

**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**CHELSEA OAKS**

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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**CHELSEA OAKS**

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHELSEA OAKS is made this \_\_\_\_ day of \_\_\_\_\_, 2006, by Highland Cassidy, LLC, a Florida Limited Liability Corporation whose address is 250 Avenue K, S.W., Winter Haven, Florida 33880 ("Declarant").

WITNESSETH:

WHEREAS, Declarant holds title to the real property described in Article II of this Declaration; and

WHEREAS, Declarant recorded the DECLARATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC. on or about February 3, 2006 in Official Records Book 6621, Page 1461 of the Public Records of Polk County, Florida, and amended by that certain FIRST AMENDMENT TO THE DECLARATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC. recorded in Official Records Book 6754, Page 960 and Book of the aforementioned Public Records, and that certain SECOND AMENDMENT TO THE DECLARATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., recorded on or about June 27, 2006 (collectively, the "Original Declaration"); and

WHEREAS, Declarant desires to amend and restate the Original Declaration in its entirety; and

WHEREAS, Declarant intends to develop the real property as a residential single family attached home (townhome) community with various common properties for the benefit of the Properties, as hereafter defined; and

WHEREAS, Declarant has deemed it desirable for the maintenance and preservation of property values and amenities established pursuant to this Declaration to establish CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation (the "Association") and to delegate and assign certain powers and duties of ownership, operation, administration, maintenance and repair of certain restrictions and easements contained herein and the collection and

disbursement of the assessments and charges hereinafter provided to the Association.

NOW, THEREFORE, Declarant hereby declares that the Original Declaration is hereby amended and restated in its entirety, and that the Original Declaration as previously recorded and amended by the First and Second Amendments thereto is of no effect whatsoever, and that all of the real property described in Article II is and shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property. Said easements, covenants, conditions, restrictions, reservations, liens and charges shall run with the real property described in Article II, shall be binding upon all parties having and/or acquiring any right, title or interest in the real property described therein or in any part thereof, and shall inure to the benefit of each and every person or entity, from time to time, owning or holding an interest in said real property.

## **ARTICLE I. DEFINITIONS**

The following words and terms when used in this Declaration or any Supplemental Declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

- A. "Architectural Review Committee" or ARC shall refer to the committee established by the Board and described in Article VII hereof.
- B. "Articles" and "By-Laws" shall mean the Articles of Incorporation and the By-Laws of the Association as they may exist from time to time.
- C. "Association" shall mean CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation, its successors and assigns.
- D. "Board" shall mean the Board of Directors of the Association.
- E. "Builder" shall mean a construction company, contractor or other individual or entity holding title to a Lot for the purpose of resale in the ordinary course of business.
- F. "Cluster Building" or "Building" shall refer to the structure comprised of a group of townhome dwellings which are attached to each other and share common walls, roofs, etc.
- G. "Common Expenses" shall mean the actual and estimated expenditures, including reasonable reserves, for maintenance, operation and other services required or authorized to be performed by the Association with respect to Common Property, Open Spaces, Surface Water Management Systems, Water Management Tracts or Public areas, all as may be found to be reasonably necessary by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

- H. "Common Property" or "Common Area" shall mean and refer to all real and personal property from time to time intended to be owned, operated and maintained by the Association and devoted to the use and enjoyment of all Members of the Association, all at Common Expense. Common Property shall include, but not be limited to, easement areas which are held by the Association. Common Property shall not include any Property not conveyed to the Association by Declarant, regardless of any designation as such on any plat, marketing materials, or other documents.
- I. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board and the Architectural Review Committee (as defined in Article VII, Section 2).
- J. "Declarant" shall mean Highland Cassidy, LLC, a Florida Limited Liability Corporation, and its successors and assigns who take title to any portion of the Properties for the purpose of development and sale, but only if designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.
- K. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and restrictions of Chelsea Oaks and include the same as it may, from time to time, be amended.
- L. "Dwelling" shall mean and refer to the individual townhome building constructed on each Lot and any extensions of said structure (i.e., garages, driveways, porches, etc.).
- M. "Institutional Lender" shall mean and refer to the owner and holder of a Mortgage encumbering a Lot, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government, private or public pension fund, Veteran's Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust or a lender generally recognized in the community as an institutional lender.
- N. "Lot" shall mean any parcel of land shown upon any recorded subdivision map or plat of the Properties upon which in the future will be located an attached or detached single-family residential dwelling.
- O. "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof.
- P. "Mortgage" shall mean a permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.
- Q. "Plat" shall mean and refer to the plat of CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., as recorded in Plat Book 134, Page(s) 36, Public Records of Polk County, Florida, and any additional plats of properties annexed into the Association.

- R. "Owner" shall mean and refer to the record owner of fee simple title to any Lot located within the Property. Owner shall not mean or refer to the holder of a Mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; not shall the term "Owner" mean or refer to any lessee or tenant of an Owner.
- S. "Properties" or "Property" shall mean and include the real property described in Exhibit "A" attached hereto and, when added in accordance with the terms and conditions hereof, shall also include real property which is in the future subjected to this Declaration under the provisions of Article II hereof.
- T. "Dwelling" shall mean and refer to the building structure erected upon a Lot and any extensions of said structure (i.e., garages, driveways, porches, etc.).
- U. "Supplemental Declaration" shall mean any supplement, amendment or modification of this Declaration.
- V. "Surface Water Management System" shall mean that portion of the Open Space consisting of swales, inlets, culverts, retention ponds, lakes, water management tracts, outfalls, storm drains and the like, and all connecting pipes and easements, used in connection with the retention, drainage and control of surface water.

## **ARTICLE II. PROPERTY SUBJECT TO DECLARATION**

**Section 1. Property.** The real property which is subject to this Declaration is all of the real property described in Exhibit "A" attached hereto and made a part hereof by reference and any additional property annexed as set forth below.

### **Section 2. Annexation and Withdrawal.**

- A. Until December 31, 2009, the Declarant may, without the consent or joinder of the Owners or any other person or entity, (i) annex additional real property to the Properties or (ii) when necessary or desirable, withdraw from the provisions of this Declaration any of the Properties which continue to be owned by the Declarant and which have not been designated or dedicated as Common Property. Annexations or withdrawals under this Subsection A shall be accomplished by filing a Supplemental Declaration describing the real property to be annexed or withdrawn, as the case may be, and shall become effective when such Supplemental Declaration is recorded in the Public Records of Polk County, Florida. Declarant shall have the unilateral right to transfer to any other person or entity the right, privilege, and option to annex additional Property which is herein reserved to Declarant.
- B. Subject to the consent of the Owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the

Association. Such annexation shall require the affirmative vote of Voting Members representing a majority of the Class A and Class B votes present at a meeting duly called in accordance with the By-Laws and shall require the written consent of the Declarant for so long as the Declarant owns any Property subject to this Declaration. The annexation of land under the Subsection B shall be accomplished by the recordation in the Public Records of Polk County, Florida of a Supplemental Declaration describing the Property being annexed and signed by the President and Secretary of the Association and by the Owner of the Property being annexed. Any such annexation shall be effective upon recording unless otherwise provided therein.

- C. No provision of this Declaration shall be construed to require Declarant or any other person or entity to annex or withdraw any real property to or from the scheme of this Declaration.
- D. The Declarant shall not be required to follow any predetermined order of improvement and development within the Properties.

**Section 3. Acquisition of Additional Common Property.** Declarant may convey to the Association additional real property, improved or unimproved, which is, or which may become pursuant to Section 2.A. above, subject to this declaration, which real property, upon conveyance or dedication to the Association, shall be accepted by the Association as Common Property and thereafter shall be maintained by the Association at the Association's expense for the benefit of all its Members. In such event, the Association and all Members shall have easements to use and enjoy such Common Property.

**Section 4. Further Restrictive Covenants.** The Declarant may record further restrictive covenants, Declarations of Condominium or Cooperative, or Declaration of Covenants, Conditions and restrictions pertaining to homeowner's associations, or plats as to any of the Properties possessed by the Declarant.

**Section 5. Amendment.** This Article shall not be amended without the written consent of the Declarant for so long as the Declarant owns any Property which is subject to this Declaration.

### **ARTICLE III. ASSOCIATION**

**Section 1. Membership.** Every Owner, including the Declarant shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing ownership interest, each Owner accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provision of this Declaration, the Articles of Incorporation (attached hereto as Exhibit "B"), the By-Laws (attached hereto as Exhibit "C") and



other rules and regulations of the Association. In addition to the foregoing, the family guests, invitees and tenants of said Owners shall, while in or on the Property, abide and be bound by the provisions of this Declaration, the Articles of Incorporation, the By-Laws and other rules and regulations of the Association.

## ***Section 2. Allocation of Voting Rights.***

A. The classes of voting shall be as follows:

Class A. Class A Members shall be all Owners, with the exception of Declarant and any builder, for so long as Declarant retains Class "B" voting rights. Each Class "A" Member shall have one (1) vote for each Lot owned by that Member.

Class B. The Class B Member shall be the Declarant, or its specifically designated (in writing) successor. The Class B Member shall be allocated as a number of votes equal to nine (9) votes for each Lot owned by it. The Class "B" Member shall be entitled to cast all of its votes in any vote or election held by the Association. Declarant shall retain its Class "B" voting status and rights for any Lots transferred to a Builder as defined herein. In such cases, Declarant's Class "B" votes shall not be converted to Class "A" until such time as title is transferred from the Builder to a Non-Builder Owner. Class B membership shall cease and become converted to Class A membership upon turnover of the Association as set forth in Article IX.

B. When any Property entitling the Owner to Membership in the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same Property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the secretary of the Association of the name of such individual. The vote of each official representative shall be considered to represent the will of all the Owners of that Property. In the circumstance of such common ownership, if the Owner fails to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other (Owner(s)). Upon such notification the Owner may not vote until the Owner(s) appoint their official representative pursuant to this paragraph.

### **Section 3. Change of Membership.**

- A. Change of membership in the Association shall be established by recording in the Public Records of Polk County, Florida, a deed or other instrument conveying record fee title to any Residential Unit or Residential Property. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated.
- B. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

**Section 4. Declarant's Rights to Appoint Directors.** The Declarant shall be entitled to appoint all Members of the Board until turnover as set forth in Article IX.

## **ARTICLE IV. FUNCTIONS OF ASSOCIATION**

**Section 1. Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements there (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep the Common Areas in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. The Association shall not mortgage nor convey the Common Area or any portion thereof without the consent of two-thirds (2/3) of the Owners, however, this provision shall not apply to the Declarant.

**Section 2. Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interest within the Properties conveyed to it by the Declarant.

**Section 3. Powers and Responsibilities.** The Association shall have the following powers and responsibilities:

- A. Maintenance. The Association shall have the following responsibilities and rights with respect to maintenance:
- a. Common Property. The Association shall, at its expense, maintain all Common Property, Parks, Open Space, Surface Water Management Systems, buffer tracts, recreation areas, landscaping, irrigation systems, if any located within or in a reasonable proximity to the Properties where deterioration of any of the described items would adversely affect the appearance of the Properties or the operation of systems appurtenant to Chelsea Oaks. The Association shall adopt standards of maintenance and operation required by this and other subsections within this Section 3 which are consistent with the Community-Wide Standard. The foregoing shall not prevent the Association, while in the control of the Declarant, from contracting with the Declarant or an affiliate of the Declarant for provision of these services.
  - b. Roofs, Exterior, Party Walls, and Landscaping. The Association may provide exterior maintenance upon any dwelling, as more particularly set forth in Article XIII, below which, in the Association's opinion, requires such maintenance because said dwelling is being maintained in a manner inconsistent with the Community-Wide Standard of the Properties. The Association shall notify the Owner in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected the condition with fifteen (15) days after date of said Notice, the Association (after approval of a majority of the Board) may take affirmative steps correct such condition. Said maintenance shall include but not be limited to painting, repairs, replacement and maintenance of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot located in Chelsea Oaks at reasonable hours on any day; provided however, the Association shall have the right of entry without notice if necessary to correct an emergency situation. The Association and/or its representatives may charge a reasonable fee and costs for performing such maintenance. The cost of such maintenance shall be assessed against and be a lien upon the Lot upon which such improvements occur. The foregoing shall not prevent the Declarant from requiring Owners and/or the Association to enter into a binding contract, running with the Owner's Lot(s), with the Declarant or an affiliate of the Declarant for provision of maintenance services to any Lot.
  - c. Easement Property. Maintenance of any real property located within Chelsea Oaks upon which the Association has accepted an easement for said maintenance. The foregoing shall not prevent the Association, while in the control of the Declarant, from contracting with the Declarant or an affiliate of the Declarant for provision of these services.

- d. Pest Control. Insect, pest and aquatic control where necessary or desirable in the judgment of the Association to supplement the service provided by the state and local governments. The Association reserves a perpetual right on, over and under all Properties to dispense herbicides and pesticides and to take other action which in the opinion of the Association is necessary or desirable to control insects and vermin; provided, however, the Association shall not dispense herbicides or pesticides in designated conservation areas within the Property except as reasonably necessary to maintain health and safety conditions for residents of the Property and, in such event, shall use only herbicides or pesticides used or approved by state and local governments for controlling such problems in similar conservation areas and shall use only state licensed or state certified persons to dispense such chemicals. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to provide such services. The foregoing shall not prevent the Association, while in the control of the Declarant, from contracting with the Declarant or an affiliate of the Declarant for provision of these services.
- B. Taking any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Properties or in the Articles or By-Laws.
- C. Conducting business of the Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events.
- D. Establishing and operating the Architectural Review Committee after turnover or in the event that the Association is delegated such purpose by the Declarant.
- E. Adopting, publishing and enforcing such Rules and Regulations as the Board deems necessary.
- F. Lighting of roads, sidewalks, walking and bike paths throughout the Properties as deemed necessary by the Board.
- G. At the sole option and discretion of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.
- H. Constructing improvements on Common Property and easements as may be required to provide the services as authorized in this Article.
- I. Establish use fees and promulgate rules and regulations respecting the use of Common Property and Association facilities by Members and persons other than Members.
- J. Hire professional property management.
- K. All other powers and duties set forth herein.

**Section 4. Conveyance by Association.** The Association may convey lands or easements to the Declarant in connection with any replatting of any portion of the Property upon two-thirds (2/3) vote of the owners, not including the Declarant.

## **ARTICLE V. EASEMENTS**

**Section 1. Appurtenant Easements.** Declarant grants to all Owners (and their guests, lessees and invitees) and to the Association as an appurtenance to and as part of the ownership held by such Owner, but subject to this Declaration, the Articles and By-Laws of the Association and the rules promulgated by the Association, a perpetual use and enjoyment of all Common Property, which Common Property. Such use and enjoyment to be shared in common with the other Owners, their guests, lessees, and invitees as well as the guests, lessees and invitees of the Declarant. Provided, with respect to the Common Property, the Declarant reserves the right (but not the obligation) to maintain and use all rights of way associated therewith, and to maintain and place Declarant's signs thereon. Each Owner shall have a joint and reciprocal maintenance, repair and reconstruction of any party wall or for the maintenance, repair and reconstruction of any portion of an attached dwelling when access across each Lot upon which the cluster dwelling is located for the installation, maintenance and use of conduits, plumbing, irrigation equipment, wiring, and other facilities for furnishing utility services and irrigation to each dwelling or Lot.

**Section 2. Utility Easements.** The Declarant reserves to itself (and its successors or assigns) for so long as the Declarant owns any of the Properties, and the Association thereafter, the non-exclusive right to grant easements to any private company, public or private utility or governmental authority providing utility and other services within the Properties and the Common Property upon, over, under and across the Properties, except that with respect to cable service, Declarant may grant exclusive rights and easements to a cable service provider of its choice. Said easements shall only be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, fiber optics lines, power lines, telephone service, gas lines, siphons, valves, gates, pipelines, cable television service, alarm systems and all machinery and apparatus appurtenant thereof to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Properties and Common Property. All such easements to be of a size, width and location as Declarant (or the Association, if the Association owns the Common Property), in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Properties.

Declarant hereby places the Association and all Members on notice that, as a condition of approving and permitting the Declarant's development of the Property and

construction of Dwellings thereon, a county, city, or other government body or utility may require the use of government-supplied reclaimed water for irrigation on the Property at some future time. As of the date of this Declaration, there is no connection to such a system, and there is no requirement that the Property's irrigation system be connected thereto. In the event that any government body requires that irrigation on the Property utilize such a system, the Association shall bear all costs associated with connection to such a system. Such costs may include, but are not limited to, excavation, equipment, labor, installation, and modification of the existing irrigation system in any manner as may be required by the city, county, or any other government body. Neither the Declarant nor its Successors or assigns shall be liable to the Association, a Member, or any other party as a result of costs incurred adapting the irrigation system to use reclaimed water.

**Section 3. Declarant Easements.** Notwithstanding the easements granted to the Association, the Declarant hereby reserves to itself, its successors and assigns, and to such other persons as Declarant may from time to time designate in writing, a perpetual, privilege and right in and to, over, under, on and across the Common Property for ingress and egress as required by its officers, directors, employees, agents, independent contractors, invitees and designees; provided, however, that such access and use does not unnecessarily interfere with the reasonable use and enjoyment of these Properties and facilities by the Association and Owners. Declarant reserves the right to impose further restrictions and to grant to dedicate additional easements granted by Declarant shall not structurally weaken any improvements or unreasonably interfere with the enjoyment of the Properties. Declarant reserves for itself, its successors and assigns, an exclusive easement for the installation and maintenance of security and television cables and wire within the rights-of-way, Common Property, and easement areas referred to hereinabove.

Declarant hereby places the Association and all Members on notice that, as a condition of approving and permitting the Declarant's development of the Property and construction of Dwellings thereon, a county, city, or other government body or utility may require the use of government-supplied reclaimed water for irrigation on the Property at some future time. As of the date of this Declaration, there is no connection to such a system, and there is no requirement that the Property's irrigation system be connected thereto. In the event that any government body requires that irrigation on the Property utilize such a system, the Association shall bear all costs associated with connection to such a system. Such costs may include, but are not limited to, excavation, equipment, labor, installation, and modification of the existing irrigation system in any manner as may be required by the city, county, or any other government body. Neither the Declarant nor its Successors or assigns shall be liable to the Association, a Member, or any other party as a result of costs incurred adapting the irrigation system to use reclaimed water.

**Section 4. Service Easements.** Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail

carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Declarant, its successors or assigns to service the Properties and to such other persons as the Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Common Property for the purposes of performing their authorized services and investigations.

**Section 5. Right of Entry.** The Association shall have the right, but not the obligation, to enter onto any Lot or dwelling in case of emergency, or to perform functions related to safety or security which right may be exercised by the Board, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. The Association and/or its representative will maintain at all times, a master key for each unit in Chelsea Oaks. No lock on any entry door can be changed without prior consent by the Association.

**Section 6. Easements of Encroachment.** There shall be reciprocal appurtenant easements of encroachment as between each Lot and dwelling and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots and/or Properties, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

**Section 7. Drainage Easements.** Drainage flow shall not be obstructed or diverted from drainage easements. The Association may, but shall not be required to, cut drainways for surface water whenever such action may appear to the Association to be necessary to maintain reasonable standards of health, safety and appearance. These easements include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or to take any other action reasonably necessary to install utilities and to maintain reasonable standards of health and appearance but shall not include the right to disturb any improvements erected within the Properties which are not located within the specific easement are designated on the plat or in this Declaration. Except as provided herein or required by a governmental authority, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. The Association will have the sole control over elevations and slopes within drainage easements and no Owner may alter any such elevations except upon written consent of the Association.

**Section 8. Conservation Easements.** The subdivision is also subject to a conservation easement in favor of SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT recorded in October 5, 2005 Official Records Book 6427, Page 1341, of the public records of Polk County, Florida, (hereafter, "Conservation Easement"). The purpose of the Conservation Easement is to assure that the easement property will be retained forever in its existing natural condition and to prevent any use that will impair or interfere with its environmental value. Any activity on or use inconsistent with the purpose of the Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- A. Constructing or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above ground;
- B. Dumping or placing soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
- C. Removing or destroying trees, shrubs, or other vegetation, except for removal of nuisance or exotic vegetation in accordance with a plan approved by the Southwest Florida Water Management District;
- D. Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances;
- E. Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition;
- F. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- G. Acts or uses detrimental to such retention of land or water areas; and
- H. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

**Section 9. Ingress and Egress Easements.** If ingress or egress to any Lot is through the Common Area, all easements in the Common Area shall be subject to any such ingress or egress easement of the Owner of such Lot(s).



**Section 10. Extent of Easements.** The rights and easements of enjoyment created in this Article V shall be subject to the following:

- A. The right of the Declarant or the Association, in accordance with its By-Laws, to borrow money from any lender for the purpose of improving and/or maintaining the Parks, Surface Management Systems and Common Property and providing services authorized herein;
- B. The right of the Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.
- C. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility that may be situated on Common Property.
- D. The right of Declarant or the Association to place (and remove after notice) any reasonable restrictions upon any roadways owned by them, including, but not limited to, speed bumps or access gates. The fact that such restrictions on the use of such roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Properties shall not make such restrictions unreasonable.

## **ARTICLE VI. ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligations of Assessments.** The Declarant covenants, and each owner of any Lot shall be acceptance of a deed therefore, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association: (1) Annual Assessments, (2) Special Assessments and (3) individual assessments collected from time to time as hereinafter provided. The Annual and Special Assessments together with such interest thereon and cost of collections provided herein shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment, together with such interest was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Lot, all of such Co-Owners shall be jointly and severally liable for the entire amount of the assessment.

The liability of assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the Property against which the

assessment was made. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any inaction or action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

**Section 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association may be used for the improvement, maintenance, enhancement and operation of the Surface Water Management Systems and Common Property and to provide services which the Association is authorized or required to provide including, but not limited to, the payment of taxes and insurance thereon, construction, repair or replacement of improvements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized or required functions.

**Section 3. Annual Assessments.** It shall be the duty of the Board, at least thirty (30) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include reserve funds as may be determined to be necessary by the Board.

The annual assessment to be levied for the coming year against each Lot subject to assessment as set forth below shall be computed by dividing the budgeted Common Expenses by the number of Lots subject to this Declaration. Except as provided in Section 5 below, Declarant shall have no responsibility to pay assessments on any Lot. The Board shall cause a copy of the Common Expense budget and Notice of the amount of the Annual Assessment to be levied against each Lot for the following year to be delivered to each Owner fifteen (15) days prior to the due date of the first installment of the assessment.

In the event that the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

**Section 4. Special Assessments.** In addition to the Annual Assessments authorized by Section 3 hereof, the Association may levy in any assessment year a Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

**Section 5. Elective Assessments of Declarant.** Notwithstanding any provision of this Declaration, or the Association's Articles of Incorporation or By-Laws to the contrary, for as long as there is Class B membership in the Association, the Declarant may, at its sole option, with respect to any Lot owned by the Declarant, fund the difference between the amount of assessments levied on all Lots subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. This elective payment may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts of "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

**Section 6. Date of Commencement of Annual Assessments: Due Dates.** The Annual Assessments provided for herein shall commence as to each Lot upon the date of closing.

**Section 7. Initial Assessment.** In addition to annual and special assessments, the Association shall charge and collect an initial one time capital contribution from each original Buyer in the amount of \$350.00 per Dwelling for all initial transfers of title from the Declarant or the Builder and in the amount of \$175.00 per lot for all subsequent transfers to any new Buyer. Said contribution shall be due and collectable at the time of transfer of record title to a Lot.

**Section 8. Effect of Non-Payment of Assessment, Lien.** If any assessment is not paid on the date due, then such assessment shall become delinquent and the entire assessment provided, become due and payable and be a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. In addition, the Association shall have the right to charge a late fee in addition to interest as determined by the Board of Directors. The obligation of the Owner to pay such assessment, however, shall remain a personal obligation. The Association may record a notice of lien for delinquent assessments in the public records and foreclose the lien in the same manner as a mortgage. Upon recording, the lien shall secure the amount of the delinquency stated therein and all unpaid assessments thereafter until satisfied of record.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of the delinquency at the highest rate allowed by Florida law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property and there shall be added to the amount of such assessment all reasonable attorneys' fees and costs incurred in the collection process.

The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

**Section 9. Subordination of the Lien to the Mortgages: Mortgagees' Rights.** The lien of the assessments provided for herein is subordinate to the lien of any first Mortgage given to an Institutional Lender now or hereafter placed upon a Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

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

**Section 10. Exempt Property.** The following Property subject to this Declaration shall be exempted from all assessments, charges and liens created herein: (a) all Properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Property; (c) all Property dedicated for recreational use; (d) Property which is used in the Surface Water Management Systems.

**Section 11. Individual Assessment.** In addition to the Annual Assessments authorized by Section 3 hereof, the Association may levy an individual assessment against any individual Lot to recover any charges or losses incurred by the Association as a result of the actions or inactions of a particular Owner, or resulting from an individual Owner's failure to comply with the terms of this Declaration or the Association's governing documents. Individual assessments shall be payable in such manner and at such times as determined by the Board.

## **ARTICLE VII. ARCHITECTURAL CONTROL**

**Section 1. Enforcement of Architectural Standards.** The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Sections 2 and 3 of this Article VII. This Article shall not be amended without the written consent of the Declarant for so long as the Declarant owns any Property which is subject to this Declaration.

- A. The ARC shall consist of two (2) or more persons designated by the Declarant. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the ARC, whereupon the Board shall appoint three (3) or more persons as the Members of the ARC. For the purposes of this requirement, the Board may act as the ARC.
- B. The ARC shall have the right of specific approval or veto of all architectural, engineering, platting, planning and landscaping aspects of any improvement or development of individual units or buildings as well as the general plan for development of any individual Lot or subdivision, tract or parcel of land within the Properties. All construction and development within the Properties is subject to local governmental control; however, the ARC may, in its sole discretion, impose standards of architectural and landscaping design, or the general plan for development, which standards are greater or more stringent than standards prescribed in applicable building, zoning, and planning or other local governmental codes.
- C. No building, sign, decorative or ornamental sculpture, outside lighting, fence, hedge, wall, walk, dock or other structure or planting shall be constructed, erected, planted or removed until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the ARC. Refusal of approval of plans, specifications or location may be based upon any grounds, including purely aesthetic consideration, which the ARC, in its sole discretion, deems sufficient.
- D. All plans for the construction of any improvements within the Properties shall contain a drainage plan.
- E. As part of the application process, three (3) complete sets of plans and specifications prepared by an architect or other person found to be qualified by the ARC shall be submitted for approval by written application on such form as may be provided or required by the ARC. In the event the information submitted to the ARC is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.
- F. The ARC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons. In approving or disapproving such plans and applications, the ARC shall consider the suitability of the proposed building, improvements, and structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring Property.
- G. Unless specifically excepted by the ARC, all improvements for which approval of the ARC is required under this Declaration shall be completed

within a reasonable time from the date of commencement of said improvements or within the time set by the ARC in the event that the approval is so conditioned.

- H. In the event the ARC shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form or to request additional information reasonably required within thirty (30) days after submission, such plans and specifications shall be deemed approved.
- I. There is specifically reserved unto the ARC the right of entry and inspection upon any Lot for the purpose of determination by the ARC whether there exists any construction of any improvement which violates the terms of any approval by the ARC or the terms of this Declaration or any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Association 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 improvements, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorneys' fees in connection therewith.
- J. The Association shall indemnify and hold harmless the ARC from all costs, expenses and liabilities including attorneys' fees incurred by virtue of any Member of the ARC's service as Member of the ARC.
- K. A majority of the ARC may take any action of the committee and may designate a representative to act for it. In the event of death, disability or resignation of any Member of the ARC, the Board shall designate a successor. The ARC shall be selected by and shall serve at the pleasure of the Board of Directors.
- L. The ARC may adopt such further rules and regulations as it deems necessary to carry out its functions and purposes hereunder.
- M. The ARC has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration. The granting of any waiver for any portion of the Properties may be given or withheld in the ARC's sole discretion and prior grant of a similar waiver shall not impose upon the ARC the duty to grant new and additional requests for such waivers.
- N. The Association, Declarant, ARC or any officer, employee, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval, or to any other Owner, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant, ARC or ARC Members to recover any such damages.
- O. Provided the procedures described in this Article VII are complied with, nothing contained in this Declaration shall prohibit the construction of a screened porch or lanai that otherwise meets the requirements of this

Declaration and the standards of the ARC, and nothing shall prohibit the use of an aluminum or aluminum pan roof that otherwise meets the requirements of this Declaration and the standards of the ARC.

**Section 2. Modifications.** The ARC shall promulgate detailed standards and procedures governing modifications to existing Lots or structures, consistent with local government standards and codes. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of a dwelling or to paint the interior of the dwelling any color desired. In the event that the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within thirty (30) days after submission, the plans shall be deemed approved.

## **ARTICLE VIII. RESTRICTIONS**

### ***Section 1. Compliance by Owners: Initial Rules and Regulations.***

Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations adopted by the Board.

- A. Residential Use. All Lots shall be used for residential dwelling units and related recreational facilities only and for no other purposes. Notwithstanding anything herein to the contrary, Declarant shall be entitled to build and maintain sales models and offices. Uses which do not conform to Polk County zoning ordinances will not be permitted.
- B. Temporary Buildings. No tents, trailers, vans, shacks, tanks, or temporary or accessory buildings or structures shall be erected or permitted to remain on the Properties; however, the foregoing shall not restrict or prevent the construction and maintenance of temporary sales models and such other temporary facilities that are essential to the development, construction and sale of the housing facilities created, provided that such are in compliance with appropriate governmental requirements applicable thereto.
- C. Trash and Garbage. No lumber, metals, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on the Properties except building materials during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open after dark on the day before the pick-up is to be made or on such day and at such place as will be accessible to persons making such pick-up. Such containers may not be placed in the open on the day preceding the pick-up. At all other times, such containers shall be stored so that they cannot be seen from surrounding property. The Architectural Control

Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same.

- D. Burial of Pipe and Tanks. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained on the Properties above the surface of the ground, except hoses. No Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil and other hydrocarbons, minerals, gravel or earth. Provided, however, that nothing contained herein shall prohibit or restrict removal of fill or earth materials to construct or create approved drainage structures or landscaped berms.
- E. Nuisance. Nothing shall be done on the Properties which is illegal or which may be or may become an annoyance or nuisance to the subdivision and its residents.
- F. Weeds and Underbrush. No weeds, underbrush, or other unsightly growths, including unkempt lawns, shall be permitted to grow or remain upon the Properties and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.
- G. Vehicle Parking. The Board may promulgate rules which restrict, limit or prohibit the use of any driveway or parking area which may be in front of, adjacent to or part of any Lot or dwelling as a parking place for personal passenger vehicles, commercial vehicles, trailers, recreational vehicles, self-propelled motor homes, motorcycles and boats. Such rules, if and when promulgated, shall have the same force and effect as if promulgated and initially made a part of this Declaration. No unregistered or inoperable vehicle or trailer may be visible in such a manner as from any point on adjacent property or the street. No vehicle of any kind may be disassembled, serviced or repaired on the Properties.

The following initial rules have been adopted:

- i) Prohibited Vehicle. No "Prohibited Vehicle" shall be parked or stored on any of the Common Properties or Common Areas or on any road or Lot within the Property. For purposes of this Section, a "Prohibited Vehicle" is:
  - a) a truck, delivery van, service van or bus (except that trucks not in excess of  $\frac{3}{4}$  ton are permitted, provided they have no camper top, bed enclosure, or other appendage attached to it);
  - b) a commercial vehicle (i.e., one not designed and used for normal personal/family transportation) and any vehicle bearing lettering, graphics or other commercial insignia;
  - c) a recreational vehicle (RV) including a camper, mobile and motor home, all terrain vehicle (ATV or ATC) or dune buggy;
  - d) a trailer of any type;
  - e) a boat; or
  - f) a derelict vehicle, including a vehicle with no current license plate or a vehicle incapable of self propulsion.



For purposes of this section, a "Prohibited Vehicle" shall not be deemed to be any commercial or public service vehicle present in the property while performing services for or on behalf of residents or the Declarant.

- H. Antennas. No external antennas or satellite dish installations are permitted except those reception devices that are protected under federal law or regulations.
- I. Drainage. No changes in elevations or Property subject to these restrictions shall be made which will cause undue hardship to adjoining property or be inconsistent with the approved drainage plans for the community or any part thereof.
- J. Underground Wires. No lines or wires for communication or the transmission of electrical current or electromagnetic pulses shall be constructed, placed or permitted to be placed on Residential Property unless the same shall be underground.
- K. Animals. No horses, cattle, swine, goats, poultry, fowl, or any other animals not commonly considered household pets shall be kept on the Properties. Under no circumstances shall any commercial or business enterprises involving the use, care or treatment of animals be conducted on the Properties without the express prior written consent of the Board. All pets must be less than 20 lbs each when full grown, must be registered with the Association if a mechanism for registration is established by the Association, must not create a nuisance (as determined by the Association) for other Owners, must be kept on a leash when not on the pet owner's Lot. No pet shall be allowed to roam unattended. The Association may, from time to time, publish and impose other reasonable regulations setting forth the type and number of animals that may be kept on the Properties. There shall be a limit of two (2) household pets per Lot, excluding birds and fish. Owners shall be responsible to clean up all pet waste on the properties. an animal in violation of this paragraph must be permanently removed from the Property within fifteen (15) days written notice from the Association.
- L. Business. No trade or business will be conducted or carried on upon the Properties or in any building or other structure erected thereon, except that an Owner or occupant may conduct business activities within the dwelling so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a dwelling shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

- M. Maintenance or Parking Areas, Etc. All setback areas, yards, walkways, driveways and parking areas and drainage swales shall be maintained and kept in a neat and clean condition free of refuse and debris.
- N. Maintenance of Landscaped Areas. All landscaped areas (to the paved public right of way) shall be maintained in live, healthy and growing condition, properly watered and trimmed. Any planting of grass, shrubs or trees which become dead or badly damaged shall be replaced with similar, sound, healthy plant materials.
- O. Maintenance of Landscaping to Public Right of Way or Water's Edge. Any Owner that owns or has the maintenance responsibility for Property adjoining any public right of way or water body shall maintain the landscaping to the public right of way or water's edge regardless of the Property boundaries on the plat.
- P. Telecommunications Services. In connection with the installation, maintenance, or operation of telecommunications services, Declarant (or its successors and assigns) reserves access, installation, and service easements over, across and under Common Property and the Residential Property necessary to provide such services to all Owners of Lots; provided, however, such easements shall be reasonably located by the Declarant so as to not unreasonably impair the value of use of the Property or the Lots.
- Q. Fences. The composition, location and height of fences and walls must be approved by the ARC prior to installation in accordance with standards and requirements set by the ARC from time to time. The ARC is under no obligation whatsoever to approve any fences.
- R. Mailboxes. All mailboxes must be of a type as approved by the ARC.
- S. Trees. Removal of existing trees and shrubbery from any Lot shall not be permitted (except within the foundation perimeter line for the dwelling) without ARC approval and without replacing with landscaping of an equivalent or higher quality.
- T. Air Conditioners. No window air conditioning units shall be permitted. Permanently mounted wall air conditioning units shall not be permitted unless first approved by the ARC.

- U. Signs. No sign of any kind shall be displayed to the public view on any Lot or dwelling, except those which shall be in compliance with the guidelines established by the ARC. The ARC shall have the right to establish guidelines so as to require a uniform standard for signs in the Properties.
- V. Lighting. No exterior lighting fixtures shall be installed on any Lot without adequate and proper shielding of fixtures. No lighting fixture shall be installed that may be or become an annoyance or a nuisance to the residents of adjacent Lots;
- W. Non-Waiver. No delay in enforcing these covenants and restrictions as to any breach or violation thereof shall impair, damage or waive the right of the Association to enforce the same, to obtain relief against or recovery for continuation or repetition of such breach or violation or of any similar breach or violation thereof at a later time or times.
- X. Window Treatments. All dwellings shall maintain appropriate window treatments at all times on windows that are visible from off of the Lot. Such treatments shall be of a type in keeping with the Community-Wide Standard.
- Y. Basketball Goals. No permanent basketball goals, nor any type of basketball goal that is affixed to the Lot or dwelling, shall be allowed on a Lot. Temporary, portable basketball goals not shall be allowed.
- Z. Flags, Banners, Signs, etc. Owners may display one portable, removable, United States flag on their Lot if displayed in a respectful manner. No other flags, banners, signs of any type shall be permitted shall be permitted unless approved by the ARC or otherwise protected under federal or state law or regulations.

**Section 2. Enforcement.** Failure of the Owner to comply with such restrictions, covenants, or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof, including costs and attorneys' fees incurred in bringing such actions, and if necessary, costs and attorneys' fees for appellate review. The Association shall have the right to suspend use of Common Areas for any Owner violating these Covenants and Restrictions for a period of time which is the longer of sixty (60) days or the term of continued violation.

**Section 3. Fines.** In addition to all other remedies, the Association may impose a fine or fines upon an owner, tenant, guest, invitee or employee for failure to comply with this Declaration, or any rule or regulation promulgated hereunder, provided the following procedures are adhered to:

- a) Notice: The Association shall notify the owner or other party of the infraction or infractions. Included in the notice shall be the date and time of a special hearing at which the fine or fines will be addressed. Such notice shall be provided to the offending party at least fourteen (14) days prior to such hearing.

- b) Hearing: the hearing as set forth above shall be before a committee of at least three (3) members of the Association appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve of a proposed fine or suspension, it may not be imposed.
- c) Penalties: The Association may impose a fine against the offending party in an amount not to exceed \$100.00 per violation. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000.00 in the aggregate.
- d) Payment of Penalties: Fines shall be paid not later than five (5) days after notice of the imposition of the fine.
- e) Collection of Fines: fines shall be treated as an assessment subject to the provisions for the collection of assessments.
- f) Nonexclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

## **ARTICLE IX. TURNOVER**

**Section 1. Time of Turnover.** The turnover of the Association by the Declarant shall occur at the turnover meeting described in Section 2 below which meeting shall take place within three (3) months of the occurrence of the following events, whichever occurs earliest:

- A. January 1, 2011.
- B. Upon voluntary conversion to Class A membership by the Declarant.
- C. When ninety percent (90%) of the Lots (as amended and supplements from time to time) have been conveyed to Owners other than the Declarant or Builders.

**Section 2. Procedure of Calling Turnover Meeting.** The purpose of the turnover meeting shall be to elect directors to the Association. No more than sixty (60) days and no less than thirty (30) days prior to the turnover meeting, the Association shall notify in writing all Class A Members of the date, location, and purpose of the turnover meeting.

**Section 3. Procedure for Meeting.** The turnover meeting shall be conducted in accordance with the most recent revision of Robert's Rules of Order.

**Section 4. Declarant's Rights.** The Declarant shall be entitled to appoint all Members of the Board until the Time for Turnover as set forth in Article X. After turnover of the Association by the Declarant, the Declarant shall have the right to appoint at least one Member of the Board as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots (as amended and supplemented from time to time). Notwithstanding anything contained herein, the limitations described by Article X shall remain applicable.

## **ARTICLE X. DECLARANT'S RIGHTS**

**Section 1. Declarant's Activities.** Declarant may maintain and carry on upon portions of the Common Property such facilities and activities as may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have a non-exclusive easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots and dwellings owned by the Declarant and any clubhouse or community center which may be owned respectively, of sale prospects and other business invitees. Builders and Declarant shall have a non-exclusive easement upon and across the Properties for the purpose of installing sales trailers, and maintaining and carrying on construction and sales activities.

**Section 2. Other Declarations.** No person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

**Section 3. Sale of Properties.** All forms of deeds and contracts for sale for the subdivision and sale of property in the Properties by any Owner shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver Notice to any Owner of Declarant's approval or disapproval of all such materials and documents within fifteen (15) days of receipt of such materials and documents, and, if disapproved, set forth the specific changes requested. If Declarant fails to do so within such fifteen (15) day period, Declarant shall be deemed to have waived any objections to such material and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

**Section 4. Pre-Turnover Activities.** Until turnover, the Board or the Association shall have no authority to, and shall not, undertake any action which shall:

1. decrease the level of maintenance services of the Association performed by the initial Board as specified in the Articles of Incorporation of the Association;
2. change the membership of the ARC or diminish its powers as stated herein;
3. alter or amend any Declaration, any subsequent amendment thereto, the Articles or By-Laws of the Association;
4. terminate or waive any rights of the Association under this Declaration;
5. accept the conveyance, lease, Mortgage, alienation or pledge of any real or personal property of the Association;
6. terminate or impair in any fashion any easements, powers or rights of the Declarant;
7. restrict the Declarant's right of use, access and enjoyment of any of the Properties; or
8. cause the Association to default on any obligation of it under any contract or this Declaration, unless the Declarant consents in writing to the prohibited action. The Declarant's consent shall be exercised by its appointee on the Board or other person designated to so act by Declarant.

**Section 5. Community Systems and Services.** Declarant reserves for itself, its successors and assignees, the exclusive right to provide and operate, or to permit others to provide and operate, within Chelsea Oaks, such telecommunications systems (including, without limitation, telephone, cable television, community intranet, internet, and other systems for receiving, distributing and transmitting electronic data, signals, and audio or visual communications), security monitoring, systems and services, utilities, and similar systems and services, including, without limitation, conduits, wires, amplifiers, towers, antennae, and other apparatus and equipment for the operation or provision thereof (collectively, the "Community Systems and Services") as Declarant, in its discretion, deems appropriate. Such right shall include, without limitation, the right to select and contract with companies that provide such services, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such services, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable. Declarant may receive, and shall be entitled to retain, any and all rebates, credits, fees, or incentives relating to the installation, operation, or provision of any Community Systems and Services. No Owner may avoid liability for the charges associated with the Community Systems and Services by electing not to utilize the Community Systems and Services. The Declarant may assign its rights under this paragraph to any party.

Each Owner must enter into and execute the Community Systems and Services Agreement attached hereto as Exhibit C, and by acceptance of a Lot subject to this Declaration shall be deemed to have entered into such Agreement regardless of whether it is executed, which shall be a valid and binding contract, connected with, attached to, and running with the land, between each Owner and the other parties thereto, and shall be binding on each Owner as well as their successors and assigns.

**Section 6. Nature of Declarant Rights.** Any or all of the special rights and obligations of the Declarant set forth in this Article or any other portion of this Declaration may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right of the Declarant beyond that contained herein.

This Article may not be amended without the express written consent of the Declarant.

## **ARTICLE XI. INSURANCE AND CASUALTY LOSSES**

**Section 1. Insurance on Common Areas.** The Association's Board or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

To the extent available on commercially reasonable terms and conditions, the Board must also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents.

Premiums for all insurance on the Common Area shall be Common Expenses of the Association and shall be included in the Annual Assessment. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

**Section 2. Insurance on Lots.** To provide for convenience, continuity, and efficiency of claims in the event of a hazard loss or liability, the Association's Board or its duly authorized agent may procure, as a Common Expense, insurance against loss or damage by fire, wind storm, and/or other hazards as may be determined by the Board on all Lots in Chelsea Oaks and the cluster buildings and other improvements thereon. The Board may also obtain insurance against liability for injury or damages arising on a Lot. Such insurance shall be for the benefit of the Association, Owners, and mortgagees as their interests may appear. However, EACH OWNER SHALL HAVE THE PRIMARY RESPONSIBILITY TO PURCHASE HAZARD, LIABILITY, AND

OTHER INSURANCES FOR THEIR LOTS AND PERSONAL PROPERTY AS MAY BE NECESSARY OR DESIREABLE, AND TO VERIFY THAT ANY ASSOCIATION-PROVIDED INSURANCE COVERAGES ARE APPROPRIATE AND COORDINATE WITH INSURANCE PURCHASE BY SUCH OWNER. THE ASSOCIATION HAS NO AFFIRMATIVE DUTY TO PROVIDE INSURANCE ON ANY LOT OF ANY KIND, AND ANY PROVISION OF SUCH INSURANCE IS PURELY FOR THE SAKE OF CONVENIENCE, CONTINUITY, AND EFFICIENCY.

The Association may also limit or prescribe the insurance company to be used by any Owner for hazard or liability coverage on any Lot, and prescribe reasonable minimum limits and coverage terms for such policies.

### ***Section 3. Damage and Destruction.***

- A. Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of the repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. If the Association elects to purchase insurance on any non-Common Area structure or Lot, the Association is obligated to complete repair or reconstruction of such structure as a Common Expense to the extent that such loss is insured by the Association.
- B. Any damage or destruction to an insured property or structure shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed. Any reconstruction to property that is not part of the Common Areas must be undertaken at the expense of the owner of such property subject to the terms of this Declaration. The Association shall mutually cooperate with the Owner to make the proceeds of any Association-provided insurance recovery available to such owner to complete reconstruction, and may impose reasonable restrictions on the amount and timing of owner draws



against such amounts. Any amounts received for any loss in excess of amounts required to reconstruct shall be turned over to the applicable owner upon completion of reconstruction.

- C. In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive manner consistent with the Community-Wide Standard.
- D. In the event that it should be determined in the manner described above that the damage or destruction to an insured property that is not part of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event all insurance proceeds applicable to any loss on such property shall be paid over to the owner of such property. Such property shall be maintained in accordance with this Declaration at all times and any proposed construction on such property must comply with the terms of this Declaration.
- E. Immediately after damage or destruction by fire or other casualty to all or any part of a dwelling or cluster building covered by insurance written in the name of an Owner, the Owner shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of the repair or reconstruction of the damaged or destroyed items, which information shall be provided to the Association. Each Owner must repair or reconstruct his dwelling to the condition that the dwelling was in prior to the casualty, unless such repair or reconstruction is impossible from an engineering standpoint. In such case, said owner shall make such repairs or reconstruction as necessary to preserve any party walls and the integrity of the cluster dwelling and adjacent, attached, dwellings. In the event that an Owner fails to make such repairs or file such claims, the Association may do so as provided for in Article IV, Section 3(A)(b)

**Section 4. Disbursement of Proceeds.** If the damage or destruction of common areas for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee and may be enforced by such Mortgagee.

**Section 5. Repair and Reconstruction.** If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall levy a Special Assessment against all Owners on the same basis as provided for Annual Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE XII. NO PARTITION**

Except as is permitted in the Declaration or amendments thereto there shall be no physical partition of the Common Area or any part thereof, nor shall any person or entity acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property which may or may not be subject to this Declaration.

## **ARTICLE XIII. LANDSCAPING, BUILDING AND DWELLING MAINTENANCE**

**Section 1. Owner Maintenance Responsibilities.** Each owner shall be primarily responsible for the maintenance, repair and upkeep of his Lot, the dwelling and any other structures located thereon or within the dwelling, except for the specific items which the Association is mandated to maintain as set forth in Section 2. To provide for community continuity, each Owner must enter into and execute the Service Agreement attached hereto as Exhibit B, and by acceptance of a Lot subject to this Declaration shall be deemed to have entered into such Agreement regardless of whether it is executed, which shall be a valid and binding contract, connected with, attached to, and running with the land, between each Owner and the other parties thereto, and shall be binding on each Owner as well as their successors and assigns.

### **Section 2. Optional Maintenance by Association.**

Upon expiration of any Service Contract with an Owner as set forth in Exhibit B, or the non-existence of such a contract with respect to any maintenance item set forth herein, the Association may, at the Association's option, maintain all roof and portions of any improvement on any Lot contributing to the support of the roof or any improvements on any other Lot, which portions shall include, but not be limited to, outside walls and any fixtures on their exterior, those portions of boundary walls which are party walls, floor and ceiling slabs, lead-bearing columns, and load-bearing walls.

## **ARTICLE XIV. PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the dwellings and cluster buildings upon the Properties and placed on the subdividing line between the Lots, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty and it is not covered by insurance, any Owner who has used the wall may restore it; and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in proportion to their use without prejudice, subject, however, to the right of any such Owner to call for a larger contribution from the others under any rule or law.

**Section 4. Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

## **ARTICLE XV. GENERAL PROVISIONS**

**Section 1. Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, Voting Members representing three-fourths (3/4) of the votes of the Association vote in favor of terminating this Declaration at the end of its then current term.

Written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be

given at least sixty (60) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution.

Said certificate shall be recorded in the Public Records of Polk County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. Termination of the Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

**Section 2. Amendments by Members.** This Declaration may be amended in whole or part upon the affirmative vote of a majority of the owners present in person or by proxy at a duly called meeting of the Association. No such amendment shall be effective until such time as it is recorded in the Public Records of Polk County, Florida.

Notwithstanding anything above contained to the contrary, no amendment shall be valid without the consent of the Declarant as long as there remains a Class B membership. No amendment may remove, revoke, or modify any right or privilege of Declarant or any other non-Owner third party set forth herein without the written consent of Declarant or the holder or assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgages held by a Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

**Section 3. Amendment by Declarant.** Until such time as turnover occurs pursuant to Article IX herein, the Declarant specifically reserves for itself, its successors and assigns, and to the Association, the absolute and unconditional right to alter, modify, change, revoke, rescind, or cancel any or all of Declaration of the restrictive covenants contained in this Declaration or hereinafter included in any subsequent Declaration provided that in doing so, Declarant shall not adversely affect the rights of Owners and the Association under this Declaration.

**Section 4. Enforcement.** Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by the Declarant, its successors or assigns, the Association, its successors or assigns, the CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC., in relation to its rights as set forth in Article VI, Section 11 herein, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against

the land and to enforce any lien created by these covenants; and failure by the Association or any Owner or the Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

**Section 5. Severability.** Should any covenant, condition or restriction herein contained, or any Article, Section, Subsection or sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 6. Interpretation.** The Board shall have the right except as limited by any other provisions of this Declaration or the By-Laws to determine all questions arising in connection with this Declaration to construe and interpret its provision, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

**Section 7. Authorized Action.** All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association as approved by the Board in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

**Section 8. Prohibited Actions.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable federal or state law, nor shall the Association perform any acts which violate federal, state or local law.

**Section 9. Singular, Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**Section 10. Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Properties.

## **ARTICLE XVI. WATER MANAGEMENT**

A. It shall be the responsibility of each owner in the subdivision, at the time of construction of a building, residence or other structure, to comply with the

construction plans approved and on file with the Southwest Florida Water Management District as part of the surface water management system for development of the Subdivision.

B.. No permanent building, residence or structure of any kind shall be constructed by any owner within that portion of any unit designated on the Subdivision plat as a drainage easement.

C. No construction activities may be conducted relative to any portion of the surface water management system facilities. Prohibited activities include, but are not limited to: digging or excavations; depositing fill, debris or any other material or item; constructing or altering any water control structure; or any other construction to modify the surface water management system facilities. If the project includes a wetland mitigation area, as defined by the Southwest Florida Water Management District, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed, or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the Environmental Resource Permit may be conducted without specific written approval from the district.

D. The Southwest Florida Management District shall have 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 facilities.

E. If the subdivision has on site wetland mitigation which requires ongoing monitoring and maintenance in accordance with the rules and regulations of the Southwest Florida Water Management District, the Association shall allocate sufficient funds in its budget for monitoring and maintenance of the wetland mitigation area(s) each year until the Southwest Florida Water Management District determines that the area(s) is successful in accordance with the environmental Resource Permit.

F. If the Association ceases to exist, all of the Owners shall be jointly and severally responsible for operation and maintenance of the surface water management system facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity acceptable to the Southwest Florida Water Management District assumes responsibility for the operation and maintenance for the surface water management system facilities in accordance with the requirements of the Environmental Resource Permit.

## **ARTICLE XVII. RECREATIONAL FACILITIES AND COMMON AREA USE**

Notwithstanding anything to the contrary described in the plat or other recorded documents concerning the Property, as a material inducement for the Declarant and its assignees and successors in interest to enter into the various Agreements and obligations set forth herein, the Declarant may retain title to and ownership of all common areas as shown on the Plat of Chelsea Oaks. Each Owner must enter into and execute the Service Agreement Regarding Recreational Facilities attached hereto as Exhibit D, and by acceptance of a Lot subject to this Declaration shall be deemed to have entered into such Agreement regardless of whether it is executed, which shall be a valid and binding contract, connected with, attached to, and running with the land, between each Owner and the other parties thereto, and shall be binding on each Owner as well as their successors and assigns.

IN WITNESS WHEREOF, this Declaration is executed on the date as set forth above.

BY:

\_\_\_\_\_

\_\_\_\_\_  
Witness  
Print name:

\_\_\_\_\_  
Witness  
Print name:

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

THE FOREGOING instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_, who is personally known to me or produced identification (type of identification produced: \_\_\_\_\_).

\_\_\_\_\_  
Notary Public – State of Florida  
Stamp or Seal

## **EXHIBIT A**

### LEGAL DESCRIPTION:

All of CHELSEA OAKS, according to the map or plat thereof as recorded in Plat Book 134, Page 46, Public Records of Polk County, Florida.



## EXHIBIT B

### SERVICE AGREEMENT *for* CHELSEA OAKS

Owner(s): \_\_\_\_\_

Lot: \_\_\_\_\_; Street Address: \_\_\_\_\_

This Agreement is made and entered into this \_\_\_\_\_, 20\_\_\_\_, between **Chelsea Oaks Management Company**, a Florida corporation, hereinafter called the "Contractor," and the Owner(s) named above, hereinafter called "Owner."

Contractor and Owner desire to enter into an Agreement for the performance by Contractor of certain basic lawn care services for the Lot described above (the "Lot") and the payment for these services by the Owner.

For and in consideration of the sum of Ten Dollars and other good and valuable consideration, given to each party by the other party, the receipt and sufficiency of which each party hereby acknowledges, the parties agree as follows:

1. **Term:** The term of this Agreement shall begin upon the closing of Owner's purchase of the Lot, and shall continue until terminated as set forth in this Agreement. This Agreement shall terminate on the date which is **thirty (30) years** after the date of the recording of the deed, conveying the Lot to Owner, in the Official Records of Polk County, Florida. Unless the Owner or Contractor gives notice (canceling this Agreement at the end of said 30-year term) to the other party at least **thirty (30) days** prior to the termination of this Agreement, the term of this Agreement shall automatically be extended for another **ten (10) years**. A second **ten (10) year** extension shall automatically go into effect unless notice (canceling this Agreement at the end of the first 10-year extension) is given at least **thirty (30) days** prior to the end of the first ten (10) year extension.

2. **Services Provided by Contractor:** The Contractor shall provide only the following basic lawn care services. The Contractor shall provide sufficient manpower to provide these services and shall employ at least one (1) person to perform these services. The Contractor shall:

(a) Provide labor, tools, and equipment for cutting the grass and trimming the shrubbery upon the Lot, and only the Lot. The Contractor shall cut the grass once a week, if needed; except from November 1 through March 31, this shall be done only as needed and at the Contractor's sole discretion. The Contractor, at the Contractor's sole discretion, shall trim the shrubbery as needed.

(b) Blow or broom sweep the driveway on the Lot, after each cutting of the grass.

(c) Edge planter beds after each cutting of the grass.

(d) Maintain a supply of replacement parts for the appropriate irrigation sprayers and sprinklers, which shall be available for purchase by the Owner, at the Owner's expense. Contractor shall not be required to replace any of the sprayers or sprinklers; it shall be the Owner's responsibility to maintain the irrigation system and to arrange and pay for all repairs to the irrigation system. The Contractor may, but shall not be required to, provide this service to the Owner for an additional fee mutually agreed upon by the Contractor and the Owner.

(e) Weed flower beds by both hand and herbicide, such service to be performed quarterly. The Contractor shall not be responsible for any services not specifically enumerated herein and any and all additional services shall be the Owner's responsibility and expense. The Contractor shall not be responsible for, nor be required to: (a) replace light bulbs, fixtures, lawn, trees, or shrubbery; (b) mulch, fertilize, or herbicide; (c) trim trees; (d) control insects; or (e) replace or repair any irrigation systems or parts. The Contractor shall not be responsible for any damage caused to the lawn, trees and/or shrubbery by any act of God, which shall include but not be limited to, insects, pests, wind, flooding, lightning, hurricanes, frost and freezing, and/or natural causes.

3. **Contractor's Liability:** The Contractor shall not, under any circumstances, be liable under or by reason of this Agreement, directly or indirectly, for any accident, injury, breakage or damage of any machinery or appliance not attributed to the action or inaction of the Contractor or of any of its agents, employees, or servants; nor shall it be held responsible or liable for any loss, damage, detention or delay in furnishing materials or failure to perform duties as provided above when such is caused by fire, flood, strike, acts of civil or military authorities, or by insurrection or riot, or by any other cause which is unavoidable or beyond its control.

4. **Service Fee Payable By Owner:** It is understood and agreed that the Owner shall pay to the Contractor **\$121.00** per month as a service fee for the services described herein. This fee shall be due on the first day of each and every calendar month. This fee will increase to the rate of \$4.00 per month on the first day of January following the date of closing, and will increase on the first day of each January thereafter for the term of this Agreement, as follows: The amount of each increase shall be the greater of \$4.00 per month or the percentage increase in the Consumer Price Index over the previous year times the existing fee. The Consumer Price Index is defined as the United States Department of Labor, Consumer Price Index, U.S. City Average - All Urban Consumers, 1982-1984 = 100; or, in the event of the discontinuation of publication of the Consumer Price Index, then an alternate index that measures the cost of living and which has been reasonably related to the Consumer Price Index in evaluating economic conditions, and which has been or can reasonably be expected to be, generally accepted as a replacement index for the Consumer Price Index.

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initial

\_\_\_\_\_  
initial

5. **Liability for Assessments:** The Owner, and each subsequent owner of the Lot, regardless of how his title has been acquired, including without limitation by purchase at a foreclosure or other judicial sale or by deed in lieu of foreclosure, by acceptance of a deed or other conveyance of title to the Lot, whether or not it shall be so expressed therein, shall be deemed to covenant and agree to pay, and is liable for, all service fees levied against the Lot which come due while he is an owner.

6. **No Monthly Bills:** A monthly bill will not be sent to the Owner. The Owner is expected to and agrees to pay the service fee each month on or before its due date.

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initial

\_\_\_\_\_  
initial

7. **Late Fees; Application of Payments:** The Contractor shall have the right and power to charge the Owner a late fee for each service fee payment not received by the Contractor within **ten (10) days** after its due date, in the amount equal to **1.5%** interest per month on such late payment or **\$10.00**, whichever is greater. Any payment received by the Contractor shall be applied first to any late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent service fee payment.

\_\_\_\_\_  
initial

\_\_\_\_\_  
initial

8. **Creation of Lien, Priority, and Claim of Lien:** The Owner hereby grants to the Contractor a continuing lien on the Lot to secure the payment of all service fees due with respect to the Lot, as well as interest, late fees, and all reasonable costs and attorney fees incurred by the Contractor incident to the collection thereof. The lien is effective from and shall relate back to the time of the recording of this instrument in the public records of Polk County, Florida. However, as to first mortgages of record, the lien is effective only from and after the recording of a claim of lien in the public records of Polk County, Florida, which claim of lien shall state the description of the Lot, the name of the record Owner, the amount due, and the date when due. The Contractor may record a claim of lien in the public records of Polk County, Florida to give notice of unpaid service fees; however, except as to first mortgages of record, the recording of a claim of lien is not necessary to perfect the Contractor's lien rights hereunder. Any claim of lien shall continue in effect until all sums secured thereby have been paid in full. Upon full payment, including attorney's fees and costs, the party making payment shall be entitled to a recordable release of the claim of lien. The lien granted herein is superior in dignity to any homestead rights which the Owner may now or in the future claim with regard to the Lot.

9. **Owner's Personal Obligation:** All services fees provided for above, together with interest and late fees thereon and all reasonable costs and attorney fees incurred by the Contractor incident to the collection thereof, shall be the personal joint and several obligation of all persons and entities who were the owners of the Lot at the time when the service fee became due. This provision shall not, however, limit or otherwise affect the lien on the Lot for all unpaid service fees, including service fees that became due prior to the time such person or entity became an owner of the Lot.

10. **Action to Foreclose Lien or Obtain Money Judgment:** The Contractor may bring an action in its name to foreclose a lien for unpaid service fees in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid service fees, with interest, late fees and costs, without waiving any claim of lien. In either a lien foreclosure action or an action to recover a money judgment for unpaid service fees, the Contractor shall be entitled to recover from the Owner all collection costs, including without limitation the cost of preparing and filing the complaint, the service of process fees, and reasonable attorney's fees incurred by the Contractor incident to the collection process or enforcement of the lien, whether or not suit is brought, including without limitation legal services rendered prior to any litigation, during trial, upon any appeal, post judgment, and bankruptcy proceedings.

11. **Default By Owner; Contractor's Right to Discontinue Service:** If Owner fails to pay to the Contractor the service fee set forth above, in the amount specified above, on or before the **tenth (10th)** day after its due date, then the Contractor shall be authorized to discontinue and terminate all of the services that are provided by the Contractor until the Owner shall have made full payment in accordance with the terms and conditions of this Agreement. These rights of the Contractor shall be in addition to all other remedies available to the Contractor under law and equity.

12. **Covenants Running With The Lot; Binding Effect:** This Agreement concerns the Lot described above, and the parties impose upon and declare that the Lot shall be owned, held, transferred, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the covenants, charges, liens, and other provisions set forth in this Agreement; each and all of which shall: (a) constitute covenants running with the Lot; (b) be binding on all persons and entities having or acquiring any right, title or interest in the Lot or any part thereof, and their heirs, successors, and assigns; and (c) inure to the benefit and limitation of all present and future owners of the Lot.

13. **Attorney's Fees and Costs:** In any action or proceeding brought under this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the losing party a sum equal to the prevailing party's reasonable attorney's fees and costs, including appeals.

14. **Severability:** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity only, without invalidating the remainder of such provision or of the remaining provisions of this Agreement.

15. **Notices:** Any notice required or permitted under this Agreement shall be in writing and shall be sent by U.S. certified or registered mail, return receipt requested, postage prepaid. Any notice to the Owner or subsequent owner of the Lot shall be given to the address for such owner as shown on the Polk County, Florida's real property tax roll for the Lot. Any notice to the Contractor shall be given to the Contractor's principal office as shown on the records of the Florida Corporate Division.

16. **Termination of Agreement by Contractor:** The Contractor shall have the right to terminate this Agreement at any time with or without cause upon thirty (30) days prior written notice to the Owner.

In witness whereof, the parties have executed this instrument as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
*Signature of Witness #1*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Owner #1*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Witness #2*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Owner #2*  
Print Name° \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_\_\_, by the Owner(s) named above, who [ ] is/are personally known to me or [ ] has/have produced a drivers license as identification.

(SEAL)

\_\_\_\_\_  
Notary Public  
Print Name:°  
My Commission Expires: \_\_\_\_\_

## **EXHIBIT C**

### **COMMUNITY SYSTEMS AND SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, by and between Nexgen Home Services, LLC, a Florida limited liability company (“Nexgen”), located in Winter Haven, Florida and \_\_\_\_\_ (“Owner”).

#### **Recitals**

Nexgen manages the provision of Community Systems and Services in Chelsea Oaks, and manages the provision of such services to Owner’s lot in Chelsea Oaks and the improvements thereon (the “Lot”), more particularly described as follows:

Lot \_\_\_\_\_ of CHELSEA OAKS according to the map or plat thereof recorded in Plat Book 134, Page 46, of the Public Records of Polk County, Florida.

Owner desires to purchase, Nexgen intends to designate the provider for, Standard Cable Service, Telephone Service, High-Speed Internet Service and Other Services (as defined below), from the provider designated by Nexgen. Nexgen shall select the provider of such services (the “Provider”), contract with the Provider, and act as intermediary and manager the relationship between the Owner and the Provider. The Provider shall be an appropriately licensed, franchised, or otherwise approved provider or group of providers of such services.

In consideration of the mutual covenants, terms and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### **Definitions**

“Package Services” shall mean Standard Cable Service, High-Speed Internet Service, and Telephone Service as defined below.

“Standard Cable Service” shall mean television channels provided by the Provider. Nexgen and the Provider reserve the right, in their sole discretion from time to time, to make changes, additions or deletions to the channel lineup; provided, however, Standard Cable Service shall consist of a substantially similar number and type of channels as are available as part of standard cable television packages generally marketed in the area. At any time during the term of this Agreement, Nexgen and Provider shall have the right to install set-top

converters or replace existing set-top converters for every Resident receiving Services under this Agreement as Nexgen and Provider may reasonably deem necessary to allow it to continue to allow Provider to provide Standard Services to Owner. If Owner refuses such installation or replacement, neither Nexgen nor Provider shall not be liable for any failure to provide Standard Services to Owner.

“High-Speed Internet Service” shall mean high-speed internet access provided by Provider through Road Runner and/or, at Nexgen or Provider’s sole discretion, any other brand of high-speed internet. Nexgen shall use commercially reasonable efforts to contract with a Provider to provide internet access of a substantially similar quality, speed, and bandwidth as is generally marketed in the area.

“Telephone Service” shall mean single-line digital telephone service to the Owner, including a package of services, features, and calling areas as is generally marketed in the area. Telephone Services shall initially include (1) local and long distance calling to anywhere in the United States including Alaska, Hawaii, Canada, Guam, Puerto Rico, U.S. Virgin Islands, and N. Marianna Islands, and (2) enhanced features such as voicemail, call waiting, caller ID, call waiting with caller ID, “611” dedicated phone number for 24/7 customer service. Telephone Service shall not include international long distance calling, operator assistance, local, national or international directory assistance, person-to-person, station-to-station or any other feature for which Provider separately charges its subscribers. Notwithstanding the foregoing, Nexgen or Provider reserve the right, in their sole discretion from time to time, to add or remove features or service areas to/from Telephone Service.

“FCC” shall mean the Federal Communications Commission.

“Other Services” shall include, digital television, movie channels, pay services, pay-per-view channels, pay-per-view programs, video on demand, Telephone Service, Internet services, personal computer data networking services, and any other one- or two-way entertainment, data, information or telecommunications services available now or in the future (other than Package Services) which Nexgen in its sole discretion decides contract with a Provider to offer to Owner

“Services” shall mean Package Services and Other Services collectively.

“System” shall mean a system of coaxial cable, fiber optic cable or lines, and/or other types of cable lines, and/or other wireline or wireless delivery system located in the community and used by Provider for the provision of Services.

“Term” shall mean the period of effectiveness of this Agreement as set forth in Section 2 of this Agreement.

### **Terms & Conditions**

1. **Term.** This Agreement shall be in effect for an initial term commencing on the date of the recording of the deed conveying the property to the first Owner following issuance of an initial Certificate of Occupancy for the Lot and expiring ninety-nine (99) years thereafter and shall remain in effect and be automatically renewed for successive ten

- (10)-year terms thereafter unless Owner provides to Nexgen written notice of non-renewal at least ninety (90) days prior to expiration of the then-current term.
2. **Fees.** The base fee for Package Services shall be set by the Provider and shall be negotiated by Nexgen. In addition, Nexgen may charge a reasonable management fee, administrative fee, negotiation fee, or other fee or fees in its absolute and sole discretion (subject to the limitation herein described) for its services rendered in negotiation, management, administration, collections, or other services rendered on behalf of or to the Owner to arrange for the Provider to provide Services. The total aggregate combined fee for Services provided by Provider and fees charged by Nexgen shall, in any event, be less, by a non-trivial amount, than the total cost at which Owner could obtain the Package Services at retail, without the benefit of collective negotiations. Except if otherwise directed in writing by Nexgen, all fees, including those charged by Provider, shall be payable by Owner to Nexgen no less often than monthly on a date established by Nexgen. Nexgen or Provider may change their fees from time to time with written notice to Owner.
  3. **High-Speed Internet Service.** High-Speed Internet Service shall be installed for one personal computer with one modem. Additional charges for both installation and equipment for wireless applications for high-speed internet service or for additional computers shall result in additional charges.
  4. **Other Services.** Nexgen may arrange for the provision of optional Other Services to Owner by Provider on the same terms and conditions herein described for Package Services. If Nexgen has made no such arrangements, Owner may contract directly with Provider for Other Services. Provider may set the fees for Other Services and may bill the Owner directly for such fees.
  5. **Ownership of the System; Electricity.** The System and all other property placed on the Lot by Provider or Nexgen shall be and remain the sole property of Provider and Nexgen, respectively, and shall not be deemed to be affixed to or to become part of the Lot. Provider or Nexgen shall have the sole right to possession of and dominion and control over the System, all other property placed on the Lot by Provider or Nexgen, and any equipment, facilities, antennas, pipes, conduits, poles, pedestals, vaults, active or passive devices, converters, cables and wires on the Lot which are to be used by Provider or Nexgen to deliver Services under this Agreement. Provider or Nexgen may remove any and all of the System and any other property placed on the Lot at any time until ninety (90) days after such time as this Agreement terminates. If Provider or Nexgen so elects, it may lease any portion of the System to any other party following expiration or termination of this Agreement pursuant to such terms and conditions as may be agreed to by such parties. Owner shall not, and shall not allow any other party to, tamper with, attach to or use any portion of the System without the prior written authorization of Provider or Nexgen. Owner agrees that any use, whether with or without the consent of Provider or Nexgen, by Owner or any third party of the System or any other property placed on the Lot by Provider or Nexgen shall not disturb Provider and Nexgen's continued right to ownership of such property.



6. **Service Interruptions.** Neither Provider nor Nexgen shall be liable for any interruption of Services other than interruptions of more than twenty-four (24) consecutive hours caused by reasons within Provider or Nexgen's control, in which event Nexgen's sole liability for such interruption shall be to make available to Owner a pro rata credit against the Package Services Fee calculated based on the length of such interruption.
7. **Costs and Attorney's Fees.** If it becomes necessary for either party to enforce or defend its rights created herein, the prevailing party shall be entitled to reimbursement from the other party of all costs, including reasonable attorney's fees through appeal, incident to enforcement or defense of its rights
8. **Customer Service.** Provider shall provide customer service in accordance with its usual business practices. Nexgen shall not be liable or responsible for any customer service matters.
9. **Operation and Maintenance.** Nexgen or Provider shall have the right, from time to time, to install equipment (e.g. set-top boxes) or replace existing equipment at the Lot as Nexgen and Provider may reasonably deem necessary to allow it to continue to provide Services to Owner. If Owner refuses such installation or replacement, Nexgen and Provider shall not be liable for any failure to provide any Services to such Lot.
10. **Default and Remedies.** In the event that Nexgen or Provider fails to perform its obligations under this Agreement for a period in excess of thirty (30) contiguous days, Nexgen shall be deemed in default of this Agreement. In such event, Owner's sole remedy shall be a refund of any payments made to Nexgen for services not provided.

In the event that Owner fails to perform its obligations under this Agreement, including payment of all amounts due and payable hereunder to Nexgen, Provider, or Nexgen's designee, Nexgen may pursue any and all available rights or causes of action against Owner in law or equity, including but not limited to specific performance and foreclosure.

11. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Florida.
12. **Severability.** If any portion of this Agreement is rendered invalid or otherwise unenforceable under any law or regulation or by a governmental, legal or regulatory authority with jurisdiction over the parties, then the remainder of this Agreement will continue in full force unless such continuance will deprive one of the parties of a material benefit hereunder or frustrate the main purpose(s) of this Agreement. In such event, the party that has been deprived of such material benefit (the "Affected Party") may notify the other, and the parties promptly thereafter shall use their reasonable best efforts to replace or modify the invalid or unenforceable provision with a provision that, to the extent not prohibited by any law or regulation, achieves the purposes intended under the invalid or unenforceable provision. If the parties are unable to reach agreement on replacement or modification of the invalid or unenforceable provision within sixty (60) days after notification from the Affected Party, then the Affected

Party may terminate this Agreement upon sixty (60) days' prior written notice to the other party.

13. **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither party shall be liable or in default for any delay or failure of performance resulting directly from any factor beyond the control of the nonperforming party, including but not limited to acts of God; acts of any civil or military authority; acts of any public enemy; terrorism; war; hurricanes, tornadoes, storms, earthquakes, forest fires or floods; governmental regulation or intervention; or strikes, lockouts, or other work interruptions.
14. **No Warranties; Limitation of Liability.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEXGEN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SYSTEM OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. Neither party shall be liable to the other or to any third party for any indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of service, rent, profits or business opportunities. Notwithstanding the foregoing, Nexgen shall be entitled to seek and obtain, on behalf of itself or Provider, as direct damages, lost revenues for any breach by Owner under this Agreement.
15. **Assignment.** Nexgen may assign this Agreement to any party upon written notice to Owner, and may be relieved of any further liability thereby. This contract is for the benefit of and shall burden Owner and the successors in interest to Owner's Lot. Upon any sale, transfer, or other alienation of the Lot, the Owner shall be automatically deemed to have assigned all of its right, title, and interest in the benefits of this Agreement to the transferee. The Transferee shall be automatically deemed to have assumed all of Owner's obligations hereunder. Owner shall jointly remain personally liable for all obligations of Owner incurred or accruing prior to the date of the transfer.
16. **Counterparts or Non-Execution.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original. This Agreement may be executed and recorded, but, by virtue of its recording with the Declaration to which it is attached, it shall be valid, binding, and enforceable in all respects regardless of whether it is executed.
17. **Entire Agreement.** This Agreement, contain the entire agreement between the parties regarding its subject matter. This Agreement may not be altered, except upon mutual agreement evidenced by an instrument in writing. This Agreement supersedes all other previous agreements between the parties.
18. **Provider Terms.** Notwithstanding Section 17, above, the Provider may impose additional terms and conditions on the Owner, or on Nexgen, with written notice to Owner from Provider or Nexgen, as conditions on the provision of Services to the Owners. For Package Services, such terms and conditions shall be commercially reasonable for the industry. Such terms and conditions are and shall be deemed part and

parcel of this Agreement, and the breach by Owner of any such terms and conditions shall constitute a breach by Owner of this Agreement.

19. **Lien; Covenant.** The obligations of Owner shall be secured by, touch and concern, and constitute a binding covenant running with the Lot. Nexgen shall have continuing lien on the Lot to secure such obligations. Such lien shall attach as of the date of recording of this form Agreement with the Covenants of the subdivision, and may be further evidenced by recording of an individual, signed agreement with the owner. Such lien shall be subordinate to any bona-fide purchase-money mortgage in favor of a lender or its assignee securing a promissory note payable by Owner, and any subsequent bona-fide refinance of such mortgage loan to the extent of the amount due and payable on such mortgage immediately prior to the refinance. Nexgen may foreclose on such lien to collect amounts due and payable to Nexgen or Provider. All attorneys fees and costs associated with collection shall be included in the scope of such lien.
20. **Status of Nexgen.** Owner and Nexgen each acknowledge it is entering into this Agreement for the purposes of convenience and pooling the negotiating power of Owner with other owners in the subdivision to obtain cost-effective Package Services for the benefit of Owner and other residents of the subdivision. The provider of Services for all intents and purposes, including state and federal regulation, taxes, customer service, ownership of Systems, and the like, shall be Provider. Nexgen's sole role shall be to negotiate bulk rates for such services and to handle management, administration, collections, and the like, and to guarantee payment to Provider for Package Services as a material inducement for Provider to provide favorable bulk rates.
21. **Status of Provider.** The Provider is not a party to this Agreement and assumes no obligations hereunder. The Provider shall have no causes of action or other rights arising out of this Agreement except to the extent that Nexgen may assign Provider such rights in writing. The failure of Owner to perform any duties or obligations directed to Provider in this Agreement shall be a material breach of this Agreement that may cause Nexgen significant damages. The parties acknowledge that it is Nexgen's present intent (though it is not bound to do so now or in the future) to guarantee payment of Owner's Package Services fees to Provider.
22. **Other Providers; Non-Use.** Owner's failure to use the Package Services or the purchase of similar services from other providers shall in no way affect Owner's obligation to purchase Package Services from Provider as arranged by Nexgen and perform its obligations under this Agreement.

By signing below, the parties acknowledge that this Agreement is a binding agreement established by the Declaration of Covenants to which they are attached and recorded simultaneously with. The parties hereto have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
*Signature of Witness #1*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Owner #1*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Witness #2*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Owner #2*  
Print Name° \_\_\_\_\_

County of \_\_\_\_\_

State of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_\_\_, by the  
Owner(s) named above, who [ ] is/are personally known to me or [ ] has/have produced a drivers  
license as identification.

\_\_\_\_\_  
Notary Public  
Print Name:  
My Commission Expires: \_\_\_\_\_

(SEAL)

## EXHIBIT D

### **AGREEMENT REGARDING RECREATIONAL FACILITIES BETWEEN CHELSEA OAKS MANAGEMENT COMPANY AND THE MEMBERS OF CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC.**

THIS AGREEMENT is entered to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **Chelsea Oaks Management Company**, "The Facilities Owner" hereinafter referred to as "COMC" and \_\_\_\_\_ hereinafter known as the "Owner".

#### THE PARTIES AGREE AS FOLLOWS:

1. Subject to the terms and conditions of this Agreement, COMC agrees that the Owner shall have the nonexclusive use of the real property depicted as Common Areas on the Plat of Chelsea Oaks as recorded in plat book 134, page 46, of the public records of Polk County, Florida (including, without limitation, rights of way, roads ways, sidewalks, and corresponding rights of way), along with any recreational facilities (including, without limitation, pool, clubhouse, bathrooms, rec. room, club parking) that exist thereon during the term of this agreement. COMC, its guests, invitees or other persons selected by COMC shall have the right to use the property. Such use by COMC or its guests may be exclusive and at the discretion of COMC.
2. The term of this agreement shall begin upon the completion of the common areas and recreational facilities and shall continue until either party hereto gives written notice to the other party of its intent to terminate this Agreement. The Owner agrees and understands that COMC may terminate this Agreement at anytime with or without cause.
3. COMC agrees to maintain the recreational facilities during the term of this Agreement. COMC will maintain the roof on the clubhouse/recreational room, paint the buildings at regular intervals, mow the grass on its property, and provide chemicals for the pool. Equipment or other amenities in or on the property not stated herein will not be the responsibility of COMC. If person who is on the property as an Owner (or guest of an Owner) should damage the property, the Owner agrees to pay for the repairs and COMC shall not be responsible for any capital improvements, damages caused by any cause other than normal wear and tear, or any maintenance, repairs, damages, or liabilities not specifically set forth herein with respect to the common areas and recreational facilities.

4. This Agreement shall be construed according to the laws of Florida and they are in effect on the date hereof. It is the intent of the parties to not incorporate changes made in the Florida Statutes and law after the date hereof.
5. The Owner agrees that COMC shall have the absolute right to sell, lease, or otherwise grant ownership, possession, or the right to use the facilities free from any encumbrance by this Agreement. The Agreement shall automatically terminate upon the lease, sale, or other conveyance of the property by grantor.
6. The Owner agrees that the Owner, all co-owners, heirs, successors, and assigns of the Owner, shall have no legal or equitable right to use the recreational facilities other than as expressly stated herein. The Owner, all co-owners, beneficiaries, heirs, assigns, and successors, shall indemnify and hold COMC harmless from any damages COMC may suffer from litigation prosecuted by the Owner, co-owner, beneficiary, assigns, or successors in interest, regarding COMC's unfettered ownership of these facilities. COMC damages shall include any loss or diminution of COMC rights in the property as a fee simple owner with the right of full and exclusive possession, and COMC reasonable costs of defending any such action, including attorney's fees, during any prelitigation phase, and in defending any such action at the trial court level and upon appeal.
7. COMC may establish reasonable and binding guidelines for use of the recreational facilities, including but not limited to, safety rules, hours of access, exclusion of individuals whose use of the facilities is unsafe, a nuisance, or inconsistent with the standards of the community, limitation of access during scheduled events, keycard or gate codes, and the like.
8. This Agreement shall be binding upon heirs, assigns, legal representatives, and successors of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have placed their hands and seals with

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
*Signature of Witness #1*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Owner #1*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Witness #2*  
Print Name° \_\_\_\_\_

\_\_\_\_\_  
*Signature of Owner #2*  
Print Name° \_\_\_\_\_

County of \_\_\_\_\_

State of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_\_\_, by the Owner(s) named above, who [ ] is/are personally known to me or [ ] has/have produced a drivers license as identification.

\_\_\_\_\_  
Notary Public  
Print Name:° \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(SEAL)



STRAUGHN TURNER & SMITH PA  
P O BOX 2295  
255 MAGNOLIA AVE SW  
WINTER HAVEN, FL 33883-2295

**SECOND AMENDMENT TO THE  
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
OF  
CHELSEA OAKS TOWNHOMES HOMEOWNERS' ASSOCIATION, INC.**

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THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHELSEA OAKS is made this 28<sup>th</sup> day of June, 2007, by Highland Cassidy, LLC, a Florida Limited Liability Corporation whose address is 250 Avenue K, S.W., Winter Haven, Florida 33880 ("Declarant").

HIGHLAND CASSIDY, LLC, a Florida limited liability company. hereinafter called Declarant, is the Developer of a certain tract of real property located in Polk County, Florida, known by official plat designation as CHELSEA OAKS, pursuant to map or plat thereof recorded in Plat Book 134, Page 46, public records of Polk County, Florida. Declarant is the owner in fee simple of greater than ten percent (10%) of the lots in all phases of CHELSEA OAKS.

Pursuant to Article XV, Section 3, of the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF CHELSEA OAKS, Declarant hereby makes the following Amendment to the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF CHELSEA OAKS, as previously recorded in O.R. Book 6942, pages 980-1027, inclusive, and amended by the FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF CHELSEA OAKS, as previously recorded in O.R. Book 7329, pages 1848-1855, inclusive specifying that the Declarations and this Amendment thereto shall constitute a covenant running with the land, and that this Amendment shall be binding upon the undersigned. These restrictions, during their lifetime, shall be for the benefit of, and limitation upon, all present and future owners of the real property.

1. 7. Article VIII, Section 1(K) is hereby deleted and replaced with the following:

**K. Animals.** No horses, cattle, swine, goats, poultry, fowl, or any other animals not commonly considered household pets shall be kept on any Lot or within any Dwelling, or any portion of the Property. Under no circumstances shall any commercial or business enterprises involving the use, care or treatment of animals be conducted on any Lot or within any Dwelling, or any portion of the Property without the express prior written consent of the Board. All pets must be less than 45 lbs

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POLK COUNTY  
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when full grown, must be registered with the Association if a mechanism for registration is established by the Association, must not create a nuisance (as determined by the Association) for other Owners and must be kept on a leash when not on the pet owner's Lot. No pet shall be allowed to roam unattended. The Association may, from time to time, publish and impose other reasonable regulations setting forth the type and number of animals that may be kept on the Properties. There shall be a limit of three (3) household pets per Lot, excluding birds and fish. Owners shall be responsible to clean up all pet waste on the Properties. An animal in violation of this paragraph must be permanently removed from the Property within fifteen (15) days after written notice from the Association.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand, by its duly authorized managing member, this 28th day of June, 2007.

HIGHLAND CASSIDY, LLC

By:

  
Albert B. Cassidy, as President of  
CASSIDY PROPERTIES, INC.,  
Managing Member

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF CHELSEA OAKS was acknowledged before me by Albert B. Cassidy as President of CASSIDY PROPERTIES, INC., managing member, this 28th day of June, 2007.

  
NOTARY PUBLIC

