwise), shall have the following meanings:

1.1 “Act” or “Homeowners’ Association Act” means Chapter 720, Florida Statutes, as amended from time to time.

1.2 “Architectural Review Committee” or “ARC” shall refer to the committee established by the Board of Directors of the Association described in Article 10 of this Declaration.

1.3 “Articles of Incorporation” or “Articles” means the Articles of Incorporation for Townhomes At Marbella On Cypress, Inc., a Florida not-for-profit corporation in the form attached hereto as **Exhibit “B”** and incorporated herein by reference, as amended from time to time.

1.4 “Assessment” means a charge against a Lot and its owner as provided in Article 7 of this Declaration.

1.5 “Association” shall mean and refer to Townhomes At Marbella On Cypress, Inc., a Florida not-for-profit corporation established for the purposes set forth herein.

AMENDED AND RESTATED DECLARATION OF COVENANTS,
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1.6 “**Board**” shall mean the Board of Directors of the Association, appointed or elected in accordance with the Bylaws of the Association.

1.7 “**Bylaws**” shall mean and refer to the Bylaws of Townhomes At Marbella On Cypress, Inc., in the form attached hereto as **Exhibit “C”** and incorporated herein by reference.

1.8 “**Common Area**” shall mean all portions of the Properties exclusive of the Lots, including all parcels or tracts dedicated to the Association on any subdivision plat of the Properties. Common Areas do not include any part of the common elements of Marbella on Cypress Condominiums Association, Inc., which is adjacent to the Community.

1.9 “**Common Expenses**” means all expenses properly incurred by the Association in the performance of its powers and duties.

1.10 “**Community**” shall mean all real property comprising Townhomes At Marbella on Cypress and the improvements thereon.

1.11 “**Declaration**” shall mean and refer to this Amended and Restated Declaration Of Covenants Conditions And Restrictions For Townhomes At Marbella On Cypress, as it may be amended or supplemented from time to time.

1.12 “**Family**” or “**Single Family**” means any of the following: **(a)** One natural person; **(b)** Two or more natural persons who commonly and regularly reside together as a single housekeeping Unit, each of whom is related by blood, marriage, or adoption to each of the others; or **(c)** Two (2) or more natural persons meeting the requirements of (b) above, except that there is among them not more than one person who is not so related to some or all of the others.

1.13 “**Governing Documents**” shall mean and refer to this Declaration, the Articles of Incorporation, and Bylaws of the Association, and any rules adopted by the Board of Directors.

1.14 “**Guest**” means a person who is physically present in or occupies a Townhome on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.15 “**Lease**” means the grant by an Owner of a right to occupy the Owner's Townhome Unit for valuable consideration.

1.16 “**Lot**” means one or more of the numbered platted parcels of land as shown on any subdivision plat for Properties, upon each of which a Townhome Unit has been constructed. Wherever “**Lot**” is used, it shall be interpreted as though it was followed by the words “and the Townhome Unit constructed thereon,” unless the context clearly requires another meaning.

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1.17 “Notice” shall mean delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association.

1.18 “Occupant” when used in connection with a Townhome Unit, means a person who is physically present in the Townhome Unit on two (2) or more consecutive days, including staying overnight. “Occupy” means the act of being an occupant.

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

1.20 “Plat” shall mean and refer to any final plat for the Townhomes At Marbella On Cypress recorded in the Public Records of Lee County, Florida.

1.21 “Primary Occupant” means the natural person approved for occupancy, together with that person's family, when legal title to a Townhome Unit is held in the name of more than two (2) persons, or by a Director, Manager, or Partner of a corporation or other entity which is not a natural person, as further provided herein.

1.22 “Property” or “Properties” shall mean and refer to the real property described on **Exhibit “A”** together with such additional property as is subjected to this Declaration. The term “Townhomes At Marbella” may be used in this Declaration interchangeably with “Property” or “Properties.” The Properties does not include any common elements or any other part of Marbella on Cypress Condominiums Association, Inc., which is adjacent to the Community.

1.23 “Rules” or “Rules and Regulations” means the rules governing the use and occupancy of the Community adopted by the Association Board of Directors as provided herein, the Articles of Incorporation and the Association Bylaws.

1.24 “Service Charge” means a fee or charge against one (1) or more Owners, Lots or Townhome Units for any service, material or combination thereof which may be provided by the Association for the use and benefit of the Owner on a voluntary basis, such as contracting in bulk for repairs, services, materials, or maintenance. The amount paid or incurred by the Association on behalf of the Owners accepting or receiving such material or service shall be a service charge against the Lots or Townhome Units so benefitted. The Owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.25 “Special Assessment” shall mean and refer to any assessment in addition to the Regular and Individual Assessments authorized herein, levied by the Association, in any fiscal year, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, or for the purpose of defraying, in whole or in part, any other costs authorized by this Declaration, the Articles of Incorporation, the Bylaws or by state law.

AMENDED AND RESTATED DECLARATION OF COVENANTS,
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1.26 “**Temporary**” or “**Temporarily**” shall mean not more than thirty (30) days in any period of six (6) consecutive months, unless stated otherwise.

1.27 “**Townhome Unit**” means any or all of the residences which will be constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever either term is used, it shall be interpreted as though it was followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

1.28 “**Townhomes at Marbella on Cypress**” shall mean the name of the Properties.

1.29 “**Voting Interest**” shall mean and refer to the appurtenant vote(s) of each Lot located within the Properties.

ARTICLE 2 DURATION AND GENERAL DEVELOPMENT PLAN

2.1 Duration. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Amended Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Amended Declaration is recorded in the Public Records of Lee County, Florida, after which time the covenants, conditions and restrictions contained in this Declaration shall be automatically extended for successive periods of ten (10) years each, unless prior to the end of such twenty-five (25) year period, or each successive ten (10) year period, an instrument signed by the then Owners of eighty percent (80%) of the Lots agreeing to terminate the covenants, conditions and restrictions at the end of such twenty-five (25) year or ten (10) year period has been recorded in the Public Records of Lee County, Florida. Provided, however, that no such agreement to terminate the covenants, conditions, and restrictions shall be effective unless made and recorded at least ninety (90) days in advance of the effective date of such change.

2.2 Development. The Properties were developed into Lots intended for “zero lot line” cluster housing. This is not a Condominium. Rather, this is a townhome product intended to be fee simple. Other areas of Marbella on Cypress were developed as a Condominium.

2.3 Operation, Maintenance, and Repair of Common Areas. The operation of the Subdivision in accordance with this Declaration and other authority shall be through Townhomes At Marbella On Cypress, Inc. (herein, “the Association”). The purpose of the Association shall be to operate, maintain and repair the Common Area described on **Exhibit “A,”** and any improvements thereon; to maintain the entrance features of the Properties; to maintain and repair any irrigation facilities servicing land which the Association is obligated to maintain; to maintain and repair the recreational facilities, to maintain any buffer and landscape areas; and take such other action as the Association is authorized to take with regard to the Properties pursuant to its

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Articles, Bylaws and this Declaration. The Association shall own title to Common Areas in the Community not dedicated and accepted by the public.

2.4 Provisions of the Amended and Restated Easement, Cost Sharing and Maintenance Agreement. The Association will be a successor in interest to Royal Public Fort Myers II, LLC to the Amended and Restated Easement, Cost Sharing and Maintenance Agreement (the "Cost Sharing Agreement") as recorded as Instrument number 2012000067271 in the Official Records of Lee County, Florida, and as later amended by the First Amendment to Amended and Restated Easement, Cost Sharing and Maintenance Agreement as recorded as Instrument Number 2013000271349 in the Official Records of Lee County, Florida, and as may be amended from time to time. The Common Area of the Association and the Lots shall be subject to the easements, terms, and provisions of the Cost Sharing Agreement. In addition, the Association shall be responsible for any financial obligations of the Cost Sharing Agreement.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, Bylaws, Rules, and Regulations, and this Declaration. The foregoing does not include persons or entities that hold a leasehold interest or an interest merely as security for the performance of an obligation. Ownership, as defined above, shall be the sole qualification for membership. When any Lot is owned of record by two (2) or more persons or other legal entity, all such persons or entities shall be members; provided, however, no more than one (1) vote shall be cast in connection with a Lot. An Owner of more than one (1) Lot shall be entitled to one (1) membership for each Lot owned. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and it shall be automatically transferred by a conveyance of that Lot.

3.2 Voting. Votes shall be cast as provided in the Bylaws for the Association.

ARTICLE 4 EASEMENTS

4.1 Owners' Easements of Enjoyment. Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area that shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association from time to time to establish, modify, amend and rescind reasonable Rules and Regulations regarding use of the Common Area and the Lots;

(b) The right of the Association to suspend the voting rights and Common Area use rights for any period during which any regular Installment Assessment levied under this Declaration against a Lot remains unpaid for a period in excess of ninety (90) days;

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(c) The right of the Association to suspend Common Area use rights for a reasonable time for violations of this Declaration and the Rules and Regulations, which such suspension shall be in accordance with state law;

(d) The right of the Association to dedicate, transfer or mortgage all or any part of the Common Area; provided, however, Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without the majority approval of the Board and the approval of sixty-six and two-thirds percent (66 2/3%) of the Voting Interests (in person or by proxy) at a duly noticed meeting of the members in which there is a quorum present;

(e) The right of the Association to grant easements as to the Common Area or any part thereof; and

(f) The right of the Association to otherwise deal with the Common Area.

4.2 Delegation of Use. Any Owner may delegate his or her right of enjoyment and other rights in the Common Area to: (i) all family or household members of such Owner; or (ii) such Owner's tenants or contract purchasers; and (iii) all family or household members of such tenants or contract purchasers provided the foregoing actually reside in such Owner's Home. Any delegation to tenants or invitees of any of the foregoing is subject to this Declaration and the Association's Rules and Regulations.

4.3 Partition; Separation of Interests. There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall any Owner or any other person acquiring any interest in the Community, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Townhome Unit owned in co- tenancy. The ownership of any Lot and the ownership of the Townhome Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Townhome Unit hold membership in the Association.

4.4 Easements. Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Amended Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, for the location of, and access for the operation, maintenance, repair, and replacement of plumbing, electrical, mechanical and HVAC equipment (including but not limited to air conditioning compressors, conduits, lines, and other apparatus) which may be situated on certain lots but serves neighboring lots, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

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(a) Utility and other Easements. The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, and to relocate any existing easements in any portion of the Properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(b) Encroachments. Not for any reason other than the intentional act of the Owner or the Association, any Townhome encroaches upon any of the Common Areas, upon any other Lot, or any Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(c) Ingress and Egress. A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees, and invitees for pedestrian traffic over, though, and across sidewalks, streets, paths, walks, and other portions of the Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, though, and across such portions of the Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(d) Drainage. A perpetual, non-exclusive easement shall exist in favor of Declarant, the Association, the District, and their employees or other designees for the use of drainage areas established throughout the Community, and an easement for ingress, egress, and access to enter any portion of the Community in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be Placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

(e) Association Easement. A non-exclusive easement is hereby established over all portions of the Common Areas, for ingress and egress to and from all portions of the Properties, and for maintenance of the Common Area and all Lots for the benefit of the Association, and the ARC (as defined herein) and their respective contractors, agents and licensees. The Association is hereby granted a non-exclusive easement over, on, under, across and through the Properties for the purpose of maintaining, repairing, replacing and operating such of the irrigation facilities as may have been or may hereafter be installed in connection with its development of the Properties. Association reserves the right to install, operate and maintain

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irrigation and sprinkling equipment on any Common Area or within landscaped rights of way which the Association is obligated to maintain under this Declaration. The Association shall be obligated to maintain, operate, replace and repair such irrigation and sprinkling equipment at its own expense and such shall be a Common Expense. In addition to the aforementioned easements, the Association reserves for itself, the ARC (as defined herein), and their respective grantees, successors, legal representatives, and assigns, an easement for ingress and egress to, over and across each Lot and the right to enter upon each Lot for the purpose of exercising its and their rights and obligations under this Declaration. Entry into any Lot, absent emergency conditions, shall not be made without reasonable notice to the Owner or occupant thereof for any purpose.

(f) Owners' Easements. Owners shall have a non-exclusive easement over the Lots of other Owners for the purpose of delivery of bulky items and for the purpose of major improvements or repairs. In the event the user of such easement damages the Lots, or landscaping or improvements thereon, over which the user traverses, such user shall be responsible for the repair of the damages.

ARTICLE 5 RIGHTS, OBLIGATIONS, AND POWERS OF THE ASSOCIATION

5.1 Responsibilities. The Association, subject to the rights of the Owners set forth in this Amended Declaration, shall be responsible for the exclusive management and control of the Common Area and shall keep the same in good, clean, and proper condition, order, and repair. The Association shall be responsible for the payment of all costs, charges, and expenses incurred in connection with the operation, administration, and management of the Common Area and the performance of its other obligations hereunder.

5.2 Board of Directors. Except as expressly otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the Members shall be required. The officers and Directors of the Association have a fiduciary relationship to the Members. An Owner does not have the authority to act for the Association by virtue of being an Owner.

5.3 Manager. The Association may obtain, employ and pay for the services of an entity or person, hereinafter called the "Manager," to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Association or by the Manager. The Association shall open the management contract up for new bidding every three (3) years from the date of hiring of any management company. Management contracts shall specifically state that they shall not automatically renew.

5.4 Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject

to such restrictions, if any, as may from time to time be provided in the Association's Articles or Bylaws.

5.5 Association as Owner of Lots. The Association has the power to purchase Lots and Townhome Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns three (3) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests. This limitation shall not apply to Lots and Townhome Units acquired by the Association through lien foreclosure or by deed in lieu of lien foreclosure.

5.6 Limitation on Liability. Notwithstanding the duty of the Association to maintain and repair the Common Areas, and certain parts of the Townhome Units, the Association is not liable to owners for property damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Owners or other persons.

5.7 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation, the Bylaws, and by state law.

ARTICLE 6 MAINTENANCE, ALTERATIONS, AND PARTY WALLS

6.1 Maintenance of Lots and Townhomes. The maintenance of the Lots and Townhomes shall be as follows:

(a) Owner Responsibility. Each Owner must maintain his or her Lot, including, without limitation, all structures, landscaping, and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the standards as determined and published by the Board of Directors, and any, other applicable covenants, except to the extent that such maintenance responsibility is assigned to or assumed by the Association pursuant to this Amended Declaration or additional covenants applicable to such Lot. In addition, each Owner shall maintain the sidewalk and landscaping located between the boundary of such Owner's Lot and the back-of-curb of any roadway lying adjacent to the boundary of his or her Lot, unless the Association assumes all or part of such maintenance responsibility, and then only to the extent not assumed by the Association.

(b) Association Responsibility. The Association shall be responsible for:

(1) maintenance (including, mowing, fertilizing, watering, pruning, and controlling disease and insects), of all lawns and landscaping installed in the Lot as part of the initial construction on the Lots, specifically excluding any enclosed courtyard, patio, or other area not readily accessible from outside the dwelling;

(2) painting of all exterior painted portions of any Townhome Unit, including any garage, garage door, exterior doors, shutters, soffits, fascia on the dwelling, and any

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fence or perimeter walls erected along the Lot boundaries as part of the original construction on the Lots or any replacement thereof (“Boundary Fences”);

- (3) caulking of the exterior portions of all windows and doors;
- (4) clean, repair and/or replacement of the gutters and roofs (including shingles and roof decking, but no roof trusses) of Townhome Units, including the garages;
- (5) pressure cleaning of front sidewalks, exterior front steps, roofs, and the exterior walls of all Townhome Units and garages;
- (6) repair and replacement of any boundary fences installed at the time of original construction of the development;
- (7) operation, maintenance, repair, and replacement of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, and time clocks, to the extent they are located within the Common Areas or Properties) serving the Lots, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Lot;
- (8) preventative termite treatment of all exterior walls and foundations of dwellings and garages provided that the Association shall not be liable if such treatment proves to be ineffective;
- (9) repair or replacement of any damaged garage door and exterior door hardware, not including any garage door openers; provided. However, the cost of such repair/replacement shall be assessed against the Owner of the Lot as a Special Charge Assessment;
- (10) repair or replacement of any lamp post(s) and mail kiosk installed at the time of original construction of the Community, whether on Lot or in the Common Area; and
- (11) repair and replacement of any fixtures or furnishings originally placed or installed at the time of original construction on any recreational amenity situated in the Common Area, if any; and
- (12) pest control services for the inside of each Townhome Unit at the discretion of the Board of Directors, with the cost thereof being part of the common expenses, if so provided as a Common Expense of all Owners. An Owner has the option to decline such service unless the Association determines that such service is necessary for the protection of other Townhome Units, in which case the Owner must either permit the Association’s pest control company to enter his or her Townhome Unit, or employ a licensed pest control company of his or her own selection to enter his or her Townhome Unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. In all events, the cost of pest control provided by the Association is a Common Expense, so the election of an Owner not to use the service will not reduce the Owner’s assessments. In the event that the Board of Directors does

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not elect to provide pest control services for the inside of each Townhome Unit, the Owner shall employ a licensed pest control company of his or her own selection to provide such service. The Board of Directors may prescribe the minimum treatment for Owner employed pest control services, including frequency and verification of services.

The Association's responsibility to maintain, repair, and replace any improvement on any Owner's Lot is expressly limited to those items enumerated in this Article 6.1(b)(1) thru (12), inclusive. Each Owner shall be responsible for maintaining, repairing, and replacing all other improvements on their Lot.

The Association shall not be responsible for any maintenance or repairs to any glass surfaces, any screening, anything contained within any Townhome Unit, including any garage, or courtyard, or any landscaping, improvements, or modifications added or made to any Lot after the conveyance of the Lot by the Developer.

All other portions of the Lots (and the improvements located thereon) shall be the responsibility of the respective Owners, including, without limitation, maintenance, repair, and replacement, as necessary, of all pipes, lines, wires, conduits, or other apparatus which serve only the Lot, whether located within or outside the Lot's boundaries (including all utility lines and courtyard drain and associated pipes serving only the Lot) and all landscaping located in the rear of the Lot.

6.2 Party Walls. The responsibility of the Owners with regard to party walls shall be as follows:

(a) **Definition.** Any wall which by definition includes any utility lines or facilities within the wall, which is built as part of the original construction of any Townhome Unit subject to this Declaration and placed on the dividing line between adjoining Townhome Units and Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

(b) **Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who share the wall. In the event of a dispute between Owners as to responsibility for damages to a party wall which exists between their Units, the Decision of the Board of Directors with regard to the dispute and responsibility for said damages shall be final.

(c) **Weatherproofing.** Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements, or to infestation by termites or other injuries, agencies or elements, shall bear the whole cost of furnishing the necessary protection against such elements.

(d) **Contribution.** The right of any Owner to contribution from any other Owner(s) under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors in title.

(e) **Binding Arbitration.** Any dispute concerning a party wall shall be submitted to arbitration under Chapter 682, Florida Statutes. Each party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

6.3 Maintenance and Alteration of Common Areas.

(a) **Common Area Maintenance.** Except as otherwise provided herein, the Association shall maintain, repair, and replace any and all improvements constructed on the Common Areas, including without limitation all landscaping, roads, utility easements dedicated to the Association, conservation areas, recreational areas, the components of the irrigation systems, including but not limited to the tap into the mainline, timers, switching devices and heads, drainage structures, utility lines, walkways, light fixtures, and other structures. Additionally, where the Common Areas are contiguous to the right-of-way of a road, the Association shall maintain all landscaping (if any) between the Common Areas and the pavement within such right-of-way.

(b) **Alterations and Additions.** Any material alteration or substantial addition to the Common Areas which costs more than ten percent (10%) of the annual budget, including reserves, must be approved by a majority of the voting interests present and voting at a meeting called for the purpose. However, if the material alteration or substantial addition is necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair, or replace the Properties, no prior approval by the Owners is necessary.

ARTICLE 7 SURFACE WATER MANAGEMENT SYSTEMS, LAKES, AND WET RETENTION PONDS

The Association shall be responsible for the operation and maintenance of all surface water management systems, ditches, canals, lakes, and water retention ponds in the Community as permitted under South Florida Water Management District. Copies of the permit and any future SFWMD permit actions shall be maintained by the Association's Registered Agent for the Association's benefit.

7.1 All surface water management systems within the Community which are accepted by or constructed by the Association, excluding those areas (if any) normally maintained by the County, will be the ultimate responsibility of the Association, which may enter a Tract and make whatever alterations, improvements or repairs that are deemed necessary to provide or restore proper water management. The cost shall be a common expense of the Association. Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any storm management systems or conservation areas, without first obtaining the necessary permits from all governmental agencies having jurisdiction.

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7.2 No structure of any kind (including docks) shall be constructed or erected in or on, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow or volume of water in, any portion of any water management area including, but not limited to lakes, ponds, swales, drainage ways, or wet retention ponds or areas intended for the accumulation of runoff waters, without the specific written permission of the Association.

7.3 No Owner or other person shall unreasonably deny or prevent access to water management areas for maintenance, repair, or landscaping purposes by Declarant, the Association, or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefore are hereby specifically reserved and created.

7.4 No Lot, Tract or Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip- rap, block, divert or change the established water retention, drainage, or drainage easement areas, that have been or may be created. No person other than the Declarant or the Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

7.5 All Stormwater Management Systems and Conservation Areas, excluding those areas (if any) maintained by the County, will be the ultimate responsibility of the Association. The Association may enter any Lot or Tract and make whatever alterations, improvements or repairs are deemed necessary to provide, maintain, or restore proper surface water management. The cost shall be an expense of the Association.

7.6 No Person may remove native vegetation that may become established within the conservation areas. "Removal" includes dredging, application of herbicide, pulling and cutting.

7.7 Tracts may contain or abut conservation areas, which are protected under recorded conservation easements. These areas may not be altered from their present conditions except in accordance with the restoration program included in the conservation easement, or to remove exotic or nuisance vegetation, including without limitation, melaleuca, Brazilian pepper, Australian pine, Japanese climbing fern, cattails, Primrose willow, and grapevine. Property owners are responsible for perpetual maintenance of signage required by the permit issued by Southwest Florida Water Management District, which maintenance will be maintained to the greatest degree lawful by IBE Association.

ARTICLE 8 COVENANT FOR MAINTENANCE ASSESSMENTS

8.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed or other conveyance thereto, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association the following assessments and charges: (1) Regular Assessments or charges for Common

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Expenses; (2) Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, or for the purpose of defraying, in whole or in part, any other costs authorized by the Governing Documents or state law; and (3) Individual Assessments or charges on a Lot which shall include fines against a particular Lot as may be provided by the terms of the Governing Documents or state law. Such assessments and charges, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a lien upon the property against which such assessment is made. Each such assessment or charge, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due.

8.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Community, and for the improvement and maintenance of the Common Area and the carrying out of the other responsibilities and obligations of the Association under this Declaration, the Articles and the Bylaws. Without limiting the generality of the foregoing, such funds may be used for the acquisition, improvement and maintenance of Properties, services and facilities related to the use and enjoyment of the Common Area, including the costs of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes and assessments made or levied against the Common Area; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the maintenance, landscaping and beautification of the Common Area and such public lands as may be designated by the Association; the employment of security personnel to provide services that are not readily available from any governmental authority; and such other needs as they may arise.

8.3 Establishment of Assessments and Budget. Regular Assessments shall be uniform for all Lots. Except as otherwise provided in this Declaration to the contrary Special Assessments and Reserves shall be allocated equally to each Owner. Regular Assessments shall be established by the adoption of a twelve (12) month operating budget by the Board. The budget shall be in the form required by Section 720.303(6), Florida Statutes, as amended from time to time. Written notice of the amount and date of commencement thereof shall be given to each Owner not less than fourteen (14) days in advance of the due date of the first installment thereof. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the budget is adopted or amended mid-year or in order to change the fiscal year of the Association.

8.4 Special Assessments. In addition to the Installment Assessments authorized above, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement, including fixtures and personal property related thereto, or for the purpose of defraying, in whole or in part, any other costs authorized by the Governing Documents or by state law, including the cost of any expense for specific purposes of a nonrecurring nature, which are not in the nature of

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capital improvements. No vote of the Members shall be required for such Special Assessments, and such Special Assessments may be established by the Board, from time to time, and shall be payable at such time or time(s) as determined by the Board.

8.5 Individual Assessments. Any charge, cost or expense, including fines that are required to be paid by an Owner related to such Owner, and any and all other accrued, liquidated indebtedness of any Owner to the Association arising under any provision of the Governing Documents or state law, including any indemnity contained herein, or by contract express or implied, or because of any act or omission of any Owner or of any Owner's family, household members or invitees, also shall be assessed by the Association against such Owner's Lot after such Owner fails to pay the same when due or upon demand and such default continues for thirty (30) days after written notice. Individual assessments may be collected as provided in Sections 8.6, 8.7, and 8.8 of this Article 8.

8.6 Due Dates of Assessments. The Board shall fix the amount of the Regular Assessment for Common Expenses against each Lot not later than December 1st of each calendar year for the following calendar year, unless otherwise determined by the Board. Written notice of the Regular Assessment for Common Expenses shall be sent to every Owner subject hereto. The Board may, from time to time, determine when the Regular Assessments will be collected by the Association (i.e. monthly, quarterly, or annually). Unless otherwise established by the Board of Directors, Regular Assessments for Common Expenses shall be collected on a quarterly basis. The due date for Special Assessments and Individual Assessments shall be as established by the Board.

8.7 Lien for Assessments. All sums assessed to any Lot pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, shall be secured by a continuing lien on such Lot in favor of the Association. The lien for assessments provided for herein shall be subordinate to the lien of any first mortgage which is given to or held by an Institutional Lender. The recordation of this Declaration in the public records of Lee County, Florida, shall constitute constructive notice to all subsequent purchasers and creditors of the existence of the lien hereby created in favor of the Association and the priority thereof. The lien for assessments provided herein is effective from and after the recording of such lien in the public records of Lee County but shall relate back to the date that this Declaration was recorded. The liability of an Institutional Lender shall be as provided by law.

8.8 Effect of Nonpayment of Assessments: Remedies of the Association. Assessments and installments on such assessments paid on or before the date when due shall not bear interest, but all sums not paid on or before the date when due shall bear interest at the rate of eighteen (18%) percent per annum (or the maximum allowable rate by law, whichever is greater) from the date when due until paid and there shall also be assessed as an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for each delinquent installment that the payment is late. All payments on accounts shall be first applied to fines levied by the Association, then to interest accrued by the Association, then to any administrative late fee, then to costs and attorneys' fees, and then to the delinquent assessment

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payment first due. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her Lot.

8.9 Foreclosure and other Remedies for Collection. The lien for sums assessed pursuant to this Declaration may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed under Florida law. In any such foreclosure, the Owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date the Owner's title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In lieu of foreclosing its lien, the Association, at its election, shall have the right to collect amounts due it by suit for collection brought against the Owner personally obligated for payment or by demand for rent as permitted state law.

8.10 Acceleration of Assessments. In the event of nonpayment of any assessment on or before the date when due, at its option, the Association may accelerate the Regular Assessments due to the end of the budget year, regardless of whether Regular Assessment installments are not yet due and payable, whereupon the entire budget year's Regular Assessments shall be immediately due and payable, and, at its option, the Association may declare all other sums, including Special Assessments, Individual Assessments, fines, interest, and administrative late fees, immediately due and payable.

8.11 Resale Capital Contribution. There shall be collected upon every conveyance of an ownership interest in a Lot by an Owner a resale capital contribution (the "Resale Capital Contribution") in an amount not to exceed Five Hundred and No/100 Dollars (\$500.00) payable to Association. The Resale Capital Contribution shall be a recurring charge payable to Association upon all conveyances of a Lot. The amount of the Resale Capital Contribution and the manner of payment shall be determined by resolution of the Board from time to time; provided, however, all Lots shall be assessed a uniform amount. The Resale Capital Contribution shall be paid within thirty (30) days of closing by the new Owner. Amounts paid as Resale Capital Contribution are not to be considered as advance payments of Installment Assessments. Unpaid Resale Capital Contributions may be collected as provided in Sections 8.6, 8.7, and 8.8 of this Article 8.

ARTICLE 9 INSURANCE AND CASUALTY LOSSES; CONDEMNATION

Even though this development is not a residential condominium, it was the Developer's intent that the Association would obtain and maintain property insurance as though this development was created and developed as a residential condominium under Florida law. The

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Association will continue this policy. In order to adequately protect the Association and its Members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

9.1 By the Owner. Each Owner shall obtain and maintain at all times an insurance policy insuring his or her own Townhome Unit and Lot, and the personal property therein; all floor, wall and ceiling coverings; built-in cabinets and countertops, appliances, water heaters, water filters, electrical fixtures, window treatments including curtains, drapes, blinds, hardware and similar window treatment components or replacements of any of the foregoing which are located within the Townhome Unit and Lot and serve only such Townhome Unit and Lot. This insurance policy shall be for full insurable value, replacement costs, or similar coverage. In addition, each Owner is expected to insure all alterations, modifications or additions made to their Townhome Unit or by his predecessor in interest or title. In addition to the foregoing, each Owner shall be required to purchase loss assessment protection at the maximum available coverage amount.

Owner shall provide the Association proof of insurance coverage required by this Article 9.1 at least annually or upon the written request of the Association. If an Owner fails or refuses to maintain insurance required herein or provide the Association proof of such coverage at least annually or within thirty (30) days of the Association's written request, the Association is authorized (but not under no circumstances required) to purchase such insurance as the duly authorized agent of the Owner and assess the Owner an Individual Assessment, which if not paid may become a lien subject to foreclosure as provided in Article 8. In addition, the Association may file a court action to compel the purchase of insurance required herein and/or levy daily fines for violations of this section in an amount up to One Hundred Dollars (\$100) per day but not exceeding Five Thousand Dollars (\$5000) in the aggregate.

9.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage as though this was a residential condominium governed by Chapter 718 of the Florida Statutes, as amended from time to time and under these documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure. Once a Certificate of Occupancy (CO) or temporary Certificate of Occupancy has been issued for any Townhome Unit within a building, the Association shall then be responsible for obtaining and maintaining insurance on the entire building in accordance with this Article 9.

9.3 Required Coverage. The Association shall maintain adequate insurance covering the buildings and other improvements on the individual Lots, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors to be reasonable in the exercise of its good business judgment, such insurance to afford at least the following protection:

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(a) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an “all risk” property contract.

(b) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner. The Association's liability coverage does not extend to accidents, injuries or deaths occurring inside Townhome units.

(c) **Automobile.** Automobile liability for bodily injury and property damage for owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(d) **Statutory Fidelity Bond.** Comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors and/or employees of the Association and all others who handle or are responsible for handling funds of the Association. Such coverage shall be in an amount at least equal to the estimated maximum of funds under the control of the Association at any given time.

9.4 Property Insurance. Every property insurance policy issued or renewed shall provide primary coverage for:

(a) all buildings or other Lot improvements as initially installed on a Lot or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the building was developed and the Townhome Unit was initially conveyed; and

(b) all portions of the property for which this Declaration requires coverage by the Association.

Anything to the contrary notwithstanding, the terms “building(s)”, “Townhome Units,” or “other lot improvements,” or any other term found in this Declaration which defines the scope of property or casualty insurance that this Association is required to obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Lot and serve only one Lot.

Every property insurance policy issued or renewed to an individual Owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual Owner providing such coverage shall be without rights of subrogation against the Association. All real or personal property which is excluded from the coverage provided by the Association as set forth above shall be insured by the individual Owner.

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9.5 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Owners. Some of the more common options include:

- (a) Flood insurance.
- (b) Broad Form Comprehensive General Liability Endorsement.
- (c) Directors and Officers Liability.
- (d) Medical Payments.
- (e) Leakage, seepage and wind-driven rain.
- (f) Endorsement for loss by operation of local ordinance.

9.6 Description of Coverage. A detailed summary of the coverages included in the Community policies, and copies of the Community policies, shall be available for inspection and copying by Owners or their authorized representatives upon request.

9.7 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

9.8 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Owners and their respective mortgagees.

(a) **Mortgagee.** If a mortgagee endorsement has been issued as to a Lot, the shares of the mortgagee and the Owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a Townhome Unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(b) **Deductibles.** The policies may provide for reasonable deductibles. In the case of property insurance, the deductible or any uninsured loss for which the Association is

required under this Declaration to insure shall be considered a common expense and proportionally shared by all Owners.

9.9 Distribution of Proceeds. Insurance proceeds from Association policies shall be distributed to or for the benefit of the Lot Owners in the following manner:

(a) **Costs of Protecting and Preserving the Property.** If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(b) **Cost of Repair or Reconstruction.** If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the Costs of reconstruction. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial Owners, remittances to Townhome Unit Owners and their mortgagees being paid jointly to them.

(c) **Failure to Repair or Reconstruct.** If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial Owners, remittances to Townhome Unit Owners and their mortgagees being payable jointly to them.

9.10 Association as Agent. The Association is hereby irrevocably appointed as agent for each Townhome Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Community.

ARTICLE 10 REPAIR OR RECONSTRUCTION AFTER CASUALTY

If any part of any Townhome Unit or Lot improvements which are covered by the Association's insurance policy is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

10.1 Damage to Townhome Unit Interiors. Where loss or damage occurs within the interior of one or more Townhome Units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged Townhome Unit(s) in shares. The Owner(s) of the damaged Townhome Unit(s) interior shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

10.2 Damage to Buildings or Other Lot Improvements Covered by the Association's Insurance Policy. Where loss or damage occurs to any Townhome Units or other Lot improvements which are covered by the Association's insurance policy, it shall be mandatory

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for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(a) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration and shall negotiate and contract for repair and reconstruction.

(b) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the building or other Lot improvements which are covered by the Association's insurance policy, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares of the common expenses for the deficiency. Such special assessments need not be approved by the Owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

10.3 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be distributed to all Owners, pro rata.

10.4 Equitable Relief. In the event of damage to the Townhome Unit or other Lot improvements which are covered by the Association's insurance policy which renders any Townhome Unit uninhabitable, if repairs and reconstruction are not begun and completed within a reasonable period of time, the Owner of the uninhabitable Townhome Unit may petition a court for equitable relief. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within twelve (12) months following the damage or destruction, and is completed within twelve (12) months thereafter.

10.5 Plans and Specifications. Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the owners of at least three-fourths (3/4ths) of the units, by the ARC, and by the primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Townhome Unit without the consent of the Townhome Unit Owner and his or her institutional mortgagee, if any.

ARTICLE 11

ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS

11.1 Generally. Every Owner and all Guests, Tenants, and Occupants of the Townhome Units, shall at all times comply with Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Association. Each Member and the Member's Tenants, Guests, and Invitees, and the Association, are governed by and must comply with this Chapter 720, the governing documents of the Community, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions, including but not limited to the

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Association's obligation to maintain the Common Areas, may be brought by the Association or by any member against:

- (a) The Association;
- (b) A Member;
- (c) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a Lot or using the Common Areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section does not deprive any person of any other available right or remedy. The Association shall charge the expense of same against the Owner of the Lot, which charge shall be a lien on the Lot which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

11.2 Enforcement Action. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.3 Negligence; Damage Caused by Condition in Townhome Unit. The Owner of each Townhome Unit shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or intentional action by that of any member of his family or his or her guests, employees, agents, or lessees, only to the extent that such expense is not met by proceeds of insurance. Each Owner has a duty to maintain his or her Townhome Unit, and the personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Townhome Units, the Common Areas, or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Townhome Units, the Common Areas, Association property or property within other Townhome Units, the Owner of the offending Townhome Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one (1) or more of the Townhome Units involved is not occupied at the time the damage is discovered, the Association may enter the Townhome Unit without prior notice to the Owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner. Any cost incurred by the Association in repairing damage under this Article 9.3 is an Individual Assessment and shall be collectible as provided in Article 8.

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11.4 Self-Help Remedies. Violation of any condition, restrictions, maintenance requirement or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the Lot where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement, or removal. Any cost incurred by the Association under this Article 9.4 is an Individual Assessment and shall be collectible as provided in Article 8.

11.5 Suspension of Common Area Use Rights and Fines. In addition to other remedies available to the Association, the Association may suspend, for a reasonable period of time, the rights of an Owner or an Owner's Tenants, Guests, or Invitees, or both, to use Common Areas and facilities for a reasonable time and may levy reasonable fines. No fine shall exceed One Hundred Dollars (\$100.00) per violation, per day. However, a fine may be levied for each day of a continuing violation, with a single notice and opportunity for a hearing. A fine for a continuing violation may not exceed Five Thousand Dollars (\$5,000.00) in the aggregate. A fine of more than One Thousand Dollars (\$1000.00) may become a lien on the Lot and shall be deemed an Individual Assessment and shall be collectible as provided in Article 8.

11.6 Towing. Subject to applicable laws and ordinances, any vehicle parked in the Common Area in violation of these or other restrictions contained herein or in the Rules and Regulations may be towed by the Association at the sole expense of the Owner of such vehicle.

ARTICLE 12 ARCHITECTURE AND LANDSCAPING

12.1 Architectural and Aesthetic Control. The Association is seeking to maintain a neighborhood of architecturally harmonious Townhomes Units and Lots.

12.2 Members of the Architectural Review Committee (ARC). The ARC shall consist of at least three (3) members appointed by the Board from time to time. Each of said persons shall hold office until such time as such person has resigned or has been removed or a successor has been appointed by the Board. Members of the ARC may be removed at any time without cause. The Board may also sit as the ARC.

12.3 All Improvements Subject to Approval. In order to protect the integrity of the development plan and preserve the values of the Townhome Units and Lots, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval of Architectural Review Committee of the Association (the "ARC"). Further, no building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area be performed without the prior written approval of the ARC and the Board of Directors. Notwithstanding any

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requirement for ARC approval under this Article, the Board of Directors can determine certain that certain architectural improvements may proceed without ARC approval so long as meeting all requirements of this Declaration and any adopted standard.

12.4 Standards for Review and Approval. Any such review by and approval or disapproval of the ARC shall take into account the objectives, purposes, and limitations of this Declaration, the purposes and function of the ARC, and any other applicable standard or rule adopted by the Board of Directors. Such review by and approval of the ARC shall also take into account and include the type, kind, nature, design, style, shape, size, height, width, length, scale, color, quality, quantity, texture, and materials of the proposed building, structure or other improvement under review, both in its entirety and as to its individual or component parts, in relation to its compatibility and harmony with other, contiguous, adjacent and nearby structures and other improvements and in relation to the topography and other physical characteristics of its proposed location and in relation to the character of the Lots in general. The ARC shall have the right to refuse to give its approval to the design, placement, construction, erection or installation of any improvement on Lots which it, in its sole and absolute discretion, deems to be unsuitable, unacceptable or inappropriate for the Community or which otherwise violates this Declaration or any other Board adopted standard or rule. In addition, refusal to approve proposed changes may be based on purely aesthetic reasons.

12.5 Procedure for Review. In order to obtain the approval of the ARC, each Owner shall observe the following:

(a) Application. Each applicant shall submit an application to the ARC with respect to any proposed improvement or material change in an improvement, together with the required application(s) and other fee(s) as established by the Board. The applications shall include such information as may be required by the application form adopted by the Board of Directors. The ARC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the applicant shall, if requested, submit to the ARC, such site plans, plans and specifications for the proposed improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, and specifications and the times scheduled for completion, all as reasonably specified by the ARC.

(b) Incomplete Application. In the event the information submitted to the ARC is, in the ARC's opinion, incomplete or insufficient in any manner, the ARC may request and require the submission of additional or supplemental information. The applicant shall, within fifteen (15) days thereafter, comply with the request.

(c) Review Period. No later than thirty (30) days after receipt of all information required by the ARC for final review, the ARC shall approve or deny the application in writing.

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In the event the ARC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed disapproved by the ARC.

(d) Board Disagreement with ARC. In the event the Board of Directors disagrees with an approval issued by the ARC, the Board of Directors shall have seven (7) days from the date of the ARC approval in which to call and hold a meeting to reconsider the approval. The Owner shall be provided written notice of this meeting. The decision of the Board of Directors at this meeting shall be binding.

(e) Appeal. Upon disapproval, the applicant may appeal the decision of the ARC to the Board within thirty (30) days of the ARC's written review and disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the applicant's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed disapproved. The decision of the ARC, or if appealed, of the Board, shall be final and binding upon the applicant, the Owner, and their respective heirs, legal representatives, successors and assigns. If the Board sits as the ARC, the decision of the ARC shall be final and there shall be no right to appeal to the Board as provided herein.

12.6 Duration of Approval. If construction or installation of the building, structure or other improvement for which plans, specifications, and other materials have been approved, has not commenced within said six (6) six months of an approval issued herein, such approval shall expire, and no construction shall thereafter commence without a resubmission and approval of the plans, specifications and other materials previously approved. The prior approval shall not be binding upon the ARC on resubmission in any respect. Notwithstanding the above six (6) month time limitation

12.7 Interior Alterations Exempt. Nothing contained in this Article shall be construed so as to require the submission to or approval of the ARC of any plans, specifications or other materials for the reconstruction or alteration of the interior of any building, structure or other improvement constructed on Lots or Common Area after having been previously approved by the ARC, unless any proposed interior construction or alteration impacts a structural component of any portion of the Townhome Unit and/or building or will have the effect of changing or altering the exterior appearance of such building, structure or other improvement visible from the exterior of the Townhome Unit.

12.8 Exculpation for Approval or Disapproval of Plans. Any and all members of the ARC and any and all Officers, Directors, employees, agents, and members of the Association, shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever or whatsoever by reason or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to the provisions of this Article, or for any mistake in judgment, negligence, misfeasance or nonfeasance related to or in connection with any such decision, approval or disapproval.

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12.9 ARC Proposals. The ARC may propose new policies, procedures, or standards but any and all policies, procedures, and standards proposed by the ARC must be approved by the Board of Directors.

ARTICLE 13 USE RESTRICTIONS

13.1 Applicability. All provisions of this Declaration, the Bylaws of the Association, and Board adopted Rules and Regulations which govern the conduct of persons shall apply to all Owners, tenants, occupants, guests, invitees, licensees, contractors, and visitors. Every Owner shall cause all tenants, occupants, guests, invitees, licensees, contractors, and visitors of his/her Lot to comply with this Declaration, the Association Bylaws, and any Board adopted Rule or Regulation and shall be responsible for all violations and losses to the Common Areas caused by such tenant, occupants, guests, invitees, licensees, contractors, and visitors, notwithstanding the fact that such tenants, occupants, guests, invitees, licensees, contractors, and visitors are fully liable and may be sanctioned for any violation of this Declaration, the Bylaws of the Association, or Board adopted Rule or Regulation.

13.2 Residential and Business Uses. The Lots and the Common Areas shall be used for single-family residential purposes only. No trade or business may be conducted on any Lot or on the Common Areas, except that an Owner, tenant, or other occupant may have a home office within the Townhome Unit so long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Townhome Unit; (2) the business activity conforms to all zoning requirements for the Community; (3) the business activity does not involve persons coming into the Community who do not reside therein or door-to-door solicitation of the residents; (4) the Townhome Unit or Lot is not publicly advertised as the address of any business; or (5) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board. The use of a Townhome Unit as a public lodging establishment shall be deemed a business or commercial use.

13.3 Nuisances, Offensive, or Annoying Activities. No portion of the Community shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition that will be obnoxious to the eye, nor shall any substance, thing, or material be kept upon any portion of the Community that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of occupants of other Lots. Nothing shall be done within the Community tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community or which will increase insurance rates on any Lot or on the Common Areas. No apparatus or machine of any sort shall be used or maintained on any Lot which causes interference with television or other such reception in other Townhome Units.

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13.4 Lawful Use. No unlawful use shall be made in any portion of the Properties. All laws, zoning ordinances, and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification, or repair of a portion of the Properties shall be the same as the responsibility for maintenance and repair of the property concerned.

13.5 Prohibition of Persons Convicted of Certain Felonies. It shall be a violation of this Amended Declaration for a Townhome Unit to be acquired for ownership (whether in whole or in part), leased, or occupied at any time for any duration by any person convicted of felony drug trafficking, robbery, burglary, murder, sexual battery, child molestation, rape, or a non-capital felony of a violent nature in the last ten (10) years or their equivalent under federal or state laws. It shall also be a violation of this Declaration for any ownership or leasehold interest in a Townhome Unit to be provided in any manner to any such person. Notwithstanding any requirement in this Declaration that the Association provide an alternative purchaser for the transfer of a Townhome Unit, the Association shall not be responsible for providing an alternative purchaser if the requested approval is denied because the person acquiring or being provided ownership of the Townhome Unit is convicted of any of the enumerated crimes listed herein. The Board shall have the authority to modify this provision to comply with any state or federal law or regulation.

13.6 Vehicles. Parking. Owner and Tenant automobiles shall be parked in the garage or driveway. All garage and driveway spaces must be in active use before Common Area parking spaces may be used. No vehicle which cannot operate on its own power shall remain within Townhomes at Marbella on Cypress for more than twelve (12) hours, except in the garage of a Townhome Unit. No repair, except emergency repair, of vehicles shall be made within the Community except in the garage of a Townhome Unit. Vehicles parked within the Community shall have a current tag at all times. The Board of Directors may adopt additional parking rules, including the requirement that vehicles be registered or must display a tag.

No commercial vehicle, recreational vehicle, boat, trailer, including but not limited to boat trailers, house trailers, and trailers of every other type, kind or description, or camper, may be parked or kept within Community except in the garage of a Townhome Unit. The term "commercial vehicle" shall not be deemed to include recreational or utility vehicles (i.e. Suburbans Blazers, Explorers, Navigators, etc.) up to 21'5" in length or clean "non-working" vehicles such as pick-up trucks, vans, or cars if they are used by the Owner on a daily basis for normal transportation. Such vehicles shall not contain any commercial business names, written advertisements, or logos written on the outside of such vehicles. This restriction shall not prohibit the temporary parking of commercial vehicles making deliveries, or while used in connection with providing services to any Lot or the Common Area. No vehicle shall be parked, stored, or kept on any yard, street, or any other Common Area at any time.

In addition to other remedies provided by law, vehicles and trailers of any kind parked in violation of this Article 13.6 may be towed by the Association in accordance with Article 11.6.

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13.7 Garages. Garage doors shall remain closed at all times except when vehicular or pedestrian access is required. Garages may not be enclosed, modified, or altered for use as a bedroom, office, or to otherwise increase the air-conditioned living space of the Townhome Unit.

13.8 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved in advance by the ARC. Maintenance and repair of all driveways, parking, and other paved parking facilities shall be the responsibility of the Association. However, driveways must be kept clean and free from excessive oil, rust, or other unsightly stains at all times by the Owner.

13.9 Visibility at Street Intersections. No obstruction to visibility at street intersections shall be permitted. The ARC or Board shall have the right to adopt additional restrictions concerning the height and type of trees and shrubs within any of the Lots.

13.10 Lot Re-subdivision or Combination of Lots. No Lot shall be further subdivided, replanted, or separated into smaller Lots by any Owner. Lots shall not be combined to make larger Lots. Notwithstanding the foregoing, this restriction shall not prohibit corrective deeds or similar corrective instruments.

13.11 Alterations and Additions. No material alteration, addition or modification to a Townhome Unit or improvement, or material change in the appearance thereof, shall be made without the prior written approval thereof being first had and obtained from the ARC as required by this Declaration.

13.12 Signs, Flags, and Flag Poles. In order to maintain an attractive community, no sign, banner, advertisement, or poster (including "open house", "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed, in, on, or upon any part of the Properties. This provision includes signs inside of Townhome Unit windows or the windows of motor vehicles. All flags are prohibited, except that an Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, September 11 and Veterans Day may display portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard, POWs, MIAs, fire departments or police departments in a respectful manner. In addition, an Owner may erect a freestanding flagpole no more than twenty (20) feet high on the Lot so long as the flagpole does not obstruct sightlines at intersections, is not erected within or upon an easement, and complies with all building codes, zoning setbacks, and other applicable governmental regulations.

13.13 Decorations. No decorative objects including, but not limited to, birdbaths, light fixtures, sculptures, statues, weathervanes, or flagpoles shall be installed or placed within or upon any portion of the Properties without the prior written approval of the ARC. Notwithstanding the foregoing, holiday lighting and decorations shall be permitted to be placed upon the exterior portions of the Home and upon the Lot not more than thirty (30) days prior to the holiday and for not more than fourteen (14) days after the holiday. The ARC may require the removal of any lighting or decoration that creates a nuisance (e.g., unacceptable spillover to adjacent Townhome).

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13.14 Antennas and Radio Equipment. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed, or permitted to remain on any portion of the Common Areas or any Lot or upon any improvements thereon, except that this prohibition shall not apply to a satellite dish not exceeding more than one (1) meter in diameter may be installed on a Lot with ARC approval (herein "Permitted Satellite Dish"). The ARC may adopt and enforce reasonable rules regulating the placement of Permitted Satellite Dishes, such as limiting installation height or to side or rear yard locations, requiring that they not be visible from the street or neighboring Townhome Units, or integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and the increased costs of installation under such rules would not be unreasonable. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use, and building regulations.

13.15 Sports and Play Equipment. No recreational, playground, or sports equipment shall be permanently installed or erected within or about any portion of a Lot or on a Townhome Unit without the prior written consent of the ARC. Portable basketball backboard, playground, sports or recreational equipment, and play structures will be permitted so long as such do not constitute a nuisance and so long as stored in the garage or Townhome Unit when not in active use. A determination by the Board that any recreational, playground, or sports equipment is a nuisance, including without limitation basketball backboards and playground structures, shall be conclusive and binding on all parties.

13.16 Window Treatments. Window treatments shall be limited to white window blinds unless white plantation shutters have been approved by the ARC. No awnings, canopies, or decorative shutters shall be affixed to the exterior of a Townhome. No reflective tinting or mirror finishes on windows shall be permitted.

13.17 Window Air Conditioners. No window air conditioning unit shall be installed in or on any of the Townhome Units.

13.18 Protective Shutters and Hurricane Shutters. The Board may adopt standards regarding the type of protective and hurricane shutters that may be installed on the Townhomes and the permitted use thereof. Protective shutters and hurricane shutters may not be activated for use more than seven (7) days before the projected arrival of a named hurricane or named tropical storm. Protective shutters and hurricane shutters shall be deactivated within fourteen (14) days after the named hurricane or named tropical storm or threat has passed unless the area is under an evacuation order or another named hurricane or named tropical storm is imminent. If the area is under an evacuation order, the fourteen (14) daytime frame is extended to begin once the evacuation order is lifted. Permanent installation or installation of non-compliant protective shutter and hurricane shutters is prohibited

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13.19 Use of Accessory Structures. No tent, shack, barn, utility shed, or building shall, at any time, be erected and used on any Lot temporarily or permanently, whether as a residence or for any other purpose. Temporary structures, including trucks, trailers, motor homes, or recreational vehicles, shall not be used on any Lot at any time as a residence, either temporary or permanent.

13.20 Swimming Pools. Swimming pools, above-ground or below, are prohibited

13.21 Fences, Walls, and Hedges. No fences, walls, hedges, or visual barrier of any nature may be erected, constructed, or maintained upon any Lot without the prior written consent of the ARC.

13.22 Laundry. Subject to the provisions of Section 163.04, Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung, or exposed so as to be visible outside the Townhome Unit unless located at the rear of the Townhome Unit and on a removal device that must be stored in the Townhome Unit when not in active use.

13.23 Appearance; Refuse Disposal. Each Owner shall keep his Lot and Townhome Unit free of trash and debris, and shall reasonably maintain his or her Townhome in a sanitary condition. Personal property of residents shall not be left on the lawns or landscaped areas outside the Townhome Units. Trash, garbage, or other waste must be kept in appropriate containers suitably screened from view from the street and adjacent Lots. Porches, and lanais shall be used only for the purposes intended and shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

13.24 Oil and Mining Operations. No oil, drilling development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or on the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or on the Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any upon or on the Properties.

13.25 Hazardous Materials. No hazardous or toxic materials or pollutants shall be maintained, stored, discharged, released, or disposed of in or under the Properties except in strict compliance with applicable statutes and any Rules and Regulations. Fuel or gas storage tanks or other flammable, combustible, or explosive fluids, materials, or substances for ordinary household use may be stored or used in the Properties only in strict compliance with manufacturers' directions and applicable safety laws and codes, shall be stored in containers specifically designed for such purposes and shall be disposed of in accordance with all applicable laws.

13.26 Animals. Each Townhome Unit may house up to three (3) animals, which may only be domestic cats or dogs, with no more than two (2) of the animals being domestic dogs, unless such animals are of a breed prohibited by County, City, or any other ordinance or law. Notwithstanding the foregoing, pit bull and pit bull mix dogs or other recognized aggressive breeds

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of dogs shall be prohibited regardless of size or weight. A pit bull or pit bull mix dog is defined as any dog that, in the sole and exclusive discretion of the Board, has the appearance and characteristics of being predominantly and commonly referred to as a "pit bull" regardless of the opinion of any veterinary doctor. Any Owner who keeps or maintains any animal in a Townhome Unit, in exchange for and in consideration of the privilege to keep the animals, hereby indemnifies and holds the Association and each Owner free and harmless from any loss, claim, or liability of any kind or character of whatever nature arising from or related to the keeping or maintaining of such animal. The Board of Directors may define other breeds of dogs that it considers dangerous in its sole discretion. Further, each Townhome Unit may house fish and up to two (2) domestic (household type) birds, as long as the fish and birds are kept indoors and do not become a source of annoyance to other Owners. Animals shall not be allowed on the Common Areas or otherwise outside of a Townhome Unit on the Lot except on a leash of no longer than six (6) feet or when being carried by their Owner. No animals shall be left unattended in or on the balcony, patio, or other similar area even if the area has been enclosed. No reptiles, wildlife, amphibians, poultry, or livestock shall be raised, bred, or kept within the Community. No animals shall cause or be the source of annoyance, nuisance, or disturbance to any other Owner or Occupant. Each animal Owner shall be responsible for the removal and disposal of the animal's feces or waste. The ability to have and keep an animal is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any animal which becomes a source of annoyance to other residents of the Association or in any way causes any damage to the Community. Owners may provide in a lease that Tenants shall not be permitted to keep or have animals of any kind.

13.27 Open Space. Any land subjected to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Area or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Association, the Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment thereof for open space purposes.

13.28 Fireworks. Only legal fireworks shall be used or ignited in or from any Lot on or from the Properties or on or from the Common Area.

13.29 Swimming, Boating, Docks, and Wildlife. Swimming, wading, boating, and kayaking is prohibited within any of the lakes or waterbodies within or adjacent to the Property. No private docks may be erected within any waterbody. Fishing is permitted in compliance with all state laws.

13.30 Landscaping. All landscaping, including without limitation trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Association. No landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the ARC. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon any Lot outside of the Townhome Unit and the Townhome Unit's privacy walls, unless approved by the ARC.

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13.31 Water Supply; Wells; Water Rights. Each Townhome Unit shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each Owner shall be required to connect the water lines on his Lot to the lines of the utility provider(s) providing service to Townhomes at Marbella on Cypress No Owner may install or operate a private well for any reason, including operation of a water source heat pump.

13.32 Occupancy of Townhome Unit. In no event shall permanent occupancy of a Townhome Unit exceed two (2) persons for each bedroom, except when temporary guests are visiting. Temporary guests shall be defined as individuals gratuitously residing in a Townhome Unit at the request of the Owner or Tenant for not more than thirty (30) consecutive days or more than forty-five (45) days in any twelve (12) month period. Persons residing within a Townhome Unit for more than thirty (30) consecutive days or more than forty-five (45) total days in any twelve (12) month period shall be deemed Tenants and must comply with the restrictions set forth in Article 14 of this Declaration.

13.33 Leases. Townhome Units may be leased, licensed, or occupied for the payment of consideration only in their entirety and no fraction or portion may be rented. No bed and breakfast facility may be operated out of Townhome Unit. No lease, license or occupancy for the payment of consideration shall be for a period of less than six (6) months. However, renewals or extensions of an initial six (6) month lease to the same tenants may be for no lease than thirty (30) days. After each conveyance or other transfer of a Townhome Unit and Lot subsequent to the recording of this amendment in the public records, the Townhome Unit and Lot shall not be leased during the initial two (2) years of ownership; however, this two (2) year lease prohibition shall not apply to: 1) transfers made primarily for estate planning purposes which are for nominal consideration (including without limitation transfers to a Member's spouse, transfers directed by a Member's will to beneficiaries or heirs or into a trust); 2) the rental of a Townhome Unit and Lot owned by an institutional first mortgagee upon its foreclosure or a deed in lieu of foreclosure; and 3) the Association. In the event of a dispute concerning the primary purposes of a transfer, the Association's Board of Directors shall determine the purpose of the transfer, which decisions shall be final unless wholly arbitrary and capricious. Leases for a Townhome and Lot complying with all leasing requirements contained in these Bylaws and any Board adopted rules entered into prior to the conveyance or other transfer of a Townhome Unit and Lot may continue after the conveyance or other transfer until the end of the lease term but may not be renewed or otherwise extended. The two (2) year lease prohibition provided in this amendment shall begin at the end of such lease term.

ARTICLE 14
LEASES, SALES AND TRANSFERS

In order to maintain a community of congenial residents and thus protect home values within the subdivision, the transfer, sale, or leasing of a Townhome Unit by an Owner shall be subject to the following provisions:

14.1 Lease. All leases shall be subject to prior approval of the Association. Approval shall not be unreasonably withheld. Within a reasonable time, not less than fifteen (15) days prior to the commencement of the proposed lease term, an Owner or the Owner's agent shall apply to the Association for approval of such lease; if desired, the Board may adopt the application form. Additionally, the Board may adopt a standard lease agreement. If such a lease agreement is adopted by the Board, such adopted lease agreement shall be used by all Owners for the lease of homes within the subdivision. The Owner or the intended lessee shall furnish such information as the Association may reasonably require, including a copy of the proposed lease agreement, along with a transfer fee as provided below. It shall be the Owner's obligation to furnish the lessee with a copy of all Association governing documents. Each lease, or addendums attached thereto, shall contain an agreement of the lessee to comply with the Association governing documents: shall provide or be deemed to provide that any violation of the Association Governing Documents shall constitute a material breach of the lease; shall contain a provision appointing the Association as agent for the Owner so the Association may act on behalf of the Owner to enforce the lease, evict the lessee, or otherwise. The Owner shall not be relieved of any liability or responsibility hereunder by virtue of the existence of said lease or any of the foregoing provisions. The Owner shall have a duty to bring his or her tenant's conduct into compliance with the Association Governing Documents by whatever action is necessary, including without limitation the institution of eviction proceedings, without notice to cure, where legally permissible.

If the Owner fails to bring the conduct of the tenant into compliance with the Association's Governing Documents, the Association shall then have the authority to act as agent of the Owner to undertake whatever action is necessary to abate the tenant's non-compliance with the Association Governing Documents, including without limitation the right to institute an action for removal (eviction, unlawful detainer or other appropriate action) against the tenant in the name of the Association and/or as agent for the Owner. The Association shall have a right to recover any costs or fees including attorney's fees from the Owner, which shall be secured by assessment and lien in the same manner as an Individual Assessment. It shall be the duty of the Association to notify the Owner of approval or disapproval of such proposed lease within fifteen (15) days after receipt of the application for lease on any prescribed form completed with all required information. Failure of the Association to respond within fifteen (15) days shall not be deemed to constitute approval. The Board may delegate its approval/denial authority provided herein to a committee, single person, or authorized agent.

14.2 Lease Disapproval. If the Association disapproves of a proposed lease or renewal the Owner shall receive a statement indicating the reason for the disapproval, and the lease shall

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not be made or renewed. Any lease made in violation of this Declaration shall be voidable and the Association may institute suit to evict the tenant and/or any other remedy. The Association shall neither have a duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application if a denial is based upon any of the following factors:

(a) The persons seeking approval (which shall include all proposed occupants) has been convicted of a crime involving violence to persons or property or of a felony demonstrating dishonesty or moral turpitude;

(b) A person seeking approval has a documented history of financial mismanagement or financial instability, which shall be defined by the Board of Directors.

(c) The application for approval on its face or the conduct of an applicant, indicates that the person seeking approval intends to conduct himself or herself in a manner inconsistent with the Association Governing Documents by way of example, but not limitation, a Tenant taking possession of premises prior to the approval of the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents.

(d) A person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other housing facilities or associations or by conduct in this subdivision as a tenant, owner or occupant of a Townhome Unit.

(e) A person seeking approval has failed to provide the information, fees required to process in a timely manner.

14.3 Sale or Transfer. An Owner intending to make a transfer or sale of a Townhome or Lot or any interest therein shall give to the Association notice of such intention, on forms prescribed by the Board and such other information concerning the intended transfer or sale as the Association may reasonably require, and shall be accompanied by a copy of the proposed transfer documents or proposed sales contract signed by the proposed purchaser. Within fifteen (15) days after receipt of such fully completed notice and information, the Association must either approve or disapprove the proposed transfer or sale. If approved, the approval shall be stated in a certificate executed by an Association officer or its agent. Failure of the Association to respond within the twenty (20) day period shall constitute approval. The Board may delegate its approval/denial authority provided herein to a committee, single person, or authorized agent.

14.4 Disapproval of a Transfer or Sale. Approval of the Association may be withheld only if a majority of the entire Board so votes. The Board shall consider the following factors and may confer with counsel in reaching its decision.

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(a) The persons seeking approval (which shall include all proposed occupants) has been convicted of a crime involving violence to persons or property or of a felony demonstrating dishonesty or moral turpitude;

(b) A person seeking approval has a documented history of financial mismanagement or financial instability, which shall be defined by the Board of Directors.

(c) The application for approval on its face or the conduct of an applicant, indicates that the person seeking approval intends to conduct himself or herself in a manner inconsistent with the Association Governing Documents by way of example, but not limitation, a Tenant taking possession of premises prior to the approval of the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Association Governing Documents.

(d) A person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his or her conduct in other housing facilities or associations or by conduct in this subdivision as a tenant, owner, or occupant of a Home.

(e) A person seeking approval has failed to provide the information, fees required to process in a timely manner.

14.5 Failure to give Notice. If no notice is given of a sale or transfer, the Association at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

14.6 Right of First Refusal, Duty to Provide Alternative Purchaser. If the Association disapproves a prospective purchaser, the Association shall have the obligation to purchase the home on the same terms and conditions as the offer from the disapproved purchaser or provide an alternate purchaser within sixty (60) days after written notice of disapproval, or at such later date as the parties may agree. However, should the transfer or sale be rejected on the basis that such transferor sale would result in a violation of an express provision of the Declaration, the Association's right of first refusal or requirement that the Association provide an alternate purchaser shall be optional unless otherwise prohibited by law.

14.7 Fair Market Price Determination. If the application for transfer or sale raises a question, in the Board's reasonable judgment, as to whether the stated purchase price is bona fide, the price to be offered shall be determined by taking an average fair market value established by two qualified real estate appraisals from current home prices in Lee County. One (1) appraiser will be selected by the selling Owner and the other selected by the Association. The cost of the appraisals shall be shared equally by the Owner and the Association. Closing and transfer shall be within thirty (30) days from submission of the agreement to purchase by the Association or ten (10) days after the price is determined as provided above, whichever occurs later.

14.8 Transfer/Screening Fees. The Association may impose a transfer/sales fee not to exceed one hundred fifty and no/100 dollars (\$150.00) per applicant or as permitted by law from time to time simultaneously with the giving of notice of intention to lease, transfer, or sell a lot or any interest therein.

14.9 Exception. The provisions of this Article 14 do not require Association approval of the acquisition of title by any acquirer who acquires title through an institutional mortgage, whether by foreclosure or deed in lieu of foreclosure; however, Association approval is required for a purchaser from such mortgagee.

14.10 Unapproved Transfers. Any sale or transfer which is not approved pursuant to the terms of this declaration shall be void or voidable unless subsequently approved by the Board.

ARTICLE 15 AMENDMENTS

This Declaration may be amended from time to time as provided in this Article:

15.1 Proposal. Amendments to this Declaration may be proposed at any time by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. Any amendments so proposed must be submitted to a vote of the owners not later than the next annual meeting.

15.2 Amendment Approval Threshold. Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended at any time if a duly proposed amendment is approved by at least a majority of all Owners, provided that the text of each proposed amendment has been given to the Members with notice of the meeting. However, no amendment shall be effective to change the share of liability for assessments or ownership of the common surplus of the Association, or the voting rights, appurtenant to any Townhome Unit, unless the Owner and his institutional mortgagee (if any) consent in writing to the amendment.

15.3 Certificate; Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where this Declaration is recorded and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of the County.

15.4 Stormwater Proviso. Regardless of any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, can be effective to change the Association's responsibilities for the Stormwater Management System, unless the amendment has been consented to in writing by the SFWMD. Any proposed amendment which would affect the Stormwater Management System must be submitted to the SFWMD for a determination of whether the amendment necessitates a modification of the surface water management permit.

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ARTICLE 16
ASSOCIATION LIABILITY

16.1 Disclaimer of Liability of Association. Notwithstanding anything contained herein or in the articles of incorporation, Bylaws, any rules or regulations of the Association or any other document governing, binding on or administered by the Association (collectively, the “Association Documents”), the Association shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any owner, occupant or user of any portion of the lands including, without limitation, residents and their families, guest, invitees, agents, servants, contractors or subcontractors or for any property of any such persons, without limiting the generality of the foregoing:

(a) It is the express intent of the governing documents that the various provision thereof which are enforceable by the association, and which govern or regulate the uses of the lands have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the lands and the value thereof.

(b) The association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, the county and/or any other jurisdiction of the prevention of tortuous activities.

(c) Any provision of the Association documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the use of assessment funds and not as creating a duty of the association to protect or further the health, safety, or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

(d) Each owner (by virtue of his acceptance of title to his Lot) and each other person having an interest in or lien upon, or making any use of, any portion of the lands (by virtue of accepting such interest or lien or making such uses) shall be bound by this article and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the association has been disclaimed in this article.

As used in this article “Association” shall include within its meaning, all of the association’s directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors, and assigns.

16.2 Security: Non – Liability of Association. All persons using or occupying any portion of the community are responsible for their own security and the security of their own property. The association shall not be liable in any way on account of loss, damage, or injury resulting from lack of security or the lack of effectiveness of any security measures undertaken. The Association makes no representations or warranties, express or imply, including any warranty

AMENDED AND RESTATED DECLARATION OF COVENANTS,
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of merchantability or fitness for any particular purpose, relative to any fire protection system and/or burglar alarm system, or other security systems recommended or installed, or any security measures undertaken within the community.

ARTICLE 17 MISCELLANEOUS

17.1 Interpretation. The Board shall have the right except as limited by any other provisions of this Declaration or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction, or interpretation shall be final and binding.

17.2 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Community.

17.3 Singular, Plural, and Gender. Whenever the context so permits, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

17.4 Headings and Capitalization. The headings of the sections, subsections, paragraphs, and subparagraphs herein, and the capitalization of certain words, are for convenience only and are not intended to affect the meaning or interpretation of the contents.

17.5 Severability. These Covenants, Conditions and Restrictions are severable and the invalidation of one shall not invalidate any other covenant hereof and each covenant shall be independent to such extent.

17.6 Prohibited Actions. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

17.7 Delegation of Use. Any Owner may delegate his or her right of enjoyment in the Common Areas to members of his or her family, tenants or social guests, subject to the provisions of this Declaration and the Articles of Incorporation, Bylaws and Rules of the Association.

17.8 No Waiver of Use. No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and charges thereof by waiver of the use and enjoyment of the Common Areas or non-use thereof, or the abandonment of the Lot.

17.9 Disputes as to Use. If there is any dispute as to whether the use of any portion of the Properties complies with this Amended Declaration, such dispute shall be decided by the Board. A determination rendered by such party with respect to such dispute shall be final and binding on all persons concerned.

17.10 Waiver. Any waiver by any person of any provisions of this Declaration, or the breach thereof, must be in writing to be effective and shall not operate or be construed as a waiver of any other provision or subsequent breach.

17.11 Election of Remedies. All rights, remedies, and privileges granted to the Association hereunder shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by Association documents, or at law or in equity.

17.12 Notices. Any notice required to be sent to any owner under this Declaration or the Bylaws shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. If the owner elects to receive electronic notice in lieu of mailed notice, notice shall be deemed to have been properly sent when electronically transmitted to the email address in the records of the Association at the time of such transmittal. The owner bears the responsibility for notifying the Association of any change of address or change of email address.

EXHIBIT "A"

Lots 301 - 306, inclusive; Lots 401 - 406, inclusive; Lots 1601 - 1608, inclusive of MARBELLA ON CYPRESS, PHASE 2, according to the Plat thereof, as recorded as Instrument Number 2015000131018, of the Public Records of Lee County, Florida.

AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR TOWNHOMES AT MARBELLA ON CYPRESS

Prepared by and return to:
Justin J Givens, Esquire
Anderson & Givens, P.A.
PO Box 12613
Tallahassee, FL 32317

AMENDED AND RESTATED

**ARTICLES OF INCORPORATION
OF
TOWNHOMES AT MARBELLA ON CYPRESS, INC.
a Florida corporation, Not-for-Profit**

*[Substantial Rewording of the Articles of Incorporation. See existing
Articles of Incorporation for present text.]*

These are the Articles of Incorporation of the TOWNHOMES AT MARBELLA ON CYPRESS, INC., a not-for-profit corporation under Chapter 617, Florida Statutes:

**ARTICLE 1
NAME**

The name of the corporation shall be TOWNHOMES AT MARBELLA ON CYPRESS, INC. (hereinafter referred to as the "Association").

**ARTICLE 2
PRINCIPAL OFFICE**

The principal office of the Association shall be located at 12734 Kenwood Ln, Ste 49, Ft. Myers, FL 33907. The Association Board of Directors may change the location of the principal office of the Association and its mailing address from time to time as provided by law.

**ARTICLE 3
DURATION**

The period of duration of the Association is perpetual.

**ARTICLE 4
PURPOSE**

The Association does not contemplate pecuniary gain or benefit, direct or indirect, to its Members. By way of explanation and not limitation, the purposes for which the Association is organized are:

- (a) To be and constitute the Association to which reference is made in the Declaration,

to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as set forth in the Declaration, these Articles of Incorporation and the Bylaws of the Association as provided by law; and

(b) To provide an entity for the maintenance, management, and control of certain property located in Lee County, Florida, which property is subject to the Declaration of Covenants, Conditions and Restrictions For Townhomes At Marbella On Cypress, (hereinafter "Declaration"), which is recorded in the Public Records of Lee County, Florida, as same shall from time to time be amended and supplemented.

(c) To provide for the ownership, operation, maintenance, and preservation of any common areas and for the maintenance and improvement of any easements granted to the Association within the lands subject to the Declaration and such additional properties as may be added thereto from time to time by annexation or otherwise as provided in the Declaration and in these Articles; and

(d) To promote the health, safety and welfare of its members and the residents within the Association Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association.

ARTICLE 5 POWERS

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

General Powers. In furtherance of its purposes, the Association shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws of the Association, may be exercised by the Board of Directors:

(a) All of the powers conferred upon not-for-profit corporations by common law and Florida Statutes in effect from time to time; and

(b) All of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws and the Declaration, including, without limitation, the following:

- (1) The power to fix, levy and collect adequate Assessments against Lots, as provided in and subject to the Declaration;
- (2) The power to expend monies assessed and collected for the purpose of paying the expenses of the Association, including without limitation costs and expenses as provided in the Declaration;
- (3) The power to manage, control, operate, maintain, repair and improve the Common Areas;

- (4) The power to purchase supplies and materials and lease equipment required for the maintenance, repair, replacement, operation and management of the Subdivision as provided in the Declaration;
- (5) The power to insure and keep insured Association Property and the Common Areas;
- (6) The power to employ the personnel required for the operation and management of the Association and the Subdivision;
- (7) The power to pay utility bills for utilities serving the Common Areas, if any;
- (8) The power to pay all taxes, licenses, assessments or other governmental assessments which are liens against the Association Property or Common Areas;
- (9) The power to establish and maintain a reserve fund for capital improvements, repairs and replacements;
- (10) Subject to applicable laws, ordinances and governmental regulation the power to control and regulate the use of the Lots and Common Areas, if any;
- (11) The power to acquire (by gift, purchase or otherwise), own hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, mortgage, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (12) The power to make reasonable Rules and Regulations and to amend the same from time to time;
- (13) The power to enforce by any legal means the provisions of these Articles, the Bylaws, the Declaration and the Rules and Regulations promulgated by the Association from time to time;
- (14) The power to borrow money, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred and to select depositories for the Association's funds, and to determine the manner of receiving, depositing, and disbursing those funds and the form of checks and the person or persons by whom the same shall be signed, when not signed as otherwise provided in the Bylaws;
- (15) The power to enter into a contract with any person, firm, corporation, or management agent of any nature or kind to provide for the maintenance,

- operation, and administration of the Association and the Subdivision;
- (16) The power to appoint committees as the Board of Directors may deem appropriate;
 - (17) The power to collect delinquent Assessments and fines by suit or otherwise, to abate nuisances and to fine, suspend use or voting rights, enjoin or seek damages from Owners for violation of the provisions of the Declaration, these Articles of Incorporation, the Bylaws or the Rules and Regulations;
 - (18) Subject to the terms of the Declaration, the power to bring suit and to litigate on behalf of the Association;
 - (19) The power to provide any and all supplemental municipal services as may be necessary or proper;
 - (20) The power to grant easements as to the Common Area to public and private utility companies, and to the public bodies or governmental agencies or other entities or persons, without cost or charge, where convenient, desirable or necessary in connection with the development of the properties, and the providing of utility and other services thereto and;
 - (21) Participate in mergers and consolidations with other non-profit corporations organized for similar purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have been approved by (i) a majority of the Board of Directors; and (ii) sixty-six and two thirds ($66 \frac{2}{3}$) percent of the voting interests (in person or by proxy) at a duly noticed meeting of the members in which there is a quorum present;
 - (22) The power to possess, employ and exercise all powers necessary to implement, enforce and carry into effect the powers above described.

Emergency Powers. For purposes of this Article only, an emergency exists during a period of time that the Subdivision, or the immediate geographic area in which the Subdivision is located, is subjected to: a state of emergency declared by civil or law enforcement authorities; a hurricane watch or warning as issued by a governmental authority; a partial or complete evacuation order issued by civil or law enforcement authorities; the declaration of a federal or state "disaster area" status; or catastrophe, whether natural or manmade, which seriously damages, or threatens to seriously damage the physical existence of the Subdivision. During an emergency as defined herein, the Association's Board of Directors may exercise the emergency powers provided to Florida corporations by Section 617.0207 and Section 617.303, Florida Statutes, and as may be provided in Chapter 720, Florida Statutes.

Limitations and Restrictions. The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article.

ARTICLE 6 QUALIFICATIONS OF MEMBERSHIP

General. The Association shall be a membership corporation without certificates or shares of stock. The record title owner ("Owner") of each Lot or Unit within the lands subject to the Declaration ("Lot") shall be a Member of the Association and shall be entitled to vote as provided in the Declaration and the Bylaws. The rights and obligations of a Member may not be assigned or delegated except as provided in the Declaration, these Articles of Incorporation, or the Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot. Change of an Owner's membership in the Association shall be established by recording in the Office of the Clerk of the Circuit Court of Lee County, Florida, a deed or other instrument establishing record title to a Lot. Upon such recordation, the Owner designated by such instrument shall become a Member of the Association, and the membership of the prior Owner shall terminate.

Limitation on Transfer of Shares of Assets. A member cannot assign, hypothecate or transfer in any manner his or her share in the funds and assets of the Association, except as an appurtenance to the member's Lot.

ARTICLE 7 VOTING RIGHTS

Subject to the restrictions and limitations hereinafter set forth, all Members shall be entitled to one (1) vote for each Lot that they own. When one or more persons hold such interest or interests in any Lot, all such persons shall be Members, but only one (1) vote may be cast for the Lot in the manner provided in the Association's Bylaws. Except where otherwise required under the provisions of the Governing Documents or by law, the affirmative vote of the Owners of a majority of Lots represented at any meeting of the Members duly called and at which a quorum is present shall be binding upon the Members.

ARTICLE 8 BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board consisting of three (3) or (5) Directors, as provided in the Bylaws. Elections shall be conducted in the manner provided in the Bylaws.

**ARTICLE 9
INDEMNIFICATION OF
OFFICERS AND DIRECTORS**

Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including legal fees, reasonably incurred by, or imposed upon him in connection with any proceeding or the settlement of any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except when the Directors or officer is adjudged-guilty of willful and wanton misfeasance or malfeasance in the performance of his duties provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

**ARTICLE 10
OFFICERS**

The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and any other such officers as may be designated in the Bylaws. The Bylaws of the Association shall specify the election, term, qualifications, and duties of Association officers.

**ARTICLE 11
REGISTERED AGENT**

The street address of the registered office of this corporation is 12734 Kenwood Ln, Ste 49, Ft. Myers, FL 33907, and the name of the Registered Agent of this corporation at that address is Tropical Isles Management, Inc. The Association Board of Directors may change the Association's registered office and registered agent from time to time as permitted by law.

**ARTICLE 12
BYLAWS**

The Association Bylaws may be amended in the manner provided by the Bylaws.

**ARTICLE 13
AMENDMENTS**

These Articles may be amended in the following manner:

- (a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
- (b) A resolution adopting an amendment may be proposed by either the Board of Directors

of the Association or by twenty percent (20%) of the Members of the Association petitioning for a Membership meeting. Upon any amendment or amendments to these Articles of Incorporation being proposed by the Board of Directors or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in his or her absence, and a Meeting of the Members of the Association shall be called not later than sixty (60) days from the receipt of the proposed amendment or amendments. Except as elsewhere provided, an amendment must be approved by at least a majority of the Membership of the Association who are present, in person or by proxy, and voting at a meeting for that purpose.

(c) Limitation and Recording. As elsewhere provided, however, no amendment shall make any changes in the qualifications for membership nor in the voting rights or property rights of Members without approval in writing by all Members so affected. No amendment shall be made that is in conflict with the Declaration. Amendments to these Articles shall become effective upon recordation unless a later effective date is specified therein.

Prepared by and return to:
Justin J. Givens, Esquire
Anderson & Givens, P.A.
PO Box 12613
Tallahassee, FL 32317

AMENDED AND RESTATED
BYLAWS
OF
TOWNHOMES AT MARBELLA ON CYPRESS, INC.

*[Substantial Rewording of the Bylaws. See existing
Bylaws for present text.]*

ARTICLE 1
IDENTITY AND PURPOSE

These are the Bylaws of the TOWNHOMES AT MARBELLA ON CYPRESS, INC. ("the Association"), a Corporation not for profit under the laws of the State of Florida. The Articles of Incorporation of the Association were initially filed in the office of the Secretary of the State of Florida on July 28, 2015. The Association has been organized for the purposes of administering the Declaration of Covenants, Conditions and Restrictions For Townhomes At Marbella On Cypress subdivision ("Declaration") which is located in Lee County, Florida.

1.1 PRINCIPAL OFFICE. The principal office of the Association shall be located at 12734 Kenwood Ln, Ste 49, Ft. Myers, FL 33907. The Board of Directors of the Association may change the location or address of the principal office of the Association from time to time.

1.2 CORPORATE SEAL. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation (2006). Alternatively, the words "Corporate Seal" or "Seal" may serve as the seal of the Association.

ARTICLE 2
DEFINITIONS

The terms used herein shall have the same definitions as stated in the Declaration and the Homeowners' Association Act (Chapter 720, Florida Statutes), unless the context requires otherwise. If there is a dispute over the proper definition of a vague or ambiguous term which is not otherwise defined by the Declaration or by the Homeowners' Association Act, the Association's Board of Directors shall provide a reasonable definition of the term or may adopt any standard dictionary definition of the term.

ARTICLE 3 MEMBERSHIP

3.1 Eligibility. Any person or entity that holds title in fee simple to a lot in the Subdivision shall, by virtue of such ownership, automatically be a member of the Association.

3.2 Change of Membership. Change of membership in the Association shall be established by recording a deed (or other instrument establishing a fee interest in any Lot in the Subdivisions) in the Public Records at which time the membership of the prior Owner is terminated. The prior Owner shall notify the Association of the proposed transfer of ownership. The new Owner shall furnish the Association with a certified copy of the deed (or other instrument) within thirty (30) days after transfer of ownership.

3.3 Restraint upon Assignment of Membership, Shares, and Assets. The membership of an Owner and the share of a Member in the funds and assets of the Association shall not be assigned, hypothecated, or transferred in any manner except as an appurtenance to the Lot.

ARTICLE 4 VOTING

4.1 Voting Rights. The Member or Members who are the record owners of each Lot in the Subdivision shall be collectively entitled to one (1) vote for each such Lot. If a Member owns more than one Lot, the Member shall be entitled to one (1) vote for each Lot owned. A vote may not be divided.

4.2 Voting Procedure. All determination of requisite majorities and quorums for all purposes under the Declaration, the Articles of Incorporation, and these Bylaws shall be made by reference to the number of Lots owned by Members entitled to vote. Decisions of the Association shall be made by a simple majority of votes entitled to be cast by Members represented at a meeting at which a quorum is present unless a greater percentage is required by the Declaration, the Articles of Incorporation, or these Bylaws. The vote of a Members shall be cast as follows:

(a) Single Owner. If the Lot is owned by one (1) natural person, that person shall be entitled to cast the vote for the Lot.

(b) Multiple Owners. If a Lot is owned by more than one (1) person, either as co-tenants or joint tenants, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record owners and filed with the Secretary of the Association.

(c) **Life Estate with Remainder Interest.** If a Lot is owned by a life tenant, with others owning the remainder interest, the life tenant shall be entitled to cast the vote for the Lot. If the life estate is owned by more than one person, the authority to vote shall be determined as herein otherwise provided for voting by persons owning a Lot in fee in the same manner as the life tenants own the life estate.

(d) **Corporation or other Business Entity.** If a Lot is owned by a corporation or other business entity, the officer, manager or employee thereof entitled to cast the vote for the Lot shall be designated by a certificate executed by an executive officer or manager of the corporation or business entity and filed with the Secretary of the Association.

(e) **Trustee.** If a Lot is owned by a trustee or trustees, such trustee or trustees shall be entitled to cast the vote for the Unit. Multiple trustees may designate a single trustee, or a beneficiary entitled to possession, and a single trustee may likewise designate such beneficiary as the person entitled to cast the vote for the Lot by a certificate executed by all trustees and filed with the Secretary of the Association.

(f) **Estate and Guardianship.** If a Lot is subject to administration by a duly authorized and acting Personal Representative or Guardian of the property, then such Personal Representative or Guardian shall be entitled to cast the vote for such Lot upon filing with the Secretary of the Association a current certified copy of the Letters of Administration or Guardianship.

(g) **Tenants by the Entirety.** If a Lot is owned by spouses as tenants by the entirety, they may designate a voting Member in the same manner as other multiple owners. If no certificate designating a voting Member is on file with the Association, and only one (1) of the spouses is present at a meeting, that person may cast the vote for their Lot without the concurrence of the other Owner. If both spouses are present, they may jointly cast the vote for their Lot, but if they are unable to agree on the manner of casting such vote, they shall lose their right to vote on such matter, although the Lot may still be counted for purposes of a quorum.

Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot. A certificate designating the person entitled to cast the vote of a Lot may be revoked by any Owner of a Lot. If such a certificate is not on file, the vote of such Owner shall not be considered in determining whether a quorum is present or for any other purpose.

4.3 Approval or Disapproval of Matters. Whenever the decision of a Lot owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Owner if at an Association meeting, unless the joinder of record owners is specifically required by the Declaration or these Bylaws.

4.4 Proxies. Votes may be cast in person or by proxy. A proxy shall be in writing and signed by the designated voting representative, or the Owner, if no voting representative has been designated. A proxy shall be valid only for the particular meeting designated in the proxy, and must be filed with the Secretary of the Association before the appointed time of the meeting or any adjournments thereof. A properly executed and delivered proxy may be revoked by a writing delivered to the Secretary, prior to the appointed time of the meeting or any adjournment thereof, or by the attendance in person of the persons executing said proxy at any meeting or adjournment thereof. In no event shall a proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Persons attending by phone or other electronic means must also submit a proxy.

4.5 Method of Voting. Subject to the provisions of the Declaration or Chapter 720, Florida Statutes, voting may be by roll call, voice vote or by written ballot; provided, however, that whenever written approval is required by the Declaration or Chapter 720, Florida Statutes, or whenever any amendment to the Declaration is proposed, or when any borrowing of funds, pledge, or other disposition of common properties or assets is proposed, the voting shall be by written ballot. Routine matters such as approval of minutes, adjournment, acceptance of reports, parliamentary questions and social business may be determined by "yeas" and "nays;" except when any five voting Members, or the chairman, require a roll call vote or vote by written ballot.

4.6 Suspension of Voting Rights. As provided by law, the voting rights of members may be suspended.

ARTICLE 5 MEMBERS' MEETINGS

5.1 Place. Meetings of the Association Members shall be held at such place as the Board of Directors may designate in the Notice of Meeting.

5.2 Annual Meeting. The annual meeting of the Members on a date determined by the Board no more than thirteen (13) months from the last annual meeting. The annual meeting shall be for the purpose of electing Directors and transacting any other business authorized to be transacted by the Members.

5.3 Special Meetings. Special meetings of the Members shall be held whenever called by the President or Vice President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from voting Members entitled to cast not fewer than twenty (20%) percent of the total number of votes.

5.4 Notice of Meetings. Notice of all meetings of the Members, stating the time, place and objects for which the meeting is called, shall be given by the President or Vice President or Secretary. All such notices shall be given in writing to each Member at his address, as it appears on the books of the Association, or as the Member may have otherwise directed in writing, and

shall be mailed or delivered not fewer than fourteen (14) days nor more than seventy (70) days, prior to the date of the meeting. In addition, a notice of each meeting of the membership shall be posted at a conspicuous place within the Subdivision at least fourteen (14) continuous days prior to the meeting. The notice for any meeting at which assessments against Lot owners are to be considered shall contain a statement of the nature of such assessments and that such assessments will be considered. Proof of such mailing or delivery shall be given by affidavit of the person giving the notice.

5.5 Waiver of Notice. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver, when filed in the records of the Association (whether executed and filed before or after the meeting), shall be deemed equivalent to the giving of such notice to such Member. A Member's attendance at a meeting shall be deemed a waiver by such Member of notice of the meeting unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at the meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

5.6 Quorum. A quorum shall exist when Members entitled to cast not fewer than twenty percent (20%) of all votes are present, either in person, by a designated voting representative or by proxy.

5.7 Adjournment of Meetings. If the Association cannot hold a meeting because a quorum is not present, a majority of the Members who are present may adjourn the meeting to a time at least five (5) but not more than thirty (30) days from the date called for the original meeting. At the reconvened meeting, those present or in person by proxy shall be deemed a quorum and any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Association shall give the Members notice of the date, time and place for reconvening the meeting, as provided herein.

5.8 Order of Business. The order of business at annual meetings of the Members, and as far as practical at other meetings of the members, shall be:

- (a) Calling of the roll and certifying of the proxies.
- (b) Proof of notice of the meeting or waiver of notice.
- (c) Reading and disposal of any unapproved minutes.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of Directors.
- (g) Unfinished business.
- (h) New business.
- (i) Announcements.

- (j) Adjournment.

ARTICLE 6 ELECTION OF DIRECTORS

6.1. Number. The Board of Directors shall be comprised of either three (3) or five (5) Directors, as determined from time to time by the Board of Directors not less than sixty (60) days in advance of an election. Notwithstanding the foregoing authority of the Board of Directors to determine the number of Director positions on the Board of Directors, the Board of Directors shall be increased from three (3) to five (5) Directors at the next election held after the adoption of these Bylaws and shall remain at five (5) unless or until changed by the Board of Directors as provided herein. Directors shall serve a two (2) year term.

6.2 Director Qualifications. Every Director shall be at least eighteen (18) years of age and shall be a Member or the designated voting representative for a Lot as provided in Article 4.2 of these Bylaws. A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the Association on the day that he or she could last nominate himself or herself or be nominated for the Board may not seek election to the Board, and his or her name shall not be listed on the ballot. A person serving as a Board member who becomes more than ninety (90) days delinquent in the payment of any fee, fine, or other monetary obligation to the Association shall be deemed to have abandoned his or her seat on the Board, creating a vacancy on the Board to be filled according to law.

6.3 Election of Directors. The election of Directors shall be held at the Annual Members Meeting, in the manner provided by law and as follows:

(a) Notice. At least sixty (60) days before a scheduled election, the Association shall mail or hand-deliver, whether by separate Association mailing or included in another Association mailing (including regularly published newsletters) to each Lot Owner entitled to vote, a first notice of the date of the election. Any Lot Owner or other eligible person desiring to be a candidate for the Board of Directors shall give written notice to the Association of his/her self-nomination not less than forty (40) days before the scheduled election. If furnished to the Association by a self-nominated Director candidate not less than thirty-five (35) days prior to the election, the Association shall include with the mailing of the second notice of election a one-sided candidate information sheet, not larger than 8-½ inches by 11 inches. The Association is not responsible for the content of the candidate information sheet. At least fifteen (15) days before and not more than thirty-four (34) days prior to the election meeting, the Association shall mail or hand-deliver a second notice of the membership meeting to all Lot Owners entitled to vote, together with all timely-provided candidate information sheets and a written ballot which shall list alphabetically by surname all Director candidates who timely provided written notice to the Association. The Association shall pay the costs of mailing and copying of the candidate information sheets.

(b) Balloting Materials and Assistance At Meeting. Additional written

ballots will be available for use by those Lot Owners attending the meeting in person. A Lot Owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance, but no Lot Owner shall permit another person to cast his or her ballot, and any such improperly cast ballot shall be deemed invalid.

(c) Ballot Casting and Counting. If more persons are timely nominated than there are vacancies to be filled, the election shall be by secret ballot. The nominees receiving the greatest number of votes cast shall be elected. Voting shall be non-cumulative. In the event of a tie vote, there shall be a runoff election as required by law. No election shall be necessary if the number of candidates is less than or equal to the number of vacancies. In such a case, the candidates shall automatically be elected and their names announced at the annual members' meeting

(d) Votes Cast for Valid Election. There shall be no quorum requirement for an election of Directors; however, at least ten percent (10%) of the eligible voters must cast a ballot to have a valid election.

(e) Floor Nominations Prohibited. There shall be no nominations from the floor on the date of the election.

(f) Condominium-Style Election. It is the intent of this Article 6.3 that the Association's election process mimic the requirements of a Florida condominium association election, including all balloting requirements as may be contained in state law and by applicable administrative rule.

(g) Electronic Voting. Notwithstanding any mailing and/or paper balloting requirements contained herein, under Florida Condominium law or applicable administrative rules, the Association may implement electronic voting pursuant to the requirements of Chapter 720.317, Florida Statutes.

6.4 Vacancies. Except as to vacancies provided by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors.

6.5 Removal. Any Director may be removed with or without cause by concurrence of a majority of the votes of the entire membership at a special meeting of the members called for that purpose or by written recall in accordance with state law. Any vacancy on the Board so created shall be filled by the members of the Association at the same meeting unless otherwise provided by law. Any Director shall also be removed upon majority vote of the Board of Directors, if such Director fails to attend three (3) consecutive Board meetings and fails to provide the Board with a legitimate excuse for his absence when requested by the Board. The seat of a Director removed by the Board for his failure to attend Board meetings may be filled by the remaining Board members for the balance of that Director's term.

**ARTICLE 7
BOARD OF DIRECTORS**

7.1 Authority. The Association shall be managed and governed by the Board of Directors. Without limiting the generality of the preceding sentence, or any power vested in it by law, the Board of Directors shall have the power to:

(a) To employ, dismiss, control and contract for personnel and contractors for the administration of the Association, including but not limited to managers, maintenance personnel, attorneys, accountants and other professionals, by employment or contract, as the Board may determine.

(b) To create and disband such committees as the Board may from time to time determine as reasonably necessary or useful in and about the administration of the Association and to delegate such authority to such committees as may be reasonable in connection with their purpose, subject always to the provisions of the Declaration, Articles of Incorporation and Bylaws. All committees of the Association shall keep records and conduct meetings in the same manner, to the extent applicable, as is required of the Board of Directors.

(c) To declare the office of a member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors.

(d) To adopt budgets and make assessments, and to use and expend assessments and other receipts of the Association to carry out the powers and duties of the Association pursuant to the Declaration and these Bylaws.

(e) To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Association.

(f) To conduct, manage and control the affairs and business of the Association.

(g) To borrow money and to incur indebtedness for the purposes set forth in the Declaration subject to any limitations contained in the Articles of Incorporation, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges hypothecations or other evidences of debt and securities therefor.

(h) To contract for and pay fire, casualty, errors and omissions, blanket liability, the Owners, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration covering and protecting against such damages or injuries as the Board deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area and Easement Areas, and to bond the agents and employees of any

management body, if deemed advisable by the Board. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the Association.

(i) To impose fines and suspensions for a violation of the Declaration or Rules and Regulations, the Articles of Incorporation, or these Bylaws. The maximum aggregate fine for a continuing violation shall be \$5,000.00. Fines that may become a lien under the law shall be deemed an assessment under Chapter 720, Florida Statutes, and the Declaration and shall be collected in the same manner.

(j) To enter into contracts for the operation, management, administration and maintenance of the Association and the Common Areas.

(k) To assess late fees and to charge interest for the late payment of assessments.

(l) Exercise all powers, duties, and authority of the Association, including those provided by Chapters 617 and 720, Florida Statutes, the Declarations, the Articles of Incorporation, and these Bylaws, except those expressly requiring a vote of the Members.

7.2 Compensation. The Association shall not compensate a Director or Officer for acting as such. The Association may reimburse any Director or Officer for expenses incurred on the Association's behalf if approved by a majority of the other Directors. In addition, nothing herein shall prohibit the Association from compensating a Director or Officer for services or supplies he or she furnishes to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association. The foregoing also applies to any entity with which a Director or Officer is affiliated.

7.3 Directors Meetings. Meetings of the Board of Directors shall be open to all members and shall be held in accordance with the following provisions:

(a) Organizational Meeting. The organizational meeting of a newly-elected Board of Directors shall be held immediately after the close of the Annual Meeting. The outgoing President shall preside at the organizational meeting until a successor is elected.

(b) Regular Meeting. Regular meetings of the Board of Directors shall be held not less frequently than annually and at such a time and place as shall be determined by the President or a majority of the members of the Board of Directors.

(c) Special Meeting. Special meetings of the Board of Directors may be called by the President (or, if he/she is absent or refused to act, by the Vice President) and shall be called by the Secretary at the written request by at least two (2) of the Directors.

(d) Notice of Board Meetings. Notice of all meetings of the Board shall be given to each Director, personally or by mail, telephone, fax or email, at least forty-eight (48) hours prior

to the day and time named for such meeting, which notice shall state the date, time and place of the meeting. As to special Board meetings, the purpose of the meeting shall be included with the notice to Directors. A Director may waive notice of a meeting before or after a meeting. Except for emergency meetings, notice of a Board meeting shall be posted in a conspicuous place within the Subdivision at least forty-eight (48) hours in advance of the meeting. In lieu of notice of each regular Board meeting, the Board may post or publish a schedule of upcoming Board meetings. The notice requirements hereof shall not apply to the organizational meeting of the Board nor in the event of an emergency, that is circumstances such that damage to persons or property or other material interests of the Association would occur by a delay of forty-eight (48) hours. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment.

(e) Special Notice of Certain Board Meetings. A nonemergency special assessment may not be levied at a Board meeting nor may any rule regarding the use of Lots in the Subdivision be adopted, amended, or revoked unless a written notice of the Board meeting is provided to all Members at least fourteen (14) days before the meeting, which notice includes a statement that a special assessment will be considered at the meeting and the nature of the special assessment or that a rule regarding Lot use will be considered at the meeting and the nature of that action.

(f) Quorum of Board. At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these Bylaws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue, notwithstanding the withdrawal of Directors, if at least a majority of the required quorum for that meeting approves any action taken.

(g) Actions without Proper Notice. Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (i) a quorum is present, and (ii) either before or after the meeting each Director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes.

(h) Telephonic Participation. Members of the Board may participate in a Board meeting by means of telephone or other electronic means, through which all persons participating in the meeting can hear each other at the same time. Participation in this manner shall constitute presence at the meeting for all purposes. Participants attending by electronic means may vote by electronic transmission.

(i) Adjourned Meetings. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting.

At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

(j) Presiding Officer. The presiding officer of Directors' meetings shall be the President. In the absence or disability of the President, the Vice-President shall exercise and perform the duties of the President. In the absence of both the President and Vice-President, the Directors present shall designate one of their number to preside.

(k) Vote. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election and removal of officers.

(l) Comments. Comments from the floor by Members who are not Directors may be invited and permitted by the President whenever the President deems it appropriate or by vote of the Board of Directors; either with respect to the subject matter being discussed or on other issues, and shall also be allowed when required by law.

(m) Meetings Open. Meetings of the Board of Directors shall be open to all Members.

(n) Minutes. Minutes of all meetings of the Members of the Association and of the Board must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon by each Director present at a Board meeting must be recorded in the minutes.

(o) Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting, by signing and concurring in the minutes thereof shall constitute the concurrence of such Director for the purpose of determining requisite majorities on any action taken and reflected in such minutes or to create a quorum. Directors may join in minutes under this section only after an open meeting, for the purposes herein provided.

ARTICLE 8 OFFICERS

8.1 Executive Officers. The executive officers of the Association shall be a President, a Vice President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Each executive officer of the Association shall be a Director of the Association. Any person may hold two or more offices, except that the President shall not also be the Secretary. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. Any officer may be peremptorily removed by a vote of the Directors at any meeting.

8.2 President. The President shall be the chief executive officer of the Association, shall have all the powers and duties usually vested in the office of President of a homeowners

association, including but not limited to the power to appoint advisory committees as the President may deem appropriate to assist in the conduct of the affairs of the Association. The President shall serve as chairperson at all Board and Membership meetings, except that the President may designate another person to serve as chairperson. The President shall see that all orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, and other written instruments and promissory notes and may affix the corporate seal as may be required on any document. Checks shall be signed as provided by resolution by the Board.

8.3 Vice President. The Vice President shall, in the absence of the President or during periods in which the President is unable to perform the duties of the office, perform the duties of the President. If the President shall be removed or resign, die, become legally incompetent or be unable permanently to perform his/her duties as President, the Vice President shall succeed to the Presidency and a Vice President shall be elected by the Board of Directors. In addition, the Vice President shall generally assist the President, and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors.

8.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members and shall attend to the giving and serving of all notice to the Members and Directors and other notices required by law and the governing documents. In addition, the Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association, as may be required by the Directors or the President. The Assistant Secretary, if such office is created, shall perform the duties of the Secretary, when the Secretary is absent.

8.5 Treasurer. The Treasurer shall be responsible for all property of the Association, including funds, securities, and evidence of indebtedness; shall ensure that the financial books of the Association are kept in accordance with good accounting practices; cause and annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; shall ensure that all financial records are kept in compliance with Florida Statutes; and shall perform all other duties incident to the office of Treasurer.

8.6 Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

8.7 Delegation of Functions and Reimbursement. The Board of Directors may delegate any or all of the functions of any Officer position to a management agent or employee, provided that the Secretary or Treasurer shall in such instance generally supervise the performance of the agent or employee in the performance of such functions. Upon request, the Association may reimburse a Director or officer for reasonable expenses incurred on behalf of the Association.

ARTICLE 9 COMMITTEES

9.1 Appointment and Removal. In addition to the authority of the President, the Board of Directors may by resolution create committees and may invest in such committees such powers and responsibilities as the Board shall deem advisable. The Board may, with or without cause, remove committee members.

9.2 Minutes. All committees shall keep minutes of their meetings. Minutes shall be provided to the Secretary and shall be maintained as an official record of the Association.

9.3 Term of Office. Each Member of a committee shall continue as such until the next annual membership meeting and until his or her successor is appointed unless the committee is terminated sooner or the Member is removed from the committee, the Member resigns, or unless such Member shall cease to qualify as a member thereof.

9.4 Quorum. Unless otherwise provided in the resolutions of the Board of Directors designating the committee, a committee may meet only when a quorum (a simple majority) is present. The act of a majority of the members present at a committee meeting at which a quorum is present shall be the act of the committee.

9.5 Scope and Rules. Each committee shall abide by the scope and stated purpose of the committee as defined by the President or Board of Directors and may adopt rules for its operation not inconsistent with these Bylaws and with rules adopted by the President or Board of Directors.

9.6 Reports and Action. Every committee shall report its findings directly to the Board of Directors. A committee may not take action on behalf of the Association and the Board of Directors unless the Board adopts a written resolution specifically empowering the committee to take such action.

9.7 Vacancies. Vacancy in the members of any committee may be filled by the Board of Directors or President, as applicable, in the same manner as provided in the case of original appointments.

ARTICLE 10 INDEMNIFICATION

Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including legal fees, reasonably incurred by, or imposed upon him in connection with any proceeding or the settlement of any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a

Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except when the Directors or officer is adjudged-guilty of willful and wanton misfeasance or malfeasance in the performance of his duties provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

ARTICLE 11 FINANCES

The provisions for fiscal management of the Association set forth in the Declaration and Articles of Incorporation shall be supplemented by the following provisions:

11.1 Fiscal Year. The fiscal year of the Association shall be the calendar year or as designated by the Board of Directors.

11.2 Accounting. Receipts and expenditures of the Association shall be credited and charged to accounts under the following general classifications, as shall be appropriate, all of which expenditures shall be common expenses:

(a) Current Expenses. Current expenses shall include all receipts and expenditures to be made within the year for which the funds are budgeted and may include a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves. The balance in this fund at the end of each year shall be applied to reduce the regular assessment for current expenses for the succeeding year or to fund reserves. The current expense classification shall be detailed and shall include, but not be limited to, the following subclassifications where applicable:

- (i) Administration of the Association.
- (ii) Management fees.
- (iii) Maintenance.
- (iv) Insurance.
- (v) Security provisions.
- (vi) Operating capital.
- (vii) Contingency funds for advancement of special and service assessments.
- (viii) Other expenses.

(b) Reserves for Deferred Maintenance. Reserves for deferred maintenance shall include funds for maintenance items that occur less frequently than annually.

(c) **Additional Accounts.** The Board may establish additional accounts for specifically authorized improvements or other categories consistent with accepted accounting practices.

11.3 Budget. The Board of Directors shall adopt an annual budget. A copy of the proposed budget shall be mailed to the owners at least fourteen (14) days prior to the date of the meeting at which the proposed budget is to be considered. The annual budget shall be funded by an annual assessment paid in one (1) lump sum payment for the year for which the assessment is made. Late fees and interest may be charged on delinquent payments. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended, or a special assessment may be levied as may be provided in the Declaration.

11.4 Depository. The funds of the Association may be kept in such bank or banks, savings and loan association or other federally insured depository or depositories as shall be designated from time to time by the Board of Directors. Withdrawal of funds from such accounts shall be only by electronic transfers approved by or checks or other appropriate instruments signed by such persons as are authorized by the Board of Directors.

11.5 Financial Report. A complete financial report of the actual, total receipts of assessments and other funds received by the Association, and an itemized listing of the expenditures made by the Association shall be made annually in the manner required by law, and a copy of the report shall be furnished to each Member not later than ninety (90) days following the year for which the report is made.

11.6 Board of Directors Insurance. Unless the members vote to forego pursuant to Section 720.3033, Florida Statutes, fidelity bonds or proper liability insurance shall be required by the Board of Directors from all persons authorized to sign checks or otherwise disburse or withdraw Association funds. The bonds or liability insurance shall be determined by the Directors, shall protect the Association against theft or embezzlement of the maximum amount of funds held by the Association at any time and shall in no event be less than one-half of the total annual assessment. The premiums on such bonds shall be paid by the Association as a common expense.

ARTICLE 12 PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall guide the conduct of the Association and Directors' meeting when not in conflict with the Governing Documents or state law. A deviation from Robert's Rules of Order (latest edition) shall not invalidate an otherwise properly approved action.

ARTICLE 13 RECORDS

13.1 Inspection and Copying of Records. Any member wishing to inspect or make copies of the Official Records of the Association must submit a written request to the Secretary not less than ten (10) business days preceding the date upon which the inspection is to be made. The request must state which record or records are to be inspected and must be signed and dated by the person requesting the inspection. The Member making the inspection will be charged for the costs of the inspection, including the costs of supervising the inspection, and any copying costs.

13.2 Recording. Any Lot Owner may tape record or videotape meetings of the Board or Membership. Tape recording and videotaping of a meeting shall be in compliance with such reasonable rules as may be adopted, in writing, by the Board. Video and audio recordings shall not be posted to any social media or internet website without prior written Board approval.

13.3 Member Information. Members are responsible for supplying to the Association all information necessary to maintain and keep current the records of the Association. The records of the Association shall include information required by Homeowners' Association Act and records necessary for the effective operation of the Association. Members shall reply to requests for information from the Association within thirty (30) days of receipt.

ARTICLE 14 AMENDMENTS

These Bylaws may be amended in the following manner:

- (a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
- (b) A resolution adopting a proposed amendment must receive the affirmative approval of a majority of those Members voting in person or by proxy.
- (c) When an amendment has been so adopted, a copy of same shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these Bylaws and referencing the Declaration by its original recording information. The certificate shall be executed by the officers of the Association with the formalities of a deed when such certificate and copy of amendment are recorded in the Public Records of Lee County, Florida.

**ARTICLE 15
RULES AND REGULATIONS**

The Board of Directors may, from time to time, adopt, amend or add to rules and regulations governing the operation and use of the property. Such rules and regulations may be rescinded at any annual or special meeting of the members upon the approval of not less than fifty percent (50%) of the votes of the entire membership.

**ARTICLE 16
CONSTRUCTION AND CAPTIONS**

Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders. The captions herein are inserted only as a matter of convenience and for reference and in no way define or limit the scope of these Bylaws or the intent of any provision hereof.

**ARTICLE 17
DOCUMENT CONFLICT**

If any irreconcilable conflict should exist, or hereafter arise, the documents shall take precedence and prevail in the following order: (1) Declaration of Covenants, Conditions and Restrictions; (2) Articles of Incorporation; (3) Bylaws; and (4) Rules and Regulations.