

# PROPOSAL



# MILANO PUD

## AMENDMENT REQUEST 22-38RZ

Rebuttal Slides

Venice Planning Commission March 21, 2023

PRESENTED BY **NEAL**COMMUNITIES



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY

### **CLAIM: ONCE LAND IS PLATTED IT CAN NEVER BE CHANGED WITHOUT THE CONSENT OF ALL HOMEOWNERS.**

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#### **Misleading testimony pulled from transcript of January 17th Planning Commission Hearing:**

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Dan Lobeck: "Once the developer takes that step of recording a plat for the home sites, which in Cielo are down to the southwest of the subdivision and records other provisions on that plat to bind that property, that is binding."

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Dan Lobeck: "And I submit to you that because it has been platted, because it says that that is reserved for wetlands, drainage, open space, and lake, the developer doesn't have any control to ask you and to ask the City Council to amend the plat to provide for anything different."

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Dan Lobeck: "If this wasn't true, that the developer had to have control over the property in order to request it to be used for something other than what's been approved, other than what's in the recorded plat, the developer could come in on any property that it doesn't have control over within the PUD and say now I want something different, even though it's been fully platted for something else. It can't do that. It can't do that here. It's just – it's common sense."



## MILANO PUD PROPOSAL

RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### CLAIM: ONCE LAND IS PLATTED IT CAN NEVER BE CHANGED WITHOUT THE CONSENT OF ALL HOMEOWNERS.

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Misleading testimony pulled from transcript of January 17th  
Planning Commission Hearing:

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Dan Lobeck: "And that makes sense. I mean, once you buy a home in a subdivision with the plat it can't be changed on you to steal your open space, for example, without your consent."

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Dan Lobeck: " and they can't amend the plat without the consent of all the owners, and you're going to find that Cielo owners, including one of my named clients, will not sign Mr. Neal's proposed plat amendment."

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Dan Lobeck: "The statute requires that each and every homeowner sign a dedication, the same formalities of a deed, if the plat is going to be changed."



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### REALITY: A PLAT CAN BE AMENDED WITHOUT THE CONSENT OR SIGNATURE OF ALL HOMEOWNERS



Old Republic National Title Insurance Company  
6000 Cattleridge Drive, #104  
Sarasota, Florida 34232

#### AMERICAN LAND TITLE ASSOCIATION COMMITMENT

**Transaction Identification Data for reference only:**

Issuing Agent: Vogler Ashton, PLLC	ALTA Universal ID:	Commitment Number:	Issuing Office File Number: Publix Supermarkets, Inc
Issuing Office: 705 10th Avenue West Suite 103 Palmetto, FL 34221	Loan Number:	Revision Number:	Property Address: 0 Caserta Ct Nokomis, FL 34275

#### SCHEDULE A

FILE NO.: 22134305 CS

1. Commitment Effective Date: October 25, 2022 at 8:00 A.M.

2. Policy to be issued:

- |   |  |
|---|--|
| (a) ALTA 2006 OWNER'S POLICY<br>(with Florida Modifications)<br>Proposed Insured:<br><br>Publix Supermarkets, Inc., a Florida corporation | Proposed Policy Amount:<br><br>\$1,000,000 |
| (b) ALTA 2006 LOAN POLICY<br>(with Florida Modifications)<br>Proposed Insured:<br><br>N/A   | Proposed Policy Amount:<br>N/A             |

3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.

4. Title to the estate or interest in the Land is at the Commitment Date vested in:

Border and Jacaranda Holdings, LLC, a Florida limited liability company

### Florida Statute 177.0 1

(2) Every plat of a subdivision filed for record must contain a dedication by the owner or owners of record. The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey record fee simple title to the lands being dedicated in the same manner in which deeds are required to be executed.

### Old Republic National Title Insurance Company Title Commitment

1. Confirms ownership is solely vested in Border and Jacaranda Holdings, LLC.
2. Schedule B-I contains no requirement for consent or joinder of any other person, including any homeowner in Cielo Subdivision.

# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.



**Old Republic National Title Insurance Company**  
6000 Cattleridge Drive, #104  
Sarasota, Florida 34232

AMERICAN LAND TITLE ASSOCIATION COMMITMENT

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Issuing Agent: **Vogler Ashton, PLLC**      ALTA Universal ID:      Commitment Number:      Issuing Office File Number: **Publix Supermarkets, Inc**  
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Proposed Policy Amount: \_\_\_\_\_
  - ALTA 2006 LOAN POLICY (with Florida Modifications)  
Proposed Insured: N/A  
Proposed Policy Amount: N/A
- The estate or interest in the Land described or referred to in this Commitment is Fee Simple.
- Title to the estate or interest in the Land is at the Commitment Date vested in: Border and Jacaranda Holdings, LLC, a Florida limited liability company

### SCHEDULE B - I

AMERICAN LAND TITLE ASSOCIATION COMMITMENT

#### Requirements

All of the following Requirements must be met:

- The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
- Pay the agreed amount for the estate or interest to be insured.
- Pay the premiums, fees, and charges for the Policy to the Company.
- Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
- Warranty Deed from Border and Jacaranda Holdings, LLC, a Florida limited liability company to the proposed insured.
- The agent must
  - Determine that Border and Jacaranda Holdings, LLC is in good standing in the state of its formation; and
  - Establish that the person(s) executing the deed or mortgage to be issued are authorized by law to execute said instruments on behalf of the company.
- Satisfactory survey, in conformity with the minimum standards for land surveys made for title insurance purposes, certified to the company and/or its agents, through a current date, disclosing the nature and extent of any encroachments, overlaps, boundary line discrepancies, or other matters adversely affecting title to the property to be insured. Additional requirements and/or exceptions will be made for matters disclosed by the survey.
- Determination must be made that there are no unrecorded special assessment liens or unrecorded liens arising by virtue of ordinances, unrecorded agreements as to impact or other development fees, unpaid waste fees payable to the county or municipality, or unpaid service charges under Ch. 159, F.S., or county ordinance.
- Submit proof that all municipal charges and assessments and all municipal service charges for water, sewer and waste collection, if any, are paid.

Note: The following is for informational purposes only and will not appear in the policy to be issued: The following deed(s) affecting the land described in Schedule A hereof cover a minimum twenty-four month period prior to the effective date of this commitment:

O.R. Instrument No. 2016154101 and corrective in O.R. Instrument No. 2018046502

**FILE NO.: 22134305**

### SCHEDULE B - II

AMERICAN LAND TITLE ASSOCIATION COMMITMENT

#### Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

- Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
- Facts which would be disclosed by an accurate and comprehensive survey of the premises herein described.
- Rights or claims of parties in possession.
- Construction, Mechanic's, Contractors' or Materialmen's lien claims, if any, where no notice thereof appears of record.
- Easements or claims of easements not shown by the public records.
- General or special taxes and assessments required to be paid in the year 2022 and subsequent years, which are not yet due and payable.
- Right-of-Way Easement granted to Florida Power & Light Co. recorded in O.R. Book 931, Page 684.
- Right-of-Way Easement granted to Florida Power & Light Co. recorded in O.R. Book 931, Page 686.
- Temporary Slope Easement in favor of The City of Venice recorded in O.R. Instrument No. 2013007711.
- All matters contained on the Plat of CIELO, as recorded in Plat Book 53, Pages 288 through 296, as affected by Release and Termination of Cielo Easements & Restrictive Covenants recorded in O.R. Instrument No. 2022165138 and 2022164599.
- City of Venice Ordinance No. 2005-42 as recorded in O.R. Instrument No. 2005236099.
- Developer's Agreement as recorded in O.R. Instrument No. 2014102555.
- Any lien provided by County Ordinance or by Ch. 159, F.S., in favor of any city, town, village or port authority, for unpaid service charges for any water systems, sewer systems or gas systems serving the land described herein; and any lien for waste fees in favor of any county or municipality.

**FILE NO.: 22134305**

#### EXHIBIT A

TRACT 581 AND THAT PORTION OF TRACTS 366 AND 608 OF THE PLAT OF CIELO, AS RECORDED IN PLAT BOOK 53, PAGE 288, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA, AS CONTAINED IN THE FOLLOWING DESCRIBED PARCEL OF LAND:

COMMENCING AT THE NORTHEASTERLY CORNER OF TRACT 700, CIELO SUBDIVISION AS RECORDED IN PLAT BOOK 53, PAGE 288 OF SARASOTA COUNTY OFFICIAL RECORDS, THENCE SOUTH 00°09'06" WEST, A DISTANCE OF 55.64 FEET ALONG THE WEST RIGHT-OF-WAY LINE OF JACARANDA BOULEVARD TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE SAID RIGHT-OF-WAY SOUTH 00°09'06" WEST, 478.24 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE, NORTH 89°14'10" WEST, 935.70 FEET; THENCE NORTH 00°45'50" EAST, 72.60 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 17.60 FEET AND WHOSE CHORD BEARS NORTH 12°25'30" WEST, 7.43 FEET; THENCE NORTHERLY 7.49 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 24°22'40", TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 110.67 FEET AND WHOSE CHORD BEARS NORTH 11°23'08" WEST, 46.88 FEET; THENCE NORTHERLY 47.24 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 24°27'24"; THENCE NORTH 00°50'04" EAST, 181.66 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 61.00 FEET AND WHOSE CHORD BEARS NORTH 11°31'26" WEST, 26.97 FEET; THENCE NORTHERLY 27.18 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 24°43'15", TO A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 94.50 FEET AND WHOSE CHORD BEARS NORTH 11°58'28" WEST, 35.80 FEET; THENCE NORTHERLY 35.29 FEET ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 23°49'11"; THENCE NORTH 00°03'51" WEST, 159.00 FEET TO THE SOUTH LINE OF TRACT 700 OF SAID CIELO SUBDIVISION; THENCE ALONG SAID SOUTH LINE, SOUTH 89°10'25" EAST, 957.24 FEET TO THE POINT OF BEGINNING.

**FILE NO.: 22134305**

5. The Land is described as follows:  
See Attached Legal Description

Issued through the Office of:  
Vogler Ashton, PLLC  
705 10th Avenue West  
Suite 103  
Palmetto, FL 34221  
Phone: 941-304-3400

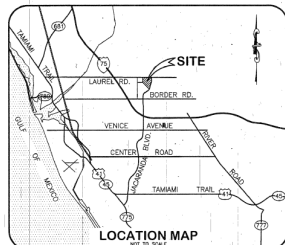
*Wanda Vogler*  
Authorized Signature

# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT. REALITY: A PLAT CAN BE AMENDED WITHOUT THE CONSENT OR SIGNATURE OF ALL HOMEOWNERS

**CIELO**  
A SUBDIVISION  
IN SECTION 35, TOWNSHIP 38 SOUTH, RANGE 19 EAST  
CITY OF VENICE, SARASOTA COUNTY, FLORIDA

PLAT BOOK 53 PAGE 288  
SHEET 1 of 9



**CERTIFICATE OF APPROVAL OF COUNTY CLERK**  
STATE OF FLORIDA } SS  
COUNTY OF SARASOTA } SS  
I, KAREN E. BUSHING, COUNTY CLERK OF SARASOTA COUNTY, FLORIDA, HEREBY CERTIFY THAT THIS PLAT HAS BEEN EXAMINED AND THAT IT COMPLES IN FORM WITH ALL THE REQUIREMENTS OF THE STATUTES OF FLORIDA PERTAINING TO PLATS AND PLATS. 53-288  
RECORDS OF SARASOTA COUNTY, FLORIDA, THIS 19th DAY OF JUNE, 2019.  
CLERK OF COUNTY COURT  
SARASOTA COUNTY, FLORIDA

**CERTIFICATE OF APPROVAL OF CITY CLERK**  
STATE OF FLORIDA } SS  
COUNTY OF SARASOTA } SS  
I, JAMES R. SCHEER, CITY CLERK OF THE CITY OF VENICE, FLORIDA, HEREBY CERTIFY THAT THIS PLAT HAS BEEN EXAMINED AND THAT IT COMPLES IN FORM WITH ALL THE REQUIREMENTS OF THE STATUTES OF FLORIDA PERTAINING TO PLATS AND PLATS. 53-288  
RECORDS OF THE CITY OF VENICE, FLORIDA, THIS 19th DAY OF JUNE, 2019.  
CITY CLERK

**CERTIFICATE OF REVIEWING SURVEYOR AND MAPPER**  
STATE OF FLORIDA } SS  
COUNTY OF SARASOTA } SS  
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RECORDS OF SARASOTA COUNTY, FLORIDA, THIS 19th DAY OF JUNE, 2019.  
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SARASOTA COUNTY, FLORIDA

**POINT BREAK SURVEYING, LLC**  
CERTIFICATE OF AUTHORIZATION LB 7364  
8115 BLANCKEN COUNTY, BLAETLE  
SARASOTA, FL 34240  
PHONE: (941) 378-4737  
FAX: (941) 378-6658

DATE: 10/24/2019

**GRANT OF EASEMENTS**  
UNLESS OTHERWISE INDICATED, LOT EASEMENTS OF TEN FEET (10') IN WIDTH ALONG EACH SIDE OF LOT LINE, FIVE FEET (5') IN WIDTH ALONG EACH REAR LOT LINE AND THREE FEET (3') IN WIDTH ALONG EACH SIDE LOT LINE ARE HEREBY GRANTED AND PROVIDED FOR THE PURPOSES OF ACCOMMODATING TELECOMMUNICATIONS UTILITIES. SUCH EASEMENTS SHALL INCLUDE TELECOMMUNICATIONS SERVICES, POWER, GAS, WATER, TELEVISION, CABLE, AND OTHER PUBLIC OR PRIVATE UTILITIES. THE CITY OF VENICE AND SARASOTA COUNTY HEREBY GRANT THE EASEMENTS SET FORTH ABOVE TO THE CITY OF VENICE AND SARASOTA COUNTY. THE CITY OF VENICE AND SARASOTA COUNTY HEREBY GRANT THE EASEMENTS SET FORTH ABOVE TO THE CITY OF VENICE AND SARASOTA COUNTY. THE CITY OF VENICE AND SARASOTA COUNTY HEREBY GRANT THE EASEMENTS SET FORTH ABOVE TO THE CITY OF VENICE AND SARASOTA COUNTY.

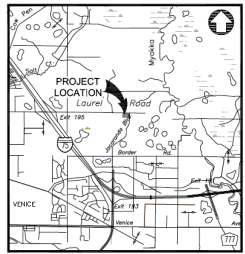
**NOTES**  
1) NOTICE: THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DECLARATION OF THE UNDERSIGNED, JAMES R. SCHEER, BY OR MANAGER OF BORDER AND JACARANDA HOLDINGS, LLC, A FLORIDA LIMITED LIABILITY COMPANY, AND (2) AS MANAGER OF NOOD MANUFACTURING, LLC, A FLORIDA LIMITED LIABILITY COMPANY, AND (3) AS MANAGER OF NOOD MANUFACTURING, LLC, A FLORIDA LIMITED LIABILITY COMPANY, ALL COMPANIES LICENSED TO DO BUSINESS IN THE STATE OF FLORIDA, COLLECTIVELY, "OWNERS", CERTIFIED OWNERSHIP OF THE PROPERTY DESCRIBED HEREIN, AND HAS CAUSED THIS PLAT ENTITLED "CIELO" TO BE MADE AND DOES HEREBY RESOLVE THE FOLLOWING:  
TO THE CITY OF VENICE, SARASOTA COUNTY AND PUBLIC AND PRIVATE UTILITY COMPANIES, ALL ACTING WITHIN THE SCOPE OF THEIR RESPECTIVE, NON-EXCLUSIVE EASEMENT OVER UNDER AND ACROSS TRACT 100 (PRIVATE ROAD WAY) FOR THE LIMITED PURPOSES OF THE EASEMENTS SET FORTH ABOVE TO THE CITY OF VENICE AND SARASOTA COUNTY AND PUBLIC UTILITIES IDENTIFIED ON THE PLAT AND FOR THE DESIGN AND MAINTENANCE, THROUGH THE PUBLIC UTILITIES SERVICE OF EMERGENCY AND LAW ENFORCEMENT PERSONNEL, AND (3) INDICES/EXPOSES FOR THE PURPOSE OF INSTALLATION AND MAINTENANCE OF UNDERGROUND UTILITY INFRASTRUCTURE AND EASEMENTS, IF SPECIFICALLY UNDERGROUNDED, TO THE CITY OF VENICE AND SARASOTA COUNTY AND PUBLIC UTILITY COMPANIES.  
WHEREAS, THE FOREGOING HAS SET HIS HAND AND SEAL THIS 24th DAY OF October, 2019.

2) WHEREAS, THE FOREGOING HAS SET HIS HAND AND SEAL THIS 24th DAY OF October, 2019.  
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### Multiple replats within this PUD without the joinder of anyone other than the fee simple title holder.

**CIELO REPLAT**  
A REPLAT OF TRACT 501 AND PORTIONS OF TRACTS 306 & 600 OF "CIELO" AS RECORDED IN PLAT BOOK 53, PAGE 288 LYING IN SECTION 35, TOWNSHIP 38 SOUTH, RANGE 19 EAST, CITY OF VENICE, SARASOTA COUNTY, FLORIDA



**CERTIFICATE OF APPROVAL OF COUNTY CLERK**  
STATE OF FLORIDA } SS  
COUNTY OF SARASOTA } SS  
I, KAREN E. BUSHING, COUNTY CLERK OF SARASOTA COUNTY, FLORIDA, HEREBY CERTIFY THAT THIS PLAT HAS BEEN EXAMINED AND THAT IT COMPLES IN FORM WITH ALL THE REQUIREMENTS OF THE STATUTES OF FLORIDA PERTAINING TO PLATS AND PLATS. 53-288  
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**POINT BREAK SURVEYING, LLC**  
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PHONE: (941) 378-4737  
FAX: (941) 378-6658

DATE: 10/24/2019

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**CERTIFICATE OF OWNERSHIP AND DEDICATION**  
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COUNTY OF SARASOTA } SS  
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PHONE: (941) 378-4737  
FAX: (941) 378-6658

DATE: 10/24/2019

**Stantec**  
8000 Professional Plaza, Fort Myers, FL 33904  
Phone: 813.436.6600  
Office: 813.436.6600  
stantec.com









# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

- Developer retains very specific rights to replat the property and make changes in the development.
- Full disclosure of the Declaration is included in the sales contract, the title insurance policy provided at closing, and subdivision documents.
- These are included in the Declaration of Covenant Conditions and Restrictions recorded for Cielo.
- Every homeowner is subject to the Declaration as it was recorded before their deed.
- Each homeowner accepts title to their home and is bound by the Declaration.

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2019169159 84 PG(S)  
December 10, 2019 04:13:04 PM  
KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FL

Prepared By and Return To:  
Vogler Ashton, PLLC  
705 10<sup>th</sup> Ave. West, Ste. 103  
Palmetto, Florida, 34221



### DECLARATION

#### OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

#### CIELO

This Declaration (the "Declaration") is made as of the 3<sup>rd</sup> day of October, 2019, by **NEAL COMMUNITIES OF SOUTHWEST FLORIDA, LLC**, a Florida limited liability company, (the "Declarant" or "Developer"), whose mailing address is 5800 Lakewood Ranch Blvd, Sarasota, Florida 34240.

#### WITNESSETH:

**WHEREAS**, Declarant is the owner of and/or is developing that certain real property within the City of Venice, Florida, described on **Exhibit "A"**, attached hereto and made a part hereof (the "Initial Property" or "Property"); and

**WHEREAS**, the Initial Property has or will be platted as an initial phase of "Cielo," and Declarant desires to establish thereon a planned community of both residential and commercial uses, which community shall be subject to the terms of this Declaration as hereinafter provided; and,

**WHEREAS**, this Declaration does not and is not intended to create a condominium within the meaning of The Florida Condominium Act, Florida Statutes Section 718.01, et seq., and none of the Property falls within or under The Florida Condominium Act.

**NOW, THEREFORE**, Declarant declares that the above recitals are true and correct and shall be incorporated herein; and the Property, and such additions thereto as may hereafter be made pursuant to Article 2, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, reservations, restrictions, conditions, easements, limitations, terms, obligations, charges and liens hereinafter set forth herein this Declaration, as same may be amended from time to time, all of which shall run with the land and be binding upon the land and all owners and transferees acquiring any interest therein.



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### Each homeowner accepts title to their home and is bound by the Declaration:

**2.02 (a)** Notwithstanding anything to the contrary herein, **Declarant and/or Developer reserve the right to make any modifications, changes, or deletions to the Common Areas, including the landscaping and landscape buffers, open spaces, and all other areas of the Initial Property and Property upon the addition of new property to the Subdivision.**

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**2.02 (c)** The Association, and all Owners by acceptance of a deed to or other transfer conveyance of their Lots, shall be deemed to have automatically consented to any such rezoning, re-platting, change, addition or deletion thereafter made by Declarant to the Property, including the Common Areas, and shall evidence such consent in writing if requested to do so by Declarant at any time (provided, however, that the refusal to give such written consent shall not obviate the general and automatic effect of this consent provision). **Declarant reserves the right to change any of the Lot Types, sizes or configurations, the housing, building and dwelling unit plans, styles, sizes and configurations, the landscaping, recreational amenities and Common Property, and to change the general scheme of development, general development plan, and the like, in any way Declarant deems reasonable, in Declarant's sole and absolute discretion. (Emphasis Added)**



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

**4.01 (d) Notwithstanding anything to the contrary herein, Declarant reserves the right to, and the Association, and all Owners by acceptance of a deed to any Lot, shall automatically be deemed to have consented to this reservation by Declarant to change the scheme of the development and general development plan of the Project, including but not limited to, additions to, and deletions of the Common Property, reconfiguration of Lots, change of uses, change of Lot types, and all other changes to the Subdivision and Subdivision Improvements so implemented by Declarant pursuant hereto. (Emphasis Added)**

**10.1 Notwithstanding anything to the contrary herein, nothing contained herein shall limit or impair, in anyway whatsoever, Declarant's rights to develop the Subdivision, including re-platting and reconfiguring Lots and Common Property as well as developing adjacent parcels and incorporating some into this Subdivision as a new plat, re-plat and/or new phase of the Subdivision.**

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2019100109 04 PG(S)  
December 10, 2019 04:13:04 PM  
KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FL



Prepared By and Return To:  
Vogler Ashton, PLLC  
705 10<sup>th</sup> Ave. West, Ste. 103  
Palmetto, Florida, 34221

**DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**

**CIELO**

This Declaration (the "Declaration") is made as of the 3<sup>rd</sup> day of October, 2019, by **NEAL COMMUNITIES OF SOUTHWEST FLORIDA, LLC**, a Florida limited liability company, (the "Declarant" or "Developer"), whose mailing address is 5800 Lakewood Ranch Blvd, Sarasota, Florida 34240.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of and/or is developing that certain real property within the City of Venice, Florida, described on **Exhibit "A"**, attached hereto and made a part hereof (the "Initial Property" or "Property"); and

**WHEREAS**, the Initial Property has or will be platted as an initial phase of "Cielo," and Declarant desires to establish thereon a planned community of both residential and commercial uses, which community shall be subject to the terms of this Declaration as hereinafter provided; and,

**WHEREAS**, this Declaration does not and is not intended to create a condominium within the meaning of The Florida Condominium Act, Florida Statutes Section 718.01, et seq., and none of the Property falls within or under The Florida Condominium Act.

**NOW, THEREFORE**, Declarant declares that the above recitals are true and correct and shall be incorporated herein; and the Property, and such additions thereto as may hereafter be made pursuant to **Article 2**, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, reservations, restrictions, conditions, easements, limitations, terms, obligations, charges and liens hereinafter set forth herein this Declaration, as same may be amended from time to time, all of which shall run with the land and be binding upon the land and all owners and transferees acquiring any interest therein.



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

**12.04. Scheme of Development Construction.** This Declaration shall be liberally construed to give effect to its purpose of creating a plan for a residential community with possible commercial and other non-residential uses and development planned and for the maintenance of the Common Property. The Declarant and Developer specifically and exclusively reserve the right to change, amend, modify, alter, supplement and clarify the scheme or general plan of development of the Cielo Project, to include, but not limited to, (i) amend, modify, alter, and change the site and development plans, permits and approvals for the Subdivision (ii) reconfigure the Lots and Common Property in the Subdivision with or without the need for a re-plat of the Subdivision (iii) add or delete property from the Subdivision (iv) reconfigure the Lots without re-platting, including granting variances from the provisions of this Declaration and Plat (v) change the number, type, location and size of Lots and the architectural style and design of improvements to be constructed thereon (vi) change, modify or alter all Subdivision Improvements (vii) change, modify, alter, relocate and reconfigure the Common Property and (viii) to amend this Declaration to effectuate the above and any other change or amendment deemed reasonable by the Declarant or Developer



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### 12.04. Scheme of Development Construction continued:

...and further provided, any such amendment or change shall be automatically deemed to be **REASONABLE** by the Association and all Lot Owners and shall not be deemed to unreasonably change the general scheme or plan of the Cielo Subdivision, provided such change, amendment, modification or the like continues to maintain the Cielo Subdivision as a residential development with possible commercial and non-residential uses. No Owner should rely upon, and the Developer and Declarant make no representation or warranty of any kind, whatsoever, as to whether the Subdivision shall be built out in conformance with any current plans, approvals, or permits, including any marketing related plans, brochures, posters or the like provided by Declarant, Developer and any Approved Builders. The Declarant, Developer and any Approved Builder, including their agents, employees and sales agents, make no representation as to (i) changing market conditions which may affect future sales prices of the Lots and Units, including any future sales or promotions which may reduce Lot and Unit prices or (ii) the general scheme, layout, dimensions, architectural style, design or plan of the Cielo development, other than that it is a residential development with possible commercial and non-residential uses and development planned.



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### 12.04. Scheme of Development Construction continued:

**THIS ABSOLUTE RESERVATION BY DECLARANT AND DEVELOPER OF THE RIGHT TO AMEND, MODIFY, CHANGE, SUPPLEMENT, ALTER AND CLARIFY THE GENERAL SCHEME AND PLAN OF THE CIELO DEVELOPMENT, IN ANYWAY DEEMED REASONABLE BY DECLARANT AND DEVELOPER, IN THEIR SOLE AND ABSOLUTE DISCRETION, AND THE REQUIREMENT THAT THE ASSOCIATION, AND ALL LOT OWNERS BY ACCEPTANCE OF A DEED TO THEIR LOT, DO HEREBY AUTOMATICALLY CONSENT TO AND ACKNOWLEDGE DECLARANT AND DEVELOPER'S SPECIFIC RESERVED RIGHTS TO AMEND, CHANGE, MODIFY, ALTER, SUPPLEMENT AND CLARIFY THE GENERAL SCHEME AND PLAN OF THE CIELO DEVELOPMENT IS A MATERIAL INDUCEMENT TO DECLARANT AND DEVELOPER TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE PROPERTIES. THE ASSOCIATION AND ALL LOT OWNERS HEREBY CONSENT TO, ACKNOWLEDGE, AND DEEM REASONABLE, ANY CHANGES TO THE GENERAL SCHEME OR PLAN OF DEVELOPMENT AS SET FORTH HEREIN, AND DO HEREBY APPOINT DECLARANT AND/OR DEVELOPER AS THEIR AGENT TO EXECUTE ANY AND ALL DOCUMENTS RELATED TO DECLARANT AND/OR DEVELOPER'S RESERVED RIGHTS HEREIN WITHOUT THE NEED FOR FURTHER CONSENT OF OR BY ASSOCIATION OR THE LOT OWNERS. (Emphasis Added)**



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

**12.06. Amendment.** This Declaration may be amended only in accordance with this Section. (a) Prior to the Turnover Date, Declarant reserves the right to amend this Declaration, the Articles and By-Laws in any reasonable manner whatsoever, without the requirement of Association consent or the consent of any Lot Owner or the mortgagee of any Lot, so long as such amendments do not delete or convey to another party any Common Property designated, submitted or committed to common usage if such deletion or conveyance would materially and adversely change the nature, size and quality of the Common Property provided however, this provision shall not limit or affect the Developer's ability to re-plot and/or reconfigure all or part of the Subdivision's Common Property and amend the Declaration in connection therewith. Notwithstanding anything to the contrary herein, the Declarant reserves the right to relocate or reconfigure the Common Areas, including the right to substitute relocated or similar Common Areas in other locations within the Subdivision, thereby deleting the Common Areas in the prior location. The right of Declarant to amend as herein set forth shall prevail, anything else contained herein to the contrary notwithstanding.

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**12.0 (f).** The Declarant and Developer shall be permitted to exercise all rights set forth herein this Declaration without the consent or joinder of any Lot Owner, the Association or mortgagee of any Lot. (Emphasis Added)



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### **MISLEADING TESTIMONY PROVIDED AT JANUARY 17TH PLANNING COMMISSION HEARING:**

Dan Lobeck: "4.01(d) of the declaration provides that the declarant, the developer, may amend the development plan and/or scheme of development provided that the amendment, quote, "does not delete or convey -- does not delete or convey to another property any common property designated, submitted or committed to common uses if such deletion or conveyance would materially and adversely affect the nature, size, and quality of the common property."

4.01 (d) Notwithstanding anything to the contrary herein, Declarant reserves the right to, and the Association, and all Owners by acceptance of a deed to any Lot, shall automatically be deemed to have consented to this reservation by Declarant to change the scheme of the development and general development plan of the Project, including but not limited to, additions to, and deletions of the Common Property, reconfiguration of Lots, change of uses, change of Lot types, and all other changes to the Subdivision and Subdivision Improvements so implemented by Declarant pursuant hereto. (Emphasis Added)



# MILANO PUD PROPOSAL

## RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

### **MISLEADING TESTIMONY PROVIDED AT JANUARY 17TH PLANNING COMMISSION HEARING:**

**If he is referring to Section 12.06, he fails to provide the entire provision which states:**

Provided however, this provision shall not limit or affect the Developer's ability to re-plot and/or reconfigure all or part of the Subdivision's Common Property and amend the Declaration in connection therewith.

Notwithstanding anything to the contrary herein, the Declarant reserves the right to relocate or reconfigure the Common Areas, including the right to substitute relocated or similar Common Areas in other locations within the Subdivision, thereby deleting the Common Areas in the prior location. The right of Declarant to amend as herein set forth shall prevail, anything else contained herein to the contrary notwithstanding.



## MILANO PUD PROPOSAL

### RESPONSE TO TESTIMONY PROVIDED BY AFFECTED PARTY CONT.

**Who make the decision and exercises discretion in making changes to the Project?**

Declarant reserves the right to change any of the Lot Types, sizes or configurations, the housing, building and dwelling unit plans, styles, sizes and configurations, the landscaping, recreational amenities and Common Property, and to change the general scheme of development, general development plan, and the like, in any way Declarant deems reasonable, in Declarant's sole and absolute discretion.

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**OPEN SPACE. THE COMMERCIAL PROPERTY IS NOT REQUIRED TO SATISFY OPEN SPACE REQUIREMENTS.**