

working capital of the Association. The amount of the contribution shall be as determined by the Declarant from time to time. This contribution shall be considered a Specific Assessment as described in Section 6 of this Article.

**Section 18. Homesteads.** By acceptance of a conveyance of title to any Lot, each Owner is deemed to acknowledge conclusively that (i) the assessments established by this Article are for the improvement and maintenance of any homestead thereon; (ii) the Association's lien for such assessments has priority over any such homestead; and (iii) such Owners irrevocably waive the benefit of any homestead exemption otherwise available with respect to all amounts validly secured by such lien.

**Section 19. Exemption of McInturf from Assessments.** Notwithstanding anything herein to the contrary, McInturf shall be exempt from paying any and all Assessments established by this Article during the period of time that McInturf owns any of the Lots subject to this Declaration unless and until such time that all of the rights, powers and privileges of Declarant as the "Declarant" under this Declaration are assigned to McInturf by the recording of an Assignment of Declarant's Rights in the public records of Hillsborough County, Florida.

## **ARTICLE IX**

### **PARTY WALLS, ROOFS, AND UTILITY CONNECTIONS**

**Section 1. General Rules of Law to Apply.** Each wall built as a part of any residential structure within the Submitted Property and placed on the dividing line between Lots and the roofs between Lots for attached units are considered to be a party wall or roof as the case may be. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage caused by negligence or willful acts or commissions apply to the ownership, maintenance and use of such walls and roofs.

**Section 2. Use of Party Walls.** Each Owner shall maintain his or her own Lot, including all boundary walls and fences (if any), walkways and balconies, in good repair. Those walls, structures, or fences, which may be constructed between two adjoining Lots and are to be shared by the Owners of said adjoining Lots are to be known as and are hereby declared to be "Party Walls". The centerline of a Party Wall is the common boundary of the adjoining Lot. The cost of maintaining each side of a Party Wall shall be borne by the Lot Owner using said side, except as otherwise provided herein. Each adjoining owner of a Party Wall, his heirs, successors, and assigns shall have the right to use same jointly with the other party to said Wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would

cause an aperture, hole, conduit, break or other displacement of the original concrete or core board forming said Party Wall. The cost of reasonable repair, maintenance and replacement of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Maintenance of Party Walls.** Each Owner shall have the right to full use of a Party Wall subject to the limitation that such use shall not infringe on the rights of the Owner of the adjacent Lot or in any manner impair the value of said wall. Each Owner shall have the right and duty to maintain and to perform superficial repairs to that portion of a Party Wall that faces such Owner's Lot. The cost of said maintenance and superficial repairs shall be borne solely by said Owner. In the event of damage or destruction of the Party Wall from any cause whatsoever, other than negligence or willful misconduct of one of the adjacent Lot owners, the Owners of the adjacent Lots shall, at their joint expense, repair and rebuild said wall within 30 days, unless extended by the Board. In the event it is necessary to repair or rebuild a Party Wall, the Owners shall agree on the cost of such repairs or rebuilding, and shall agree on the person or entity to perform such repairs, provided however, all such repairs must be performed by a qualified contractor. If the Owners cannot agree on the cost of such repairs or on the person or entity to perform such repairs, each Owner shall choose a member of the Board to act as their arbiter. The Board members so chosen shall agree upon and choose a third Board member to act as an additional arbiter, All of the said Board members shall thereafter choose the person or entity to perform the repairs and shall assess the costs of such repairs in equal shares to the Owners. Whenever any such wall or any part thereof shall be rebuilt it shall be erected in the same manner and be of the same size and of the same or similar materials and of like quality and color and at the same location where it was initially constructed. Provided, that if such maintenance, repair or construction is brought about solely by the neglect or the willful misconduct of one Lot Owner, any expense incidental thereto shall be borne solely by such wrongdoer. If the Lot Owner shall refuse to repair or reconstruct the wall within 30 days, unless extended by the Board, and to pay his share, all or part of such cost in the case of negligence or willful misconduct, the Association may have such wall repaired or reconstructed and shall be entitled to a lien on the Lot of the Owner so failing to pay for the amount of such defaulting Owners share of the repair or replacement. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent lots to effect necessary repairs and reconstruction.

**Section 4. Destruction by Fire or Other Casualty.** If a party wall or roof is destroyed or damaged by fire or other casualty and is not covered by insurance, any Owner who has used the wall or roof may restore, it; and, if other Owners thereafter

make use of the wall or roof, they shall contribute to the cost of restoration in proportion to their use, all without prejudice to the right of any such Owner to call for larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

**Section 5. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes any party wall or roof to be exposed to the elements, or to infestation by termites or other injurious agencies, shall bear the whole cost of furnishing the necessary protection against such elements or agencies and of repairing all resulting damage.

**Section 6. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article is appurtenant to the Lot affected and shall pass to and bind each such Owner's successors in title.

**Section 7. Utility Connections.** All Lots are served by a sanitary sewer system and public water system. No septic tank or well of any kind may be installed on any Lot. All utilities, including, but not limited to, telephone, cable tv, electric, water, sewer, etc., have been or will be installed underground and within, below or upon the property (including within, below or upon the dwelling on each Lot). Repairs and maintenance of any utilities serving a particular dwelling may affect the dwellings of adjacent Lot Owners. On the date hereof, Declarant is uncertain whether a master meter loop water system or a master meter with individual meters for each Lot will be installed. In the event a loop system is installed, water shall be included in the monthly assessments, and all expenses relating thereto shall be borne by the Association and allocated to each Owner equally. However, in the event a master meter with individual meters is installed, all expenses related thereto shall be secured individually from the Owner of each respective Lot, and the Association shall invoice each Owner monthly for such expenses. Said expenses will include monitoring devices for allocation of fees and costs for water and sewer. Such costs may or may not include those imposed by governmental agencies pertaining to such sub-metering, such as water testing and reporting requirements. Metering provided by the Declarant and the Association does not constitute a "utility" as defined by law. Should any owner become delinquent in the payment of any such water or sewer fees charged to the Owner's respective Lot, the Association has the right to secure payment of such delinquent fees through a lien upon the Lot against which each delinquent charge is made, and such lien will continue until all charges and costs are paid in full. The Declarant and the Association shall have the right to contract with third parties for the billing, collection, testing and inspection of water and sewer activities if required. Declarant and Association also reserve the right to adjust the Association budget at any time to accommodate the method of installation and billing

thereof. Any increase in the Association budget relative to water/sewer charges shall not be subject to the 15% maximum increase referenced in Article VIII, Section 5 hereof.

## ARTICLE X SURFACE WATER

**Section 1. Surface Water.** The Association shall control and maintain all storm water and surface water systems within the Submitted Property.

(a) The Association shall maintain, as part of the Common Area, drainage structures for the properties and comply with conditions of the permits from the Southwest Florida Water Management District (hereafter, "SWFWMD" or the "District") for the Surface Water Management System. The Association, shall, when requested by Declarant, accept transfer of the SWFWMD permit for the development. The conditions may include monitoring and record keeping schedules, and maintenance. The Association is responsible for maintenance, repair and replacement of the Common Area and Surface Water Management System in perpetuity. Notwithstanding any other provisions of this Declaration to the contrary, the Association shall allocate sufficient funds in its annual budget for monitoring and maintenance of the wetland mitigation areas, if any, each year until the District determines that the mitigation area(s) is successful in accordance with the Environmental Resource Permit for the Submitted Property.

(b) The Association shall maintain, as part of the Common Area, any areas designated on the Submitted Property as mitigation areas for wetlands. The Association shall comply with any and all applicable permit conditions for such areas, including monitoring and maintenance of wetland vegetation, and the replanting of wetland vegetation to meet required survival rates. To the extent that SWFWMD requires signage in or near preservation areas, the Association shall maintain these as part of the Common Area. The Association shall comply with all governmental regulations including, but not limited to, those of SWFWMD. The Association acknowledges and agrees that the District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System.

(c) It shall be the responsibility of each property Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, F.A.C., approved and on file with SWFWMD, all other governmental