

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
STONEYBROOK, A GOLF COURSE COMMUNITY
OF ESTERO, INC.**

KNOW ALL MEN BY THESE PRESENT that on January 29, 1999 the original Declaration was recorded in Official Record Book 3069, at Page 2495 *et seq.*, of the Public Records of Lee County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter the "Property") is attached as Exhibit "A" to the original Declaration and is incorporated as amended b reference.

No Additional land is being added by this instrument and no land is being removed by this instrument. The covenants, condition and restrictions contained in this Declaration shall run with the land and be binding upon an inure to the benefit of all present and future owners. The acquisition of title to a lot or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a lot or the Property constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by these terms.

SECTION 1

1. **DEFINITIONS.** The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, and any and all Amendments thereto, or if not defined below unless the context clearly requires another meaning.

1.1 **"Architectural Review Committee" (ARC)** means the Architectural Review Committee as established and empowered in Section 6 of this Declaration.

1.2 **"Assessment" or "Assessments"** means a share of the funds required for the payment of the expenses of the Property Owners Association which from time to time is assessed against the members, including without limitation annual assessments and special assessments, as authorized by Section 9 of this Declaration.

1.3 **Property Owners Association** means Stoneybrook, a Golf Course Community of Estero, Inc., a Florida corporation not for profit, including any other corporation not for

profit which may be merged into Stoneybrook, a Golf Community of Estero, Inc. which has its principal place of business in Lee County, Florida, and its successors and assigns.

1.4 “Board” means the Board of Directors of Property Owners Association Stoneybrook, a Golf Course Community of Estero, Inc.

1.5 “CDD” means and refers to any Community Development District, as defined in Chapter 190, Florida Statutes, established for the purpose of owning and maintaining property or facilities in the Community.

1.6 “CDD Property” means any and all real property and improvements which the CDD now or hereafter either owns, contracts, operates and any combination of the foregoing or otherwise administers pursuant to its responsibilities under Chapter 190, Florida Statutes, and the documents establishing the CDD.

1.7 “DRI” Stoneybrook, a Golf Course Community is a Development of Regional Impact (DRI), as defined under § 380, Florida Statutes, State DRI #3-8384-40, adopted by the Board of Lee County Commissioners on April 21, 1998, County Case #95-01-033.03201.011 / 95-01-033.042-05.01, and as amended from time to time.

1.8 “Neighborhood Community” means all real property comprising Stoneybrook, a Golf Course Community of Estero, Inc., and the improvements thereon.

1.9 “Conservation Area” means the wetland preserve areas and the upland preserve areas within the Community as described in the subdivision plat for Stoneybrook, as recorded in Plat Book 63, Pages 1-50, Public Records of Lee County, Florida.

1.10 “County” or “the County” means Lee County, Florida.

1.11 “Golf Course” means the land described as such in the subdivision plat for Stoneybrook, as recorded in Plat Book 63, Pages 1-50, Public Records of Lee County, Florida, and all improvements thereon, which will be separately owned by the CDD and operated as a golf course open to the public.

1.12 “Governing Documents” means this Declaration, and the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Property Owners Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority as listed herein.

1.13 “Institutional Mortgagee” means:

(A) a lending institution having a first mortgage lien upon a Lot, Parcel or Tract, including any of the following institutions: a Federal or State savings and loan building and

loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loan (including Without limitation the Federal National Mortgage Association), Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and which holds, guarantees or insures a first mortgage upon a Lot or Living Unit; or,

(C) the successors and assigns of such investors or lenders which have loaned money to Developer to acquire, develop, or construct improvements upon, the Community and who have a mortgage lien on all or a portion of the Community securing such loan. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Lot or Living Unit.

1.14 "Lands" means the land described in Exhibit "A" to this Declaration, as it may be amended from time to time.

1.15 "Living Unit" or "Unit" means any residential structure, including a single family detached or attached dwelling unit(s) located within the Community and intended for occupancy by one family or household. If a Living Unit is a free-standing or attached single family home or villa located on a Lot, the use of the term "Living Unit" or Unit" shall be interpreted as if the term was followed immediately by the words "and the Lot on which it is located."

1.16 "Lot" means one or more of the platted portions of land into which the Community has been subdivided, upon each of which a single Living Unit has been or is intended to be constructed. Unless the context clearly requires a different interpretation, the term "Lot" shall be interpreted as if it was followed by the words "and the Living Unit constructed thereon."

1.17 "Member" means any or all of those persons who are entitled to membership in the Property Owners Association, as provided in the Governing Documents.

1.18 "Stoneybrook" is the name of the Community.

1.19 "Neighborhood" means a condominium, a group of single family homes, villas or apartment units, or any other residential sub-area development within the Community, where all the Lots and Living Units are subject to a single common recorded declaration of neighborhood covenants.

1.20 "Neighborhood Association" means a condominium association, an incorporated homeowners association as defined in Section 617.301, Florida Statutes (1995), as

amended from time to time, or any other incorporated mandatory membership property owners association operating a Neighborhood, or operating facilities or property serving two or more Neighborhoods.

1.21 “Common Area” means that real property, including any improvements and fixtures thereon, which is owned or leased by, or dedicated to, a Neighborhood Association for the common use and enjoyment of its members. If the Neighborhood is a condominium, the term includes the common elements of the condominium and any real property owned by the condominium association.

1.22 “Neighborhood Covenants” means any and all covenants, conditions, restrictions, and other provisions imposed by recorded declaration or other instrument, applicable to one or more specific Neighborhoods, including the recorded Articles of Incorporation and Bylaws of the Neighborhood Association.

1.23 “Owner” means the record owner of legal title to any Lot, Living Unit, Tract or Parcel.

1.24 “Parcel” means any and all unplatted portions of the Community.

1.25 “RPD” means and refers to residential planned development project, created by Lee County Resolution Z-98-018 as adopted by the Board of County Commissioners of Lee County, Florida, on April 21, 1998, and as amended from time to time.

1.26 “Rules and Regulations” means the administrative regulations governing use of the Common Areas and procedures for administering the Community Association, as adopted, and amended from time to time by resolution of the Board of Directors.

1.27 “SFWMD” means South Florida Water Management District.

1.28 “Service Assessment” means a charge against one or more Lots or Living Units for any service, material or combination thereof which may be provided by the Property Owners Association for the use and benefit of the owner(s) on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Property Owners Association on behalf of the owners accepting or receiving such material or service shall be a service assessment against the Lots or Living Units so benefited. An owner is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service.

1.29 “Structure” means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words “or part thereof”. The term includes, without limitation, all Living

Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, and storage sheds.

1.30 “Tract” means any and all platted portions of the Community other than the Lots.

1.31 “Voting Interests” means the arrangement established in Section 2 of the Bylaws of the Property Owners Association by which members are entitled to vote in the affairs of the Property Owners Association.

SECTION 2

2.1 GENERAL DEVELOPMENT PLAN. The Community is a Residential Planned Development (“RPD”), comprising at least 805 acres of land which includes certain recreation facilities open to the public as described in Section 2.1 below. Under the current site plan, the Developer anticipates the construction and development of single and multi-family units. The site plan has been approved for 3,000 units which comprise of 737 single family and 382 multi-family units. The equivalent residential density is 1,840 units of which 640 units are multi-family units and 1,200 units are single family units. Notwithstanding however, Developer has the right to construct more or fewer units of either classification based upon plans as approved and as amended. The Golf Course property will be constructed and owned by the CDD. The Golf Course property does not include the Clubhouse facility.

The cost of construction of the Golf Course property has been financed through the CDD with the CDD floating a revenue bond(s). Only the Golf Course property has been or will be pledged as security to repay this revenue bond(s). Repayment of the Golf Course revenue bond(s) will not in any way become an obligation of the individual homeowners within Stoneybrook. The CDD may enter into agreements with U.S. Home, or its assigned, or any other party to manage or operate the Golf Course. The golf course property is separate and apart from the Residential development and uses within Stoneybrook and ownership and/or residency within Stoneybrook does not grant or convey upon those owners or occupants within Stoneybrook any special privileges or us rights in the golf course.

Separate special assessment bond(s) may be floated to finance construction of other improvements and to provide other services as delineated in this section, including but not limited to Tract “A” depicted on the Subdivision Plat as roadway and streets, as well as to provide everything permitted or allowed under Chapter 190, Florida Statutes. The special assessment bond(s) will be the obligation of each unit owner and each residential property within the CDD has been pledged as collateral security for this obligation.

The CDD will own the submerged or lake bottoms for each lake in the community. Additionally, the CDD shall own the water irrigation utility system and utility lines with the exception of the individual sprinkler heads. A separate utility company has been formed

within the CDD to provide and operate the water irrigation system which is designed to follow and adhere to the Phase Restriction of the South Florida Water Management District

The CDD will enter into an Agreement with Stoneybrook, a Golf Course Community of Estero, Inc., ("Property Owners Association") which requires the Property Owners Association to operate and perform some, if not all, of the CDD duties relating to maintaining the lakes and the general aesthetic condition of the lakes within the community.

The Developer has transferred all of its interest in those certain Development of Regional Impact ("DRI") permits to the CDD. The CDD has accepted and will fulfill all obligations and responsibilities of and under the DRI permits, including, but not limited to, monitoring of traffic. The development is located within the Corkscrew Road Service Area (CRSA). A Municipal Service Benefit Unit ("MSBU") has been created to collect and pay assessments for the road widening and other road improvements of Corkscrew Road.

The Developer has entered into a Cost Sharing Agreement under the DRI with the owners of these tract(s) referenced herein above. The Developer's rights, duties and obligations under this Cost Sharing Agreement may be later assigned to the CDD.

2.2 Public Recreation Facilities. The community will be developed around, in conjunction with, an eighteen (18) hole golf course which will be owned by the CDD and clubhouse facility which will be initially constructed and owned by the Developer. Both the Golf Course and the Clubhouse will be open to the public. One of the effects of establishing a recreational facility open to the public within a residential community having commercial uses may be to increase the number of persons using the roads and the parking facilities. The Developer reserves the right to unilaterally grant over, across and through the community, any easements which may be required for the use and enjoyment of these facilities. THE OWNERSHIP OF A LOT OR LIVING UNIT AND ITS AP-
PURTENANT MEMBERSHIP IN THE PROPERTY OWNERS ASSOCIATION,
DOES NOT CONFER ANY OWNERSHIP INTEREST IN, OR RIGHT TO USE, THE
GOLF COURSE, OR ANY OF THE RELATED FACILITIES.

2.3 Community Development District. A Community Development District, as defined in Chapter 190, Florida Statutes (1995), which includes all or a portion of Stoneybrook, and may also include property in addition to Stoneybrook, has been created. The CDD would manage and provide certain urban infrastructure facilities and services, and would have the authority to levy and collect fees, rates, charges, taxes and assessments to pay for, finance and provide said facilities and services. The term "assessment" as used in this Section refers to assessments as defined in Chapter 190, Florida Statutes, not as defined in this Declaration. The CDD would be empowered to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructure which could include without limitation: water

management and control lands within the CDD and the connection of some or any of such facilities with potable water distribution systems; sewage collection.

2.4 Scope of CDD Responsibility. The CDD is empowered to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain systems and facilities, including, without limitation, roads, water and sewer, irrigation, water management, street lighting, parks and facilities for indoor and outdoor recreation, cultural and educational uses, and limited access assurances services.

2.5 Taxes and Assessments. THE CDD IS A SPECIAL TAXING DISTRICT WITH AUTHORITY TO FUND ITS OPERATIONS BY IMPOSING TAXES OR ASSESSMENTS, OR BOTH, ON THE PROPERTY WITHIN THE CDD. THE TAXES AND ASSESSMENTS PAY FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES OF THE CDD AND ARE SET ANNUALLY BY A GOVERNING BOARD OF SUPERVISORS OF THE CDD. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO THE COUNTY AND OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW. THESE TAXES AND ASSESSMENTS MAY APPEAR ON THE ANNUAL REAL ESTATE TAX BILL FOR EACH OWNER AS A SEPARATE TAX OR ASSESSMENT AND MAY BE PAYABLE DIRECTLY TO THE LEE COUNTY TAX COLLECTOR. THE TAXES AND ASSESSMENTS OF THE CDD CONSTITUTE A LIEN UPON THE PROPERTY THAT IS WITHIN THE CDD. "Assessments" as used in this paragraph refers to "Assessments" as defined in Chapter 190, Florida Statutes and not as defined in Section 1 of this Declaration.

2.6 Issuance of Revenue Bonds. The CDD has the power to issue general obligation bonds, revenue bonds, refunding bonds and any other type of bond permitted by Chapter 190, Florida Statutes. Repayment of any such bond will be funded by ad valorem taxes on all non-exempt property within the CDD, or by the imposition of rates, user fees, special assessments or other charges. The CDD is empowered to pledge its full faith and credit for the purpose of securing the repayment of the bonds it issues. In addition, the CDD may secure revenue bonds by pledging the rates, fees or charges collected or to be collected by any revenue producing project. Bonds have been issued for the purpose of financing or refinancing, capital improvements, to pay off existing bonds or any other permitted use.

2.7 CDD Property Becoming Common Areas. If the CDD Board determines that it is in the best interest of Stoneybrook for any of the CDD property to become common areas, the CDD shall convey to the Association, fee simple title, easements, use rights and/or maintenance obligations to those portions of the CDD property which are to become common areas. The Property Owners Association and the members are obligated to accept title to the CDD property, subject to taxes for the year of conveyance, and to restrictions, limitations, conditions, obligations, reservations, duties and easements of record.

2.8 Common Areas Becoming CDD Property. If the Property Owners Association Board determines, subject to any governmental requirements, that it is in the best interest of Stoneybrook for any portions of the common areas to be owned and administered by the CDD rather than the Association, such portions of the common areas shall cease to be common areas, even if they have already been conveyed to the Association, and shall thereafter, be considered CDD property, even if legal title has not been formally transferred to the CDD. When a part of the Community becomes CDD property, the expenses in the administration and the maintenance shall be common expenses, unless the expenses are the responsibility of the CDD. If required by law, or if deemed by the Property Owners Association Board to be in the best interest of Stoneybrook, the Property Owners Association shall convey to the CDD, the legal title to any common area which becomes CDD property. The surface water management system of the community shall be an area of common responsibility. The CDD will assume responsibility for maintenance and monitoring of on-site wetland preserve areas pursuant to Conservation Easement recorded at Official Records Book 2949, Pages 0271-0284, Public Records of Lee County, Florida.

2.9 Board of Supervisors. The functions, duties and powers of the CDD shall be managed and exercised by a Board of Supervisors consisting of at least five (5) supervisors.

2.10 Property Owners Association Board Options. The Property Owners Association Board shall have the right, in its sole discretion, to convey property it owns to the CDD with the joinder of no other person being required, subject to the approval of the CDD and any applicable governmental regulations.

SECTION 3

THE PROPERTY OWNERS ASSOCIATION'S PURPOSES AND POWERS. The primary purposes of the Property Owners Association are to hold title to, operate and maintain the Common Areas of Stoneybrook; to enforce restrictive covenants applicable to the Community; to provide architectural and aesthetic control; and to take such other action as the Property Owners Association is authorized or required to take with regard to the Community pursuant to the Governing documents., The Property Owners Association shall operate, insure, maintain and repair all property and related improvements designated by the Property Owners Association Board as Community Common Areas, regardless of whether legal right to that property has been formally conveyed to the Property Owners Association.

3.1 Community Common Areas. The Property Owners Association shall operate, maintain and, when deeded by the Developer, hold record title to the Community Common Areas. Community Common Areas will include the Community Center, multi-purpose playing fields and Recreation Park, tennis courts and swimming pools, as depicted on the Subdivision Plat as Recreation Tracts ("R1" & "R2"). The Property Owners Association Board of Directors may promulgate reasonable rules and regulations regarding use of the Community Common Areas consistent with the Governing Documents. Use of the Community Common Areas shall be available to all members and their invitees,

guests, family members and tenants, subject to the rules and the Governing Documents. The costs of operating, maintaining, repairing, insuring and protecting the Community Common Areas and the facilities located thereon or connected therewith shall be assessed equally against all Lots and Living Units.

3.2 Manager. The Property Owners Association may contract, employ and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Property Owners Association shall determine to be necessary or desirable.

3.3 Personal Property. The Property Owners Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.4 Insurance. The Property Owners Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as required in Section 12 below. The Property Owners Association funds to be insured or bonded with adequate fidelity insurance or bonds.

3.5 Express and Implied Powers. The Property Owners Association may exercise any rights, power or privilege given to it expressly by the Governing Documents or by the law in effect at the time this Declaration is recorded, and every other right, power or privilege reasonably inferable there from.

3.6 Acts of the Property Owners Association. Unless the approval or affirmative vote of the members is specifically made necessary by some provision of applicable law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Property Owners Association may be given or taken by its Board of Directors, without a vote of the members. The officers and Directors of the Property Owners Association have a fiduciary relationship to the members. A member does not have the authority to act for the Property Owners Association by reason of being a member.

3.7 Articles of Incorporation. The Articles of Incorporation of the Property Owners Association and any Amendments are attached as Exhibit "B".

3.8 Bylaws. The Bylaws of the Property Owners Association shall be the Bylaws attached as Exhibit "C" as they may be amended from time to time.

3.9 Official Records. The official records of the Property Owners Association shall be maintained within the State of Florida and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Property Owner Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the Community. The Property Owners Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of

providing copies of the official records, including, without limitation, the costs of copying. The Property Owners Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.10 Polling Places. Accommodation may be made for future use of building space within the Common Areas for the purposes of accommodating the function of an electoral polling place.

3.11 Treated Effluent. The CDD may negotiate an agreement with any effluent supplier for the use of treated sewage effluent within the project for irrigation purposes throughout the subdivision, including all common areas, neighborhood common areas, lots, units and condominium common element properties. The CDD would be responsible for providing all on-site piping and pumping facilities from the point of delivery to the project, and negotiate with the effluent supplier to provide full or partial on-site storage facilities, as required by the Florida Department of Environmental Protection consistent with the volume of treated wastewater to be utilized. All owners within Stoneybrook, by the act of purchasing, are deemed to have irrevocably consented to the irrigation of the Common Areas and Lots with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction. The cost of such treated effluent and all administrative, operational, maintenance and support costs related to it are expenses of the CDD

3.12 Hurricane Preparedness. It shall be the responsibility of the Property Owners Association to establish and maintain an educational program for hurricane preparedness. The program must, at a minimum, consist of annually describing to the residents the risks of hurricane hazards and actions to mitigate the dangers that these hazards present.

3.13 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Board of Directors of the Property Owners Association shall be required to obtain the prior approval of at least a two-thirds (2/3rds) of all classes of the voting interests of the Property Owners Association prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Property Owners Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;
- (C) the enforcement of the Governing Documents;
- (D) the enforcement of the rules and regulations of the Property Owners Association;

- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) filing a compulsory counterclaim.

SECTION 4

THE PROPERTY OWNERS ASSOCIATION MEMBERSHIP VOTING RIGHTS.

Every owner of record having legal title to a Lot or Living Unit within the Community shall be a member of the Property Owners Association as further defined in Section 4.1 below. Membership is appurtenant to, and may not be separated from, ownership of a Lot or Living Unit. The rights, powers, duties and privileges of members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Property Owners Association.

4.1 Classes of Membership. The Property Owners Association will have voting-membership, as follows:

- (A) Regular Members. Regular Members shall be the Owners of Lots or Units within the Community, which shall have one vote per lot or living unit.

4.2 The Property Owners Association Rights and Easements. Members in good standing have the non-exclusive right to use the Common Areas subject to:

- (A) The right of the Property Owners Association, by and through its Board of Directors, to adopt the annual budget and to determine the annual assessments to be paid by members;
- (B) The right of the Property Owners Association, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-owners than for owners;
- (C) The right of the Property Owners Association, by and through its Board of Directors, to suspend a member's right to use Common Areas for the period during which any assessment or charge against the member's Lot or Living Unit remains unpaid and past due, and for a reasonable period during or after any infraction of the Property Owners Association's rules and regulations;
- (D) The right of the Property Owners Association, by and through its Board of Directors, to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility;

- (E) The right of the Property Owners Association, by and through its Board of Directors, to grant easements over, across or through the Common Areas;
- (F) The right of the Property Owners Association, by and through its Board of Directors, to open the Common Areas for use by non-members of the Property Owners Association, or non-owners;
- (G) The right of the Property Owners Association, by and through its Board of Directors to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas;
- (H) The right of the Property Owners Association, by and through its Board of Directors, to take such steps as are reasonably necessary to protect the Common Areas;
- (I) The right of the Property Owners Association, by and through its Board of Directors, to close or restrict access to the Common Areas for limited periods of time to conduct special events.
- (J) The Right of the Property Owners Association, by and through its Board of Directors, to regulate parking and traffic on the private roads within the Community, including without limitation the use of access gates or speed bumps;
- (K) The provisions of this Declaration, the Articles of Incorporation and Bylaws of the Property Owners Association; and any rules and regulations governing use and enjoyment of the Common Areas adopted by the Property Owners Association;
- (L) The right of a CDD to exercise and enforce any and all powers authorized by Chapter 190, Florida Statutes; and
- (M) The right of the Property Owners Association to dedicate or transfer ownership or control of all or any part of the Common Areas to a CDD or any other governmental agency, public authority, or utility;

4.3 Delegation of the Use Rights In Common Areas. Guests accompanied by a member shall have the right to use the Common Areas, but only to the extent provided in Section 2.6 of the Bylaws, or in the Property Owners Association's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated therein. If the Property Owners Association permits a member to delegate his/her use rights in Common Areas to his/her guests, then a fee may be imposed, which fee may be charged in an amount which is not necessarily limited by or related to the cost of processing the delegation. Each member shall be financially and legally responsible to the Property Owners Association for the action and debts to the Property Owners Association of any person to whom the member has delegated his right to use the Common Areas.

The member may not delegate the obligation to pay the Property Owners Association assessments.

Upon the lease of a Lot or Living Unit to which a membership is appurtenant, the lessor may retain the right to use the membership, in which case the tenant shall not have such rights. If a member delegates his privileges to a tenant residing in his Living Unit, the member shall not be entitled to use of the facilities, except as a guest of another member, during the period of the delegation.

4.4 Separation of Ownership. The ownership of a Lot, and the ownership of the Living Unit constructed thereon, may not be separated or separately conveyed, nor may any person who does not own record legal title to at least one Lot, Living Unit, Tract or Parcel hold membership in the Property Owners Association.

SECTION 5

GENERAL COVENANTS AND USE RESTRICTIONS. The Community may be used for those purposes provided in the RPD. The Property Owners Association reserves the right and power to assign and reassign various land uses within the Community in accordance with the RPD, or any amendments thereto, and where reasonably necessary and advisable, to inaugurate and implement variations from, modifications to, or amendments of the RPD and any other governmental plans, land development regulations, development orders and development permits applicable to the Community, so long as the Property Owners Association maintains and preserves the overall general scheme of the Community.

5.1 Subdivision and Regulation of Land. No Lot or Living Unit may be divided or subdivided without the express written consent of the CDD. No owner or Neighborhood Community Association shall initiate, undertake or attempt to inaugurate or implement any variation from, modification to, or amendment of the RPD or any other governmental plans, land development regulation, development orders or development permits applicable to the Community, or to any Lot, Tract or Parcel, without the prior written approval of the Property Owners Association, which approval may be denied at the sole discretion of the Property Owners Association. Nothing herein is intended to prohibit judicial partition of a Lot or Living Unit owned by two or more persons.

5.2 Surface Water Management Systems, Lakes, and Wet Retention Ponds. The CDD shall be responsible for maintenance of all surface water management systems, ditches, canals, lakes, and water retention ponds in the Community. All surface water management systems within Stoneybrook which are accepted by or constructed by the CDD, excluding those areas (if any) normally maintained by the County and Village of Estero, will be the ultimate responsibility of the CDD, which may enter any lot, tract or neighborhood common area and make whatever alterations, improvements or repairs that are deemed necessary to provide or restore property water management. The cost shall

be an expense of the CDD. Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any storm management systems or conservation areas, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including the CDD.

- (A) No structure of any kind (including docks) shall be constructed or erected in or on, nor shall an owner or Neighborhood Association in any way change, alter, impede, revise or otherwise interfere with the flow or volume of water in, any portion of any water management area including, but not limited to lakes, ponds, swales, drainage ways, or wet retention ponds or areas intended for the accumulation of runoff waters, without the specific written permission of the CDD.
- (B) No owner, Neighborhood Association or other person shall unreasonably deny or prevent access to water management areas for maintenance, repair or landscaping purposes by the Property Owners Association Board, the CDD, or any appropriate governmental agency that may reasonably require access. Non-exclusive easements therefore are hereby specifically reserved and created.
- (C) No Lot, Tract, Parcel or Neighborhood Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without prior written consent of the CDD. No person other than the Property Owners Association or the CDD may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.
- (D) All Storm water Management Systems and Conservation Areas, excluding those areas (if any) maintained by the County, will be the ultimate responsibility of the CDD. The CDD may enter any Lot, Tract, Parcel or Neighborhood Common Area and make whatever alterations, improvements or repairs are deemed necessary to provide, maintain, or restore proper surface water management. The cost shall be an expense of the CDD. NO PERSON MAY REMOVE NATIVE VEGETATION THAT MAY BECOME ESTABLISHED WITHIN THE CONSERVATION AREAS. "REMOVAL" INCLUDES DREDGING, APPLICATION OF HERBICIDE, PULLING AND CUTTING.
- (E) Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any Stormwater Management Systems or Conservation Areas, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including South Florida Water Management District, and the Developer, its successors and assigns.

LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS, WHICH ARE PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE

CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. PROPERTY OWNERS ARE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WHICH MAINTENANCE WILL BE MAINTAINED TO THE GREATEST DEGREE LAWFUL BY THE CDD

5.3 Conservation Areas. The CDD shall be responsible for the maintenance and regulatory compliance of all Conservation Areas, regardless of where located, in accordance with rules, regulations and permitting requirements set forth by the County and other permitting agencies, including the South Florida Water Management District. No person shall undertake or perform any activity in Conservation Areas described in the approved permits and Plats of the Community, or remove native vegetation that becomes established within the Conservation Areas. Prohibited activities within Conservation Areas include the removal of native vegetation, excavation, placement or dumping of soil, trash or land clearing debris, and construction or maintenance of any building, unit or other structure. "Removal of native vegetation" includes dredging, application of herbicides, and cutting. Nothing in this Section shall be construed to prohibit the CDD from exercising its park, recreational, cultural or educational powers in conservation or preservation areas or easements, subject to other applicable governmental approvals.

5.4 Open Space. Any land subjected to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Area or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Property Owners Association or to a Neighborhood Association, the Property Owners Association or Neighborhood Association shall preserve and maintain such land. No development may occur on such land except structures or improvement which promote the use and enjoyment of the land for open space purposes.

5.5 Lawns, Landscaping; Irrigation Systems. Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas regardless of ownership of the underlying lands. Stone, gravel, or paving may not be used as a substitute for grass in a lawn. Certain areas as determined by the Property Owners Association Board or the RPD shall remain in a natural or unimproved state. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall thereafter be kept in good condition by the owner. Lawns must be regularly cut and mulched areas regularly re-mulched. Maintenance, repair and replacement of the main irrigation line shall be the

responsibility of the Property Owners Association. The components of the irrigation system serving each individual Neighborhood Common Area, including but not limited to the tap into the main line, timers and switching devices shall be the responsibility of the CDD. The maintenance, repair and replacement of irrigation heads shall be the responsibility of the individual parcel owner. Each owner of a Lot shall be required to tap into the CDD's irrigation system, and the cost of such tap will be at the expense of the lot owner, payable to the Property Owners Association or its assigns. The CDD shall have the right, at its sole discretion to adopt a schedule of irrigation times and duration of irrigation, subject to the Rules and Regulations of the SFWMD. The CDD may also be responsible for irrigation of certain highway medians not owned by it, and the cost shall be a CDD expense. The Property Owners Association or the CDD has an agreement with Gulf Utilities, Inc. or its successors or assigns for the use of treated sewage or effluent within the community for the purposes of irrigation. Gulf Utilities, Inc., its successors or its assigns, shall be deemed the exclusive provider of irrigated waters within Stoneybrook and, by active purchasing, all owners within Stoneybrook are deemed to have irrevocably consented to irrigation of common areas and lots with treated effluent emanating from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection or such other agency with jurisdiction. The cost of treated effluent and all administrative, operational, maintenance and support costs related to it shall be expenses either borne by the CDD or billed separately and borne by the individual owner as built and assessed periodically by Gulf Utilities, Inc., or its assigns.

5.6 Maintenance of Premises. Except for Conservation Areas and other areas designated by the Developer or the RPD to remain in a natural state, no high weeds, underbrush, high grass or other unsightly vegetation shall be permitted to grow or remain upon any Lot or Neighborhood Common Area, and not refuse or waste shall be allowed to be placed or suffered to remain upon any Lot or Neighborhood Common Area. If an owner or Neighborhood Association permits such weeds, high grass, underbrush or other unsightly growths, and fails to correct same after five (5) days' notice by the Property Owners Association, the Property Owners Association shall have the right to enter upon the premises and make such corrections and shall charge the owner or the Neighborhood Community Association for the cost of the corrections. Said charge, until paid, shall be a lien against the offending Lot or Neighborhood Association. All lawns, landscaping and sprinkler systems and all structures, improvements and appurtenances shall at all times be kept in safe and attractive condition, and all structures shall be maintained in a finished, painted and attractive condition. Provisions under section are intended to obligate the Property Owners Association to maintain all streets, roads and thoroughfares and other open areas within the subdivision. The owner/operator of the Golf Course may maintain areas either being part of the Golf Course and abutting thereto, including but not limited to Golf Course roughs and other areas. These areas level of maintenance shall be at the sole discretion of the owner/operator.

5.7 Sidewalks. The Property Owners Association Board may construct sidewalks in various locations within the Community. Driveway cuts and the construction of the driveways must be done in accordance with plans and specifications approved by the Property

Owners Association Board. The Property Owners Association Board shall maintain all sidewalks.

5.8 Bike Path. The Property Owners Association Board will construct a bike path within the Community in accordance with plans and specifications approved by the Property Owners Association Board. The Property Owners Association Board shall maintain the bike path.

5.9 Litter. In order to preserve the beauty of the Community, no garbage, trash, refuse or rubbish shall be deposited, dumped or kept within the Community except in closed containers, dumpsters or other garbage collection facilities deemed suitable by the Board, or in proper-sized, closed plastic bags for curbside pickup as required. All containers, dumpsters and other garbage collection facilities shall be screened from view, kept in a clean condition, or without noxious or offensive odors emanating.

5.10 Walls, Fences, Hedges, etc. Unless approved in writing by the Property Owners Association, no wall, fence, hedge, or other divider shall be constructed or maintained on any adjoining Lot or Neighborhood Common Area, it being the express intent that no fences, walls or dividers shall be permitted on any Lot or Neighborhood Common Area which abuts lakes, preserve areas, streets or roads unless the Property Owners Association so approves. Hedges, constructed of shrubbery or other suitable vegetation, may be approved but only in those situations where back to back lots or home-sites so request and are approved by the ARC. Any dispute as to height, length, type, design, composition or material shall be resolved by the Property Owners Association's Board of Directors, whose decision shall be final, Approval may not be given for the construction of any wall, fence or hedge which materially interferes with the water view or Golf Course view of any Lot or Living Unit.

5.11 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved by The Property Owners Association. Maintenance and repair of all driveways, parking and other paved parking facilities (except driveways serving only one single family home) shall be the responsibility of the Property Owners Association (if located in the Common Areas) or the responsibility of the Neighborhood Association (if located in a Neighborhood Common Area). Driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

5.12 Color. No exterior colors on any structure shall be permitted that, in the judgment of the ARCHITECTURAL REVIEW COMMITTEE, or the Property Owners Association, would be inharmonious, discordant or incongruous with the Community or a particular Neighborhood. The initial exterior color and design of structures shall be as approved by the Property Owners Association and any later changes shall be recommended by the ARCHITECTURAL REVIEW COMMITTEE and approved by the Property Owners Association.

5.13 Underground Utilities. No lines or wires for communication or the transmission of current shall be constructed, or placed, or permitted to be placed within the Common Areas unless the same shall be protected cables; all such lines or wires which are not located in buildings shall be constructed or placed and maintained underground, unless otherwise approved in writing by the Property Owners Association. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

5.14 Water Supply; Wells; Water Rights. Each Living Unit shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each owner shall be required to connect the water lines on his Lot to the Lines of the utility provider(s) providing service to Stoneybrook. No owner may install or operate a private well. The Property Owners op and utilize the ground and surface water resources of the Lands for any legal purpose

5.15 Temporary Factory-Built or Existing Structures. No structure of any kind of what is commonly known as “factory-built”, “modular”, or “mobile home” type construction shall be erected without the prior written permission of the Property Owners Association. No tent, trailer or temporary structure shall be permitted unless its size, appearance and temporary location on the Lot have first been approved by the Architectural Review Committee.

5.16 Antennas and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or Tract or upon any improvements thereon, unless expressly approved in writing by the ARCHITECTURAL REVIEW COMMITTEE, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S. Section 1.400, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Property Owners Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the Residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations.. A flagpole, for the display of the American Flag only shall be at a location approved by the Architectural Review Committee. An approved flagpole shall not be used to mount an antenna. This provision is intended to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment.

5.17 Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile

Homes, Boats, Campers, Trailers and Other Vehicles.

The operation of any motor vehicle as defined under Chapter 322, Florida Statutes, which is propelled by any power other than human muscular power including, but not limited to, gasoline power or electric power and which further would require the operator of that possess a valid driver's license shall be prohibited to be operated or used on streets, roads and/or sidewalks with the Stoneybrook Subdivision, on Stoneybrook home sites, whether vacant, completed or under construction, or in or on the common areas of Stoneybrook. A Golf Community of Estero, Inc. unless the motor vehicle is operated by a person with a valid driver's license and the motor vehicle complies with all prerequisites established under Florida law for operating said vehicle on public streets, roads and thoroughfares. The term "motor vehicle" extends to and includes but not limited to, motorized bicycles (mopeds), motorized skateboards, motorized scooter (go-peds), golf carts, and similar motorized toy vehicles. The term "motor vehicle" does not include motor wheelchairs which are operated by persons who require wheelchairs for mobility.

- (A) No commercial vehicle of any kind shall be parked in the Community, except for construction or service vehicles temporarily present on business. The term "commercial vehicle" as restricted under this section is defined as meaning all vehicles of every kind whatsoever that show or tend to show any commercial markings, signs, displays, equipment, or otherwise indicate a commercial use on the exterior of the vehicle, or any portion thereof.
- (B) No boat, trailer, semi-tractor trailers or house trailer of any kind, camper, mobile home, motor home, bus, truck camper, or disabled, inoperative or unlicensed vehicle of any kind may be parked in the Community unless it is kept fully enclosed inside a structure. For purposes of this paragraph only, an open carport shall not be deemed a structure. House trailers, semi-tractor trailers, campers, buses, motor homes, mobile homes, truck campers and the like are permitted to be parked in the Community for loading and unloading purposes only, and then for a maximum of twelve (12) hours. Parking for longer periods of time may be permitted only with the approval, in writing, of the Property Owners Association.
- (C) No motor vehicle shall be parked anywhere on the property, except on an individual driveway or within a garage. Parking on lawns or landscaped area or in the street is prohibited except as may be permitted as follows: Whenever a resident is hosting an event where the number of expected guests may cause a need for motor vehicles to be parked on the street, a temporary On-Street Parking Permit may be issued, pursuant to the guidelines established therefore by the Stoneybrook Property Owners Association Board of Directors.
- (D) No motor vehicle shall be used as a domicile or residence, either permanent or temporary.

- (E) Passenger automobiles, vans and light pick up trucks with single rear wheels or no more than one (1) ton designation, in a presentable condition shall be permitted. The term “vans and light pick up trucks” is defined to mean vehicles of no more than one (1) ton or less rated weight carrying capacity and single axle rear wheels.
- (F) Paragraphs A through E above shall not be deemed to prohibit any temporary facility permitted by Section 5.17 above.
- (G) Any vehicles parked in violation of this Section 5.17 shall be subject to being towed at the owner’s expense.
- (H) In order to operate a golf cart on the streets of Stoneybrook, the operator of the golf cart must be at a minimum of 16 years of age and have a valid driver’s license. All golf carts shall only be operated on the streets of Stoneybrook. All golf carts must follow Florida Statute 322 at all times, which covers following traffic control devices, land usage speed, etc.

The following regulations are to be followed at all times for the operation of a golf cart in Stoneybrook:

1. All golf carts MUST be registered with the Property Manager. A one-time registration fee of for each cart will be assessed when the cart is registered.
2. All golf carts MUST bear a community registration sticker. Sticker must be affixed to a conspicuous place on the front of the cart.
3. All drivers must be a minimum of 16 years of age or older and hold a valid drivers license.
4. Golf Carts are restricted to a speed of no more than 15 MPH.
5. The number of persons allowed to ride on a golf cart is limited to one (1) person per the manufactured seats on the cart. No standing riders on the rear of the golf cart.
6. Golf carts may only be driven on the streets within Stoneybrook, driving is prohibited on walkways.

Penalties for violations of 5.17 H

1st violation – Verbal or written warning.

2nd violation – Fine established by the Property Owners Association Board.

5.18 Outdoor Equipment. No above ground swimming pools are permitted. All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool and spa equipment and housing and sprinkler pumps and other such outdoor equipment must be underground, or placed in areas not readily visible from adjacent streets, or adequate

landscaping must be used as screening around these facilities and maintained by the owner or Neighborhood Association.

5.19 Clothes Drying Area. No outdoor clothes drying area shall be allowed unless its location and design are approved in writing by the Property Owners Association.

5.20 Lighting. All exterior lighting of structures or landscaping shall be accomplished in accordance with plans approved in writing by the Property Owners Association. Except as may be initially installed or approved by the Property Owners Association, no spot-lights, floodlights or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon, or upon any Common Areas or any part thereof, without the approval of the Property Owners Association. Other types of low intensity lighting, including normal and customary Christmas or other holiday decorations, which do not unreasonably disturb other owners or occupants of the Community, shall be allowed, and must be removed no later than 30 days after the holiday.

5.21 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event shall be held on any lot. The foregoing, notwithstanding, garage sales are allowed on Lots when held in conjunction with a community-wide garage sale organized and approved by the Property Owners Board of Directors.

5.22 Air Conditioners. Wall or window air conditioning or heating units are not permitted,

5.23 Signs. No signs, except those denoting security alarms or security systems in place, banners, billboards, or advertisements of any kind, including without limitation, those of realtors, politicians, contractors, or subcontractors, shall be erected or displayed anywhere within the Community, including in windows and on motor vehicles.

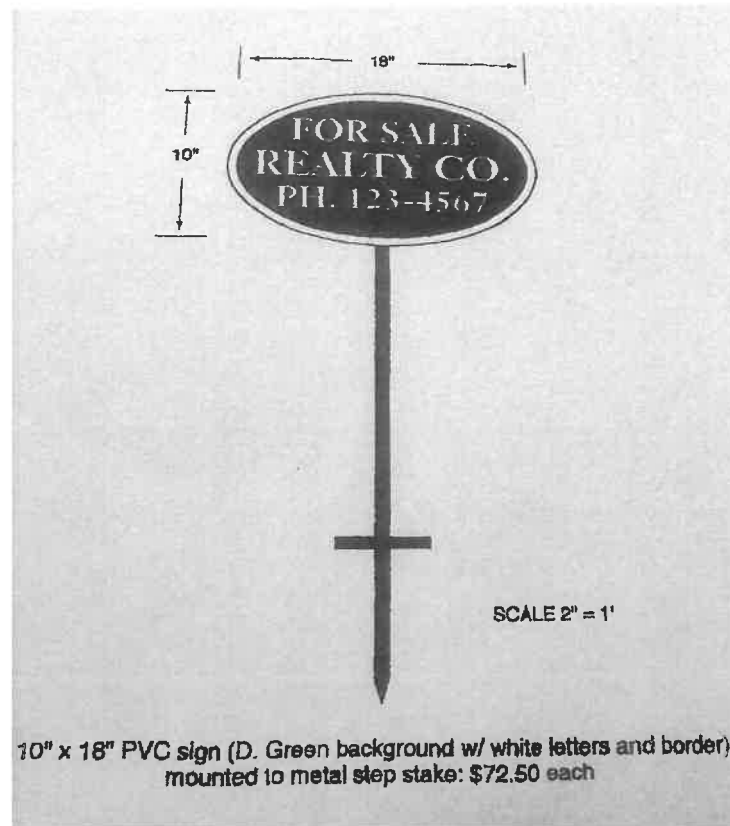
If any sign is erected in violation of this provision, the Declarant, the Property Owners Association, the CDD, or any Neighborhood Association shall have the right to enter the property on which the sign is located and remove it, as well as levy a fine of \$100.00/day for each day's violation and suspend the violators use of privileges of the community common areas.

The section actually conveys permission from each property owner to enter the property for this purpose: Said action to enter one's property and remove the sign, if necessary, shall be deemed expressly permitted by the property owner.

No signs may be erected or displayed in or on any Lot, Living Unit, or structure except that a "For Sale" or "For Rent" sign no larger than ten (10) inches in height and no more than eighteen (18) inches in width is permitted. The sign shall conform to the drawing depicted on subsequent page. The party seeking to erect or place a sign on their property shall be required to purchase the sign and sign post from a vendor designated by the Association. The vendor so designated by the Association shall be the only party authorized

to place or install the sign on the owner's property. Owner's right to install a sign shall be further subjected to the following restrictions and those which may be later promulgated by the Architectural Review Committee:

- a. The sign shall only contain the telephone number and the name of either the homeowner or the real estate company listing the property, if any:
- b. Telephone number and lettering shall not exceed four (4) inches in height and the lettering indicating the homeowner or real estate company shall not exceed two (2) inches in height;
- c. Color of the lettering shall be white and shall have a dark green background;
- d. For single-family homes and villas, one (1) sign may be located in front of the property, no closer than fifteen (15) feet from the street pavement and another sign may be located along the rear of the house, no farther than three (3) feet from the house.
- e. For condominiums, two (2) signs are permitted. One (1) sign may be located in the rear window of the unit.
- f. Note: Notwithstanding the foregoing, the individual neighborhood associations may prevent, prohibit, or impose additional restrictions on the placement of signs in their respective neighborhoods;
- g. The Architectural Review Committee may require that all signs installed or placed within the community be constructed or installed by a vendor designated and approved by the Association, in order to insure conformity with these restrictions.



5.24 Living Units: Residential Use. Each Living Unit shall be used as a single family residence and for no other purpose. No business or commercial activity shall be conducted in or from any Living Unit, nor may the address or location of the Unit be publicly advertised as the location of any business or commercial activity. Notwithstanding, however, the listing on any occupational license of the Living Unit serving as a business address shall be dispositive of the property being used as for commercial or business purposes. Any owner may use his/her residence for incidental commercial purposes, so long as (1) property is not used for manufacturing, construction or installation of material sold or advertised to be sold, whether retail or wholesale customers; (2) the nature of the business activity does not invite or permit suppliers, customers or vendors to visit or frequent the Living Unit, (3) the business activity within the Living Unit is limited to telephone calls and written correspondence in and from the Living Unit; and (4) no employees or contractors, other than those who regularly reside within the Living Unit may perform any work or other services to the business at the Living Unit. These restrictions shall further not be construed to prohibit any owner from maintaining a personal library or professional library, from keeping personal, business or professional records in his Living Unit, or from the handling of personal, business or professional telephone calls and written **correspondence** in and from his Living Unit. Such uses are expressly declared customarily incidental to residential use.

5.25 Occupancy in Absence of the Owner and Leasing of the Living Units. All consideration restrictions regarding leasing also apply to any other type of occupancy for which has been paid including but not limited to renting and licensing.

(A) Occupancy in the Absence of Owner. If the owner and his family who permanently reside with owner are not occupying the Living Unit then any occupancy shall be considered a lease whether or not the occupants are paying rent, and shall be subject to provisions pertaining to leases as set forth elsewhere herein, except that the owner may permit his home to be occupied without compliance with the provision pertaining to leasing under the following circumstances and limitations:

1. Any person who is the grandparent, parent, or child of the owner or the owners spouse, if any, may occupy the Living Unit in the absence of the owner without limitation to the number of occasions or length of stay.
2. All overnight guests who are not accompanied by owners must be registered with the association office and authorized by written instructions from the owners to avoid having their presence
challenged by other owners, security, or management, The owner shall submit the names of all house guests and the length of their stay in writing to the management office in advance.
3. Approved lessees may also have guests in compliance with the circumstances and limitations set forth above.
4. Upon prior written application by the owner, the Property Owners Association Board may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the Board's discretion for the sole purpose of avoiding undue hardship or inequity.

(B) Leasing of Living Units. Neighborhood covenants may establish stricter standards and collect their own fees and damage escrow, but the following restrictions shall apply to the occupancy of the Living Units in the Community:

1. All leases must be in writing, even if no rent or other consideration is involved.
2. The minimum lease term shall be thirty (30) days.
3. An owner may lease only his entire Living Unit and no room rental or subleasing is permitted.

4. The lessee must be a natural person as opposed to an artificial entity, such as a corporation, partnership, trust, etc.
5. The Association may file suit to evict any tenants in its own name and without consent of the owner in the event that any lessee violates the provisions of the Declaration or the rules and regulation of the Association. In such cases, the owner and the lessee shall be jointly and severally liable for all attorneys' fees and costs, including those incurred prior to the filing of suit.
6. Any owner who is more than forty-five (45) days in arrears on the obligation to pay regular or special maintenance assessments is deemed to have assigned the right to collect rents to the Association and, solely upon demand by the Association, the tenant shall make payment of all or such portion of the future rents that the Association specifies for so long as the Association specifies. The Association shall apply the rent to the owners unpaid account in accordance with the priority established under Section 720.3085, Florida Statutes, and shall promptly remit any excess over the amounts due on the account to the owner.
7. Owners shall provide the Association with a copy of the proposed lease and fully completed application for approval of the lease not less than fourteen (14) days prior to the proposed occupancy.
8. The Association may determine the form of the application for approval of leases, prescribe a form of lease to be used by the owners, and may conduct interviews and background checks on all proposed occupants.
9. The Association may charge an application fee and collect a security deposit in the maximum amount allowed by law.
10. The Association may impose conditions on lessees that are stricter than those that apply to owners regarding pets and the number of persons who will be allowed to occupy the Living Unit overnight and as to the number of vehicles that lessees and their visitors and guests may park in the Community.
11. A proposed lease may only be disapproved for good cause. Appropriate good cause grounds for disapproval shall include, but not be limited to, the following:
 - a) The owner is delinquent in the payment of assessments at the time the application is considered

- b) The owner has a history of leasing his Living Unit without obtaining approval, or leasing to troublesome lessees, and/or refusing to control or accept responsibility for the occupancy of his Living Unit.
- c) The real estate company or rental agent handling the leasing transaction on behalf of the owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval
- d) The application on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the property
- e) The prospective lessee or any proposed occupants have been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude.
- f) The prospective lessee or any proposed occupants have a history of conduct which evidences disregard for the rights and property of others.
- g) The prospective lessee or any proposed occupants have, during previous occupancy, evidenced an attitude of disregard for the Association rules.
- h) The prospective lessee or any proposed occupants have given false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.
- i) The owner fails to give proper notice to the Property Owners Association Board of his intention to lease his Living Unit.

(C) **Unapproved Leases.** Any lease of a Living Unit that has not been approved by the Association may, at the option of the Association, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent for such eviction.

(D) **Occupancy Restrictions;** Each Living Unit shall be used as a single family residence and for no other purpose. No business or commercial activity shall be conducted in or from any Living Unit, nor may the address or

location of the Unit be publicly advertised as the location of any business or commercial activity. Notwithstanding however, neither the listing on any occupational license shall be dispositive of the property being used as for commercial or business purposes. Any owner may use his/her residence for incidental commercial purposes, so long as (1) property is not used for manufacturing, construction or installation of materials sold or advertised to be sold, whether retail or wholesale customers; (2) the nature of the business activity does not invite or permit suppliers, customers or vendors to visit or frequent the Living Unit, (3) the business activity within the Living Unit is limited to telephone calls and written correspondence in and from the Living Unit; and (4) no employees or contractors, other than those who regularly reside within the Living Unit may perform any work or other services to the business at the Living Unit. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping personal, business or professional records in his Living Unit, or from the handling personal, business or professional telephone calls and written correspondence in and from his Living Unit. Such uses are expressly declared customarily incidental to residential use.

5.26 Leasing of Living Units/Occupancy Restrictions. No Living Unit may be leased or rented for a term shorter than thirty (30) consecutive days. Neighborhood Covenants may establish stricter standards for particular Neighborhoods. Living Units may be leased by their Owners, but only in the entirety and no fraction or portion of a Unit may be leased or sub-leased. Individual rooms of a Unit may not be leased under any circumstances. All occupants of a Unit who are eighteen years of age or older at the lease commencement date must be signatories to a valid lease agreement

Each Owner leasing a Unit shall be obligated to remove, at the Owner's sole expense, by legal means if necessary (including prosecution of eviction proceedings), any tenant who refuses or fails to comply with all the terms and conditions of the Governing Documents, Rules and Regulations or Resolutions of the Property Owners Association.

Notwithstanding the foregoing, should an Owner fail to perform his or her obligation to remove, by eviction if necessary, any non-compliant tenant, the Property Owners Association shall have the right, but not the obligation, to commence eviction proceedings against such non-compliant tenant. To facilitate this remedy, each lease agreement between and Owner and a tenant shall contain mandatory language designating the Property Owners Association's duly authorized officer or management agent as the Owner's attorney-in-fact for the purpose of, and with the authority to, terminate the lease agreement and bring an eviction action against any tenant committing two or more violations of any of the provisions of the Governing Documents,

Rules and Regulations or Resolutions of the Property Owners Association, or a single violation constituting either a serious breach of the peace, an act of property destruction, or other criminal or nuisance activity. The Property Owners Association shall notify the Owner of any and all violations committed by his or her tenant(s) and provide the Owner with a reasonable opportunity to attempt to cure the violation within no more than ten (10) days of the delivery of such notice; provided, however, that if any tenant commits a

violation constituting either a serious breach of the peace, an act of property destruction, or other criminal or nuisance activity, the Association shall remain obligated to provide notice to the Owner concerning said violation, but shall not be obligated to provide any opportunity for curing of such violation. Delivery of notice by the Property Owners Association to an Owner shall be deemed effected upon the placement of a correctly stamped and properly addressed notice to the Owner in the US mail directed to the address provided by the Owner in the lease agreement, to such other address as the Owner may apprise the Property Owners Association of in writing subsequent to the execution of the lease agreement, or to the address of the Owner's Unit if the Owner has provided no other valid address to the Property Owners Association. The Property Owners Association shall recover all of its reasonable enforcement costs, including, without limitation, reasonable attorney's fees and paralegal fees and court costs, from the Owner and the tenant(s), jointly and severally, should the Property Owners Association prevail in the prosecution of an eviction action or any other enforcement action against a tenant or tenants. To avoid excessive stress and wear upon the Common Property, all Owners leasing Units shall be deemed to have delegated exclusive use of the Common Property to the Owner's tenants and the Owners shall not be permitted to utilize any of the Common Property during the term of the lease. The provisions set forth in this Section 5.26 shall apply to all leases of the Units within the Community effective June 1, 2008. Any lease agreement pre-dating June 1, 2008 shall be grand-fathered through the termination date of the lease, provided that a fully executed and dated copy of such lease agreement is supplied to the Association's management within thirty (30) days of the effective date of this Section 5.26. Furthermore, any subsequent lease or lease extension of the original term shall be subject to the provisions set forth in this Section 5.26.

5.27 Delegation of Use Rights in Common Areas. Upon the leasing of his Living Unit, the Member shall temporarily be deemed to have delegated his privilege to use the Common Areas to his tenants while they are residing in the Member's Living Unit subject to the provisions of the Bylaws, the Property Owners Association's Rules and Regulations, and subject to the conditions, limitations and restrictions as may be stated herein. A fee may be imposed for such delegation, not necessarily limited by or related to the cost of processing such delegation. Each Member shall be financially and legally responsible to the Property Owners Association for the actions and debts to the Property Owners Association of any person to whom the Member has delegated his Common Area use privilege. The Member may not delegate the obligation to pay the Property Owners Association assessments. Upon the lease of a Lot or Living Unit to which a membership is appurtenant, the lessor may retain the right to use the membership, in which case the tenant shall have not such rights. If a Member delegates, upon the delegation of his Common Area use privileges to a tenant residing in his Living Unit, the Member shall not be entitled to use of the facilities during the period of the delegation.

5.28 Pets and Animals. Not more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds may be kept in a Living Unit, subject to other reasonable regulation by the Property Owners Association or Neighborhood Association. All animals shall be leashed (if outdoors), or kept within

the living Unit and shall not be permitted to roam free. The Property Owners Association may restrict the walking of pets to certain areas. Owners who walk their pets on the Property Owners Association or Neighborhood Common Areas must clean up after their pets. Commercial activities involving pets, including without limitation, boarding, breeding, grooming or training, are not allowed. The ability to keep a pet is a privilege, not a right. If in the opinion of the Property Owners Association Board, any pet becomes the source of unreasonable annoyance or nuisance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Community. Pets may not be left unattended or leashed in yards or garages or on porches or lanais.

5.29 Nuisances. Nothing may or shall be done which is, or may become, a source of unreasonable annoyance or nuisance to residents of any Neighborhood. Any questions with regard to the interpretation of this Section shall be decided by the Property Owners Association whose decision shall be final.

5.30 Correction of Health and Safety Hazards. Any Conditions of the physical property which are reasonably deemed by the Property Owners Association to be an immediate hazard to the public health or safety may be corrected as an emergency matter by the Property Owners Association, and the cost thereof shall be charged to the responsible owner or the Property Owners Association

5.31 Hurricane Shutters. Any hurricane or other protective devices visible from the outside of the home or unit shall be of a type as approved by the ARC, and in accordance with the guidelines as promulgated by the ARC. No such devices shall be installed without the prior written approval of the ARC. If the hurricane or other protective devices consist of roll down, accordion, clear panel, or mesh/fabric shutters, and galvanized or aluminum panels painted to match the body color of the structure, the owner may install, operate, or have in the closed or down position, storm shutters for the purpose of securing the owner's residence or any other reason whatsoever. If the hurricane or other protective devices consist of unpainted galvanized steel, or unpainted aluminum panels, plywood, or any other style shutters not listed above, the owner may only install, operate, or have in a closed or down position, storm shutters if and when the National Weather Service has issued a hurricane watch for the County or Municipality where the owner's dwelling is located. Those styles not listed above must be returned to the open or up position within (72) hours after such hurricane-watch expires or is otherwise no longer in effect. If any owner fails to comply with the terms of the section, such owner shall be subject to the imposition of fines as detailed in this Declaration.

5.32 Horticultural Waste Removal. The Lee County Ordinance, 05-13, of August 5, 2005 states that all horticultural debris may only be placed out for pick up 24 hours prior to the scheduled pick up. This is the same as the placement of trash containers for pick up, therefore all horticultural waste must be kept behind the front setback of the house (either side behind the front line of the home) until 8 AM the day before pickup. If waste is placed out earlier the homeowner would receive a letter of warning, a second offense

would result in a \$25.00 fine and any and all subsequent offenses will result in a fine as determined by the Board.

5.33 Windows Exposed to Flying Golf Balls. For windows that are prone to be damaged by golf balls from the Stoneybrook Golf Course, a clear high impact insert to fit into the window opening may be installed

SECTION 6 ARCHITECTURAL AND AESTHETIC CONTROL

6.1 General. Except for the initial construction of Living Units, Neighborhood Common Area facilities, Common Area facilities, and related improvements by the Developer, no building, structure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure. Lot, Living Unit, or Neighborhood Common Area be performed without the prior written approval of the Architectural Review Committee. In obtaining said written approval, an owner or any other person applying shall comply with all applicable requirements and procedures.

6.2 Architectural Review Committee. The architectural and aesthetic review and control functions of the Property Owners Association shall be administered and performed by the ARC. The ARC shall consist of no more than five (5) individuals who are also members of the Community, and such members shall not be a Director.

6.3 Powers. The ARC shall have the power, subject to and limited by the guidelines of the approved regulatory permits of South Florida Water Management District (Permit Nos. 36-01685-S and 36-02571-W), the County, the U.S. Army Corps of Engineers and the RPD and the DRI, to:

(A) Propose the adoption, modification or amendment by the Board of Directors, of written Design Review Guidelines which shall set forth such things as design requirements, landscape materials, construction standards and colors and materials which the ARC finds acceptable. Said Guidelines shall be consistent with provisions of this Declaration, and shall not be effective until adopted by at least a majority of the whole Board of Directors (at a meeting duly called and noticed. Notice of any adoption, modification or amendment of Design Review Guidelines) including a verbatim copy of the proposed modification or amendment thereof, shall be mailed to each Neighborhood Association at least thirty (30) days prior to the Board meeting at which such action is to occur;

(B) Require submission to the ARC of complete plans and specifications for any building, structure, or other improvement proposed to be erected or altered, or any

proposed grading, excavation, tree or other landscape material removal or installation, change of exterior color or other work which materially alters the exterior appearance of any structure, Lot or Neighborhood Common Area. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work; Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fines, if any shall be payable to the Property Owners Association, in cash or check, All work initiated or completed without ARC approval will be forwarded to the Fining Committee. Adopt procedures for inspecting approved changes during and after construction, to ensure conformity with approved plans.

6.4 Enforcement. Any decisions of the ARC shall be enforced by the Neighborhood Association involved, as well as by the Property Owners Association.

6.5 Single family residences Mailboxes. The Property Owners Association shall replace the mailboxes on each Lot. After such initial replacement, the Property Owners Association shall be responsible for maintenance, repairing and replacing the mailboxes, cost to be borne by the single family residents only.

SECTION 7 EASEMENTS

7.1 Utilities, Services and Support. Each Lot, Unit, Tract and Parcel and the Common Areas (except Conservation Areas) and Neighborhood Common Areas is and are hereby subjected to easements for public services, communications and telecommunications, and utilities purposes including, but not limited to, fire police protection, and emergency services, garbage and trash removal, potable and non-potable water, sewage, telephone, electric and irrigation, lake maintenance, and cable television, as well as for CDD purposes. The utilities and governmental agencies having jurisdiction, and their employees and agents, shall have the right of access to any Lot, Unit, Tract, or Parcel or the Common Areas in furtherance of such easements. The easement areas on any Lot, whether or not shown on any plat, shall at all times be properly maintained by the owner, whether or not the utility or service company property maintains the easement area.

(A)There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Community, those easements described herein and those shown upon the recorded plat of the Community, and there are also

reserved such easements and rights-of-way for any other purposes as the Property Owners Association in its sole discretion may in the future grant.

(B)The Association hereby reserves the right, and the power to declare, grant and record easements for drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, telephone and other telecommunication lines, cable television lines, and such other service facilities as the Property Owners Association may deem necessary or desirable, along the various utility service routes, through, in, over and under all Lots, Tracts, Parcels and Common Areas, and Neighborhood Common Areas. The purpose, duration and scope of any such easement shall be set forth in an instrument of public record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the Lot, Parcel, Tract or Common Area, or materially change the rights of the owners. If any agreement is entered into by the Property Owners Association for the exclusive provision of System services or other services to the Community, as described in either Section 7.2, 7.3 or both below, it shall be the affirmative obligation of the Property Owners Association to grant all appropriate and reasonably necessary easements for the furnishing of those services; and upon the expiration or termination of such agreement, to provide subsequent or alternate easements so as to insure the continuous accessibility and availability to the Community, of those services.

7.2 T.V. and Broadband Telecommunications System. The Property Owners Association hereby reserves for itself and its successors, assignees and licensees, the right, without obligation, to construct or install over, through, under, across and upon any portion of the Community for the use and benefit of the owner and that committed or authorized guests, invitees, tenants and family members, one (1) or more cable and/or internet access telecommunications receiving and distribution systems and electronic surveillance systems, internet access, emergency, medical and surveillance monitoring, or alarm system (all or any part of which shall be referred herein collectively as the "System"), the exact description, location and nature of which may have not yet been fixed or determined. -The Property Owners Association shall have and hereby reserves to itself and its designees, successors, assignees and licensees, a perpetual and exclusive right, privilege, easement and right-of-way for the installation, construction and maintenance of the System (the scope, extent, size and location of which over, across, upon and through the Community shall be determined solely by the Property Owners Association its successors, designees and assigns) together with a perpetual and exclusive right and privilege of: unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute services of the System including, without limitation, television and radio signals, electronic banking, surveillance, fire police and emergency medical protection.

(A) Transmitting the facilities and equipment of which, shall be owned and exclusively controlled by the Property Owners Association, its successors and assigns or its designees.

(B) Each Lot and Living Unit is subject to a permanent easement in favor of adjoining or adjacent Lots and Living Units for lateral and subjacent support.

(C) Each Lot and Living Unit is subject to a permanent easement in favor of the Community Association to remove and/or destroy invasive exotic vegetation species.

(D) Each Lot and Living Unit is subject to a permanent easement in favor of the Property Owners Association as designated in Section 7.2 above.

7.3 Contracts with Service Providers. The Property Owners Association shall have the right to enter into Contracts for the exclusive provision of the System, as designated in Section 7.2, the Property Owners Association shall deem it in the best interest of the Community. The Property Owners Association may receive valuable consideration for the grant of the exclusive right to provide System services. As used herein, the term “contractual designee” means the service provider with which the Property Owners Association contracts for the furnishing of System services.

7.4 Collection of “System” Assessments by the Property Owners Association. Every Lot or Living Unit to which the service System is available for many contractual designee(s) shall be subject to a System service assessment, payable per Lot or Living Unit for System services, including, without limitation, television services. The Property Owners Association shall bill the appropriate System service assessment to each Lot or Living Unit along with other assessments for common expenses, which may be due and payable at the same time, and shall collect same and remit payment to the contractual designee(s) providing the System services. Any additional service charges over and above the Property Owners Association Assessment, which are greater than or in excess of the contract with the Property Owners Association should be billed by the Provider to the living unit owner and should be the owners responsibility.

7.5 Conservation Easements. CDD hereby grants, creates, and establishes a perpetual conservation easement as defined in Section 704.06, Florida Statutes (1995), for the South Florida Water Management District, and the U.S. Army Corps of Engineers permit, over the Conservation Areas which shall run with the land be binding upon the Property Owners Association, its successors and assigns, and remain in full force and effect forever. The scope, nature and character of this conservation easement shall be as follows:

(A) It is the purpose of this conservation easement to insure that the Conservation Areas predominately remain in their natural scenic open or wooded condition, while retaining such areas as suitable habitat for fish, plants, or wildlife. It is anticipated that the assignee of the Conservation Easements will be the CDD or

the Association. To carry out this purpose, the following rights are conveyed to many governmental and quasi governmental district, including, but not limited to: Florida Fish and Fresh Water Game Commission, Audubon Society, United States Fish and Wildlife Commission, SFWMD by this easement:

- (1) To enter upon the Lands at reasonable times to enforce the rights herein granted, upon prior notice to grantor, its successors or assigns, in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Lands by the Property Owners Association and its successors or assigns, at the time of such entry; and
 - (2) To enjoin in any activity on or use of the Conservation Areas that is inconsistent with the purpose of this conservation easement, and to enforce the restoration of such areas or features of the Conservation Areas that may be damaged by any inconsistent activity or use, except those damages or changes caused by an act of God.
- (B) Use Restrictions. Unless otherwise approved by SFWMD in writing, the following activities are prohibited in or on the Conservation Areas, except as provided in the reservation of rights located in Paragraph (C), or in the maintenance and monitoring plan set forth in the Conservation Easement:
- (1) Construction or placing of buildings, roads, signs, billboards, or other advertising, utilities, or other structures on or above the ground.
 - (2) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
 - (3) Removal or destruction of trees, shrubs, or other vegetation, excepting removal of invasive exotic species.
 - (4) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such a manner to affect the surface.
 - (5) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
 - (6) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
 - (7) Acts or uses detrimental to the retention of land and water areas.
 - (8) Use of recreational motor vehicles such as motorcycles, ATV's, four-wheel drive vehicles.

(C) Reservation of Rights. The following rights are specifically reserved to the Property Owners Association, its successors or assigns:

- (1) Passive recreational activities not involving construction and not contrary to the purpose of this conservation involving construction, but not contrary to the purpose of this conservation easement, may be permitted upon written approval by SFWMD.
 - (2) The Property Owners Association reserves to itself, its successors, or assigns, all rights as owner of the property, including the right to engage in all uses of the property that are not specifically prohibited in this easement
 - (3) The Property Owners Association reserves to itself, its successors or assigns, the right to excavate and recover fill dirt at any time in accordance with applicable governmental regulations.
- (D)** Plans for construction of passive recreational facilities shall be submitted to SFWMD for review and approval prior to any construction. The Property Owners Association, its successors and assigns shall minimize and avoid, to the fullest extent possible, impact to any wetland or buffer areas within the Conservation Areas. The SFWMD shall not unreasonably withhold approval. Any such work shall be subject to all applicable federal, state, or local permitting requirements.
- (E)** No right of access by the general public to any portion of the lands or Conservation Areas is conveyed by this conservation easement.
- (F)** The Property Owners Association its successors or assigns, shall bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Conservation Areas and does hereby indemnify and hold the SFWMD harmless therefrom.
- (G)** The Property Owners Association its successors or assigns, shall pay any and all real property taxes and assessments levied by competent authorities on the Conservation Areas.
- (H)** Any costs incurred by the SFWMD in enforcing, traditionally or otherwise, the terms and restrictions of this conservation easement against the Property Owners Association its successors or assigns shall be borne by, and be recoverable against the Property Owners Association, its successors or assigns as long as the SFWMD is the prevailing party in such proceedings.
- (I)** Any costs incurred by the Property Owners Association its successors or assigns in defending an enforcement action brought by the SFWMD shall be

borne by and be recoverable against the SFWMD and its successors, as long as the SFWMD is not the prevailing party.

- (J) Enforcement of the terms and provisions of the conservation easement shall be at the reasonable discretion of the SFWMD, and any forbearance on behalf of SFWMD to exercise its rights hereunder in the event of any breach hereof by the Property Owners Association its successors or assigns shall not be deemed or construed to be a waiver of the SFWMD's rights hereunder in the event of a subsequent breach.

The SFWMD will hold this conservation easement exclusively for conservation purposes. The SFWMD will not assign its rights and obligations under this conservation easement without the prior written consent of the Property Owners Association its successors or assigns, except to other State organizations qualified to hold such interest under the applicable state and federal laws who are committed to holding this conservation easement exclusively for conservation purposes.

- (K) If any provisions of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this conservation easement and the applications of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby, as long as the general purpose of the conservation easement is preserved.
- (L) All notices, consents, approvals or other communications hereunder shall be in writing and be deemed properly given if sent by registered or certified U.S. Mail, return receipt requested, addressed to the appropriate party in interest
- (M) The Property Owners Association, its successors or assigns, must follow the State laws of Florida pertaining to notification of any subsequent party, buyer, or filing of other legal instruments, when the Property Owners Association its successors or assigns divests itself of any interest in the Conservation Areas.

7.6 Easements for Golf Nonspecific, nonexclusive easements are hereby created for the benefit of the users of the golf course over all Lots, Living Units, Neighborhood Common Areas, and the Common Areas adjacent to the golf course, to permit every act necessary, incidental, or appropriate to the playing of golf. These acts, include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots, Living Units or Common Areas, the landing of errant golf balls upon the Lots, Living Units or Common areas, the use of necessary and usual golf carts and maintenance equipment upon the golf course (and this golf course easement over as herein set out) the usual and common noises and other

disturbances created by maintenance of the golf course and the playing of the game of golf, including occasional tournaments, together with all other common or usual occurrences normally associated with the existence and operation of a golf course. No golf carts are permitted on Lots or Neighborhood Common Areas for the purposes of retrieving golf balls. Neither the Property Owners Association, the CDD, the Golf Course Operator, nor any Neighborhood Association or any of its successors or assigns shall be liable for damage to individual Lot or Unit Owner's property from errant golf balls.

7.7 Waiver and Disclaimer Regarding Golf Course. Each Owner of a Lot or Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is hereby deemed to acknowledge and accept the following inherent risks associated with the golf course:

- (1) maintenance on the golf course may begin early in the morning and extend late into the evening, ordinarily occurring from sunrise to sunset;
- (2) during certain periods of the year, the golf course will be heavily fertilized;
- (3) the maintenance of the golf course may require the use of chemicals and pesticides;
- (4) the golf course may be watered with reclaimed water;
- (5) golf balls are not susceptible of being easily controlled and accordingly may enter Owner's airspace, strike Owner, Owner's guests, yard, walls, roof, windows, landscaping and personal property causing personal injury and property damage; and
- (6) the golf course will consist of roughs, natural areas and other golf course ancillary properties which will be maintained by the owner/operator of the golf course. The level of maintenance including the nature of mowing, pruning, trimming and other care shall be determined solely by the golf course owner/operator.

7.8 The CDD, the operator of the Club (in their capacity as members), and any successor in title to the golf course, and any agents, servants, employees, directors, officers, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such party ("Related Parties"), shall not in any way be responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever, including without limitation, actions based on (a) any invasion of the Lot owner's use or enjoyment of the Lot, (b) improper design of the golf course, (c) the level of skill of any golfer (regardless of whether such golfer has the permission of the management to use the golf course), or (d) trespass by any golfer on the Lot, that may result from property damage or personal injury from golf balls (regardless of number) hit on the Burdened Property or adjacent roadways, or from the exercise by any golfer of the easements granted herein. Furthermore, each Owner of a Lot or Unit hereby assumes the risk inherent in owning property adjacent to or nearby a golf course, including, without limitation, the risk of personal injury and property damage from errant golf balls, and hereby indemnifies and agrees to hold the Released Parties harmless from any and all loss

arising from claims by such Owner, or persons using or visiting such Owner's Lot for any personal injury or property damage.

SECTION 8 COMMON AREAS; CONVEYANCE, USE AND MAINTENANCE

8.1 Designation. Except for the Conservation Areas, and the Storm Water Management System, the Property Owners Association Board shall have the right, and the power, in its sole discretion, to determine which parts of the Community shall be Common Areas, and to convey, lease or grant a license or other right to use real property within the Community, to the CDD or to the Association or any Neighborhood Association as Common Areas.

(A) Any such conveyance, lease or grant of license or use right to the Property Owners Association may be exclusive or non-exclusive, so that persons or entities other than the Property Owners Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted. The Property Owners Association must accept from the Board the CDD, any such conveyance, lease, grant of license or grant of use right. The Property Owners Association shall not accept, from any person other than the CDD, a conveyance, lease, grant or license or grant of use right except upon the prior written approval of the Property Owners Association Board

(B) Property Owners Association shall have the right to charge reasonable fees, rents, or other charges for the use of the property; however, rents, fees and other charges required to be paid to the Property Owner Association Board under leases, grants, licenses or contracts creating use rights to third parties shall continue to be paid.

The foregoing notwithstanding, the CDD shall own and maintain the surface water management system of Stoneybrook which has been constructed by or accepted by the CDD, unless those duties and obligations are transferred and accepted by the Property Owners Association.

8.2 EXCEPT AS OTHERWISE PROVIDED IN THE CONSERVATION EASEMENT, IT SHALL BE THE PERPETUAL RESPONSIBILITY OF THE PROPERTY OWNER ASSOCIATION AND THE EASEMENT MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS

TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION, EXCEPT REMOVAL OF EXOTIC/NUISANCE VEGETATION; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE, FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

8.3 Conveyance and Use:

(A) Any real property conveyed, leased, or the use of which has been granted by the Property Owners Association or any third party to the CDD as Common Areas, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of members and their guests, tenants and invitees.

(B) The CDD may convey property to The Property Owners Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Property Association may accept such property. The Property Owners Association shall not accept conveyance of real property from any third party other than the CDD, in either an improved or unimproved condition, without the prior written consent of the Property Owners Association Board so long as the Property Owners Association owns any property in Stoneybrook.

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8.4 Maintenance and Alteration. The Property Owners Association is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas except those the CDD is responsible for, in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times. After the control of The Property Owners Association has been turned over to the members, there shall be no material alterations of or substantial additions to the Common Areas costing more than \$300,000 in the aggregate during any fiscal year unless first approved by at least a majority of the members voting in person or by proxy cast at a duly called special meeting at which a quorum has been attained.. However, if work that is reasonably necessary to meet the Property Owners Association's obligations under the first sentence of this Section 8.4 also constitutes material alterations or substantial addition, no prior membership approval is required.

8.5 Partition, Subdivision and Encumbrance. Except as hereinafter provided, after legal title to the Common Areas, or any portion thereof, becomes vested in the CDD or the Property Owners Association, the Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered, without first obtaining the approval of not less than a majority of voting interests present at any duly called meeting at which a quorum is attained. The foregoing shall not be construed to limit the authority of the Property Owners Association through its Board of

Directors to grant such easements over, across and through the Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the members; nor is it intended to interfere with the transfer of title to the Common Areas to the CDD as contemplated in Section 8.7. Nothing herein shall be construed to prohibit judicial partition of any Lot, Unit, Tract or Parcel owned in co-tenancy.

8.6 Community Association's Rights and Powers. No Common Areas shall be used in violation of any rule or regulation or other requirement of the Property Owners Association established pursuant to the provisions of this Declaration or the Bylaws.

8.7 Expansion or Modification of Common Areas. Additions or modifications to the Common Area as may be made if not inconsistent with the RPD and any amendments thereto. If the Property Owners Association determines, subject to any governmental requirements, that it is in the best interest of the development for any Common Areas to be owned by the CDD rather than the Property Owners Association, then such Common Areas shall cease to be Common Areas, even if such Common Areas have been conveyed to the Property Owners Association pursuant to Section 8.1 and 8.2 hereof, and shall thereafter be CDD property and the Property Association shall make such conveyance to the CDD.

SECTION 9 ASSESSMENTS

9.1 Creation of Lien. Each owner, by acceptance of a deed to a Lot or Living Unit, covenants and agrees to pay to the Property Owners Association:

- (A) Annual Assessments
- (B) Special Assessments
- (C) Service Assessments, Resale Capital Assessments and other fees or charges (including fines) imposed against one or more Lots, Living Units, Tracts or Parcels, as provided for elsewhere in this Declaration, and in the Bylaws of the Property Owners Association System Assessments (e.g. Broadband Telecommunications, internet access, security, Bulk Service Television).
- (D) Irrigation and water utility assessments.
- (E) To provide community wide services for the benefit of the owners and the members not provided through the CDD, including without limitation, transportation and security.
- (F) Except as otherwise provided in Section 14.2 below as to certain mortgages, no owner may avoid or escape liability for the assessments or charges

provided for herein by non-use or abandonment of his Lot, Living Unit, Tract, Parcel, or the Common Areas, or otherwise.

(G) Assessments shall be fixed, levied, established and collected as provided herein, and in Section 7 of the Bylaws.

(H) The owner of each Lot or Living Unit regardless of how title was acquired, is liable for all assessments coming due while the owner. Multiple owners are jointly and severally liable. Except as provided in Section 14.2 below, whenever title to a Lot or Living Unit is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments unpaid at the time of the transfer, regardless of when incurred, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

(I) No land shall be subject to assessment by the Property Owners Association if it is a Neighborhood Common Area, or a Common Area, or it is owned by or dedicated to the County or other governmental agency, and used for a public purpose. Only Lots and Living Units shall be subject to assessment.

9.2 Purposes of Assessments.

(A) To promote the recreation, health, safety, and welfare of the owners and residents of the Community;

(B) For the improvement, maintenance, protection and operation of the Property Owners Association and Community Common Areas, the Conservation Areas, the Property Owners Association Equipment and facilities, and the Stormwater Management System; and to establish and maintain adequate repair and replacement reserves, not the responsibility of the CDD.

(C) To provide utility, television, and other systems of telecommunications services by bulk contract with third parties: Where deemed desirable by the Board of Directors, to provide services of general benefit to the owners and residents either on a community-wide basis or otherwise, including without limitation, cable television, transportation, security or other services;

(D) To pay the operating expenses of the Property Owners Association; and

(E) For such other purposes and uses as are authorized by the Governing Documents as amended from time to time and agreements with the CDD.

9.3 Imposition of Assessments. Upon the closing of the initial sale of each Lot or Living Unit to a purchaser and on the first day of each fiscal year thereafter, the assessment shall be assessed against each Lot or Living Unit. The assessment for the year (which

may be payable annually or in quarterly installments at the discretion of the Board) in which the initial sale occurred shall be prorated to the actual date of closing.

9.4 Amount of Assessments. The amount of the assessment based on the annual budget shall be the same for each Lot or Living Unit subject to assessment unless determined otherwise by the Property Owners Association Board.

9.5 Special Assessments. Any special assessments levied by the Property Owners Association's Board of Directors shall be assessed equally against all Lots and Living Units, unless the assessment or portion thereof is intended specifically for the direct benefit of one or more classes of members, in which case it shall be assessed against only the classes of members directly benefited, in accordance with the apportionment described in Section 9.4 above for the apportionment of annual assessments.

9.6 Charges. Any charge by the Property Owners Association authorized by law or by the Governing Documents to be imposed on less than all of the Lots or Living Units shall not be deemed an assessment. Payment may be enforced as provided in Section 9.7 and 9.8 below.

9.7 System Service Assessment. Assessment for System services, as described under Section 7.3 and 7.4 above, may be levied by the Board of Directors. Given their nature and purpose, such assessments may be levied on a non-uniform basis, notwithstanding the provisions of Section 9.5 above, and shall still be deemed "assessments". For example, if the Property Owners Association enters into a Community wide bulk contract for cable television services to be provided to all Living Units, but one (1) or more Living Units is owned or occupied by a vision impaired person who, by law, cannot be required to pay for such television services, the cost of the cable television service shall be shared equally by all other Living Units, and the amount each living unit pays shall be deemed an "assessment" for all purposes hereunder.

9.8 Lien. The Property Owners Association has a lien on each Lot and Living Unit for any unpaid past due assessments and charges, together with interest, late payment penalties and reasonable attorney's fees incurred by the Property Owners Association in enforcing this lien.

The lien relates back to the date of recording this Declaration in the Public Records of Lee County, Florida; and is perfected by recording a Claim of Lien in the public records of the County, which Claim of Lien shall state the legal description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Property Owners Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments and charges, interest, costs and attorney fees which are due and which may accrue or come due after the recording of the Claim of Lien and

up to the issuance of a clerk's deed. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

9.9 Foreclosure of Lien. Unless a different method is required by Florida law, as amended from time to time, the Property Owners Association's lien may be foreclosed by the procedures and in the manner provided in Section Chapters 720 of the Florida Statutes as it may be amended from time to time, for the foreclosure of a lien upon a condominium parcel for unpaid assessments. The Property Owners Association may also bring an action at law against any owner liable for unpaid charges or assessments. If initial judgment is obtained, it shall include interest on the assessments as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action, and the prevailing party shall be entitled to recover reasonable attorney fees in connection with any appeal of such action

9.10 Priority of Lien. Unless otherwise provided by Florida law as amended from time to time, the Property Owners Association's lien for unpaid assessments and charges shall have the same priority with respect to first mortgages holding mortgages on Lots and Living Units the lien of a condominium association for unpaid assessments under Section Chapter 720 of the Florida Statutes, as amended from time to time, has with respect to first mortgages for other acquirers of title through the first mortgage. The Property Owners Association's lien shall be superior to, and take priority over, all other mortgages regardless of when recorded. Any lease of a Living Unit shall be subordinate and inferior to any Claim of Lien of the Property Owners Association's lien to that of a Neighborhood Association shall be determined by the order of their recording in the public records.

9.11 Resale Capital Assessment. The Property Owners Association may levy a Resale Capital Assessment upon the transferee in any conveyance of a Lot or Living Unit by a member. The amount of the Resale Capital Assessment and the manner of payment shall be as determined by resolution of the Board from time to time; provided, however, all Lots or Living Units similarly situated shall be assessed at a uniform rate. The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Assessment shall be the legal obligation of the transferee. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot or Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or the death of the transferee, nor to a transfer of title to a family trust or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. Resale capital assessments shall be considered an assessment and can be collected as such in accordance with the provisions under Article 9.

9.12 Ownership. Assessments, resale capital assessments, and charges collected by or on behalf of the Property Owners Association become the Property Owners Association property; no owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot or Living Unit. No owner has the right to withdraw or receive

distribution of his share of the common surplus (including reserves), except as otherwise provided by law.

SECTION 10

COVENANT AND RULE ENFORCEMENT: DISPUTE RESOLUTION

The Property Owners Association has the power to enforce all covenants, conditions, restrictions, rules and agreements applicable to any real property within Stoneybrook, and is further empowered to promulgate and enforce administrative rules and regulations governing the use of the Common Areas.

10.1 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the rules promulgated by the Property Owners Association, shall apply to all owners, as well as to any other person occupying any Living Unit. Failure of an owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Property Owners Association of the power to enforce these provisions. Each owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

10.2 Litigation. Each member and the member's tenants, guests, and invitees, and the Property Owners Association, are governed by and must comply with Chapter 617, Florida Statutes, the Governing Documents and rules of the Property Owners Association. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of the Governing Documents and the Property Owners Association rules may be brought by any owner, or the Property Owners Association against:

- (A) the Property Owners Association;
- (B) a member;
- (C) any occupant of a Living Unit;
- (D) any Director or officer of the Property Owners Association who willfully and knowingly fails to comply with these provisions; and
- (E) any tenants, guests, or invitees occupying a parcel or using the common areas
- (F) any Neighborhood Association which fails to make a prompt and reasonable effort to enforce any restrictive covenants or affirmative obligations under provisions of this Declaration or the Neighborhood Covenants, where such failure has or threatens to have a material adverse impact on the appearance of the community, or the operation of the Property Owners Association. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section is not intended to deprive any person of any other available right or

remedy. The enforcement of covenants, conditions, restrictions and agreements applicable to the various subdivisions and developments within the Community is primarily the function and duty of the respective Neighborhood Associations. It is the intent of this provision that the Property Owners Association exercise its covenant enforcement powers with respect to Neighborhood Covenants only after the Neighborhood Association primarily responsible for enforcement has notice of the violation and has, after a reasonable time, been unable or unwilling to resolve the problem in a satisfactory manner.

10.3 Damages and Attorney's Fees. Damages shall not be conclusively deemed adequate relief for any breach or violation of the Governing Documents or the rules. Any person or entity entitled to enforce any provision thereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity. The prevailing party in a proceeding to enforce any provision of the Governing Documents or rules, or to enjoin violation or breach of any provision hereof, or recover damages on account of such breach, against any person shall be entitled to recover reasonable attorney's fees and court costs (including those resulting from appellate proceedings).

10.4 Fines

In addition to the means of enforcement provided elsewhere herein, the Property Owners Association shall have the right to assess fines against a unit, a unit owner, or his tenants, invitees, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations of the Property Owners Association regarding the use of units, common elements, or the Property Owners Association property as well as damages caused by such violations. Such violator and the unit owner shall be given written notice of the alleged violation and the opportunity for a hearing before the Board of Directors with at least fourteen (14) days' notice. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws or Rules which have been allegedly violated; and a short and plain statement of the matters asserted by the Property Owners Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, witnesses, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Property Owners Association. The amount of such fine shall not exceed the amount set by State Statute per occurrence, or the maximum permissible by law, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing. A fine for a continuing violation may accrue up to a maximum of \$2,500.00 plus the reasonable expenses of the Association to bring such violations into compliance. An action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees. Except to the extent expressly prohibited by law, the Association is entitled to treat any fine which remains unpaid thirty (30) days after the due date as a delinquent

individual assessment which shall entitle the Association to impose a claim of lien and pursue a foreclosure action and/or a suit for money damages in the same manner as any other assessments.

10.5 Suspension of Use Rights. To the extent lawful, the Board of Directors may suspend the right of any unit owner, or his guests, tenants, or family members, to use Common Areas during any period of time the owner shall have failed to pay any fine levied, or for a reasonable time as punishment for one or more infractions of the Property Owners Association rules and regulations by the owner, his family, guests or tenants. No such suspension shall affect the unit owner's right of access to his unit. A suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be suspended and an opportunity for a hearing before the Fining Committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Property Owners Association, or the spouse, parent, child, brother, or sister of an officer, Director or employee. If the committee, by majority votes, does not approve a proposed suspension, it may not be imposed.

(A) The requirements of the previous paragraph do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments, fines, or other charges when due if such action is authorized by the Governing Documents.

(B) Suspension of common areas use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

10.6 Stormwater Management System. The Property Owners Association Board as the beneficiaries of the Stormwater Management System shall have the right to enforce the provisions of the Governing Documents that the drainage system, easements and rights-of-way will be continuously maintained.

SECTION 11 NEIGHBORHOOD ASSOCIATIONS

11.1 Entry Rights. The Property Owners Association and Neighborhood Associations and each owner shall permit, an authorized party to enter upon a Common Area or the owner's Lot at reasonable times, to carry out the provisions of this Declaration, and the entry shall not constitute a trespass.

11.2 Maintenance of Neighborhood Common Areas. The Property Owners Association may contract with any Neighborhood Association to provide for the maintenance and management of its Neighborhood Common Areas.

11.3 Priority of Neighborhood Covenants. The documents establishing or governing a Neighborhood Association shall not be inconsistent with this Declaration or its recorded

exhibits, except they may establish restrictions on subjects related to the use and occupancy of the property within the Neighborhood, such as pets, parking, architectural controls, leasing and guest occupancy, that are more restrictive than those set forth in the Governing Documents.

SECTION 12 RECONSTRUCTION AFTER CASUALTY

12.1 Duty to insure, and to Reconstruct or Clean Up. Each owner or a Neighborhood Association shall at all times maintain adequate property insurance on the Living Units and structures containing Living Units, and all other insurable improvements, in amounts equal to the replacement cost thereof. If any Living Unit or other improvements located on any Lot, Neighborhood Common Area, Tract or Parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner or Neighborhood Association shall cause repair or replacement to be commenced and completed within six (6) months after the date such damage or destruction occurred, and completed the repair or replacement within six (6) months thereafter. The Architectural Review Committee may extend such period for good cause shown. All such repairs or replacements must be approved in writing by the ARCHITECTURAL REVIEW COMMITTEE. Unless changes are approved by the ARCHITECTURAL REVIEW COMMITTEE, the owner or Neighborhood Association must restore the damaged property to substantially the same configuration as existed before the casualty, and structurally and architecturally compatible with any adjoining improvements which share a party wall and promptly cause all debris, damaged improvements, and other unsightly materials to be removed from the site.

12.2 Failure to Comply. If any owner or Neighborhood Association fails to comply with Section 12.1 above within the time periods provided, the Property Owners Association shall be deemed to have been granted the right by the owner or Neighborhood Association as his or its attorney-in-fact, to either commence and complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements; or to remove the damaged improvements completely. If The Property Owners Association exercises the rights afforded to it by this Section, the owner or Neighborhood Association shall be deemed to have assigned to The Property Owners Association any right he or it may have to insurance proceeds that may be available because of the damage or destruction. The Property Owners Association shall have the right to recover from the owner or Neighborhood Association any costs not paid by insurance, and shall have a lien on the Lot or Living Unit to secure payment.

12.3 Flood Insurance. The Property Owners Association may, in the discretion of the Board, maintain flood insurance to cover buildings and any other property in designated hazard areas, if any, up to the full insurable value or maximum coverage available.

12.4 Property Insurance. The Property Owners Association shall maintain replacement cost property insurance coverage on all structures, improvements, and fixtures which are part of the Common Areas.

12.5 Liability Insurance. The Property Owners Association shall maintain adequate public liability insurance coverage for all Common Areas and all activities of the Property Owners Association.

12.6 Bonding. The Property Owners Association shall maintain adequate fidelity bond coverage for all individuals having control of or access to the Property Owners Association funds.

12.7 The Property Owners Association's Right of Entry. For the purpose of performing the duties authorized by this Section 12, the Property Owners Association, through its duly authorized agents and employees, shall have the right to enter upon any Living Unit or Lot at reasonable hours and perform such duties.

SECTION 13

13.1 Security; non-Liability of Property Owners Association. The Property Owners Association reserves the right to determine the level (if any) of security services to be provided, or to engage or discontinue any such services. The Property Owners Association shall not be liable if security services are not provided.

13.2 All persons using or occupying any portion of the community are responsible for their own security. The Property Owners Association, is not insurers or guarantors of security for persons or property within the community. Neither The Property Owners Association, nor the CDD shall be liable in any way on account of loss, damage or injury resulting from lack of security, or the lack of effectiveness of any security measures undertaken; The Property Owners Association makes no representations or warranties, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire protection system and/or burglar alarm systems, or other security systems recommended or installed, or any security measures undertaken within the community.

13.3 Miscellaneous

(A) The Property Owners Association shall have the right and the power to regulate and control the external design and appearance of all Common Areas in such a manner as to:

1. Promote a quality environment which will preserve the value of the Lots and Living Units; and
2. Foster the attractiveness and functional utility of the Community as a place to live and play, including a harmonious relationship among structures, vegetation and topography.
3. Any use of Common Areas other than, or inconsistent with the uses intended pursuant to this Declaration shall be subject to the prior written approval of the Property Owners Association.

(B) The Property Owners Association has the right to replat unsold portions of the Properties without the joinder or consent of any owner

13.4 Management Contract. The Property Owners Association shall have the right and the power to enter into professional or management contracts on behalf of the Community.

SECTION 14 RIGHTS OF MORTGAGEES

14.1 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of any significant portion of the Common Areas, the record holder of any first mortgage on the Common Areas who has requested such notice in writing, shall be entitled to written notice.

14.2 Mortgage Foreclosure. Except as otherwise provided by Florida law as amended from time to time, if an Institutional Mortgagee acquires title to a Lot, Living Unit, Tract or Parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such mortgagee shall not be liable for the Property Owners Association assessments or charges attributable to the Lot, Living Unit, Tract or Parcel, or chargeable to the former owner, which came due prior to the mortgagee's acquisition of title. Any unpaid assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a Lot, Living Unit, Tract or Parcel by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.

14.3 Right to inspect Documents and Books. The Property Owners Association shall make available to Institutional Mortgagees requesting same the current Governing Documents and Rules and Regulations of the Property Owners Association and financial statements of the Property Owners Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be at the expense of the mortgagee requesting same.

14.4 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Property Owners Association for the immediately preceding fiscal year.

14.5 Lender's Notices. Upon written request to the Property Owners Association, any Institutional Mortgagee shall be entitled to timely written notice of:

- (A) Any delinquency of more than sixty (60) days in the payment of assessments or charges owed by the owner of any Lot, Living Unit, Tract or Parcel on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Property Owners Association. An increase in coverage, or a change of insurer does not require notice under this Paragraph
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

SECTION 15

Duration of Covenants and Amendments.

15.1 The covenants, conditions, easements and restrictions in this Declaration shall run with and bind the property within the Community, and shall inure to the benefit of and be enforceable by the County and or the Village of Estero, the Property Owners Association, and any owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of recording this Declaration in the Public Records of Lee County, Florida. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Declaration as it may be amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

15.2 Termination. This Declaration may be terminated at any time after the initial period if not less than eighty percent (80%) of the voting interests of all classes of the members of the Property Owners Association vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate the Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the members vote to terminate this Declaration, the President and Secretary of the Property Owners Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Property Owners Association at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall

be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained herein as they relate to the termination of this Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

15.3 Amendments. This Declaration may be amended at any time. Except as otherwise specifically provided, amendments to the Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4th) of the voting interests.

15.4 Procedure. Upon amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

15.5 Vote Required. Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by a vote of greater than 50% (fifty) percent of the voting members present, in person or by proxy and voting, provided that notice of the text of each proposed amendment was sent to the members with notice of the meeting.

15.6 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers of the Property Owners Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The certificate must set forth the location in the public records of the County where this Declaration was originally recorded.

15.7 Proviso. Regardless of any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, can be effective to change the Property Owners Association's responsibilities for the Stormwater Management System, the Conservation Areas, unless the amendment has been consented to in writing by the SFWMD. Any proposed amendment which would affect the Stormwater Management system, or the Conservation Areas must be submitted to the SFWMD for a determination of whether the amendment necessitates a modification of the surface water management permit. If the surface water management system is administered by the CDD, any such amendment shall likewise require the consent of the CDD.

15.8 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote is greater than is required to authorize 50% (fifty) of the voters present or by proxy and voting, provided that notice of the text of each proposed amendment was sent to the members with notice of the meeting or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

15.9 Limitations. No amendment to any of the Governing Documents shall be effective to change any member's voting rights as set forth in Section 2.1 of the Bylaws, or the provisions of Sections 9.4 or 9.5 above, unless all members affected first consent in writing to said amendment.

SECTION 16 GENERAL AND PROCEDURAL PROVISIONS

16.1 Other Documents. The Property Owners Association, and the Neighborhood Associations shall have such rights, powers, duties, and privileges as are set forth in the Governing Documents and Neighborhood Covenants; this Declaration and its provisions shall prevail in all events of conflict.

16.2 Severability. If any covenant, condition, restriction or other provision of this Declaration of Covenants is held to be invalid in whole or in part by any court of competent jurisdiction, the holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

16.3 Merger or Consolidation of the Community Associations. Upon a merger or consolidation of the Property Owners Association with another corporation as provided by law, the Property Owners Association's rights, obligations and property may, by operation of law, be transferred to another surviving or consolidated association or the CDD, alternatively, remain the rights, obligations and property of the Property Owners Association as the surviving corporation. The surviving or consolidated corporation or CDD may administer this Declaration within the existing property together with the covenants and restrictions established upon any other property, as one common scheme.

16.4 Dissolution. If the Property Owners Association is dissolved other than by a merger or consolidation as provided for above, each Lot, Living Unit, Tract and Parcel shall continue to be subject to the assessments provided for in Section 9, and each owner shall continue to be personally obligated to the Property Owners Association or the successor or assigns of the Property Owners Association (as the case may be) for such assessment to the extent that such assessments are required to enable the Property Owners Association or any such successors or assigns acquiring any real property previously owned by the Property Owners Association to properly maintain, operate and preserve it.

16.5 Gender; Number. Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

16.6 Notices.

- (A) To the Property Owners Association. Notices to the Property Owners Association shall be in writing and delivered or mailed to the Property Owners Association at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Property Owners Association.
- (B) To Owners. Notices to any owner as may be required herein shall be in writing and shall be delivered or mailed to the owner at his last known address, or at the address shown on the deed recorded in the public records of the County.
- (C) To CDD Notices to the CDD as may be required herein, shall be in writing and shall be delivered or mailed to the CDD at its principal place of business as shown by the records of the State of Florida Department of Community Affairs.
- (D) Any notice(s) required by these Declarations may be sent electronically if authorized by the recipient of the party to whom such notice is sent and such electronic notification is sufficient to fulfill the notice(s) requirement.

16.7 Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan and the purposes set forth herein..

16.8 Captions, Headings and Titles. Captions, headings, capitalization of certain words, and titles inserted throughout the Governing Documents are for convenience only, and in no way shall such captions, headings or titles define, limit, or in anyway affect the subject matter, content or interpretation of the terms and provisions of the Governing Documents.

16.9 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions of the Governing Documents. Their interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by the Property Owners Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall establish the validity of such interpretation.

16.10 Applicable Statutes. The validity, application, and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, as they exist on the date of recording this Declaration.

16.11 Rights Limited to Express Terms of Governing Documents. Every member of the Property Owners Association acknowledges that his or her rights, duties or obligations are limited to the express terms of the Declaration, Articles of Incorporation, By-laws and the Rules and Regulations (Governing Documents). Every prospective member should make his decision to purchase within Stoneybrook based upon these representations as set out in the Governing Documents which contain the entire understanding of

the parties and no prior or present agreements or representation shall be binding upon the Property Owners Association unless included in the Governing Documents..

EXHIBIT A:

LEGAL DESCRIPTION: A TRACT OF PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE. LYING IN SECTIONS 25, 35 AND 36, TOWNSHIP 46 SOUTH, RANGE 25 EAST, AND BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SECTION 35, TOWNSHIP 46 SOUTH, RANGE 25 EAST, THENCE S89°50'20"W ALONG THE SOUTH LINE OF SAID SECTION 35 FOR 212.74 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 75; THENCE THE FOLLOWING FIVE (5) COURSES ALONG SAID RIGHT-OF-WAY LINE OF INTERSTATE 75; THENCE N18°17'53"1'1 FOR 2592.47 FEET; THENCE N 13°50'10"W FOR 198.64 FEET; THENCE N 12°28'59"1'1 FOR 258.70 FEET; THENCE N09°50'33"W FOR 215.63 FEET; THENCE N06°33'22"1'1 FOR 182.01 FEET; THENCE DEPARTING FROM SAID RIGHT-OF-WAY LINE N60°16'16"E FOR 1402.18 FEET; THENCE N55°53'35"E FOR 1250.00 FEET; THENCE N128°13'28"1'1 FOR 555.00 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF CORKSCREW ROAD; THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF CORKSCREW ROAD; THENCE N61°46'32"E FOR 135.01 FEET; THENCE N28°13'28"W FOR 25.00 FEET; THENCE N61°46'32"E FOR 44165.85 FEET; THENCE THE FOLLOWING SEVEN (7) COURSES ALONG THE PARCEL DESCRIBED IN OFFICIAL RECORDS BOOK 2406 AT PAGE 49 PUBLIC RECORDS OF SAID LEE COUNTY; THENCE S01°05'07"E FOR 618.05 FEET; THENCE S61°46'31"W FOR 1531.00 FEET TO A POINT OF INTERSECTION WITH A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 330.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS N70°18'37"E; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 33°29'53" FOR 192.93 FEET; THENCE S13°48'30"1'1 FOR 46.73 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 30.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°28'19" FOR 44.75 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 730.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°53'52" FOR 419.15 FEET; THENCE N88°54'53"E ALONG A LINE NON TANGENT TO SAID CURVE FOR 1384.27 FEET; THENCE S01°05'07"E PARALLEL WITH AND 60.00 FEET WESTERLY OF (AS MEASURED ON A PERPENDICULAR) THE EAST LINE OF SECTION 25 OF SAID TOWNSHIP 46 SOUTH, RANGE 25 EAST FOR 667.75 FEET; THENCE S00°33'14"E PARALLEL WITH AND 60.00 FEET WESTERLY OF (AS MEASURED ON A PERPENDICULAR) THE EAST LINE OF SECTION 36 OF SAID TOWNSHIP 46 SOUTH, RANGE 25 EAST FOR 2640.72 FEET; THENCE S00°27'46"E PARALLEL WITH AND 60.00 FEET WESTERLY OF (AS MEASURED ON A PERPENDICULAR) THE EAST LINE OF SAID SECTION 36 FOR 2643.91 FEET; THENCE S89°21'17"W ALONG THE SOUTH LINE OF SAID SECTION 36 FOR 2578.17 FEET TO THE SOUTH QUARTER CORNER;

THENCE CONTINUE ALONG SAID SOUTH SECTION LINE N.88'39'22"W. FOR 2631.68 FEET TO THE SOUTHWEST CORNER OF SND SECTION 36 AND THE POINT OF BEGINNING. SAID PARCEL CONTAINS 805.7 4 ACRES MORE OR LESS.