

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
SMILEY PLACE**

A RESIDENTIAL COMMUNITY

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**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS
FOR
SMILEY PLACE
A RESIDENTIAL COMMUNITY**

THIS DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS (herein referred to as the "Declaration") is made this 9th day of April, 2018 by Olde City Developers, LLC, a Wyoming Limited Liability Company, (the "Developer"), who is the Declarant herein, and is joined by Smiley Place Homeowner's Association, Inc., a Florida corporation not-for-profit (The "Association").

RECITALS

WHEREAS, Developer is the owner in fee simple of certain real property located in Escambia County, Florida, described in Exhibit 1 attached hereto and made a part hereof ("The Real Property"), and intends to develop the Real Property, once committed to use pursuant to this Declaration, to be known as Smiley Place, a Residential Community (and herein referred to as "Smiley Place" or "THE COMMUNITY").

WHEREAS, Developer will develop, on the Committed Property, entranceways, roads, open greenspace areas and recreation facilities and other common properties for the use and benefit of all of the residents of the community.

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the community and to provide the means whereby all owners of property in the community contribute to the cost of constructing and maintaining the entry way, roadways, lakes open space, green areas, retention ponds and other common properties; and for this purpose will subject the Committed Properties, to this declaration and to the covenants, conditions, restrictions, easements, charges and things hereinafter set forth, all for the benefit of the properties and each owner thereof.

WHEREAS, Developer has caused the Association to be formed, which Corporation has joined in this Declaration and to which there will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair of portions of the Committed Property; the enforcement of the covenants, conditions and restrictions contained herein; and the collection and disbursement of the Assessments.

**ARTICLE 1
DECLARATION**

Section 1.1. **Declaration.** Developer hereby creates a residential development named "Smiley Place" on the Committed Property described in Exhibit "1", and any additional Land that may be acquired by the Declarant, and declares that the Committed Property shall be held, sold, and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens, and other provisions of this Declaration.

Section 1.2. **Covenants Running with the Land.** All covenants, restrictions, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens, and benefits created by this Declaration shall bind and inure to the benefit of the Developer, the Owners, all other parties having any right, title or interest in the Committed Property or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators, and personal representatives.

Section 1.3. **Duration.** The Covenants and Restrictions of this Declaration shall run with and bind the Committed Property, and shall inure to the benefit of and be enforceable by the Association, the Developer or the Owner of any Committed Property, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date that this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration may be extended for successive additional periods if three-fourths (3/4) of the votes cast at a duly held meeting of the Association vote in favor of extending this Declaration. The length of each such extension shall be established by such vote. The written notice of any meeting at which such a proposal to extend this Declaration is to be considered shall set forth the fact that such a proposal will be considered. The President and Secretary of the Association shall execute a certificate which shall set forth any Resolution of Extension adopted by the Association and the date of the meeting of the Association at which such Resolution was adopted. Said certificate shall be recorded in the Public Records of the County.

ARTICLE II DEFINITIONS

The following words and phrases when used in this Declaration (unless the context clearly reflects another meaning) shall have the following meanings:

Section 2.1. **"Articles"** means the Articles of Incorporation of the Smiley Place Homeowner's Association, Inc.

Section 2.2. **"Assessment" or "Amenity Fee"** means a sum of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.

Section 2.3. **"Association or Homeowners Association"** shall mean and refer to Smiley Place Homeowner's Association, Inc., a not-for-profit Florida corporation, its successors and assigns, in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Section 2.4. **"Board"** means the Board of Directors of the Association.

Section 2.5. “Builder” means any entity licensed to build structures in the State of Florida.

Section 2.6. “By-Laws” means the By-Laws of the Smiley Place Homeowner’s Association, Inc.

Section 2.7. “Committed Property” or Property means the Real Property which is now or may become committed in the future to the land use provisions and other covenants, conditions and restrictions contained in this Declaration.

Section 2.8. “Common Area or Common Properties” means certain amenities for the benefit of the community so designated on the Plat recorded in the Records of the County or property deeded to the Association and designated as Common Properties or Common Area, including but not limited to, private roadways, entrance areas, buffer walls, drainage, retention, and conservation areas now or hereafter designated or created within the Committed Property (including the improvements thereto) owned or leased by the Association for the common use, enjoyment or benefit of all of the Owners.

Section 2.9. “Common Element” means collectively the portions of Committed Property outside of the Lots and each portion designated or dedicated as a “Common Area,” improved and unimproved, which are intended to serve all of the residents of the Community, and which shall be used for common purposes.

Section 2.10. “Community” means Smiley Place, a Residential Community and includes the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term “community” includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto.

Section 2.11. “Corporation Property” means such portions of the Committed Property as are dedicated or conveyed to the Association.

Section 2.12. “County” means Escambia County, Florida.

Section 2.13. “Declarant” means Olde City Developers, LLC, which is the “Developer” as defined herein.

Section 2.14. “Declaration” means this instrument and any supplements or amendments hereto.

Section 2.15. “Developer”, means Olde City Developers, LLC, its successors, or assigns, and any additional Declarant appointed by the Developer in writing, setting forth that such successor, designee, alternate, or additional Declarant is to have, together with or in lieu of, the Declarant’s rights, duties, obligations, and responsibilities, in whole or in part, for all or any portion of the “Committed Properties”. The term “Developer” shall not include any person or party who purchases a Lot from Declarant, unless such purchaser is specifically assigned, by a

separate recorded instrument, some or all of the Declarant's rights, duties, obligations, or responsibilities, under this Declaration with regard to the property conveyed.

Section 2.16. "Dwelling Unit" or "Unit" means a residential dwelling unit for which a final certificate of occupancy has been issued by the County intended as an abode for a single family including, without limitation, a detached single-family home, an attached townhouse dwelling, an attached duplex or other multiplex dwelling, a condominium unit pursuant to section 718.103(26) of the Florida Statutes, or any apartment-type dwelling unit contained in any multi-dwelling unit or multistory, residential building, notwithstanding the fact that any of the foregoing are subject to fee simple, cooperative, condominium, rental or other forms of ownership and possession.

Section 2.17. "Dwelling Unit Owner" means the owner of the fee simple title to a Dwelling Unit and includes the Developer for so long as it is the owner of the fee simple title to a Dwelling Unit.

Section 2.18. "Director" means a member of the Board of Directors of the Association.

Section 2.19. "Documents" means in the aggregate the Plat, this Declaration, exhibits, supplemental amendments, the Articles, the By-Laws, Rules and Regulations, Architectural Guidelines and all of the instruments and documents referred to therein and referred to herein.

Section 2.20. "Home Business" shall mean a business that is conducted entirely within the confines of a home and is not open to the public and is otherwise allowed by applicable County ordinances.

Section 2.21. "Institutional Mortgagee" means (a) any lending institution having a first mortgage lien upon a Lot or unit including any of the following institutions: a Federal or State Savings and Loan or Building and Loan Association, or bank or real estate investment trust, or mortgage banking company doing business in the State of Florida; or (b) any "Secondary Mortgage Market Institution" including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institution as the board shall hereafter approve in writing which has acquired a first mortgage upon a Lot or Dwelling Unit; or (c) any pension or profit-sharing funds qualified under the Internal Revenue Code; or (d) any and all investing or lending institutions, their successors and assigns (herein referred to as the "Lenders") which has loaned money to Developer to acquire, or construct improvements upon, the Committed Property and which hold a mortgage upon any portion of the Committed Property securing such a loan.

Section 2.22. "Lot" means a portion of the Committed Property shown on a Plat upon which a "Dwelling Unit" is permitted to be erected and is part of the "Residential Property" located within the Committed Property upon which a final certificate of occupancy for a dwelling unit has not been issued.

Section 2.23. "Lot Owner" means the owner of the fee simple title to a lot and includes Developer for so long as it is the owner of the fee simple title to an undeveloped lot.

Section 2.24. "Operating Expenses" means the expenses for which Owners are liable to the Association as described in this Declaration and in any other of the Association Documents, and includes, but is not limited to, the costs and expenses incurred by the Association in administering, operating, reconstructing, maintaining, repairing and replacing the Corporation Property and the Common Area.

Section 2.25. "Owners" means all Parcel Owners; collectively.

Section 2.26. "Plat" means the instrument titled PLAT OF SMILEY PLACE as recorded or to be recorded in the Public Records of the County and any instrument filed in the Public Records of the County supplementing, amending, or replatting the Plat.

Section 2.27. "Parcel" means a platted or unplatted lot, tract, dwelling unit or other subdivision of real property within a community, as described in the declaration: (a) Which is capable of separate conveyance; and (b) Of which the parcel owner, or an association in which the parcel owner must be a member, is obligated: (1) By the governing documents to be a member of an association that serves the community, and (2) To pay the homeowner's association assessments that, if not paid, may result in a lien.

Section 2.28. "Parcel Owner" means the record owner of legal title to a parcel.

Section 2.29. "Supplemental Declaration" means a document, filed in the County, supplementing or amending this declaration and containing a declaration of covenants, restrictions and conditions and applicable to the additional property which becomes Committed Property.

Section 2.30. "Surface Water Management System" means a system which is designed and constructed to control discharges which are necessitated by rainfall, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system as permitted.

Section 2.31. "Subdivision" refers to Smiley Place the Plat of which is recorded in the Public Records of the County.

Section 2.32 "Turnover" refers to the point in time in which the control of the Association is transferred to the Class A Members, being three (3) months after 90% of the parcels within all phases of the community that will ultimately be operated by the Association have been conveyed and made subject to the Declaration and have been conveyed to Members other than the Class B Member. The term "parcels in all phases of the community" means any additional phases developed or to be developed by Declarant in the future upon adjoining properties or properties adjoin such adjoining properties.

Section 2.33. "Voting Interest" means the voting rights distributed to the members of the homeowner's association, pursuant to the governing documents.

Section 2.34. "Uncommitted Property" means any part of the "Real Property" or other real property owned by a Developer which has not been committed to the covenants, conditions and restrictions contained in this Declaration.

ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

Section 3.1. **Committed Property.** The real property located in the County, which is particularly described in Exhibit "1" attached hereto shall be the real property initially submitted and subject to the use limitations, restrictions and other provisions, set forth in this Declaration.

Section 3.2. **Additions to Committed Property.** Developer may from time to time commit any other property presently owned or later acquired by the Developer to the land use provisions and covenants, conditions and restrictions contained in this Declaration. This determination shall be made in the sole discretion of Developer. Each commitment of Property to this Declaration shall be made by a recitation to that effect by a supplement or amendment to this Declaration, which shall include a legal description of the portion of Uncommitted Property then becoming Committed Property. Upon the recording thereof the Uncommitted Property shall be Committed Property as though originally designated as Committed Property. All additions to the Committed Property must be done within twenty-five years from the date that this declaration is recorded. Notwithstanding anything herein contained to the contrary the Developer neither warrants nor represents that any Uncommitted Property shall become Committed Property.

Section 3.3. **Withdrawal of Property.** Developer shall have the right, at any time and from time to time, to withdraw from the scheme of this Declaration any Committed Property, provided that (i) no Committed Property shall be withdrawn if the effect of such withdrawal would be to completely sever the lands remaining subject to this Declaration, it being the scheme of this Declaration that no parcel of land subject to this Declaration shall ever be noncontiguous to at least one other parcel of land subject to this Declaration, and (ii) the withdrawal of such Committed Property shall not materially increase the annual assessments or charges against the Committed Property remaining subject to this Declaration.

Section 3.4. **Method for Additions and Withdrawals of Committed Property.** The Declarant shall have the absolute right from time to time to make any additions or withdrawals authorized in Section 3.2 or 3.3 above by the filing of record of one or more supplemental declarations with respect to the added or withdrawn property. A supplemental declaration shall contain a statement that the real property that is the subject of the supplemental declaration constitutes additional property which is to become a part of the Property subject to this Declaration or constitutes real property to be withdrawn from the provisions hereof. In addition, a supplemental declaration may contain such additions to or modifications of the provisions hereof applicable to any additional property as may be necessary to reflect the different character, if any, of the additional property that is the subject of the supplemental declaration

including modifications in the basis of assessments or amounts thereof. Such supplemental declaration shall become effective upon being recorded in the County Public Records.

Section 3.5. **Deed Restrictions, Additional Declarations, and Homeowners Association.** In addition to this Declaration, the Developer may record for parts of the Committed Property specific deed restrictions, declarations of covenants, conditions, restrictions, and Homeowners Association documents applicable thereto. . To the extent that part of the Committed Properties are made subject to such specific documents, such real estate shall be subject to both the specific documents and this Declaration. The Association shall have the power to enforce all restrictions as expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained herein shall require the Developer to impose uniform restrictions, or to impose restrictions of any kind, other than this Declaration, on all or any part of the Committed Properties.

Section 3.6. **Developer's Reservation of Rights to Use and Changes.** Notwithstanding anything to the contrary contained herein, only Committed Property shall be subject to the documents. Developer reserves the right to alter the Land Use Plan and to alter roadways from those now shown on the Land Use Plan without specifically amending this Declaration or the Land Use Plan itself. The Land Use Plan may be amended, modified, or discontinued in whole or any part, at any time in the Developer's sole discretion. Developer reserves the right to modify the provision of this Declaration including but not limited to the change of use of single family lots, to multi family lots, and vice versa.

ARTICLE IV LAND USE CLASSIFICATIONS AND RESTRICTIONS OF COMMITTED PROPERTY

The following provisions shall be applicable to the Committed Property which is conveyed subject to the terms of this Declaration:

Section 4.1. **Residential Property.** Residential Property is that portion of the Committed Property upon which Dwelling Units may be constructed and shall be for "Residential Use" only. Except for facilities related to construction, development, sales and rental activities permitted on Residential Property as hereinafter set forth, "Residential use" shall include only Dwelling Units and improvements associated with residential purposes including but not limited to streets, drives, driveways, parking spaces, lawn areas and other amenities as an appurtenance to Dwelling units. No commercial or business occupations may be conducted on Residential Property except for the construction, development, and sale of Residential Property, and except for direct accessory services to Residential Property such as utilities, Dwelling Unit or Lot maintenance, or other such services. In addition to the provisions of this Declaration, the Residential Property shall also be subject to the terms of all applicable Supplemental Declarations which shall designate the Lots subject thereto and, may provide (a) for the type of Dwelling Units that may be constructed thereon, and (b) the establishment of such other amenities, benefits, covenants, easements, restrictions or provisions for the Section as Developer shall deem appropriate such as:

Section 4.2. **Common Areas.** Common Areas are those portions of the Committed Property designated as, or dedicated for use as "Common Area" in this Declaration, or a plat and shall only be used for "Common purposes". "Common Purposes" includes parks, lakes, retention ponds, fence, green areas, open spaces, facilities intended for use for recreational or social purposes and amenities associated therewith including but not limited to streets, driveways and parking facilities. The permitted Common Purposes for which a particular Common Parcel may be utilized may be limited by any specific provisions of this Declaration, or a plat, or any other supplemental document to which the Common Parcel is subject.

Section 4.3. **Association Property.** All of the Association Property shall be owned and held by the Association, subject to the terms and provisions of the conveyance thereof and subject to the provisions of this Declaration. The costs of administering, operating, maintaining, repairing, replacing and reconstructing the Association Property, and any improvements to be maintained thereon, shall be part of the Operating Expenses.

Section 4.4. **Developer's Right of Use.** Notwithstanding anything to the contrary contained in this Declaration, Developer hereby reserves for itself, the right to the use of all Common Areas and all other Committed Property in conjunction with its program of sale, leasing, constructing and developing of Smiley Place without any cost to Developer, its successors and assigns, for such rights and privileges. For purposes of this section, the term "Developer" shall include any Institutional Mortgagee that acquires title to any Committed Property as the result of the foreclosure of any mortgage encumbering Committed Property or by deed in lieu of foreclosure. The rights and privileges of Developer herein set forth, shall terminate upon Developer no longer owning any Committed Property or upon such earlier date as Developer shall notify the Association in writing of Developer's election to relinquish the aforesaid rights and privileges of use.

Section 4.5. **Disputes as to Use.** In the event there is any dispute as to whether the use of Committed Property complies with the covenants and restrictions contained in this Declaration, or any applicable plat, such dispute shall be referred to the Board of the Association, and a determination rendered by the Board shall be final and binding on all parties concerned. However, any use by Developer of Committed Property in accordance with "Developer's Right Of Use" authorized herein shall be deemed a use which complies with this Declaration and all supplemental Declarations and Plats and shall not be subject to a determination to the contrary by the Board.

ARTICLE V USE AND DEVELOPMENT RESTRICTIONS

In order to preserve the values and amenities of Smiley Place, the following use and development restrictions shall be applicable to the Committed Property:

Section 5.1. **Model Homes.** No trade, business, profession, or other type of commercial activity shall be carried on upon any Lot, except for Home Business. Developer, however, reserves the right for the Developer, Owners, and their agents to show Lots or Dwelling Units, for sale. Every person or entity purchasing a Lot recognizes that the Developer, its agents

and designated assigns, including any Builder approved by Developer, shall have the right to (1) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices, (2) maintain fluorescent-lighted or spotlighted model homes which are open to the public for inspection seven (7) days per week for such hours as the Developer deems appropriate, (3) conduct any other activities on Lots to benefit sales or lease efforts, and (4) use the parking facilities on the Common Area for its employees and invitees.

Section 5.2. **Use of Accessory Structures.** No tent, shack, bam, utility shed, fence, wall, or other building, other than a Dwelling Unit and its required garage, shall, at any time, be erected on a Lot and used temporarily or permanently as a residence or for any other purpose, except for temporary buildings, offices, or facilities used by Developer or builders, with the written approval of the Developer.

Section 5.3. **Maintenance of Improvements.** Each Dwelling Unit Owner shall maintain his Dwelling Unit in good condition and repair. No Owner shall change the exterior design or color of the Dwelling Unit, including the roof thereof, without the prior written approval of the Board of Directors of the Association. If after 30 days notice a Dwelling Unit, owner shall not comply with this section the Board of Directors of the Association may bring same into compliance and in such event shall have a lien against same to recover its costs.

Section 5.4. **Storage: Clothes Hanging.** No Lot shall be used for the storage of rubbish or permit outside clothes hanging devices.

Section 5.5. **Lot Upkeep.** After acquiring title from Developer, all Owners of Lots, whether or not improved with a dwelling unit, shall, as a minimum, keep the grass regularly cut and all trash and debris removed.

Section 5.6. **Nuisances.** No noxious or offensive activity shall be carried on upon the Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted on any Lot, other than in a garage and concealed from public view.

Section 5.7. **Lawns.** Each Dwelling Unit, shall be maintained in a neat condition by the Owner thereof, including that portion of property from the outside of the Dwelling Unit to the adjacent paved road surface. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the Community. All Dwelling Units must have grassed front, side and rear lawns. No gravel or similar type lawns are permitted. No above ground swimming pools, tool sheds or shacks, dog or other animal pens or houses or the like, and no unsightly lawn furniture or decorations shall be permitted in such lawn areas. The Board of Directors shall determine "unsightly lawn furniture or decorations" by written definition, the purpose of which is to promote complementary improvements.

Section 5.8. **Failure to Maintain.** If the Owner of a Dwelling Unit or Lot shall fail to maintain such Dwelling Unit or Lot as required, either the Developer or the Association, after

giving such Owner at least ten (10) days' written notice, shall be authorized to undertake such maintenance at such Owner's expense. Entry upon an Owner's Dwelling Unit or Lot for such purpose shall not constitute a trespass. If such maintenance is undertaken by the Association or Developer, the charge therefore and all costs of enforcement and collection shall be secured by a lien on the applicable Dwelling Unit or Lot.

Section 5.9. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or in any Lot except that a reasonable number of cats, dogs, and other household pets may be kept provided they are kept within the Dwelling Unit and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the Community. No person owning or in custody of an animal shall allow it to stray or go upon another's Lot without the consent of the Owner of such other Lot. All animals shall be on a leash when outside the Owner's Dwelling Unit. No animals shall be allowed on the Common Areas. No dogs of the breed of Akita, American Bull, Beaucerons, Caucasian Mountain Dog, Chow, Doberman, German Shepherd, Great Dane, Keeshonds, Pit Bull, Staffordshire Terrier, Presa Canarios, Rottweiler, any mix of the above or with a bite history, or other aggressive, vicious breeds shall be allowed. No barking or vicious dogs which may be declared a nuisance may be kept on the Property. Dogs, cats, or other household pets may be kept, provided they are not bred or maintained in such number or in such manner so that such shall constitute an annoyance or nuisance or shall in any way be detrimental or injurious to the health of the community or adjacent neighbors. No livestock, swine or poultry of any kind shall be raised, kept or bred upon any portion of said Property.

Section 5.10. **Signs.** No signs shall be displayed on Lots, with the exception of a maximum of one (1) "For Sale" or "For Rent" sign not exceeding 36" x 24" in size. The Association may develop uniform sign standards and specifications to which all Owners must adhere. Notwithstanding anything to the contrary herein, Developer and its assigns, including the Builders, shall have the exclusive right to maintain signs of any type and size on Lots which they own and on the Common Area, in connection with the development and sale of Lots.

Section 5.11. **Water Retention Areas.** The Association will be responsible for maintaining the portions of the Surface Water Management System which are within the Common Area including the water quality and quantity standards of the approved plans. A drainage easement is hereby dedicated to the Association for the purpose of maintaining the Surface Water Management System to meet water quality and quantity design standards of the approved and permitted plans.

5.11.1. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance, or other Surface Water Management System capabilities as permitted by the Northwest Florida Water Management District (the "District"). Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified, as approved by the District. The District shall have the right to enforce by a proceeding at law or in equity or by administrative tribunal the provisions contained in this Declaration which relates to the maintenance, operation, and repair of the Surface Water Management System. Any amendment to this Declaration which alters the Surface Water Management System, beyond maintenance in its original condition,

including the water management portions of the Common Area, must have the prior approval of the District. Any activity shall be subject to and governed by any permit issued by the District as amended and supplemented from time to time.

5.11.2. Each Owner of a Lot which borders a water retention area shall maintain any portion thereof as may be within the boundary of such Owner's Lot free of debris but shall not remove any wetlands species or do anything that would affect adversely water quality within the water retention area.

5.11.3. Each Owner within the Community shall comply with the construction plans approved and on file with the Northwest Florida Water Management District (NFWFMD) as part of the stormwater management system for development of the Community.

5.11.4. No owner of a Lot may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas, and upland conservation areas described in the approved permit and in the recorded plat of the subdivision, unless prior approval is received from the District. It is the Owner's responsibility not to remove native vegetation (including cattails) that become established within any wet retention pond that may be abutting their Lot. Removal includes dredging, file application of herbicide and cutting. Swimming or bathing in water retention areas are prohibited. All other uses of water retention areas shall be subject to the prior written approval of the Board of Directors, and such rules and regulations as the Board of Directors may adopt from time to time.

Section 5.12. **Vehicles**. No vehicle shall be parked within the Community except on a paved parking surface, driveway, or within a garage. No trucks or vehicles which are primarily used for commercial purposes, other than those temporarily present on business, nor any trailers, maybe parked within the Community. Boats, boat trailers, campers, travel trailers, mobile homes, recreational vehicles, and the like, and any vehicles not in operable condition and validly licensed, shall only be permitted to be kept within the Community if such are kept inside a garage and concealed from public view. For the purpose of the foregoing sentence, the term "kept" shall mean present for a period of twelve (12) hours or longer.

Section 5.13. **Antennas**. Unless otherwise approved by the Board of Directors of the Association, there shall be no rooftop or exterior antennas, or "earth stations" or similar signal receiving devices installed on any Lot which are visible from any street, dwelling, or any Common Area; provided however, satellite dishes no greater than 18 inches in diameter shall be permitted to be attached to the Dwelling Unit but shall not be visible from any street.

Section 5.14. **Sidewalks**. All sidewalks shall be constructed in accordance with the requirements of the County. Each Owner shall maintain, repair and replace the sidewalk abutting his or her Lot. Such maintenance, repair and replacement shall be at the sole cost and expense of the affected Owner. In the event an Owner shall fail to maintain the sidewalk abutting his or her Lot in a manner satisfactory to the Association, the Association may undertake necessary maintenance, repair or replacement of the sidewalk in accordance with the provisions of this Declaration.

Section 5.15. **Fences.** All fences must be approved by the Association prior to construction. All fences, hedges, walls or the like constructed upon any Lot shall comply with County regulations. As a general guideline all fences shall be of pressure-treated wood and six feet in height. Fences shall remain natural in color. No fence may be constructed and no hedge planted closer to the street than ten (10) feet behind or to the rear of the front face of the front corner of the dwelling (excluding garage). If a corner Lot, no fence may be constructed and no hedge planted any closer to the side street than the building setback required from the side street by the Plat. The rear Lot line shall be defined as being approximately parallel to the rear corners of the home and perpendicular to the boundary of the side Lot lines. No fences or structures shall be located within drainage easements that may prohibit or materially restrict the flow of stormwater.

Section 5.16. **Trash Receptacle.** All trash, garbage, grass cuttings, leaves, and other natural solid waste must be placed in plastic garbage/trash bags, or other suitable container. Garbage and trash shall be kept in a suitable tightly closed trash container. These containers are to be kept only inside the garage. Curbside pickup of garbage and trash shall be provided by an independent contractor; the containers are to be placed curbside in front of the Lot only on the day the garbage and trash are to be collected. Receptacles not removed by the independent contractor must be removed from curbside once emptied. No container or receptacle will be curbside for more than twelve (12) hours.

Section 5.17. **Mining or Drilling.** There shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise ("Mining Activity") undertaken within any portion of Committed Property. Activities of Developer in dredging any Lakes or creating, excavating or maintaining drainage or other facilities or easements shall not be deemed Mining Activities nor will the installation of wells or pumps, in compliance with applicable governmental requirements, or for - .sprinkler systems for any portions of Committed Property be deemed a Mining Activity.

Section 5.18. **Removal of Sod and Shrubbery; Alteration of Drainage.** Except for Developer's acts and activities in the development of Smiley Place, no sod, topsoil, mulch, trees or shrubbery shall be removed from Committed Property and no change in the condition of the soil or the level of the land of any Committed Property shall be made which results in any permanent change in the flow or drainage of surface water of or within The Common Area without the prior written consent of the Board.

Section 5.19. **Subdivision and Partition.** The Lots shall not be subdivided further than as provided in this Declaration or in any Plat.

Section 5.20. **Casualty Destruction to Improvements.** In the event that a Dwelling Unit or other improvement upon a Lot is damaged or destroyed by casualty, hazard or other loss, then, within a reasonable period of time after such incident, the Owner thereof shall either commence to rebuild or repair the damaged Dwelling Unit or improvements upon compliance with the determinations of the Board and diligently continue such rebuilding or repairing activities to completion or, upon a determination by the Owners thereof that the improvements will not be repaired or replaced, promptly clear damaged improvements and grass over and

landscape the Lot in a sightly manner. Dwelling Units shall only be replaced with Dwelling Units of a similar size and type as those destroyed as approved by the Board.

Section 5.21 **Pools, Play Facilities and Lighting.** All recreation facilities constructed or erected on a Lot, including, without limitation, swimming pools and any other play or recreation structures, platforms, playhouses, dog houses, or other structures of a similar kind of nature, but not basketball backboards, must be adequately walled, fenced, or landscaped in a manner specifically approved by the Association before such facility is constructed or erected.

Section 5.22 **Mailboxes.** All mailboxes, paperboxes, or other receptacles of any kinds for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or permitted in only the location approved by the Association and must be constructed according to a size, design and material approved by the Association.

Section 5.23. **No Implied Waiver.** The failure of the Board to object to an Owner's or other party's failure to comply with the covenants or restrictions contained herein or in other of the Smiley Place Documents now or hereafter promulgated shall in no event be deemed a waiver by the Board or of any other party having an interest therein of its right to object to same and to seek compliance in accordance with the provisions of the Smiley Place Documents.

Section 5.24. **Residential Use.** Each Lot is hereby restricted to a private, single-family dwelling for residential use.

Section 5.25. **Subdivision of Lots.** Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions, and provisions hereof, to easements and right-of-way, and matters of public record. No Lot may be subdivided into a smaller Lot or Lots unless approved by the Association; provided, however, that an entire Lot may be combined with an entire adjacent Lot and occupied as one Lot but assessed and governed as two Lots.

Section 5.26. No window air-conditioning units shall be permitted on the front or sides of any residence so as to be visible from the front line of such Lot.

Section 5.27 **Driveway.** Driveways must be made of concrete, or if not, the alternative surface must be approved by the Association; provided, however, that in no event may any Driveway be painted, scored or otherwise colored.

Section 5.28. **Firearms and Fireworks.** The display or discharge of firearms or fireworks on any Lot or any Common Area is prohibited; provided, however, that the display of lawful firearms on the Common Area is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Area to or from an Owner's Lot. The term "firearm" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

Section 5.29. **Windows and Window Treatments.** Reflective glass shall not be permitted on the exterior of any Dwelling or structure. No foil or other reflective materials shall be installed on any windows or used for sunscreens, blinds, shades or for other purposes. All exterior window styles, materials, and colors must be approved by the Association; provided, however, that in no event shall burglar bars and/or wrought iron doors be permitted.

Section 5.30. **Outdoor Lighting.** All outside lights shall be of an intensity not to exceed 100 watts and shall be placed so as to avoid an annoyance to any neighbor. Said lighting shall be turned toward the ground and shall be shielded completely or by frosted glass or plastic in all directions so that it does not shine toward neighboring Lots. Flood lights which shine all night are specifically prohibited.

Section 5.31. **Outdoor Equipment.** No outdoor equipment, tools, generators, or sporting equipment (including but not limited to basketball goals) may be installed or affixed to any Lot or Dwelling without prior written approval from the Association; provided, however, that portable outdoor equipment, tools, generators, or sporting equipment may be used on a temporary basis for no more than twenty-four (24) hours and promptly removed from view after use. Notwithstanding the foregoing, portable generators may be used and located on a Lot for more than twenty-four (24) hours in the event of an emergency or power outage but must be promptly removed once power is restored.

Section 5.32. **Holiday Displays.** Notwithstanding anything to the contrary in this Declaration, holiday lighting and holiday decorations shall be permitted to be placed, installed, located, and/or erected upon the exterior portion of a Dwelling or Lot beginning no earlier than one (1) week before Thanksgiving and shall be removed in their entirety no later than January 15th of the next calendar year. By way of example only, if Thanksgiving occurs on the 23rd day of a calendar year, then holiday lighting and decorations may be placed and/or installed on the exterior portion of a Dwelling or Lot no earlier than November 16th of such year, and all such holiday lighting and decorations must be removed in their entirety on or before January 15th of the following year. In no way limiting the foregoing, the Association may establish additional standards and/or rules and regulations regarding holiday lighting that creates a nuisance.

Section 5.33. **Lawn Decoration.** Notwithstanding anything contained in this Declaration to the contrary except otherwise set forth in Section above, exterior decorations, ornaments, and/or statuaries shall not be permissible on any Lot or the exterior of any Dwelling without the prior written approval of the Association.

Section 5.34. **Leasing.** Dwellings and Lots may be leased by an Owner for residential purposes only; provided, however, that such lease and the rights of any tenants thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Lots and Homes and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. Any Owner who leases his Home or any portion thereof shall be responsible for the acts of his tenants, including without

limitation, the violation of this Declaration and/or any rules and regulations promulgated by the Association hereunder.

ARTICLE VI EASEMENTS

Section 6.1. **Access Easement.** An easement for vehicular and pedestrian access is hereby reserved over and across all private roadways in the Subdivision for the benefit of the Association, all Owners, and all tenants and guests of all Owners (the "Access Easement"). The Association shall have the right to promulgate rules and regulations for the use of the Access Easement. The maintenance and repair of the road surface that constitutes the Access Easement shall be performed by the Association. The Association shall have the right, but not the obligation, to construct, install, maintain and repair a controlled access gate at the entrance to the Subdivision (a "Gate"). In the event the Association elects to construct, install, maintain and repair a Gate, the Association shall, subject to any rules and regulations adopted by the Association therefor, provide all Owners with an access code, gate key or some other method of obtaining access through the Gate when it is closed.

Section 6.2. **Easements and Buffer Strips.** All easements and buffer strips shown on the Plat of Subdivision, if any, are hereby adopted as part of this Declaration and all Lots in the Subdivision shall be subject to such easements and buffer strips.

Section 6.3. **Overhead Wires.** No Lot shall be served with an overhead electrical or communications service, and no Owner shall erect power poles for such service; provided, however, that nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting provided that such lighting is constructed in accordance with the terms and conditions thereof.

Section 6.4. **Drainage Easements Between Lot Lines.** There shall be a two and one half foot (2.5') private drainage easement centered on each shared Lot line (collectively, the "Lot Line Drainage Easements"). No fences or other structures may be constructed within the area of a Lot Line Drainage Easement in a manner that impedes stormwater flow.

Section 6.5. **Control of Common Areas.** The Association may, upon approval of the Members, sell, subdivide, lease, mortgage, grant easements over or otherwise encumber the Common Area, or exchange all or any portion of the Common Area for Lots or other real property, or purchase or acquire any additional real property and dedicate the same as Common Area subject to the terms of this Declaration.

Section 6.6. **Private Access Easement.** The Association, as the owner of any Common Area shown on the Plat (collectively, the "Private Access Easements"), shall have the right to grant easements for ingress and egress over and across the Private Access Easements to third parties as deemed appropriate by the Board, and any such easement shall be in writing and recorded in the Public Records. Furthermore, the Association shall have the right to restrict Owners' ability to access and use the area of the Private Access Easement from the surrounding

Lots and adjacent Common Area. In no way limiting the foregoing, the Private Access Easement shall at all times remain Common Area that is owned and maintained by the Association.

Section 6.7. **Easements for Public Authorities and Utilities.** Each Lot and the Common Area shall be subject to easements for public authorities and public utilities purposes (including, but not limited to, fire and police protection, garbage and trash removal, telephone and cable television and other communication services, water and sewage systems, and electric and gas services), and the utilities and applicable governmental agencies having jurisdiction over such services and their employees and agents shall have the right of access to any Lot or the Common Area in furtherance of such easements. The easement areas contained in any Lot, whether or not shown on any map or plat, shall at all times be properly maintained by the applicable Owner whether or not the utility company or governmental agency properly maintains the easement area.

Section 6.8. **Reservations to Developer.** Developer retains for itself, its successors in interest, agents, employees, any Builder, and assigns, a nonexclusive easement for ingress and egress over and across all streets, roadways, Common Area, driveways, common parking areas, and walkways that may from time to time exist within the Committed Properties.

Section 6.9. **Utility Easements.** The Developer hereby reserves a blanket easement for the benefit of the Developer or its designees, upon, across, over, through, and under any portion of the Committed Property for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and service systems, public and private.

Section 6.10. **Developer's Easement to Correct Drainage.** Developer hereby reserves a blanket easement and right on, over and under the ground within the Committed Property to maintain and to correct drainage of surface water and other erosion controls in order to maintain reasonable standards of health, safety and appearance.

Section 6.11. **Easement for Unintentional Encroachment.** The Developer hereby reserves an exclusive easement for the unintentional and non-negligent encroachment by any Lot caused by or resulting from construction, reconstruction, repair, shifting, settlement or movement of any portion of the Committed Property, which exclusive easement shall exist at an easement appurtenant to the encroaching property, to the extent of such encroachment.

Section 6.12. **Additional Easements.** The Developer reserves the right, for itself and its designees (so long as Developer or said designees own a Lot) and for the Board of Directors of the Association, without joinder or consent of any Owner, member, or other person or entity whatsoever, to grant such additional easements, including, but not limited to, irrigation wells and pumps, cable television, television antennas, electric, gas, water, sewer, or other utility easements, or to relocate any existing utility easement in any portion of the Properties as the Developer, its designee, or the said Board of Directors shall deem necessary or desirable for the proper operation and maintenance of the Community, or any portion thereof, or for the general health or welfare of the Lot, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Lot or Common Area for permitted purposes.

ARTICLE VII
PROVISIONS RELATING TO USE OF COMMON AREA

Section 7.1. **Owners' Easements Over Common Area.** Every Owner shall have a right and non-exclusive easement to enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. the right of the Association from time to time in accordance with its Bylaws to establish, modify, amend, and rescind reasonable rules and regulations regarding use of the Common Area;

B. the right of the Association to suspend the voting rights of, and right to use the Common Area by, an Owner for any period during which any assessment levied under this Declaration against the Owner's Lot, remains unpaid for a period in excess of ninety (90) days and suspend such rights for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

C. the right of the Association to suspend, for a reasonable period of time, not to exceed 60 days, the rights of an Owner and an Owner's tenants, guests, or invitees, to use common areas and facilities and to levy reasonable fines, not to exceed \$100 per violation, against any member or any Owner, guest, or invitee; for any violation of its published rules and regulations; provided, however, that a fine or suspension 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 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; and provided further that a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$10,000 in the aggregate;

D. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility as provided by its Articles;

E. the right of the Association to grant easements as to the Common Area or any part thereof as provided by its Articles;

F. the right of the Association to otherwise deal with the Common Area as provided by its Articles;

G. the right of the Association to release or convey its rights to any part of the Common Area, whether or not deeded to the Association, to the Developer or any Owner

to facilitate development of residential dwellings so long as the release or conveyance does not substantially, materially, and adversely affect the function and use of the remaining Common Area;

H. the right of the Developer to transfer or dedicate any portion of the Common Area to the governmental agency having jurisdiction thereof;

I. the right of the Developer and its designees to use Common Area parking areas for parking by its employees and invitees; and

J. the right of the Association to adopt reasonable rules and regulations relating to the sale or lease of an owner's dwelling including the right to charge a fee reasonably related to the administrative cost of maintaining Association records.

Section 7.2. **Owners Easement for Ingress & Egress.** If ingress or egress for any resident is through the common area, any conveyance or encumbrances of such area is subject to the Owner's easement for reasonable use through such common area conveyed.

Section 7.3. **Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, all or part of such Owner's right of enjoyment of the Common Area to such Owner's tenants who resides at or in the Dwelling Unit provided the Owner waives such Owner's use in writing.

Section 7.4. **Prohibition of Certain Activities.** No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any tenant or invitee of any Owner. No noxious, destructive, or offensive activity shall be permitted on or in the Common Area or any part thereof, nor shall anything be done thereon or therein which may be or may become an unreasonable annoyance or nuisance to any other Owner. No Owner may maintain, treat, landscape, sod, place, or erect any improvement or structure of any kind of any Common Area without the prior approval of the Board of Directors.

Section 7.5. **Signs Prohibited.** No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. This section, however, shall not apply to the Developer or to the Association or to those actively constructing residences within the Committed Properties for sale to others.

Section 7.6. **Animals.** No animals shall be permitted on or in the Common Area at any time except as may be provided in this declaration, the rules and regulations of the Association or by applicable law.

Section 7.7. **Rules and Regulations.** No Owner or other permitted user shall violate the reasonable rules and regulations promulgated for the use of the Common Area, as the same are from time to time adopted or amended or both by the Association.

Section 7.8. **Title to Common Area.** No later than the time that the Developer no longer exercises voting control over the Association, as provided in this Declaration, continuously for a

period of one (1) year, the Developer shall convey, and the Association shall accept, title to any Common Area subject to such easements, reservations, conditions, and restrictions as may then be of record. Developer may convey, and the Association shall accept, title at any time prior to the time referred to in this Section, at Developer's option and sole discretion; it is understood and agreed however, that until Developer transfers any such Common Areas to the Association and upon completion of the anticipated improvements upon any Common Area, the equitable title thereto (or equitable easement) shall pass to the Association for purposes of taxation, assessment and other governmental regulation affecting same.

Section 7.9. **Security Gates.** The Developer shall have the right, but not the obligation, to establish security gates at various locations on any road right of way over or on any of the Common area, and require persons using the road to present appropriate identification, key, card, or other item in order to pass through the gate.

ARTICLE VIII APPROVAL REQUIRED FOR IMPROVEMENTS

In order to preserve the value and appearance of Smiley Place, Board approval will be required before improvements can be made to Lots.

Section 8.1. **Developer Improvements.** Dwelling Units, buildings and other structures and improvements constructed or placed with the approval of Developer; landscaping and plantings with the approval of Developer; and additions, alterations, modifications and changes to any of the foregoing with the approval of Developer (collectively "Developer Improvements"), are not subject to the approval of the Board.

Section 8.2. **Board Approval of Improvements.** Except for Developer Improvements, no improvement or structure of any kind, including, without limitation, any building, wall, fence, swimming pool, tennis court, or screen enclosure, shall be erected, placed or maintained on any portion of Committed Property; no landscaping or planting shall be commenced or maintained upon any portion of Committed Property; and no addition, alteration, modification or change to any such improvement, structure, landscaping or planting shall be made without the prior written approval of the Board.

Section 8.3. **Method of Obtaining Board Approval.** In order to obtain the approval of the Board, two (2) complete sets of plans and specifications for proposed construction and landscaping shall be submitted to the Board for its review. Such plans and specifications shall include, as appropriate, the Proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs, and nature, type and color of materials to be used. The Board may also require the submission of additional information and materials as may be reasonably necessary for the Board to evaluate the proposed construction, landscaping or alteration. The Board shall evaluate all plans and specifications utilizing standards of the highest level as to the aesthetics, materials and workmanship and as to suitability and harmony of location, structures and external design in relation to surrounding topography, structures and landscaping. The Board shall not be responsible for reviewing, nor shall its approval of any plans and specifications be

deemed approval of any plan or design from the standpoint of structural safety or conformance with building codes.

Section 8.4. **Approval or Disapproval by the Board.** The Board shall, in its sole discretion, have the right to refuse to approve any proposed plans or specifications. All approvals or disapprovals of the Board shall be in writing and shall be sent to the respective Lot Owner or Dwelling .Unit Owner, as applicable. In the event the Board fails to approve or to disapprove in writing any proposed plans and specifications within thirty (30) days after submissions to the Board of such plans and specifications and any and all other reasonably requested information related thereto,, then said plans and specifications shall be deemed to have been approved by the Board and the appropriate written approval delivered forthwith.

Section 8.5. **Board to Adopt Rules and Regulations.** The Board shall promulgate further rules and regulations and a schedule of reasonable fees for the processing of applications to the Board.

Section 8.6. **When Approval of Board Not Needed.** If the contemplated improvement, structure, landscaping, planting or thing which would otherwise be subject to the jurisdiction of the Board is subject to the jurisdiction of an architectural control committee, the Board shall have the right (but not the obligation) to adopt a resolution providing that the procedures for architectural control and approval shall take precedence for so long as said resolution shall be in effect or until revoked by subsequent resolution of the Board. Any written approvals given other than in accordance with the provisions of this Subparagraph shall be effective notwithstanding the subsequent termination of the effectiveness or subsequent revocation of the Board's resolution which permitted such approval to be given other than by the Board.

Section 8.7. **Architectural Review Committee and Guidelines.** The Board of Directors of the Association may in its sole discretion establish an Architectural Review Committee or Committees which will establish architectural guidelines governing the style and appearance of all improvements to be constructed on the Committed Property and a procedure for approval of all plans and specifications so submitted for approval.

**ARTICLE IX
FUNCTIONS OF THEASSOCIATION**

Section 9.1. **Functions and Services of Association.** The Association shall provide the following services to its Members to the extent permitted by the government of the County.

A. Maintenance of all Common Property and Common Roads including roadway medians and landscaping of Common Road rights-of-way;

B. Maintenance of lakes and lagoons and retention areas, if any, serving the Committed Property;

- C. Lighting of Common Roads;
- D. Security protection, including employment of security guards and maintenance of electronic and other security devices which in the discretion of the Board of Directors shall be necessary for the protection of persons and property within the Committed Property;
- E. Garbage and trash collection and disposal; to the extent that it is not provided by governmental authorities.
- F. Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors to supplement the service provided by state and local governments;
- G. To provide administrative services, including, legal, accounting and financial services;
- H. To provide liability and hazard insurance covering improvements and activities on the Common Properties.
- I. To pay taxes assessed against Common Properties and upon request of an Owner or institutional mortgages to furnish evidence of such payment.

**ARTICLE X
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;
BOARD OF DIRECTORS OF THE ASSOCIATION**

Section 10.1. **Membership.** Each Owner shall be shall be a mandatory member of the Association, subject to and bound by the Association's Articles of Incorporation, Bylaws, Rules and Regulations, and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership shall be the sole qualification for membership. When any Owner of record is two or more persons or other legal entities, all such persons or entities shall be members, but multiple ownership shall not result in additional voting rights. An Owner of more than one Lot or Dwelling Unit shall be entitled to one membership for each Lot or Dwelling Unit owned. Membership shall be appurtenant to, and may not be separated from any ownership, which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot, Dwelling Unit. The Developer shall also be a member so long as it owns one or more Lots, Dwelling Units.

Section 10.2. **Board of Directors.** The Association shall be governed by a Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles of Incorporation and By Laws of the Association.

Section 10.3. **Voting Rights.** Voting shall be in accordance with the Articles of Incorporation and By Laws of the Association.

Section 10.4. **Relationship to Articles and Bylaws.** The Articles and Bylaws will govern all matters of the Association not set forth in this Declaration.

**ARTICLE XI
ASSOCIATION BUDGET**

To fulfill its obligation to maintain the Common Property, the Board is responsible for the fiscal management of the Association and shall adopt an Association Budget and make annual assessments in accordance with the Bylaws and Chapter 720 of the Florida Statutes.

**ARTICLE XII
COVENANT TO PAY ASSESSMENTS FOR OPERATING EXPENSES AND SPECIAL ASSESSMENTS**

Section 12.1. **Affirmative Covenant to Pay Assessments.** In order to (i) fulfill the terms, provisions, covenants and conditions contained in this Declaration; and (ii) maintain, operate and preserve the Common Area and Association Property for the recreation, use, safety, welfare and benefit of the Owners and their guests, invitees, lessees and licensees, there is hereby imposed upon each Owner the affirmative covenant and obligation to pay to the Association all "Assessments" including, but not limited to, the "Annual Assessment" for operating expenses and the "Special Assessments" as hereinafter provided. Each owner by acceptance of a deed or other instrument of conveyance, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Annual Assessments for Operating Expenses and Special Assessments in accordance with the provisions of the Smiley Place Documents.

Section 12.2. **Annual Assessments for Operating Expenses.** The following expenses of the Association are Operating Expenses which the Association is obligated to assess and collect and which the Owners are obligated to pay annually as provided herein;

A. **Taxes.** Any taxes levied or assessed upon the Association Property and any improvements thereon by any taxing authorities,, including, without limitation, all taxes, charges, and assessments for public improvements, and water drainage districts, and in general all taxes and tax Hens which may be assessed against the Association Property.

B. **Utility Charges.** All charges levied for utilities providing services for the Association Property, whether supplied by a private or public firm, including, without limitation, all charges for water, gas, electricity, telephone, sewer, and any other type of utility or any other type of service charge.

C. **Insurance.** The premiums on the policy or policies of insurance which the Association, in its sole discretion, determines to obtain.

D. **Maintenance, Repair and Replacement.** Any and all expenses necessary to (i) maintain and preserve the landscaped, grassed and open and natural portions of the Association Property including such expenses as grass cutting, tree trimming sprinkling, fertilizing, spraying and the like; (ii) operate, maintain, preserve and protect the portions of the Association Property designated or used for water management and drainage purposes including all costs of chemically treating the waters of such areas, controlling water levels, and maintaining and operating any improvements established within any such areas; (iii) keep, maintain, operate, repair and replace any and all improvements, personal property and furniture, fixtures and equipment upon the Association Property in a manner consistent with the development of Smiley Place and in accordance with the covenants and restrictions contained herein, and in conformity with all applicable federal, state, County or municipal laws, statutes, ordinances, orders, rulings and regulations; (iv) maintain, repair and replace all street signs installed or placed on any Committed Property by Developer or the Association which are not maintained, repaired and replaced by the County or other applicable governmental body or agency; (v) maintain, repair and replace all signs, decorative walls, fences and other structures installed, placed or erected by Developer or the Association within Committed Property constituting signs and entry features for Smiley Place or any part thereof, maintenance and operation of any gate houses located on Association ' Property and whether on land owned by or dedicated to the Association or on land whereon the Association has an easement for such purposes; (vi) maintain and operate any street lights within or adjacent to the streets and roads within Smiley Place including, but not limited to, all charges of any utility company providing electric service for such street lights and costs for repair or replacement of damaged street lights to the extent any of such costs and charges are not paid for by governmental agencies or the utility company providing service with respect thereto.

E. **Administrative and Operational Expenses.** The costs of administration for the Association in the performance of its functions and duties under the Smiley Place Documents including, but not limited to, costs for secretarial and bookkeeping services, salaries of employees, legal and accounting fees and contracting expenses. In addition, the Association may retain a management company or companies or contractors (any of which may be a subsidiary, affiliate, or an otherwise-related entity of Developer) to assist in the operation of the Association Property, or portions thereof, and to perform certain obligations of the Association under the Smiley Place Documents and the charges of any management company or contractor so retained shall be deemed to be an Operating Expense.

F. **Compliance with Laws.** The Association shall take such action as it determines necessary or appropriate in order for the Association Property and the improvements thereon to be in compliance with all laws, statutes, ordinances and regulations of any governmental authority, whether federal, state or local, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions and fire hazards, and the cost and expense of such action taken by the faster Association shall be an Operating Expense.

G. **Indemnification of Developer.** The Association covenants and agrees that it will indemnify and hold harmless Developer from and against any and all claims, suits, actions, causes of action and/or damages arising from any personal injury, loss of life and/or damage to property sustained on or about the Association Property and improvements and thereon, and from and against all costs, expenses, counsel fees (including, but not limited to, all trial, appellate levels, and arbitration and whether or not a formal action be instituted), expenses and liabilities incurred by Developer arising from any such claim, the investigation thereof) or the defense of any action or proceedings brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon. The Association shall also indemnify Developer for any expense Developer may incur in bringing any suit or action for the purpose of enforcing the rights of Developer under any of the Smiley Place Documents or of compelling the specific enforcement of the terms, conditions and covenants contained in any of the Smiley Place Documents to be kept or performed by the Association or the Owners. The costs and expense of fulfilling this covenant of indemnification set forth in this Paragraph shall be an Operating Expense.

H. **Failure of Owners to Pay Assessments.** Funds needed for Annual Operating Expenses due to the failure or refusal of Owners to pay Annual Assessments levied shall, themselves, be deemed to be Operating Expenses and properly the subject of an Assessment provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of Owners to pay a Special Assessment.

I. **Costs of Reserves.** The funds necessary to establish an adequate reserve fund (the "Reserves") for depreciation and/or deferred maintenance of the Association Property and the improvements thereupon shall be an Operating Expense. The monies collected by the Association on account of Reserves shall be deposited in a separate account and shall remain the exclusive property of the Association and no Owner shall have any interest, claim or right to such Reserves.

J. **Miscellaneous Expenses.** The costs of all items for the benefit of the Association or the Association Property not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board of the Association shall be an Operating Expense.

Section 12.3. **Special Assessments for Capital Improvements.** Special Assessments are those Assessments which are levied for capital improvements including the costs of constructing or acquiring improvements for the Association and the cost of reconstructing or replacing such improvements. Special Assessments shall be assessed in the same manner as the Annual Assessment Operating Expenses. Special Assessments shall be paid in installments or in a lump sum as the Board shall determine.

A. **Matters of Special Assessments Generally.** Amounts needed for a Special Assessment must be approved by the affirmative vote of a majority of the Members of the Association, except that no such approval need be obtained for a Special Assessment for the replacement or repair of a previously existing improvement on the Association Property which was destroyed or damaged.

B. **Special Assessment for Insurance Shortfall.** In the event that the amount necessary to repair, replace, construct, or reconstruct any improvements upon the Association Property damaged by any casualty not covered in whole or in part by insurance, the difference between the amount of insurance proceeds received with respect to such damage and the amount of funds necessary to repair, replace, construct, or reconstruct the building or improvement so damaged shall be the subject of a Special Assessment, and the Association will levy a Special Assessment for the funds within ninety (90) days from the date such damage was incurred. The Association shall pay into an account with a federal or state commercial or savings bank or savings and loan association located in the County, any such funds collected by Special Assessment and all insurance proceeds collected by the Association so that the funds on deposit will equal the cost of repair, replacement, construction, or reconstruction of the damaged improvements, and the Association shall go forward with all deliberate speed so that such repair, replacement, constructions, or reconstruction shall be completed as soon as is reasonably possible after the date of the damage.

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

Section 12.4. **Maximum General Assessments.** Until December 31, 2018, the maximum yearly general assessment shall be \$300.00 per lot.

A. The maximum general assessment may be increased each year by not more than Twenty-five (25%) above the maximum assessment permitted hereunder for the previous year(s) only by a vote not less than sixty (60%) percent of the membership.

B. The maximum general assessment may be increased in excess of the maximum permitted in Section 12.4 above only by a vote of not less than sixty percent (60%) of members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum required for maintaining the Common Area and the areas set forth in Article II herein.

D. Notwithstanding anything to the contrary stated herein, the Declarant shall be excused from the payment of assessments for current operating expenses and reserves.

Section 12.5 **Developer Assessments.** Notwithstanding anything contained in this Declaration to the contrary, all Lots and Dwelling Units owned by Declarant shall be exempt

from assessments of any type by the Association until the first to occur of (i) Declarant's execution and recording in the real property records of Escambia County, Florida of a written waiver of the exemption from assessments set forth in this Section of (ii) Turnover; provided however, that for so long as Declarant's Lots and Dwelling Units are exempt from assessments, Declarant shall be responsible for and shall pay any and all operating expenses of the Association that exceed the amount of assessments receivable hereunder from the other Members and other income sources (if any) of the Association.

Section 12.6. Working Capital Contribution. In addition to annual and special assessments levied hereunder, the first Owner acquiring title to a Lot that has been improved with a House who will occupy (or lease to an occupant) the House and all subsequent purchasers thereof shall pay to the Association at the closing of such Lot a contribution to the Association's working capital in an amount equal to one-fourth (1/4) of the annual assessments for Common Expenses then being levied by the Association (a "Working Capital Contribution"). The Working Capital Contribution may be used by the Association for any purpose not expressly prohibited by applicable law.

ARTICLE XIII INSURANCE AND CASUALTY COSTS

The Association shall maintain the following insurance:

Section 13.1. Property Insurance. Property insurance-in an amount equal to the full replacement cost, exclusive of land, foundation, excavation and other item normally excluded from such coverage, of all buildings and improvements located upon the Association Property, affording protection against the following:

- A. loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and
- B. such other risks as shall customarily be covered with respect to Association property in developments similar in construction, location and use.

Section 13.2. Liability Insurance. A comprehensive policy of public liability insurance and, if appropriate, owners, landlord and tenant policies naming the Association and, until the Turnover Date, Developer as named insureds thereof insuring against all claims or demands made by any person for injuries received in connection with, or arising from, the operation, maintenance and use of the Association Property and any improvements and buildings located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000) for damages incurred or claimed by any one person for any one occurrence and not less than Five Million Dollars (\$5,000,000) for damages incurred or claimed for any one occurrence and for not less than One Hundred Thousand Dollars (\$100,000) property damage per occurrence with no separate limits stated for the number of claims. Such coverage shall include, without limitation, protection against water damage, liability for non-owned and

hired automobiles, liability for property of others, host liquor liability and such other risks as are customarily covered with respect to Association Property in developments similar in construction, location and use.

Section 13.3. **Fidelity Bonds.** Adequate fidelity coverage to protect against dishonest acts on the part of officers, Directors, and employees of the Association and others who handle funds of the Association, in the form of fidelity bonds which meet the following requirements

- A. Such bonds shall name the Association as an obligee;
- B. Such bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual Operating Expenses of the Association;
- C. Such bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

Section 13.4. **Other Insurance.** Such other forms of insurances and in such, coverages as the Directors of the Association shall determine to be required for the protection or preservation of the Association Property and any improvements located thereon or in the best interests of Smiley Place or the Association.

Section 13.5. **Damage and Destruction.**

A. Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the costs and repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

B. Any damage or destruction to the Common Area or to the common property of any homeowner's association shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association, if Common Area, or the homeowner's association whose common property is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a consequence of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

C. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative

improvements are authorized, then and in that event that affected portion of the Properties shall be restored to their natural state and maintained by the Association, Subdistrict or residential association, as applicable in a neat and attractive condition.

D. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of notice to or a vote by the Member, levy a special assessment against all Owners for the full amount of such deficiency.

ARTICLE XIV ESTABLISHMENT OF LIENS AND COLLECTION OF ASSESSMENTS

Section 14.1. Establishment of Liens for Assessments. Any and all assessments made by the Association in accordance with the provisions of this Declaration or any of the Smiley Place Documents together with interest thereon at 18% and costs of collection, including, but not limited to, reasonable attorneys' fees (collectively "Assessments") are hereby declared to be a charge and continuing lien upon the Lots against which each such Assessment is made: Each Assessment shall be the personal obligation of the Owner of each Lot assessed. No Owner may exempt himself from personal liability for Assessments or release the Lot owned by him from the liens and charges by waiver of the use and enjoyment of the Association Property or by abandonment of his Lot. Said lien shall be effective from the time of the recordation in the Public Records of the County of a statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, where an Institutional Mortgagee obtains title to a Lot as a result of foreclosure of its mortgage or deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall not be liable for the share of Assessments chargeable to the former Owner which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu thereof unless the Assessment is secured by a claim of lien for Assessment that is recorded prior to the recordation of the mortgage. All late charges, fees, fines or interest levied by the Association in connection with an unpaid Assessment shall, be subordinate to the lien of a first mortgage of an Institutional Mortgagee on such Lot to which the unpaid Assessment relates.

Section 14.2. Collection of Assessments and Remedies Assessments shall be due and payable upon such date as designated in advance by the Board, whether or not a bill for such has been sent to the Owner by the Association, in the event any Owner shall fail to pay an Assessment, or installment thereof, within ten (10) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies, which remedies are cumulative in addition to all other remedies available to the Association:

A. To charge interest on such Assessment from the date it becomes due at 18% per annum, as well as a late charge of One Hundred Dollars (\$100) to defray additional record keeping and collection costs.

B. To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

C. To advance on behalf of the Owner in default, funds to accomplish the needs of the Association up to the full amount for which such Owner is liable to the Association and the amount so advanced, together with interest at 18% per annum, and all costs of collection including, but not limited to, reasonable attorneys' fees, may be collected by the Association and such advance by the Association shall not waive the default.

D. To file an action in equity to foreclose its lien at any time, after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a manner as a foreclosure of a mortgage on real property.

E. To file an action at law against the Owner to collect said Assessment plus interest at 18% per annum plus court costs and reasonable attorneys' fees without waiving any lien rights or rights of foreclosure of the Association.

Section 14.3. **Collection by Developer.** In the event that the Association shall fail to collect the Assessments, then in that event, Developer shall have the right: (i) to advance such sum as the Association could have advanced; and (ii) to collect such Assessments and, if applicable, any such sum advanced by Developer, rising the remedies available to the Association which remedies are hereby declared to be available to Developer.

Section 14.4. **Rights of Developer and Institutional Mortgagees to Pay Assessments and Receive Reimbursement.** Developer and any Institutional Mortgagees shall have the right, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Lot in Smiley Place. Developer and any Institutional Mortgagees shall have the right, jointly or singly, and at their sole option, to pay insurance premium or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association where the same are overdue and where lapses in policies or services may occur. Developer and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus costs of collection including, but not limited to, reasonable, attorneys' fees and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and. to Developer if Developer is entitled to reimbursement.

Section 14.5. **Homestead** By acceptance of a deed thereto, the Owner (and any spouse thereof, if married) of each Lot shall be deemed to have agreed that the liens herein provided for have attached prior to the time when any Lot has acquired homestead status and deemed to have waived any exemption of such Owner's Lot from the liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available by reason of the Homestead Exemption provisions of Florida law, if for any reason such are applicable. This section is not intended to limit or restrict in any way the lien or rights granted by this Declaration, but to be construed in its favor.

**ARTICLE XV
GENERAL PROVISIONS**

Section 15.1. **Lawful Use of Committed Property.** Each portion of Committed Property will be subject to all laws, statutes, ordinances, rules and regulations of the United States of America, the State of Florida, the County and any and all other governmental and public authorities having jurisdiction over the Committed Property. No illegal or immoral purpose or use shall be permitted on such Committed Property.

Section 15.2. **Incorporation of Smiley Place Documents.** All deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of the Smiley Place Documents, whether or not the incorporation of the terms and conditions of the Smiley Place Documents is specifically set forth by reference in such deed, and acceptance by the grantee of such a deed shall be deemed to be acceptance by such grantee of all of the terms and conditions of the Smiley Place Documents.

Section 15.3. **Notices.** Any notice or other communication required to be given hereunder to any Owner shall be deemed given and delivered upon the mailing by United States mail, postage prepaid, to:

A. the Owner of record on the books of the Association at the time of such mailing and in the absence of any specific address at the address, of any Dwelling Unit, Lot, or Parcel owned by such Owner; and

B. the Association, at 212 W. Intendencia St, Pensacola, Florida 32502, or such other address as the Association shall hereinafter notify Developer and the Owners in writing; and

C. Developer at 212 W. Intendencia St., Pensacola, Florida 32502, or such other address as Developer shall hereafter notify the Association of in writing; any such notice to the Association of a change in Developer's address shall be notice to the Owners. Upon request of an owner, the Association shall furnish to such Owner the then current address for Developer.

Section 15.4. **Information to Institutional Mortgagee.** Upon receipt by the Association of a written request from any Institutional Mortgagee together with a copy of the mortgage held by such Institutional Mortgagee on a Lot, Dwelling Unit, or Parcel, the Association shall timely send to such Institutional Mortgagee the following:

A. A copy of any notice of a meeting of the Association or of the Board which is sent to an Owner; and

B. A copy of any financial statement of the Association which is thereafter sent to an Owner; and

C. Written notice of any termination by the Association of any professional management of the Common Areas or Association Property, and the assumption by the Association of the self-management of such areas; and

D. Thirty (30) days prior written notice of the cancellation or termination by the Association of any policies of insurance, covering the Common Areas or Association Property or any improvements thereon, or any fidelity bonds of the Association for its officers, Directors, or employees as well as copies of any notices of cancellation by others received by the Association with respect thereto; and

E. Written notice of any damage or destruction to the improvements located on the Common Areas or Association Property which gives rise to net insurance proceeds therefor being available for distribution to the owners encumbered by the mortgage of such Institutional Mortgagee; and

F. Written notice of any condemnation or eminent domain proceeding or proposed acquisition arising therefrom with respect to the Common Areas or Association Property; and

G. Written notice of any material amendment to, or the abandonment or termination of, this Declaration in accordance with the terms hereof.

H. The failure of the Association to send any such notice to any such Institutional Mortgagees shall not have any effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof.

Section 15.5. **Internet & Telecommunications.** Developer hereby reserves unto itself and its designees, assignees and licensees the right to construct and/or install over, across and upon any portion of Committed Property for the use of the Owners and their permitted or authorized guests, invitees, tenants and family members a central or master internet or telecommunications receiving and distribution system ("System") the exact description, location and nature of which has not yet been fixed nor determined. For the purpose of authorizing, permitting and allowing Developer to cause the System to be constructed and installed and thereafter inspected, repaired, maintained, altered, improved and replaced, Developer shall have and hereby reserves to itself and its successors and assigns a perpetual and exclusive right, privilege, easement and right-of-way for the installation, construction and maintenance of the System (the scope, extent and size as well as the location of which upon and through Committed Property shall be determined solely by Developer, its successors and assigns) together with a perpetual and exclusive right and privilege of: (i) unlimited ingress and egress thereto for the purpose of temporarily and permanently installing, constructing, inspecting, testing, repairing, servicing, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute telecommunications, including, without limitation, television and radio signals, electronic banking, fire, police and medical protection; and (ii) transmitting within Smiley Place telecommunications via the System (the facilities and equipment of which

shall be owned and exclusively controlled by Developer, its successors and assigns) for such lawful rates, fees and charges and upon such terms and conditions as may be fixed from time to time by Developer, its successors or assigns, provided that same shall be uniformly applicable to the Owners and occupants of Smiley Place; and (iii) assigning, transferring and/or delegating to any person(s), firm(s), corporation(s) or other entity(ies) of Developer's choice, the rights, privileges and easements, and the obligations related thereto, of installing, constructing and maintaining the System and of transmitting, over and through the equipment and facilities thereof, all or any part of the telecommunications signals transmitted or received by or through such System.

Each Owner (by acceptance of a deed, whether or not it shall be so expressed in any such deed) consents, agrees to and shall be bound by the exclusive rights, privileges, easements and rights-of-way reserved to and vested in Developer, its successors and assigns pursuant to the provisions of this Paragraph), with all of such rights, privileges, easements and rights-of-way being deemed reserved to Developer and excepted from any conveyance or dedication by Developer of any portion of Committed Property.

Section 15.6. **Limited Liability.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Developer contemplated under this Declaration, the Developer shall not be liable to an Owner or to any other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld.

Section 15.7. **No Jury Trial.** EACH OWNER, BY ACCEPTANCE OF SUCH OWNER'S DEED, AND THE ASSOCIATION, AGREE THAT NEITHER THE OWNER NOR THE ASSOCIATION NOR ANY ASSIGNEE, SUCCESSORS, HEIR, OR LEGAL REPRESENTATIVE OF ANY OF THEM (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE, WHETHER IN CONTRACT OR TORT OR AT LAW OR IN EQUITY, BASED UPON OR ARISING OUT OF THIS DECLARATION, OR THE OBLIGATIONS, BENEFITS, DEALINGS, OR THE RELATIONSHIPS BETWEEN OR AMONG THE ASSOCIATION AND THE OWNERS, THEIR SUCCESSORS AND ASSIGNS, OR ANY OF THEM. NEITHER THE ASSOCIATION NOR ANY OTHER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

Section 15.8. **Mediation and Arbitration.** Any lien enforcement proceedings shall be carried out in a court of competent jurisdiction, but in the event of a dispute, claim, or controversy other than lien enforcement proceedings arising out of or relating to the breach, termination, validity, interpretation, enforcement, or implementation of any term or provision of this Declaration ("Dispute¹"), the Owners and the Association agree to submit the Dispute first to mediation and then to voluntary, binding arbitration, as follows:

In the event the parties cannot successfully negotiate a resolution of the Dispute within thirty (30) days of its occurrence, any party to the Dispute can notify the other parties to the Dispute that the matter will be submitted to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association ("Mediation Rules") and that all parties to the Dispute shall bear equally the costs of the mediation unless as otherwise directed by the mediator. The panel shall consist of one mediator and shall be selected according to the Mediation Rules. The parties agree to participate in good faith in the mediation and negotiations related thereto.

If the Dispute cannot be resolved through mediation, within ten (10) days after the failure to resolve the Dispute through mediation, any party can notify the others that the matter will be submitted to voluntary, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The panel shall consist of three arbitrators and shall be selected according to the Arbitration Rules.

The parties agree to use the Regional Office of the Arbitration Association which is: nearest to the Committed Properties to administer the mediation and arbitration.

Nothing contained in this Article shall in any way limit or affect the Association's right to immediately file an action in the appropriate court to collect any assessment or enforce any lien for an assessment.

If a person or party is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, such person or party shall bear all costs and expenses of the Dispute resolution, including court costs and reasonable attorneys' fees, for all mediation, arbitration, trial, and appellate proceedings incurred by the party enforcing the provisions of this Declaration.

Developer shall not be obligated to enforce this Declaration or any particular provision hereof and shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than itself.

Section 15.9. **Enforcement.** The covenants and restrictions herein contained or contained in any of the Smiley Place Documents may be enforced by Developer, the Association, any Owner or Owners, and any Institutional Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction, or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, reasonable attorneys' fees.

Section 15.10. **Captions, Headings and Titles.** Article and paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and

in no way shall such captions, headings or titles define, limit, or in any way affect the subject matter or any of the terms and provisions thereunder nor the terms and provisions of this Declaration.

Section 15.11. **Context.** Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 15.12. **Attorneys' Fees.** Any provision in this Declaration for the collection or recovery of attorneys' fees shall be deemed to include, but not be limited to, attorneys' fees for the attorneys' services for consultation, negotiation, enforcement, mediation, arbitration and at all trial, bankruptcy and appellate levels, whether, or not an action is instituted.

Section 15.13. **Severability.** In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or reduction in the scope or term of them by reason of judicial application of the legal rules against perpetuities or otherwise shall in no way affect any other provision which shall remain in full force and effect for such period of time and to such extent as maybe: permitted by law.

Section 15.14. **Interpretation.** The Board of Directors shall have the right to determine all questions arising in connection with this Declaration, and to construe and interpret its provisions, and its determination shall be binding, in all cases, the provisions of this Declaration shall be given that interpretation that will best serve the consummation of the general plan of development.

Section 15.15. **Subordination to Construction Mortgage.** Developer and the Association agree that their respective interests as provided for in this Declaration shall be and are subordinated to the lien, encumbrance and operation of any existing (as of the date hereof) mortgages encumbering any portion of the Real Property and any additional or replacement or subsequent mortgages obtained by Developer for the purpose of financing the construction of improvements to take place upon any portion of the Real Property. While the provisions of this Paragraph are self-operative, the Association nevertheless agrees to execute such instruments in recordable form as may be necessary or appropriate to evidence the foregoing subordination of its interests to any such mortgages and shall do so forthwith upon request of Developer.

Section 15.16. **Procedure for Amendment and Modification.** The process of amending or modifying this Declaration shall be as follows:

A. Until the Turnover Date, all amendments or modifications shall only be made by Developer without the requirement of the Association's consent or the consent of the

Owners; provided, however, that the Association shall, forthwith upon request of Developer, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Developer shall, from time to time, request.

B. After the Turnover Date, this "Declaration may be amended (i) by the consent of two-thirds (2/3) of the Owners together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of owners at any regular or special meeting of the Association called and held in accordance with the By-Laws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

C. Amendments for correction of scrivener's error or other non-material changes may be made by Developer alone until the Turnover Date and the Board thereafter and without the need of consent of the Owners.

D. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Developer, the Association or of any Institutional Mortgagee under this Declaration or any other of the Smiley Place Documents without the specific written approval of such Developer, Association or Institutional Mortgagee affected thereby, furthermore, notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which would increase the liabilities of a then Owner or prejudice the rights of a then Owner or his guests, invitees, lessees and licensees to utilize or enjoy the benefits of the Association Property unless the Owner or Owners so affected consent to such amendment in writing or unless such amendment is adopted in accordance with the procedures required for adoption of an amendment to this Declaration after the Turnover Date.


E. A true copy of any amendment to this Declaration shall be sent certified mail (herein called the "Mailing") by the Association to Developer and to all Institutional Mortgagees requesting notice as provided herein. The amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration setting forth the amendment in the Public Records of the County, but the certificate shall not be recorded until thirty (30) days after the Mailing, unless such thirty-day period is waived in writing by Developer and all institutional Mortgagees; provided, any amendment which would affect the surface water management system, including the water management portions of the Association Property, must have the prior approval of the South Florida Water Management District.

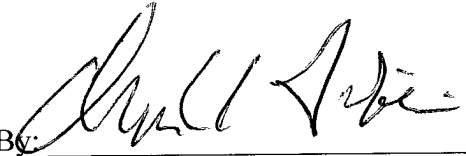
IN WITNESS WHEREOF, this Declaration of Covenants, Conditions, and Restrictions for Smiley Place has been signed by Developer and the Association on the day and year first above set forth.

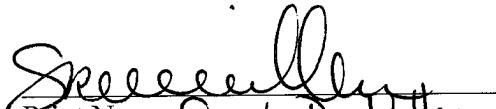
Signed, Sealed and Delivered in the Presence of:

Witnesses:

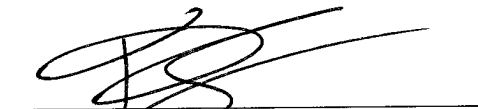
Olde City Developers, LLC., a Wyoming Limited Liability Company



Print Name: Kaylan Walden

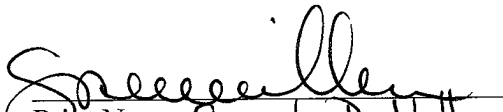
By: 
Charles S. Liberis, Its Manager


Print Name: Sarah R. Vittaverde

By: Smiley Place Homeowner's Association Inc.

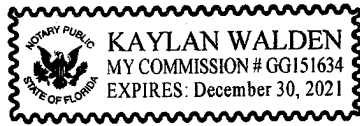

Print Name: Kaylan Walden

By: 
Charles S. Liberis, as its President


Print Name: Sarah R. Vittaverde

State of FLORIDA
County of ESCAMBIA

The foregoing instrument was acknowledged before me this 9th day of April, 2018, by Charles S. Liberis, as Manager of Olde City Developers, LLC, a Wyoming Limited Liability Company, He is personally known to me or has produced _____ as identification.

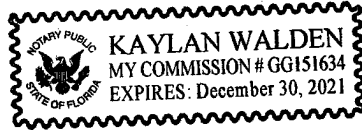




Notary Public
My Commission Expires:

State of FLORIDA
County of ESCAMBIA

The foregoing instrument was acknowledged before me this 9th day of April, 2018, by Charles S. Liberis, as President, on behalf of Smiley Place Homeowner's Association, Inc.. He/she is personally known to me or has produced _____ as identification.





Notary Public
My Commission Expires:

EXHIBIT "1"

LEGAL DESCRIPTION:

A PORTION OF SECTION 12, TOWNSHIP-1-SOUTH, RANGE-30-WEST, ESCAMBIA COUNTY, FLORIDA, AND LOTS 6 AND 7, BLOCK 1 OF SPRINGHEAD HOME SITES, AS RECORDED IN PLAT BOOK 3, PAGE 24 OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 6 OF SAID SPRINGHEAD HOME SITES; THENCE GO NORTH 03 DEGREES 06 MINUTES 05 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 6, FOR A DISTANCE OF 200.43 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE GO NORTH 88 DEGREES 17 MINUTES 14 SECONDS WEST ALONG THE NORTH LINE OF SAID SPRINGHEAD HOME SITES, FOR A DISTANCE OF 110.62 FEET TO THE INTERSECTION WITH THE EAST LINE OF THE WEST 294.00 FEET OF THE SOUTH 330.00 FEET OF GOVERNMENT LOT 1 OF THE AFORESAID SECTION 12; THENCE DEPARTING SAID NORTH LINE OF SPRINGHEAD HOME SITES, GO NORTH 02 DEGREES 54 MINUTES 19 SECONDS EAST ALONG SAID EAST LINE, FOR A DISTANCE OF 330.14 FEET TO THE NORTH LINE OF THE SOUTH 330.00 FEET OF SAID GOVERNMENT LOT 1; THENCE GO SOUTH 88 DEGREES 16 MINUTES 23 SECONDS EAST ALONG SAID NORTH LINE AND THE WESTERLY EXTENSION AND THE SOUTH LINE OF AIRWAY OAKS, AS RECORDED IN PLAT BOOK 18, PAGES 44 AND 44A OF THE PUBLIC RECORDS OF SAID COUNTY, FOR A DISTANCE OF 725.26 FEET TO THE INTERSECTION WITH THE WEST LINE OF THE NORTH 160.00 FEET OF THE SOUTH 330.00 FEET OF THE EAST 300 FEET OF SAID GOVERNMENT LOT 1; THENCE DEPARTING SAID SOUTH LINE OF AIRWAY OAKS, GO SOUTH 02 DEGREES 49 MINUTES 03 SECONDS WEST ALONG SAID WEST LINE, FOR A DISTANCE OF 160.03 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE SOUTH 170.00 FEET OF THE EAST 315.00 FEET OF SAID GOVERNMENT LOT 1; THENCE GO NORTH 88 DEGREES 17 MINUTES 14 SECONDS WEST ALONG SAID NORTH LINE, FOR A DISTANCE OF 15.26 FEET TO THE INTERSECTION WITH THE WEST LINE OF THE SOUTH 170.00 FEET OF THE EAST 315.00 FEET OF SAID GOVERNMENT LOT 1; THENCE GO SOUTH 02 DEGREES 49 MINUTES 03 SECONDS WEST ALONG SAID WEST LINE, FOR A DISTANCE OF 169.93 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFORESAID SPRINGHEAD HOME SITES; THENCE GO NORTH 88 DEGREES 17 MINUTES 14 SECONDS WEST ALONG THE NORTH LINE OF SAID SPRINGHEAD HOME SITES, FOR A DISTANCE OF 450.00 FEET TO THE NORTHEAST CORNER OF LOT 7 OF SAID SPRINGHEAD HOME SITES; THENCE GO SOUTH 03 DEGREES 07 MINUTES 17 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 7, FOR A DISTANCE OF 200.02 FEET TO THE INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF SMILEY AVENUE (66' RIGHT-OF-WAY); THENCE DEPARTING THE EAST LINE OF SAID LOT 7, GO NORTH 88 DEGREES 26 MINUTES 40 SECONDS WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID SMILEY AVENUE, FOR A DISTANCE OF 149.84 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL IS SITUATED IN SECTION 12, TOWNSHIP-1-SOUTH, RANGE-30-WEST, ESCAMBIA COUNTY, FLORIDA AND CONTAINS 6.13 ACRES, MORE OR LESS.

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BYLAWS OF SMILEY PLACE HOMEOWNER'S ASSOCIATION, INC.,
A FLORIDA NOT-FOR PROFIT CORPORATION:

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**BYLAWS OF SMILEY PLACE HOMEOWNER'S ASSOCIATION, INC.,
A FLORIDA NOT-FOR PROFIT CORPORATION**

1. Identity. These are the Bylaws of Smiley Place Homeowner's Association, Inc. (the "Association"), a Florida not-for-profit corporation and organized for the purpose of administering that certain Real Property located in Escambia County, Florida, and known as Smiley Place Subdivision (the "Real Property").

1.1 Principal Office. The principal office of the Association shall be at 212 West Intendencia Street, Pensacola, Florida 32502, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept in Escambia County, Florida, or at such other place within the state of Florida as may be designated by the Board from time to time.

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

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

2. Definitions. For convenience, these Bylaws shall be referred to as the "Bylaws" and the Articles of Incorporation of the Association as the "Articles." The other terms used in these Bylaws shall have the same definitions and meanings as those set forth in the Declaration of Covenants, Conditions and Restrictions recorded in the Public Records of Escambia County unless herein provided to the contrary or the context otherwise requires.

3. Member Meetings

3.1 Annual Meeting. After Turnover (As defined in The Declaration), the annual members' meeting shall be held on the date, at the place, and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors and to transact any other business authorized to be transacted by the members, or as stated in the notice of the meeting sent to Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of December following the year in which the Declaration is filed, at such time, place, and date as the Board shall determine.

3.2 Special Meetings. Special members' meetings shall be held at such places as provided herein for annual meetings and may be called by the President or by a majority of the Board of Directors of the Association and must be called by the President or Secretary

upon receipt of a written request from a majority of the members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Owners for any lawful purpose, including, but not limited to, the following: (i) a special meeting of the Members for purposes of recalling a member or members of the Board of Directors and (ii) such special meeting of Members as set forth in Article 9 of these Bylaws.

3.3 Notice of Meeting; Waiver of Notice. Notice of a meeting of members, stating the time and place and the purpose(s) for which the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Property at least 14 continuous days prior to the annual meeting. The notice of the annual meeting shall also be sent by mail or hand delivered to each Member unless the Member waives in writing the right to receive notice of the annual meeting by mail or hand delivery. The delivery or mailing shall be to the address of the member as it appears on the roster of members. The posting and mailing of the notice shall be effected not less than 14 days nor more than 60 days prior to the date of the meeting. Proof of posting shall be given by affidavit, and proof of mailing of the notice shall be given by affidavit or the retention of a post office certificate of mailing.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member) shall constitute such member's waiver of notice of such meeting except when his or her (or the authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

An Officer of the Association shall provide an affidavit, to be included in the official records of the Association, affirming that notices of the Association meeting were mailed or hand delivered in accordance with this Section, to each Member at the address last furnished to the Association. No other proof of notice of a meeting shall be required.

3.4 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast 30% of the total voting interest.

3.5 Voting.

3.5.1 Number of Votes. At any meeting of Members, the Owners of Lots shall be entitled to cast one vote for each Lot owned. The vote of a Lot shall not be divisible.

3.5.2 Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been present shall be binding upon all Members for all purposes except where otherwise provided by law, the Declaration, the Articles, or these Bylaws. As used in these Bylaws, the Articles, or the Declaration, the term "majority of the members" shall mean a majority of the members themselves and shall

further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of the members themselves.

3.5.3 Voting Member. If a Lot is owned by one person, the right to vote shall be established by the roster of members. If a Lot is owned by more than one person, those persons (including husbands and wives) shall decide among themselves who shall cast the vote of the Lot. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Lot shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Lot is owned by a corporation, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by an appropriate Officer of the corporation and filed with the Secretary of the Association. Such person need not be an Owner. Those certificates shall be valid until revoked or superseded by a subsequent certificate or until a change occurs in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote for a Lot may be revoked by any record Owner of an undivided interest in the Lot. If a certificate designating the person entitled to cast the vote for a Lot for which that certificate is required is not on file or has been revoked, the vote attributable to that Lot shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

3.6 Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote but shall be valid only for the specific meeting for which originally given and any lawful adjourned meetings thereof. All proxies must be filed with the Secretary before the appointed time of each meeting and such proxy shall be valid only for the particular meeting designated in the proxy and any lawfully adjourned meeting thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, be signed by the person authorized to cast the vote for the Lot (as described in Section 3.5), name the person(s) voting by proxy and the person authorized to vote for such person(s), and be filed with the Secretary of the Association before the time to which the meeting is adjourned. Each proxy shall contain the date, time, and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. Holders of proxies need not be Lot Owners. Notwithstanding the foregoing, no proxy, limited or general, shall be used in the election of Board members, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise.

3.7 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting.

Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

3.8 Proviso. Notwithstanding anything contained herein to the contrary, until sixty (60%) percent of the Lots in the Subdivision have been sold to the original purchasers, or until Turnover, whichever shall first occur, there shall be no meeting of the members of the Association unless a meeting is called by the Board of Directors.

3.9 Order of Business. If a quorum has been attained, the order of business at annual members' meetings, and, if applicable, at other members' meetings, shall be:

3.9.1 Call to order by President;

3.9.2 Appointment by the President of a chair of the meeting (who need not be a member or a Director);

3.9.3 Calling of Roll and Certification of Proxies

3.9.4 Proof of notice of the meeting or waiver of notice;

3.9.5 Reading of minutes;

3.9.6 Reports of Officers;

3.9.7 Reports of committees;

3.9.8 Election of Directors;

3.9.9 Unfinished business;

3.9.10 New business;

3.9.11 Adjournment.

Such order may be waived in whole or in part by direction of the chair.

3.10 Minutes of Meeting. The minutes of all meetings of Owners shall be kept in a book available for inspection by Owners or their authorized representatives and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

3.11 Action Without a Meeting. Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of members, or any action that may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice, and without a vote if a

consent in writing, setting forth the action so taken, shall be signed by the members (or persons authorized to cast the vote of any such members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of members at which a quorum of members (or authorized persons) entitled to vote thereon were present and voted. Within 10 days after obtaining such authorization by written consent, notice must be given to members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action.

3.12 Owner Participation. Owners shall have the right to participate in meetings of Owners with reference to all designated agenda items. However, the Association may adopt reasonable rules governing the frequency, duration, and manner of Owner participation. Any Owner may tape record or videotape a meeting of the Owners subject to reasonable rules adopted by the Division.

4. Directors.

4.1 Composition. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than five (5) Directors. During Developer control, Directors need not be Lot Owners; provided, however, upon turnover, each Director, other than any Developer appointed or elected Director, shall be a Lot Owner.

4.2 Election of Directors. The election of Directors shall be conducted in the following manner:

4.2.1 Election of Directors shall be held at the annual members' meeting except as provided herein to the contrary.

4.2.2 Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Owner entitled to a vote, a first notice of the date of the election. Any Owner or other eligible person desiring to be a candidate for the board of administration shall give written notice to the Association not less than 40 days before a scheduled election. The Association shall then mail or deliver a second notice of the meeting at least 14 days prior to the meeting, which notice must include an agenda, to all Owners entitled to vote therein, together with a written ballot that shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing or delivery and copying to be borne by the Association.

4.2.3 The election shall be by written ballot or voting machine and by a plurality of the votes cast, each person voting being entitled to cast his or her vote for each of as many nominees as there are vacancies to be filled. The entire membership shall vote for all of the Directors. No Owner shall permit another person to cast his or her ballot and any such ballots improperly cast shall be deemed invalid except for a Owner who needs assistance in voting due to blindness, disability, or inability to read or write.

4.2.4 There shall be no quorum requirement or minimum number of votes necessary for election of Board of Directors. However, at least 20% of the eligible voters must cast a ballot in order for the election to be valid.

4.2.5 No nominating committees, no slates of Directors, no nominations from the floor, and no write-in candidates are permitted. Any Owner who indicates an interest in running must be placed on the ballot. Election and balloting are not required unless more candidates file notices of intent to run or are nominated than there are vacancies on the Board.

4.3 Vacancies and Removal.

4.3.1 Except as to vacancies resulting from removal of Directors by members, vacancies on the Board of Directors occurring between annual meetings of members shall be filled by the affirmative vote of the remaining Board of Directors, even if the remaining Directors constitute less than a quorum, provided that all vacancies in Directorships to which Directors were appointed by the Developer under the provisions of section 4.16 hereof shall be filled by the Developer without the necessity of any meeting.

4.3.2 Any Director elected by the members (other than the Developer) may be removed without cause by concurrence of a majority of the votes of all the voting interests at a special meeting of members called for that purpose, which meeting may be called by 10% of the voting interests, giving notice of the meeting as required for a meeting of Owners, and stating the purpose of the meeting, or by written agreement signed by a majority of the Owners of all Lots.

If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided herein. The Board shall duly notice and hold a board meeting within five full business days of the adjournment of the Owner meeting to recall one or more board members. At the meeting, the Board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five full business days any and all records and property of the Association in their possession, or shall proceed as set forth below.

If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the Association by certified mail or by personal. The Board shall duly notice and hold a meeting of the Board within five full business days after receipt of the agreement in writing. At the meeting, the Board shall either certify the written agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately, and shall turn over to the Board within five full business days any and all records and property of the Association in their possession, or proceed as described below.

If the Board determines not to certify the written agreement to recall a member or members of the Board, or does not certify the recall by a vote at a meeting, the Board shall, within five full business days after the meeting, file a petition for binding arbitration. For the purposes of this section, the Owners who voted at the meeting or who

executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the Board, the recall will be effective upon mailing of the final order of arbitration to the Association. If the Association fails to comply with the order of the arbitrator, the Division may take action under F.S. 718.501. Any member or members so recalled shall deliver to the Board any and all records of the Association in their possession within five full business days of the effective date of the recall.

If the Board fails to duly notice and hold a Board meeting within five full business days of service of an agreement in writing or within five full business days of the adjournment of the Owner recall meeting, the recall shall be deemed effective and the Board members so recalled shall immediately turn over to the Board any and all records and property of the Association.

If a vacancy occurs on the Board as a result of a recall and less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, notwithstanding any provision to the contrary contained in Section 4.2 herein. If vacancies occur on the Board as a result of a recall and a majority or more of the Board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the Division.

4.3.3 Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by the members other than the Developer of the Real Property, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Developer, shall be subject to removal by members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting.

4.3.4 If a vacancy on the Board of Directors results in the inability to obtain a quorum of Directors in accordance with these Bylaws, any Owner may apply to the Circuit Court within whose jurisdiction the Real Property lies for the appointment of a receiver to manage the affairs of the Association. At least 30 days prior to applying to the Circuit Court, the Owner shall mail to the Association and post in a conspicuous place on the Real Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy or vacancies in accordance with these Bylaws. If, during such time, the Association fails to fill the vacancy or vacancies, the Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs, and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors and shall serve until the Association fills the vacancy or vacancies on the Board sufficient to constitute a quorum in accordance with these Bylaws.

4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the members and subsequently until his or her successor is duly elected and has taken office, or until he or she is removed.

5. Directors Meeting

5.1 Organizational Meeting. The organizational meeting of newly elected or appointed Directors shall be held within 10 days of their election or appointment at such place and time as shall be fixed by the Directors at the meeting at which they were elected or appointed. Notice of the organizational meeting shall be as required for regular meetings of the Board of Directors.

5.2 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, and shall be transmitted at least 48 hours prior to the meeting. Regular meetings of the Board of Directors shall be open to all Lot Owners and notice of such meetings shall be posted conspicuously on the Real Property at least 48 continuous hours in advance for the attention of the members of the Association except in the event of an emergency. Owners shall have the right to attend and the right to speak with reference to all designated agenda items. The Board may adopt reasonable rules governing the frequency, duration, and manner of Owner statements. Owners may tape record or videotape meetings of the Board subject to rules adopted by the Division. Directors may not vote by proxy or by secret ballot at Board meetings. A vote or abstention for each Director present shall be recorded in the minutes.

5.3 Special Meetings. Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of one third of the Directors. For so long as the Developer is in control of the Association, special meetings of the Directors may be called by the Developer. Notice of the meeting shall be given personally or by mail, telephone, or telegraph, which notice shall state the time, place, and purpose of the meeting and shall be transmitted not less than 48 hours prior to the meeting. Special meetings of the Board of Directors shall be open to all Owners, and notice of such meetings shall be posted conspicuously on the Real Property at least 48 continuous hours in advance for the attention of the members of the Association except in the event of an emergency, and Owners shall have a reasonable right to participate. The Board may adopt reasonable rules governing the frequency, duration, and manner of Owner statements. Owners may tape record or videotape meetings of the Board. Directors may not vote by proxy or secret ballot at Board Meetings. A vote or abstention for each Director present shall be recorded in the Minutes.

Notwithstanding the foregoing, written notice of any meeting at which non-emergency special assessments, or at which an amendment to Rules regarding Lot use, will be considered shall be mailed or delivered to the Lot Owners and posted conspicuously on the Real Property not less than 14 days prior to the meeting.

5.4 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by the Director of notice. Attendance by any Director at a meeting except when his or her attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business

because the meeting is not lawfully called, shall be deemed equivalent to the due receipt by that Director of notice.

5.5 Quorum. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board except when approval by a greater number of Directors is specifically required by the Declaration, the Articles, or these Bylaws.

Meetings of the Board of Directors and any committee thereof at which a quorum of the members of that committee are present shall be open to all Lot Owners. The right to attend such meetings includes the right to speak with reference to all designated agenda items; provided, however, the Association may adopt reasonable rules governing the frequency, duration, and manner of Lot Owner statements.

5.6 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

5.7 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum.

A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless that Director votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. A vote or abstention for each Director present shall be recorded in the minutes. Directors may not vote by proxy.

5.8 Presiding Officer. The presiding Officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).

5.9 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:

- 5.9.1 Roll call;
- 5.9.2 Proof of due notice of meeting;
- 5.9.3 Reading and disposal of any unapproved minutes;
- 5.9.4 Reports of Officers and committees;

5.9.5 Election of Officers;

5.9.6 Unfinished business;

5.9.7 New Business;

5.9.8 Adjournment.

Such order may be waived in whole or in part by direction of the presiding Officer.

5.10 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

5.11 Executive Committee; Other Committees. The Board of Directors may, by resolution duly adopted, appoint an Executive Committee to consist of three or more members of the Board. This Executive Committee shall have and may exercise all of the powers of the Board in management of the business and affairs of the Real Property during the period between the meetings of the Board insofar as may be permitted by law except that the Executive Committee shall not have power (a) to determine the Common Expenses required for the affairs of the Real Property, (b) to determine the assessments payable by the Lot Owners to meet the Common Expenses of the Real Property, (c) to adopt or amend any rules and regulations covering the details of the operation and use of the Real Property, or (d) to exercise any of the powers set forth in paragraphs (f) and (o) of Article 5 below.

The Board may by resolution also create other committees and appoint persons to such committees and vest in such committees such powers and responsibilities as the Board shall deem advisable.

Meetings of any committee of the Board at which a quorum of the members of that committee are present shall be open to all Owners. Written notice, which notice shall specifically incorporate an identification of agenda items, of all committee meetings shall be posted conspicuously on the Real Property at least 48 continuous hours preceding the meeting except in an emergency.

6. Transition of Control.

At the time of Turnover, as provided in the Declarations, the Developer shall relinquish control of the Association and shall deliver to the Association all property of the Lot Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable:

6.1. All deeds to the common property owned by the Association.

6.2. The original or a photocopy of the recorded Declaration and all amendments thereto.

6.3. A certified copy of the Articles of Incorporation of the Association.

6.4. A copy of the Bylaws of the Association.

6.5. The minute books, including all minutes, and other books and records of the Association, if any.

6.6. Any rules and regulations that have been adopted.

6.7. The financial records, including financial statements of the Association, and source documents from the incorporation of the Association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the Association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records of the Association to determine that the Developer was charged and paid the proper amounts of assessments.

6.8. The financial records, including financial statements of the Association, since the incorporation of the Association through the date of the turnover. All financial statements shall be prepared in accordance with generally accepted accounting standards.

6.9. Association funds or the control thereof.

6.10. All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property.

6.11. A copy of the plans and specifications utilized in the construction the Improvements and the Real Property.

6.12. Insurance policies.

6.13. Any other permits issued by governmental bodies applicable to the Real Property in force or issued within one year prior to the date the Lot Owners take control of the Association.

6.14. All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.

6.15. A roster of Lot Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.

6.16. Leases of the Common Elements and other Leases to which the Association is a party, if applicable.

6.17. A list of current employment contracts or service contracts including addresses and telephone numbers in which the Association is one of the contracting parties, or service contracts in which the Association or Lot Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

6.18. All other contracts to which the Association is a party.

7. Powers and Duties. The Board of Directors shall have the powers and duties granted to it by law, the Declaration, the Articles, and these Bylaws necessary for the administration of the affairs of the Lot Owners and may take all acts, through the proper Officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles, or these Bylaws may not be delegated to the Board of Directors by the Lot Owners. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:

7.1 Operating and maintaining the Common Elements.

7.2 Determining the expenses required for the operation of the Association.

7.3 Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.

7.4 Adopting and amending rules and regulations concerning the details of the operation and use of the Property.

7.5 Maintaining bank accounts on behalf of the Association and designating the signatory or signatories required therefor.

7.6 Purchasing, leasing, or otherwise acquiring Lots or other property in the name of the Association or its designee.

7.7 Purchasing Lots at foreclosure or other judicial sales, in the name of the Association or its designee.

7.8 Selling, leasing, mortgaging, or otherwise dealing with Lots acquired, and subleasing Lots leased, by the Association or its designee.

7.9 Obtaining and reviewing insurance for the Property.

7.10 Enforcing obligations of the Lot Owners, allocating profits and expenses, and taking such other actions as shall be deemed necessary and proper for the sound management of the Association.

7.11 Imposing fines against appropriate Lot Owners for failure to comply with the provisions of the Board policies and resolutions, the Declaration Documents including the Rules and Regulations established by the Association, and applicable laws by the Lot Owners, their occupants, licensees, or invitees.

The Directors may, impose fines against a Lot not to exceed the maximum permissible by law, for failure to comply with the provisions of the Board policies and resolutions, the Declaration Documents, including the Rules and Regulations, and applicable laws by Owners, occupants, licensees, tenants, and invitees.

A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law.

The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing by being given notice of not less than 14 days. Notice shall be deemed effective when deposited in the United States Mail, certified, return receipt requested, to the address of the Lot Owner listed in the official records of the Association, and as to tenants, to the mailing address for the Lot. The notice shall include:

7.12.1 A statement of the date, time, and place of the hearing.

7.12.2 A statement of the provisions of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Board policies and resolutions or laws that have allegedly been violated.

7.12.3 A short and plain statement of the matters asserted by the Association.

The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The hearing shall be held before a Committee of other Lot Owners. If the Committee does not agree with the fine, the fine may not be levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect the fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining hearings), at trial, and on appeal. Lot Owners shall be jointly and severally liable for the payment of fines levied against tenants, guests, invitees, or other occupants of a Lot.

7.13 Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Elements or the acquisition of property, and granting mortgages on and/or security interests in Association-owned property, provided, however, that the consent of the Owners of at least a majority of the Lots represented at a meeting at which a quorum has been attained in accordance with the provisions of these Bylaws shall be required. If any sum borrowed by the Board of Directors on behalf of the Association under the authority contained in this paragraph (o) is not repaid by the Association, a Lot Owner who pays to the creditor such portion thereof as the Owner's interest in his or her Common Elements bears to the interest of all of the Lot Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien that the creditor shall have filed or shall have the right to file against, or which will affect, such Lot Owner's Lot. However, the Association shall take no action authorized in this paragraph without the prior written consent of the Developer as long as the Developer owns any Lot.

7.14 Contracting for the management and maintenance of the Common Property and authorizing a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its Officers shall, however, retain at all times the powers and duties granted by the documents, including, but not limited to, the making of assessments, promulgation of rules, and execution of contracts on behalf of the Association. Notwithstanding the foregoing, in the event that a lawsuit is to be brought against the Developer for any reason whatsoever, at least 75% of all Lot Owners, other than the Developer, must agree, at a meeting duly called for such purpose, prior to institution of any such action.

7.15 Adopting budgets and making and collecting special and periodic assessments against Owners to defray the costs of the Association.

7.16 Acquiring and conveying Common Elements for the purposes of providing utility easements, right-of-way expansion, or other public purpose whether negotiated or as part of the eminent domain procedure, which authority can be exercised by the Board of Directors without approval of the Lot Owners.

7.17 At its discretion, authorizing Lot Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use.

7.18 Exercising (i) all powers specifically set forth in the Declaration of Covenants Conditions and Restrictions, the Articles, and these Bylaws, (ii) all powers incidental thereto, and (iii) all other powers of a Florida not-for-profit corporation.

7.19 Imposing a lawful fee in connection with the approval of the transfer, lease, sale, or sublease of Lots, not to exceed the maximum amount permitted by law from time to time in any one case.

7.20 Contracting with and creating or joining in the creation of special taxing districts, joint councils, and the like.

8. Officers.

8.1 Executive Officers. The initial executive Officers of the Association shall be a President, a Vice President, a Treasurer, and a Secretary (none of whom need be Directors or Lot Owners), all of whom shall be elected by the Board of Directors (which may create and fill other offices as provided herein) and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office except that the President may not also be the Secretary. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other Officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association.

8.2 President. The President shall be the chief executive Officer of the Association. He or she shall have all of the powers and duties that are usually vested in the office of president of an association.

8.3 Vice President. The Vice President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He or she also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the Vice President of an association and as may be required by the Directors or the President.

8.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. The Secretary shall attend to the giving of all notices to the members and Directors and other notices required by law. He or she shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He or she shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.

8.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He or she shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. He or she shall submit a Treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties incident to the office of Treasurer and as may be required by the Directors or the President. All money and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

8.6 Other. The Board of Directors may create additional offices from time to time and appoint persons to fill such offices, subject to removal at the discretion of the Board.

8.7 Developer Appointees. No Officer appointed by the Directors designated by the Developer may be removed except as provided in Section 4.16 hereof and by law.

9. Compensation. Neither Directors nor Officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or Officer as an employee of the Association, nor preclude contracting with a Director or Officer for the management of the Real Property or for any other service to be supplied by such Director or Officer. Directors and Officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

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

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

11.1 Budget.

11.1.1 Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association (which shall detail all accounts and items of expense, determine the amount of assessments payable by the Lot Owners to meet the expenses of The Association, and allocate and assess such expenses among the Lot Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, pavement resurfacing. The amount of reserves shall be computed by means of a formula based on estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The Association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the members of the Association have, by a majority vote at a duly called meeting of the Association, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby. If a meeting of Lot Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the Association.

The adoption of a budget for the Association shall comply with the requirements hereinafter set forth:

(a) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be mailed to each Lot Owner not less than 14 days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. The meeting shall be open to the Lot Owners, and the Lot Owners shall have a reasonable right to participate. The Board may adopt reasonable rules governing the frequency, duration, and manner of Lot Owner statements.

(b) Special Membership Meeting. If a budget is adopted by the Board of Directors that requires assessments against the Lot Owners in any year exceeding 115% of the assessments for the preceding year, as hereinafter defined, upon written application of 10% of the Lot Owners, a special meeting of the Lot Owners shall be held within 30 days of delivery of such application to the Board of Directors. Each Lot Owner shall be given at least 10 days' notice of the special meeting. At the meeting, Lot Owners shall consider and adopt a budget. The adoption of the budget shall require a vote of Owners of not less than a majority of all the Lots (including Lots owned by the Developer). If a meeting of the Lot Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Lot Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

(c) Determination of Budget Amount. In determining whether a budget requires assessments against Lot Owners in any year exceeding 115% of assessments for the preceding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Common Property or in respect of anticipated expenses of the Association that are not anticipated to be incurred on a regular or annual basis, and there shall be excluded further from such computation assessments for improvements to the Real Property.

(d) Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose assessments for a year greater than 25% of the prior year's assessments, as herein defined, without the approval of a majority of Lot Owners other than the Developer.

11.1.2 Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements of Subsection 9.1(a) above, the Board of Directors may call a special meeting of Lot Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for special meetings in that subsection, or propose a budget in writing to the members, and if such budget is adopted by the members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.

11.2 Assessments. Assessments against Lot Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least 20 days preceding the year for which the Assessments are made. Such assessments shall be due in equal installments, payable in advance on the first day of each month (or each quarter at the election of the Board) of the year for which the assessments are made. If annual assessments are not made as required, assessments shall be presumed to have been made in the amount of the last prior assessments, and monthly (or quarterly) installments on the assessments shall be due upon each installment payment date until changed by amended assessments. In the event the annual assessments prove to be insufficient, the budget and assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 9.1 hereof, if applicable. Unpaid assessments for the remaining portion of the fiscal year for which amended assessments are made shall be payable in as many equal installments as there are full months (or quarters) of the fiscal year left as of the date of such amended assessments, each such monthly (or quarterly) installment to be paid on the first day of the month (or quarter), commencing the first day of the next ensuing month (or quarter). If only a partial month (or quarter) remains, the amended assessments shall be paid with the next regular installment in the following year unless otherwise directed by the Board in its resolution.

11.3 Assessments for Emergencies. Assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be due only after 14 days' notice is given to the Lot Owners concerned, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of the assessments.

11.4 Late Assessments. Assessments not paid within 10 days from the date due may bear interest from the date when due until paid at the then highest rate allowed by law. Additionally, the failure to pay any assessment within 10 days from the date due shall entitle the Association to levy a late charge against the defaulting Lot Owner, in such amount as the Board may determine from time to time. However, such late charge shall not exceed the maximum amount allowed under the Act.

11.5 Depository. The depository of the Association shall be such bank or banks or financial institution(s) in the state of Florida federally regulated and insured as shall be designated from time to time by the Directors and in which the funds of the Association shall be deposited. Withdrawal of money from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from assessments or contributions to working capital or otherwise shall be maintained separately for each Real Property, in the Association's name. Reserve and operating funds of the Association shall not be commingled. The Association shall maintain separate accounting records for the Association and for each Real Property operated by the Association. No manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, Officer, or Director of the Association shall commingle Association funds with his, her, its, or another association's or entity's funds.

11.6 Acceleration of Installments Upon Default. As an additional right and remedy of the Association, if a Lot Owner shall be in default in the payment of an installment of the Owner's assessments after 30 days' prior written notice to the applicable Lot Owner, the Board of Directors or its agent may accelerate the assessments due for the remainder of the quarter (if the assessments are made by monthly installments) and thereafter, if a claim of lien has been filed, the assessments shall be accelerated for the balance of the budget year. The unpaid balance of the assessments for the balance of the accelerated period shall be due upon the date stated in the notice, but not less than five days after delivery of the notice to the Lot Owner, or not less than 10 days after the mailing of such notice to the Lot Owner by certified mail, whichever shall first occur.

11.7 Enforcement of Assessments. In the event an assessment is not paid within 10 days of the date it shall be due and payable, the Association, through the Board of Directors, may proceed to enforce and collect that assessment from the delinquent Lot Owner in any manner provided for by the Declaration, and these Bylaws. Each Lot Owner shall be individually responsible for the payment of assessments against his or her Lot and for the payment of reasonable attorneys' fees and costs incurred by the Association in the collection of sums due and enforcement of any lien held by the Association.

11.8 Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amount as shall be determined by the formula set forth in the Act, or such greater amount as may be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association as a Common Expense.

11.9 Accounting Records and Reports. The Association shall maintain accounting records in the State of Florida, according to accounting practices normally used by similar associations. The records shall be open to inspection by Lot Owners or their authorized representatives at reasonable times, and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Lot designating the name and current mailing address of the Lot Owner, the amount of assessments, the dates and amounts in which the assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Lot Owner annually.

No later than April 1 of the year following the end of a fiscal year, the Board shall mail, or furnish by personal delivery, to each Lot Owner a complete financial report of actual receipts and expenditures for the previous 12 months (i.e., the last completed fiscal year), or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting principles. The report shall show the amount of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- 11.9.1 Cost for security;
- 11.9.2 Professional and management fees and expenses;
- 11.9.3 Taxes;
- 11.9.4 Cost for recreation facilities;
- 11.9.5 Expenses for refuse collection and utility services;
- 11.9.6 Expenses for landscaping;
- 11.9.7 Cost for building maintenance and repair;
- 11.9.8 Insurance costs;
- 11.9.9 Administrative and salary expenses; and

11.9.10 Reserves for capital expenditures, deferred maintenance, and any other category for which the Association maintains a reserve account or accounts.

11.10 Application of Payment. All payments made by a Lot Owner shall be applied as provided in these Bylaws and in the Declaration, or as otherwise determined by the Board.

11.11 Notice of Meetings. Notice of any meeting at which assessments against Lot Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

12. Roster of Lot Owners. Each Lot Owner shall file with the Association a copy of the recorded deed or other document showing his or her ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Lot Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at the meeting unless prior to the meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of the meeting.

13. Parliamentary Rules. ROBERT'S RULES OF ORDER (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles, or these Bylaws.

14. Amendments. Except as provided otherwise in the Declaration, these Bylaws may be amended in the following manner:

14.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting of the membership at which a proposed amendment is to be considered.

14.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one third of the members of the Association. Any proposed amendment to these Bylaws must be made by ballot or by limited proxy, delivered to the Secretary of the Association at or prior to the meeting. The approval must be:

14.2.1 Prior to the turnover of control of the Association to Lot Owners other than the Developer, by not less than a majority of the votes of those members of the Association who are present or represented at a meeting at which a quorum has been attained and by not less than 51% of the entire Board of Directors; or

14.2.2 After control of the Association has been turned over to Lot Owners other than the Developer, by not less than 67% of the votes of the members of the Association represented at a meeting at which a quorum has been attained.

14.3 Proviso. No amendment may be adopted that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted or reserved to the Developer or mortgagees of Lots without the consent of the Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.

14.4 Execution and Recording. A copy of each amendment shall be attached to a certificate stating that the amendment was duly adopted as an amendment of the Declaration and Bylaws, which certificate shall be executed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment are recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of the Public Records where the Declaration is recorded.

15. Rules and Regulations. The Board of Directors may from time to time adopt, amend, modify, or add to Rules and Regulations concerning the use of the Real Property except that subsequent to the date control of the Association is turned over by the Developer to Lot Owners other than the Developer, Owners of a majority of the Lots may overrule the Board with respect to any such adoption, amendments, modifications, or addition. Any such Rule adoption, modification, amendment, or addition need not be recorded in the public records of Escambia County to be effective; however, copies of such adopted, modified, amended, or additional Rules and Regulations shall be furnished by the Board of Directors to each affected Lot Owner not less than 10 days prior to the effective date thereof. At no time may any Rule or Regulation be adopted that would prejudice the rights reserved to the Developer.

16. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

17. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these Bylaws or the intent of any provision hereof.

18. Official Records. From the inception of the Association, the Association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the Association:

18.1 The plans, permits, warranties, and other items provided by the Developer under F.S. 718.301(4).

18.2 A photocopy of the recorded Declaration of Covenants Conditions and Restrictions and all amendments thereto.

18.3 A photocopy of the recorded Bylaws of the Association and all amendments thereto.

18.4 A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto.

18.5 A copy of the current Rules and Regulations of the Association.

18.6 A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Lot Owners, which minutes shall be retained for a period of not less than seven years.

18.7 A current roster of all Lot Owners, their mailing addresses, Lot identifications, voting certifications, and, if known, telephone numbers.

18.8 All current insurance policies of the Association and the Real Property.

18.9 A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Lot Owners have an obligation or responsibility.

18.10 Bills of sale or transfer for all property owned by the Association.

18.11 Accounting records for the Association and the accounting records for the Real Property, according to good accounting practices. All accounting records shall be maintained for a period of not less than seven years. The accounting records shall include, but not be limited to:

18.11.1 Accurate, itemized, and detailed records for all receipts and expenditures.

18.11.2 A current account and a monthly, bimonthly, or quarterly statement of the account for each Lot designating the name of the Lot Owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

18.11.3 All audits, reviews, accounting statements, and financial reports of the Association or Real Property.

18.11.4 All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one year.

18.12 Ballots, sign-in sheets, voting proxies, and all other papers relating to elections, which shall be maintained for a period of one year from the date of the meeting to which the document relates.

The official records of the Association shall be open to inspection by any Association member or the authorized representative of a member at all reasonable times in accordance with reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying adopted by the Association. Inspections may take place only at the building in which the records are located and the records shall not be removed from that location. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Association member.

19. Mandatory Non-binding Arbitration of Disputes.

19.1 Prior to the institution of court litigation, the parties to a dispute, as defined in the Act, shall petition the Division for non-binding arbitration. Arbitration shall be conducted according to Rules promulgated by the Division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

19.2 At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence, and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

19.3 The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the Real Property is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial

a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party may be awarded reasonable attorneys' fees, the costs of the arbitration, or both, in an amount determined in the discretion of the arbitrator.

19.4 The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorneys' fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees.

19.5 The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo. If such judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence.

19.6 Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Real Property is located. A petition may not be granted unless the time for appeal by filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

The foregoing was adopted as the Bylaws of Smiley Place Association, Inc., a Florida not-for-profit corporation, on this the 9th day of April, 2018.


SMILEY PLACE ASSOCIATION, INC.

By:



Charles S. Liberis, President

ATTEST:



Kaylan Walden, Secretary

**ARTICLES OF INCORPORATION
FOR
SMILEY PLACE OWNER'S ASSOCIATION, INC.**

The undersigned incorporator, for the purpose of forming a not-for-profit corporation under the laws of the state of Florida, hereby adopts the following Articles of Incorporation.

ARTICLE 1 - NAME AND ADDRESS

The name of the corporation shall be Smiley Place Owner's Association, Inc. The principal address of the Association is 212 W. Intendencia St., Pensacola, Escambia County, Florida 32502. For convenience, the corporation shall be referred to as the "Association," the Declaration of Covenants, Conditions and Restrictions, as the "Declaration," these Articles of Incorporation as the "Articles," and the Bylaws of the Association as the "Bylaws."

ARTICLE 2 - PURPOSES

The purposes for which the Association is organized are:

1. To furnish all services reasonably necessary, for the health, comfort, safety, welfare and enjoyment of lot owners of the proposed subdivision to be known as Smiley Place Subdivision (the "Subdivision"), which is located on all or a portion of that certain real property located in Escambia County, Florida and more particularly described in Exhibit A, attached hereto, together with any additional property that may be annexed into the Subdivision in accordance with the terms and conditions of the Declaration (defined below).
2. To own, manage and control all of the common areas and improvements thereon located within the boundaries of the Subdivision which are intended to be devoted to the common use and enjoyment of the owners of lots in the Subdivision, including, but not by the way of limitation, the maintenance of private easements or roads, any decorative fences, street islands and any retention pond for storm water drainage.
3. To administer, enforce and otherwise act in accordance with that certain Declaration of Covenants, Conditions and Restrictions for Smiley Place Subdivision which have or will be recorded in the office of the Clerk of the Circuit Court of Escambia County, Florida, as may be amended from time to time (the "Declaration"), to the extent provided in the Declaration.
4. To assess, collect and direct the proper disbursement of the lot owner's pro rata shares of the costs and expenses incurred in the carrying out of said purposes in accordance with these Articles, the Bylaws for the Association and the rules and regulations of the Subdivision and the Declaration.

ARTICLE 3 - DEFINITIONS

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Declaration of Covenants, Conditions and Restrictions to be recorded in the Public Records of Escambia County, Florida, unless herein provided to the contrary or unless the context otherwise requires.

ARTICLE 4 – NONPROFIT CORPORATION

The Association shall be without capital stock, will not be operated for profit and will not distribute gains, profits or dividends to any of its members. The members of the Association shall not be personally liable for the debts, liabilities or obligations of the Association, but shall be personally liable to the Association for their pro rata share of costs and expenses that are attributable to members of the Association under these Articles, the Bylaws of the Association or the Declaration. The purposes of the Association shall be served without pecuniary profit to any director or member of the Association

ARTICLE 5 - POWERS

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

5.1 General. The Association shall have all of the common-law and statutory powers of a not-for-profit corporation under the laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, or the Bylaws, or the Florida Statutes.

5.2 Enumeration. The Association shall have the powers and duties set forth in Florida Statutes 720 as they may be amended from time to time except as limited by these Articles, the Bylaws, and the Declaration (to the extent that they are not in conflict with the Florida Statutes) and all of the powers and duties reasonably necessary to carry out the purpose set forth herein the Declaration, and in the Bylaws, as they may be amended from time to time, including, but not limited to, the following:

- a. To make and collect assessments and other charges against the members, and to use the proceeds thereof in the exercise of its powers and duties.
- b. To buy, own, operate, lease, sell, trade, and mortgage both real and personal property.
- c. To maintain, repair, replace, reconstruct, add to, and operate the Property, and other property acquired or leased by the Association.

d. To purchase insurance upon the Property and insurance for the protection of the Association, its Officers, Directors, and Owners.

e. To make and amend reasonable rules and regulations for the maintenance, conservation, and use of the Property and for the health, comfort, safety, and welfare of the Owners.

f. To enforce by legal means the provisions of the Declaration, these Articles, the Bylaws, and the Rules and Regulations for the use of the Property.

g. To contract for the management and maintenance of the Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance, repair and replacement of the Common Elements using funds made available by the Association. The Association and its Officers shall, retain at all times the powers and duties granted under Article 4, including, but not limited to, the levy of assessments, promulgation of rules, and execution of contracts on behalf of the Association.

h. To employ personnel to perform the services required for the proper operation, maintenance, conservation, and use of the Property.

5.3 Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles, and the Bylaws.

5.4 Distribution of Income. The Association shall make no distributions of income to its members, Directors or Officers.

5.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the Bylaws, provided that in the event of conflict, the provisions of the Florida Statutes shall control over those of the Declaration and Bylaws.

ARTICLE 6 – MEMBERSHIP AND VOTING RIGHTS

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

(a) Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any lot all such persons shall be members. The vote for such lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one (1) vote be cast with respect to any single lot.

(b) Class B. Class B member shall be the Declarant, which shall be entitled to ten (10) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (i) Three (3) months after ninety percent (90%) of the Lots in all phases of the Subdivision that will ultimately be operated by the Association have been conveyed to members;
- (ii) Such other percentage of the Lots has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels;
- (iii) Upon the Declarant abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the governing documents. There is a rebuttable presumption that the Declarant has abandoned and deserted the property if the Declarant has unpaid assessments or guaranteed amounts under Section 720.308, Florida Statutes, for a period of more than two (2) years;
- (iv) Upon the Declarant filing a petition seeking protection under Chapter 7 of the Federal Bankruptcy Code;
- (v) Upon the Declarant losing title to the property through a foreclosure action or the transfer of deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment;
- (vi) Upon a receiver for the Declarant being appointed by a Circuit Court and not being discharged within thirty (30) days after such appointment, unless the court determines within thirty (30) days after such appointment that transfer of control would be detrimental to the Association or its members; or
- (vii) Declarant records an instrument in the Public Records of Escambia County, Florida terminating Class B membership.

After Declarant relinquishes control of the Association, Declarant is entitled to elect at least one member to the Board as long as the Declarant holds for sale five (5%) percent of the Lots in the Subdivision and may continue to vote any Declarant owned lots in the same manner as any other member.

ARTICLE 7 - TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 8 - INCORPORATOR

The name and address of the Incorporator of this Corporation is Charles S. Liberis, whose address is 212 W. Intendencia St., Pensacola, Florida 32502.

ARTICLE 9 - DIRECTORS

Except as provided herein, the affairs of the Association shall be managed by a Board of Directors. Notwithstanding anything contained in these Articles, the Bylaws of the Association, or the Declaration to the contrary, until Turnover, Olde City Developers, LLC, a Wyoming limited liability company (the "Declarant") shall have the sole and exclusive right to (1) appoint all of the members of the Board of Directors of the Association (subject to the rights of members other than the Declarant to elect at least one member of the Board of Directors under Section 720.307(2) of the Florida Statutes); (2) appoint all of the officers of the Association; (3) remove and replace any members of the Board of Directors of the Association; (4) amend these Articles and Bylaws; and (5) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association. "Turnover" has the meaning set forth in the Declaration. Upon Turnover, the then-current members of the Association shall be entitled to vote on all the foregoing matters subject to any restrictions set forth in the Declaration and the Bylaws of the Association.

The initial Board of Directors of the Association shall be composed of three(3) directors; none of which must be a member of the Association.

10.1 First Directors. The names and addresses of the members of the first Board of Directors, who shall hold office until their successors are elected and have taken office, as provided in the Bylaws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Charles S. Liberis	212 W. Intendencia St. Pensacola, FL 32502
Linda B. Liberis	212 W. Intendencia St. Pensacola, FL 32502
Kaylan Walden	212 W. Intendencia St. Pensacola, FL 32502

ARTICLE 10 - OFFICERS

The affairs of the Association shall be administered by the Officers holding the offices designated in the Bylaws. The Officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal from office of Officers, for filling vacancies, and for the duties and qualifications of the Officers. The names and addresses of the Officers who shall serve until their successors are designated by the Board of Directors are as follows:

<u>President:</u>	Charles S. Liberis 212 W. Intendencia St. Pensacola, FL 32502
<u>Vice President:</u>	Linda B. Liberis 212 W. Intendencia St. Pensacola, FL 32502
<u>Secretary-Treasurer:</u>	Kaylan Walden 212 W. Intendencia St. Pensacola, FL 32502

ARTICLE 11 - INDEMNIFICATION

11.1 Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, lawsuit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a Director, employee, Officer, or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, lawsuit, or proceeding unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnity, that he or she did not act in good faith or in a manner he or she reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any action, lawsuit, or proceeding by judgment, order, settlement, conviction or upon plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner that he or she reasonably believed to be not in, or opposed to, the best interest of the Association, and, with

respect to any criminal action or proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.

11.2 Expenses. To the extent that a Director, Officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, lawsuit, or proceeding referred to in Section 10.1 above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him or her in connection with that defense.

11.3 Advances. Expenses incurred in defending a civil or criminal action, lawsuit, or proceeding shall be paid by the Association in advance of the final disposition of such action, lawsuit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, employee, or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article 10.

11.4 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, employee, or agent and shall inure to the benefit of the heirs and personal representatives of that person.

11.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee, or agent of the Association, or is or was serving, at the request of the Association, as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

ARTICLE 12 – ASSESSMENTS

12.1 To provide the total sum necessary for the insurance, reserve fund for replacements, maintenance and operation of the common areas and improvements within the Subdivision, each member for each lot owned shall pay a portion of the total amount necessary for such purposes to the Association. The portion to be paid by each member for each lot owned shall be equal to a fraction, the numerator of which shall be the number of lots owned by such lot owner and the denominator of which shall be the total number of lots in the Subdivision, and which the quotient of such fraction shall be multiplied by the sum necessary for such purposes. The total number of lots in the Subdivision may be increased from time-to-time by the Declarant in its sole and absolute discretion so long as Declarant continued to have the right to add additional property to the Subdivision in accordance with the terms of the Declaration.

12.2 The amount of assessment against each member as provided under the paragraph immediately above, shall be assessed by the Association as a lien as provided in the Declaration.

12.3 In addition to the annual assessments authorized above, the Association may levy in any assessment year special assessments for the purposes and in the manner set forth in the Declaration, as may be amended from time to time.

12.4 Each assessment shall be assessed and shall be due and payable as provided in the Declaration and the Bylaws, and upon default or payment within such period of time, the assessment shall be a lien against each lot owned by the defaulting member and against that undivided portion of the common area owned by the defaulting member, and the Association shall be entitled to enforce the payment of said lien according to the laws of the State of Florida and to take any other actions for collection from the defaulting party or parties. Any such lien against a lot or against a common area shall be subordinate to a recorded first mortgage covering such lot.

12.5 Both annual and special assessments shall be collected in the time and manner specified in the Declaration or as otherwise directed by the Association's directors.

ARTICLE 13 – DISSOLUTION

Unless the Board of Directors determines that because of a conflict of interest or other substantial reason it should not make any recommendation, the Board of Directors must adopt a resolution recommending that the Association be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of the Members entitled to vote thereon, which may be either an annual meeting or special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation must be given to each Member (as of thirty (30) days prior to the date of mailing such notice) entitled to vote at such meeting. This notice shall be sent at least ten (10) days and not more than sixty (60) days before the date named for the meeting to each Member by United States mail, or by telegram, charges prepaid, to his address appearing in the books of the Association. A resolution to dissolve the corporation shall be adopted by receiving 80% of the votes which Members present at such meeting or represented by proxy are entitled to cast. At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State articles of dissolution for filing.

ARTICLE 14 – MISCELLANEOUS

14.1 Amendment. Until Turnover, these Articles may be amended at any time and from time to time by Declarant, without consent or approval of any of the other members of the Association. After Turnover, these Articles may be amended, subject to the terms and provision of the Declaration, by the affirmative vote or at least sixty-seven (67%) of the total voting interests of all members of the Association. All amendments to

these Articles become effective only upon being placed of record in the Office of the Clerk of the Circuit Court Escambia County, Florida.

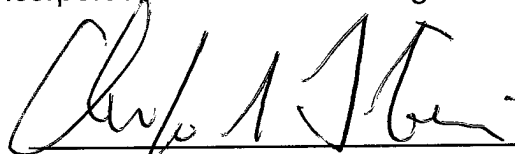
14.2 Termination, Dissolution, or Liquidation. In the event of a termination, dissolution, or final liquidation of the Association, the responsibility for the operation and maintenance of any Stormwater Management System must be transferred to and accepted by an entity which complies with Rules and Regulations, and be approved by the Northwest Florida Management District prior to such termination, dissolution or liquidation.

14.3 Incorporation by Reference. All of the terms, provisions, definitions, covenants and conditions set forth in the Declaration are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in these Articles and the Declaration, then the provisions of the Declaration shall at all times control. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in these Articles and the Association Bylaws, then the provisions of these Articles shall at all times control.

**ARTICLE 15 – INITIAL REGISTERED OFFICE,
ADDRESS AND NAME OF REGISTERED AGENT**

The initial registered office of this Corporation shall be at 212 W. Intendencia St. Pensacola, Florida 32502, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent of the Corporation shall be Liberis Law Firm, PA, by Charles S. Liberis who shall also be a resident agent, whose address is 212 W. Intendencia St. Pensacola, Florida 32502.

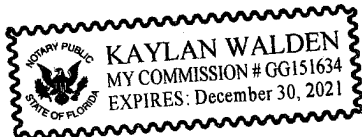
IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.

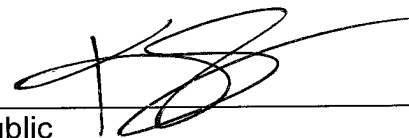


Charles S. Liberis

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me on the 9th day of April, 2018, by Charles S. Liberis, who is personally known to me and who did not take an oath.





Notary Public
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**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR
THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT
UPON WHOM PROCESS MAY BE SERVED**

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the state of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the County of Escambia, State of Florida, the corporation named in the said Articles has named Charles S. Liberis, whose address is Liberis Law Firm, 212 W. Intendencia St., Pensacola, Florida 32502, as its statutory registered agent.

Having been named the statutory agent of the corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity and agree to comply with the provisions of Florida law relative to keeping the registered office open.



Charles S. Liberis

EXHIBIT "A"

LEGAL DESCRIPTION:

A PORTION OF SECTION 12, TOWNSHIP-1-SOUTH, RANGE-30-WEST, ESCAMBIA COUNTY, FLORIDA, AND LOTS 6 AND 7, BLOCK 1 OF SPRINGHEAD HOME SITES, AS RECORDED IN PLAT BOOK 3, PAGE 24 OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 6 OF SAID SPRINGHEAD HOME SITES; THENCE GO NORTH 03 DEGREES 06 MINUTES 05 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 6, FOR A DISTANCE OF 200.43 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE GO NORTH 88 DEGREES 17 MINUTES 14 SECONDS WEST ALONG THE NORTH LINE OF SAID SPRINGHEAD HOME SITES, FOR A DISTANCE OF 110.62 FEET TO THE INTERSECTION WITH THE EAST LINE OF THE WEST 294.00 FEET OF THE SOUTH 330.00 FEET OF GOVERNMENT LOT 1 OF THE AFORESAID SECTION 12; THENCE DEPARTING SAID NORTH LINE OF SPRINGHEAD HOME SITES, GO NORTH 02 DEGREES 54 MINUTES 19 SECONDS EAST ALONG SAID EAST LINE, FOR A DISTANCE OF 330.14 FEET TO THE NORTH LINE OF THE SOUTH 330.00 FEET OF SAID GOVERNMENT LOT 1; THENCE GO SOUTH 88 DEGREES 16 MINUTES 23 SECONDS EAST ALONG SAID NORTH LINE AND THE WESTERLY EXTENSION AND THE SOUTH LINE OF AIRWAY OAKS, AS RECORDED IN PLAT BOOK 18, PAGES 44 AND 44A OF THE PUBLIC RECORDS OF SAID COUNTY, FOR A DISTANCE OF 725.26 FEET TO THE INTERSECTION WITH THE WEST LINE OF THE NORTH 160.00 FEET OF THE SOUTH 330.00 FEET OF THE EAST 300 FEET OF SAID GOVERNMENT LOT 1; THENCE DEPARTING SAID SOUTH LINE OF AIRWAY OAKS, GO SOUTH 02 DEGREES 49 MINUTES 03 SECONDS WEST ALONG SAID WEST LINE, FOR A DISTANCE OF 160.03 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE SOUTH 170.00 FEET OF THE EAST 315.00 FEET OF SAID GOVERNMENT LOT 1; THENCE GO NORTH 88 DEGREES 17 MINUTES 14 SECONDS WEST ALONG SAID NORTH LINE, FOR A DISTANCE OF 15.26 FEET TO THE INTERSECTION WITH THE WEST LINE OF THE SOUTH 170.00 FEET OF THE EAST 315.00 FEET OF SAID GOVERNMENT LOT 1; THENCE GO SOUTH 02 DEGREES 49 MINUTES 03 SECONDS WEST ALONG SAID WEST LINE, FOR A DISTANCE OF 169.93 FEET TO THE INTERSECTION WITH THE NORTH LINE OF THE AFORESAID SPRINGHEAD HOME SITES; THENCE GO NORTH 88 DEGREES 17 MINUTES 14 SECONDS WEST ALONG THE NORTH LINE OF SAID SPRINGHEAD HOME SITES, FOR A DISTANCE OF 450.00 FEET TO THE NORTHEAST CORNER OF LOT 7 OF SAID SPRINGHEAD HOME SITES; THENCE GO SOUTH 03 DEGREES 07 MINUTES 17 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 7, FOR A DISTANCE OF 200.02 FEET TO THE INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF SMILEY AVENUE (66' RIGHT-OF-WAY); THENCE DEPARTING THE EAST LINE OF SAID LOT 7, GO NORTH 88 DEGREES 26 MINUTES 40 SECONDS WEST ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID SMILEY AVENUE, FOR A DISTANCE OF 149.84 FEET TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL IS SITUATED IN SECTION 12, TOWNSHIP-1-SOUTH, RANGE-30-WEST, ESCAMBIA COUNTY, FLORIDA AND CONTAINS 6.13 ACRES, MORE OR LESS.