

Prepared by and return to:  
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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
HILL TIDE ESTATES**

THIS Declaration of Covenants, Conditions, and Restrictions and Reservations for Hill Tide Estates is made this 8 day of SEPT., 2016, by **BOCA PASS PARTNERS, LLC, a Florida limited liability company** (hereinafter referred to as "Declarant"), whose address is 12801 Commonwealth Dr., Unit 12, Ft. Myers, FL 33913.

**WITNESSETH:**

WHEREAS, the Declarant is the owner of the property described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property"), and desires to subject said Property to this Declaration of Covenants, Conditions, and Restrictions for Hill Tide Estates ("Declaration").

NOW, THEREFORE, the Property shall hereafter be subject to this Declaration, as it may be amended from time to time. The Property described in Exhibit "A" attached hereto and by this reference incorporated herein shall be owned, used, sold, conveyed, leased, encumbered, demised and occupied subject to the provisions of this Declaration, which shall run with the Property or any part thereof and which is binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each Owner thereof. Nothing herein contained, and no violation of these covenants and restrictions shall invalidate or impair the lien of any mortgage or deed of trust given in good faith and for value. Further, the express intent of Declarant is that substantive contract rights created hereunder shall not be retroactively impaired by legislation enacted subsequent to the recording of this Declaration.

**PURPOSE**

This Declaration provides for the overall, development, administration, maintenance and preservation of the Property and amenities thereon. The Property has or will be platted and developed to create a common scheme of development for Hill Tide Estates in order to ensure the desirability and attractiveness of the Property as a residential neighborhood. The Association has been formed to be comprised of owners of the Lots within the Property for the purposes of owning, operating and/or maintaining

various common areas and other portions of the Property as provided herein and administering and enforcing the Declaration. This Declaration does not and is not intended to create a condominium under Florida law.

## ARTICLE I

### DEFINITIONS

Section 1. **Annual Assessment** means any Assessment levied against the Lots pursuant to the budget adopted annually by the Association.

Section 2. **Architectural Review Board (ARB)** means a committee appointed by the Board to exercise the functions delegated to it in connection with review and approval of architectural plans and landscaping plans for improvements on the Property and as herein provided.

Section 3. **Articles** means the Articles of Incorporation for the Hill Tide Estates Owners Association, Inc., a copy of which is attached hereto as Exhibit "B".

Section 4. **Assessment** means a share of the funds required for the payment of the expenses of the Association which from time-to-time is assessed against the individual Members, which may include, without limitation, Annual Assessments, Special Assessments, Individual Assessments, Initial Assessments, and Re-Sale Assessments, all as authorized by this Declaration, and does not mean non-ad valorem special assessments (by any name) which may be levied and imposed on the Property by a general purpose or special purpose local government.

Section 5. **Association** means the HILL TIDE ESTATES OWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation, its successors and assigns.

Section 6. **Association Property** means the lands, leaseholds, and tangible and intangible personal property owned by or dedicated to the Association, including but not limited to the Common Areas, and any easements granted to the Association.

Section 7. **Board or Board of Directors** means the Board of Directors of the Association.

Section 8. **Builder** means any person or entity, including but not limited to licensed contractors, who purchases one or more Lots within the Property for purposes of constructing improvements for later sale to consumers. The term Builder does not include a person or entity who purchased a Lot for re-sale as a vacant lot, for investment, or to construct a home thereon at a later date for their use. The Owner of a Lot shall not, solely by virtue of having purchased a Lot, be deemed a Builder or a successor or assignee of any rights of a Builder unless an instrument of assignment or conveyance expressly so states.

Section 9. **Bylaws** means the Bylaws of the Association, which are attached hereto as Exhibit "C" and as they may be amended from time to time.

Section 10. **Common Area or Common Areas** means all real and personal property now or hereafter owned by or dedicated to the Association for the common use and enjoyment of the Owners and may include, without limitation or obligation, Recreational Facilities, conservation areas, drainage easements, the Surface Water Management System, signs and signage easements, landscape easements, roadways, walkways and public utility easements. The Common Area also includes, but is not limited to, any tract dedicated to the Association on the Plat, and any Lot owned by the Association upon which Recreational Facilities are located, if any.

Section 11. **Common Expenses** means the actual and estimated expenses of operating the Association, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles. Common Expenses may include reserves for capital expenditures and/or deferred maintenance in accordance with Florida law or reserves for other purposes as deemed necessary by the Board.

Section 12. **Declarant** means BOCA PASS PARTNERS, LLC, a Florida limited liability company, its successors, transferees and assigns, provided such successors or assigns acquire at least one undeveloped Lot from Declarant for the purposes of development and are assigned all or a portion of the Declarant's rights by a duly executed and recorded instrument.

Section 13. **Dock** means any mooring and/or docking facilities or other structures constructed on the Property or in the water adjacent to the Property the purpose of which is to moor watercraft or provide an over-water structure for fishing and/or sightseeing. Any Dock, or a portion of a Dock, constructed on or adjacent to the Property may be dedicated to the Association as Common Area or may be leased, sold, or otherwise assigned to individual Owners for their exclusive use, solely at Declarant's discretion.

Section 14. **Declaration** means this Declaration of Covenants, Conditions, and Restrictions for Hill Tide Estates, as it may be amended from time to time.

Section 15. **Living Unit or Unit** means any improved property intended for use as a single family dwelling located within the Property. For purposes of this Declaration, any such Unit shall not be deemed to be improved until a Certificate of Occupancy has been issued by the appropriate governmental authorities for the single family dwelling constructed on such portion of the Property. The use of the term "Living Unit" or "Unit" shall be interpreted as if the term was followed immediately by the words, "and the Lot on which it is located."

Section 16. **Lot** means any one of the platted portions of land into which the Property has been subdivided, upon each of which a single Living Unit has been or is intended to be constructed. Unless the context clearly requires a different interpretation, the term, "Lot" shall be interpreted as if it were followed immediately by the words "and the Living Unit constructed thereon." However, any platted Lot which is owned by the Association upon which Recreational Facilities are located shall not be deemed a Lot for purposes of this Declaration.

Section 17. **Majority** means those eligible votes totaling more than fifty percent (50%) of the total eligible number.

Section 18. **Member** means every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to this Declaration, but excluding persons or entities holding title merely as security for performance of an obligation, and every such person or entity shall be a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Lot.

Section 19. **Owner or Lot Owner** means the record owner of fee simple title, whether one or more persons or entities, of any Lot which is part of the Property, but excluding any party holding fee simple title merely as security for the performance of an obligation, unless and until such holder has acquired title pursuant to foreclosure proceedings or deed in lieu of foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

Section 20. **Permit** means the Environmental Resource Permit and conditions approved by the South Florida Water Management District Under Permit No. 36-08641-P, attached as Exhibit "D" hereto.

Section 21. **Person** means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

Section 22. **Plat** means the plat of Hill Tide Estates, recorded as Instrument # 2017000012430 in the Public Records of Lee County, Florida.

Section 23. **Property** means the real property subject to this Declaration as described in Exhibit "A" of this Declaration, as the same may be amended from time to time.

Section 24. **Recreational Facilities (or Recreational Facility)** means those tracts of land, if any, together with any improvements thereon, and also includes any personal property acquired by the Association for use in connection with any recreational facilities, which are owned by the Association and used by or are intended for recreational uses by the Members.

Section 25. **Residential** means the intended use of the Property as a single-family Living Unit.

Section 26. **Rules** means those certain Rules that may be promulgated by the Board from time to time pertaining to use of the Property.

Section 27. **SFWMD** means the South Florida Water Management District.

Section 28. **Special Assessment** means any Assessment levied against an Owner other than the Assessment required by the budget adopted annually by the Association.

Section 29. **Surface Water Management System** means any portion of the surface water or stormwater management system which is designed, constructed or implemented pursuant to the Permit to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse the water to prevent or reduce flooding, over drainage, environmental degradation, or water pollution otherwise affecting the quantity discharge of the water. The Surface Water Management System shall be maintained by the Association.

Section 30. **Street** means any street, highway or other thoroughfare constructed within the Property whether the same is designated as a street, avenue, boulevard, drive, driveway, place, court, road, terrace, way, circle, lane, walk or other similar designation.

Section 31. **Tract** means any or all of the Common Area Tracts designated as a Tract and dedicated to the Association on the Plat.

Section 32. **Turnover or turnover meeting** means the point at which the Lot Owners other than Declarant are entitled to elect a majority of the Board.

Section 33. **Undeveloped Lot** means a Lot upon which no Living Unit has been constructed or a Lot upon which a Living Unit has been constructed but no certificate of occupancy has been issued by the local governmental authority.

Section 34. **Watercraft Slip** means the area of water adjacent to or between Docks designed to accommodate storage of a watercraft in the water or on a boat lift constructed in the Watercraft Slip, or on some other device designed to store a watercraft out of the water. Any Watercraft Slip constructed or created adjacent to or within Docks may be dedicated to the Association as Common Area or may be leased, sold, or otherwise assigned to individual Owners for their exclusive use, solely at Declarant's discretion

## ARTICLE II

### PROPERTY RIGHTS

Section 1. **Association Property and Surface Water Management System.** Subject to the provisions of Article IV, Section 1(a), the Association Property shall be

owned by or dedicated to the Association for the benefit of its Members. The Surface Water Management System (including some of the property on which the Surface Water Management System is located) shall be owned and maintained by the Association and shall be considered Association Property. The Association shall also have a non-exclusive easement over, through and under all portions of the Property as necessary to access, operate, repair, replace and maintain the Surface Water Management System and the Association Property, provided that such easement is not exercised in a manner that materially interferes with the residential use of a Lot. The drainage and lake maintenance easements dedicated or reserved on the Plat and any other drainage easements dedicated to the Association by the Declarant shall be considered Common Areas. No drainage or lake maintenance easements dedicated or reserved to the Association on the Plat or pursuant to this Declaration may be removed from their intended use by subsequent Owners or others without the approval of the SFWMD.

**Section 2. Declarant's Reserved Easement.** Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserves unto itself, and its agents, successors, assigns and Builders, a non-exclusive, perpetual right, privilege, and easement over, under, in, and/or on the Property, without obligation and without charge for the purposes of construction, installation or relocation of utilities, development, sale, signage, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Property, provided that this right, privilege and easement shall not substantially interfere with the use of a Lot by an Owner. The reserved easement shall constitute a burden on the title to the Property, may not be removed from its intended use by the Association or its successors and assigns, and shall specifically include, but not be limited to:

(a) The right of access, ingress and egress for vehicular and pedestrian traffic over, under, on, or in the Property; and the right to tie into any portion of the Property with roads, driveways, parking areas, and walkways, provided that such action by will not prevent or unreasonably interfere with the Residential use of a Unit; and the right to install, tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Property.

(b) The right to store materials, vehicles, tools, equipment, etc., which are being utilized in the development, construction or improvement work on the Property and the right to use and maintain signs, banners, and other marketing or advertising structures in connection with the sale or promotion of the Property, or any portion thereof.

(c) The right to access, ingress and egress for operation and maintenance of the equipment and pipes used to draw water to irrigate the Property, if the Declarant decides to use water for such purposes.

(d) The right, but not the obligation, to enter into cross easement agreements with owners of adjoining properties.

(e) The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as may be required, convenient, or incidental to the construction and sale of Lots and homes on the Property.

(f) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Property, but is held independent of such title, and no such right, privilege, or easement is surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

(g) The right to construct, install, replace, relocate, maintain, repair, and use equipment, lines and pipes necessary for irrigation of Association Property and the Lots. It is expressly permissible for the Declarant to install, repair, replace and maintain such equipment, lines and pipes when and where the Declarant deems appropriate.

(h) The right, prior to and after Turnover, to access, ingress and egress over, in and to the Property for completion of all Declarant's obligations required by any and all applicable permits related to the Property.

(i) The right to allow members of the general public to inspect Lots and model homes, the right to hold promotional parties and picnics, and the right to use the Property for every other type of promotional or sales activity that may be employed in the marketing of residential Units.

(j) The right, but not the obligation, to construct Recreational Facilities upon the Common Areas or any Lot owned by the Declarant.

At no time shall Declarant incur any expense whatsoever in connection with its use and enjoyment of such rights and easements. No Owner, nor an Owner's agents, tenants, or invitees, nor the Association shall in any way interfere or hamper Declarant, its agents, successors, assigns and Builders, in connection with such construction, development, promotion or sales activity. The easements created by this Section 2 and the rights reserved herein shall be construed as broadly as possible and supplement the rights of Declarant set forth in this Section.

This Section may not be amended without the written consent of Declarant so long as Declarant owns any portion of the Property or is engaged in any construction work within or upon the Property, including but not limited to construction or improvement work related to the close-out, completion, and certification of all outstanding permits, development orders, or other entitlements affecting the Property or any portion thereof.

**Section 3. Association Easements.** The Association shall have non-exclusive easements over, through and under the Property, including but not limited to all of the Lots and Common Areas, for purposes of fulfilling its purposes and obligations as set forth in this Declaration, and the Articles and Bylaws. Easements over, through and under Lots shall be exercised so as to not unreasonably interfere with the Residential use of the Unit.

**Section 4. Grant of Drainage and Utility Easements.** The Property will be or are subject to non-exclusive drainage and/or utility easements as will be or are shown and dedicated on the Plat. These drainage and utility easements are for the construction, installation, replacement, relocation, maintenance, repair and operation of all drainage, utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, irrigation lines and facilities, and drainage lines and facilities, constructed or installed in, on, under and/or over the drainage and utility easements, and may not be removed from their intended use by the Association, its successors and assigns, without the approval of Lee, the SFWMD, and/or the requisite utility providers as may be required. The utility easements are dedicated on the Plat to duly licensed public and private utilities for use in performing and discharging their respective official duties and obligations to provide utility and other governmental services. Neither the easement rights reserved pursuant to this Article II or as shown on the Plat shall impose any obligation on Declarant to maintain such easement areas, nor to install or maintain the utilities or improvements that may be located on, in or under such easements, or which may be served by them. All repairs to utilities not performed by a utility company or governmental agency is the responsibility of the Owner. No permanent improvements or structures which obstruct drainage flow may be placed or erected within or upon drainage easements. In addition, no fences, driveways, pools, decks, patios, air conditioners, impervious surface improvements, utility sheds, sprinkler systems, trees, shrubs, hedges, plants or any other landscaping element other than sod may be placed or erected upon or within drainage easements.

**Section 5. Owner's Easements.** Each Owner and his agents, tenants and invitees shall have a permanent and perpetual non-exclusive easement for ingress and egress for pedestrian and vehicular traffic over and across the common roadways and walkways from time to time laid out on the Common Areas, for use in common with all such Owners and their agents, tenants, and invitees. The portion of the Common Areas not used, from time to time, for common roadways and walkways are for the common use and enjoyment for its intended purpose of the Owners, and each Owner have a non-exclusive easement for use of such portions of such Common Areas and for the use of same in such manner as may be regulated by the Association. The foregoing easements are subject to the following:

(a) The right of the Association to grant such additional utility, maintenance and other easements, or relocate any existing easements, for the proper operation and maintenance of the Properties, subject, however, to the prior written consent thereto by the Declarant, so long as the Declarant has any ownership interest in the Property.



(b) The right and duty of the Association to levy Assessments against each Unit for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with all restrictions on the various plats of the Property and any other instruments from time to time recorded in the Public Records.

(c) The right of the Association upon fourteen (14) days' prior written notice and an opportunity for a hearing, to suspend voting rights and/or the right to use the Common Areas and facilities by an Owner or his family for any period during which any Assessment against his Unit remains unpaid, and for a reasonable period to be determined by the Board for any infraction of this Declaration or any of the Rules, it being understood that any suspension for either non-payment of any Assessment or breach of any Rules does not constitute a waiver or discharge of the Member's obligation to pay the Assessment; provided, however, that the Association may not suspend the right to use any roads belonging to the Association, subject to the Rules for such use, and provided further that the Association may not suspend any rights and easements reserved herein to the Declarant.

(d) The right of the Association to (i) adopt, amend, and enforce Rules governing the use of the Common Areas and all facilities at any time situated thereon and (ii) conduct such activities as may be required by the Association. The Rules may include, but not be limited to, the right to restrict the maximum and minimum speed limits of using Association roads, maximum vehicle weight restrictions, maximum noise levels, and all other necessary traffic and parking regulations, all of which may be more restrictive than the laws of the State or any local government having jurisdiction.

(e) The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him or her, subject to regulations from time to time adopted by the Association, which regulations may include reasonable admission fees or other fees for use of any facilities located upon the Common Areas.

Section 6. **Easements Appurtenant.** The easements provided in Section 5 above are appurtenant to and shall pass with the title to each Lot.

Section 7. **Service Easement.** The Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television, and other utilities authorized by the Declarant, its successors or assigns, to service the Property, and to such other persons as the Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Common Area, roadways, and other rights of way for the purposes of performing their authorized services and investigations. The provisions of this section is limited to the roadways and other rights of way, both public and private, shown on the Plat and subject to this Declaration.

Section 8. **Signage and Landscape Easements.** The Declarant hereby reserves for itself and for the Association, a perpetual easement, privilege and right in, over, under, on and across the Common Areas for the purposes of erecting,

maintaining, and repairing signage for Hill Tide Estates and for installing, maintaining and replacing landscaping, walls, fences and lighting as may be desired by Declarant or required by the Association and/or any applicable governmental permits or requirements. If such signage, landscaping, wall or fence, if any, have been erected, the Association, shall have the obligation to maintain, repair and replace such signage, landscaping, wall or fence in a neat and aesthetic condition. The cost of such maintenance, repair or replacement, if any, shall be a Common Expense. An easement over all Lots is also hereby reserved to the Association for the purpose of performing its irrigation, landscaping and lawn maintenance obligations as provided in Article V hereof.

**Section 9. Easements for Repair.** To the extent necessary, each Owner shall have an easement over the adjacent Lot and over the Common Area to maintain such Owner's Unit and to make necessary repairs to the Owner's Unit. Such easement may not exceed an area extending five (5) feet over the Lot or Common Area. Any such right of access shall be exercised in a reasonable manner only and, except for emergency repairs, any Owner shall give at least twenty-four (24) hours prior notice to the other party over whose Lot the easement is being exercised and shall, to the extent practical, not interfere with, restrict, disturb or hinder the full enjoyment by such Owner of his or her Unit. Any Owner exercising the easement rights herein granted shall repair, at such Owner's sole cost and expense, any damage caused by such Owner as a result of such entry.

**Section 10. Additional Easements.** The Declarant, so long as it has any ownership interest in any portion of the Properties or so long as the Class B membership exists, whichever is later, and the Association shall each have the right to grant such additional electric, sewer, water, telephone, gas, sprinkler, irrigation, cable television, maintenance, stormwater management, drainage or other easements, and to relocate any existing easement in any portion of the Property and to grant access easements and to relocate any existing access easements in any portion of the Property as the Declarant or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for Residential purposes. The Association shall join in or separately execute any easements for the foregoing purposes, which Declarant shall direct or request from time to time.

**Section 11. Assumption of Risk and Indemnification.** Each Owner hereby expressly assumes all risk and responsibility for noise, personal injury to Owner or Owner's family, visitors, tenants and invitees, or property damage to Owner's property, caused by maintenance, operation or use of Common Areas, including, without limitation: (a) noise from maintenance equipment, it being specifically understood that such maintenance may take place around sunrise or sunset (b) noise caused by users of the Common Areas, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by planting and maturation of trees, shrubbery and berms (whether planted or installed prior to the Owner's occupancy of a Unit or subsequently planted or

installed), (e) reduction in privacy caused by traffic on the roadways or other Common Areas or the removal or pruning of shrubbery or trees on the Common Areas, (f) power lines and other utilities running through the Property and (g) design or modification of the Common Areas, and agrees that neither Declarant, the Association nor any of Declarant's affiliates or agents nor any other entity owning or managing the Common Property shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Common Areas, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, the Association or any other entity owning or managing the Common Area. Each Owner hereby agrees to indemnify and hold harmless Declarant, Association and any other entity owning or managing the Common Area against any and all claims by such Owner or Owner's family, visitors, tenants and other invitees upon such Owner's Lot or the Common Areas. Without limiting the foregoing, all persons using the Common Areas, including, without limitation, any area adjacent to Boca Grande Pass, do so at their own risk. By taking title to any Lot, each Owner further accepts and assumes all the risks and hazards of ownership and occupancy attendant to the ownership of such Lot, including, but not limited to, its proximity to any lake within the Common Areas.

The Association agrees to indemnify and hold harmless Declarant, its officers, partners, agents, employees, affiliates, directors attorneys and Builders (collectively, "**Indemnified Parties**") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("**Losses**") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of any water bodies within or adjacent to the Property by Owners and their families, visitors, tenants and invitees, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Declarant or of any of the Indemnified Parties. Should any Owner bring suit against Declarant or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner is liable to such parties for all losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including legal fees.

#### **Section 12. Property Subject to Declaration.**

(a) **Initial Property.** The real property which shall initially be held, transferred, sold, conveyed, given, donated and/or occupied subject to this Declaration is described in Exhibit "A" attached to the Declaration. The Declarant hereby reserves the right to review, modify, or amend the development plan from time to time in its sole discretion and at its option, including, but not limited to, adding or deleting real property, Units or Lots, Common Areas, or Recreational Facilities; increasing or decreasing density; relocating and reducing or increasing lakes, and open or green areas; provided, however, that any such changes may only involve property then owned by the Declarant unless the owner thereof consents to such change. The Declarant is not required to

follow any predetermined order of improvement and development within Hill Tide Estates and, notwithstanding the terms and conditions of this Declaration, the Articles and Bylaws, the Declarant may bring within the Declaration lands and develop them before completing the development of Hill Tide Estates. The Declarant shall have full power to add to, subtract from, or make changes in its development plan regardless of the fact that such actions may alter the relative voting strength of memberships of the Association.

(b) **Mergers.** Upon a merger or consolidation of the Association with another association (which merger may only take place as permitted by the articles of incorporation and bylaws of both associations), the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or in the alternative, the properties, rights and obligations of the other association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. Except as hereinafter provided, no such merger or consolidation shall revoke, change or add to the covenants, conditions and restrictions established by this Declaration.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership.** Every person or entity who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration is deemed to be a Member in this Association, and is governed and controlled by the Articles of Incorporation and the Bylaws thereof. By taking title to a Lot, each Owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, any amendments thereto, the Articles, Bylaws, and Rules of the Association. Membership is appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest does not terminate the Owner's Membership.

Section 2. **Initial Control.** The affairs of the Association shall be managed initially by a Board of Directors consisting of at least three (3) Directors. The number of Directors shall be the number of Directors elected from time to time in accordance with the Bylaws but shall never be less than three (3). The Declarant shall have the right to designate the full membership of the Board until transfer of control of the Association occurs in accordance with Section 5 of this Article. Other than Directors selected by the Declarant, each Director shall be a Member of the Association.

Section 3. **Membership Types and Voting.** The Association shall have two classes of voting Members as follows:

Class A: Class A Members are all Lot Owners provided, however, so long as there is a Class B membership, the Declarant shall

not be a Class A Member. Every Class A Member is entitled to one vote for each Lot owned. The Declarant's votes are governed under the provisions of the "Class B" voting rights below.

**Class B:** The Class B Member is the Declarant until such time as the Class B Membership ceases as further provided herein. At which time Declarant shall become a Class A Member with regard to each Lot owned by Declarant. The Class B Member is entitled to the same number of votes as the total votes held by Class A Members, plus one. In other words, if Class A Members hold 15 votes, the Class B Member shall have 16 votes. Upon the transfer of control of the Association pursuant to Section 6 of this Article III, or if the Class B Member voluntarily converts its Membership to Class A status, whichever occurs first, the Class B Membership shall cease and Turnover to the Class A members shall occur after which Declarant shall become a Class A Member with regard to any Lot owned by Declarant. Class B Membership may be assigned by Declarant to a successor or assignee of Declarant in one of two ways. First, Class B Membership may be assigned provided that (1) such successor or assignee acquires ownership of the balance of the Property then owned by the Declarant, (2) such successor or assignee holds such property for sale, development or improvement, and (3) such successor or assignee has been assigned or granted the Declarant's rights by a duly executed and recorded instrument. Second, Class B Membership may be assigned, subject to such assignment being revoked by the Declarant, provided that (1) such successor or assignee, or an Affiliate of such successor or assignee, owns at least one Lot, (2) such successor or assignee has a contractual right to purchase additional Lots from Declarant, (3) such successor or assignee owns a Lot and has the contractual right to purchase additional Lots for sale, development or improvement, and (4) such successor or assignee has been assigned or granted the Declarant's rights by a duly executed and recorded instrument.

**Section 4. Entity Owner or Multiple Owners of a Lot.** When any Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify the Secretary of the Association of the name of such individual. The vote of such individual shall be considered to represent the will of all the Owners of that property. If no notification of a representative is made as provided in this paragraph, any one of the several Owners of the same property in attendance at any meeting may vote, but if more than one of the Owners of said property are in attendance, no vote may be cast on behalf of said property unless all of its Owners in attendance agree upon said vote. Any officer, member, or

authorized agent of the Class B Member present at any meeting is entitled to cast said Class B Member's votes. The ownership of a Lot, and the ownership of a single family Living Unit constructed thereon, may not be separated or separately conveyed, nor may any person who does not own record legal title to at least one Lot, hold membership in the Association.

**Section 5. Impact on Declarant.** Any other provision of this Declaration to the contrary notwithstanding, any action proposed to be taken by the Association which has a material adverse impact upon the Declarant's construction and/or sales activities within the Property shall require approval by the Declarant while the Declarant owns any Lot for development or sale in the ordinary course of business. The Declarant, in its reasonable discretion, shall determine whether any proposed action by the Association will have a material adverse impact. However, an increase in assessment for common expenses without discrimination against the Declarant shall not be deemed to be detrimental to the Declarant's construction or sales activities.

**Section 6. Transfer of Control of the Association.**

(a) Three (3) months after 90 percent of the Lots have been conveyed to Owners, Members other than the Declarant are entitled to elect at least a majority of the members of the Board (the "Turnover"). For purposes of this section, the term "Members other than the Declarant" does not include Builders, as defined in Article I, who purchase a Lot for the purpose of construction improvements thereon for resale.

(b) The Declarant is entitled to elect at least one member of the Board as long as the Declarant holds for sale in the ordinary course of business at least 5 percent of the Lots. After the Declarant relinquishes control of the Association, the Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board.

(c) At the time the Class A Members are entitled to elect at least a majority of the Board, the Declarant shall, at the Declarant's expense, within no more than 90 days, deliver the documents required by Section 720.307, Florida Statutes, to the Owner-elected Board:

(d) Declarant's relinquishment of control of the Association shall not require Declarant to relinquish any power or right which is reserved to Declarant hereunder for a period which is longer than Declarant's voting control or allow the Association to assume control over such power or right, except that the Declarant does not have the unilateral ability to make changes to this Declaration or the Articles or Bylaws of the Association after Turnover.

(e) Provided that at least thirty (30) days notice of Declarant's decision to relinquish control of the Association and cause its appointed Directors to resign is given to Lot Owners, neither the Declarant or its appointed Directors shall be liable in

any manner in connection with such resignation even if Lot Owners other than Declarant fail or refuse to assume control of the Board.

**Section 7. Changes in Voting Strength.** Changes may occur from time to time in the number of Members because of:

- (a) Changes in the development plan, including, but not limited to, the conveyance of a Lot to the Association by Declarant for use as a Recreational Facility;
- (b) Changes in the number of existing Units or Units to be constructed in any area of the Property;
- (c) Amendments of this Declaration.

Such changes may result in changes in the number of total votes which may be cast at membership meetings. No such changes, assuming that they are otherwise properly authorized by changes in this Declaration or any Supplemental Declaration, shall be subject to objection or question by any Member, notwithstanding the fact that any such Member's relative voting strength may be affected thereby.

#### ARTICLE IV

##### DECLARANT'S RIGHTS AND POWERS

**Section 1. Declarant's Ownership of Property.** So long as Declarant or its affiliates owns land within the Property for development or for sale in the ordinary course of business:

(a) Declarant may in its sole discretion, set aside, grant a license, grant an easement or grant other use rights to real property or personal property to the Association within or without the Property for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. The Association must accept from Declarant any such easement, conveyance, dedication, lease, grant of license, or grant of use right, and such acceptance is conclusively presumed by the recording of a deed or other instrument in the Public Records of Lee County. The Association is required, upon request of the Declarant, to execute any documents necessary to evidence acceptance of such Property. No such real or personal property is considered to be the property of the Association until actually so conveyed, dedicated by platting, leased or a grant of license or other use right is created by a written instrument. The written instrument shall also provide the date that the personal property or area(s) of land are dedicated, conveyed, leased, licensed or a use right is granted to the Association.

(b) The Association may not accept from any person other than Declarant an easement, conveyance, dedication, lease, grant of license, or grant of use right except upon the prior written consent of the Declarant, which consent will not be unreasonably withheld.

(c) Declarant shall have the right and the power to regulate and control the external design and appearance of the Property in such a manner as Declarant deems appropriate so as to promote a quality environment which will preserve the value of the Member's Lots and to foster the attractiveness and functional utility of the Property as a place to live.

(d) Any change in the type of use of any Association Property is subject to the prior written approval of Declarant.

(e) Prior to any grant of easement, conveyance, dedication, lease or grant of license or other use right by Declarant to the Association of any property, Declarant shall have the right to charge reasonable fees for the use of such property. Thereafter, the right to use such property is in favor of and for the benefit of the Association, subject to reasonable rents, fees and other charges payable to Declarant pursuant to the leases, grants, licenses or contracts creating the use right.

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

(g) Declarant shall have the right, in its sole discretion, to grant easements, licenses, or use rights with respect to the Association Property to persons that are not Members of the Association, including but not limited to any public agency, authority, or utility, for such purposes as benefits the Property, or portions thereof, and Owners of Lots contained therein.

(h) Declarant shall have the right to construct a dividing or privacy wall on all or any of the Lots owned by Declarant in the area where the Lot is contiguous to a public or private road, adjoining Lot, or Common Area.

(i) Declarant may preserve any area designated as open space on the Plat of the Property. Such open space may not be developed except for open space purposes in accordance with applicable Lee County regulations. The obligations for maintaining any such open space is the responsibility of the Association.

**Section 2. Owners Not to Convey Easements.** No Owner, except for the Declarant, so long as Declarant owns any Lot for development or for sale in the ordinary course of business, shall grant any easement upon any portion of the Property to any person or entity, without the prior written consent of the Declarant and thereafter without the prior written consent of the Association if the easement has not been granted prior to the recording of this Declaration.

**Section 3. Enforcement and Inaction.**

(a) So long as Declarant owns land described on Exhibit "A" for development or for sale in the ordinary course of business, Declarant shall have the



right and power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any person violating or attempting to violate such provision, to restrain any violation or attempted violation of such provisions, to require performance of such provisions, to recover damages for violations of such provisions, to levy against the land to enforce any lien created by this Declaration, and to delegate or assign either exclusively or nonexclusively any or all of its rights, powers, duties or privileges hereunder to the Association, or to an Owner, or to any other person. In the event Declarant expends any sum of money to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration, the Association shall immediately reimburse the Declarant for such expenditure. Failure by Declarant, or by the Association or any other Owner or any other person to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

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

## ARTICLE V

### ASSOCIATION MAINTENANCE OBLIGATIONS

Section 1. **Maintenance, Operation and Repair of the Association and Other Property.** The Association, subject to the rights of the Owners and subject to the rights of the Declarant set forth in this Declaration, is responsible for the exclusive management, maintenance, and control of the Association Property, including, but not limited to, any and all easements, conveyances, dedications, leases, licenses, or use rights granted to the Association, and all improvements thereon (including furnishings, landscaping, irrigation devices and equipment related thereto, if any), and shall keep it in good, clean attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws. The Association is also responsible for maintenance of certain other personal property or fixtures to real property that may be located outside of the Association Property, as provided in this Article. The Association is responsible for the cleanup, maintenance, operation, improvement, repair and replacement of all Common Areas, the responsibility for which has not been assigned to and accepted by Lee County or another appropriate entity in this Declaration or a separate instrument recorded in the Official Records of Lee County, Florida. Such obligations may include, but not be limited to:

(a) The Common Area security systems and facilities, including landscape lighting, and signage areas, if any, which shall be operated and maintained for the benefit of all of the Lots within the Property;

(b) The Surface Water Management System;

(c) The areas in which entrance signs are placed identifying the Property and the entrance signs located in such areas, including lighting thereof and supplying electricity for this purpose;

(d) Any areas conveyed, dedicated, or leased to or used by the Association, including any improvements upon Association Property;

(e) All utility and access easements and right-of-way areas, including but not limited to any roads, street signs, landscaping, street lighting, gatehouses and gates contained within such access easement and right-of-way areas unless any such areas are operated or maintained by the Declarant, Lee County, Florida, the State of Florida or another applicable entity and except to the extent a utility provider is obligated to maintain or repair any damage to utility easements caused by such utility provider;

(f) Conservation and preservation areas, if any;

(g) Landscaping on Association Property;

(h) Docks and Watercraft Slips, if any; even if located over sovereign submerged land that is outside of the Association Property, provided, however, if a Watercraft Slip has been sold, leased, or otherwise assigned for the exclusive use of a Lot Owner, any boat lift or other device designed to store a watercraft out of the water; shall be maintained, repaired, or replaced, as necessary, by the Lot Owner who owns or leases the Watercraft Slip or by the Lot Owner to whom the Watercraft Slip has been assigned.

(i) Recreational Facilities, if any.

All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

**Section 2. Maintenance of Walls and Fences.** There are, or may be constructed, perimeter and buffer walls and fences throughout the Property, which will be located on Association Property but may, in some locations, be located on Lots. The Association is responsible for maintaining any perimeter or buffer wall or fence constructed along the North, South, and West side of the Property or constructed adjacent to interior Lots to buffer such Lots from the Common Areas. The Association shall have an easement over any Lot on which a wall is constructed or where the wall is constructed on land adjacent to the Lot in order for the Association to have access to maintain the inside face of the wall facing the Lot. The Association is not responsible for maintaining any fences or walls constructed on Lots by the Owners of such Lots or their Builders.

**Section 3. Maintenance of Other Property.** There are navigational warning lights on the dock which is located over sovereign submerged land at the Southeast corner of the Property. The Declarant has a Private Aids to Navigation Permit issued by the Department of Homeland Security/U.S. Coast Guard, allowing the lights to exist. The Association shall be responsible for maintaining the lights in a

working condition and replacing the lights as necessary. The Declarant may transfer said permit to the Association and the Association shall be obligated to accept said permit and execute any form required by the Department of Homeland Security evidencing said transfer. If the Association refuses to execute any such document, the Declarant is hereby granted a power of attorney to execute the same on behalf of the Association.

**Section 4. Management of Association Property.** The Association's authority to manage the Association Property shall include:

(a) The right to establish Rules governing the use of the Association Property, facilities located thereon, and the individual Lots. Copies of such Rules and amendments thereto shall be furnished by the Association to all Owners prior to such Rules' effective date. Such Rules are binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such Rules are overruled, canceled, or modified by the Board or by the Association in a regular or special meeting by the vote of Class A Members holding a majority of the total votes in the Association and by the majority vote of the Class B Members, so long as such Membership shall exist. The Board shall have the authority to impose reasonable monetary fines for the violation of this Declaration or the Rules, not to exceed \$100 per day per continuing violation, up to a maximum of \$2,500.00 in the aggregate per violation, and other sanctions, including suspension of the right to vote and suspension of the right to use Association Property. Any suspension of Association Property use rights or voting rights for the non-payment of Assessments or other monetary obligations due to the Association may be imposed if approved at a properly noticed Board meeting. A fine or suspension imposed for violations other than a failure to pay Assessments or other monetary obligations may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing, at the written request of the Member, before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the Court;

(b) The right to charge reasonable admission and other fees or Assessments for the use of Association Property;

(c) The right to suspend a Member's right to vote, and a Member's right to use Association Property, for any period during which any Assessments against the Member's Lot or any monetary obligation of the Member to the Association remains unpaid or unfulfilled for more than ninety (90) days, provided that suspension of Common Area use rights may not impair the right of an Owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park;

(d) The right to dedicate or transfer all or any part of Association Property to any governmental agency, public authority, or utility;

(e) The right to borrow money for the purpose of improving Association Property or property which is to be publicly dedicated but required to be upgraded or maintained by any local, state or federal government agency, and in aid thereof to mortgage the same, and the right to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its obligations under the Declaration, Articles and Bylaws;

(f) The right to take such steps as are reasonably necessary to protect Association Property against foreclosure;

(g) Subject to the limitations described in Article IV, the right to grant easements to all or any part of Association Property to any person.

(h) The right and obligation to establish a budget for its fiscal operations and to establish the Assessments needed for such fiscal year.

(i) The right to enforce the provisions of this Declaration, or any other applicable recorded instrument adopted by the Association, including the Articles of Incorporation and Bylaws of the Association, and any Rules;

(j) The right to conduct business of the Association, including but not limited to, administrative services such as legal, accounting and financial, and communication services informing Members of activities, notices of meetings and other important events;

(k) The obligation to conduct and maintain all maintenance and landscaping on the Association Property, at a minimum, to the standard initially installed by Declarant, or better.

**Section 5. Insurance.** The Association shall maintain insurance on the Association Property of such types, in such amounts and with such companies as the Board deems appropriate. So long as there is a Class B Member, all liability and hazard insurance policies shall name the Declarant as an additional insured.

**Section 6. Services.** The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association or Declarant may, but is not required, to arrange as an Association expense with third parties to furnish water, trash collection, cable service, and other common services to each Lot. If one or more agreements to obtain cable television services to the community and all Lots is

established, the fees for the cable television service payable to the provider shall be a Common Expense payable by the Association and shall be included within the Annual Budget for which Assessments are levied each year. No Owner may avoid or escape liability for any portion of the Assessments by election not to utilize the cable television service. Upon Turnover, the Board shall have the power to terminate any management agreement entered into by the Association prior to Turnover upon ninety (90) days written notice to the management firm, and the provisions of this sentence shall be deemed an implied term in any management agreement of the Association prior to such Turnover.

**Section 7. Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, is obligated to accept any and all deeds of conveyance, easements, bills of sale, leasehold, or other instruments delivered to it by Declarant in accordance with Article IV, Section 1(a).

**Section 8. Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**Section 9. Enforcement.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any installation, thing or condition which violates this Declaration, the Bylaws, the Rules or the use restrictions. An easement is hereby reserved for the Association and its authorized agents for such purpose. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to take such actions. All costs of such abatement or removal including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and collected from Lot Owner as provided for herein for the collection of Assessments.

**Section 10. Right of Entry.** The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter onto Lots for emergency, security, or safety purposes, which right may be exercised by the Associations' Board, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties and, except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant.

**Section 11. Optional Services.** The Board may, from time to time, offer optional services or facilities to the Members, who may choose to accept the benefit of such services. Any such services shall be consistent with the Association's purposes as provided in the Declaration and Articles. The cost of such optional services shall be charged to Owners who accept such optional services as an individual Assessment.

**ARTICLE VI**  
**ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Except as hereinafter more fully provided, the Declarant hereby covenants for each Lot within the Property and each Owner of a Lot is deemed to covenant by acceptance of a deed or other conveyance of title for such Lot, whether or not it is so expressed in the deed or other conveyance of title, to pay (1) Regular Assessments, (2) Special Assessments, (3) Individual Assessments, and (4) Initial and Re-Sale Assessments, such Assessments to be fixed, established, and collected from time to time as hereinafter provided. The Regular, Special, Individual and Initial and Re-sale Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge and continuing lien against the Lot and shall be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due, as well as any subsequent Owners, subject to Section 10 of this Article VI. Each Member expressly covenants by acceptance of such deed or other conveyance of title that a certificate of lien may be recorded against the Owner's Lot for nonpayment of Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Area or by the abandonment of the property against which the Assessment was made. In the case of co-ownership of any Lot subject to an Assessment, all of such co-Owners are jointly and severally liable for the entire amount of the Assessment.

**Section 2. Purpose of Assessments.** The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and for the improvement and maintenance of Property, services and facilities devoted to this purpose, and to provide services the Association is authorized or required to provide, which may include but are not limited to performance of the following duties and the payment of:

- (a) Improvements, maintenance, and repair of Association Property;
- (b) Water, electrical, lighting, and other necessary utility services, if any, for Association Property;
- (c) Fire and other hazard insurance covering the full insurable replacement value of Association Property with extended coverage;
- (d) Liability and property damage insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, or tenants of any Owner arising out of their occupation and/or use of Association Property. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association;

(e) Workman's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board;

(f) Acquisition of equipment for Association Property as may be determined by the Association, including without limitation, all equipment and personnel necessary or proper for use of Association Property, and for services the Association is authorized or obligated to provide;

(g) Operation, repair, maintenance, irrigation, and landscaping of the Association Property, except as provided in Article VII, Section 1, regarding an Owner's obligation to maintain landscaping to the pavement edge of abutting streets;

(h) Operation, repair, and maintenance of the Surface Water Management System.

(i) Operation, repair, and maintenance of common facilities within Association Property, including, but not limited to, utility, maintenance, and drainage easements and Recreational Facilities;

(j) Operation, repair, and maintenance of the entrance features and signs;

(k) Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or Bylaws, or which are necessary or proper in the opinion of the Board or the operation of the Property, for the benefit of the Owners or for the enforcement of these restrictions;

(l) Irrigation and landscaping to the extent such services are the responsibility of the Association as provided in this Declaration; and

(m) Establishment of reserves as provided in the Bylaws.

**Section 3. Special Assessments Prior to Turnover.** There shall be no Special Assessments prior to Turnover unless a majority of the Owners other than Declarant approve such Special Assessments by a majority vote at a duly called special meeting of the membership at which a quorum is present. The Declarant is excused from paying any such approved Special Assessments levied against Lots owned by Declarant at the time the Special Assessment is levied if the Declarant is funding deficits in accordance with sub-section 6(b) of this Article VI at the time such Special Assessment is levied.

**Section 4. Annual Budget of General Expenses.** Prior to Turnover, the Declarant shall establish the annual budget. Following Turnover, the Association shall prepare an annual budget not less than thirty (30) days in advance of the commencement of each fiscal year which shall project the estimated total expenditures

for the services set forth in Section 2 above for the forthcoming year, and shall deliver a copy of the proposed budget and notice of the meeting in which the budget will be considered by the Board to each Owner not less than fourteen (14) days prior to that meeting in accordance with the Bylaws. The Association shall, at the same time as it prepares the annual budget, prepare a schedule which sets forth the amount of the Regular Assessment for each Owner. In the event the Association fails to prepare an annual budget, the annual budget for the proceeding year shall be the budget for the Association until a new annual budget is prepared by the Association. Additionally, if the Association determines that the then existing annual budget does not correctly incorporate the expenditures for services set forth in Section 2, then the Association shall have the right to prepare a new annual budget together with a schedule setting forth the amount of Regular Assessments for each Owner. The Association shall, upon demand at any time, furnish to any Owner liable for said Assessment a certificate in writing signed by an officer of the Association setting forth whether an Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may charge a reasonable fee for this certificate.

**Section 5. Date of Commencement of "Regular Assessments"; Due Date; Assessment period.** Subject to the provisions of Article VI, Section 6(b) below, the Regular Assessments provided for herein shall be levied against each Lot as of the first day of the month following the date a Lot is conveyed from Declarant to an Owner other than Declarant. Each Lot for which the Regular Assessments are due shall be assessed in equal shares regardless of whether a Living Unit is constructed on a Lot or not. The Regular Assessments shall be paid quarterly, in advance, except that the Assessment installment period may be changed from time to time at the discretion of the Board, provided, however, that upon default in the payment of any one or more installments by an Owner, the entire balance of said Assessments attributable to that Owner's Lot for that calendar year may be accelerated at the option of the Board and be declared due and payable in full.

**Section 6. Basis and Maximum Amount of Regular Assessments.**

(a) From the recording of the Declaration until the Turnover Meeting, the annual budget and the initial Regular Assessments shall be established by the Declarant.

(b) Notwithstanding any provision that may be contained to the contrary in this Declaration, for as long as Declarant is the Owner of any Lot and there is a Class B Membership pursuant to this Declaration, the Declarant is not liable for any Assessment levied against such Lot, provided that the Declarant funds any difference between the amount of Assessments levied on all other Lots subject to Assessment together with interest earned thereon and any other Association income from whatever source derived and the amount of actual expenditures by the Association incurred during the fiscal year, exclusive of (i) any resident usage charges for services provided to particular Owners (such as cable, phone, and waste collection, if any such charges are Association expenses), (ii) the cost of capital improvements and non-budgeted repairs or



replacements, (iii) book entry depreciation expenses, and (iv) any amounts budgeted for reserves for capital expenditures, deferred maintenance or contingencies. For purposes hereof, a deficit shall be computed by the subtraction from said actual expenses (exclusive of the items described in the foregoing sentence) all Assessments levied, contributions and other sums received or receivable by the Association. The Declarant may at any time commence paying Assessments on Lots it owns and thereby automatically terminate its obligations to fund a deficit as provided in this sub-section in the same manner as all other Owners. When all Lots within the Property are sold and conveyed to Class A Members, the Declarant shall have no further liability of any kind to the Association for the payment of Assessments or deficits other than those that arose prior to such time.

**Section 7. Special Assessment.** In addition to the Regular Assessments authorized by Section 3 hereof, the Board may levy in any fiscal year a Special Assessment, applicable to that year and not more than the next five (5) succeeding years, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Association Property, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such assessment. Prior to Turnover, the Declarant is not obligated to pay Special Assessments levied on any Lot owned by Declarant. After Turnover, the Declarant is not obligated to pay Special Assessments levied on any Undeveloped Lot owned by Declarant.

**Section 8. Individual Assessments.** Individual Assessments may be levied for the following purposes:

(a) In the event Docks or a portion of a Dock, such as a mooring slip, is sold, leased, or otherwise assigned to the exclusive use of an Owner, the Association is still responsible for maintenance of the Dock, but may, if a majority of the Board votes to do so, establish a separate budget for maintenance of the Dock and levy an Individual Assessment only against those Owners to whom the Dock or mooring slips are sold, leased, or assigned. In the alternative, the Dock may be constructed such that a portion is designed for individual mooring slips while other portions may be used by all Owners for fishing or sightseeing. In such event, the Board, by a majority vote, levy a portion of the maintenance expense as an Individual Assessment against those Owners to whom the mooring slips are sold, leased, or assigned and pay for the remaining maintenance expense from Regular Assessments.

(b) In the event any Owner of a Unit fails to maintain his Lot, whether improved or unimproved, in a state of good repair and in an orderly and uncluttered condition at all times, which shall include, but not be limited to, landscape maintenance and periodic painting (or other appropriate refinishing) of all structures requiring same, the Association, after first given thirty (30) days notice to such Owners and an opportunity to appear before the Board, may take such steps as are necessary to remedy any defective and/or unsightly conditions or comply with requirements imposed

herein, and such Owner(s) of said property shall be assessed an Individual Assessment for the expense of same. Entry upon such Owner's property for such purpose does not constitute trespass.

(c) Individual Assessments may also be levied against any Owner for any damage to Common Area or Recreational Facilities which may be caused by such Owner, their tenants, agents, or invitees.

(d) Individual Assessments may also be levied against any Owner of a Lot who has accepted optional services provided by the Association

(e) Notwithstanding sub-paragraph (b) above, any Individual Assessment levied against an Owner and Lot for the costs of any additional services performed by the Association on an Owner's Lot at the request of the Owner may be levied without the requirement of the thirty (30) day notice and time for cure.

**Section 9. Initial and Resale Assessments.** An Initial Assessment is due upon the conveyance of record title to a Lot to the first Owner thereof from Declarant. A Resale Assessment is due upon each subsequent transfer or conveyance of record title to a Lot unless exempt as provided below. Until such time as the Declarant or Board adopts a resolution to change the amount, the Initial and Resale Assessment is Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00). The Initial and Resale Assessments are in addition to the Regular Assessments and shall not be considered an advance payment of any Assessment. The amount shall be paid to the Association upon the closing or other settlement of the transfer or conveyance of a Lot. Any unpaid Initial or Resale Assessment is secured by a lien in favor of the Association as further provided in this Article. The Initial and Resale Assessment shall be paid to the Association to fund its operating account and is deemed ordinary Association income and need not be separated from or held or applied differently than Regular Assessments. Declarant is exempt from paying any Initial or Resale Assessments to the Association.

Notwithstanding the foregoing, a Resale Assessment may not be levied in the following instances:

(a) Conveyance of a Lot by an Owner to a trust, partnership, corporation or other entity so long as such entity is and remains wholly beneficially owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Lot was exempted from payment of the Resale Assessment pursuant to this subsection, then this subsection does not apply and the Lot is subject to the Resale Assessment;

(b) Conveyance of a Lot by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Lot was exempted from payment of the Resale Assessment pursuant to this subsection, then this subsection does not apply and the Lot is subject to the Resale Assessment; and

(c) Conveyance of an undivided interest in a Lot by the Owner thereof to any then-existing co-Owner(s) of such Lot.

**Section 10. Financial Reporting.** The Association shall prepare an annual financial report ("Financial Report") within sixty (60) days after close of the fiscal year as required by Florida law, unless the statutory level of financial reporting is waived or reduced as provided in the applicable Florida Statute.

**Section 11. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association; Late Fees; Resale Certificate.**

(a) The Association has a continuing lien on each Lot to secure the payment of Assessments, together with interest, late fees, and the cost of collection and attorneys' fees incident to collection thereof, which lien is effective from and shall relate back to the date of recording of this Declaration. However, subject to the provisions for first mortgagee liability for Assessments provided in Section 12 of this Article VI, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of Lee County, Florida. If the Assessments are not paid on the date when due, then such Assessment shall become delinquent and the Association may record a claim of lien satisfying the requirements in Section 720.3085, Florida Statutes (2016), to secure all unpaid Assessments that are due and may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, together with such interest and late charges thereon and cost of collection and attorney's fees incident to collection thereof as hereinafter provided. Such lien shall bind such Lot in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain the Owner's personal obligation. Provided, however, that no voluntary sale of any Lot is effective, nor shall any marketable title be conveyed unless and until the Seller has obtained from the proper officers of the Association a certificate, attesting to the fact that the Seller has paid all Assessments to date. An Owner, regardless of how his or her title to the Lot has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all Assessments that come due while he or she is an Owner and each Owner, except the Association, if it becomes an Owner, is jointly and severally liable with the previous Owner of the Lot for all unpaid Assessments that came due up to the time of transfer of title to the Lot. If an Assessment is not paid within ten (10) days after the due date, the Assessment shall bear interest from the due date at the rate established by the Board not to exceed the maximum legal rate of interest. The Association may file a claim of lien and bring an action at law against the Owner(s) personally obligated to pay the outstanding Assessments and/or bring an action to foreclose the lien against the Property in the manner in which mortgages on real property are foreclosed and in accordance with the requirements of Florida law; and there shall be added to the amount of such Assessment all costs of collection, including, but not limited to, the cost of preparing the filing and complaint in such action, the cost of any and all attorney's fees incident to collection whether or not suit is brought, including attorney's fees on appeal. In the event a judgment is obtained, such judgment shall include interest on the

Assessments as provided above and a reasonable attorney's fee to be fixed by the court, together with costs incident to the action.

(b) In addition to the foregoing remedies, the Board may charge a "Late Fee" for late payment at the highest amount permitted by law, when the payment is more than ten (10) days delinquent, for the purposes of helping defray collection costs. A Late Fee may be charged on each Assessment installment that is delinquent. The Association may also suspend the use rights of Association Property and facilities upon the non-payment of Assessments that are at least ninety (90) days delinquent, in accordance with Chapter 720, Florida Statutes.

(c) In the event the lien herein created is extinguished by the sale or transfer of a Lot pursuant to a foreclosure of the first mortgage held by a first mortgagee, or a deed given in lieu of foreclosure to a first mortgagee, or by a tax deed, such delinquent Assessments which were not collectable from the first mortgagee or the new Owner may be reallocated and assessed to all of the Lots within the Property, or the Association may pursue legal action to collect such delinquent Assessments from the Owner who owned the Lot prior to the foreclosure, deed in lieu of foreclosure, or tax deed. Any such sale or transfer pursuant to a foreclosure or a deed given to a first mortgagee in lieu of foreclosure or by tax deed, does not relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of, any Assessments arising thereafter.

(d) In addition to all other remedies available to the Association at law or in equity for enforcing this Declaration, if a Unit is occupied by a tenant and the Owner is delinquent in paying any monetary obligation due to the Association, to include, but not be limited to Assessments, fines and any other charges provided for in this Declaration, the Articles, Bylaws or by law, the Association may demand in writing in the form required by law that the tenant pay to the Association the tenant's subsequent rental payments and continue to make such payments until all monetary obligations of the Owner related to the Lot have been paid in full to the Association, and the Association releases the tenant or until the tenant discontinues tenancy in the Unit. A tenant is immune from any claim by the Owner related to the rent timely paid to the Association after the Association has made written demand. If the tenant paid rent to the Owner for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within fourteen (14) days after receiving the demand, the tenant shall begin making rental payments to the Association for the following rental period, and shall continue making rental payments to the Association to be credited against the monetary obligations of the Owner to the Association, until the Association releases the tenant or the tenant discontinues tenancy in the Unit. The Association shall, upon request, provide the tenant with written receipts for payments made. The Association shall mail written notice to the Owner of the Association's demand that the tenant pay monetary obligations to the Association. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant shall be given a credit against rents due to the Owner or landlord in the amount of Assessments paid to the Association. The Association may issue notice under Section 83.56, Florida Statutes, and sue for eviction

under Sections 83.59-83.625, Florida Statutes, as if the Association were a landlord as defined in Part II of Chapter 83, Florida Statutes, if the tenant fails to pay a monetary obligation to the Association. However, the Association is not otherwise considered a landlord under chapter 83, Florida Statutes, and specifically has no obligations under Section 83.51, Florida Statutes. The tenant does not, by virtue of payment of monetary obligations, have any of the rights of an Owner to vote in any election or to examine the books and records of the Association. A court may supersede the effect of this subsection by appointing a receiver

**Section 12. Subordination of Assessment Lien.** The lien for Assessments provided for in the Declaration is effective from and shall relate back to the date on which the Declaration was recorded in the Public Records of Lee County, Florida. The lien is in effect until all sums secured by it have been fully paid or the lien has been extinguished by foreclosure or released by the Association. Upon payment in full or as limited to first mortgagees as described below, the lien shall be released. The lien is subordinate to real property tax liens and the lien of any first mortgage; provided, however, that any such mortgage lender when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender and its affiliate acquiring a deed in lieu of foreclosure, and all persons claiming, by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure) and any unpaid Assessments owed by the previous Owner, subject to the limitations provided herein. Notwithstanding anything to the contrary contained in this Article VI, a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage, who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure is liable for unpaid Assessments that became due before the first mortgagee's acquisition of title in an amount equal to the lesser of: (1) the Lot's unpaid Common Expenses and Assessments that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (2) one Percent (1%) of the original mortgage debt. The limitations on first mortgagee liability provided by this paragraph apply only if the first mortgagee filed suit against the Owner and initially joined the Association as a defendant in the mortgagee foreclosure action. Joinder of the Association is not required if, on the date the Complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee.

**Section 13. Exempt Property.** The following property subject to this Declaration is exempted from the Assessments, charges and liens created herein; (a) all Property to the extent any easement or other interest therein is dedicated and accepted by the local public authority and devoted to the public use; (b) the Common Areas; (c) and any easements granted to a company or entity providing utility service to the Property.

## ARTICLE VII

### UNIT OWNER MAINTENANCE

**Section 1. Maintenance of Units.** Unless otherwise provided in an appropriate amendment or supplemental Declaration, the Owner of a Lot shall maintain all portions of the Unit, including but not limited to, exterior surfaces and roofs, fascias and soffits of the structures (including the Living Unit), and other improvements located on the Lot including but not limited to landscaping, sprinkler systems, driveways and sidewalks, pools, screen enclosures, fences and walls which are not maintained by the Association pursuant to Article V, windows, doors, exterior door fixtures, and exterior lighting fixtures, all in a neat, orderly and attractive manner. Each Owner is obligated to maintain the landscaping out to the pavement edge of any abutting street, even though there may be a portion of land between the Lot and street that is part of the street right of way or Common Area. The minimum (though not the sole) standard for the foregoing shall be consistency with the general appearance of the Property as initially constructed and otherwise improved (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness). The Owner shall clean, repaint or restain, as appropriate, the exterior portions of each Unit, with the same colors and materials as initially used on the Unit, or approved by the ARB, subject to the Design & Construction Guidelines provided in Article VIII thereof, including exterior surfaces of garage doors, as often as is necessary to comply with the foregoing standards. The Board may adopt Rules as to specific frequencies of required cleaning, repainting/restaining and the like for the Living Units.

If an Owner purchases a Lot and does not commence construction thereon within six (6) months, the Owner shall sod or otherwise landscape any barren areas on the Lot and maintain the sod and/or landscaping by regular mowing and trimming so that the sod is not more than six (6) inches in height and the landscaping does not become overgrown, as may be determined by the Board. If the Lot Owner does not install irrigation on the vacant Lot, the sod and/or landscaping installed shall be drought tolerant, such as bahia sod and/or xeriscape landscaping.

If a Unit is damaged by fire or other casualty, the Owner shall promptly restore the Unit to at least as good a condition as it was in before the casualty occurred. Any restoration shall be in accordance with the Unit's original plans and specifications unless authorized by the ARB and is otherwise subject in all respects to the provisions of Article VIII herein.

In the event that the Declarant, in its sole discretion, prior to turnover, or the Board, by two thirds vote, determines that any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair or replacement of items for which he or she is responsible hereunder, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity, the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days within which to complete the maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within the ten (10) day period, to commence and diligently continue such work and complete it within the reasonable time. If any Owner does not comply with the provisions hereof within the ten (10) day period, the Association may

enter the Owner's Lot and provide any such maintenance, repair or replacement at Owner's sole cost and expense and the cost shall be added to and become part of the Assessment to which such Owner is subject and shall become a lien against the Lot.

**Section 2. Builder Responsibility.** All Builders are responsible for complying with all existing governmental approvals applicable to the Property. Builders shall also be responsible for keeping construction debris confined within the applicable Lot on which construction is taking place, for installing erosion control devices and maintenance of the grade of each Lot and for keeping all Common Areas free from dust, debris, and other construction related waste. Any maintenance or repair costs incurred by the Association on the Common Areas of the Association, including but not limited to streets, sumps or catch basins, or any other part of the Surface Water Management System, that are the result of construction activities of a Builder, is the sole responsibility of the Builder causing such costs to be incurred.

Any Builder responsible for maintenance or repair costs incurred under this Section shall reimburse the Association for said costs within thirty (30) days of written demand by the Association. The maintenance and repair costs of this Section shall constitute an Individual Assessment against the Lot or Lots on which the construction was occurring which caused the cost to be incurred.

## ARTICLE VIII

### ARCHITECTURAL REVIEW BOARD

#### Section 1. Authority and Members of Committee.

(a) The Architectural Review Board, sometimes referred to in this Declaration as the ARB, shall consist of not less than three (3) nor more than five (5) members, except that the Declarant reserves the right to fulfill the duties of the ARB until such time as the Lot Owners have elected the majority of the Board or such earlier time as Declarant may designate. Thereafter, each new member of the ARB shall be appointed by the Board and shall hold office until such time as he/she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the ARB may be removed at any time without cause. The Board shall have the right to appoint and remove all members of the ARB.

(b) The Board shall have the authority and standing, on behalf of the Association to enforce in courts of competent jurisdiction decisions of the Architectural Review Board.

(c) This Article may not be amended without the Declarant's consent, so long as the Declarant owns any portion of the Property subject to this Declaration.

(d) No construction, which term shall include within its definition staking, clearing, excavating, grading, and other site work, or other exterior improvements or exterior painting may be commenced, and no plantings or removal of

plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the ARB has been obtained.

(e) In accordance with this Article VIII, and consistent with the provisions of Article IX herein, the Declarant or the ARB may promulgate design review guidelines and application and review procedures which shall be known as the "Design and Construction Guidelines".

**Section 2. Review of Proposed Construction.** No new structure or building or site construction, and no modifications, additions, or alterations to existing structures, or installation of landscaping, signs, outside lighting, fence, wall, walk, site furniture, statuary, ornaments or other items or structures upon a Lot, shall commence or be erected, installed or removed until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and location of the same shall have been submitted and approved in writing by the ARB. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not violate any provisions in this Declaration or any Design and Construction Guidelines which may be promulgated, or be detrimental to the appearance of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The ARB may condition its approval of proposals and plans and specifications or other information prior to approving or disapproving the application submitted. The ARB shall review each application for consistency with the requirements of this Declaration and any Design and Construction Guidelines which may be promulgated, as well as any future regulations or construction guidelines generated by the Board or the Declarant. The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, landscape plans, drainage plans, elevation drawings and descriptions or samples or exterior materials and colors. Until receipt by the ARB of all required plans and specifications, the ARB may postpone review of any plans submitted for approval. Final written approval of the ARB must be obtained prior to making application for a building permit. No building or other structure shall be erected or allowed to remain if built in violation of this Declaration or which violates any zoning or building ordinance or regulation. In the event the information submitted to the ARB is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information. All construction, changes and alterations shall also be subject to all applicable permit requirements and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. When Lot Owners other than Declarant have elected the majority of the Board, any decision of the ARB may be appealed to the Board within fifteen (15) days from the date of rendition of the decision of the ARB.

**Section 3. Meeting of the ARB.** The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate an ARB representative (who may,



but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of a Majority of the total members of the ARB shall constitute an act of the ARB.

**Section 4. No waiver of Future Approvals.** The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever, subsequently or additionally submitted for approval or consent.

**Section 5. Compensation of Members.** The members of the ARB shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. However, the ARB shall have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. All expenditures of the ARB are subject to the prior written approval of the Board.

**Section 6. Noncompliance.** In the event any work for which approved plans are required under this Article VIII is not completed in substantial compliance with said approved plans or any Design and Construction Guidelines which are promulgated, the ARB or its duly authorized representatives shall notify the Owner conducting such work (the "Applicant") in writing of such noncompliance specifying the particulars of noncompliance and requiring the Applicant to remedy the same within ten (10) days. If, upon the expiration of ten (10) days from the date of such notification, the Applicant failed to remedy such noncompliance, the ARB shall notify the Board in writing of such failure. The Board shall then determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than ten (10) days from the date of announcement of the Board ruling. If the applicant does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvements or remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Association, the Board shall levy an Individual Assessment for noncompliance against such Applicant's Lot for reimbursement.

**Section 7. Non-Liability of ARB Members.** Neither the Declarant, the ARB nor any member thereof, nor its duly authorized ARB representative, are liable to the Association or any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance or non-performance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member is liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property. The ARB shall take into

consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but is not responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or regulations. Each person who shall submit plans, specifications or other materials to the ARB for consent or approval pursuant to the provisions of this Article, by submission thereof, and each Owner by acquiring title to any Lot or any interest therein, is deemed to have agreed that he or it is not entitled to and cannot bring any action, proceeding, or suit against the Declarant, the ARB, the Association, nor any individual member, officer, director, employee or agent of any of them for the purpose of recovering any such damages or other relief on account of any such decision, approval or disapproval.

**Section 8. Variance.** The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstruction, hardship, aesthetic or environmental considerations require. Such variance must be evidenced in writing which must be signed by a majority of the members of the ARB. If such variances are granted, no violation of the covenants, condition and restrictions contained in this Declaration is deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance does not, however, operate to waive any of the terms and provisions hereof covered by the variance, nor does it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

**Section 9. Construction Completion.** Unless specifically exempted by the ARB, all improvements for which approval of the ARB is required under this Declaration must be completed within a reasonable time from the date of commencement of said improvements, or within any deadline established in the Design and Construction Guidelines, or within the time set by the ARB in the event that the approval is so conditioned, whichever is applicable. Prior to the building, alteration, improvement, remodeling or rebuilding of any improvement upon a Lot by an Owner for any reason, including, but not limited to a casualty loss, such alteration, improvement, remodeling or rebuilding of such improvement must be approved by the ARB. Once construction of such approved improvement commences, substantial work toward the completion of the construction must be pursued diligently and continuously until completion. If, for any reason, no substantial progress is made toward the completion of the approved improvement for any thirty (30) day period after construction has commenced ("No Substantial Progress Period"), or if construction is not timely completed by the applicable deadline ("Construction Completion Violation"), then an Owner is in violation of this sub-section, whether the violation was caused by the Owner or his/her contractor(s). An Owner violating this sub-section shall first be given a written warning by the Association. The failure of such Owner to recommence or complete construction within ten (10) days after such written warning is delivered to the Owner is a second violation and result in a fine of one-hundred dollars (\$100.00) per day for each day that the violation continues, except that no fine may exceed \$2,500.00 in the aggregate.

The provisions of Section 720.305(2), Florida Statutes, shall apply to fines levied pursuant to this Section.

In the event the fines levied by the Association equal \$2,500.00 and the Owner has not cured the No Substantial Progress Period violation or the Construction Completion Violation, then, should the Association have to file a legal action ("Action") to enforce the provisions of this Section, each Owner (i) waives, releases, and remises any and all legal, equitable and/or factual defenses he/she may have to such Action, and (ii) agrees to pay to the Association the sum of Five Hundred and No/100 Dollars (\$500.00) per day as liquidated damages for each day beyond the No Substantial Progress Period that substantial progress is not achieved or for each day after the Construction Completion Deadline until completion. The Owner shall pay all the Association's costs and attorney's fees related to filing such an Action. This sub-section does not apply to Declarant and may not be amended to apply to Declarant without Declarant's written consent.

**Section 10. ARB Right of Entry.** There is reserved unto the ARB the right of entry and inspection upon any of the Property for the purpose of determination by the ARB whether there exists any construction of any improvements which violates the terms of any approval by the ARB or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. Such inspection shall be preceded by reasonable notice to the Owner of the property to be inspected, except for inspections of exterior of improvements and of unenclosed land. The ARB is specifically empowered, acting in the name of the Association, to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the Association is entitled to recovery of all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association indemnifies and holds harmless the ARB and each of its members from all costs, expenses and liabilities including attorneys' fees incurred by virtue of any member of the ARB's service as a member of the ARB. All costs, expenses, and attorneys' fees of the ARB, including those incurred in connection with its enforcement or powers as provided herein, shall be borne by the Association; provided, however, that nothing provided herein is deemed to negate the Association's right to an award of its and the ARB's reasonable attorneys' fees and costs if it is the prevailing party in any administration or judicial proceeding.

**Section 11. Delegation of ARB's Duties.** In lieu of appointing an ARB, the Declarant, so long as Declarant is fulfilling the duties of the ARB, and thereafter the Board, may delegate all of the ARB's duties outlined in this Article XII to a consultant who is a licensed engineer, architect, or building contractor. Provided, however, the right to levy fines for violation of this Article, the right to demand liquidated damages pursuant to this Article, and the right to file suit against any Owner who violates this Article may not be delegated and such rights shall remain with the Declarant, so long as Declarant is fulfilling the duties of the ARB, and thereafter the Board.

Section 12. **Declarant's Exemption.** The Declarant is exempt from the provisions of this Article with respect to alterations and additions desired to be effected by Declarant and is not obligated to obtain ARB approval for any construction or changes in construction which the Declarant may elect to make at any time.

Section 13. **Attorney's Fees.** In any litigation, including breach, enforcement or interpretation, arising out of this Article, the prevailing party in such litigation is entitled to recover reasonable attorney's fees, court costs and other expenses.

## ARTICLE IX

### RESTRICTIONS

Section 1. **Use Restrictions.** In order to maintain the standards of community design and environmental protection which Declarant has set for the Property and to ensure a degree of uniformity and compatibility for the mutual benefit of the Property Owners therein, the following use restrictions are hereby adopted for the achievement of the stated goals. In particular, the philosophy of development includes the ability to maintain an aesthetically pleasing atmosphere throughout the community and the preservation of the aesthetic qualities alone is sufficient to trigger the enforcement provisions set forth herein. Therefore, specific provisions and requirements are included herein to promote the development plan to the benefit of the entire community.

Section 2. **Use of Lots.** Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for construction of a single-family Living Unit containing at least three thousand (3,000) square feet of air conditioned living area. Except as herein otherwise specifically provided, no structure may be erected or permitted to remain on any Lot other than one single family residence, one private attached or detached garage, and other outbuildings of like architectural character incidental to residential use of the premises conforming to the restrictions of this Declaration. No trade, commercial activity or other enterprise of any kind may be carried on or upon any Lots. However, this restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping personal, business or professional records within their Living Unit, or from handling personal, business or professional telephone calls or electronic and written correspondence in and from the Living Unit so long as the business conducted in the Living Unit is inside the Living Unit and does not result in customers or clients coming to the Living Unit or deliveries being made to the Living Unit. Such uses are expressly declared customarily incidental to Residential use. This restriction shall not prohibit Declarant from conducting activities necessary on Lots and on Common Areas to complete development and sale of Lots and/or Living Units, including without limitation, the right to construct sales offices, model homes, or both, and the right to conduct commercial real estate sales and brokerage activities on Lots.

Section 3. **Air Conditioning and Heating Equipment.** Wall air conditioning units and window air conditioning units are not permitted unless approved by the ARB.

**Section 4. Antennas and Flagpoles.** No antennas or satellite reception devices may be installed outside the Unit without prior written approval by the ARB, except that a "dish" antenna one meter (39.37 inches) or less in diameter designed to receive direct broadcast satellite service or to receive and transmit fixed wireless signals via satellite, or an antenna one meter or less in diameter designed to receive wireless cable or wireless signals other than by satellite, or commercially-available analog and digital television antennas or any other satellite dishes or antennas otherwise permitted by the FCC pursuant to the Telecommunications Act of 1996 is permitted to be installed without prior approval by the ARB or the Board. A flagpole for display of the American flag or any other flag is permitted if first approved in writing by the ARB. Both its design and location must be first approved in writing by the ARB. An approved flagpole may not be used as an antenna. Notwithstanding anything foregoing to the contrary, any 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, and Veterans Day may display in a respectful manner portable, removable official flags, not larger than 4 ½ feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any Association rules or requirements dealing with flags or decorations.

**Section 5. Artificial Vegetation.** No artificial grass, plants, or other artificial vegetation may be placed or maintained upon the exterior portion of any Lot unless approved by the ARB.

**Section 6. Clothes Drying Area.** No clothes drying area is allowed outside of screened-in areas and no garments, rugs or any other materials may be hung from the windows or form the front façade of a Living Unit.

**Section 7. Colors.** No exterior colors on any structure are permitted that, in the sole judgment of the Declarant or ARB, would be inharmonious or incongruous with the Property. Any future exterior color changes desired by Owner must be first approved in writing by the Declarant or ARB in accordance with Section VIII.

**Section 8. Factory-Built Structures.** No structure of any kind that is commonly known as "factory-built", "modular," or "mobile home" type of construction, nor shall metal sheds be erected.

**Section 9. Lampposts and Building Designation.** The form, size, color, character and placement of all lampposts and the method of designating buildings must be first approved by the Declarant or ARB both prior to initial installation and prior to replacement. All replacements shall be of consistent design and color as originally approved by Declarant and installed by the Builder. Declarant or the ARB shall have the right to remove any unapproved lamppost and/or building designation.

**Section 10. Mailboxes.** If the U.S. Postal Service requires the use of centrally located mailboxes for the Living Units; then Owners may not install a mailbox on their Lot and the Association will be responsible for installing and maintaining the centrally located mailboxes. If the U.S. Postal Service does not require the use of centrally

located mailboxes for the Living Units, then the form, size, color, character and placement of all mailboxes must be first approved by the Declarant or ARB both prior to initial installation and prior to replacement.

Section 11. **Landscaping.** All portions of the Lots not covered by structures, walkways, or paved parking facilities, or which are not enclosed by walls or fences, shall be maintained as lawn or landscape areas to the pavement edge of any abutting Streets and to the waterline of any abutting canal or water management areas. No stone, gravel, or paving of any types may be used as a lawn unless approved as part of the final landscape plan. All landscaping shall be accomplished in accordance with the plan approved by the Declarant or ARB. All required lawns and landscaping shall be completed at the time of completion of the structure, as evidenced by the issuance of a certificate of occupancy by the appropriate governmental agency.

Section 12. **Leasing Restrictions.** No Owner is permitted to lease a Living Unit more than three (3) times per calendar year and no lease may be less than one (1) month duration. All leases must be in writing. It is the obligation of all Owners to supply the Board with a copy of said written lease at least five (5) days prior to the date of possession by the lessee. The lease must contain the tenant's name, phone number, e-mail address, and permanent address if Hill Tide Estates will not be the tenant's primary residence. No Living Unit or part thereof may be rented separately from the rental of the entire Living Unit.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING LIVING UNITS OR THE INCOME TO BE DERIVED THEREFROM, IF ANY. ANY OWNER WHO DESIRES OR INTENDS TO RENT A LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

Section 13. **Sales Restrictions.** There are no restrictions on selling Lots or Living Units except that prior to any transfer of title the Owner shall give written notification to the Association of the proposed purchaser's name, phone number, e-mail address, and permanent address if Hill Tide Estates will not be the purchaser's primary residence. Within 5 business days after title is transferred, the Owner or purchaser shall deliver a copy of the Deed or other instrument of conveyance to the Association.

UNTIL SUCH DEED OR OTHER INSTRUMENT OF CONVEYANCE IS DELIVERED TO THE ASSOCIATION, AN OWNER SELLING HIS OR HER LOT SHALL REMAIN LIABLE FOR ALL ASSESSMENTS LEVIED BY THE ASSOCIATION, EVEN AFTER TRANSFER OF TITLE.

This Section shall apply to any transfers of title, whether the transfer is to a third party, a family member, to or from a trustee, by operation of law, by foreclosure, or otherwise.

Section 14. **Lighting.** All exterior lighting of a Lot shall be accomplished in accordance with a lighting plan first approved in writing by the Declarant or ARB.

Section 15. **Maintenance of Premises.** No refuse or unsightly objects shall be placed or allowed to remain upon any Lot. The determination of existence of refuse or unsightly objects shall be made by the Board, in its sole discretion, and its decision is definitive. All personal property, structures, improvements and appurtenances shall be kept in a safe, clean, orderly and attractive condition, free of debris and trash, and all structures shall be maintained in a finished, painted and attractive condition. In the event the Owner fails to maintain the Owner's Lot and Unit in accordance with the requirements of this Section, then after providing notice as required by this Declaration, the Association can, but shall have no obligation to, maintain the Lot and charge the cost of such maintenance, together with a fee of ten (10%) percent of such cost, to Owner as an Individual Assessment.

Section 16. **No Time Share.** No Living Unit may be sold or used on a "time share" basis.

Section 17. **Nuisances.** Nothing may be done which may be or may become an annoyance or nuisance to any person. No obnoxious, unpleasant or offensive activity may be carried on, nor shall anything be done, which can be reasonably construed to constitute a nuisance, public or private in nature. Any question with regard to the interpretation of this Section shall be decided by the Declarant as long as it owns any Lot within the Property for development or for sale in the ordinary course of business and thereafter the Association whose decision is final. Without the prior written consent of the Board, nothing may be done or kept in or upon any Lot or on Association Property or any part thereof to increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, or offensive activity or any activity constituting an unreasonable source of annoyance, may not be conducted in or upon any Lot or on Association Property or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. No work or activity on a Lot which creates excessive noises, including noises from lawnmowers or other equipment may occur before 8:00 a.m. or after dusk on any day, except that work performed by or on behalf of Declarant is not subject to such restrictions.

Section 18. **Outdoor Equipment.** All garbage and trash containers, bottled gas tanks, and other such outdoor equipment (other than installed swimming pool equipment and other than temporary generators used during periods when electrical power is not available to the Living Unit for reasons other than an Owner's failure to pay for such service) must be placed underground, walled-in or placed in sight-screened or fenced-in areas so that they are not readily visible from any adjacent Streets or Lots or adequate landscaping shall be installed around these facilities. In no event shall gasoline or other hazardous materials, as defined by any state or federal regulation or judicial interpretation thereof, excluding home heating fuels other than heating oil, and excluding gasoline cans for lawn equipment or generators, be stored on any of the Lots.

Section 19. **Trucks, Commercial Vehicles, Recreational Vehicles, Mobile Homes, Boats, Campers and Trailers; Parking.**

(a) Operable and currently licensed cars, vans, SUV's, CUV's, pick-up trucks with up to a one (1) ton load capacity or less, police cars, motorcycles, bicycles, and golf carts may be kept or parked only on paved driveways, on paved parking pads, in houses or in enclosed garages. All other vehicles or items must be parked inside a garage, including but not limited to: (i) any vehicle, including but not limited to cars, vans, trucks, SUV's and CUV's, on which commercial signage or lettering is displayed, except police cars (which may be parked in driveways), (ii) pick-up trucks over one (1) ton load capacity, (iii) inoperable automobiles, (iv) recreational vehicles, (v) all-terrain vehicles, (vi) ambulances, (vii) hearses, (viii) watercraft, (ix) aircraft, (x) house trailers, (xi) camping trailers, (xii) other trailers, (xiii) go carts, and (xiv) tractors. Notwithstanding the foregoing prohibition, a trailered watercraft or recreational vehicle may be parked on unenclosed paved areas overnight for not more than forty-eight consecutive hours in any one week period. Cars, vans, SUV's, CUV's, and pick-up trucks with up to a one (1) ton load capacity may be parked in the street in front of the home but not for more than twenty-four consecutive hours, and the Board of Directors may enact rules requiring that all street parking be limited to one side of the street.

(b) No commercial vendor vehicle of any kind is permitted to be parked outside for a period of more than twelve (12) hours unless such vehicle is necessary and being used in the actual construction or repair of a structure or for grounds maintenance.

(c) None of the aforementioned vehicles may be used as a domicile or residence, either permanently or temporarily.

**Section 20. Owner and Member Compliances.**

(a) The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to Owners, and persons to whom an Owner has delegated the Owner's right to use of any Association Property, but also to any other person occupying an Owner's Lot under lease from the Owner or by permission or invitation of the Owner or the Owner's tenants, licensees, invitees or guests.

(b) Failure of an Owner to notify any person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration does not in any way act to limit or divest the right of Declarant or the Association to enforce the provisions of this Declaration. The Owner is responsible for any and all violations of these provisions by the Owner's tenants, licensees, invitees or guests, and by guests, licensees and invitees of the Owner's tenants.

**Section 21. Residential Use.** No Lot may be used except for residential purposes, except that a Living Unit may be used as a "home office" so long as the business conducted in the Living Unit is inside the Living Unit and does not result in customers or clients coming to the Living Unit or deliveries being made to the Living Unit. This restriction shall not apply to prohibit Declarant from conducting any activities



upon Lots it owns for the purposes of sales, construction and development of the Property.

Section 22. **Setbacks.** The location of Buildings, Units and other structures upon Lots shall comply with setback requirements of Lee County, Florida.

Section 23. **Signs.** During the time period Declarant owns any Lot within the Property, no sign of any kind may be displayed to the public view on any Lot, except one "Open House" may be displayed on Sundays from 1 p.m. to 4 p.m., not larger than 18" x 24" and placed in the front yard advertising an open house and that property is for sale, and except signs required by law or signs used by the Declarant and Builders to advertise the Property during the construction and sale of any Living Units. Once the Declarant has conveyed all Lots its owns within the Property, then For Sale and Open House signs not larger than 18" x 24" may be placed in the front yard so long as the style, materials, and colors of the sign are first approved by the ARB in accordance with Article VIII. The Board or ARB may adopt a uniform style of For Sale or Open House sign and require that all For Sale or Open House signs conform to the style so adopted.

Section 24. **Solar Collectors.** Solar Collectors are permitted, but Declarant or ARB must approve the location of, color and materials used in the construction of solar collectors prior to installation. The provisions of Section 163.04, Florida Statutes, shall apply with regard to approval of Solar Collectors pursuant to this Section.

Section 25. **Storage of Personal Property.**

Personal property of Owners, including bicycles, motorcycles, mopeds, golf carts, and the like shall be kept within the Unit except when in use. Operational barbeque grills may be kept within the rear of a Lot, provided they are well maintained and not visibly rusty. Placement of playground equipment, including, but not limited to, swing sets and wading pools may be kept in the backyard of the Lot as long as it is kept in compliance with the applicable setbacks, and has been approved by the ARB.

Section 26. **Subdivision and Regulation of Land.**

(a) No Lot may be divided or subdivided without the express written consent of Declarant as long as Declarant holds for sale at least one Lot in the subdivision, and thereafter shall be approved by the Association, and no such division or subdivision is permitted unless it complies with the provisions of the applicable Lee County zoning ordinances and regulations as well as all other governmental laws, ordinances and regulations.

(b) An Owner may not inaugurate or implement any variation from, modification to, or amendment of any governmental plans, land development regulations, development orders or development permits applicable to the Property, or to any Lot, without the prior written approval of Declarant, which approval may be denied at the sole discretion of Declarant prior to transfer of control of the Board, and thereafter, without prior written approval of the Association.

**Section 27. Combining Lots.** Lots may be combined by Owners in order to construct one dwelling unit on more than one Lot; provided, however, each individual Lot, as platted, shall still be counted as separate Lots for purposes of levying assessments due to the Association and the number of votes allocated to each Lot.

**Section 28. Temporary and Accessory Structures.** No tents, shacks, trailers, barns, sheds, mobile homes, other detached storage structures, or temporary structures are permitted on any Lot at any time, either temporary or permanent, except temporary structures used in connection with the construction of Living Units approved by the ARB and permanent accessory structures approved by the ARB.

**Section 29. Underground Utility Lines.** All electric, telephone, gas and other utility lines, wires, pipes, and conduits of any type must be installed underground.

**Section 30. Use of Association Property.** No planting or gardening may be done, and no fences, hedges, or walls may be erected or maintained upon Association Property, except in accordance with the initial construction of the improvements located thereon or as approved by the Board or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the Property outside the boundaries of their respective Lots only in accordance with reasonable regulations as may be adopted by the Board or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

**Section 31. Animals.** No turkeys, chickens, ducks, geese, pigs, horses, cows, goats, hogs, and the like may be kept, maintained, or bred in any Unit or elsewhere within the Property. Dogs, cats, fish, and other domestic pets not prohibited above may be kept in reasonable numbers so as to not cause a nuisance, except that the Board may prohibit any breed of dog which in the Board's reasonable determination is or could be a threat to the safety of the occupants of the Project. The determination of whether the number of domestic pets kept by an Owner or the breed of dog constitutes a nuisance is at the sole discretion of the Board. No Owner may use a Living Unit for breeding animals or pets of any kind. Each person bringing or keeping a pet within any portion of the Property is liable to other Owners and their invitees for any damage to persons or property caused by any pet brought upon or kept upon the Property by such person or by members of his or her family, his or her guests or invitees and it is the duty and responsibility of each such Owner to clean up after such pets which have deposited droppings or otherwise used any portion of the Property or public Street abutting or visible from the Property, and to prevent the Owner's pet(s) from becoming a nuisance to other Owners, residents, tenants, or guests by barking, running loose or otherwise. Pets must be kept within an enclosure or on a leash held by a person capable of controlling the pet, or otherwise under the full physical control of such person. All excretion shall be immediately removed from the Property, placed in a sealed container and placed in the Owner's solid waste container. The Association shall have the right to promulgate Rules relating to pets, and the right to restrict and require the removal of any pets determined by the Board to constitute a nuisance.

Section 32. **Garage.** Each improved Unit shall include an enclosed garage with space for parking at least two (2) vehicles. No garage may be improved for purposes of making same a living area, nor shall garage doors be removed except for replacement (in which case the Owner must obtain approval of any replacement door from the ARB).

Section 33. **Waste Containers.** The Owners of Living Units or the applicable municipality or waste collection company shall provide waste disposal containers for all garbage and rubbish. Such containers shall be fully enclosed in a concrete or fenced area attached to and in architectural conformity with the Living Unit, as approved by the Declarant or the ARB.

Section 34. **Basketball Poles.** Permanent basketball poles are permitted on the Lots so long as they are screened from view so that they are not visible from the street. Temporary, movable, basketball poles are permitted provided that they are not left outside overnight.

Section 35. **Screen Enclosures.** Screen enclosures are not allowed without approval by the ARB, which may approve or disapprove screen enclosures in its sole discretion.

## ARTICLE X

### SURFACE WATER MANAGEMENT SYSTEM,

Section 1. **Surface Water Management System.** The Association is be responsible for the operation and maintenance of the Surface Water Management System, including but not limited to ditches, canals, lakes, and water retention ponds in the Properties, which is permitted by the SFWMD pursuant to the Permit. All Surface Water Management Systems within the Properties which are accepted by or constructed by the Association or the Declarant, excluding those areas (if any) normally maintained by Lee County or another governmental agency, will be the ultimate responsibility of the Association, whose agents, employees, contractors and subcontractors may enter any portion of the Common Areas and make whatever alterations, improvements or repairs that are deemed necessary to provide or restore property water management.

(a) No construction activities may be conducted relative to any portion of the Surface Water Management System. Prohibited activities include, but are not limited to: digging or excavation; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water Management System. To the extent there exists within the Properties a wetland mitigation area or a wet detention pond, no vegetation in these areas may be removed, cut, trimmed or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the Permit may be conducted without specific written approval from the District.

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

(c) No Lot or Common Area may be increased in size by filling in any water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the Association.

(d) All Surface Water Management Systems, excluding those areas (if any) maintained by Lee County or another governmental agency, will be the ultimate responsibility of the Association. The Association may enter any Lot or Common Area and make whatever alterations, improvements or repairs are deemed necessary to provide, maintain, or restore proper Surface Water Management System. The cost is a Common Expense.

(e) Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any Surface Water Management System, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including SFWMD, the Association and the Declarant, its successors and assigns.

(f) The SFWMD has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System.

(g) Any amendment of the Declaration affecting the Surface Water Management System or the operation and maintenance of the Surface Water Management System shall have the prior written approval of the SFWMD.

(h) If the Association shall cease to exist, all Lot Owners are jointly and severally responsible for the operation and maintenance of the Surface Water Management System in accordance with the requirements of the Permit, unless and until an alternate entity assumes responsibility.

Section 2. **Enforcement.** In addition to any enforcement rights of the SFWMD, the Association is entitled to take action against Lot Owners as necessary to enforce the above provisions and any requirements of the Permit.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. **Nonliability of Declarant.** Declarant may not be held liable or responsible for any violation of these covenants, conditions, restrictions or other

provision by any person other than itself or for failure to enforce these covenants, conditions, and restrictions, in whole or in part.

**Section 2. Master Irrigation System.** Either the Declarant, prior to Turnover, or the Association, after turnover, may elect to create a master irrigation system to provide irrigation water throughout the Property. If provided, each Owner is obligated to hook up their individual Lot irrigation system to the master irrigation system and pay for the irrigation water based on rates established by the Declarant or Association. The Association may collect delinquent irrigation bills using the same method for collecting delinquent assessments as provided in Article VI.

**Section 3. Amendment.** Until the Declarant no longer controls the Association and the Class B Membership ceases to exist, the Declarant reserves the right, without consent of any other person, to amend the Declaration for the purpose of correcting a clerical or scrivener's error, or to comply with any applicable governmental law, codes, or regulations, provided that no such corrective amendment shall materially or adversely affect the property rights of any Owner without such Owner's joinder and consent. Such corrective amendment is effective upon the Declarant's recording of an executed Amendment to the Declaration in the public records of Lee County, Florida. In Addition, Declarant may, in its sole discretion, by an instrument executed solely by the Declarant and filed of record, modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration. Notwithstanding any provision to the contrary, the prior consent of any mortgagee who has only a mortgage on any Lot(s) sold to a third party is not required in order to amend this Declaration. In addition to any other rights of amendment or modification provided for in this Declaration, in which case those provisions shall apply, this Declaration may be amended at a meeting duly called for such purpose pursuant to the Bylaws of the Association by an affirmative vote of sixty-seven percent (67%) of the total voting interests of the Association, or by approval in writing of sixty-seven percent (67%) of the total voting interests of the Association without a meeting. Notwithstanding the foregoing, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant without the written consent of such Declarant to any such amendment. Additionally, no amendment to this Declaration relating to the operation and maintenance of a Surface Water Management System located within the Property is effective without the prior written consent of the SFWMD.

**Section 4. Duration.** The covenants and restrictions of this Declaration run with and bind the land and inure to the benefit of and are enforceable by the Association or any Member thereof for a period of twenty-five (25) years from the date hereof. Thereafter they shall be automatically extended for additional periods of twenty-five (25) years unless an instrument in writing, signed by a majority of then Owners, has been recorded within the year preceding the beginning of each successive period of twenty-five (25) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

**Section 5. Covenants Run with the Land.** All restrictions, reservations, covenants, conditions, and easements contained in this Declaration constitute covenants running with the land; and all Associations, devisees, or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions of (a) this Declaration of Covenants, and Restrictions, (b) the Articles of Incorporation, (c) the Bylaws, and (d) any Rules promulgated by the Board as authorized herein.

**Section 6. Disputes.** In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, such dispute shall be referred to the Board, and the determination rendered by the Board with respect to such dispute is final and binding on all parties thereto.

**Section 7. Enforcement.**

(a) Declarant, the Association, or any Owner, their heirs, representatives or assigns, have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including any provisions regarding the Surface Water Management System, and are entitled to recover all expenses, costs and attorney's fees related thereto. Failure by the Declarant, Association, or by any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

(b) The SFWMD has the right to enforce, by a proceeding at law or equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System as well as any and all other provisions contained in this Declaration that in any way relate to the Permit issued by the SFWMD. The SFWMD's right to enforce this Declaration by proceedings at law or in equity shall survive any dissolution of the Association and may be enforced by SFWMD against the Association and/or the Owner(s). Should the SFWMD bring an action at law or in equity to enforce any provision of this Declaration and should it be determined in any such proceedings that the Association or any Owner(s) breached any of the provisions of this Declaration or failed to completely and timely comply with any of this Declaration, the SFWMD is entitled to an award of any attorney's fees and costs incurred in any administrative and appellate proceedings. The SFWMD has the right to file a lien in the public records of Lee County, Florida for any such attorneys' fees and costs awarded to the SFWMD by any court or administrative body.

**Section 8. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions. All other provisions shall remain in full force and effect.

**Section 9. Indemnification.** The Association indemnifies every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then

Board) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors are not liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association indemnifies and holds each such officer and the director free and harmless against any and all liability to the others on account of any such contract or commitment. Any indemnification provided for herein is not exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 10. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 11. Conflict.** In the event of any conflict among the provisions of this Declaration, the Declarant reserves the right and the power to resolve any such conflict, and its decision shall be final.

**Section 12. Dissolution.**

(a) In the event of dissolution of the Association, in accordance with the terms of its Articles of Incorporation, each Lot shall continue to be subject to the regular Assessments specified in Article VI and each Owner shall continue to be personally obligated to pay such Assessments to Declarant or the successor or assigns of the Association, and to the entity(s) referenced in Section 12 (b) below, as the case may be, to the extent that such Assessments are required to enable Declarant or any such successors or assigns and the entity(s) referenced in Section 12 (b) below acquiring any real property previously owned by the Association to properly maintain, operate and preserve it. The provisions of this Section only apply with regard to the maintenance, operation and preservation of Property which has been Association Property and continues to be so used, for the common use, enjoyment and benefit of the Owners and to that portion of the Property comprising the Surface Water Management System.

(b) In the event of dissolution of the Association, title to real property owned by the Association and the real property on which the Surface Water Management System is located, or easements to such real property, shall be conveyed to a similar not-for-profit entity or entities in order to allow such entity(s) to continue maintaining the formerly Association owned real property in accordance with this Declaration and maintaining and operating the system in accordance with the Environmental Resource Permit. Until such entity(s) assumes responsibility for maintaining and operating such real property, all Owners shall be jointly and severally responsible for the operation and maintenance of such real property and Surface Water

Management System facilities in accordance with the requirements of this Declaration and the Environmental Resource Permit.

Section 13. **Exception.** Notwithstanding any provision of this Declaration to the contrary, the Declarant has the right to amend this Declaration, from time to time, so long as Declarant owns a Lot within the Properties, to make such changes, modifications and additions therein and thereto as may be requested or required by HUD, FHA, VA, FNMA, GNMA, or any other governmental agency or body as a condition to, or in connection with such agency's or body's agreement to make, purchase, accept, insure, guaranty, or otherwise approve loans secured by mortgages on Lots or any other amendment which Declarant deems necessary provided such amendment does not destroy or substantially alter the general plan or scheme of development of the Property. Any such amendment shall be executed by the Declarant and is effective upon its recording the Public Records of Lee County, Florida. No approval or joinder of the Association, other Owners, or any other party is required or necessary for such amendment.

Section 14. **Assignment.** Declarant has the sole and exclusive right at any time and from time to time transfer and assign to, and to withdraw from such person, firm or corporation as it shall select, any or all rights, powers, easements, privileges, authorities, and reservations given to or reserved by Declarant by any part or paragraph of this Declaration or under the provisions of the Plat.

Section 15. **Withdrawal.** Anything herein to the contrary notwithstanding, the Declarant reserves the absolute right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purposes of removing certain portions of the Property from the provisions of this Declaration.

Section 16. **Warranties.** Declarant makes no warranties, express or implied, as to the improvement located in, on, or under the Common Area. Each Owner of a Lot, other than Declarant, by acceptance of a deed or other conveyance of the Lot, is deemed to acknowledge and agree that there are no warranties of merchantability, fitness or otherwise, either express or implied, made or given, with respect to the improvements in, on or under the Common Area, all such warranties being specifically excluded.

Section 17. **Waiver of Jury Trial.** In the event there is a dispute concerning the rights, obligations or remedies of an Owner or Declarant under this Declaration, such matter will be submitted to a court of competent jurisdiction. **DECLARANT AND ALL OWNERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY DISPUTE CONCERNING THE RIGHTS, OBLIGATIONS OR REMEDIES OF DECLARANT OR ANY OWNER UNDER THE DECLARATION OR ANY LITIGATION (INCLUDING BUT NOT LIMITED TO ANY COUNTERCLAIMS, CROSS-CLAIMS OR THIRD PARTY CLAIMS) BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. DECLARANT HEREBY CERTIFIES THAT NEITHER**



ANY REPRESENTATIVE NOR AGENT OF DECLARANT NOR DECLARANT'S COUNSEL HAS REPRESENTED, EXPRESSLY OR IMPLICITLY, THAT DECLARANT WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THE FORGOING WAIVER.

**Section 18. Indemnification.** Each Owner indemnifies and holds harmless Declarant, Association, their officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, losses, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of waterbodies within or adjacent to the Property by Owners, and their guests, family members, invitees, or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Declarant, Association, or of any Indemnified Parties. Should any Owner bring suit against Declarant, Association, or any of the Indemnified Parties from any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner is liable to such Indemnified Parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorneys' fees, and paraprofessional fees at trial and upon appeal.

Notwithstanding anything to the contrary in the Declaration, Articles, Bylaws, Rules, or any exhibits thereto, or any other document affecting the Property (the "Governing Documents"), neither the Association nor the Declarant is 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 Property, including, but not limited to, residents and their families, guests, lessees, licensees, invitees, agents, servants, contractors, and/or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

It is the express intent of the Governing Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Hill Tide Estates community and the value thereof.

The Association is not empowered, nor has it been created, to act as an agency which enforces or ensures the compliance with the laws of the State of Florida and/or County or which prevents tortuous activities.

The provisions of the Governing Documents setting forth the uses of Assessments which relate to health, safety, and welfare shall be interpreted and applied only as purposes for the uses 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.

Each Owner (by virtue of his acceptance of title to a Unit) and each other person having an interest in or lien upon, or making a use of, any portion of the Property is bound by this Section and is deemed to have automatically waived any and all rights,

claims, demands and causes of action against Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this Section or otherwise. As used in this Section "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, and contractors (including management companies, subcontractors, successors and assigns).

**Section 19. Notices.**

(a) **To Declarant.** Notice to Declarant as may be required herein shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by Declarant.

(b) **To Association.** Notice to the Association as may be required herein or the Bylaws of the Association shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by the Association.

(c) **To Owner.** Notice to any Owner of a violation of any of these restrictions, notice of assessments or any other notice as may be required herein shall be in writing and delivered or mailed to the Owner at the address shown on the tax rolls of Lee County, Florida, or if not shown thereon, to the address of the Owner, as shown on the deed recorded in the Public Records of Lee County, Florida.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 8<sup>th</sup> day of September 2016.

WITNESSES:

**Boca Pass Partners, LLC**  
a Florida limited liability company  
By: BCB Seagate I, LLC  
a Florida limited liability company  
Its: Manager

[Signature]  
\_\_\_\_\_

By: [Signature]  
William G. Price, Jr., Manager

[Signature]  
\_\_\_\_\_  
Printed Name

[Signature]  
\_\_\_\_\_

Anjea Blezi  
\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was executed before me, an officer duly authorized in the State and County named above to take acknowledgments, this 8<sup>th</sup> day of September, 2016, by William G. Price, Jr., Manager of BCB Seagate I, LLC, a Florida limited liability company, Manager of Boca Pass Partners, LLC, a Florida limited liability company, on behalf of the companies, who is personally known by me to be or who produced \_\_\_\_\_, as identification.

[Signature]  
\_\_\_\_\_  
Notary Public, State of Florida



Rochelle Karch  
\_\_\_\_\_  
Printed Name  
My Commission Expires: 7-16-19

**CONSENT OF MORTGAGEE**

This CONSENT OF MORTGAGEE is made this 24 day of AUGUST, 2016 by FINEMARK NATIONAL BANK & TRUST, ("Mortgagee"), having a mailing address of 12681 Creekside Lane, Ft. Myers, Florida 33919, is the owner and holder of a certain Mortgage, Security Agreement, and Assignment of Rents and Profits recorded as Instrument #2016000053010, and that certain UCC-1 Financing Statement recorded as Instrument #2016000053011, both of the Public Records of Lee County, Florida.

Mortgagee hereby consents to the **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HILL TIDE ESTATES** (the "Declaration"), to which this Consent is attached. Declarant agrees that should Mortgagee foreclose on its Mortgage, or otherwise come into possession of the above described Property by foreclosure, deed in lieu of foreclosure, or otherwise, then Mortgagee shall take title subject to the terms, conditions, easements and obligations created and contained in the Declaration. However, the foregoing notwithstanding, nothing contained herein shall be deemed to or in any way limit or affect the Mortgage owned and held by the Mortgagee, or the priority of the lien created thereby, and the purpose of this Consent is to acknowledge the consent of the Mortgagee to the Declaration as herein above provided. The Mortgagee makes no warranty, representation, or covenant, of any kind, type, or nature concerning the Declaration, any of its terms or provisions, or its legal sufficiency. Mortgagee does not assume and shall not be responsible for any of the Declarant's duties, liabilities, or obligations.

**FINEMARK NATIONAL BANK & TRUST**

Witness: Mary Jo Masquer  
Printed Name: Mary Jo Masquer

By: [Signature]  
Printed Name: Robert M. Arnall

Witness: Renee Seager  
Printed Name: Renee Seager

Printed Title: EVP

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 24 day of August, 2016 by Robert M. Arnall as EVP

\_\_\_\_\_ of **FINEMARK NATIONAL BANK & TRUST**, on behalf of the Bank,  
who is personally known to me.

(Notary Seal)



Mary Jo Masquelier  
NOTARY PUBLIC  
Printed Name: Mary Jo Masquelier  
My Commission Expires: 12-18-19

**EXHIBIT "A"**

**All of the Land within the Plat of Hill Tide Estates, according to the Plat thereof recorded as instrument No. 2017000012430, of the Public Records of Lee County, Florida.**