

Ruden, McClosky et. al.

Requester's Name

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**ARTICLES OF INCORPORATION
OF
TORTOISE CAY AT ST. LUCIE WEST RESIDENTS' ASSOCIATION, INC.
(a Florida Corporation Not-for-Profit)**

In order to form a corporation not-for-profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates the Association as a not-for-profit corporation for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

- A. "Articles" mean these Articles of Incorporation and any amendments hereto.
- B. "Assessments" mean the "Base Assessments" and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the provisions of the Declaration or any other Tortoise Cay Document.
- C. "Association" means Tortoise Cay at St. Lucie West Residents' Association, Inc., a Florida corporation not-for-profit, its successors or assigns, which is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.
- D. "Board" means the Board of Directors of the Association.
- E. "Bylaws" mean the Bylaws of the Association and any amendments thereto.
- F. "Common Areas" means that portion of the Property and improvements now or hereafter located thereon described in the Declaration as such.
- G. "Common Expenses" means the expenses for which all Owners are liable to the Association as described in the Declaration.
- H. "County" means St. Lucie County, Florida.
- I. "Declarant" means St. Lucie West Development Corp., its successors, grantees and assigns. An Owner shall not, solely by the purchase of a residential parcel (*i.e.* a Lot) within Tortoise Cay, be deemed a successor or assign of Declarant or of the rights of Declarant under the Tortoise Cay Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

J. "Declaration" means the Declaration of Covenants, Restrictions, Conditions and Easements for Tortoise Cay at St. Lucie West to be recorded in the Public Records of the County, and all amendments thereto.

K. "Director" means a member of the Board.

L. "Legal Fees" mean (a) all fees for attorney and paralegal services incurred in negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and post-judgment proceedings; and (b) court costs through and including all trial and appellate levels and post-judgment proceedings.

M. "Member" means a member of the Association as more particularly described in Article V hereof.

N. "Owner" means the owner or owners of fee simple title to a Lot within Tortoise Cay , and includes Declarant for so long as it is the owner of fee simple title to such Lot. An Owner shall not mean nor refer to a holder of a mortgage or security deed, its successors or assigns, unless and until such holder has acquired title pursuant to foreclosure proceedings or by deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

O. "Property" means that certain real property described in Exhibit "A" to the Declaration.

P. "Tortoise Cay" means the single-family community being developed by Declarant on the Property in the County. Tortoise Cay shall contain residential parcels (Lots), Common Areas and such other uses as Declarant determines in its sole discretion and in conformance with applicable zoning requirements.

Q. "Tortoise Cay Documents" mean in the aggregate the Declaration, these Articles, the Bylaws and "Community Development Code and Land Use Standards" of the "New Construction Committee" (as such terms are defined in the Declaration.)

R. "Turnover Date" means the date set forth in Article X hereof.

ARTICLE II NAME

The name of this corporation shall be TORTOISE CAY AT ST. LUCIE WEST RESIDENTS' ASSOCIATION, INC., a Florida not-for-profit corporation. For convenience, the corporation shall be herein referred to as the Association, whose present address is 1850 Fountainview Boulevard, Suite 201, Port St. Lucie, Florida 34986.

ARTICLE III
PURPOSE

The purposes for which the Association is organized are (i) to be and constitute the Association to which reference is made in the Declaration; (ii) to perform all obligations and duties of the Association in accordance with the terms, provisions and conditions contained in the Declaration and other Tortoise Cay Documents; (iii) to carry out the covenants and enforce the provisions relative to the Association as set forth in the Declaration and other Tortoise Cay Documents; (iv) to operate, lease, trade, sell and otherwise deal with the personal and real property of the Association; and (v) to provide an entity for the furtherance of interests of Owners in Tortoise Cay.

ARTICLE IV
POWERS

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

- A. The Association shall have all of the common law and statutory powers of a corporation not-for-profit, which are not in conflict with the terms of the Declaration.
- B. The Association shall have all of the powers to be granted to the Association in the Declaration.
- C. The Association shall have all of the powers reasonably necessary to implement its purpose, including, but not limited to, the following:
 - 1. To do any acts required or contemplated for it under the Declaration;
 - 2. To enforce reasonable rules and regulations governing the Common Areas of Tortoise Cay or any portions thereof;
 - 3. To make, levy and collect Assessments for the purpose of obtaining funds for the payment of Common Expenses in the manner provided in the Declaration, and to use and expend the proceeds of such Assessments in the exercise of its powers and duties hereunder;
 - 4. To administer, manage and operate the Common Areas in accordance with the Declaration and to maintain, repair, replace and operate the Common Areas in accordance with the Declaration;
 - 5. To enforce by legal means the obligations of the membership of the Association and the provisions of the Declaration;

6. To employ personnel, retain independent contractors and professional personnel and enter into service and management contracts to provide for the maintenance, operation, management and administration of the Common Areas and to enter into any other agreements consistent with the purposes of the Association; and
7. To provide to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain the Common Areas in a proper and aesthetically pleasing condition.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

A. Membership

Every person or entity who or which is a record Owner of a fee or undivided fee interest in any Lot which is subject to the Declaration shall be a Member of the Association and shall be entitled to vote except as specifically provided herein or in the Bylaws, provided that any such person or entity who holds record ownership merely as security for the performance of an obligation shall not be a Member of the Association.

No Owner, whether one (1) or more persons, shall have more than one (1) membership per Lot owned. If the Owner of a Lot is more than one (1) person, voting and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of the Declaration, these Articles and the Bylaws. The membership rights of a Lot owned by a corporation or partnership or other entity shall be exercised by the individual designated from time to time by the Owner, in a written instrument provide to the Secretary of the Association, subject to the provisions of the Declaration, these Articles and the Bylaws.

B. Voting

The Association shall have two (2) classes of membership: "Class A" and "Class B", as follows:

1. Class A. "Class A" Members shall be all those Owners, as defined in paragraph A above, with the exception of Declarant (as long as the "Class B" Membership shall exist, and thereafter, Declarant shall be a "Class A" Member to the extent it would otherwise qualify). Unless otherwise specified in the Declaration, these Articles or the Bylaws, the vote for each Lot shall be exercised by the Owner of that Lot.

"Class A" Members owning Lots shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Paragraph V.A hereof; there shall be only one (1) vote per Lot.

In any situation when more than one (1) person holds the interest in a Lot required for membership, the vote for such Lot shall be exercised as those persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended if more than one (1) person seeks to exercise it.

Notwithstanding anything provided herein, there shall be no vote(s) for any Lot(s) owned by the Association.

2. Class B: The "Class B" Member shall be Declarant, or a representative thereof designated by it in a written notice to the Association, who shall have and cast one (1) vote in all Association matters, plus two (2) votes for each vote which may be cast by the "Class A" Members, except that the "Class B" member shall not vote in any election of directors by "Class A" Members. Such "Class B" Member may be removed and replaced by Declarant in its sole discretion. The "Class B" Membership shall cease and terminate (and convert to "Class A" Membership) at such time as Declarant elects, but in no event later than the Turnover Date.

C. Meetings of Members

The Bylaws of the Association shall provide for an annual meeting of Members, and may make provisions for regular and special meetings of Members other than the annual meeting. A quorum for the transaction of business at any meeting of the Members shall exist if the Members having the power to cast thirty percent (30%) of the votes of the Members shall be present at the meeting.

D. General Matters

When reference is made herein, or in the Declaration, the Bylaws, rules and regulations, management contracts, or otherwise, to a majority or specific percentage of the Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of the Members eligible to be cast by the Members present at a duly constituted meeting thereof (*i.e.*, one for which proper notice has been give and at which a quorum exists) and not of the Members themselves (or their Lots).

E. A quorum of the Members entitled to vote on any matter shall consist of the persons entitled to cast thirty percent (30%) of the votes regarding such matter.

F. No Member may assign, hypothecate or transfer in any manner his or her Membership or his or her share in the funds and assets of the Association, except as an appurtenance to his or her Lot.

ARTICLE VI TERM

The term for which the Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be transferred only to another not-for-profit corporation or dedicated or conveyed to an appropriate governmental agency agreeing to accept such dedication or conveyance.

ARTICLE VII
INCORPORATOR

The name and address of the Incorporator of these Articles is as follows:

David Page
1850 Fountainview Boulevard, Suite 201
Port St. Lucie, Florida 34986

ARTICLE VIII
OFFICERS

A. The affairs of the Association shall be managed by the President of the Association, assisted by one or more of the Vice President(s), the Secretary and the Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board.

B. The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the Directors, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the offices of President and a Vice President shall not be held by the same person, nor shall the offices of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	David Page
Secretary	James Anderson
Treasurer	James Anderson

ARTICLE X
BOARD OF DIRECTORS

A. There shall be three (3) members on the first Board ("First Board") who are to serve until the Turnover Date as provided in this Article. The number of members of the Board subsequent to the First Board shall be determined by the Board from time to time, but shall not be more than five (5) Directors. Except for Declarant-appointed Directors, Directors must be selected from amongst the Members or the spouses of such Members. Officers, directors and shareholders of corporate Members (or the equivalent of other entities) are also eligible to serve as Directors of the Association.

B. The names and street addresses of the persons who are to serve as the First Board are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Paul Hegener	1850 Fountainview Blvd., Suite 201 Port St. Lucie, FL 34986
David Page	1850 Fountainview Blvd., Suite 201 Port St. Lucie, FL 34986
James Anderson	1850 Fountainview Blvd., Suite 201 Port St. Lucie, FL 34986

Declarant reserves the right to remove members of the First Board and to appoint replacements in the event a vacancy is created on the First Board.

C. At the next Annual Meeting of the Membership occurring at least sixty (60) days after the time Class "A" Members, other than Declarant or a builder holding title solely for purposes of development and sale, own fifty percent (50%) of the Lots within Tortoise Cay, Declarant shall cause one member of the First Board to resign and the Members other than Declarant shall elect one (1) of the three (3) Directors as provided in the Bylaws.

D. Except as provided in Section C of this Article X, the First Board shall be the Board of the Association until the Turnover Date. Upon the Turnover Date, all three (3) members of the First Board shall resign, whereupon the Members shall elect Directors as provided in the Bylaws. Notwithstanding the resignation of the First Board upon the Turnover Date as provided herein, so long as Declarant continues to hold for sale in the ordinary course of business at least five percent (5%) of the Lots within Tortoise Cay, Declarant shall be entitled (but not required) to appoint one (1) Director. Vacancies on the Board shall be filled in accordance with the Bylaws.

E. The "Turnover Date" shall be the sooner to occur of the following:

1. Three (3) months after ninety percent (90%) of the Lots have been conveyed to persons other than Declarant or builders holding title solely for the purposes of development and sale;
2. December 31, 2030; or
3. When Declarant elects to turn over control of the Board to the Members.

The turnover date shall be the end of the "Class "B" Control Period" (as defined in the Declaration.)

F. The Board shall control the operation of the Association and shall possess all of the powers of the Association. All decisions of the Board shall be by a majority vote of the Directors present at a meeting of the Board at which a quorum is present and each Director shall be entitled to one (1) vote.

ARTICLE XI INDEMNIFICATION

Every Director and every officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including Legal Fees reasonably incurred by or imposed upon by him or her in connection with any proceeding, litigation or settlement in which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having been a Director or officer of the Association, whether or not he or she is a Director or officer at the time such cost, expense or liability is incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of any and all rights to which such Director or officer may be entitled by common or statutory law.

ARTICLE XII BYLAWS

The Bylaws of the Association shall be adopted by the First Board and thereafter may be altered, amended or rescinded as set forth therein. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

ARTICLE XIII AMENDMENTS

A. These Articles may be amended only as follows:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may either be the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one meeting.
- (b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Owner within the time and in the manner provided in the Bylaws for the giving of notice of meetings of Members.
- (c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving:

(i) the affirmative vote of two-thirds (2/3) of the Members of the Association; and

(ii) the affirmative vote of a majority of the Directors on the Board.

(d) Notwithstanding anything contained herein to the contrary, as long as "Declarant's Mortgagee" (as defined in the Declaration) continues to hold a mortgage encumbering any portion of the Property, no amendments shall be made to these Articles prior to the Turnover Date without the prior written approval of Declarant's Mortgagee.

(e) Notwithstanding the foregoing, as long as there is a "Class B" membership, the following actions require the prior written approval of the Federal Housing Administration ("FHA"): annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment to these Articles.

2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by two-thirds (2/3) of the Members of the Association and all Directors on the Board setting forth their intention that an amendment to the Articles be adopted.

B. No amendment shall be made to the Articles which shall in any manner reduce, amend, affect or modify the terms, conditions, provisions, rights and obligations set forth in the Declaration or any amendments thereto.

C. A copy of each amendment shall be filed with and certified by the Secretary of State of the State of Florida. After the Declaration is recorded, a certified copy of each amendment or the Articles as restated to include such amendment shall be recorded amongst the Public Records of the County.

D. Notwithstanding the foregoing provisions of this Article XIII, there shall be no amendment to these Articles which shall abridge, amend or alter the rights of:

- (i) the Declarant, including the right to designate and select members of the Board as provided in Article X hereof, without the prior written consent thereto by Declarant; or
- (ii) any first Mortgagee (as defined in the Declaration) without the prior written consent of such first Mortgagee).

ARTICLE XIV REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is: 1850 Fountainview Blvd., Suite 201, Port St. Lucie, FL 34986, and the initial registered agent for the Association at that address shall be David Page.

