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**DECLARATION OF COVENANTS  
FOR  
HICKORY TREE RESERVE**

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## **EXHIBITS**

Exhibit "A"	The Properties
Exhibit "B"	Articles of Incorporation
Exhibit "C"	By-Laws
Exhibit "D"	Common Areas
Schedule "A"	Rules and Regulations

**DECLARATION OF COVENANTS  
FOR  
HICKORY TREE RESERVE**

**THIS DECLARATION** is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, LLC, a Florida limited liability company ("Declarant") which declares hereby that "**The Properties**" described in Exhibit "A" attached hereto and made a part hereof and Article II of this Declaration are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I  
DEFINITIONS**

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "**Act**" shall mean and refer to Chapter 720, Florida Statutes, governing homeowners' associations, as same exists on the date of recording of this Declaration and as same may be subsequently amended. Notwithstanding the designation of the effective date of the Act as it applies to this Declaration (and the Association), any future amendments to the Act which are of a procedural (versus substantive) nature shall be binding on the Association.

(b) "**Architectural Review Committee**" or "**ARC**" shall mean and refer to the Committee appointed per, and performing the duties under, Article VI, Section 12 of this Declaration.

(c) "**Association**" shall mean and refer to **HICKORY TREE RESERVE COMMUNITY ASSOCIATION, INC.**, a Florida corporation not-for-profit. The Articles of Incorporation and By-Laws of the Association are attached hereto as **Exhibits "B"** and **"C"**, respectively.

(d) "**Board of Directors**" or "**Board**" shall mean and refer to the duly appointed or elected Board of Directors of the Association.

(e) "**Builder**" shall mean and refer to a party or its affiliate having acquired a Lot(s) from Declarant for the purpose constructing a Home(s) thereof for resale to a third party, specifically including Declarant and its affiliates.

(f) "**Common Areas**" shall mean and refer to the property described in Exhibit "D" hereto, plus all property designated as Common Areas in any future recorded supplemental declaration; together with the landscaping and any improvements thereon, including, without limitation, all gatehouses, gates, private roadways and sidewalk areas, fountains, structures, recreational facilities, open space, walkways, sprinkler systems and street lights, if any, but excluding any public utility installations thereon, not made Common

Areas hereunder, and any other property of Declarant not intended to be made Common Areas. The Surface Water Management System, as defined below, shall be Common Areas hereunder, regardless of where portions of same are located. Common Areas may be owned now or in the future by the Association or may be solely in the nature of an easement.

(g) **"Common Roof"** means and refers to the exterior roof covering a group of attached Homes, including all components thereof and its supporting structure.

(h) **"County"** shall mean and refer to Osceola County, Florida, primarily as a governmental entity or where the context so requires, a geographic location.

(i) **"Declarant"** shall mean and refer to \_\_\_\_\_, LLC, a Florida limited liability company, its successors and such of its assigns as to which the rights of Declarant hereunder are specifically assigned. Declarant may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of The Properties. In the event of such a partial assignment, the assignee shall not be deemed the Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

(j) **"First Mortgagee"** shall mean and refer to a person or entity holding a mortgage on a Lot which is first in priority over any other mortgage.

(k) **"Home"** shall mean and refer to the individual residential structure constructed on a Lot for which a certificate of occupancy has been issued.

(l) **"Limited Common Areas"** shall mean and refer to any portions of the Common Areas, if any, dedicated to the exclusive use of an adjacent Home, with such area to be determined as provided in Article IV, Section 10 hereof.

(m) **"Lot"** shall mean and refer to any Lot on any plat or site plan of all or a portion of The Properties, which is subject to these covenants and restrictions.

(n) **"Member"** shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof.

(o) **"Member's Permittee"** shall mean and refer to a person described in Article VIII, Section 3 hereof.

(p) **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties.

(q) **"Party Wall"** means and refers to the common wall separating one Home from another Home in the same Townhome Residential Building.

(r) **"Surface Water Management System"** shall mean and refer to the system serving The Properties which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect,

convey, store, absorb, inhibit, treat, use or reuse water to prevent flooding, over drainage, environmental degradation and water pollution or otherwise effect the quantity or quality of discharges from this system as permitted by the **County**.

(§) **"The Properties"** shall mean and refer to the property described in Exhibit "A" attached hereto and made a part hereof and all additions thereto, as are now or hereafter made subject to this Declaration, except those which are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

(¶) **"Townhome Residential Building"** means and refers to a building containing attached Homes.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO**

#### **Section 1.    Legal Description of The Properties.**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County, and is more particularly described on Exhibit "A" attached hereto and made a part hereof, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Properties".

#### **Section 2.    Supplements.**

Declarant may from time to time bring other land under the provisions hereof by recorded supplemental declarations (which shall not require the consent of then-existing Owners, the Association, or any mortgagee other than that of the land intended to be added to the Properties) and thereby add to The Properties. To the extent that such additional real property shall be made a part of The Properties as a common scheme, reference herein to The Properties shall be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate the Declarant to add to the initial portion of The Properties, to develop any such future portions under such common scheme, nor to prohibit Declarant (or the applicable Declarant-affiliated Owner) from rezoning and changing plans with respect to such future portions. All Owners, by acceptance of a deed to or other conveyance of their Lots, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by the Declarant (or the applicable Declarant-affiliated Owner thereof) and shall evidence such consent in writing if requested to do so by the Declarant at any time (provided, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

#### **Section 3.    Withdrawal.**

Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of The Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a

result of any changes whatsoever in the plans for The Properties desired to be effected by the Declarant; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for The Properties. Any withdrawal of land not owned by Declarant shall require the written consent or joinder of the then-owner(s) and mortgagee(s) of such land and of the **County** if any portion of the Surface Water Management System is located thereon or if same is otherwise affected by such withdrawal.

### **ARTICLE III**

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

##### **Section 1.   Membership.**

Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

##### **Section 2.   Voting Rights.**

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

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Declarant (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the single vote for such Lot shall be exercised as they among themselves determine but, subject only to the following Subsection, in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast in the aggregate at any time and from time to time by the Class A Members. The Class B Membership shall cease and terminate ninety (90) days after ninety percent (90%) of the Lots within The Properties have been sold and conveyed by the Declarant (or its affiliates) to parties other than Builders, or sooner at the election of the Declarant (or in the Act as to the entitlement of Class A Members to elect majority of Directors), in either case whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association. Class A Members shall be entitled to elect a member of the Board of Directors when fifty percent (50%) of all of the Lots have been sold and conveyed to parties other than Builders.

##### **Section 3.   General Matters.**

When reference is made herein, or in the Articles, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members present at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the Members themselves or of their Lots.

#### **ARTICLE IV**

#### **COMMON AREAS: CERTAIN EASEMENTS: COMMUNITY SYSTEMS**

##### **Section 1.    Members' Easements.**

Each Member, and each Member's Permittee, shall have a non-exclusive permanent and perpetual easement over and upon the Common Areas for the intended use and enjoyment thereof in common with all other such Members, Member's Permittees, their tenants, agents and invitees, in such manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(a)    The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with the restrictions on the plats of portions of The Properties from time to time recorded.

(b)    The right of the Association to suspend the Member's (and his Member's Permittees') right to use the recreational facilities (if any) for any period during which any assessment against his Lot or other sums due the Association from such Member remains unpaid for more than thirty (30) days; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

(c)    The right of the Association to charge reasonable admission and other fees for the use of recreational facilities (if any) situated on the CommonAreas.

(d)    The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(e)    The right to the use and enjoyment of the Common Areas and facilities thereon shall extend to all Members' Permittees, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

(f)    The right of Declarant to permit such persons as Declarant shall designate to use the Common Areas and all recreational facilities located thereon (if any).

(g)    The right of Declarant and the Association to have grant and use general

("blanket") and specific easements over, under and through the Common Areas.

(h) The right of the Association, by a two-thirds (2/3) affirmative vote of the entire membership, to dedicate or convey portions of the Common Areas to any other association having similar functions, or any public or quasi-public agency, community development district or similar entity under such terms as the Association deems appropriate and to create or contract with the other association, community development and special taxing districts for lighting, roads, recreational or other services, security, or communications and other similar purposes deemed appropriate by the Association (to which such dedication or contract all Owners, by the acceptance of the deeds, to their Lots, shall be deemed to have consented, no consent of any other party, except the Declarant, being necessary).

**WITH RESPECT TO THE USE OF THE COMMON AREAS AND THE PROPERTIES GENERALLY, ALL PERSONS ARE REFERRED TO ARTICLE XV, SECTIONS 10, 11 AND 12, AND ARTICLE XV, HEREOF, WHICH SHALL AT ALL TIMES APPLY THERETO.**

Section 2. Easements Appurtenant.

The easements provided in Section 1, above, shall be appurtenant to and shall pass with the title to each Lot, but shall not be deemed to grant or convey any ownership interest in the Common Area subject thereto.

Section 3. Maintenance.

The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas and, to the extent not otherwise provided for, the paving, drainage structures, landscaping, improvements and other structures (except public utilities and Community Systems, to the extent same have not been made Common Areas) situated on the Common Areas, if any, all such work to be done as ordered by the Board of Directors of the Association. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's and its affiliates' responsibility to the **City of St. Cloud** and **Osceola County** and its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas and shall indemnify and hold the Declarant and its affiliates harmless with respect thereto.

All work pursuant to this Section and all expenses incurred or allocated to the Association pursuant to this Declaration shall be paid for by the Association through assessments (either general or special) imposed in accordance herewith.

No Owner may waive or otherwise escape liability for assessments by non-use (whether voluntary or involuntary) of the Common Areas or abandonment of the right to use the Common Areas.

Section 4. Utility Easements.

Use of the Common Areas for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration and said plats. The Declarant and its affiliates and its and their designees shall have a perpetual easement over, upon and under the Common Areas and the unimproved portions of the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of utilities.

Section 5. Irrigation System Easements.

The Association is hereby granted an easement over and under each Lot for the purpose of the operation, maintenance, repair and replacement of a common landscaping irrigation system serving The Properties. Concurrently, the Association shall have the duty to operate and maintain such irrigation system, the easement rights and physical installations described herein being deemed Common Areas hereunder. No Owner or Member's Permittees shall take any action (including, without limitation, planting of additional landscaping material) which damages or unreasonably interferes with the operation of the common irrigation system and each Owner shall take due care when performing landscape and lawn maintenance to avoid damage to sprinkler heads and other components of the common irrigation system.

Section 6. Public Easements.

Fire, police, health and sanitation, utility, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas in the performance of their respective duties.

Section 7. Surface Water Management System.

To the extent that any portion of the Surface Water Management System is located on a Lot, then a perpetual but non-exclusive easement in favor of the Association shall exist with respect to such portion so that the Association shall maintain same as provided in Article X hereof. With respect to such area(s), (i) the Association's responsibility shall be limited to maintaining the Surface Water Management System and not to matters such as maintaining landscaping, lawns or other installations therein and (ii) except as provided below, no Owner shall allow such area to be improved in such a manner as to interfere with the operation, maintenance and repair of the Surface Water Management System nor shall such Owner allow any pollutants to enter the Surface Water Management System through such area in a manner which violates the **County** permit for same or is otherwise harmful thereto.

Notwithstanding any provision of this Declaration or any condition or restriction on the plat of any portion of The Properties to the contrary, in the event that Declarant or any Builder installs any equipment (such as, but not limited to, air conditioning equipment) serving a Home within a drainage easement granted the Association on any plat of the Properties or in any landscaped Common Area (other than a Common Area subject to a conservation easement where such installation is prohibited) and such installation does

not interfere with the actual drainage in such easement or overall use of the applicable Common Area, then such installation (including, without limitation, concrete pads and connecting pipes and wires) shall not be deemed in derogation of the Association's rights under such easement and, accordingly, shall be and is hereby authorized. This authorization shall extend to any and all access to such equipment necessary for its use, maintenance, repair or replacement.

#### Section 8. Ownership.

The Common Areas are hereby dedicated non-exclusively to the joint and several uses, in common, of the Declarant and the Owners of all Lots that may from time to time constitute part of The Properties and all Member's Permittees and the Declarant's tenants, guests and invitees, all as provided and regulated herein or otherwise by the Association. The Common Areas (or appropriate portions thereof which are to be owned by the Association, as opposed to being easements) shall, upon the later of completion of the improvements thereon or the date when the last Lot within The Properties has been conveyed to a purchaser (or at any time and from time to time sooner at the sole election of the Declarant), be conveyed by quit claim deed to the Association, which shall be deemed to have automatically accepted such conveyance. Beginning from the date this Declaration is recorded, the Association shall be responsible for the maintenance, insurance and administration of such Common Areas (whether or not then conveyed or to be conveyed to the Association), all of which shall be performed in a continuous and satisfactory manner without cost to the general taxpayers of **Osceola County**. It is intended that any and all real estate taxes assessed against that portion of the Common Areas owned or to be owned by the Association shall be (or have been, because the purchase prices of the Lots and Homes have already taken into account their proportionate shares of the values of the Common Area), proportionally assessed against and payable as part of the taxes of the applicable Lots within The Properties. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date these covenants are recorded, and such taxes shall be prorated between Declarant and the Association as of the date of such recordation.

Declarant, its affiliates and Builders shall have the right from time to time to enter upon the Common Areas and other portions of The Properties (including, without limitation, any unimproved portions of Lots) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on the Common Areas or elsewhere on The Properties that Declarant, its affiliates or Builders elect to effect, and to use, without charge, the Common Areas and other portions of The Properties for sales, displays and signs or for any other purpose during the period of construction and sale of any portion thereof or of other portions of adjacent or nearby communities. Without limiting the generality of the foregoing, the Declarant and its affiliates shall have the specific right to maintain upon any portion of The Properties sales, administrative, construction or other offices and appropriate exclusive and non-exclusive easements of access and use are expressly reserved unto the Declarant and its affiliates, and its and their successors, assigns,

employees and contractors, for this purpose. Any obligation (which shall not be deemed to be created hereby) to complete portions of the Common Areas shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, the Declarant shall not be liable for delays in such completion to the extent resulting from the need to finish the above-referenced activities prior to such completion.

Section 9. Platted Easements.

The rights to use all easements created by the Plat of The Properties including, without limitation, overhang maintenance easements, may be enforced by the Association as fully as if stated herein and no party shall make any improvements or otherwise do anything which interferes with the lawful use of such easements.

With respect to the aforesaid overhang maintenance easements shown on the Plat of The Properties, the right to use same shall extend to any party having maintenance or repair obligations hereunder which require such use and shall include the right to place ladders in Common Areas adjacent to the easements and to conduct all such other activities as lawfully may be necessary to maintain the applicable Home or Building. They shall also serve to permit a roof overhang to encroach over a property line and rain run-off from such roof onto adjoining property. Nothing shall be erected or installed in or around any such overhang maintenance easement which prevents or unreasonably interferes with the lawful use thereof for its intended purpose.

Section 10. Limited Common Areas.

Any portion of the Common Areas adjacent to a Home and occupied by an air conditioner compressor pad, other equipment or other improvements or installations, if any, shall be deemed a Limited Common Area for the exclusive use of the adjacent Home. Likewise, any portion of a Platted private roadway which is not paved but, instead, is functionally part of a Lot (e.g., a swale) shall be a Limited Common Area for the exclusive use of that Lot and maintenance by its Owner.

Section 11. Easement for Repair, Maintenance and Replacement of Party Walls.

Declarant hereby reserves unto itself and hereby further grants to the Association and to each Owner of a Home a nonexclusive easement and right of ingress and egress in, under, over and across any Lot and Home thereon which shares a Party Wall, as may be reasonably necessary for the purpose of repairing, maintaining and replacing such Party Wall.

Section 12. Easement for Repair, Maintenance and Replacement of Common Roof.

Declarant hereby reserves unto itself and hereby grants to the Association and to each Owner of a Home a nonexclusive easement and right of ingress and egress in, under, over and across any Lot and the Home under a Common Roof, as may be reasonably necessary for the purpose of repairing, maintaining and replacing the Common Roof.

**ARTICLE V**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments; Assessment Rates.

Except as provided elsewhere herein, the Declarant (and each party joining in any supplemental declaration), for all Lots within The Properties, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefore or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual assessments and charges for the operation of, and for payment of expenses allocated or assessed to or through, the Association, the maintenance, management, operation and insurance of the Common Areas, Common Roof, Party Walls and any applicable Community Systems as provided elsewhere herein, including such reasonable reserves as the Board of Directors may deem necessary, capital improvement assessments, as provided in Section 4 hereof, special assessments as provided in Section 3 hereof and all other charges and assessments hereinafter referred to or lawfully imposed by or on the Association, all such assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Lots for fines, expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due and all subsequent Owners until paid, except as provided in Section 8 of this Article.

In light of the fact that the Association may provide different levels of service, or incur Common Area and other expenses fairly allocable, to Lots/Homes to the exclusion of others, the Board of Directors shall have the authority to set different rates of assessments for different Lots, provided that Lots which are determined by the Board to be similarly situated shall be assessed at an equal rate. The foregoing shall not, however, prohibit the Board from levying assessments on all Lots at the same rate. Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility, any Common Expenses benefiting less than all of the Lots or significantly disproportionately benefiting some Lots (such as water usage) may be specifically assessed equitably to such Lots which are benefited according to the benefit received.

Section 2. Purpose of Assessments.

The regular assessments levied by the Association shall be used exclusively for the purposes expressed in Section 1 of this Article.

Section 3. Special Assessments.

In addition to the regular and capital improvement assessments which are or may be levied hereunder, the Association (through the Board of Directors) shall have the right to levy special assessments against an Owner(s) to the exclusion of other Owners for (i) the repair or replacement of damage to any portion of the Common Areas (including, without limitation, improvements and landscaping thereon) caused by the misuse, negligence or other action or inaction of an Owner or his Member's Permittee(s), (ii) the costs of exterior maintenance work on attached Homes per Article VI of this Declaration or the costs of remedial work performed by the Association in accordance with Article VI (together with any surcharges collectible thereunder). Any such special assessment shall be subject to all of the applicable provisions of this Article including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any special assessment levied hereunder shall be due within the time specified by the Board of Directors in the action imposing such assessment. Notwithstanding the foregoing, no special assessment shall be levied by the Board of Directors during the period in which a majority of the directors is appointed by the Declarant unless approved by a majority vote of the Members of the Association in attendance at a duly constituted meeting thereof at which a quorum is present.

#### Section 4. Capital Improvements.

Funds which, in the aggregate, exceed the lesser of Fifty Thousand and No/100 Dollars (\$50,000.00) or ten percent (10%) of the total amount of the current operating budget of the Association in any one fiscal year which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Areas under the jurisdiction of the Association and which have not previously been collected as reserves or are not otherwise available to the Association (other than by borrowing) shall be levied by the Association as assessments only upon approval of a majority of the Board of Directors of the Association and upon approval by two-thirds (2/3) favorable vote of the Members of the Association voting at a meeting or by ballot as may be provided in the By-Laws of the Association.

#### Section 5. Date of Commencement of Annual Assessments; Due Dates.

The annual regular assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual assessment shall be imposed for the year beginning January 1 and ending December 31.

The annual assessments shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Board of Directors of the Association (absent which determination they shall be payable quarterly).

The assessment amount (and applicable installments) may be changed at any time by said Board from that originally stipulated or from any other assessment that is in the future adopted. The original assessment for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, no more than twice each year), but the amount of any revised assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate

installments) remaining in such calendar year.

The due date of any special assessment or capital improvement assessment shall be fixed in the Board resolution authorizing such assessment.

Section 6. Duties of the Board of Directors.

The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against the Lots subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto twenty (20) days prior to payment of the first installment thereof, except as to special assessments. In the event no such notice of the assessments for a new assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Declarant) for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.

Section 7. Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association.

If the assessments (or installments) provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such assessments (or installments) shall become delinquent and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. Except as provided in Section 8 of this Article to the contrary, the personal obligation of the then Owner to pay such assessment shall pass to his successors in title and recourse may be had against either or both.

If any installment of an assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge as determined by the Association, but not greater than the amount permitted by the Act, may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is

not paid thereafter, it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges; provided further, however, that each other installment thereafter coming due shall be subject to one late charge each as aforesaid) or the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full and all such sums shall bear interest from the dates when due until paid at the highest lawful rate (or, if there is no highest lawful rate, eighteen percent (18%) per annum) and the Association may bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Lot on which the assessments and late charges are unpaid, may foreclose the lien against the Lot on which the assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same, in such action shall be added to the amount of such assessments, late charges and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels.

In the case of an acceleration of the next twelve (12) months' of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase and special assessments against such Lot shall be levied by the Association for such purpose.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the assessment is delinquent, including, without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Areas until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

All assessments, late charges, interest, penalties, fines, attorney's fees and other sums provided for herein shall accrue to the benefit of the Association.

#### Section 8. Subordination of the Lien.

The lien of the assessments provided for in this Article shall be subordinate to real property tax liens and the lien of any first mortgage (recorded prior to recordation by the Association of a claim of lien) held by First Mortgagee lender or insured by FNMA/FHLMC, FHA or VA and which is now or hereafter placed upon any Lot; provided, however, that any such mortgage lender when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any assessment

coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place. No mortgagee shall be required to collect assessments.

Notwithstanding the foregoing, a First Mortgagee who acquires title to a Lot through foreclosure or deed in foreclosure shall be liable to the Association for the greater of one percent (1%) of the original principal amount of the applicable first mortgage, the assessments payable to the Association with respect to the Lot for the twelve (12) months immediately preceding such acquisition of title or the maximum amount provided in the Act, as amended from time to time.

#### Section 9. Working Capital Contribution.

Upon the sale of a Lot to a party other than a Builder, the purchaser thereof shall pay to the Association a working capital contribution of One Thousand Dollars (\$1,000). Said contribution shall not be credited against any current assessments but shall become part of the general funds of the Association and may be used for such purposes as the Association, acting through the Board of Directors, may elect, whether for operating expenses or other purposes authorized by this Declaration or reserves. Unless and until changed by the Board of Directors, Five Hundred Dollars (\$500.00) of such contribution shall be held as reserves for capital replacements, deferred maintenance or other contingencies and Five Hundred Dollars (\$500.00) shall be used for operating funds.

#### Section 10. Declarant's Payments.

Declarant shall not be required to pay assessments levied on the Lots owned by it which are subjected to this Declaration for so long as Declarant pays all operating expenses incurred by the Association in excess of those assessments receivable (as opposed to received) from all other Owners or and other revenue of the Association. Such payment of common expenses shall be made such that if at any time during the below-specified time period, received from other Owners and other revenues collected by the Association are not sufficient for the payment of common expenses on a timely basis (including the full funding of any reserves adopted hereunder), Declarant shall advance sufficient cash to the Association at the time such payments are due.

The foregoing provision shall be effective from the date of the recording of this Declaration and until the date which is the earlier of the end of the second (2<sup>nd</sup>) full year after this Declaration is recorded (subject to extension as provided below) or when the Class A Members elect a majority of the Board of Directors of the Association.

Declarant may extend the assessment guarantee and deficit funding arrangements stated above for successive periods of one (1) year, but to end no later than when the Class A Members elect a majority of the Board of Directors, at which time such arrangement shall automatically terminate.

#### Section 11. Association Funds.

The portion of all regular assessments collected by the Association for reserves for future expenses, and the entire amount of all special and capital assessments, shall be held by the Association and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions, the deposits of which are insured by an agency of the United States.

## **ARTICLE VI**

### **MAINTENANCE OF HOMES, LOTS AND LIMITED COMMON AREAS**

#### **Section 1.   Exteriors of Homes.**

Each Owner shall maintain all structures (including the Home) on the Owner's Lot in a neat, orderly and attractive manner and consistent with the general appearance of The Properties. The minimum (though not sole) standard for the foregoing shall be consistency with the general appearance of The Properties as initially constructed and otherwise improved by Declarant or by any Builders who build in accordance with plans approved by Declarant (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the judgment of the Association). The Owner shall repaint or restain, as appropriate, the exterior portions of the Home (with the same colors as initially used on the Home) as often as is necessary to comply with the foregoing standards.

The responsibilities of the Owner as aforesaid shall extend not only to the surfaces of Homes and other improvements, including the walls and roofs thereof and any fences, but shall include maintaining (including washing, repairing or replacing) windows, replacing light bulbs and fixtures, maintaining or repairing any hardware systems for entry or garage doors or other functions beyond those of a "cosmetic" nature, except as provided below. All such extended responsibilities shall be performed according to those standards set forth herein so as to maintain those portions of the Home and other improvements in the aforesaid condition and so as to be fully functional.

In addition to the foregoing, in the event that a Lot contains a lanai, patio or similar structure serving the Home thereon, the Owner of the Lot shall be solely responsible for the maintenance thereof in a clean, orderly and attractive condition, including all furniture and installations thereon.

In the event that any Owner fails to perform the Owner's maintenance responsibilities as set forth above and such failure continues for a period for ten (10) days after written notice thereof given to the Owner by the Association, then the Association shall have the right to perform such maintenance and to levy a special assessment against the Owner for the full cost thereof, together with an administrative surcharge as determined by the Board of Directors but not to exceed twenty five percent (25%) of the sums otherwise owed for such remedial work.

#### **Section 2.   Lots and Limited Common Areas.**

The Association shall maintain the trees, shrubbery, grass and other landscaping on the Lots and Limited Common Areas in a neat, orderly and attractive manner and

consistent with the general appearance of The Properties as a whole (subject to the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained). There is hereby created an easement in favor of the Association and its applicable designees over each Lot for the purpose of entering onto such Lot in the performance of the landscaping maintenance work described in this Section

### Section 3. Remedial Entry.

There is hereby created an easement in favor of the Association and its applicable designees over each Lot for the purpose of entering onto such Lot in the performance of the remedial maintenance work described in this Article.

The aforesaid easement shall include the right of the Association to enter onto a Lot to perform any maintenance thereon required to be performed by the Owner of the Lot which is not so performed, which entry shall be after at least seven (7) days' prior written notice to the Owner. In such case, the cost of the performance of the maintenance work (which may be done by a contractor or other party engaged by the Association), together with an administrative surcharge determined by the Board of Directors but not to exceed thirty five percent (35%) of such remedial cost, shall be levied on the Lot as a special assessment hereunder and shall be immediately due and payable upon notice thereof to the Owner.

### Section 4. Party Walls.

A. General Rules of Law to Apply. To the extent not inconsistent with this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply concerning a Party Wall.

B. Sharing of Repairs, Maintenance and Replacement. Other than as specifically set forth below, the cost of reasonable repair, maintenance and replacement of a Party Wall shall be shared equally by the Owners who make use of the wall and shall be a lien against their respective Lots as provided hereafter.

C. Repair and Restoration. If a Party Wall is destroyed or damaged or requires structural repair, the Association shall have the right (but not the obligation) to either restore, repair or replace said Party Wall, using the applicable proceeds from any applicable property insurance, and to the extent such proceeds are insufficient each Owner sharing said Party Wall shall be jointly and severally liable to the Association for the cost thereof without prejudice, however, to the right of any such Owner to collect a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. The Association shall have the right to enter on the property of any Owner sharing a Party Wall during normal working hours and after reasonable notice to perform its obligations arising hereunder; provided, however, that in the event of an emergency, the Association or any Owner of a Home sharing a Party Wall shall have the right to enter the Home of another Owner sharing that Party Wall, without notice, to make emergency repairs. Any and all costs incurred by the Association pursuant to this Article for which an Owner is responsible for reimbursing the Association shall constitute an Individual Assessment for which the Association shall have lien rights and all other enforcement rights in favor of the Association for enforcing the payment of other

assessments. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion. All sums due the Association pursuant to this Section shall be due and payable immediately upon demand by the Association.

D. Weatherproofing. Notwithstanding any other provision of this Section 11.05, any Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. Easement for Repair, Maintenance and Replacement. Declarant hereby reserves unto itself and hereby further grants to the Association and to each Owner sharing a Party Wall a nonexclusive easement and right of ingress and egress in, under, over and across any Lot and the improvements located thereon as may be reasonably necessary for the purpose of repairing, maintaining and replacing any Party Wall.

F. Additional Maintenance and Services. The Association may provide such additional services and maintenance with respect to Townhome Residential Buildings and Homes as the Association, in the reasonable discretion of the Board of Directors, deems necessary or desirable in order to address maintenance, repair, appearance, or other issues specific to Townhome Residential Buildings or Homes. Declarant hereby grants to the Association a nonexclusive easement and right of ingress and egress in, under, over and across any Lot and the improvements located thereon as may be reasonably necessary for the purpose of performing any Townhome Residential Building maintenance.

#### Section 5. Common Roofs.

A. General Rules of Law to Apply. To the extent not inconsistent with this Section, the general rules of law regarding liability for property damage due to negligence or willful acts or omissions shall apply concerning a Common Roof.

B. Sharing of Repairs, Maintenance and Replacement. Other than as specifically set forth below, the cost of reasonable repair, maintenance and replacement of a Common Roof shall be shared equally by the Owners of the applicable Townhome Residential Building who make use of the Common Roof and shall be a lien against their respective Lots as provided hereafter.

C. Repair and Restoration. If a Common Roof is destroyed or damaged or requires structural repair, the Association shall have the right (but not the obligation) to either restore, repair or replace said Common Roof, using the applicable proceeds from any applicable property insurance, and to the extent such proceeds are insufficient each Owner sharing said Common Roof shall be jointly and severally liable to the Association for the cost thereof without prejudice, however, to the right of any such Owner to collect a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. The Association shall have the right to enter on the property of any Owner sharing a Common Roof during normal working hours and after reasonable notice, to perform its obligations arising hereunder; provided, however, that in the event of an emergency, the Association or any Owner of a Home sharing a Common

Roof shall have the right to enter the Home of another Owner sharing that Common Roof, without notice, to make emergency repairs. Any and all costs incurred by the Association pursuant to this Section for which an Owner is responsible for reimbursing the Association shall constitute an Individual Assessment for which the Association shall have lien rights and all other enforcement rights in favor of the Association for enforcing the payment of other assessments. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion. All sums due the Association pursuant to this Section shall be due and payable immediately upon demand by the Association.

D. Easement for Repair, Maintenance and Replacement of Common Roof. Declarant hereby reserves unto itself and hereby grants to the Association and to each Owner making use of a Common Roof a nonexclusive easement and right of ingress and egress in, under, over and across any Lot and the improvements located thereon as may be reasonably necessary for the purpose of repairing, maintaining and replacing the Common Roof.

## **ARTICLE VII**

### **CERTAIN USE RESTRICTIONS**

#### Section 1. Applicability.

The provisions of this Article VII shall be applicable to all of The Properties but shall not be applicable to the Declarant or any of its designees or Lots or other property owned by the Declarant or its designees.

#### Section 2. Land Use and Building Type; Garages.

No Lot shall be used except for residential purposes. No building constructed on a Lot shall be used except for residential purposes, or as a related garage, if applicable. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Home. Temporary uses by Declarant and its affiliates for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings erected by the Declarant or its affiliates or independent homebuilders (except if such changes are made by the Declarant or such a homebuilder) without the consent of the Architectural Control Committee.

The foregoing shall not prohibit the conduct of business activities within a Home for so long as same are of a limited nature such that those activities do not generate non-social visitors, customers, clients or excessive deliveries.

The garage included within each Home shall be used for the parking of an automobile and the storage of only such volume and type of materials which do not interfere with such use. It is understood that parking within The Properties has been designed and calculated in reliance upon each Owner's or Member's Permittee complying with this requirement at all times. All garage doors shall be kept closed except when a vehicle is ingressing or egressing the garage or while cleaning or other usual and customary activities are being conducted within or around the garage.

Section 3.    Opening Blank Walls; Removing Fences.

Without limiting the generality of Section 12 of this Article, no Owner shall make or permit any opening to be made in any blank wall (except as such opening is initially installed) or masonry wall or fence. Further, no such building wall or masonry wall or fence shall be demolished or removed without the prior written consent of Declarant (so long as it owns any portion of The Properties) and the Architectural Control Committee.

Section 4.    Easements.

Easements for installation and maintenance of utilities are reserved as shown on the recorded plat of The Properties and as provided herein. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, and the Declarant and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, and electric, telephone and other telecommunication lines, cables and conduits, under and through the utility easements as shown on the plats.

Section 5.    Nuisances.

Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

Section 6.    Temporary Structures; Gas Tanks; Other Outdoor Equipment.

Except as may be approved or used by the Declarant during construction and/or sales periods, no structure of a temporary character, or trailer, mobile home or recreational vehicle, shall be permitted on any Lots within The Properties at any time or used at any time as a residence, either temporarily or permanently. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Home or on or about any ancillary building, except for one (1) gas cylinder (not to exceed 20 lbs. capacity) connected to a barbecue grill and such other tank designed and used for household purposes as shall be approved by the Architectural Control Committee described in Section 11, below, such tank to be installed underground unless physical conditions dictate otherwise, in which case the following sentence shall apply. Any outdoor equipment such as, but not limited to, pool pumps and water softening devices shall be reasonably screened from the view of anyone not standing on the Lot by the use of landscaping or other means (in any event, as approved by the Architectural Control Committee); provided, however, that the use of such screening shall not obviate the

requirement that the installation of any such equipment nevertheless be approved by the Architectural Control Committee.

Section 7. Signs.

No sign of any kind shall be displayed to the public view on any Lot except by a Builder.

Section 8. Hurricane Shutters.

Any Owner desiring to make use of hurricane shutters shall follow the procedure set forth in Section 13 of this Article for the approval thereof with respect to type, color and other relevant attributes. Once approved by the hurricane shutters shall be used only in accordance with the following requirements:

(a) In the case of shutters which are not permanently installed on the Home (e.g., panels as opposed to "accordion" shutters), same shall be stored out of sight.

(b) No hurricane or other storm shutters shall be placed on a Home, and no permanently affixed shutters shall be closed (except when servicing same), except upon the issuance of tropical storm or hurricane watch or warning by the National Weather Service with a projected landfall in the area of the properties no earlier than forty-eight (48) hours from the time of the installation or closing of the shutters.

(c) All shutters shall be opened/removed within twenty-four (24) hours of either (a) the "lifting" or cancellation of the aforesaid watch or warning or (b) in the event of an actual tropical storm or hurricane, the final passage of same.

(d) Without limiting the specific time restrictions set forth above, at no time shall any hurricane shutters be used to "board up" a home in the absence of the Owner or occupant thereof, it being the sole responsibility of the Owner or occupant to provide any other desired security measures with respect to the Home in a manner which does not have a negative esthetic impact on a Home or surrounding properties.

Section 9. Flags and Banners.

Only those flags and banners specifically required to be permitted by the Association per the Act may be placed on Lots or Homes and then only to the limited extent required by the Act. All flags and banners, including poles, shall be maintained in a good, neat, attractive and respectful condition.

Section 10. Oil and Mining Operation.

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject

to these restrictions.

#### Section 11. Pets, Livestock and Poultry.

Pets may be maintained on a Lot provided such pets are: (a) permitted to be so kept by applicable laws and regulations, (b) not left unattended on balconies, terraces, patios or in lanai areas, (c) no more than three (3) pets, (d) generally, not a nuisance to residents of other Units or of neighboring buildings and (e) not a pit bull, rottweiler, Doberman pinscher or other breed considered to be dangerous by the Board of Directors; provided that neither the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Lot committing such a violation shall fully indemnify and hold harmless the Board of Directors, the Declarant, each Unit Owner and the Association in such regard. The following provisions shall also govern any pets on the Association Property:

- (i) All pets must be on a leash not more than six (6) feet long or carried when outside of the Unit.
- (ii) Pets shall only be walked or taken upon those portions of the Association Property designated by the Association from time to time for such purposes, if any.
- (iii) Unit Owners shall pick up all solid wastes from their pets and dispose of same appropriately.
- (iv) Each Owner shall be responsible for all damage caused by his/her pet.
- (v) The maintenance, keeping, boarding and/or raising of pot belly pigs, reptiles, rodents (i.e., mice, gerbils, hamsters) and any other animals, livestock, or poultry of any kind, regardless of number, is expressly prohibited.
- (vi) Each Owner agrees to underwrite the cost of necessary exterminator measures in the Owner's apartment or others if Owner's pet is responsible for the infestation of the building or portions thereof.
- (vii) Each Owner agrees to restrain its pet in an appropriate manner should it be requested either for cause or the result of a justifiable request from the Association (i.e., muzzled when going through public areas).
- (ix) All cats must be spayed and declawed.

Any Owner who keeps or maintains a pet within a Lot shall indemnify and hold harmless all other Unit Owners, the Declarant and the Association, together with their respective directors, officers, agents, employees, managers, contractors or attorneys, from and against any loss, claim or liability of any kind or character whatsoever, whether to property or person, arising by reason of keeping or maintaining such pet within the Association Property. The Association may require registration of all pets and may establish additional reasonable rules in connection with pets in accordance with the provisions contained herein.

Any landscaping damage or other damage to Association Property caused by a Unit Owner's pet must be promptly repaired by the Unit Owner. The Association retains the right to make said repairs and charge the Unit Owner therefore. Without limiting the generality of this Article, a violation of any of the provisions of this Article shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the

By-Laws and any applicable rules and regulations) and/or to require any pet to be permanently removed from the Association Property.

Section 12. Visibility at Intersections.

No obstruction to visibility at street intersections or Common Area intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners and Members Permittees, for any damages, injuries or deaths arising from any violation of this Section.

Section 13. Architectural Control.

No building, wall, fence or other structure or improvement of any nature (including, but not limited to, pools, screen enclosures, patios (or patio extensions), hedges, other landscaping, exterior paint or finish, play structures, awnings, shutters, hurricane protection, basketball hoops, decorative plaques or accessories, birdhouses, other pet houses, swales, asphaltting, sidewalk/driveway surfaces or treatments or other improvements or changes of any kind, even if not permanently affixed to the land or to other improvements) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the Architectural Control Committee (which shall be a committee appointed by the Board of Directors of the Association, absent such appointment the Board to serve in such capacity) have been approved, if at all, in writing by the Architectural Control Committee and all necessary governmental permits are obtained. Conversions of garages to living or working space or other uses are hereby prohibited, even though same are not readily apparent from the exteriors of applicable Homes. Likewise, carports, above-ground or inflatable swimming pools and permanent basketball backboards, or other permanent recreational installations are prohibited. Each building, wall, fence or other structure, improvement or alteration of any nature, together with landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan approved by the Architectural Control Committee and applicable governmental permits and requirements. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Committee seem sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Control Committee shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. A majority of the Board may take any action the Board is empowered to take, may designate a representative to act for the Board and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Board, the remaining members shall have full authority to designate a successor. The members of the Board shall not be entitled to any compensation for services performed pursuant to this covenant, unless engaged by the Association in a professional capacity. The Architectural Control Committee shall act on submissions to it within forty-five (45) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved.

In the event that any new improvement or landscaping is added to a Home/Lot, or any existing improvement on a Lot is altered, in violation of this Section, the Association shall have the right (and an easement and license) to enter upon the applicable Lot and remove or otherwise remedy the applicable violation after giving the Owner of the Lot at least ten (10) days prior written notice of, and opportunity to cure, the violation in question. The costs of such remedial work and a surcharge of a minimum of Twenty-Five and No/100 Dollars (\$25.00) (but in no event more than thirty-five percent (35%) of the aforesaid costs) shall be a special assessment against the Lot, which assessment shall be payable upon demand and secured by the lien for assessments provided for in this Declaration.

The approval of any proposed improvements or alterations by the Architectural Control Committee shall not constitute a warranty or approval as to, and neither the Association nor any member or representative of the Architectural Control Committee or the Board of Directors shall be liable for, the safety, soundness, workmanship, materials or usefulness for any purpose of any such improvement or alteration nor as to its compliance with governmental or industry codes or standards. By submitting a request for the approval of any improvement or alteration, the requesting Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid members and representatives, and the Association generally, from and for any loss, claim for damages connected with the aforesaid aspects of the improvements or alterations.

The Architectural Control Committee may, but shall not be required to, require that any request for its approval be accompanied by the written consent of the Owners of the Lots [up to five (5)] adjoining or nearby the Lot/Home proposed to be altered as described in the request.

Without limiting the generality of Sections 1 and 27 hereof, the foregoing provisions shall not be applicable to the Declarant or its affiliates or to Builders meeting the requirements of Section 27 of this Article.

#### Section 14. Architectural Planning Criteria.

Attached hereto as Schedule "A" are certain additional rules and regulations of the Association for the use and operation of The Properties which are incorporated herein by this reference and which, as may the foregoing, may be modified, in whole or in part, at any time by the Board without the necessity of recording an amendment hereto or thereto in the public records.

#### Section 15. Commercial Vehicles, Trucks, Trailers, Campers and Boats.

No trucks (other than those of a type, if any, expressly permitted by the Association) or commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on The Properties, nor in dedicated areas, except in (i) enclosed garages, and (ii) spaces for some or all of the above specifically designated by Declarant or the Association, if any. For purposes of this Section, "commercial vehicles" shall mean those which are not designed and used for

customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained in this Section shall not apply to temporary parking of trucks and commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services, nor to passenger-type vans with windows for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Declarant or its affiliates. No lettering or graphics, regardless of how applied (including magnetic signs) shall be allowed on any type of vehicle, other than unobtrusive window decals.

All Owners and other occupants of Homes are advised to consult with the Association prior to purchasing, or bringing onto The Properties, any type of vehicle other than a passenger car inasmuch as such other type of vehicle may not be permitted to be kept within The Properties.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

Section 16. Parking on Common Areas and Lots/Garages.

No vehicles of any type shall be parked on any portion of the Common Areas (including roadways) not specifically designed and designated for such purpose or any portions of a Lot other than its driveway and garage.

Section 17. Garbage and Trash Disposal.

No garbage, refuse, trash or rubbish (including materials for recycling) shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority or other company or association for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Containers must comply with all requirements of **Osceola County**. Such containers may not be placed out for collection sooner than twenty-four (24) hours prior to scheduled collection and must be removed within twelve (12) hours of collection. In the event the Association, in its sole discretion, provides depositories for recyclable materials, same shall be the only ones used on The Properties.

Section 18. Fences, Walls and Hedges.

No fence, wall or other structure shall be erected on any Lot, except as originally installed by Declarant or its affiliates or approved by the Architectural Control Committee. Further, no hedge shall be planted except any approved by the Architectural Control Committee. In considering any request for the approval of a hedge or other landscaping, the Architectural Control Committee shall give due consideration to the possibility of same obstructing the view from any adjoining Lot or Common Area and may condition its approval on the hedge or other landscaping being kept to a specific height by the Association. The Architectural Control Committee may require a six (6) foot gate as a condition of its approval of any hedge, wall or fence.

Section 19. No Drying.

No clothing, laundry or wash shall be aired or dried on any portion of the Properties except on a portion of a Lot which is completely screened from the view of all persons other than those on the Lot itself.

Section 20. Home Air Conditioners and Reflective Materials.

No air conditioning units may be mounted through windows or walls. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard interior window treatments) placed on any glass, except such as may be approved by the Architectural Control Committee for energy conservation purposes.

Section 21. Exterior Antennas.

No exterior antennas, satellite dishes or similar equipment shall be permitted on any Lot or improvement thereon unless approved by the Architectural Control Committee, except that Declarant and its designees shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines.

Notwithstanding the foregoing, a satellite receiving dish may be installed on a Lot if, but only if, the installation of same is protected by the rules of the Federal Communications Commission, but only to the extent protected by those rules and subject to the approval of the Architectural Control Committee to the maximum extent lawful.

Section 22. Home Numbers.

The numbers placed on the exterior of a Home identifying the address thereof shall not be changed to a different material, type or style unless and except if the Association adopts a new uniform material, type or style in connection with the replacement of such numbers as the result of same wearing to the point of unsightliness.

Section 23. Renewable Resource Devices.

Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted

from time to time by the Architectural Control Committee. Such standards shall be reasonably calculated to maintain the aesthetic integrity of The Properties without making the cost of the aforesaid devices prohibitively expensive.

Section 24. Driveway and Sidewalk Surfaces.

No Owner shall install on a Lot, and the Architectural Control Committee shall not approve, any sidewalk or driveway which has a surface material and/or color which is different from the materials and colors originally used or approved by the Declarant. Further, no Owner shall change any existing sidewalk or driveway in a manner inconsistent with this Section.

Section 25. Artificial Vegetation.

No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot without the prior approval of the Architectural Control Committee.

Section 26. Variances.

The Board of Directors of the Association shall have the right and power to grant variances from the provisions of this Article VII and the rules and regulations of the Association for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article VII in any instance in which such variance is not granted.

Section 27. Exemption for Builders.

Any Builder shall be exempt from the provisions of this Article, as well as those of Article VI hereof, to the extent that the application of same would prevent or unreasonably interfere with the construction of a Home in a lawful manner; provided, however, that such Builder shall not be so exempt unless it is subject to restrictions imposed by the Declarant. Without limiting the generality of the foregoing, such exemption of Builders shall specifically extend to and include the architectural review and approval provided in Section 12 of this Article if the Declarant has the right to approve the Homes constructed by the Builder per a separate agreement with such Builder. Notwithstanding the foregoing, each such Builder shall keep its construction site in a neat, clean and orderly manner appropriate for such a site.

**ARTICLE VIII**  
**RESALE, LEASE AND OCCUPANCY RESTRICTIONS**

Section 1. Estoppel Certificate; Declarant Re-Sale Fee.

No Owner may sell or convey his interest in a Lot unless all sums due the Association are paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner. If all such sums shall have been paid, the Association shall deliver such certificate within ten (10) days of a written request therefore.

The Owner requesting the certificate may be required by the Association to pay to the Association or its management company a reasonable sum not to exceed the maximum amount permitted by the Act from time to time to cover the costs of examining records and preparing the certificate.

Any Owner who acquires a Lot from Declarant and re-sells same to a third party within eighteen (18) months of the date of recording of the deed from Declarant shall pay to Declarant a re-sale fee (the "Fee") equal to ten percent (10%) of the total purchase price of the Lot and the Home located thereon (as such price is evidenced by the documentary stamp tax notation on the recorded deed), with the fee to be disbursed from the closing of the re-sale. Any Fee not paid when due shall bear interest at the annual rate of eighteen percent (18%) from the date due until the date the Fee is paid to Declarant. The buyer of such Lot shall be jointly and severally liable with the seller for any unpaid fee and interest thereon.

The Association shall be under the affirmative duty to ensure that any estoppel letter or certificate issued by or on behalf of the Association contains the following statement: "WARNING: the Association's Declaration of Covenants contains a requirement that any sale of a home within Hickory Tree Reserve by a party having acquired the home from the Declarant, which sale closes within eighteen (18) months from the date the seller acquired the home from Declarant, requires the payment of a re-sale fee equal to ten percent (10%) of the amount paid by the original buyer of the home. Such payment shall be disbursed to \_\_\_\_\_, LLC at \_\_\_\_\_, Fort Lauderdale, Florida 33301 or at such other address as designated by the Declarant from time to time.

Owners shall be obligated to deliver the documents originally received from the Declarant, containing this and other declarations and documents, to any grantee of such Owner.

## Section 2. Leases.

No portion of a Lot and Home (other than an entire Lot and Home) may be rented. All leases shall be in writing and shall provide that the tenant shall comply with all of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and its applicable rules and regulations or other applicable provisions of any agreement, document or instrument governing The Properties or administered by the Association. Leasing of Lots and Homes shall also be subject to the prior written approval of the Association, which approval shall not be unreasonably withheld and which shall be deemed given if the Association does not deny approval within fifteen (15) days of its receipt of a request for approval together with a copy of the proposed lease and all supporting information reasonably requested by the Association. No lease shall be approved for a term less than twelve (12) months and no Home shall be rented for more than three (3) times per calendar year.

Owners wishing to lease their Lots and Homes shall be required to provide a true, correct and complete copy of the executed Lease to the Association and to place in escrow with the Association a sum of up to One Thousand and No/100 Dollars (\$1,000.00)

which may be used by the Association to repair any damage to the Common Areas or other portions of The Properties resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). The Association shall not be required to pay or remit any interest on any such escrowed funds. The Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to affect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge not to exceed Fifty and No/100 Dollars (\$50.00) and less any interest retained by the Association, shall be returned to the Owner within ninety (90) days after the tenant vacates the Home.

A Tenant may not assign his/her lease or sublet the Home, or any portion thereof. Notwithstanding anything to the contrary set forth in this Declaration, for the safety, security or welfare of the Owners or to prevent unreasonable interference with the use/enjoyment of the Common Areas, no Lot or Home, nor any part thereof, shall be used for short term vacation rentals, hotel-like or transient use, including, but not limited to, occupancies for dwelling, lodging or sleeping purposes for a period of less than 30 consecutive calendar days. Short-term vacation rentals include any contract or agreement that initially defined the occupancy term to be greater than 30 consecutive days and that was subsequently amended, either orally or in writing, to permit the occupant(s) of the Home to surrender the Home before the expiration of the initial occupancy term that results in an actual occupancy term of less than 30 consecutive days.

### Section 3. Members' Permittees.

No Lot or Home shall be occupied by any person other than the Owner(s) thereof or the applicable Members' Permittees and in no event other than as a residence. For purposes of this Declaration, a Member's Permittees shall be the following persons and such persons' families, provided that the Owner or other permitted occupant must reside with his/her family: (i) an individual Owner(s), (ii) an officer, director, stockholder or employee of a corporate owner, (iii) a partner in or employee of a partnership owner, (iv) a fiduciary or beneficiary of an ownership in trust, or (v) occupants named or described in a lease or sublease, but only if approved in accordance with this Declaration. Under no circumstances may more than one family reside in a Home at one time. In no event shall occupancy (except for temporary occupancy by guests) exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The Board of Director shall have the power to authorize occupancy of a Home by persons in addition to those set forth above. The provisions of this Section shall not be applicable to Homes used by the Declarant for model apartments, sales offices, management services or otherwise.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting the Home as or together with the Owner or permitted occupant thereof. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Home. Unless otherwise determined by the Board of

Directors of the Association, a person(s) occupying a Home for more than one (1) month shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Declaration (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to leases and lessees. The purpose of this paragraph is to prohibit the circumvention of the provisions and intent of this Article and the Board of Directors of the Association shall enforce, and the Owners comply with, same with due regard for such purpose.

## **ARTICLE IX ENFORCEMENT**

### **Section 1.   Compliance by Owners.**

Every Owner and Member's Permittee shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

### **Section 2.   Enforcement.**

Failure of an Owner or his Member's Permittee to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend the rights of use of Common Areas (except for legal access) of defaulting Owners. The offending Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs.

### **Section 3.   Fines.**

In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner or his Member's Permittees to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(a)   Notice: The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Board of Directors at which time the Owner shall present reasons why a fine(s) should not be imposed. At least fourteen (14) days' notice of such meeting shall be given.

(b)   Hearing: The alleged non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why a fine(s) should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner by not later than ten (10) days after the Board of Director's meeting. The Owner shall have a right to be represented by counsel and to cross-examine witnesses.

(c)   Amounts: The Board of Directors (if it's or such panel's findings are made against the Owner) may impose special assessments against the Lot owned by the Owner as follows:

(1) First non-compliance or violation: a fine not in excess of One Hundred and No/100 Dollars (\$100.00).

(2) Second non-compliance or violation: a fine not in excess of Five Hundred and No/100 Dollars (\$500.00).

(3) Third and subsequent non-compliance, or a violation or violations which are of a continuing nature after notice thereof (even if in the first instance): a fine not in excess of One Thousand and No/100 Dollars (\$1,000.00).

(d) Payment of Fines: Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties.

(e) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth herein.

(f) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Review Committee. The Board shall appoint a standing Enforcement Review Committee (the "Review Committee") of at least three (3) Association members who are not officers, directors or employees of the Association or a spouse, parent, child, brother or sister thereof. Any person against whom a fine or suspension is imposed may appeal same to the Review Committee by written notice to the Board given within five (5) days after the Board's decision in such regard. If the Review Committee, by majority vote, does not approve the Board's proposed fine or suspension, it may not be imposed. The role of the committee is limited to determining whether to confirm or deny the fine or suspension imposed by the Board. If the Review Committee approves the fine or suspension, the Association shall automatically impose the fine or suspension and provide the Owner with written notice of the penalty by mail and certified mail or by hand delivery to the Owner and if applicable, the Member's Permittees within ten (10) days of the hearing. Such notice shall include the amount of the fine, deadline for payment, and the duration of any suspension that has been imposed.

(h) Non-exclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

## **ARTICLE X**

### **SURFACE WATER MANAGEMENT SYSTEM**

#### Section 1. Preamble.

The provisions of this Article X are adopted to comply with the requirements of the County for an association which is a "responsible entity" for the operation of the Surface Water Management System.

## Section 2. Association Power and Authority.

The Association shall be responsible for the maintenance, operation and repair of the Surface Water Management System in accordance with the County permit or other authorization for same. Maintenance of the Surface Water Management System(s) shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the County. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified as approved, by the County. The Association shall maintain copies of all permits, amendments and any other permitting actions a part of its official records.

All expenses related to the foregoing activities or otherwise related to the Surface Water Management System shall be paid for through assessments collected as provided in this Declaration. A copy of the permit for the Surface Water Management System is attached hereto as Exhibit "E".

## Section 3. Amendment.

The provisions of this Article X may only be amended with the consent of the South Florida Water Management District (the "District"). Further, no amendment to any other provision of this Declaration which alters or affects the Surface Water Management System shall be effective without the approval of the District.

## Section 4. Enforcement.

The District has the right to take enforcement action, including civil action for an injunction and penalties against the Association, to compel it to correct any outstanding deficiencies or defects in the Surface Water Management System facilities.

# **ARTICLE XI**

## **DAMAGE OR DESTRUCTION TO COMMON AREAS**

Damage to or destruction of all or any portion of the Common Areas shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) In the event of damage to or destruction of the Common Areas, if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such portions of the Common Areas to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within Two Hundred Thousand and No/100 Dollars (\$200,000.00) or less of being sufficient to effect total restoration of the Common Areas, then the Association shall cause such portions of the Common Areas to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a capital improvement assessment against each of the Owners in equal shares in accordance with

the provisions of Article V, of this Declaration.

(c) If the insurance proceeds are insufficient by more than Two Hundred Thousand and No/100 Dollars (\$200,000.00) to effect total restoration of the Common Areas, then by written consent or vote of a majority of each class of the Members, they shall determine whether (i) to rebuild and restore the Common Areas in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying capital improvement assessments against all Members, (ii) to rebuild and restore in a way which is less expensive than replacing the Common Areas in substantially the same manner as they existed prior to being damaged, or (iii) subject to the approval of the Board, to not rebuild and to retain the available insurance proceeds. Anything to the contrary herein notwithstanding, no decision not to rebuild or to rebuild in a manner which would result in a change in the Common Areas shall be effective without the written approval of the Board, which can require rebuilding as it deems appropriate.

(d) Each Member shall be liable to the Association for any damage to the Common Areas not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Member or his Member's Permittees. Notwithstanding the foregoing, the Association reserves the right to charge such Member an assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Member. In the case of joint ownership of a Home, the liability of such Member shall be joint and several. The cost of correcting such damage shall be an assessment against the Member and may be collected as provided herein for the collection of assessments.

## **ARTICLE XII**

### **ASSOCIATION INSURANCE**

Insurance covering the Common Areas shall be governed by the following provisions:

#### **Section 1. Purchase, Custody and Payment.**

(a) Purchase. All insurance policies described herein covering the Common Areas shall be purchased by the Association and shall be issued by either an insurance company authorized to do business in Florida, or a surplus lines carrier reasonably acceptable to the Board.

(b) Named Insured. The named insured shall be the Association, individually, and as agent for Owners.

(c) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each First Mortgagee. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

#### **Section 2. Coverage.**

The Association shall maintain insurance covering the following:

(a) Casualty. All insurable improvements on the Common Areas from time to time, together with all fixtures, building service equipment, personal property and supplies serving the Common Areas (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may, however, contain reasonable deductible provisions as determined by the Board of Directors. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$100,000 per person and \$50,000 property damage, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.

(c) Worker's Compensation and other mandatory insurance, when applicable.

(d) Flood Insurance covering the Common Areas if the Association so elects.

(e) Fidelity Insurance or Fidelity Bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse Association funds, which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association.

(f) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that the insurance provided shall not be prejudiced by any act or omissions of individual

Owners that are not under the control of the Association.

Section 3. Additional Provisions.

All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations and excavation costs), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

Section 4. Premiums.

Premiums upon insurance policies purchased by the Association shall be paid by the Association, except that the costs of fidelity bonding and liabilities for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.

**ARTICLE XIII**  
**OWNERS' INSURANCE**

Section 1. Claims and Proceeds.

In the event of insured damage to a Home (and/or its Limited Common Area) which affects only that Home, the Owner shall be responsible for promptly making and pursuing the appropriate claim under the Owner's insurance and promptly seeing to the application of the proceeds thereof to the repair or restoration of the Home so as to return it to at least the condition in which it existed prior to the event giving rise to the claim.

In the event of damage to more than one (1) Home (including Limited Common Areas) in a Building, then the Owners thereof shall promptly notify the Association and, in addition to performing the obligations set forth in the immediately preceding paragraph, comply with all instructions and requirements of the Association with respect to the coordination of claims and the repair or restoration of the Homes. Such requirements may include, without limitation, a directive that the Owners use the same contractor(s) in repairing and restoring their Homes to the maximum extent permitted by their insurance carriers.

Section 2. Easement for Repairs.

There is here declared to be an easement over each Lot in favor of the Owners of adjacent Lots for the purpose of repairing or restoring any damage to the Home on the Lot(s) benefited by such easement, regardless of whether same is being done with the use of insurance proceeds. Such easement may include, without limitation, placing ladders and other equipment on a Lot on a temporary basis, having access over the

roof of an adjacent Home and other reasonable activities. Any Owner making use of this easement shall be responsible for the prompt repair and restoration of any damage caused to the Lot subject to this easement caused by such repair and restoration activities. Further, any Owner making use of the easement herein created shall notify the Association of such intended use prior to any entry onto the adjacent Lot shall not make such entry until the Association confirms that it has notified the Owner of the adjacent Lot that such entry will be made.

#### **ARTICLE XIV** **MORTGAGEE PROTECTION**

The following provisions included herein hereto (and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control):

(a) The Association shall be required to make available to all Owners and Mortgagees, and to insurers and guarantors of any mortgage on a Lot, for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of this Declaration (with all amendments) and the Articles, By-Laws and rules and regulations and the books and records of the Association. Furthermore, such persons shall be entitled, upon written request, to (i) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (ii) receive notices of and attend the Association meetings, (iii) receive notice from the Association of an alleged default by an Owner in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation or the By-Laws of the Association, which default is not cured within thirty (30) days after the Association learns of such default, and (iv) receive notice of any substantial damage or loss to the Common Areas.

(b) Any holder, insurer or guarantor of a mortgage on a Lot shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Common Areas, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (iv) any proposed action which requires the consent of a specified number of Mortgage holders.

(c) Unless at least 66-2/3% of first Mortgagees (based upon one vote for each Mortgage owned), and the Members holding at least two-thirds (2/3rds) of the votes entitled to be cast by them, have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to sell or transfer the Common Areas and any improvements thereon which are owned by the Association (the granting of easements for utilities or for other such purposes consistent with the intended use of such property by the Association or the Declarant or the transfer of the Common Areas to another similar association of the Owners in accordance with the Articles of Incorporation of the Association or dedication of such property to the public shall not be deemed a transfer within the meaning of this clause);

(2) change the basic methods of determining the obligations, assessments, dues or other charges which may be levied against a Lot, except as provided herein with respect to future Lots;

(3) by act or omission, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of The Properties;

(4) fail to maintain fire and extended insurance on insurable portions of the Common Areas as provided herein; or

(5) use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement or reconstruction of the improvements.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

#### **Section 1.   Duration.**

The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by the Association, the Architectural Control Committee, the Declarant (at all times) and the Owner of any Lot or other land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of seventy-five percent (75%) of all the Lots subject hereto and of one hundred percent (100%) of the mortgagees thereof has been recorded, agreeing to revoke said covenants and restrictions; provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

#### **Section 2.   Notice.**

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

#### **Section 3.   Enforcement.**

Enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and

against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The prevailing party in any action to interpret or enforce the terms of this Declaration shall be entitled to collect all attorney fees and costs actually incurred by that party at all pre-trial, trial and appellate levels, including fees and costs incurred in enforcing such right of recovery at all such levels.

Section 4. Severability.

Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

Section 5. Amendment.

The covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed, deleted or added to at any time and from time to time upon the execution and recordation of an instrument executed by the Declarant alone, for so long as it or its affiliates holds title to any Lot affected by this Declaration; or alternatively by approval at a meeting of Owners holding not less than 66-2/3% vote of the entire membership in the Association (as opposed to only those Members represented at a meeting of the Association). The foregoing sentence and the provisions of this Section reserving amendment powers in the Declarant may not be amended.

Section 6. Effective Date.

This Declaration shall become effective upon its recordation in the Osceola County Public Records.

Section 7. Conflict.

This Declaration shall take precedence over conflicting provisions in Schedule "A" hereto and in the Articles of Incorporation and By-Laws of the Association and said Articles shall take precedence over the By-Laws.

Section 8. Standards for Consent, Approval, Completion, Other Action and Interpretation.

Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant or its affiliates, the Association or the Architectural Control Committee, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by

the Declarant or its affiliates or the Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Declarant or Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Association or the counsel having drafted this Declaration rendered in good faith that a particular interpretation is not unreasonable shall conclusively establish the validity of such interpretation.

#### Section 9. Easements.

Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate hereby the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

#### Section 10. Disclaimer of Common Area Warranties.

**To the maximum extent lawful, and as provided in Florida Statute 553.835 as it exists on the date hereof, Declarant, on behalf of itself and all Builders hereby disclaims any and all warranties of merchantability, fitness for a particular purpose, compliance with plans and specifications or otherwise with respect to all Common Areas and all persons acquiring any interest or a portion of The Properties (including, without limitation, the Association and all Owners, whether those having purchased directly from Declarant or otherwise), by acceptance of title to their respective portions of The Properties, hereby waive any such warranties and agree that their acceptance of their portion of The Properties is on a "AS IS, WHERE IS WITH ALL FAULTS" basis and that no such party has bargained for or been promised any warranty as aforesaid.**

**In addition to the foregoing, all Owners acknowledge and agree, by virtue of taking title to the respective Lots, that the conduct of construction activities within any community nature and customarily results in wear and tear on common areas such as roadways, curbs, landscaping and the like. Neither Declarant nor any Builder shall be liable for the repair, replacement or rehabilitation of any such wear and tear and the "AS IS, WHERE IS WITH ALL FAULTS" provisions set forth in the immediately preceding paragraph shall extend to include and provide for the acceptance of the Common Areas subject to such wear and tear.**

Section 11. Termites.

ALL PERSONS OWNING, OCCUPYING OR OTHERWISE USING OR COMING ONTO ANY PORTION OF THE PROPERTIES ARE HEREBY NOTIFIED THAT THE FLORIDA DEPARTMENT OF AGRICULTURE HAS FOUND THE PRESENCE OF CONEHEAD TERMITES IN PARCEL "B" OF THE COMMON AREAS. SUCH TERMITES ARE CONSIDERED TO BE AGGRESSIVE INSECTS ALTHOUGH THEY ARE MOST COMMONLY FOUND IN TREES. SUCH TERMITES MAY OR MAY NOT BE PRESENT WITHIN THE PROPERTIES AT ANY GIVEN TIME AND THE DEPARTMENT OF AGRICULTURE HAS ASSUMED RESPONSIBILITY FOR MONITORING AND, WHEN NECESSARY, CONTROLLING OR ERADICATING SUCH TERMITES WITHOUT OBLIGATING DECLARANT, THE ASSOCIATION OR ANY OWNER TO TAKE STEPS TO DO SO. ALL PERSONS ARE NEVERTHELESS CAUTIONED TO BE OBSERVANT FOR THE PRESENCE OF SUCH TERMITES IN ANY LOCATION OUTSIDE OF TRACT B AND TO ADVISE ANY PROVIDER OF PEST CONTROL SERVICES TO AN OWNER'S HOME OF THIS DISCLOSURE.

Section 12. Covenants Running With The Land.

Anything to the contrary herein notwithstanding and without limiting the generality (and subject to the limitations) of Section 1 hereof, it is the intention of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants and restrictions shall run with the land and with title to the properties. Without limiting the generality of Section 4 hereof, if any provision or application of this Declaration would prevent this Declaration from running with the land as aforesaid, such provision and/or application shall be judicially modified, if at all possible, to come as close as possible to the intent of such provision or application and then be enforced in a manner which will allow these covenants and restrictions to so run with the land; but if such provision and/or application cannot be so modified, such provision and/or application shall be unenforceable and considered null and void in order that the paramount goal of the parties (that these covenants and restrictions run with the land as aforesaid) be achieved.

**ARTICLE XVI**  
**DISCLAIMER OF LIABILITY OF ASSOCIATION**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

- (a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS



STATE OF FLORIDA                    )  
COUNTY OF OSCEOLA                )

The foregoing instrument was acknowledged before me this\_\_\_\_\_day of \_\_\_\_\_,2021, by\_\_\_\_\_, as\_\_\_\_\_of \_\_\_\_\_ **LLC**, a Florida limited liability company, on behalf of the company ( ) who is personally known to me OR ( ) who produced \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public State of Florida at Large

**EXHIBIT "A"**

**THE PROPERTIES**

**EXHIBIT "B"**  
**ARTICLES OF INCORPORATION**  
**OF**  
**HICKORY TREE RESERVE COMMUNITY ASSOCIATION, INC.**

(A corporation not-for-profit organized under the laws of the State of Florida)

The undersigned incorporator, desiring to form a corporation not for profit under Chapter 617, Florida Statutes, as amended, hereby adopts the following Articles of Incorporation:

**ARTICLE I**  
**NAME PRIMARY ADDRESS**

The name of the corporation shall be the **HICKORY TREE RESERVE COMMUNITY ASSOCIATION, INC.**, which is hereinafter referred to as "**the Association**". The primary address of the Association shall be \_\_\_\_\_, Ft. Lauderdale, FL 33309

**ARTICLE II**  
**PURPOSES AND POWERS**

The objects and purposes of the Association are those objects and purposes as are authorized by the **Declaration of Covenants for the Hickory Tree Reserve** recorded (or to be recorded) in the Public Records of Osceola County, Florida, as hereafter amended and/or supplemented from time to time (the "**Declaration**"). The further objects and purposes of the Association are to preserve the values and amenities in The Properties and to maintain the Common Areas for the benefit of the Members of the Association. The definitions set forth in the Declaration are incorporated herein by this reference.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm or corporation.

The Association shall have the power to contract for the management of the Association and to delegate to the party with whom such contract has been entered into (which may be an affiliate of the Declarant) the powers and duties of the Association, except those which require specific approval of the Board of Directors or Members.

The Association shall have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles and the Declaration identified above. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Declaration and to provide for the general health and welfare of its membership.

Without limiting the generality of the foregoing, the Association shall operate, maintain and manage the Surface Water Management System in a manner consistent with the County permit requirements and applicable County rules, and shall assist in the enforcement of the restrictions and covenants contained in the Declaration and herein. In doing so, the Association shall levy adequate assessments against Members of the Association for the costs of maintenance and operation of the Surface Water Management System. Said assessments shall be used for such maintenance and repair of the Surface Water Management System including, but not limited to, work within retention areas, drainage structures and drainage easements.

### **ARTICLE III**

#### **MEMBERS**

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners (including any Builders) as defined in Section 1 with the exception of the Declarant (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but, subject only as provided in the following sentence, in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the Class A Members are entitled to cast in the aggregate. The Class B Membership shall cease and convert to a Class A Membership as provided in the Declaration.

Section 3. Meetings of Members. The By-Laws of the Association shall provide for an annual meeting of Members and may make provisions for regular and special meetings of Members other than the annual meeting. A quorum for the transaction of business at any meeting of the Members shall exist if thirty percent (30%) of the total number of Members in good standing shall be present or represented by proxy at the meeting.

Section 4. General Matters. When reference is made herein, or in the Declaration, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

### **ARTICLE IV**

#### **CORPORATE EXISTENCE**

The Association shall commence its existence with the filing of these Articles of Incorporation with the Florida Secretary of State and shall have perpetual existence; provided that if it is ever dissolved, its assets (including the Surface Water Management System) shall be conveyed to another association or public agency having a similar purpose and which is approved by the County.

### **ARTICLE V**

#### **BOARD OF DIRECTORS**

Section 1. Management by Directors. The property, business and affairs of the Association shall be managed by a Board of Directors, which shall consist of not less than three (3)

persons, but as many persons as the Board of Directors shall from time to time determine. A majority of the directors in office shall constitute a quorum for the transaction of business. The By-Laws shall provide for meetings of directors, including an annual meeting.

Section 2. Original Board of Directors. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of Members and thereafter until qualified successors are duly elected and have taken office, shall be as follows:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

Section 3. Election of Members of Board of Directors. Except as otherwise provided herein and for the first Board of Directors and their Declarant-appointed replacements, directors shall be elected by a plurality vote of the Members of the Association at the annual meeting of the membership as provided by the By-Laws of the Association, and the By-Laws may provide for the method of voting in the election and for removal from office of directors. All directors shall be members of the Association residing in The Properties or shall be authorized representatives, officers, or employees of corporate members of the Association, or designees of the Declarant. Notwithstanding the foregoing, until such time as the Class B Membership in the Association terminates, the Declarant shall have the right to appoint the Directors of the Association by written notice to such effect or by an announcement reflected in the minutes of the annual meeting of the Association.

Section 4. Duration of Office. Members elected to the Board of Directors shall hold office until the next succeeding annual meeting of Members, and thereafter until qualified successors are duly elected and have taken office.

Section 5. Vacancies. If a director elected by the general membership shall for any reason cease to be a director, the remaining directors so elected may elect a successor to fill the vacancy for the balance of the term.

## **ARTICLE VI** **OFFICERS**

Section 1. Officers Provided For. The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect.

Section 2. Election and Appointment of Officers. The officers of the Association, in accordance with any applicable provision of the By-Laws, shall be elected by the Board of Directors for terms of one (1) year and thereafter until qualified successors are duly elected and have taken office. The By-Laws may provide for the method of voting in the election, for the removal from office of officers, for filling vacancies and for the duties of the officers. The President shall be a director; other officers may or may not be directors of the Association. If the office of President shall become vacant for any reason, or if the President shall be unable or unavailable to act, the

Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy.

Section 3. First Officers. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and thereafter until successors are duly elected and have taken office, shall be as follows:

Name and Office   Address

President:

\_\_\_\_\_

Vice-President:

\_\_\_\_\_

Secretary-Treasurer:

\_\_\_\_\_

## **ARTICLE VII**

### **BY-LAWS**

The Board of Directors shall adopt By-Laws consistent with these Articles of Incorporation. Such By-Laws may be altered, amended or repealed in the manner set forth in the By-Laws.

## **ARTICLE VIII**

### **AMENDMENTS AND PRIORITIES**

Section 1. Amendments to these Articles of Incorporation shall be proposed and approved by the Board of Directors and thereafter submitted to a meeting of the membership of the Association for adoption or rejection by affirmative vote of 66-2/3% of the Members, all in the manner provided in, and in accordance with the notice provisions of, Florida Statute 617.017.

Section 2. In case of any conflict between these Articles of Incorporation and the By-Laws, these Articles shall control; and in case of any conflict between these Articles of Incorporation and the Declaration, the Declaration shall control.

**ARTICLE IX**  
**INCORPORATOR**

The name and address of the incorporator of this Corporation is:

Address

---

**ARTICLE X**  
**INDEMNIFICATION**

Section 1. 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, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against all expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (i) it is determined by a court of competent jurisdiction, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or that he acted in a manner he 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 had reasonable cause to believe his conduct was unlawful, and (ii) such court further determines specifically that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a 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 which he 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 had reasonable cause to believe that his conduct was unlawful.

Section 2. 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, suit or proceeding referred to in Section 1 above or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually incurred by him in connection therewith.

Section 3. 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 by-law, agreement, vote of Members or otherwise, both as to action in his official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 4. 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. Such insurance shall cover any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

Section 5. The provisions of this Article X shall not be amended.

**REGISTERED AGENT**

Until changed, **Stephen V. Hoffman, Esq.**, shall be the registered agent of the Association and the registered office shall be at 2426 East Las Olas Boulevard, Fort Lauderdale, Florida 33301.

**IN WITNESS WHEREOF**, the aforesaid incorporator has hereunto set his hand this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

STATE OF FLORIDA )  
 )  
COUNTY OF BROWARD )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, who is personally known to me and who did not take an oath.

My Commission Expires:

Notary Public State of Florida

**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, County of Osceola, State of Florida, the corporation named in said Articles has named Stephen V. Hoffman, Esq. located at 2426 East Las Olas Boulevard, Fort Lauderdale, Florida 33301, as its statutory registered agent.

Having been named the statutory agent of the above 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.

\_\_\_\_\_  
REGISTERED AGENT

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021.

## EXHIBIT "C"

### BY-LAWS

#### OF

### HICKORY TREE RESERVE COMMUNITY ASSOCIATION, INC.

(A corporation not-for-profit organized under the laws of the State of Florida)

1. Identity. These are the By-Laws of **HICKORY TREE RESERVE COMMUNITY ASSOCIATION, INC.** (the "**Association**"), a corporation not for profit incorporated under the laws of the State of Florida, and organized for the purpose of administering that certain **DECLARATION OF COVENANTS FOR HICKORY TREE RESERVE** (the "**Declaration**") as well as the properties made subject thereto ("**The Properties**").
  - 1.1 Principal Office. The principal office of the Association shall be as provided in its Articles of Incorporation, 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 at its principal office or in the office of any manager engaged by the Association.
  - 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 "Corporation Not-for-Profit", and the year of incorporation.
2. Definitions. For convenience, these By-Laws shall be referred to as the "**By-Laws**" and the Articles of Incorporation of the Association as the "**Articles**". The other terms used in these By-Laws shall have the same definitions and meanings as those set forth in the Declaration, unless herein provided to the contrary or unless the context otherwise requires.
3. Members.
  - 3.1 Annual Meeting. 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 Members in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of February or March following the year in which the Declaration is recorded.

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.

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. The notice of the annual meeting shall be sent by mail or hand delivery to each Member, unless the Member waives in writing the right to receive notice of the annual meeting by mail. 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 fourteen (14) days, nor more than sixty (60) days, prior to the date of the meeting.

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 his 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. 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 in excess of 33-1/3% of the votes of Members in the Association.

3.5 Voting.

(a) Number of Votes. In any meeting of Members, the Members shall be entitled to cast one vote for each Lot owned. The vote of a Lot shall not be divisible.

(b) 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 attained shall be binding upon all Members for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws. As used in these By-Laws, the Articles or the Declaration, the term "majority of the Members" shall mean a majority of the votes of Members and not a majority of the Members them-

selves and shall further mean more than fifty percent (50%) of the then total authorized votes present in person or by proxy and voting at any meeting of the Members 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.

- (c) Voting Member. If a Lot is owned by one person, such person's right to vote shall be established by the roster of Members based upon the holders of title to the Lots. If a Lot is owned by more than one person, those persons (including husbands and wives) shall decide between/among themselves as to 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, partnership, trust or other entity, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by a person entitled to execute a conveyance of the entity's property and filed with the Secretary of the Association. Such person need not be a Member. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change 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 Member of an undivided interest in the Lot or an authorized entity representative as aforesaid. If a certificate designating the person entitled to cast the vote for a Lot for which such certificate is required is not on file or has been revoked, the vote attributable to such 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 only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Lot (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each 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.

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 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:

- (a) Call to order by President;
- (b) Appointment by the President of a chair of the meeting (who need not be an officer, director or Member of the Association);
- (c) Proof of notice of the meeting or waiver of notice;
- (d) Reading of minutes;
- (e) Reports of officers;
- (f) Reports of committees;
- (g) Appointment of inspectors of election;
- (h) Election of Directors;
- (i) Unfinished business;
- (j) New business;
- (k) Adjournment.

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

3.9 Minutes of Meeting. The minutes of all meetings of Members shall be kept in a book available for inspection by Members or their authorized representatives and Board Members at any reasonable time.

3.10 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 which 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 ten (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.

#### 4. Directors.

4.1 Membership. The affairs of the Association shall be governed by a Board of not less than three (3) but no more than seven (7) Directors, the exact number to be determined in the first instance in the Articles, and, thereafter, by the Board of Directors. Directors shall at all times be subject to the qualifications and obligations set forth in the Act.

#### 4.2 Vacancies and Removal.

- (a) Except as to vacancies resulting from removal of Directors by Members, vacancies in the Board of Directors occurring between annual meetings of Members shall be filled by the remaining Directors, provided that all vacancies in directorships to which Directors were appointed by the Declarant shall be filled by the Declarant without the necessity of any meeting.
- (b) Any Director elected by the Members other than the Declarant may be removed by concurrence of a majority of the votes of the Members at a special meeting of Members called for that purpose or by written agreement signed by a majority of the Owners of all Lots. The vacancy in the Board of Directors so created shall be filled by the Members at the same meeting, or by the Board of Directors, in the case of removal by a written agreement unless said agreement also designates a new Director to take the place of the one removed.
- (c) Anything to the contrary herein notwithstanding, until a majority of the Directors are elected by the Members other than the Declarant, neither the first Directors of the Association, nor any Directors replacing them, nor any Directors named by the Declarant, shall be subject to removal by Members other than the Declarant. The first Directors and Declarant-appointed Directors replacing them may be removed and replaced by the Declarant without the necessity of any meeting.

- (d) If a vacancy on the Board of Directors results in the inability to obtain a quorum of Directors in accordance with these By-Laws, any Member may apply to the Circuit Court for the jurisdiction in which The Properties exist for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the applying Member shall mail to the Association a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Member 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(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.
- 4.3 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 successor is duly elected and has taken office, or until he resigns or is removed in the manner elsewhere provided.
- 4.4 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within ten (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, and no further notice to the Board of the organizational meeting shall be necessary.
- 4.5 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 two (2) days prior to the meeting.
- 4.6 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 (1/3) of the Directors. 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 two (2) days prior to the meeting.
- 4.7 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 said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, except when his 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.

- 4.8 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 of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.
- 4.9 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.
- 4.10 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.
- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside).
- 4.12 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
  - (b) Appointment of meeting chair (who need not be an officer, director or Member of the Association)
  - (c) Reading and disposal of any unapproved minutes;
  - (d) Reports of officers and committees;
  - (e) Election of officers;
  - (f) Unfinished business;
  - (g) New business;
  - (h) Adjournment.

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

4.13 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Members, or their authorized representatives, and Board Members at any reasonable time.

4.14 Committees. The Board of Directors may, by resolution duly adopted, appoint or designate itself as the Architectural Control Committee or appoint one to consist of three (3) or more Members. Such Architectural Control Committee shall have and may exercise all of the powers as set forth in the Declaration.

The Architectural Control Committee and any other committee subject to the open meeting and other applicable provisions of the Act shall at all times comply with same.

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

4.15 All meetings of the Board of Directors shall be subject to the open meeting (subject to the exceptions set forth in the Act), notice, voting, agenda item, minutes and official records and other provisions of the Act applicable thereto.

5. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association 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 By-Laws may not be delegated to the Board of Directors by the Members. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining the Common Areas, including the Surface Water Management System.
- (b) Determining the expenses required for the operation of the Common Areas and the Association and levying assessments for same.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Areas and the Association.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of The Properties.

- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring Lots or other property in the name of the Association, or its designee.
- (g) Purchasing Lots at foreclosure or other judicial sales, in the name of the Association or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Lots acquired, and subleasing Lots leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Lots or other property.
- (j) Obtaining and reviewing insurance for The Properties and the Association.
- (k) Making repairs, additions and improvements to, or alterations of, The Properties, and repairs to and restoration of The Properties in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Members, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of The Properties and the Association.
- (m) Levying fines against appropriate Owners for violations of the Declaration or of the rules and regulations established by the Association to govern the conduct of such Owners and others.
- (n) Entering into contracts for products and services, at all times in accordance with the procedural and other requirements of the Act.
- (o) Borrowing money when required in connection with the operation, care, upkeep and maintenance of the Common Areas 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 two-thirds (2/3) of the Lots represented at a meeting at which a quorum has been attained in accordance with the provisions of these By-Laws shall be required for the borrowing of any sum which would cause the total outstanding indebtedness of the Association to exceed One Hundred Thousand

and No/100 Dollars (\$100,000.00). If any sum borrowed pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, an Owner who pays to the creditor such portion thereof as his interest in his Common Areas bears to the interest of all the Unit Members in the Common Areas shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Member's Lot; provided always, however, the Association shall take no action authorized in this paragraph without the prior written consent of the Declarant as long as the Declarant owns any Lot.

- (p) Contracting with a duly licensed manager for the management and maintenance of The Properties and the Association and authorizing a management agent (who may be an affiliate of the Declarant) 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 Areas, Lots and Units 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 Declaration, the Articles and these By-Laws including, but not limited to, the making of assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, authorizing Owners or other persons to use portions of the Common Areas for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles and these By-Laws, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.
- (s) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.
- (t) Issuing of estoppel certificates and financial reports as provided in the Act.

## 6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom other than the President need be Directors), all of whom shall be elected by the Board of Directors 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.

- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 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 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.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving of all notices to the Members and Directors and other notices required by law. He shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. He 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.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He 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 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 monies 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.
- 6.6 Manager. Any of the foregoing functions of the Secretary or Treasurer may also be performed by a duly licensed manager engaged by the Association, provided that (i) the Secretary or Treasurer, as appropriate, shall oversee the performance of such functions, and (ii) no manager may execute any documents as, or in the name of, the Secretary or Treasurer.
- 7. 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 Properties 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.

8. Resignations. Any Director or officer may resign his 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 Declarant or officers or directors who were not Owners) shall constitute a written resignation of such person.
9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:
  - 9.1 Budget. 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 the Board finds to be appropriate), determine the amount of assessments payable by the Owners to meet the expenses of the Association and allocate and assess such expenses among the Owners in accordance with the provisions of the Declaration. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance.
  - 9.2 Assessments. Assessments against Lots for their share of the items of the budget shall be made for the applicable fiscal year annually at least thirty (30) 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 such 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. 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.

- 9.3 Assessments for Emergencies or Special Expenses. Assessments for expenses for emergencies and other special expenses that cannot be paid from the annual assessments shall be levied in accordance with the Declaration and shall be due only after advance notice is given to the Members concerned as determined by the Board of Directors, and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments. Assessments under this Section made prior to the transfer of control of the Association by the Declarant shall be subject to the member approval requirements of the Declaration and the Act.
- 9.4 Depository. The depository of the Association shall be such bank or banks in the State of Florida as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies 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 otherwise may be commingled in a single fund or divided into more than one fund, as determined by a majority of the Board of Directors. In addition, a separate reserve account may be established for the Association in such a depository for monies specifically designated as reserves for capital expenditures and/or deferred maintenance.
- 9.5 Acceleration of Installments Upon Default. If a Member shall be in default in the payment of an installment of his assessments, the Board of Directors may accelerate the next twelve (12) months' of the assessments as provided in the Declaration.
- 9.6 Fidelity Bonds. Fidelity bonds ( a/k/a crime insurance) may be obtained by the Association for all persons handling or responsible for Association funds in such amounts as shall be determined by a majority of the Board. The premiums on such bonds shall be paid by the Association as a common expense.
- 9.7 Accounting Records and Reports. The Association shall maintain accounting records in the State according to accounting practices normally used by similar associations. The records shall be open to inspection by Members or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually.

- 9.8 Application of Payment. All payments made by a Member shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.
10. Roster of Members. Each Owner shall file with the Association a copy of the deed or other document showing his 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 Members of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Members shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.
11. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws and subject to waiver in the discretion of the presiding officer if he determines that technical compliance with such Rules would interfere with the efficient conduct of a meeting or the will of its attendees.
12. Amendments. Except as in the Declaration provided otherwise, these By-Laws may be amended in the following manner:
- 12.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.
- 12.2 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 (1/3) of the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be by not less than a majority of the votes of all Members of the Association (as opposed to only those represented at a meeting at which a quorum has been attained) and by not less than 66-2/3% of the entire Board of Directors.
- 12.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant or mortgagees of Lots without the consent of said Declarant and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. For so long as there is a Class B Membership, FHA or VA (as long as it/they holds or insures a mortgage on a Lot or owns a Lot) may veto any amendment to these By-Laws. No amendment to this Section shall be valid.

13. Rules and Regulations. Attached to the Declaration as **Schedule "A"** are rules and regulations concerning the use of portions of The Properties. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is turned over by the Declarant to Members other than the Declarant, Owners of a majority of the Lots may overrule the Board with respect to any such modifications, amendments or additions. Copies of such modified, amended or additional rules and regulations shall be furnished by the Board of Directors to each affected Member not less than thirty (30) days prior to the effective date thereof. At no time may any rule or regulation be adopted which would prejudice the rights reserved to the Declarant.
14. 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.
15. 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 By-Laws or the intent of any provision hereof.

The foregoing was adopted as the By-Laws of the **HICKORY TREE RESERVE COMMUNITY ASSOCIATION, INC.**, a corporation not-for-profit under the laws of the State of Florida, on the       day of       , 2021.

Approved:

\_\_\_\_\_, President

\_\_\_\_\_, Secretary/Treasurer

**EXHIBIT "D"**

**COMMON AREAS**

**SCHEDULE "A"**  
**RULES AND REGULATIONS**  
**FOR**  
**HICKORY TREE RESERVE**

1. The sidewalks, entrances, passages, driveways and like portions of the Common Areas shall not be obstructed nor used for any purpose other than for ingress and egress to and from the Common Areas and Lots; nor shall any carts, bicycles, carriages, chairs, tables or any other objects be stored thereon, except in areas (if any) designated for such purposes.

2. The personal property of Owners and occupants must be stored in their respective Homes or other areas approved by the Association.

3. No articles other than patio-type furniture, barbeques and other usual and customary items shall be placed on the lanais or patios on Lots. No linens, clothes, clothing, curtains, rugs, mops or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors or other portions of the Homes.

4. No Owner or occupant shall permit anything to fall from a window or door of the Home, nor sweep or throw from the Home any dirt or other substance onto the Common Areas.

5. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the company or agency providing trash removal services for disposal or collection shall be complied with. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition and shall be at a uniform nature, which may be provided by the Association.

6. Employees of any management company are not to be sent out by Owners or occupants for personal errands. No Owner shall supervise or direct the activities of any such employee.

7. No repair of vehicles shall be made within The Properties except minor maintenance or repairs within enclosed garages.

8. No Owner or occupant shall make or permit any disturbing noises by himself or his family, servants, employees, agents, visitors or licensees, or pets, or permit any conduct by such persons or pets that will interfere with the rights, comforts or conveniences of other Owners or occupants. No Owner or occupant shall play or permit to be played any musical instrument, nor operate or permit to be operated a television, radio or other sound producing device in a Home in such a manner as to disturb or annoy other residents.

9. No radio or television, mechanical or electronic installation may be permitted in any Home which interferes with the television or other telecommunications reception of another Home.

10. No flammable, combustible or explosive fluids, chemicals or substances shall be kept in any Home except for barbeque propane tanks and usual household items.

11. An Owner or occupant who plans to be absent during the hurricane season must designate a responsible firm or individual to care for the Home should a hurricane threaten the Home or should the Home suffer hurricane damage, and such Owner or occupant shall furnish the Association with the name(s) and contact information of such firm or individual.

12. An Owner or occupant shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of such party's Home. Curtains and drapes (or linings thereof) which face on exterior windows or glass doors of Home shall be subject to disapproval by the Board, in which case they shall be removed and replaced with acceptable items.

13. Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Common Area and including full compliance by them with these Rules and Regulations and all other restrictions administered by the Association. Loud noises will not be tolerated. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing the recreational facilities.

14. Pets, birds, fish and other animals, reptiles or wildlife shall neither be kept nor maintained in or about The Properties except in accordance with the following, in addition to the applicable terms of the Declaration:

(a) Dogs and cats shall not be permitted outside of its Owner's Lot unless attended by an adult and on a leash not more than six (6) feet long. Said dogs and cats shall only be walked or taken upon those portions of the Common Areas designated by the Association from time to time for such purposes, if any.

(b) Fish or caged domestic (household-type) birds may be kept inside the Homes, subject to the provisions of the Declaration.

15. These rules and regulations shall be cumulative with the covenants, conditions and restrictions set forth in the Declaration, provided that the provisions of the same shall control over these rules and regulations in the event of a conflict or doubt as to whether a specific practice or activity is or is not permitted. All of these rules and regulations shall apply to all Owners and occupants even if not specifically so stated in portions hereof. The Board of Directors shall be permitted (but not required) to grant relief to one or more Owners from specific rules and regulations upon written request therefor and good cause shown in the sole opinion of the Board.

16. These Rules and Regulations may be amended from time to time by a majority vote of the Board of Directors, which amendments shall be published to the Members but need not be recorded in the Public Records of the County.

## **EXHIBIT “E”**

**South Florida Water Management District Permit**