

Record and return to:

Becker & Poliakoff, P.A.
Jennifer L. Horan, Esquire
4001 Tamiami Trail North Suite 270
Naples, FL 34103

ADDENDUM TO THE ACCESS EASEMENT AND AGREEMENT

This Addendum to the Access Easement and Agreement (which is recorded in Official Records Book 4034, Page 0092, at Instrument No. 3835949 in the Public Records of Collier County, Florida) (this Addendum is referred to as the “Addendum”) is made and entered into this _____ day of _____, 201_, by and between Classics Plantation Estates Homeowners Association, Inc., a Florida not for profit corporation (“Classics”), Hawthorne at Lely Resort Condominium Association, Inc., a Florida not for profit corporation (“Hawthorne”), and Tasori at Lely Resort Condominium Association, Inc., a Florida not for profit corporation (“Tasori”) (Classics, Hawthorne and Tasori are sometimes referred to individually as “Party” or collectively as the “Parties”).

WHEREAS, Classics, Hawthorne at Lely Resort Condominium Association, Inc., Hawthorne at Lely Resort, Inc., Stock Development, LLC previously entered into the Access Easement and Agreement on April 27, 2006 in order to provide Hawthorne (and, the later-developed Tasori) with a non-exclusive access easement to provide ingress and egress to and from the Hawthorne Community. The Agreement is recorded in Official Records Book 4034, Page 0092, at Instrument No. 3835949 in the Public Records of Collier County, Florida. A copy of the Agreement is attached hereto as **Exhibit “1”** and is incorporated herein;

WHEREAS, as part of the Agreement, the Parties are each obligated for a portion of Shared Costs and expenses incurred in maintaining portions of the Roadways shown cross-hatched and legally described on Exhibit “A” to the Agreement and for maintaining and operating the front entrance area of the Community (“Front Entrance Area”) and maintenance and repair of the Guard House;

WHEREAS, the Parties now desire to enter into this Addendum to revise and clarify the terms and conditions of the Agreement and to address various other matters relating to the maintenance of the real property subject to the Agreement. The Parties acknowledge and agree that the Agreement has become outdated and does not take into account recent growth in the communities, the construction and completion of Tasori and/or the current needs of the communities’ respective residents, including the parties to the Agreement.

WHEREAS, this Addendum, is intended to modify, revise, clarify, delete, change from, add to and supplement the Agreement. In the event of a conflict between the Agreement and this Addendum, this Addendum shall govern. The terms and conditions of the Agreement remain in full force and effect except as specifically modified herein. The Addendum is not intended to amend or otherwise revoke the non-exclusive access easement over and across the Roadway that was granted in favor of the Benefited Parcels and any and all owners of any portion of the Benefited Parcel (including to the owners of the Condominium Units) in the original Agreement.

Accordingly, Paragraph 2 of the Agreement remains in full force and effect. The Parties agree that to the extent that there is a conflict between any provisions in this Addendum and any provisions in the Agreement, the provisions of this Addendum shall supersede, replace and control the conflicting provisions contained in the Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants herein, the Parties agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by reference.

2. **Easement**. This Addendum is not intended to revoke any rights of the parties with regards to the access easement over and across the Roadway, as described in Paragraph 2 of the Agreement.

3. **“Front Entrance Area.”** The Parties agree that the Front Entrance Area consists of Celeste Drive and Classics Drive from Grand Lely Drive to Hawthorne Drive. The easterly boundary of the Front Entrance Area extends to the hedge line that exists as of the date of this Addendum. The westerly boundary of the Front Entrance Area extends to the column line as further depicted in the attached **Exhibit “2”**.

4. **Maintenance of the Shared Assets**. From and after the Effective Date of this Addendum, January 1, 2020, Classics shall be responsible for:

(a) the maintenance, repair and replacement of the Shared Assets. For purposes of this Addendum, “Shared Assets” includes all asphalt and paved roads in the Front Entrance Area and Roadways, all sidewalks in the same area including any pavement, associated curb, gutters, storm drains, sidewalks, street signs (excluding any association signage) and lighting, if any, within or along the right-of-way thereof, in accordance with commercially reasonable practices for pedestrian and vehicular ingress; any and all landscape material in the Front Entrance Area, including pruning and trimming the trees and bushes and removing and replacing any landscaping material; irrigation, fountains and pumps locations within the Front Entrance Area; and the Guard House (including plumbing and air conditioning), the entrance gates and exit gates, (excluding the back gate on Lely Cultural Drive), gate arms, access control equipment and software (including any computers, printers and cameras used for access purposes) and the bar code reader,

(i) operating, staffing, maintaining, repairing, and replacing, the Guard House, any associated gates, landscaping, irrigation lines and sprinklers, and lighting within the Roadway and Front Entrance Area, in accordance with commercially reasonable practices, such operations to be in accordance with operating and maintenance policies in effect on the Effective Date hereof; and

(ii) maintaining property insurance and liability insurance having coverage limits no less than the amount held by Classics during the year prior to the Effective Date, and naming Hawthorne and Tasori as additional insureds with respect to the property and improvements;

(iii) adopting an annual budget as provided in Section 6 below.

(iv) For purposes of this Addendum, "Maintenance" means, otherwise stated herein, day-to-day cleaning, heavy cleaning, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. Maintenance, repairs or replacements to the Shared Assets which is the responsibility of Classics shall be performed with materials and components of like kind, quality and quantity to the existing materials and components. Otherwise, they shall require the prior written approval of the Parties. The term "maintenance" does not include repair or replacement after a casualty or insurable event, which is described in more detail in Section 7 (b).

(b) All costs incurred by Classics pursuant to Section 4(a) including, but not limited to, costs of personnel, furnishings, gates, landscaping, taxes, utilities, and insurance, as well as reasonable reserves for future maintenance, repair and replacements related thereto (collectively, "**Shared Costs**"), shall be allocated among the Parties in accordance with Section 5 hereof.

All Shared Costs shall be based on contracts for insurance, goods, materials or services (including, without limitation, landscaping materials and services) relating solely to the maintenance of the Roadway, Front Entrance Area and Guard House Costs, as applicable, or invoices for supplies and equipment purchased, leased, or rented and used solely for the maintenance, repair and/or replacement of the same, as applicable, or in the case of utilities, on actual charges for utilities based on meters solely serving the Guard House or streetlights, as applicable. If there are no separate meters or contracts for services (i.e. property management, power washing, insurance) each Party shall be responsible for paying its allocation of shared costs based on the jointly prepared budget, unless the Classics, Hawthorne and Tasori have agreed in writing to a specific apportionment of any cost incurred by Classics which also relates to insurance, goods, materials, services, equipment, or utilities provided to or serving the Roadway, Front Entrance Area and/or Guard House.

(c) Vendor Selection and Engagement. Classics shall be responsible for solicitation, selection, and engagement of third-party vendors to provide maintenance services. Classics shall provide Hawthorne and Tasori with information regarding considered and proposed vendors prior to engagement of service by Classics for any services costing in excess of Ten Thousand Dollars (\$10,000.00). Hawthorne and Tasori shall provide written input to Classics within five (5) business days of receipt of information provided to Hawthorne and Tasori. Classics will make reasonable attempts to select an alternate vendor acceptable to Hawthorne and Tasori if those Parties make an objection to the proposed vendor.

5. Allocation of Shared Costs: Except as otherwise agreed to by the Parties in writing, all Shared Costs incurred for the period after the Effective Date of this Addendum shall be allocated and shared on a prorata basis as follows:

(a) Hawthorne's proportionate share of the Shared Costs is calculated as a fraction, the numerator of which is the total number of Units in the Hawthorne (76) and the

denominator of which is the total number of lots, condominium units and villas within all phases of Classics Plantation Estates and the Condominium (380 total units);

(b) Tasori's proportionate share of the Shared Costs is calculated as a fraction, the numerator of which is the total number of Units in Tasori (56) and the denominator of which is the total number of lots, condominium units and villas within all phases of Classics Plantation Estates and the Condominium (380 total units); and

(c) Classics' proportionate share of the Shared Costs is calculated as a fraction, the numerator of which is 248 and the denominator of which is the total number of lots, condominium units and villas within all phases of Classics Plantation Estates and the Condominium (380 total units).

6. **Budgeting of Shared Costs:** Not later than October 15th of each calendar year, Classics shall prepare and propose a detailed budget of the estimated Shared Costs and a detailed budget of any estimated additional costs for the upcoming year, including such replacement fund amounts, if any, as the associations' boards of directors determines appropriate, consistent with a reserve study conducted by a qualified consultant within the preceding 10 years, to be placed in a replacement fund for capital repairs and replacements of those items which are Shared Costs and a reasonable operating reserve for the items within each budget. The budget shall separate the Shared Costs into anticipated actual expenses for the next calendar year and reserves for the next calendar year. Each proposed budget shall reflect any surplus or deficit in the year to date budget and as compared to actual income and expenses for that period., and projected year end expenditures.

Items which must be included in the replacement fund are painting, paving and roof replacement, and any other item or asset for which the deferred maintenance or replacement cost exceeds \$10,000.00 and which is otherwise part of the Shared Costs allocated to the Parties, such as computer entry systems, gates, cameras, etc. For purposes of this paragraph, "deferred maintenance" shall mean any maintenance or repair that will be performed less frequently than annually and will result in maintaining the useful life of an asset. Classics shall not use replacement funds for non-intended purposes without the prior written approval of the Parties.

Classics shall notify Hawthorne and Tasori of the time, date and place of the meeting at which Classics will adopt the annual budget and any budget for Shared Costs and a representative of each may attend the meeting and offer comments on the proposed budget or budgets.

Classics shall mail or deliver a copy of the budget for Shared Costs to Hawthorne and Tasori so that the budget is received by November 15th of each calendar year. Such budget shall be prepared in a manner to show YTD actual receipts and expenditures and budgeted YTD amounts and projected year end amounts for each line item in the budget and any surplus or deficit for such period.

Within fifteen (15) days after receipt of the proposed budget from Classics, Hawthorne or Tasori may notify Classics in writing of any reasonable objection for Classics' consideration based on one or more of the following grounds and describing with particularity the line items, amounts, or inconsistencies giving rise to such objection: (i) the proposed budget includes line items or

amounts which are not legitimate Shared Costs; (ii) the budgeted amount for any line item exceeds historical expenses for such line item or quotes from other qualified providers by more than 10% without adequate justification; (iii) the allocation of budgeted expenses among the Parties, is not consistent with subsection 5(a) or (b) above, as applicable; or (iv) the proposed budget or allocation is otherwise inconsistent with the Agreement or this Addendum. Notwithstanding the above, no Party or entity as set forth in this subsection shall have a right to object to any line item in the budget that is not part of the Shared Costs allocated to such Party or entity pursuant to this Addendum, nor have any right of approval of any budget.

7. **Payment of Shared Costs.**

(a) Except as otherwise provided in this Section 7, each of the Parties responsible for a share of the Shared Costs pursuant to a budget and allocation adopted under Section 6 shall pay to Classics the quarterly amount allocated to it on or before the first day of each quarter (January, April, July and October). Classics will notify each Party in writing if the payment is not received by the 5th day. The Party shall have five (5) days from receipt of written notice to cure the late payment. Payment not received by the term of cure (i.e. no later than five days of receipt of written notice) will incur interest at the rate of eighteen percent (18%) per annum (or the highest rate allowed under Florida law, whichever is more). The interest will accrue from the 1st day of the month the payment is due until such time as the payment is made and the responsible Party to whom the payment is due shall be entitled to collect from the delinquent Party all costs of collection, including but not limited to reasonable attorney's fees and court costs.

If payment of the Shared Costs (not in dispute) is not made by the sixtieth (60th) day of the quarter, the delinquent Party will be deemed to be in default of the Access Easement And Agreement and will be notified in writing. After written notice of default is provided and the default is still not cured, Classics reserves the right to shut off the barcodes for the defaulting Party's residents until such time that the default is cured.

(b) **Insurance and Expenses Related to Casualty Loss.** Classics shall be solely responsible for procuring and maintaining property/casualty insurance affording coverage for losses and/or damages to the Front Entrance Area and shall cause Hawthorne and Tasori to be named as additional insured on said policies. In the event of damage or destruction of the Front Entrance Area because of fire or other casualty (including but not limited to hurricane, tornado, flooding, storm surge, sudden and unexpected event), the Parties shall arrange for the prompt repair and restoration of the Front Entrance Area as closely as possible to the condition in which it existed before the casualty. All reconstruction or repairs must be approved by the Committee (established in Section 9 below) substantially in accordance with the pre-casualty condition. Notwithstanding the foregoing, Classics may act in an emergency to remove debris and to begin clean-up of the Front Entrance Area to allow for ingress and egress. Classics must advise Tasori and Hawthorne within twenty-four (24) hours of any emergency actions taken and any costs incurred.

Any insurance proceeds received by Classics to repair damage to the Front Entrance shall be used solely and exclusively for said repairs. If the proceeds from insurance, including the deductible, are not sufficient to defray the estimated costs of reconstruction and repair, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the

payment of the costs of reconstruction and repair are insufficient, the Committee shall meet to agree on the costs of the reconstruction and repairs in a sufficient amount to provide funds for the payment of such costs, which will be allocated and shared by the Parties on the pro-rata basis set forth in Section 5 above. Any costs related to a casualty loss that are not covered by insurance required to be maintained by Classics for the Front Entrance Area (i.e. landscaping, irrigation, etc.) shall be allocated and shared by the Parties on the pro-rata basis set forth in Section 5, above.

(c) **Dispute.** In the event a dispute arises regarding or concerning any Shared Costs in excess of approved budgeted items, including whether a cost is properly a “Shared Costs” or a dispute regarding whether work is Maintenance or an improvement, the disputing Party shall place any disputed amount with Classics within 30 days of invoiced due date, to be held in a separate escrow account until the dispute is resolved in the manner set forth in Section 10j below. Escrowed funds may not be released without written approval of all disputing parties. No interest shall accrue throughout the period of dispute. Classics shall not shut off barcode code access once funds are placed in escrow as a result of any dispute.

8. **Recordkeeping; Inspection and Audit.** Classics shall maintain or cause to be maintained full and accurate books of account, contracts, service records, and receipts with respect to the performance of its responsibilities hereunder (as well as those vendors performing services applicable thereto) and shall retain copies of such books of account for a minimum period of seven (7) years. Classics shall make books, records, and related financial statements available for inspection and copying during normal business hours by an authorized representative of each other Parties, and the Party requesting copies shall pay copying charges when requesting copies.

If the amount of Front Entrance actual expenses and receipts under the budget for any year is disputed after the Classics regular annual audit, the complaining Party shall provide written notice of the dispute to all Parties. The Parties and the external auditor agree to meet within thirty (30) days of receipt of written notice that a dispute exists and shall make a good faith attempt to resolve said dispute.

9. **Committee.** The Parties agree to form an informal committee consisting of one (1) member from Classics and one (1) member from each Hawthorne and Tasori (the “Committee”). Members of the Committee may be directors or officers of the respective community associations of which they represent but each member of the Committee must be a member in good standing of their respective community association. Members of the Committee are appointed by the majority vote of the Board of Directors of their respective community associations and shall serve at the discretion of their respective Boards. The Committee will meet on a regular basis at the discretion of the Committee to discuss any issues relating to the Agreement and this Addendum, including maintenance, repair and replacement of the Shared Assets, the budget, deferred maintenance of the Shared Assets and Shared Costs and rules and regulations regarding gate access and entry.

In the event Classics (or any of the Parties to this Agreement) desires to undertake or make “improvements,” (any unanticipated expense or improvement that is outside of the budget or replacement fund and is a deviation from “as built”) which includes but is not limited to material alterations (including changing paint colors, roof materials, landscaping schemes, additions of

features, adding assets, etc.), substantial additions, replacements other than those of like kind and quality, and improvements costing in excess of Ten Thousand Dollars (\$10,000.00), a majority of the members of the Committee must agree to the same. The cost of any such improvements will be shared on a prorata basis as set forth in Section 5 above.

Prior to incurring any expenses or cost in connection with any improvement, Classics shall notify the Committee of its determination of the need for such work and/or improvement. The Committee shall negotiate in good faith for a period not to exceed fifteen (15) days. If the Committee members reach an agreement on the proposed improvement, such agreement will be promptly confirmed in writing and will be presented to the Board of Directors of the respective associations for approval. If the Committee members or the respective Boards do not reach agreement regarding the proposed improvement work within such fifteen (15) day period, then Classics may proceed with the improvement at its own cost and expense. After completion of the improvement, operating expenses and or maintenance costs will be deemed shared costs. However, any future replacement of improvement will not be a shared cost. If any dispute arises regarding improvements, funding improvements, maintaining improvements and/or whether an alteration is an allowable 'improvement' or maintenance; after following the dispute provisions contained in this Addendum and, after making a good faith effort to informally resolve the dispute, the Parties shall agree to engage in mediation of the dispute as set forth in Section 10(j) below.

10. **Miscellaneous Provisions.**

(a) **Notices.** Any notice provided for in this Agreement shall be in writing and delivered in person, by United States mail with postage prepaid, by private carrier with charges prepaid, or if the intended recipient has given its prior written authorization to use such method of delivery, by facsimile or electronic mail with written confirmation of transmission. Notices shall be sent or delivered to the intended recipient at its principal office or the address which the intended recipient has most recently designated in writing to each other Party by notice in accordance with this Section. All such notices shall, for all purposes, be deemed delivered to the addressee: (a) upon personal delivery to the address of such addressee described above, as evidenced by the signature of the person at such address who accepts such delivery; or (b) on the third day after mailing when mailed by registered, certified, or first class mail, postage prepaid, and properly addressed; or (c) upon actual receipt by the addressee, if delivered by any other authorized method. Refusal of an attempted delivery by any common, independent private carrier shall be deemed delivery on the date delivery is attempted.

(b) **Duration; Binding Effect.** This Agreement shall run for an initial term of 50 years from the date of recording hereof and thereafter shall automatically be extended for successive periods of ten (10) years each, unless and until terminated by an instrument stating the intent to terminate as of the end of such initial term or any extension period, which instrument is signed by the Parties, or their respective successors and assigns, and recorded in the Public Records of Collier County, Florida prior to the date of the next renewal.

(c) **Successors and Assigns.** This Addendum shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and successors-in-title to any portion of the Roadway and Front Entrance Area; provided, no person or entity may assign its rights or obligations hereunder to anyone other than a successor-in-title without the prior written consent of

the other Parties. Notwithstanding anything in the Agreement or this Addendum to the contrary, references to successors, assigns and successors-in-title of the Parties, shall not include any individual members or homeowners, or any homebuilder acquiring title to any portion of the Subject Property, except in the event of any permitted assignment set forth herein.

(d) No Third-Party Beneficiaries. No person or entity other than Classics, Hawthorne, Tasori, their respective successors or assigns shall be deemed a party to or beneficiary of the terms of this Addendum for purposes of enforcing the same or consenting to any matter hereunder.

(e) Amendment; Waiver. This Addendum may only be amended or terminated by an instrument in writing executed by Classics, Hawthorne, and Tasori, or their respective successors or assigns. No amendment or termination of this Addendum shall require the approval of any home owner, individual lot owner, or other person except as specifically provided in this subsection (e). No waiver of any provision hereof shall be effective unless waived in writing and signed by each Party entitled to enforce such matter, nor shall any single waiver constitute a waiver of any subsequent obligation.

(f) Severability. Invalidation in whole or in part, of any particular provision of this Addendum by judgment or court order will not affect any other provisions, all of which shall remain in full force and effect; provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to enforce any otherwise invalid provision contained in this Addendum when necessary to avoid a finding of invalidity while effecting the parties' intent herein.

(g) Enforcement. In the event any action or proceeding is taken to enforce the provisions of this Addendum, the prevailing party shall be entitled to an award of court costs and reasonable attorneys' fees (which shall include any and all reasonable attorney and paralegal fees incurred in the course of trial or appellate litigation or related services by an out-of-court attorney and paralegal associated with or regarding the dispute in question), and any and all costs and fees incurred in connection with any such action or proceeding.

(h) Venue. Any legal proceedings undertaken with regard to this Agreement shall be prosecuted in the court of competent jurisdiction in the County.

(i) Jury Trial Waiver. The Parties each knowingly, voluntarily and intentionally waive any right which either of them or any Party may have to a trial by jury with respect to any litigation or legal proceeding based upon or arising directly, indirectly or otherwise in connection with, out of, or related to this Addendum including, by way of example but not limitation, any course of conduct, course of dealings, verbal or written statements or acts or omissions of any Party which in any way relate to this Addendum or any document referenced herein. The Parties have specifically discussed and negotiated for this waiver and understand the legal consequences of it.

(j) Disputes. Any claim arising out of or related to this Addendum shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by any Party. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the County. Agreements reached in mediation shall be enforceable as settlement

agreements in any court having jurisdiction thereof. In the event mediation is not successful or if this condition is otherwise satisfied, the Parties agree that venue for any action arising out of performance or default under this Addendum shall be commenced in the appropriate court in the County.

(k) Authority. Each Party warrants and represents to the other Parties that such Party has obtained any and all consents and approvals required to enter into this Agreement and make it binding upon and enforceable against such Party and that the person or persons executing this Addendum on behalf of such Party has the full right and authority to do so on behalf of such Party and that this Addendum constitutes a valid and binding obligation of such Party, enforceable in accordance with its terms.

(l) Construction. Each Party represents to each other Party that it has had the opportunity to review and be advised by legal counsel of its choosing as to each and every provision of this Addendum. Each Party acknowledges that each has contributed equally to the negotiation and preparation of this Addendum and agrees that this Addendum shall not be construed more strictly against any Party by reason of the role or participation of such Party or its counsel in drafting of this Addendum.

(m) Counterparts. This Addendum may be signed in any number of counterparts, each of which is an original and all of which taken together constitute a single document. Any counterpart signature hereto, whether a facsimile, email, or other copy, shall be deemed and original for all purposes.

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

HAWTHORNE AT LELY RESORT CONDOMINIUM ASSOCIATION, INC.

By: _____
Print Name: _____
Title: _____
Date: _____

STATE OF FLORIDA)
) ss
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ of Hawthorne at Lely Resort Condominium Association, Inc., on behalf of the corporation. He/she is personally known to me or produced _____ as identification.

Print name: _____
NOTARY PUBLIC - State of _____
My Commission Expires: _____

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**CLASSICS PLANTATION ESTATES
HOMEOWNERS ASSOCIATION, INC.**

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ of Classics Plantation Estates Homeowners Association, Inc., on behalf of the corporation. He/she is personally known to me or produced _____ as identification.

Print name: _____
NOTARY PUBLIC - State of _____
My Commission Expires: _____

**TASORI AT LELY RESORT
CONDOMINIUM ASSOCIATION, INC.**

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ of Tasori at Lely Resort Condominium Association, Inc., on behalf of the corporation. He/she is personally known to me or produced _____ as identification.

Print name: _____
NOTARY PUBLIC - State of _____
My Commission Expires: _____