

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

COTTESMORE AT LELY RESORT

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR COTTESMORE AT LELY RESORT is made this 23rd day of February, 2006, by **STOCK DEVELOPMENT, LLC**, a Florida limited liability company, (hereinafter referred to as "Developer").

WHEREAS, Developer and/or the other parties signing this instrument are the owners or mortgagees of the real property more particularly described on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Land"); and

WHEREAS, Developer intends to develop or has developed or has caused to be developed on portions of said Land a planned residential community known as "Cottesmore at Lely Resort" all in accordance with the applicable zoning ordinances and as set forth on the Plat thereof; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities of the Land and subject the Land to the land use covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth; and

WHEREAS, Developer has deemed it desirable for the effective preservation of the values and amenities established as aforesaid to create a corporation known as Cottesmore Homeowners Association, Inc., a Florida not-for-profit corporation, hereinafter referred to as the "Association", to which there has been or will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair of the Land and improvements, the enforcement of the covenants, restrictions, easements, reservations, regulations, burdens and liens contained herein and the collection and distribution of the assessments and charges hereinafter more particularly set forth; and

WHEREAS, the Land is subject to that certain Declaration of General Covenants, Conditions and Restrictions for Lely Resort (as hereinafter defined) pursuant to which the Lely Resort Master Property Owners Association, Inc. has been established to enforce the provisions thereof; and

WHEREAS, each member of Cottesmore Homeowners Association, Inc., and each Owner (as defined below) shall be required to submit a membership application, and if accepted, become a member of and maintain such membership in the Players Club and Spa, LLC, a Florida limited liability company (also known as the Club), Membership is mandatory for all dwelling unit owners. Each member is responsible for any dues, fees or other charges levied by The Club. The rights and obligations of dwelling unit owners with regard to Club are found in the Membership Plan (also known as the Plan) and a copy of the Membership Plan, Rules and Regulations and Membership Agreement can be obtained from The Club. The Club is owned and operated by Stock Development,

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LLC, at the time of recording of this Declaration, but such ownership and/or operation may subsequently be conveyed to another entity.

WHEREAS, the parties signing this instrument desire to join in and consent to this Declaration to acknowledge their consent and joinder in the same;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, Developer and the other parties signing this instrument hereby declare that the Land shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and phrases when used in this Declaration shall have the following meanings:

1.1 **ARTICLES** mean the Articles of Incorporation of Cottesmore Homeowners Association, Inc., a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

1.2 **ASSOCIATION** means Cottesmore Homeowners Association, Inc., a Florida corporation not-for-profit, which is hereby designated as a "Neighborhood Association" as such term is defined in the Master Declaration. A copy of the Association's Bylaws are attached hereto as Exhibit "C" and incorporated herein by reference.

1.3 **ASSOCIATION EXPENSES** means the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation thereof described in Article V and VI hereof and includes, but is not limited to, the following:

- 1.3.1 Common Area Expense which means and includes all expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance and repair of the Common Areas or any part thereof, including any berms or other areas which the Association is responsible to maintain (even if title is not vested in the Association); and
- 1.3.2 Lot, Villa and Dwelling Unit Expenses which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of Lots, Villas and Dwelling Units but only as set forth in the provisions of this Declaration;
- 1.3.3 Recreation Facilities Expense which means the maintenance, repair or replacement expenses of any and all recreational facility(ies) that may be owned, operated or utilized by the Association or any other Association which maintains, owns or operates recreational facilities for the benefit of

owners of Lots, Villas and Dwelling Units subject to this Declaration, including Cottesmore Homeowners Association, Inc; and

1.4 **COTTESMORE AT LELY RESORT ARB** or **ARB** means the architectural review board for Cottesmore at Lely Resort established in accordance with Section 2.2 of this Declaration.

1.5 **DECLARATION** means this instrument and any amendments, supplements or modifications hereto.

1.6 **COTTESMORE AT LELY RESORT DOCUMENTS** means in the aggregate this Declaration and any and all Supplemental Declarations or Amendments, the Articles, the Bylaws, the Master Declaration and all supplements or amendments thereto, the Articles of Incorporation and Bylaws of the Master Association, and the Rules and Regulations of the Association and the Master Association and all of the instruments and documents referred to or incorporated therein or attached thereto as the same may be amended from time to time.

1.7 **COTTESMORE AT LELY RESORT** or **COTTESMORE AT LELY RESORT NEIGHBORHOOD** means the residential community planned as a distinctive neighborhood within Lely Resort, which is to be developed upon the Land and all improvements now or hereafter located thereon and includes the Land and all improvements on any Land submitted to the provisions of this Declaration, and any lands added hereafter pursuant to the right to add additional lands as set forth herein.

1.8 **BOARD OF DIRECTORS** means the Board of Directors of the Association.

1.9 **BYLAWS** mean the Bylaws of the Association.

1.10 **COMMON AREAS** means the portions of the Land not included within the Lots nor dedicated to a party other than the Association unless the Association maintains such dedicated area pursuant to the plat or the terms hereof, and such additional Common Areas as may hereafter be declared as such. Common Areas will include the internal road system for Cottesmore at Lely Resort. Common Areas will also include any guard house(s), fountains(s), walls, entry features, community signage or buffer areas which serve the Land, any recreational facilities which may be deeded to the Association and any area or property which is to be maintained by the Association (such as berms) even if not owned by the Association.

1.11 **COUNTY** means Collier County, Florida.

1.12 **DEVELOPER** means Stock Development, LLC, a Florida limited liability company, its successors and assigns; provided, however, that an Owner shall not, solely by the purchase of a Dwelling Unit or Villa, be deemed a successor or assignee of Developer or of the rights of the Developer under this Declaration unless such Owner is specifically so designated as a successor or assignee of such rights in the respective instrument of conveyance or any other instrument executed by the Developer. The Developer shall have the right to designate any other party or entity as a successor Developer, and if such a designation occurs, the designated party or entity shall succeed to all of the Developer's rights and powers as set forth in the documents.

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1.13 **DWELLING UNIT or VILLA** means and refers to the improvements on the Lot comprising the residential unit or villa and the amenities appurtenant thereto.

1.14 **INSTITUTIONAL MORTGAGEE** means any lending institution or real estate investment trust having a first mortgage lien upon a Lot or Dwelling Unit and includes any insurance company doing business in Florida and approved by the Commission of Insurance of the State of Florida; a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the State of Florida and approved by the office of the Comptroller, Division of Banking of the State of Florida; a mortgage banking company licensed in the State of Florida; and "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; and any mortgagee which has loaned money to Developer secured by a mortgage encumbering any portion of the Land.

1.15 **LAND** means the land more particularly described on Exhibit "A", which is committed by this Declaration to the provisions hereof and any additional real estate which may hereafter be declared to be subject to this Declaration in accordance herewith and all improvements made to such land including Dwelling Units.

1.16 **LELY RESORT** means the overall development and community commonly known as "Lely Resort" and the real property described in the Master Declaration.

1.17 **LOT** means a portion of the Land upon which is or will be located a Dwelling Unit or Villa, the legal description of which is set forth in the deed of conveyance of the Dwelling Unit or Villa.

1.18 **MASTER ASSOCIATION** means Lely Resort Master Property Owners Association, Inc., as defined in the Master Declaration.

1.19 **MASTER DECLARATION** means the Declaration of General Covenants, Conditions and Restrictions for Lely Resort recorded at Official Records Book 1513, Page 823 et. seq., of the Public Records of Collier County and any amendments, supplements and modifications thereto.

1.20 **OWNER** means the owner or owners of the fee title to a Lot, Dwelling Unit or Villa located within the property identified as the Land.

1.21 **PLAYERS CLUB AND SPA or PLAYERS CLUB or CLUB** means the entity that operates and manages the Club Property and facilities, as further described in Article III below.

1.22 **SINGLE FAMILY OCCUPANCY** shall mean and refer to occupancy by a single family unit.

1.23 **SUPPLEMENTAL DECLARATION** means a Supplemental Declaration of Covenants, Restrictions and Easements recorded by the Developer in the Public Records of Collier County, Florida, submitting all or a portion of additional land to the terms and provisions of this Declaration.

1.24 **TURNOVER EVENT** means an event as specified in Section 2.6 hereof.

ARTICLE II
COVENANTS AND RESTRICTIONS;
CONVEYANCE TO ASSOCIATION OF COMMON AREAS

Developer does hereby declare that the Land shall be used, transferred, demised, sold, conveyed and/or occupied subject to and in accordance with the following:

2.1 **LAND USE COVENANTS.**

- 2.1.1 **Lots.** All Lots shall be used only for single family residential purposes as set forth in the Master Declaration and this Article II.
- 2.1.2 **Common Areas.** The portions of the Land not included within the Lots nor dedicated to a party other than the Association shall be used and conveyed solely in accordance with this Declaration.
- 2.1.3 **Land Use.** Except for the road right-of-way and other improvements located within Exhibit "A", the Common Areas shall be grassed and planted and kept grassed or planted as green open space, or planted with such other form of ground cover or landscaping as Developer or the Board of Directors considers consistent with the plan for development for beautification of Cottesmore at Lely Resort Neighborhood.
- 2.1.4 **Private Use.** The Common Areas hereinafter described are not for the use and enjoyment of the public, but are expressly reserved for the private use and enjoyment of Developer, the Association, Owners and their lessees and their family members, guests and invitees in accordance with this Declaration.

2.2 **RESTRICTIONS ON OCCUPANCY AND USE OF THE LAND.**

In consideration of the benefits hereinafter contained and the payment of the Association Expenses referred to herein, Developer does hereby declare the Land, including but not limited to the Lots and Dwelling Units, shall at all times be used, constructed, occupied and held subject to the following:

- 2.2.1 **Plans and Specifications and Architectural Review Board.** For the purpose of ensuring the development of Cottesmore at Lely Resort Neighborhood as an area of high standards, an architectural review board ("Cottesmore ARB") shall be established as follows:

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- (A) Cottesmore ARB. Initially, the ARB shall consist of at least three (3) persons designated by Developer, and Developer shall also retain the power to replace such designees. At such time as Developer no longer owns any property within Cottesmore at Lely Resort, or when Developer voluntarily so elects, Developer shall assign to the Association Developer's rights, powers, duties and obligations as to the ARB, whereupon the Board of Directors of the Association shall appoint the members of the ARB. In the event of the death or resignation of any member of the ARB, the Developer or its assignee shall have the full authority to designate a successor. Neither the members of the ARB nor its designated representative shall be entitled to any compensation for any services pursuant to this Declaration.
- (B) Cottesmore ARB Action. A majority of the ARB may designate a member of the ARB to act on its behalf. Approval or disapproval by a majority of the members of the ARB (or by the member designated by the majority of the members) shall constitute the official approval or disapproval of the ARB.
- (C) Requirement of Cottesmore ARB Approval. No improvement, exterior change or structure of any kind, including without limitation, any building, gazebo, wall, fence, pond, fountain, shutters, swimming pool, screened enclosure, additional landscaping or change in paint colors or roof colors shall be erected, placed or maintained and no addition, alteration, modification, removal or change to any such improvement, landscaping or structure shall be made without the prior written approval of the ARB.
- (D) Method of Obtaining Architectural Review Board Approval. In order to obtain the approval of the ARB, a complete set of plans and specifications for proposed construction, alterations, additions and any and all other reasonably requested information and materials related thereto ("Plans") shall be submitted to the ARB for its review. The Plans shall include, but not necessarily be limited to, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, landscaping plans, approximate costs and nature, type and color of materials to be used. The lot grading plan shall be in conformance with the approved construction plans for Cottesmore at Lely Resort. The ARB may also require the submission of additional information and materials as may be reasonably necessary for the ARB to evaluate the proposed construction or alteration. The ARB shall evaluate all Plans utilizing standards of the highest level as to the aesthetic quality and materials and workmanship to be used and as to suitability and harmony of location, structure and external design in relation to surrounding

topography and structures. Any improvements on the Lots described on Exhibit A that are existing on the date of recordation of this Declaration ("Existing Improvements") shall be exempted from the approval required hereby, but any modification, alteration, or replacement of Existing Improvements shall be subject to the provisions hereof if such Lot is within the Land. All work shall be properly permitted and performed by properly licensed contractors and verification of this request shall solely be the responsibility of the Owner. The Owner shall further hold the Association harmless for any claims or damages arising from action of the Owner, of the Owner's agents, contractors or employees of same.

- (E) Approval or Disapproval by the Architectural Review Board. The ARB shall have the right to refuse to approve any Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the ARB shall be in writing and shall be sent to the Owner. In the event the ARB fails to approve or to disapprove in writing any proposed Plans within thirty (30) days after their submission to the ARB, then said Plans shall be deemed to have been approved by the ARB and the appropriate written approval delivered forthwith.
- (F) Indemnification. Each and every member of the ARB, specifically including but not limited to, Developer's designated members, shall be indemnified by the Association and the Owners against all costs, expenses and liabilities, including counsel fees at all trial and appellate levels, reasonably incurred or imposed upon him or her in connection with any proceeding, litigation or settlement in which he or she becomes involved by reason of being or having been a member of the ARB. The foregoing provisions for indemnification shall apply whether or not he or she is a member of the ARB at the time such expenses are incurred. Notwithstanding the above, in instances where a member of the ARB admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Declaration shall not apply; otherwise the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a member of the ARB may be entitled whether by statute or common law.
- (G) Enforcement. There is specifically reserved unto Cottesmore ARB the right of entry and inspection upon any Lot or other portion of the Land for the purpose of determining by the ARB whether there exists any construction of any improvement which violates the terms of any approval by the ARB, or the terms of this Declaration or of any other covenants, conditions and restrictions to which this deed or other

instrument of conveyance make reference. Nothing herein shall grant to the ARB the right of entry into any improvement upon the Land. This ARB is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party in such litigation shall be entitled to recover all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the ARB from all costs, expenses and liabilities, including attorneys' fees incurred by virtue of any member of the ARB's service as a member of the ARB.

- (H) **Development Standards.** Cottesmore ARB is empowered to publish or modify from time to time, design and development standards ("Standards") for Cottesmore at Lely Resort Neighborhood, including, but not necessarily limited to, standards for the following: (i) architectural design of improvements; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior landscaping; (v) exterior appurtenances relating to utility installation; (vi) signs and graphics, mailboxes and exterior lighting; (vii) building setbacks, pools and pool decks, side yards and related height bulk and design criteria; (viii) pedestrian and bicycle ways, sidewalks and pathways; (ix) all buildings, landscaping and improvements on land owned or controlled by the Association; and (x) exterior colors and materials. The Standards shall be reasonable and in conformance with the plan of development of Cottesmore at Lely Resort Neighborhood and Lely Resort. A copy of any Standards promulgated and any modification or amendment thereof shall be available to owners and mortgagees.
- (I) **Scope of Review.** Cottesmore ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of the aesthetic consideration and overall benefit or detriment which would result to the immediate vicinity and to Lely Resort and the Land as a whole. The ARB shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes. Such approval is limited solely to aesthetics.

- (J) Variance from Standards. Cottesmore ARB may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of Cottesmore at Lely Resort Neighborhood or Lely Resort, variances from compliance with the Standards, as the same may be modified or amended by Cottesmore ARB from time to time, when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted by Cottesmore ARB, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to that particular property and particular provision hereof or standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing and executed by a member of the ARB and be approved by the Master Association. Site drainage may not be altered. The Owner is further responsible for meeting all federal, state and local codes or other regulatory requirements.

- (K) ~~Developer Exempt.~~ The Developer, its successors and assigns, shall be exempt from ARB approval for so long as the Developer, its successor or assigns, hold any property in Cottesmore at Lely Resort Neighborhood for sale or in the normal course of Developer's business or is in the process of completing construction of improvements sold by the Developer or is actually involved in marketing or development of Cottesmore at Lely Resort Neighborhood.

2.2.2 Other Provisions as to Use of the Land. The following occupancy and use restrictions shall apply to each Owner and his lessees and family members, guests and invitees:

- (A) Residential Use. All Lots shall be used only for single family residential purposes. No business may be conducted on any Lot nor shall any building nor portion thereof be used or maintained as a professional office. Notwithstanding the above provisions, Developer may, in its sole discretion, permit one or more dwelling units to be used for the development of the Land and/or conduct of Developer's business or for such other purposes as are deemed necessary by the Developer.
- (B) Completion of Construction Remedies. If, for any reason, work is discontinued and there is no substantial progress toward completion continuously for a one (1) month period, then the Board of Directors shall have the right to notify the owner of record of the Lot of its

intentions herein, invade the premises and take such steps as might be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot. The reason for such correction shall be solely at the discretion of the Board of Directors and may include, but not be necessarily limited to, purely aesthetic grounds. The Owners shall be liable for all costs incurred in any such action and the total cost thereof will be a lien on the Owner's Lot, which lien may be foreclosed in the manner provided for in Article VIII hereof. The Association may also take action to force completion and to take down partially completed improvements through court order or otherwise and charge the Owner for same.

- (C) Fences and Walls. The establishment and placement of all fences, walls or hedges and/or aesthetic plantings creating a barrier or screen shall require the prior written approval of the ARB which may set guidelines for the placement thereof.
- (D) Garages. Operable doors shall be provided for all garages. Garage doors shall be closed except when vehicles are entering or exiting.
- (E) Parking. Parking at individual residences, other than in enclosed garages, either on a Lot or an adjoining right-of-way shall be limited to guests and authorized service vehicles. Residents' vehicles shall be garaged at all times. Except during construction of a single family residence, there shall be no parking on any unpaved area within Cottesmore at Lely Resort Neighborhood and the Owner of any Lot in Cottesmore at Lely Resort Neighborhood, by accepting a deed to such Lot, grants the Association an easement to remove any car parked on an unpaved area within Cottesmore at Lely Resort Neighborhood.
- (F) Garbage. During construction of a Dwelling Unit or other improvement, each Lot shall be maintained in a clean condition. Once construction is completed, all Owners shall be required to have mandatory trash pick-up.
- (G) Utilities. Any transformer box placed on any Lot shall be concealed by landscaping, at Owner's expense. Pumping station control panels located on any Lot shall be landscaped at the Owner's expense to reduce the aesthetic impact thereof, while, at the same time, not impeding the use thereof by maintenance personnel. The Developer may install the foregoing landscaping and charge the Owner. Any landscaping installed by the Developer shall be maintained as installed until the Turnover Event unless the Developer approves

alteration and after the Turnover Event may be altered only with approval of the Association.

- (H) **Landscaping.** The landscape design for any Lot shall promote and preserve the appearance, character and value of the surrounding areas. Upon development of any Lot, underground landscape irrigation systems which are designed to irrigate the entire landscape portion, including the right-of-way adjacent to any portion of the Lot, shall be installed. Where landscaping has been installed by the Developer or the Association or in any event where landscaping has been installed prior to the transfer of a Dwelling Unit to the Owner, the Owner shall not remove or add to the existing landscaping without the prior written approval of the ARB. Once landscaping is installed, it shall be maintained by the Association at the Owner's expense, including right-of-way areas. It is understood that the Owner will pay for and supply water. Furthermore, the Owner will supply the Association with access to the power source for sprinkling system(s) located on the Owner's property at all times, and if access is blocked, the Association may gain access (even by using force) as the Association deems appropriate.
- (I) **Sidewalks.** It shall be the Owner's responsibility to repair and replace any damage occurring to the sidewalks as a result of any construction on the Owner's Lot.
- (J) **Mailboxes and Meters.** All mailboxes and irrigation meters shall be purchased from the Master Association or from such suppliers as are designated by the Master Association. All mailboxes shall be constructed of uniform style, design and color as determined by the Developer. No deviation from this requirement shall be permitted.
- (K) **Nuisance.** No noxious or offensive activity shall be carried on upon the above-described property or any part, portion or tract thereof, nor shall anything be done thereon which may be or may become a nuisance or annoyance to other Owners or persons lawfully residing or present within Cottesmore at Lely Resort Neighborhood.
- (L) **Outside Storage.** No outside storage or outbuilding of any kind will be permitted without the prior written approval of the ARB. Temporary construction trailers during the actual construction of any Dwelling Unit shall be permitted. There shall be no outside storage or permanent placement of recreational vehicles or equipment of any kind including motor homes, campers, motorcycles, boats, canoes, kayaks, waverunners, jet skis, wind surfers, volleyball nets, basketball goals, swing sets, lawn care equipment, toys or play equipment. Play

equipment may be approved on an individual basis by the ARB. Storage or permanent placement shall exist if an item or vehicle remains outside for a period of more than twenty-four (24) consecutive hours.

- (M) Roofs. Roofs shall have a minimum of 4:12 slope and shall be constructed of cement tile and color to be in conformance with the community. In the event that some new, attractive material for roofing surfaces is discovered or invented, the ARB may allow its use. Flat decks may be incorporated into a Dwelling Unit upon approval of the ARB, on an individual basis.
- (N) Signage. Any signage placed on any Lot by the Developer is allowed and an easement is reserved to Developer to enter upon any Lot for the purposes of replacing, improving, altering and maintaining any signage thereon. The aforesaid reservation of easement right shall be freely assignable by Developer either in whole or in part to any entity or entities at Developer's sole and absolute discretion and without further Association approval thereof. Except for the aforesaid Developer's reservation of easement right together with Developer's right of assignment thereof, no sign shall be placed on or allowed to be placed on or adjacent to a Lot or improvements by an Owner without the prior written approval of the ARB and the Master Association. For so long as the Developer owns a Lot or is actually selling Dwelling Units located or to be built on the Land, no sign may be placed on the Land or improvements thereon without the Developer's consent.
- (O) Irrigation and Sprinklers. All Lots, and any unpaved street rights-of-way adjacent thereto, shall contain adequate automatic electric irrigation systems, provided by the Owner if not otherwise installed by the Developer or the Association, as described in subparagraph (H) above. Each Owner may be charged an initial service connect fee and water meter fee due at closing by the Developer or the Association. Sprinkler controls must be accessible from the exterior of all Dwelling Units constructed in Cottesmore at Lely Resort Neighborhood. Power source and breakers for sprinkler systems must also be accessible to the Association. Each Owner shall also supply and maintain an irrigation timer and will provide the Association with access to same. An Owner shall water the aforesaid lawn and landscaping sufficiently to maintain it in a healthy condition and, upon failure of any Owner to do so, the Association shall have the right to enter upon his Lot and water the lawn and landscaping and charge the Owner a reasonable fee and costs for same. Such charges, until paid, shall be a lien against the Lot. The Owner of any Lot, by

accepting a deed to a Lot in Cottesmore at Lely Resort Neighborhood, grants an easement to the Association to enter upon the Lot for the purposes of watering the lawn and landscaping if necessary. Each Owner covenants that he shall at all times maintain the exterior portions of his Lot and any residence thereon in a neat, aesthetically pleasing and proper condition.

- (P) Screen Enclosures. All screen enclosures shall be constructed of black, or black painted, structural materials.
- (Q) Exterior Lamp Posts. There shall be no exterior lighting lamp posts unless such exterior fixture is approved by the ARB, on an individual basis.
- (R) Firearms. The discharged of firearms is prohibited.
- (S) Antennas and Solar Water Panels. No antennas, satellite dishes, solar water panels, aerials or other appurtenant structures are allowed, without the approval of the ARB.
- (T) Storm Precautions. Although the Association is not required to promulgate storm precautions, each Owner shall be required to conform with any storm precautions promulgated by the Association.
- (U) Time Shares. No time shares program shall be permitted on any Lot.

2.2.3 Reconstruction. Any repair, rebuilding or reconstruction of damaged Dwelling Units shall be substantially in accordance with the architectural plans and specifications for: (i) the originally constructed Dwelling Unit; (ii) a previously reconstructed Dwelling Unit; or (iii) new plans and specifications approved by the Association.

2.2.4 Owner Liability. An Owner shall be liable for the expense of any maintenance, repair or replacement of any real or personal property in Cottesmore at Lely Resort Neighborhood rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, invitees, agents or lessees, but only to the extent that such expense is not covered by the proceeds of insurance which may be carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Dwelling Unit or the Common Areas. An Owner shall also be liable for any personal injuries caused by his negligent acts or those of any member of his family, or his or their guests, employees, invitees, agents or lessees. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

- 2.2.5 Rules and Regulations. Each Owner shall be subject to such rules and regulations with respect to Cottesmore at Lely Resort Neighborhood as the Association determines from time to time to be in the best interest of Cottesmore at Lely Resort Neighborhood and the Owners, provided that no rules and regulations promulgated by the Association shall conflict with the provisions of the Declaration.
- 2.2.6 Because of the importance of keeping vehicles within garaged areas, no Owner may convert any garage area for any other use. This restriction shall not apply to original construction by the Developer, nor shall it prevent the Developer from using a garage as a sales office.
- 2.2.7 Normal household pets shall be permitted, subject to rules and regulations established by the Association. No other animals shall be permitted upon the Lot.
- 2.2.8 Minimum Dwelling Unit Size. No Dwelling Unit shall contain less than 1,500 square feet of air conditioned enclosed living area. The method of determining the square footage of the enclosed living areas of a Dwelling Unit, structure or addition thereto, shall be to multiply together the horizontal dimensions of the walls forming the outer boundaries of the Dwelling Unit, structure or addition for each floor level. Open porches, atriums, screened in patios, courtyards, garages and other similar type space shall not be taken into account in calculating the minimum air conditioned enclosed living area square footage as required herein.
- 2.2.9 Setbacks. No part of any Dwelling Unit shall be located nearer than: thirty feet (30') to the front site line; ten feet (10') to the side lot line of the Lot, as measured from any of the exterior finished surfaces and exclusive of roof over-hangs and other similar appurtenances; and twenty feet (20') from the rear site line, except accessory structures - ten feet (10'); provided, however, the setback may be waived by the Developer in the event a variance is obtained from the applicable governmental agency. Accessory structures include swimming pools, pool enclosures and decking, privacy walls, and other structures so designated by the ARB.

2.3 NON-SEVERABLE INTERESTS OF OWNERS. The ownership of a Lot, the Dwelling Unit constructed thereon, all easement rights appurtenant thereto as provided in this Declaration or any Supplemental Declaration including, but not necessarily limited to, utility and governmental services easements, easements for encroachments and maintenance, and structural cross easements with respect to common structural easements; membership in the Association; and all other appurtenances thereto under Cottesmore at Lely Resort Documents (hereinafter collectively referred to as the "Interests"); shall not be severable and an Owner shall not and may not sell, convey, demise, lease, assign, pledge or otherwise transfer or encumber any of his right, title or interest in and to his respective Interests or any of such Interests unless such sale, conveyance,

demise, lease, assignment, pledge or other form of transfer or encumbrance includes all of his right, title and interest in and to the Interests including, but not limited to, the Dwelling Unit and the Lot upon which it is constructed.

2.4 RIGHTS OF DEVELOPER. Notwithstanding any provision in this Declaration as to use or otherwise to the contrary, Developer reserves the right to carry on construction, development and sale activities; place equipment, machinery, supplies and signs; construct and maintain models or other structures; and park vehicles of prospective or actual purchasers, lessees or employees and personnel of Developer on any part of the Land owned by the Developer or the Association; and exercise the easement rights and all other rights granted Developer under Cottesmore at Lely Resort Documents.

2.5 DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Land or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to Cottesmore at Lely Resort Board of Directors, and a determination rendered by the Board of Directors with respect to such dispute shall be final and binding on all parties concerned therewith. Provided, however, any use by Developer of the Land or any part thereof determined by Developer, in its sole discretion, to be in accordance with Section 2.4 above, regarding rights of Developer, shall be deemed a use of the Land which complies with this Declaration and such determination by Developer shall not be subject to any further determination or review to the contrary by the Board of Directors.

2.6 CONVEYANCE TO ASSOCIATION. Developer agrees that it shall turnover control of the Association as provided in the Florida Statutes at F.S. Sec. 720.307, members of the Association other than Developer shall elect a majority of the board of directors, and Developer shall convey to the Association fee simple title in and to the Common Areas together with the improvements located thereon on or before the "Conveyance Date" which shall be on or before ninety (90) days after the earlier of the following ("Turnover Event"):

2.6.1 The conveyance by Developer of a total of ninety percent (90%) of the Lots within Cottesmore at Lely Resort; or

2.6.2 At such earlier time as Developer, at its sole discretion, may elect.

Notwithstanding anything to the contrary in the foregoing, Developer shall be entitled to elect at least one member of the board of directors of the Association as long as the developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of Cottesmore at Lely Resort. After Developer relinquishes control of the Association, Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the Board of Directors.

All such conveyances to the Association described herein shall be by Special Warranty Deed subject to (1) taxes and taxing districts for the year of conveyance and subsequent years; (2) such facts as an accurate survey would show; (3) the terms and provisions of Cottesmore at Lely Resort

Documents; (4) easements, restrictions, reservations, conditions, and limitations of record and common to the subdivision; and (5) applicable zoning ordinances and regulations. The Association shall be obligated to accept all conveyances of any property within the Land from the Developer. The Association shall have the right and power to convey Association property and/or easements therein to any grantee for consideration or for no consideration.

**ARTICLE III
MANDATORY MEMBERSHIP;
PLAYERS CLUB AND SPA**

3.1 **INTENT.** This Declaration imposes upon the Land a requirement that each Owner of Lots within Cottesmore at Lely Resort apply for and maintain a Club Membership and pay Club Membership dues and fees to the Club, and further should an Owner fail to pay any Club Charges owed to the Club in a timely manner, as set forth in the Plan (as defined below), the Owner's Lot shall be subject to such lien and other rights set forth herein.

The Club shall be responsible for the management and operation of the Amenity Center and the Developer is released of all liability hereunder.

3.2 **DEFINITIONS.**

The following terms when used in this Article III regarding the Club shall have the following meanings:

- 3.2.1 "Classics Club Member" shall mean and refer to any person who, at the time of the acquisition of any Lot within the Property, currently owns and maintains (in good standing), and subsequent to the acquisition of any Lot within the Property continues to own and maintain (in good standing), a full golf membership in The Classics at Lely Resort & Country Club.
- 3.2.2 "Club" shall mean the Players Club and Spa, LLC, a Florida limited liability company (or a similar-named entity to be formed to operate and manage the Club Property), its affiliates or designees, or its successors; or a successor-in-title to the Club Property, and in the event of a transfer of title to the Club Property, such successor shall have all of the rights of the Players Club and Spa, LLC, and the Players Club and Spa, LLC, and Developer will be released of all liability relating to the operation, maintenance or ownership of Club.
- 3.2.3 "Club Charges" shall mean and refer to all initiation, dues, fees, use charges and other charges including the membership purchase price, required to be paid by a Club Member to obtain and maintain a Club Membership.

- 3.2.4 "Club Property" shall mean and refer to the portions of the property within Lely Resort, Collier County, Florida, now owned or to be owned by Developer, upon which the Club operates the Amenity Center for recreational purposes, including but without limitation, the health and fitness facilities, swimming pool, tennis and related recreational and ancillary facilities (without any food and beverage facilities or services), if any such improvements are constructed.
- 3.2.5 "Designated Merchant Builder" shall mean and refer to those builders, developers and/or subdevelopers designated by Developer, in writing, as exempt from the definition of Owners, subject to the conditions set forth in subsection 3.2.8 below.
- 3.2.6 "Club Member" shall mean and refer to any person entitled to membership in the Club, as provided herein and in the Plan.
- 3.2.7 "Club Membership" shall mean and refer to the license granted to Club Members under the Plan.
- 3.2.8 "Owner" shall mean and refer to the record title holder, whether one (1) or more persons or entities, of the fee simple title to any Lot. For purposes of this Article III only, Owners shall not include the following:
- (A) Developer.
 - (B) Any Designated Merchant Builders, unless and until such Designated Merchant Builder occupies the Lot for residential occupancy.
 - (C) Any Classics Club Member so long as such Classics Club Member continues to own and maintain (in good standing) a full golf membership in The Classics at Lely Resort & Country Club, or until such time as such Classics Club Member conveys the Lot to a third party, in which event such third party shall be bound by the terms of this Article III of this Declaration and the Plan.
 - (D) Any institutional mortgagee, unless and until such institutional mortgagee acquires title to a Lot pursuant to an action for foreclosure or any proceeding in lieu of foreclosure.

In the event any of the conditions set forth in subsections (B), (C) or (D) of this Section 3.2.8 occurs, such owner of the Lot shall immediately be deemed an "Owner" for purposes of this Article III and the Plan.

3.2.9 "Plan" shall mean and refer to the Membership Plan, Rules and Regulations and Membership Agreement promulgated by the Club relating to Club Membership and use of the Club Property, all as may be amended from time to time.

3.3 CLUB MEMBERSHIP DUES, ASSESSMENTS AND CHARGES.

3.3.1 Club Membership Requirements.

By acquisition of title to a Lot, each Owner, Classics Club Member and Designated Merchant Builder acknowledges and agrees that the Club Property is or will be owned by the Developer and operated by the Club, and that each Owner of a Lot is required to own and maintain a Club Membership. Upon transfer of title to a Lot, the Club Membership of the transferring Owner shall terminate and the transferee shall be required to apply for and acquire a Club Membership, provided, regardless of whether or not an application is completed, the Owner shall be required to pay the Club Charges for the Club Membership. Until an application is completed and submitted to the Club, the transferee will not be permitted to use the Club Property as a Club Member. Privileges to use the Club Property shall be subject to the terms and conditions of the Plan. The amount of the Club Charges for Club Membership shall be determined by the Club from time to time as set forth in the Plan.

In the event that an Owner is rejected for Club Membership, such Owner shall not be required to pay the Club Charges and shall not be permitted to use the Club Property as a Club Member. Such rejection for Club Membership shall not prohibit the conveyance of the Lot to the transferee; however, the requirements and restrictions set forth in this Article III and the Plan shall remain effective as to the Lot for any future conveyance. The Club's rejection of a Club Membership to any Owner of a Lot shall not be deemed a rejection of any future Owner of such Lot.

3.3.2 Creation of the Lien and Personal Obligation for the Club Charges.

Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Club, Club Charges for the Club Membership associated with the Lot. If a Lot is owned by more than one Owner (e.g., husband and wife), the obligation to pay the Club Charges is a joint and several obligation of each of the Owners of that Lot, regardless of which Owner is designated to use the Membership as provided in the Plan. If an entity owns a Lot and a Club Membership, the entity and the designated user of the Club Membership shall be jointly and severally liable for the Club Charges. The Club Charges, together with such interest thereon and costs of collection thereof as hereinafter provided, shall, in addition to being the personal obligation of the Club Member and Owner, be a charge on the Lot and shall be a continuing lien upon the Lot against which such Club Charge is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Club Charges became due. The failure of any Owner and Club Member to pay any of the required Club Charges shall constitute grounds for suspension and/or termination of Club Membership by the Club. Any Lot owned by a Designated Merchant Builder shall be exempt from the obligation to pay the Club Charges, unless and until the Designated Merchant Builder

occupies the Lot for residential purposes. At such time, the Designated Merchant Builder shall have use of the Club Facilities, subject to the requirements and restrictions set forth herein and in the Plan. A Classics Club Member shall be exempt from the obligation to pay the Club Charges for so long as such Classics Club Member continues to own and maintain (in good standing) a full golf membership in The Classics at Lely Resort & Country Club; provided that, once the Classics Club Member sells the Lot to a third party, such third party shall be bound by the terms of this Article III and the Plan. In no event shall any individual be entitled to use the Club's Facilities unless such individual occupies the Lot as their residence.

3.3.3 Collection of Club Charges; Effect of Non-Payment of Club Charges; the Personal Obligation of the Owner; the Lien; Remedies of the Club.

If the Club Charges are not paid when due as provided in the Plan, then such Club Charges shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Owner's Lot which shall bind such property in the hands of the Owner, his or her heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for all unpaid Club Charges with respect to such Lot. In any voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Club Charges made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from grantor the amounts paid by the grantee therefore.

If the Club Charges are not paid when due, the Club may impose a late charge and interest on the delinquent amount as set forth in the Plan. The Club may bring an action at law against the Owner and the Club Member personally obligated to pay the same, and/or may record a claim of lien against the Lot on which Club Charges are unpaid, and may foreclose the lien against the property on which Club Charges are unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more of remedies set forth herein or available at law at the same time or successively, and there shall be added to the amount of such Club Charges, reasonable attorney's fees and costs of collecting or attempting to collect the Club Charges through all appeals.

Any payments made to the Club by any Owner shall be applied or be disbursed by the Club, in order, for (i) any sums advanced and paid by the Club for taxes and payments on account of superior mortgages, liens, or encumbrances which may have been advanced by the Club in order to preserve and protect its Club Charges lien; (ii) reasonable attorney's fees and costs incurred by the Club incidental to the collection of Club Charges and other monies owed to the Club by the Owner for the enforcement of its Club Charges lien; (iii) interest on any Club Charges or other monies due to the Club, as provided in the Plan; (iv) any late charges, as provided in the Plan; and (v) any unpaid Club Charges owed to the Club with application to the oldest Club Charges first.

The Club shall have the right to enforce this Article III and the obligation to pay Club Charges without interference from any third party.

3.3.4 Subordination of the Lien to Institutional First Mortgage.

The lien of any Club Charges provided for herein shall be subordinate to the lien of any Institutional Mortgage. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage shall hold title subject to the liability and lien of any Club Charges becoming due after such foreclosure or conveyance in lieu of foreclosure.

3.3.5 Estoppel.

The Club shall, upon the written request of any Owner, furnish, within ten (10) days after such written request, to any person liable for Club Charges, a certificate in writing signed by an authorized signatory of the Club setting forth whether Club Charges have been paid as to the Lot of the Owner. With respect to all persons other than the Owner of that Lot, such certificate may be relied upon as conclusive evidence of payment to the Club of such Club Charges therein stated to have been paid. The Club may require the advance payment of a processing fee not to exceed twenty-five and 00/100 dollars (\$25.00) for the issuance of each such certificate.

3.4 MEMBERSHIP POLICIES.

3.4.1 **The Club Property is not common area owned by the Association or any other Neighborhood Association as defined in the Master Declaration.**

The Club shall have the right to amend the Plan which permits the Club to set and amend membership and use policies and rules and regulations from time to time. The Club Property shall be developed and provided at the discretion of the Club. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice, how and by whom these facilities shall be used, if at all. **Ownership of a Lot or any other portion of the Property or membership in the Association or any other Neighborhood Association does not give any vested right or easement, prescriptive or otherwise, to use the Club Property. Only Club Members may use Club Property.**

3.4.2 Non-Equity Club Membership.

The Club owns the Club Property and will manage and operate the Club Property. Club Membership does not grant any ownership of any of the Club Property or the Club to any Club Member or Owner.

As set forth in the Plan, the Club may be converted into an equity, member-owned club in the Club's sole and absolute discretion. The Club shall not be bound to convert to an equity, member-owned club.

3.5 GENERAL

3.5.1 Term.

The covenants set forth in this Article III shall run with and bind the Land, and shall inure to the benefit of and shall be enforceable by the Club for a term of thirty (30) years from the date this Declaration is recorded, after which time the covenants set forth in this Article III shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by sixty-seven percent (67%) of the then Owners and a written consent signed by the Club, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to terminate the same, in which case the covenants shall be terminated as specified therein.

3.5.2 Notice of Transfer of Lot.

In the event that any Owner (other than the Developer), Classics Club Member or Designated Merchant Builder desires to sell or otherwise transfer title to a Lot (by sale, gift or judicial decree), such Owner shall give the Club at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Club may reasonably require. Until such written notice is received by the Club, the transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner of the Lot, including payment of Club Charges, notwithstanding the transfer of title to the Lot.

3.5.3 Documents to Grantees.

All Owners shall be obligated to deliver the Plan to any purchaser or transferee of their Lot. Copies of the Plan may be acquired from the Club upon payment of a reasonable reproduction fee.

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

4.1 MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles. Each Owner shall be entitled to the benefit of and is subject to, the provisions of Cottesmore at Lely Resort Documents as same may be amended from time to time. The voting rights of the Members shall be as set forth in the Articles.

4.2 BOARD OF DIRECTORS. The Association shall be governed by the Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

4.3 INITIATION OF LEGAL ACTION. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of the Owners of no less than three-quarters (3/4) of all Lots or Dwelling Units within the Land (at a duly called meeting of the Association at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

4.3.1 The collection of assessments and "Maintenance Fees"; or

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- 4.3.2 The collection of other charges which Owners are obligated to pay pursuant to Cottesmore at Lely Resort Documents; or
- 4.3.3 The enforcement of the use and occupancy restrictions contained in Cottesmore at Lely Resort Documents; or
- 4.3.4 In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Land or to Owner(s).

4.4 DEVELOPER APPROVALS. If Developer is offering for sale homes built or to be built within Cottesmore at Lely Resort in the ordinary course of business, none of the following actions may be taken without the Developer's prior written approval:

- 4.4.1 Assessment of Developer as an Owner for capital improvements;
- 4.4.2 Any action by the Association that would be detrimental to the sale of Lots or Dwelling Units by Developer. The determination as to what actions would be detrimental to sales shall be at the sole discretion of Developer; and
- 4.4.3 Initiation of any legal action, including civil action, arbitration or pursuit of action before a governmental body or agency by the Association.

ARTICLE V
USE AND MAINTENANCE OF THE LAND AND
MAINTENANCE OF COMMON AREAS

5.1 COVENANTS FOR USE.

- 5.1.1 Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within Cottesmore at Lely Resort Neighborhood whether or not it shall be so expressed in such deed or instrument, covenants and agrees that the Dwelling Unit or Villa and the Lot shall be used, held, maintained and conveyed solely in accordance with the covenants, reservations, easements, restrictions and lien rights regarding same as are or may be set forth in Cottesmore at Lely Resort Documents including, but not limited to, this Declaration and all applicable Supplemental Declarations.
- 5.1.2 No Owner shall in any way damage, injure or impair the Common Areas.

5.2 MAINTENANCE AND REPAIR OF LAND. The maintenance and repair of the Land is either the responsibility of the Owners or the Association as hereinafter more particularly set forth:

5.2.1 Responsibility of Owners.

- (A) Except as set forth in Section 5.2.2 regarding ordinary lot

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maintenance, each Owner shall maintain in good condition and repair at his own expense:

- (i) All portions of his Lot and Dwelling Unit. This obligation includes, but is not necessarily limited to, the obligation to paint and maintain the exterior portions of an Owner's Dwelling Unit, including, but not limited to, roof cleaning, painting and repairs. However, before painting the exterior of a Dwelling Unit, the Owner must obtain Association approval.
- (ii) All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under his Lot and which service only his Dwelling Unit.
- (iii) All glass and screens in windows and doors, in a manner consistent and in uniformity with the standards promulgated by the Association. Any window, screen or door treatment visible from the exterior must be approved by the Developer for so long as the Developer is actually selling Villas built or to be built on the Land, and thereafter by the Association. No solar or reflective materials may be used on or as window treatments or covers.

Each Owner shall perform promptly all such maintenance and repairs and shall be liable for any damages that arise due to his failure to perform such maintenance and repairs. Furthermore, should the Owner neglect to perform such maintenance and repair, the Association shall have the right to have maintenance performed by its agents or employees and the Owner in question shall be liable to the Association for the cost and expense so incurred and shall be subject to a special assessment therefore.

- (B) Each Owner shall promptly report to the Association any defect known to such Owner which requires repair of the property for which the Association or a party other than that Owner is responsible.
- (C) Any repairs, alterations, improvements or maintenance must be completed by an Owner within thirty (30) days of commencement by an Owner.

5.2.2 Landscaping. In order to provide a means by which landscape maintenance of Lots may be fulfilled without jeopardizing the security of Cottesmore at Lely Resort by the possibility of admission thereto of a large number of

landscaping maintenance contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care of each and every Lot within Cottesmore at Lely Resort Neighborhood and such maintenance shall be part of the Association Expenses. This shall also include fertilization and insect and disease treatment. Owners with pools or additional landscaping shall be charged an extra maintenance assessment as determined by the Association at the Association's sole discretion to cover the cost of maintaining the additional landscaping. Such maintenance shall not extend to areas requiring unusual maintenance such as rose gardens or areas specifically designated by the Association as an "Area of High Maintenance". Areas of High Maintenance shall be maintained by the Owner of the Lot or by such special arrangement as may be approved by the Association. In the event the Owner makes special arrangements to have the Association perform maintenance on the Owner's Areas of High Maintenance, the cost of said maintenance shall be billed to the Owner as a "special assessment", for which the Owner shall be solely liable and for the payment of which the Association shall have a lien against the Owner's Dwelling Unit.

- 5.2.3 The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.
- 5.2.4 Maintenance and Repair of Common Areas. Maintenance and repair of Common Areas and any improvements located thereon is the responsibility of the Association including landscape maintenance and drainage maintenance. The Association shall also maintain all berms even where located on an Owner's Lot. The Association shall not waive or abandon the foregoing maintenance obligations without the prior written consent of all Institutional Mortgagees.

ARTICLE VI

ASSOCIATION EXPENSES

In order to fulfill the covenants contained in this Declaration and in order to maintain and operate the Common Areas for the use, safety, welfare and benefit of Owners, their families, invitees, guests and lessees there is hereby imposed upon each Lot and its Owners the affirmative covenant and obligation to pay to the Association (in the manner set forth in Article V and this Article VI hereof), and upon the Association, the obligation to assess, collect and expend, the Association Expenses, for those Association expenses described in this Declaration, including but not limited to the following:

6.1 COMMON AREA.

- 6.1.1 Taxes. Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments, and water drainage districts, and in general, all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue on such taxes.
- 6.1.2 Utility Charges. All charges levied for utilities providing services for the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas, electricity, irrigation, street lighting, telephone, sewer and any other type of utility or service charge.
- 6.1.3 Insurance. The premiums on any policy or policies of insurance obtained by the Association under this Declaration or Cottesmore at Lely Resort Documents.
- 6.1.4 Maintenance, Repair and Replacement. Any and all expenses necessary to:
- (A) Maintain and preserve the Common Areas (including such expenses as grass cutting, tree trimming and other landscape maintenance, operating and maintaining sprinklers and the like); and
 - (B) To keep, maintain, repair and replace any and all improvements upon the Common Areas in a manner consistent with the development of Cottesmore at Lely Resort Neighborhood, the covenants and restrictions contained herein, but not necessarily limited to, and all orders, ordinances, rulings and regulations of any and all federal, state and city governments having jurisdiction thereover as well as the statutes and laws of the State of Florida and the United States; and
 - (C) Provide any other maintenance or services for which the Association is responsible; and
 - (D) The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.

- 6.1.5 **Administrative Expenses.** The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular Owners. In addition, the Association may retain a managing company or contractors to assist in the operation of Cottesmore at Lely Resort Neighborhood and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company contractor, attorney or certified public accountant so retained shall be deemed to be part of the Common Area Expenses.
- 6.1.6 **Indemnification.** The costs to the Association to indemnify and save harmless Developer from and against any and all claims, suits, actions, damages and/or causes of action arising from any personal injury, loss of life and/or damage to property sustained in or about the Common Areas or the appurtenances thereto; from and against all costs, counsel fees, expenses and liabilities incurred relating to any such claim or in settlement thereof, the investigation thereof or the defense at any levels of any actions or proceedings brought thereon, and from and against any order, judgments and/or decrees which may be entered therein. Included in the foregoing provisions for indemnification are any expenses that Developer may incur in bringing suit for the purpose of enforcing rights hereunder, or for the purpose of compelling the specific enforcement of the provisions, conditions, covenants and restrictions contained in this Declaration to be kept and performed by the Association and/or the Owners, including the payment of Association Expenses. Further, the costs to the Association of indemnifying its officers and members of the Board of Directors for all pursuance of their duties, obligations and functions hereunder and in any legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding, costs of investigation and discovery, etc. Nothing in the provisions of this Section 6.1.6 shall require an Institutional Mortgagee to pay any Association Expense or portion thereof attributable to costs to the Association of indemnifying and saving harmless Developer in accordance with such Section. Any such Association Expense shall be reallocated amongst the Owners other than the Institutional Mortgagees.
- 6.1.7 **Enforcement.** Any and all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms and conditions of this Declaration, including without limitation, attorney's fees and court costs, or in curing any default, violation or failure to perform to abide by such covenants, restrictions, terms and conditions.

- 6.1.8 **Reserve Funds.** The costs to establish, at the discretion of the Association, an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association. Each Owner acknowledges, understands and consents that such reserve funds are the exclusive property of the Association as a whole and that no Owner shall have any interest, claim or right to any reserve funds. The Association shall be responsible for maintaining the reserve funds in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.
- 6.1.9 **Miscellaneous Expenses.** The costs of all items of expense pertaining to or for the benefit of the Common Areas or any part thereof, or the Association of Cottesmore at Lely Resort Neighborhood not herein specifically enumerated and which is determined to be a Common Area Expense by the Association including, but not limited to, the cost of refuse collection if billed to the Association and the cost of providing security services including gate(s), any guard house(s) and fountain(s) for Cottesmore at Lely Resort Neighborhood in the event the Board of Directors elects to provide such services. The cost of maintaining the lawns on Lots within Cottesmore at Lely Resort Neighborhood shall also be an Association Expense; however, maintenance of Areas of High Maintenance is not an Association Expense even though such maintenance may be performed by the Association. The Association may include the planting and replacement of annuals or other decorative plants and shrubs as part of its expenses, if deemed appropriate at the discretion of its Board of Directors. Areas of High Maintenance within individual Lots will be billed separately to the individual Owners.
- 6.1.10 **Recreation Expense.** The cost of membership in any association or entity providing recreational facilities and the maintenance, repair and improvement of any recreational facilities of the Association shall be an Association Expense.

ARTICLE VII

METHOD OF DETERMINING ASSESSMENT OF ASSOCIATION EXPENSES

7.1 **ASSESSMENTS.** It is hereby declared, and all Owners and the Association agree, that the Association Expenses shall be disbursed by the Association out of funds assessed and collected from all Owners in Cottesmore at Lely Resort Neighborhood.

7.2 DETERMINING INDIVIDUAL ASSESSMENTS.

- 7.2.1 As provided in the Bylaws of the Association, the Board shall prepare an annual estimated Budget which shall reflect the annual common expense described in Article VI. Thereupon the Board of Directors shall allocate to all Cottesmore at Lely Resort Neighborhood Lots for which a Certificate of

Occupancy for a Dwelling Unit has been issued by the appropriate governmental authority an equal share of the said annual Common Expenses. The share of the annual Association Expenses allocated to a Dwelling Unit Owner is the "Individual Assessment" for each Dwelling Unit.

- 7.2.2 For purposes of assessments, the number of Dwelling Units located in Cottesmore at Lely Resort Neighborhood shall include only Dwelling Units located upon Land for which a Certificate of Occupancy has been issued by an appropriate governmental agency.
- 7.2.3 The Individual Assessment (as defined in Section 7.2.1 above) shall be payable at such time as the Board of Directors determines.

7.3 DETERMINATION OF INDIVIDUAL ASSESSMENTS DURING THE INTERIM PERIOD.

- 7.3.1 The term "Interim Period" means that period of time commencing with the date of the recording of this Declaration in the Public Records of the County and continuing for a period of one (1) year or until the Turnover Event, whichever is the sooner to occur.
- 7.3.2 Notwithstanding anything in Article VI to the contrary, it is declared and agreed by the Association and Developer that the Owners shall pay the "Guaranteed Assessments" (as hereinafter defined) to the Association as Individual Assessments during the Interim Period prorated as of the date of the conveyance of title to the Owner. The Guaranteed Assessment shall be Two Hundred Thirty-One and 00/100 Dollars (\$231.00) per Dwelling Unit per month. The Guaranteed Assessment paid by non-developer Owners during the Interim Period shall be in addition to the assessment payable to the Master Association and to the assessment for maintenance of Areas of High Maintenance and pool maintenance. Developer covenants and agrees with the Association and the Owners that, during the Interim Period, Developer will pay the difference, if any, between: (i) the Association Expenses, including that portion of the maintenance fee attributable to landscape maintenance but not including the portion of expense attributable to Areas of High Maintenance, pool maintenance, or any expenses incurred due to an Owner's negligence or willful misconduct; and (ii) the Guaranteed Assessments assessed against non-developer Owners. During the Interim Period, Developer shall not be required to make any payments of Individual Assessments for Dwelling Units owned by Developer.
- 7.3.3 Developer may extend the Interim Period for an unlimited number of additional six (6) month periods by providing the Association notice at least sixty (60) days prior to the then current date set forth as the end of the Interim Period of Developer's intention to extend the Guaranteed Assessments and

such notice shall specify the new termination date of the Interim Period.

7.4 SPECIAL ASSESSMENTS. "Special Assessments" include, in addition to other assessments designated as Special Assessments in Cottesmore at Lely Resort Documents and whether or not for a cost or expense which is included within the definition of "Association Expenses", those assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for, or on, the Common Areas or the cost (whether in whole or in part) of reconstructing or replacing such improvement or improvements on the Land and also any other assessments in addition to the Individual Assessments as shall be levied by the Board of Directors as a result of: (i) extraordinary items of expense under this Declaration; (ii) the failure or refusal of other Owners to pay assessments of Association Expenses; and (iii) such other reason or basis determined by the Board which is not inconsistent with the terms of any of Cottesmore at Lely Resort Documents. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, the Guaranteed Assessment and any such Special Assessments assessed against Cottesmore at Lely Resort Neighborhood Owners shall be paid by such Owners in addition to any such Guaranteed Assessments. Special Assessments shall be assessed in the same manner as the Individual Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board of Directors shall from time to time determine.

7.5 LIABILITY OF OWNERS FOR INDIVIDUAL ASSESSMENTS. By the acceptance of a deed or other instrument of conveyance of a Lot in Cottesmore at Lely Resort Neighborhood, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Assessment and their applicable portion of any Special Assessments as well as for all assessments for which they are liable as provided for herein. Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner for Owner and Owner's heirs, executors, successors and assigns, that in the event Owners fail or refuse to pay their Individual Assessment or any portion thereof or their respective portions of any Special Assessments, then the other Owners may be responsible for increased Individual Assessments or Special Assessments due to the nonpayment by such other Owners and such increased Individual Assessment or Special Assessment can and may be enforced by the Association and the Developer in the same manner as all other assessments hereunder as provided in this Declaration.

ARTICLE VIII

ESTABLISHMENT AND ENFORCEMENT OF LIENS

8.1 LIENS. Any and all Individual Assessments for Fines, Association Expenses, and Special Assessments and all installments thereof (collectively the "Assessments") with interest thereon at the highest rate allowed by law and costs of collection, including attorneys' fees are hereby declared to be a charge and continuing lien upon the Lot and Dwelling Unit against which each such Assessment is made. Each Assessment against a Lot and Dwelling Unit, together with interest thereon at the highest non-usurious rate allowed by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) and costs of collection thereof, including attorneys' fees, shall be the personal obligation of the person, persons or entity owning the Lot and the Dwelling Unit assessed. As to Institutional Mortgagees, said lien shall be effective only from and

after the time of recordation in the Public Records of the County, of a written, acknowledged, or sworn statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. Where an Institutional Mortgagee obtains title to a Lot or Dwelling Unit as a result of foreclosure of its mortgage or deed given in lieu of foreclosing, such acquirer of title, its successors and assigns, shall not be liable for the share of Assessments pertaining to such Lot and/or Dwelling Unit or chargeable to the former Owner which became due prior to the acquisition of title by the Institutional Mortgagee, unless such share is secured by a claim of lien of Assessments that is recorded prior to the recording of the foreclosed first mortgage. Such unpaid share of Assessments shall be added to the Assessments collectible from all other Lots and Dwelling Units in Cottesmore at Lely Resort Neighborhood. The foregoing shall not exclude an Institutional Mortgagee from payment of Assessments pertaining to a Lot and/or Dwelling Unit which accrue during the period of ownership of such Lot and/or Dwelling Unit by such Institutional Mortgagee whether or not such Lot and/or Dwelling Unit is occupied. The lien for fines, assessments, installments, interest, attorneys' fees and cost of collection shall be deemed to be effective and shall relate back to the date of the recording of this Declaration in the Public Records of Collier County, Florida, as to all other lien holders.

8.2 ENFORCEMENT. In the event any Owner shall fail to pay Assessments or any installment thereof charged to his Lot within fifteen (15) days after the same becomes due ("Delinquent Owner"), then the Association, through its Board of Directors, shall have any of the following remedies to the extent permitted by law:

- 8.2.1 To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
- 8.2.2 To advance on behalf of the Delinquent Owner funds to accomplish the needs of the Association and the amount of or amounts of monies so advanced, including reasonable monies so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of the Delinquent Owner, together with interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum), may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
- 8.2.3 To place of record a claim of lien against the Dwelling Unit and/or Lot of the Delinquent Owner.
- 8.2.4 To file a court action to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

- 8.2.5 To file an action at law to collect said Assessment plus interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) plus court costs and attorneys' fees without waiving any lien rights and/or rights of foreclosure in the Association.

8.3 **COLLECTION BY DEVELOPER.** In the event, for any reason, the Association fails to collect the Assessments, then in that event Developer, until the Developer no longer owns a Lot in Cottesmore at Lely Resort Neighborhood, shall have the right to collect the same in the same manner as the Association.

8.4 **COLLECTION BY ASSOCIATION.** The Master Declaration provides that where land has been submitted to a Neighborhood Association, said Association shall have the duty and responsibility for collecting and timely remitting to the Master Association any and all Master Association assessments and other charges; provided, however, that the Master Association may, in its sole discretion, elect to collect due and unpaid Master Association assessments and other charges directly from any Owner for the payment of such assessments and charges which are due and payable. The Association or its members may also be liable for dues, maintenance and assessments of other associations established or for maintenance, repair and operation of recreational or other common property, which may be billed or collectable by the Association. The Association, through its Board of Directors, shall have the right to take such actions as are necessary to enforce such provisions and the Owners shall each pay to the Association such amounts as the Association is directed to charge and collect on behalf of the Master Association which shall be timely remitted to the Master Association or such other Association as may be appropriate.

ARTICLE IX INSURANCE

9.1 **COMMON AREAS INSURANCE.** The Association shall purchase coverage for the Common Areas subject to the following provisions:

- 9.1.1 **Liability Insurance.** The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or Owners policies insuring the Association against any and all claims and demands made by an person or persons whomsoever for injuries received in connection with the use, operation and maintenance of Common Areas and improvements and buildings located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have reasonable limits as determined by the Board of Directors. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of law suits related to employment contracts of the Association, water damage liability, liability for non-owned and hired

automobiles, liability of hazards related to usage and liability for property of others. All such policies will name the Association (and Developer for so long as Developer shall own any portion of the Common Areas as their respective interests may appear) as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association, the Developer or any other Owners or deny the claim of either the Developer or the Association because of the negligent acts of an Owner.

9.1.2 Casualty Insurance. The Association shall purchase and pay the costs of a policy or policies of insurance to allow the Association to insure any improvements, if any, now located or which may hereafter be located, built or placed upon the Common Areas against loss or damage caused by or resulting from at least the following: Fire and other hazards covered by the standard extended coverage endorsement, sprinkler leakage, windstorm, vandalism, malicious mischief, water damage, flood, debris removal and demolition, and such other risks as the Association shall determine are customarily covered with respect to developments similar to Cottesmore at Lely Resort Neighborhood in construction, location and use.

9.1.3 Fidelity Coverage. The Association shall purchase adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible for handling funds of the Association, such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board of Directors.

- (A) Such bonds shall name the Association as an obligee.
- (B) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

9.2 **MISCELLANEOUS INSURANCE.** The Association may also obtain such other forms of insurance and such coverages as the Association shall determine for the protection and preservation of the Common Areas. Such insurance may include, without limitation, worker's compensation insurance and flood insurance.

9.3 **POLICY CANCELLATION.** All insurance policies and fidelity bonds obtained by the Association shall provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association. In the event of cancellation, the Association shall make its best effort to replace the policy and coverage without lapse.

9.4 **INSURANCE TRUSTEE.** The Board of Directors may, if it deems it to be in the best interest of Cottesmore at Lely Resort Neighborhood or the Association, provide that insurance policies be deposited with an Insurance Trustee whose duty shall be to receive any and all proceeds from the insurance policies held by it and to pay such proceeds to the Association pursuant to the terms hereof.

ARTICLE X

GRANT AND RESERVATION OF EASEMENTS

The signatories hereby reserve and grant the following easements over and across the Land for the duration of the term of this Declaration (except as hereafter provided) and for the benefit of the parties or properties as hereinafter specified for the following purposes:

10.1 **UTILITY AND GOVERNMENTAL SERVICES EASEMENTS.** An easement or easements to provide utility services, including (but not necessarily limited to) power, electric transmission, television cable, light, telephone, gas, water, sewer and drainage and governmental services including police and fire protection, rights of access to maintain, repair, replace or install fixtures and appurtenances necessary for such utility and governmental services for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies, etc.

10.2 **RIGHTS-OF-WAY.** A perpetual non-exclusive easement is hereby declared, granted and reserved in favor of Developer, the Association, the Master Association, and Owners, their lessees and family members, guests and invitees over and through the walks, road rights-of-way and other rights-of-way within the Common Areas to provide ingress, egress and access to and from, through and between the land and publicly dedicated roads.

10.3 EASEMENT FOR ENCROACHMENT.

10.3.1 An easement for encroachment in favor of all Owners in the event any portion of any part of a Dwelling Unit now or hereafter encroaches upon any of the other Dwelling Unit or Units, Lot or Lots, or other portions of Cottesmore at Lely Resort Neighborhood as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement.

10.3.2 An easement for encroachment in favor of Developer, Owners and the Association where any portion of the Common Areas encroaches upon any portion of the Land on any Lot therein.

10.3.3 An easement in favor of the Owner of each Dwelling Unit for encroachment of any portion of the Dwelling Unit upon the Common Areas.

10.3.4 Any encroaching improvements shall remain undisturbed for so long as the encroachment exists. The easements for encroachment include an easement for the maintenance and use of the encroaching improvements in favor of the Owner or Owners thereof and their designees.

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10.4 MAINTENANCE EASEMENT. There shall be easements over and across any abutting Lot on the side lot lines for maintenance and repair of any Dwelling Unit or structure, constructed on the adjacent lot, provided the easement does not extend beyond five feet (5') from the property line and that maintenance and repair is conducted in a reasonable, timely manner, with reasonable notice to the Owner of the Servient Lot, and during reasonable hours, and further provided that the Owner of the Dominant Lot is responsible for all costs for all and any damage or other liability arising from such maintenance and repair activities. The Owner of the Dominant Lot shall also have the right to ingress and egress over the non-improved portions of the Servient Lot as necessary to obtain access to the maintenance easement for maintenance and repair activities. In the event the Developer or the Association shall exercise its rights to maintain or repair any structure or improvements benefited by this easement, they shall possess and be entitled to exercise the same rights as the Owner of the Dominant Lot. This right of easement shall not affect the rights of the Owner of the Servient Lot to construct and maintain such principal or accessory structure upon the Servient Lot as are authorized by Cottesmore at Lely Resort Documents and comply with the applicable setback requirements. Placement of landscape structure by the Developer, Association, or Cottesmore ARB shall accommodate access to this easement.

10.5 RIGHT OF ASSOCIATION TO ENTER UPON THE LAND. An easement or easements for ingress and egress in favor of the Association by its Board of Directors or the designees of the Association to enter upon each portion of the Land, including Lots, for the purpose of fulfilling its duties and responsibilities of ownership, administration, maintenance and repair in accordance with Cottesmore at Lely Resort Documents.

10.6 USE AND ENJOYMENT OF COMMON AREAS. A nonexclusive easement for the use and enjoyment and for access over and to the Common Areas on behalf of Developer, the Association, and Owners, their lessees, family members, guests and invitees; provided, however, an Owner's easement to such use and enjoyment may be temporarily suspended by the Association upon written notice for a period not to exceed thirty (30) days for failure of an Owner, his lessee, or their family members, guests or invitees to conform to the rules and regulations promulgated by the Association in regard to use of the Common Areas.

10.7 EASEMENT FOR OWNERS WITHIN LELY RESORT. An easement in favor of the owners of any residential dwelling unit now or hereafter located upon any portion of Lely Resort for purposes of emergency ingress and egress across, over and upon the Land and the private roadways located or to be located thereon to and from publicly dedicated rights-of-way. This easement shall not prevent the Association from erecting a gate so as to maintain its private roads in non-emergency times.

10.8 ASSIGNMENT; ADDITIONAL EASEMENTS. The easements reserved hereunder may be assigned by Developer in whole or in part to the Association, any city, county or state government or agency thereof, or any duly licensed for franchised public utility, or any other designee of Developer. The Owners, by the acceptance of a deed of conveyance of a Lot, authorize Developer and/or the Association to execute on their behalf and without further authorizations, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Land or any portion or portions thereof in accordance with or to implement the

provisions of this Article. Notwithstanding the foregoing, no such easement shall be permitted or deemed to exist which causes any buildings, permanent structures or other permanent facilities within Cottesmore at Lely Resort Neighborhood which have been constructed (i) in accordance with Cottesmore at Lely Resort Documents; and (ii) prior to the use of such easements, to be materially altered or detrimentally affected thereby nor shall any such easement be granted or deemed to exist under any such structures or buildings so built in accordance with this Declaration and Cottesmore at Lely Resort Documents prior to the actual use of such easement. The foregoing shall not preclude such easements under then existing improvements other than buildings or structures provided that the use and enjoyment of the easement and the installation of facilities in connection therewith would not result in other than minor, temporary alterations to such improvements other than a building or structure (such as, but not necessarily limited to, temporary alteration or removal of a fence or temporary excavation within a paved area) and provided that same is repaired and/or restored by the one making use of such easement at its expense and within a reasonable time thereafter.

ARTICLE XI

CONDEMNATION

11.1 TAKING OR PARTIAL TAKING. If at any time during the term of this Declaration the whole or any portion of the Common Areas shall be taken ("Taken Area") for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of eminent domain or by agreement between those authorized to exercise such right (hereinafter for the purpose of this Section called "Condemnation"), this Declaration and all obligations hereunder as the then Taken Area shall terminate and expire on the date of such taking, and Expenses provided to be paid for such Taken Area shall be appointed and paid to the date of such taking. The Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and/or agreements with the condemning authority for acquisition of the Taken Area, or part thereof, by the condemning authority.

11.2 DIVISION OF AWARDS. The rights of Developer and other Owners in and to the net award or awards ("Taken Area Award") after any Condemnation (after reasonable fees and expenses of collection) shall be determined as follows:

11.2.1 To the extent that Developer owns any Cottesmore at Lely Resort Neighborhood Dwelling Units or Lots, Developer shall participate in any Taken Area Awards for its interest in the Common Areas along with and to no lesser degree than other Owners.

11.2.2 The Association shall have the right to attend and participate in all hearings relevant to the Condemnation and to receive notice from Developer of such hearings.

11.3 REPAIR AND REPLACEMENT. If any improvements upon the Common Areas not included in the Taken Area shall be damaged or partially destroyed by such Condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace or rebuild such improvements so such improvements are complete and in good

condition and repair. The Association shall hold that portion, if any, of the Taken Area Award which represents consequential damages to said improvements or replacements thereof in trust for application of the same to the cost and expense as herein provided. Repair of such improvements shall be conducted under the supervision of any architect or engineer licensed in the State of Florida selected by the Association, and such work shall be done in accordance with plans and specifications prepared and approved in writing by such architect or engineer and submitted to Developer for approval, which approval shall not unreasonably be withheld.

11.4 TEMPORARY USE. If the temporary use of the whole or any part of the Common Areas shall be taken at any time during the term of this Declaration by the exercise of the right of Condemnation, the term of this Declaration shall not be reduced or affected in any way, and the Association Expenses herein provided to be paid shall continue to be due and payable and the various Owners shall be entitled to the entire award granted by reason of such taking.

11.5 TAKING OF LAND. In the event of any Condemnation of the Land, the award therefore and with interest thereon as shall represent compensation for the value of the property taken shall be payable jointly to the record Owner or Owners and Institutional Mortgagee or Institutional Mortgagees thereof as of the date of taking in accordance with respective interests in such property.

ARTICLE XII **ENFORCEMENT**

The covenants and restrictions contained in Cottesmore at Lely Resort Documents may be enforced by Developer, the Association, any Owner and any Institutional Mortgagee holding a first mortgage on a Dwelling Unit or Villa upon a portion of the Land in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant or restriction hereunder. The failure by any party to enforce any covenant, restriction or easement herein contained shall in no event be deemed a waiver of such covenant, restriction or easement. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees.

ARTICLE XIII **AMENDMENT AND MODIFICATION**

13.1 Prior to conveyance of a Lot to an Owner as evidenced by the recording of the deed or other instrument of conveyance in the Public Records of the County, Developer may modify and or amend this Declaration; provided, however, that any such modification and/or amendment shall be reflected in an instrument executed by Developer and recorded in the Public Records of the County.

13.2 In addition to amendments as provided for elsewhere in this Article, following the Turnover Event (as set forth in Section 2.6 above), this Declaration may be amended at any regular or special meeting of the Owners called and held in accordance with the Bylaws by the affirmative vote of the Owners, including the Developer for any Lots owned by Developer, owning a majority of the Lots provided that any amendment shall be approved or ratified by a majority of the Association as a whole. An amendment to the Declaration shall be evidenced by a certificate executed by the

Association. A true copy of such amendment shall be sent by certified mail by the Association to Developer and all Institutional Mortgagees ("Mailing"). The amendment shall become effective upon the recording of the certificate in the Public Records of the County, but the certificate shall not be recorded until thirty (30) days after the Mailing, unless such thirty (30) day period is waived in writing by Developer and all Institutional Mortgagees.

13.3 Whenever it shall appear to the Association that there is a technical or minor defect, error or omission in the Declaration, the Association, through its Board of Directors, may amend the Declaration. The amendment shall become effective upon the recording of a certificate amongst the Public Records of the County.

13.4 Prior to the conveyance of one hundred percent (100%) of the Lots to Owners other than Developer, Developer may amend this Declaration provided that such amendment does not materially and adversely affect any Owner's, other than Developer's, property rights. It shall not be material or adverse for the addition or deletion of land subject to this Declaration. This amendment shall be signed solely by Developer. Developer may add or subtract land to or from Cottesmore at Lely Resort Neighborhood and provide for recreational facilities to be owned and operated by the Association without appeal of any Owner, Institutional Mortgagee or the Association and may amend this Declaration to reflect such additions or subtractions without consent of any Owner, Institutional Mortgagee or the Association.

13.5 For so long as the Developer owns a Lot or any portion of the Land, no amendment shall be adopted which shall materially impair or prejudice the rights or priorities of Developer without the prior written approval of Developer. In addition, no amendment shall be adopted which shall materially impair or prejudice the rights or priorities of the Association, the Club or any Institutional Mortgagee under this Declaration without the specific written approval of the Association, the Club or any Institutional Mortgagee affected thereby, nor shall any amendment which would affect the surface water management system, including the water management portions of the Common Areas, be made without the prior approval of the South Florida Water Management District.

13.6 The following amendments shall require the affirmative votes of the Owners owning at least sixty-seven percent (67%) of the Lots.

13.6.1 Amend Article VII of this Declaration to change the method of determining the obligations, assessments, or other charges which may be levied against any Owner.

ARTICLE XIV

TERM

This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, easements, burdens and liens contained herein, including without limitation, the provisions for assessment of a Dwelling Unit, shall run with and bind the Land and inure to the benefit of Developer, the Association, Owners and their respective legal representatives, heirs,

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successors and assigns for a term of twenty-five (25) years from the date of the recording of this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless at least one (1) year prior to the termination of such twenty-five (25) year term or any such ten (10) year extension thereof there is recorded amongst the Public Records of the County, an instrument signed by the then Owners owning two-thirds (2/3) of the Lots and all Institutional Mortgagees in existence one (1) year prior to the termination of such term or extension agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the twenty-five (25) year term or the ten (10) year extension during which such instrument of termination is recorded.

ARTICLE XV

GENERAL PROVISIONS

15.1 NOTICES. Any notices or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid to: (i) any Owner, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing; (ii) the Association at such address as the Association shall hereafter notify Developer and all Owners of in writing; and (iii) Developer at such address or addresses as Developer shall hereafter notify the Association of in writing, any such notice to the Association of a change in Developer's address being deemed notice to the Owners.

15.2 CAPTIONS. Article and Section captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms and provisions of this Declaration.

15.3 SEVERABILITY. In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, such determination shall in no way affect any of the other provisions hereof which shall remain in full force and effect. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or a reduction in the term of the same by reason of the rule of law known as the "rule against perpetuities" shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

15.4 MANAGEMENT. The Association, pursuant to resolution duly adopted by its Board of Directors, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board of Directors from time to time.

15.5 ATTORNEYS' FEES. Any provision herein for the collection or recovery of attorneys' fees shall be deemed to include, but not be limited, court costs and attorneys' fees for the attorneys' services at all trial and appellate levels and post judgment proceedings and, unless the context clearly indicates a contrary intention, whether or not suit is instituted.

15.6 INTERPRETATION. In the event of a conflict between the provisions of this Declaration and the Articles and Bylaws, the provisions of this Declaration shall control. In the event of a conflict between this Declaration and the Master Declaration, the Master Declaration shall control.

15.7 RULE AGAINST PERPETUITIES. In the event any court should hereafter determine any provisions as originally drafted herein are in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, "measuring lives" shall be those of the signatories hereof.

15.8 SECURITY SYSTEM. The Developer is not obligated to install a security system. The Developer may elect to install such a security system. In that event, the Association shall provide and pay for monitor service for such security system as may be installed by the Developer. Owners shall be responsible for maintenance and repair of any security system equipment located on their Lot and the Association shall be responsible for maintenance and repair of security system equipment located on Common Areas. An easement to the Association for access and maintenance or repair of security system equipment is hereby established. No Owner may change, alter or replace any security system equipment that is part of the system for which the Association arranges and pays for monitoring without written approval of a majority of the Association's Board of Directors. If an Owner fails to keep security system equipment in good maintenance and repair, the Association may, but need not, effect any needed maintenance or repair. The Association and its directors, agents, employees, and assigns shall not be liable to Owners for any action or inaction in connection with or arising from the security system or security system equipment, including, but not limited to, its own negligence or delay in maintenance or repairs.

15.9 CONTEXT. Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereto and vice versa.

15.10 COMPREHENSIVE SERVICES AGREEMENT. Each Owner, by accepting a deed to any portion of the Land, acknowledges and agrees that Developer is in the process of negotiating and finalizing a comprehensive services and water use agreement to be entered into by and among the Lely Community Development District ("Lely CDD"), the Lely Resort Master Property Owner's Association, other neighborhood associations within Lely Resort, the Cottesmore Homeowners' Association, and/or future associations formed for the purpose of administering and assessing members under such agreement ("Comprehensive Services Agreement"). Each Owner shall be bound by all the terms and conditions of such Comprehensive Services Agreement, and Developer shall have the right to encumber the Land with such Comprehensive Services Agreement and/or other documentation evidencing the terms and conditions thereof. Further, each Owner shall cooperate with Developer in finalizing such Comprehensive Services Agreement and shall execute any documentation necessary to accomplish the same.

IN WITNESS WHEREOF, this Declaration of Covenants, Restrictions and Easements for Cottessmore at Lely Resort has been signed by Developer and the Association the day and year first above set forth.

WITNESSES:

Sandra Houldsworth
Witness #1
Print Name: Sandra Houldsworth

Blaine Spivey
Witness #2
Print Name: BLAINE SPIVEY

DEVELOPER:

STOCK DEVELOPMENT, LLC, a
Florida limited liability company

By: Brad Black
Brad Black, Vice President

ASSOCIATION:

Sandra Houldsworth
Witness #1
Print Name: Sandra Houldsworth

Valerie Schechinger
Witness #2
Print Name: Valerie Schechinger

**COTTESMORE HOMEOWNERS
ASSOCIATION, INC.**, a Florida not-for-
profit corporation

By: Blaine Spivey
Blaine Spivey, President

[NOTARY BLOCKS APPEAR ON FOLLOWING PAGE]

STATE OF FLORIDA
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Brad Black, as Vice President of STOCK DEVELOPMENT, LLC, a Florida limited liability company, who is personally known to me

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of February, 2006.



Francine J Homchak
My Commission DD332984
Expires June 27 2008

(SEAL)

Francine J. Homchak

Notary Public Signature

Printed Name: FRANCINE J. HOMCHAKMy Commission expires: 6/27/08STATE OF FLORIDA
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Blaine Spivey as President of Cottessmore Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 15th day of February, 2006.



Francine J Homchak
My Commission DD332984
Expires June 27 2008

(SEAL)

Francine J. Homchak

Notary Public Signature

Printed Name: FRANCINE J. HOMCHAKMy Commission expires: 6/27/08

MORTGAGEE JOINDER AND CONSENT

AmSouth Bank, an Alabama banking corporation, mortgagee of the property legally described in Exhibit "A" hereto by the terms of that certain Mortgage, Security Agreement and Assignment of Rents executed by Stock Development, LLC, a Florida limited liability company, dated April 17, 2002, and recorded April 22, 2002, in Official Records Book 3022, at Page 2108; Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4095, Public Records of Lee County, Florida, as modified by First Loan Modification Agreement, Notice of Future Advance Receipt and Spreader Agreement dated September 22, 2003, recorded in Official Records Book 3405, Page 846, Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4124, Public Records of Lee County, Florida; as modified by Second Loan Modification Agreement and Notice of Future Advance recorded in Official Records Book 3652, Page 3056, Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4135, Public Records of Lee County, Florida, as modified by Third Loan Modification Agreement and Notice of Future Advance Receipt dated November 4, 2004, and recorded in Official Records Book 3683, Page 2751, Public Records of Collier County, Florida, and as recorded in Official Records Book 4498, Page 4141, Public Records of Lee County, Florida, and as again modified by Fourth Loan Modification Agreement and Notice of Future Advance Receipt dated July 26, 2005, and recorded in Official Records Book 3854, Page 46, as also recorded in Official Records Book 4819, Page 1600, Public Records of Lee County, Florida; and as further modified by Fifth Loan Modification Agreement and Notice of Future Advance Receipt and Mortgage Spreader Agreement dated December 9, 2005, and recorded in Official Records Book 3947, Page 452, Public Records of Collier County, Florida, and also recorded under Instrument No. 2005000172194, Public Records of Lee County, Florida; does hereby consent to and join in the submission of the foregoing property to all of the duties, obligations, responsibilities and encumbrances as provided for under the Declaration of Covenants, Restrictions and Easements, and all exhibits thereto, for Cottesmore at Lely Resort.

Signed this 23rd day of February, 2006.

IN THE PRESENCE OF:

Sandra H. Van Horn
 Witness #1
 Print Name: **SANDRA H. VAN HORN**

David Hopkins
 Witness #2
 Print Name: **DAVID HOPKINS**

AmSOUTH BANK,
 an Alabama banking corporation

By: Thomas E. Finlay
 Its: Vice President

[NOTARY BLOCK APPEARS ON FOLLOWING PAGE]

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 23rd day of February, 2006, by **Thomas E. Finlay**, as Vice President of AmSouth Bank, an Alabama banking corporation, who ☒ is personally known to me or ☐ has produced _____ as identification.

(SEAL)

Sandra H. Whidden

Notary Public Signature

Printed Name: _____

My Commission expires: _____



Sandra H. Whidden

My Commission DD211362

Expires August 09, 2007

EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN THE EAST HALF OF SECTION 21 AND THE WEST HALF OF SECTION 22, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT "A" LELY RESORT PHASE TWO AS RECORDED IN PLAT BOOK 18, PAGES 43-45 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 26 EAST; THENCE NORTH $85^{\circ}56'57''$ WEST ALONG A WESTERLY PROJECTION OF THE SOUTHERN BOUNDARY LINE OF AFORESAID TRACT "A" LELY RESORT PHASE TWO A DISTANCE OF 160.00 FEET TO A POINT ON THE EASTERN BOUNDARY LINE OF TRACT GC-7 LELY RESORT PHASE FOUR AS RECORDED IN PLAT BOOK 38, PAGES 56-66 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA SAID POINT ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF GRAND LELY DRIVE (TRACT "A") OF THE PROPOSED PLAT OF GRAND LELY DRIVE AND LELY CULTURAL PARKWAY; THENCE SOUTH $04^{\circ}03'03''$ WEST ALONG SAID EASTERN BOUNDARY LINE, A DISTANCE OF 116.14 FEET TO THE POINT OF BEGINNING AND THE SOUTHEAST CORNER OF SAID TRACT GC-7; THENCE DEPARTING SAID EASTERN BOUNDARY LINE OF TRACT GC-7, CONTINUE SOUTH $04^{\circ}03'03''$ WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 3.86 FEET TO THE NORTHWEST CORNER OF TRACT "A" OF THE PROPOSED PLAT OF GRAND LELY DRIVE, PHASE TWO; THENCE FOLLOWING ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID TRACT "A" THE FOLLOWING THREE COURSES: SOUTH $04^{\circ}03'03''$ WEST A DISTANCE OF 623.86 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY, 743.94 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 1374.99 FEET, THROUGH A CENTRAL ANGLE OF $31^{\circ}00'00''$ AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH $11^{\circ}26'57''$ EAST, 734.90 FEET TO A POINT OF TANGENCY; THENCE SOUTH $26^{\circ}56'57''$ EAST A DISTANCE OF 618.03 FEET TO THE SOUTHWEST CORNER OF SAID TRACT "A" AND THE NORTHWEST CORNER OF TRACT "R", LELY RESORT PHASE FOUR AS RECORDED IN PLAT BOOK 38, PAGES 56-66, SAID POINT BEING A POINT OF CURVATURE; THENCE SOUTHERLY, 99.31 FEET ALONG THE WESTERN BOUNDARY OF SAID TRACT "R" AND ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 914.71 FEET, THROUGH A CENTRAL ANGLE OF $06^{\circ}13'13''$ AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH $23^{\circ}50'20''$ EAST, 99.26 FEET TO THE NORTHEAST CORNER OF AFOREMENTIONED TRACT GC-7; THENCE DEPARTING SAID WESTERN BOUNDARY OF TRACT "R", NON-TANGENTIALLY, FOLLOWING ALONG THE EASTERN BOUNDARY OF TRACT GC-7 THE FOLLOWING TWELVE COURSES: NORTH $86^{\circ}42'00''$ WEST A DISTANCE OF 280.13 FEET TO A POINT OF CURVATURE; THENCE WESTERLY, 77.85 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 188.00 FEET, THROUGH A CENTRAL ANGLE OF $23^{\circ}43'36''$ AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH $74^{\circ}50'12''$ WEST, 77.30 FEET TO A POINT OF REVERSE CURVE; THENCE WESTERLY, 98.64 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 262.00 FEET, THROUGH A CENTRAL ANGLE OF $21^{\circ}34'13''$ AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH $73^{\circ}45'31''$ WEST, 98.05 FEET TO A POINT OF REVERSE CURVE; THENCE WESTERLY, 139.60 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 188.00 FEET, THROUGH A CENTRAL ANGLE OF $42^{\circ}32'37''$ AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH $63^{\circ}16'19''$ WEST, 136.41 FEET TO A POINT OF TANGENCY; THENCE NORTH $42^{\circ}00'00''$ WEST A DISTANCE OF 77.85 FEET TO A POINT OF CURVATURE; THENCE WESTERLY, 191.35 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 212.00 FEET, THROUGH A CENTRAL ANGLE OF $51^{\circ}42'55''$ AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH $67^{\circ}51'27''$ WEST, 184.92 FEET; THENCE ALONG A NON-TANGENTIAL LINE NORTH $11^{\circ}43'00''$ WEST A DISTANCE OF 465.29 FEET; THENCE NORTH $02^{\circ}28'00''$ WEST A DISTANCE OF 551.51 FEET; THENCE NORTH $08^{\circ}39'00''$ EAST A DISTANCE OF 441.92 FEET; THENCE NORTH $18^{\circ}19'00''$ EAST A DISTANCE OF 150.39 FEET; THENCE NORTH $64^{\circ}27'39''$ EAST A DISTANCE OF 354.53 FEET; THENCE SOUTH $82^{\circ}24'09''$ EAST A DISTANCE OF 56.71 FEET TO THE POINT OF BEGINNING.

CONTAINING THEREIN 922,441 SQUARE FEET OR 21.176 ACRES, MORE OR LESS.