INSTR # 2015000199521, Doc Type DOC, Pages 73, Recorded 09/14/2015 at 01:53 PM, Linda Doggett, Lee County Clerk of Circuit Court, Rec. Fee $622.00 Deputy Clerk ERECORD

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STONEYBROOK AT GATEWAY

THIS AMENDED AND RESTATED DECLARATION is made effective this 15th day of July, 2015, by the **STONEYBROOK AT GATEWAY MASTER ASSOCIATION, INC.**, a Florida not-for-profit corporation, hereinafter called the "**Association**,"

PREMISES:

WHEREAS, the Association is a Florida not-for-profit corporation responsible for the operation of a community subdivision located in Lee County, Florida, consisting of single-family homes, multi-family structures and related recreational and other common facilities and amenities, to be known as "**STONEYBROOK AT GATEWAY**" (hereinafter referred to as the "Community"); and

WHEREAS, the Community is comprised of the real property that is described in **Exhibit "A"** to this Declaration (the "Lands"); and

WHEREAS, the Community was established by its developer as a residential community, subject to the Declaration of Covenants, Conditions and Restrictions for Stoneybrook at Gateway, as originally recorded at Official Records Book 4084 Page 3902 of the Official Records of Lee County, Florida on October 7, 2003 (the "Original Declaration"); and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, the Association was formed as a Florida corporation not-for-profit pursuant to Chapters 607 and 720, Florida Statutes; and

WHEREAS, to preserve, protect and enhance the values of the property and amenities in the Community, and the general health, safety and welfare of the members of the Association, the Association deems it desirable to maintain subject the Community to certain protective covenants, conditions, and restrictions, but to also restate, update and amend the Original Declaration; and

WHEREAS, pursuant to Chapter 190, Florida Statutes, the Gateway Services Community Development District (the "CDD") was created by law and established on the property by county ordinance or state rule to own, operate, administer and maintain certain parts of the infrastructure of the Community as further described in Sections 2.1 of this Declaration; and

WHEREAS, the Community has been turned over by the Developer to the Owners of the residences within the Community, and the Association, by and through its Board of Directors, have decided to Amend and Restate the Original Declaration to reflect that the Developer is no longer involved in the Association and that to update the Original Declaration to address changes to the law as well as the needs of the Association;

NOW THEREFORE, the Association hereby declares that the Lands described in Exhibit "A" hereto, are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the

provisions of this Amended and Restated Declaration, which shall run with the Lands and be binding on all parties having any right, title or interest in the Lands or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

1. **DEFINITIONS.** The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, 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 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 and does not mean a non-ad valorem special assessment (by any name) which may be levied and imposed on the property by a general purpose or special purpose local government.

1.3 **"Association" or "Association"** means the Stoneybrook at Gateway Association, Inc., a Florida corporation not-for-profit, 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 Stoneybrook At Gateway Association, Inc.

1.5 **"CDD"** means and refers to the Gateway Services Community Development District or any other Community Development District, as defined in Chapter 190, Florida Statutes, established by county ordinance or state rule for the purpose of administering, maintaining and operating systems, facilities and services for the property in the Community.

1.6 **"CDD Property"** means any and all real property and improvements which a CDD now or hereafter either owns, contracts, operates, administers or has jurisdiction over or any combination of the foregoing or otherwise administers pursuant to its responsibilities under Chapter 190, Florida Statutes, and the documents establishing a CDD. The term "CDD Property" shall include systems, facilities and services, which a CDD may acquire, construct, maintain and finance over the years (which constitute projects or infrastructure improvements), which may or may not be owned by a CDD.

1.7 **"Community"** means all real property comprising "Stoneybrook At Gateway," as described in Exhibit "A," and the improvements thereon.

1.8 **"Community Common Area"** means that real property, including any improvements and fixtures thereon, which is owned, leased, dedicated to, operated or maintained by the Association. However, some or all of the Community Common Areas may become CDD Property as further provided under Section 2.1.

1.9 **"Conservation Area"** means the on-site wetland preserve areas and the upland buffer and preserve areas around each wetland and the wetland mitigation areas within the Community as described in the subdivision plat for Stoneybrook at Gateway, as recorded in Plat Book 75, pages 51-68, Public Records of Lee County, and as amended.

1.10 **"County" or "the County"** means Lee County, Florida.

fixtures thereon, which is owned or leased by, or dedicated to, a Neighborhood Association for the common use and enjoyment of its members.

1.21 "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.

1.22 "Owner" means the record owner of legal title to any Lot, Living Unit, tract or Parcel.

1.23 "Parcel" means any and all unplatted portions of the Community.

1.24 "RPD" means and refers to residential planned development project, created by Lee County Resolution Z-02-028 as adopted by the Board of County Commissioners of Lee County, Florida, on September 16, 2002, and as amended from time to time.

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

1.26 "SFWMD" means South Florida Water Management District.

1.27 "SFWMD Permit" refers to the SFWMD Permit No. 36-00678-S or as it may be amended from time to time.

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 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 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 benefitted. 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 "Storm Water Management System" means that system approved by the SFWMD permit.

1.30 "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.

1.31 "Tract" means any and all platted portions of the Community other than the Lots.

1.32 "Voting Interests" means the arrangement established in Section 2 of the Bylaws of the Association by which certain classes of members are entitled to vote in the affairs of the Association.

fixtures thereon, which is owned or leased by, or dedicated to, a Neighborhood Association for the common use and enjoyment of its members.

1.21 **"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.

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1.31 **"Tract"** means any and all platted portions of the Community other than the Lots.

1.32 **"Voting Interests"** means the arrangement established in Section 2 of the Bylaws of the Association by which certain classes of members are entitled to vote in the affairs of the Association.

2. COMMUNITY PLAN AND DISTRICTS. The Community is a Residential Planned Development ("RPD"), comprised of the real property described in Exhibit "A," which is located in unincorporated Lee County, Florida, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Lands." Said Exhibit "A" may not necessarily describe all Common Areas to the extent any of same are maintenance Common Areas.

The Association shall retain an easement by reservation in perpetuity over, through and across any community park within the Community to provide landscape maintenance, repair and replacements, including providing landscape enhancements to the community park as deemed reasonably desirable by the Association.

2.1 Community Development District(s).

(A) Creation, Establishment and Powers. The Gateway Services Community Development District ("CDD") has pursuant to its state charter general powers related to the implementation of special powers to provide (through such functions as acquisitions, finance, construction, planning, implementation, maintenance and management) basic community development systems, facilities and services which constitute projects or infrastructure improvements. The CDD has as its legal purpose to manage and finance construction of other improvements and to provide other services as delineated in this section, depicted on the Subdivision Plat as roadways and streets, and road right-of-ways to provide access to and from the Community, as well as to provide everything permitted or allowed under Chapter 190, Florida Statutes.

The CDD has the power under its charter to levy and collect: (1) lienable ad-valorem taxes under certain limitations, lienable non-ad valorem taxes under certain limitations, (2) lienable non-ad valorem special assessments by a variety of names; and (3) non-lienable user-based service charges or fees. These revenue sources can also be used to amortize various types of bonds if and as deemed appropriate for the financing of the management functions of a CDD government.

1. The term "assessments" as used in this Section 2.1 refers to governmental non-ad valorem special assessments as provided for in Chapter 190, Fla. Stats. (2002), and not those as defined in Chapter 720, Florida Statutes, or in this Declaration.
2. A CDD is empowered to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities, including without limitations, roads, water and sewer, irrigation, water management; street lighting; and related systems, facilities and services. The state charter also grants a CDD additional special powers for such projects or improvements such as parks and facilities for indoor and outdoor recreational, cultural and educations uses, security, mosquito control and other such special powers; however, this set of special powers granted by the charter to a CDD may not be exercised without consent of the exercise from the applicable county or city where a CDD is located. There may be plat dedication of such systems, facilities and services to entities other than a CDD which were offered prior to the establishment of a CDD on this particular property and have not been accepted such systems, facilities and services may be conveyed instead to a CDD.
3. A CDD may assume responsibility for maintenance and monitoring of on-site wetland preserve areas pursuant to any Conservation Easement(s) recorded in the Public Records of Lee County, Florida.
4. A CDD may be established and then may exercise its state-chartered powers to levy non-ad valorem special assessments for the purposes of road widening and other road improvements as relates to off-site public roads and may enter into a contract with the Lee County Tax

Collector to have these non-ad valorem special assessments collected as first liens on the property for these purposes or for the purposes of amortizing any bonds which may have been issued by a CDD to finance this road work.

5. A CDD may impose and change a connection and usage fee for potable water, sewer, irrigation water and common area lighting.

(B) Taxes and Assessments. The CDD is a single and special purpose local government with authority to manage and fund its operations by levying taxes or non-ad valorem special assessments, or both, on the properties within the CDD. The taxes and assessments pay for the construction, operations, and maintenance costs of certain public facilities of the CDD, and are set annually by the governing board of supervisors of a CDD. These taxes and assessments are in addition to county and other taxes and assessments provided for by law. These taxes and assessments would appear on the annual real estate tax bill for each owner as a separate tax or assessment and would be payable directly to the Lee County Tax Collector. They are not part of the common expenses of the Association. The taxes and assessments of the CDD may constitute a lien upon those portions of the properties that are within a CDD. The Gateway Services District will provide and operate the water irrigation system which is designed to follow and adhere to the Phase I Restrictions of the South Florida Water Management District. Individual homeowners may not be able to control their own irrigation, nor will they be permitted to install their own wells, nor use potable water for irrigation.

(C) Issuance of 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 bonds will be funded by ad valorem taxes on all taxable 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 bonds it issues. In addition, the CDD may secure reserve bonds by pledging the rates, fees or charges collected or to be collected by any revenue-producing project. Bonds may be issued for the purpose of financing or refinancing capital improvements, to pay off existing bonds, or any other permitted use. Each owner has a duty to pay any lienable revenue levied by a CDD government on the Property and users of the facilities shall have an obligation to pay non-lienable service charges to a CDD.

(D) CDD Property Becoming Community Common Areas. If the Association determines that it is in the best interests of the Association for any of the CDD Property to become Community Common Areas, and if the Board of Supervisors of a CDD determine that a transfer of CDD Property title, jurisdiction, or responsibilities to the Association was appropriate, the CDD may convey to the Association fee simple title, easements, use rights and/or maintenance obligations to those portions of a CDD Property which are to become Community Common Areas. If the CDD desires to convey CDD Property to the Association, the 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.

(E) Community Common Areas Becoming CDD Property. If Association determines, subject to any governmental requirements, that it is in the best interests of the Association and its members for any portions(s) of the Community Common Areas to be owned and/or administered by the CDD rather than by the Association, such portion(s) of the Community Common Areas shall cease to be Community 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 deeded to the CDD.

1. Community Commons Areas becoming either owned by or merely administered by the

CDD is expressly conditioned upon the CDD's Board of Supervisors agreeing to accept conveyance of title, or merely accepting the jurisdiction to administer, operate or maintain these Community Common Areas under a CDD.

2. When a part of the Community becomes CDD Property, the expenses of administration and maintenance shall cease to be Common Expenses, unless an Agreement is entered into by the Association and the CDD making the Association responsible for the administration and maintenance of any CDD Property.

3. If required by law, or if deemed by the Association to be in the best interests of the Association, the Association shall convey to a CDD the legal title to any Community Common Area which becomes CDD Property and the CDD would be obligated to accept title to the Community Common Area, subject to taxes for the year of conveyance, and restrictions, limitations, conditions and obligations, reservations, duties and easements of record.

4. The surface water management system of the Association may be an area of common responsibility.

(F) Maintenance Agreement. The CDD may enter into an Agreement with the Association requiring the Association to perform some, if not all, of the CDD duties related to maintaining certain CDD Property that the CDD operates or administers regardless of whether or not the CDD owns title to the Property. The CDD may also enter into an Agreement with the Association that requires the Association to operate and perform some, if not all, of a CDD duties relating to maintaining the lakes and the general aesthetic conditions of the lakes within the Community.

(G) Amendments. The Association reserves the right to amend the Governing documents in any way convenient or necessary to establish by ordinance or rule the state-chartered and state-created Community Development District under Section 190, Florida Statutes.

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

3.1 Community Common Areas. The Association shall operate, maintain and hold record title to the Community Common Areas. Community Common Areas may include certain roads, utilities and the Community Center/Clubhouse and Community Park/Fields with certain recreational amenities, and any other area depicted on the Subdivision Plat. The Board of Directors may promulgate reasonable rules and regulations regarding use of the Community Common Areas consistent with the Governing Documents. Use of 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, subject to the provisions of Section 9.2, as they may be amended from time to time

3.2 Manager. The 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 Association shall determine to be necessary or desirable.

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

3.4 Insurance. The 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 13 below. The Association additionally shall cause all persons with access to Association funds to be insured or bonded with adequate fidelity insurance or bonds.

3.5 Express and Implied Powers. The 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 therefrom.

3.6 Acts of the 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 Association may be given or taken by its Board of Directors, without a vote of the members. The officers and Directors of the Association have a fiduciary relationship to the members. A member does not have the authority to act for the Association by reason of being a member.

3.7 Articles of Incorporation. The Articles of Incorporation of the Association are attached as **Exhibit "B."**

3.8 Bylaws. The Bylaws of the Association shall be the Bylaws attached as **Exhibit "C."**

3.9 Official Records. The official records of the Association shall be maintained within the State of Florida for at least seven (7) year 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 Association of a written request for access.

(A) This requirement may be complied with by having a copy of the official records available for inspection or copying within the Community or at the management company's office, or by making the records available to a parcel owner electronically through the internet.

(B) The 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.

(C) The 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.

(D) The personnel records of association and management company employees are exempt from this requirement to be available to the Owners, and are protected from disclosure. This protection shall include but not be limited to disciplinary, payroll, health, and insurance records, but does not include written employment agreement or budgetary and financial records that indicate the compensation paid to an employee.

3.10 Polling Place. The standard Polling Place for Association elections shall be the Association's Clubhouse, located at 9521 Pebble Brook Boulevard, Fort Myers, Florida. The Board shall designate a location within the Clubhouse accessible to all individuals for the actual polling station.

3.11 Treated Effluent. The Association or the CDD may negotiate an agreement with any effluent supplier for the use of treated sewage of effluent within the project for irrigation purposes throughout the subdivision, including all common areas, neighborhood common areas, lots and units. The Association or the CDD will 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 the Community 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 anticipated to be expenses of a CDD.

3.12 Hurricane Preparedness. It shall be the responsibility of the 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 High Voltage Wires. High-tension electrical power lines operated by Florida Power & Light ("FPL") are located near the boundaries of Stoneybrook At Gateway. The high-tension electric wires may discharge or emit Electromagnetic Fields ("EMF's") that may or may not present a health risk to the Community's residents.

3.14 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Board of Directors shall be required to obtain the prior approval of a majority of the voting interests of the Association prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the 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 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.

4. ASSOCIATION MEMBERSHIP VOTING RIGHTS. Every owner of record legal title to a Lot or Living Unit within the Community shall be a member of the 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 Association.

4.1 Classes of Membership. The Association will have one (1) class of voting membership, which shall be the Owners of Lots or Units within the Community. Each Lot or Living Unit shall have only one (1) indivisible vote.

4.2 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 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 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 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 Association's rules and regulations;

(D) The right of the 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 Association, by and through its Board of Directors, to grant easements over, across or through the Common Areas;

(F) The right of the Association, by and through its Board of Directors, to open the Common Areas for use by non-members of the Association, or non-owners.

(G) The right of the Association, by and through its Board of Directors, with the prior consent of a two-thirds (2/3rd) of the voting interests, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas;

(H) The right of the 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 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 Association, by and through its Board of Directors, to regulate parking and traffic on the private roads, if any, 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 Association; and any rules and regulations governing use and enjoyment of the common areas adopted by the Association

(L) The right of the CDD to exercise and enforce any and all powers authorized by Chapter 190, Florida Statutes; and

(M) The right of the Association to dedicate or transfer ownership or control of all or any part of the Common Areas to the CDD or any other governmental agency, public authority, or utility.

4.3 Delegation of 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 Association's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated therein. If the 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 Association for the actions and resulting fines or damages to the Association and its property caused any person to whom the member has delegated his right to use the Common Areas. The member may not delegate the obligation to pay 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 no 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 Association.

5. GENERAL COVENANTS AND USE RESTRICTIONS. The Community may be used for those purposes provided in the RPD.

5.1 Subdivision and Regulation of Land. No Lot or Living Unit may be divided or subdivided without the express written consent of the Association. No owner 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 Association, which approval may be denied at the sole discretion of 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. At this time, the CDD is 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 the Community which are accepted by or constructed by the CDD, excluding those areas (if any) normally maintained by the county, 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 Association, the CDD, or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefor 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 that 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 the prior written consent of the CDD. No person other than the 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 within the Property, 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. THE TERM "REMOVAL" INCLUDES BUT IS NOT LIMITED TO 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 Storm Water Management Systems or Conservation Areas, without first obtaining the necessary permits for all governmental agencies having jurisdiction, including South Florida Water Management District, and the Association its successor 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 A 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 but is not limited to dredging, application of herbicides, and cutting. Nothing in this Section shall be construed to prohibit the CDD from exercising its part, 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 Association or to a Neighborhood Association, the Association or Neighborhood Association shall preserve and maintain such land. No development may occur on such land except structures or improvements that 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 Association or the RPD shall remain in a natural or unimproved state. Lawns must be regularly cut and mulched areas regularly re-mulched. Maintenance, repair and replacement of the main irrigation line may be the responsibility of the Association or the CDD. 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. From the main tap to the individual parcel owner's property, the individual parcel owner shall be responsible for the maintenance, repair and replacement of all irrigation lines, connections, and irrigation sprinkler heads. 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. The CDD shall have the right, at its sole discretion to adopt a schedule of irrigation times and duration of irrigation, subject to intervention by the SFWMD. The CDD may also be responsible for irrigation of certain highway medians not owned by it, and the cost shall be the CDD expense. The CDD shall be deemed the exclusive provider of irrigated waters within the Community and, by the act of purchasing, all owners within the Community 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 a CDD or billed separately and borne by the individual owner as built and assessed periodically.

5.6 Maintenance of Premises.

(A) Except for Conservation Areas and other areas designated by the Association 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 no 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 permit such weeds, high grass, underbrush or other unsightly growths, and fails to correct the same after five (5) days' notice by the Association, the Association shall have the right to enter upon the premises and make such corrections and shall charge the owner or Association for the cost of the corrections. Said charge, until paid, shall be a lien against the offending Lot or Neighborhood Common Area.

(B) 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 Association to maintain all streets, roads and thoroughfares and other open areas within the subdivision.

(C) No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

5.7 Bike Path and Sidewalks. To the extent not maintained by the CDD, the Association shall maintain the sidewalks and the bike path within the Community. Driveway cuts and the construction of the driveways must be done in accordance with plans and specifications approved by Association.

5.8 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, and without emanating noxious or offensive odors.

5.9 Walls, Fences, Hedges, Etc. Unless approved in writing by 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 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. Any dispute as to height, length, type, design, composition or material shall be resolved by the Association's Board of Directors, whose decision shall be final. Approval may not be given for the construction of any wall, fence or hedge that materially interferes with the water view or preserve view of any Lot or Living Unit.

5.10 Driveways and Parking Areas; Garages.

(A) Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved 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 Association (if located in the Common Areas) or the responsibility of the Neighborhood Association (if located in a Neighborhood Common Area). Driveways, walkways and sidewalks must be kept clean and free from excessive oil, rust or other unsightly stains.

(B) No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1), nor more than four (4 '), automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.

(C) Carports are not permitted.

(D) No garage shall ever he permanently enclosed or converted to other uses without

(B) Flagpoles. A flagpole, not more than twenty (20) feet high, for display of the American Flag or the State of Florida flag, only, and one additional flag representing a United States military service or POW/MIA, may be permitted if its design and location are first approved by the Association. No flag may be larger than 4½' x 6'. Any additional flag must be smaller than the U.S. Flag. 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.

(C) This Section 5.16 shall not apply to the Association.

5.16 Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile Homes, Boats, Campers, Trailers and Other Vehicles.

(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 subsection, is defined as meaning all vehicles of every kind whatsoever which, from the viewing the exterior of the vehicles or any portion thereof, shows or tends to show any commercial markings, signs, displays, equipment, or otherwise indicates a commercial use.

(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 motor vehicle of any kind may be parked or kept in the Community unless it is kept fully enclosed inside a garage. 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 12 hours. Parking for longer periods of time may be permitted, only with the prior written approval of the Board of Directors.

(C) No motor vehicle shall be parked anywhere other than on paved or other areas designated for that purpose, or in garages. Parking on lawns or landscaped areas is prohibited.

(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 of no more than one (1) ton designation, in a presentable condition, and which will fit within an enclosed garage, shall be permitted. The term "vans and light pick-up trucks" is defined to mean vehicles with no more than one (1) ton, rear single wheels or less rated weight carrying capacity.

(F) Car covers are not allowed outside of garage.

(G) No vehicle having oversized mud tires or having a chassis which has been "jacked up" or raised shall be permitted unless parked at all times within an enclosed garage.

(H) Any vehicles parked in violation of this Section 5.17 shall be subject to being towed away at the owner's expense.

(B) Flagpoles. A flagpole, not more than twenty (20) feet high, for display of the American Flag or the State of Florida flag, only, and one additional flag representing a United States military service or POW/MIA, may be permitted if its design and location are first approved by the Association. No flag may be larger than 4½' x 6'. Any additional flag must be smaller than the U.S. Flag. 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.

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(F) Car covers are not allowed outside of garage.

(G) No vehicle having oversized mud tires or having a chassis which has been "jacked up" or raised shall be permitted unless parked at all times within an enclosed garage.

(H) Any vehicles parked in violation of this Section 5.17 shall be subject to being towed away at the owner's expense.

5.17 Outdoor Equipment/Swimming Pools/Hot Tubs/Spas/Playground Equipment

A. No above ground swimming pools are permitted.

B. All in-ground swimming pools with/without attached spas/hot tubs and portable spas/hot tubs must be located inside a lanai cage.

C. Bulk gas tanks must be installed underground and must have a Lee County permit.

D. In the event that construction required in subsections (A), (B) or (C), above, requires entry over an adjoining Lot, the entry or access shall only be with the consent of the owner of the adjacent property, consent shall not be withheld without good cause. Additionally, the owner seeking access over the adjoining Lot shall execute an agreement with the Association and the adjoining Lot Owner agreeing to: (1) repair any damage to the adjoining Lot; (2) replacing any and all landscaping and vegetation that has been removed or damaged by the construction; and (3) agreeing to indemnify and hold the adjoining Lot Owner harmless from all claims and damages arising out of the construction activities.

E. All garbage/trash can containers, recycling bins, swimming pool equipment, and spa/hot tub equipment must be placed in areas not readily visible from adjacent streets, or adequate landscaping must be used as screening around containers/equipment and maintained by the owner or Neighborhood Association.

F. Swing sets/children's playgrounds and portable basketball poles and backboards are permitted only with prior approval of the ARC. Any such equipment must remain in a state of good repair and not become either a physical danger or an aesthetic nuisance.

G. Trampolines are not permitted.

5.18 Clothes Drying Area. No outdoor clothes drying area shall be allowed unless its location and design are approved in writing by the Architectural Review Committee.

5.19 Lighting. All exterior lighting of structures or landscaping shall be accomplished in accordance with plans approved in writing Association. Except as may be initially installed or approved by Association, no spotlights, 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 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.

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

5.21 Solar Collectors; Roof Vents. Solar collectors, roof vents and other installations on the roofs of structures shall be permitted only at locations approved in writing Association or the ARC, and may be required to be screened from view by landscaping or other suitable visual barrier.

5.22 Awnings and Windows. Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the ARC.

5.23 Mailboxes, Lamp Posts. Mailboxes, front yard lamp posts, and their supporting structures shall

be substantially uniform in style, appearance and location, and are subject to regulation by the ARC.

5.24 Signs. No signs, 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.

(A) If any sign is erected in violation of this provision, the 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 violator's use privileges of the community common areas. Said action to enter one's property and remove the sign, at the owner's expense, if necessary, shall be deemed expressly permitted by the property owner.

(B) The foregoing shall not apply to signs, banners, flags, billboards or advertisements used or erected by Association, nor entry and directional signs installed by Association, and signs required by law. The Board of Directors and Association shall have the right to erect signs as they, in their discretion, deem appropriate.

(C) Realtors may post for sale or for rent signs in a manner, size and color approved by the Board.

5.25 Living Units; Residential Use.

(A) Each Living Unit shall be used as a single-family residence and for no other purpose. The family unit shall consist of, subject to the restriction set forth in subsection (B), below, the following:

(1) the Owner or Owners;
(2) the spouse or significant other of the Owner;
(3) the children of the Owner(s);
(4) the grandchildren of the Owner(s);
(5) the parents of the Owner(s);
(6) the grandparents of the Owner(s);
(7) any person for whom the Owner is a legal guardian or foster parent; and
(8) any person who is a state-licensed health care provider assigned to assist an owner.

Upon request and application, the Board may permit a non-family member to reside with the owner provided that the non-family member is a temporary guest who is not paying rent and is residing with the owner as part of a qualified or register student or cultural exchange program. The possession of a visa from the United Stated Department of State by the non-family member is preferred but shall not be required. The Owner shall complete paperwork to be provided by the Association and provide information requested by the Association, whose final determination to permit or deny the application shall be at its discretion and shall be final.

(B) In the event a relative of the owner who falls within one of the classes or relatives identified in subsection (A), above, is over the age of eighteen (18) years of age and is a convicted felon whose civil rights have not been restored, then the Board may declare that such a relative is not a permitted person from of the "family unit" and the Board shall have the power to bar such relative from living within the Community. The Board may enforce this provision in

either an ejectment action or other civil action, and both the Owner and the Owner's relative shall be liable to the Association for the costs of all enforcement actions as well as for the reasonable attorneys' fees incurred in the same.

(C) No business, commercial activity or organized social activity (*i.e.*, church, political, fund raising organization) 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 provisions of this paragraph, however, neither the listing on any occupational license nor the listing within any telephone directory of the Living Unit serving as a business address shall be dispositive of the property being used as for commercial or business purposes.

(D) 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, even on isolated occasions; (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 handling personal, business or professional telephone calls and written correspondence in and from his Living Unit. Such uses are expressly declared customarily incident to residential use.

5.26 Occupancy in the Absence of the Owner and Leasing of the Living Units

(A) Occupancy in Absence of Owner. If the owner and the Owner's family who permanently reside with the 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 here and 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 identified in Section 5.24(A), above, may occupy the Living Unit in the absence of the owner without limitation as to the number of occasions or length of stay. This provision shall apply to approved lessees as well.

2. All overnight guests who are not accompanied by an Owner must be registered with the Association office and authorized by written instructions from the Owner to avoid having their presence challenged by other owners, security, or management. The Owner shall submit the names of all houseguests and the length of their stay, which shall not exceed fourteen (14) days, in writing to the management office in advance.

3. Upon prior written application by the owner, the Board of Directors 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. A sub-association 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. All intended occupants shall be disclosed on the lease.

2. The minimum lease term shall be sixty (60) days and single-family homes and villas shall not be rented more than two (2) times in a calendar year. No new lease shall begin sooner than thirty (30) days after the first day of the last lease.

3. An Owner may lease only the entire Living Unit and no room rental or subleasing is permitted.

4. The tenant must be a natural person as opposed to an artificial entity, such as a corporation, partnership, trusts, etc.

5. The Association may file suit to evict any tenants in its own name and without the consent of the Owner in the event that any of the occupants in the Living Unit, or their guests, violate

   a. any tenant violates the provisions of the Declaration or the rules or regulations of the Association;
   b. the tenant fails to forward the rental payment to the Association following a demand for the same from the Association as a result of the Owner's failure to pay assessments;
   c. all of the occupants in the Living Unit are not disclosed prior to the lease's approval; or
   d. the tenant occupies the Living Unit without prior approval of the Association as required herein. In such event, any written leases will be considered a nullity; however, to be evicted under this section, the tenant need not have a written lease with the Owner, but the Association may consider and treat a person as a "tenant" when that person occupies the Living Unit for a period longer or more frequently than permitted for guests, and they are not otherwise exempt from such limitations (*e.g.*, direct family member).

   The Association shall be permitted to issue the appropriate notice as set forth in §83.56, Florida Statutes (or the comparable statute, if amended), and sue for eviction under Chapter 83, Part II, Florida Statutes (or the comparable chapter, if amended), as if the Association were a landlord under that part. In such cases, the owner and the tenant shall be jointly and severally liable for all attorney's fees and costs, including those incurred prior to the filing of suit in an effort to enforce this provision. Under no circumstances, however, is the Association to be considered a landlord.

6. Any Owner who is more than thirty (30) 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 Owner's unpaid account for past due regular and special assessments, interest, late fees, costs, and attorneys' fees, and shall promptly remit any excess over the amounts due on the account to the Owner. Although the Association may employ a writing to perfect such an assignment, the failure of the

Association to obtain such a written assignment of rents shall not be deemed a waiver of that assignment.

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. The Owner and the proposed tenant shall also execute an Assignment of Rents in favor of the Association prior to the lease being approved.

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 tenants 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 tenants 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 tenants, 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 tenants, 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 tenants 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 tenant or any proposed occupants have a history of conduct which evidences disregard for the rights and property of others.

    g. The prospective tenant or any proposed occupants evidence a strong possibility of financial irresponsibility.

h. The prospective tenant or any proposed occupants have, during previous occupancy, evidenced an attitude of disregard for the Association rules.

i. The prospective tenant 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.

j. The owner fails to give proper notice to the Board of Directors of his intention to lease his Living Unit.

(C) Limitation on Number of Living Units Being Rented. It is the intent and desire of the Owners within the Community to maintain the same as a single-family community and to foster a continuity and establishment of relationships among homeowners. For this reason, the Association seeks to maintain the nature, appearance and atmosphere of the "community" by maintaining a high level of owner-occupied residences. Therefore, the number of Living Units in the community which can be rented shall be limited to 120 (the "Rental Limit").

1. Living Units that were rented at the time that this provision originally took effect are not to be affected by the Rental Limit and their status as a rental home is to be "grandfathered." However, once that Living Unit becomes owner-occupied, it cannot be rented again unless the number of Living Units being rented is below the Rental Limit.

2. If the number of Living Units being rented at the time this provision takes effect exceeds the Rental Limit, then no new rentals or leases for Living Units shall be approved by the Board until the number of Living Units being rented falls below the Rental Limit.

3. The Board may maintain a waiting list for Owners who seek to rent their Living Units if the Rental Limit is reached or exceeded. The Board shall have the absolute discretion to adjust or remove an Owner from the waiting list, for cause, which shall include but not be limited to:

   a. Failure to pay all assessments, fines or other charges when due;
   b. Failure to maintain the appearance of the Living Unit; or
   c. Violation of any of the provisions of the Declaration or the rules or regulations of the Association by the Owner or any of the Owner's tenants, guests or other invitees.

The Board may charge a fee, not to exceed $100.00, to defray the costs of maintaining the "waiting list."

4. Owners shall not be permitted to "trade" positions on a waiting list; the Board retains absolute discretion in the management of the waiting list, subject to the provisions of this section.

5. The Board shall have the absolute discretion to permit a rental in excess of the Rental Limit, but only upon a showing by the Owner of genuine hardship. Such hardship must be proven in writing. A non-exclusive example of such a hardship shall be a relocation requirement by an employer, including the military, a loss of income to the

Owner requiring the Owner to find cheaper housing coupled with an inability to sell the Living Unit, or other circumstances beyond the control of the Owner. Under no circumstances are the terms of this paragraph intended to create a right for any Owner to claim a hardship waiver of the Rental Limit.

5.27 Pets and Animals.

(A) 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 Association or Neighborhood Association.

(B) The Association may restrict the walking of pets to certain areas. Owners who walk their pets on Association or Neighborhood Common Areas must clean up after their pets on all property including their own property.

(C) Commercial activities involving pets, including without limitation, boarding, breeding, grooming or training, are not allowed. Certain aggressive breeds of dogs, including but not limited to, pit bulls, Rottweilers and Chows, will not be permitted to be kept within the Community.

(D) The ability to keep a pet is a privilege, not a right. If in the opinion of the Board, a pet becomes the source of unreasonable annoyance 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.

(E) Pets may not be left unattended or leashed in yards or garages or lanais, but shall be leashed (if outdoors), or kept within the Living Unit and shall not be permitted to roam free. An invisible fence is not considered a method to restrain a pet in a yard, per Lee County Ordinance #9-20.

5.28 Nuisances. Nothing may or shall be done which is, or may become, a source of an unreasonable annoyance or nuisance to residents of any Neighborhood. Any question with regard to the interpretation of this Section shall be decided by the Association.

5.29 Correction of Health and Safety Hazards. Any condition or action that creates an unsafe, unhealthy or dangerous situation is expressly prohibited. Any conditions or actions of the physical property which are reasonably deemed by the Association Board of Directors to be an immediate hazard to the public health or safety may be corrected as an emergency matter by the Association, and the cost thereof shall be charged to the responsible owner or Association and the owner shall be subject to penalty under Section 10 of this Declaration.

5.30 Waterfront Property. As to all portions of the Lands that have a boundary contiguous to any lake, canal, river or other body of water, the following additional restrictions and requirements shall be applicable:

(A) No boathouse, dock, wharf or other structure of any kind shall be erected, placed, altered or maintained on the shores of the lake.

(B) No boat, boat trailer or vehicular parking or use of lake slope or shore areas shall be

permitted. No boats of any type shall be used on any body of water which is part of the Common Areas, except those used by the Association, the CDD or any contractor either for maintenance or other lawful purposes, or as restricted by Section 5.30 herein.

(C) No solid or liquid waste, litter or other materials may be discharged into/onto or thrown into/onto any lake or other body of water or the banks thereof.

(D) Each applicable Owner shall maintain his Lot to the line of the water in the adjacent lake or other water body, as such line may change from time to time by virtue of changes in water levels.

(E) No landscaping (unless originally inserted by the Community's developer), fences, structures or other improvements (regardless of whether or not same are permanently attached to the land or to other improvements) shall be placed within any lake maintenance or similar easements around lakes or other bodies of water.

(F) Any boats kept on the Lands shall be subject to Section 5.17 hereof.

(G) Any boats operated on lakes or other water bodies owned by, or dedicated to, the CDD or any other public authority shall be subject to any regulations of the CDD or such authority and not to regulation by the Association (which will have no jurisdiction over such areas).

5.31 Hurricane Shutters. Any hurricane or other protective devices visible from the outside of a 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. Except as otherwise provided in this Section, an owner's accordion, rollup, panel, or other style storm shutters must be left in an open position at all times. Whether they consist of accordion, roll-up, panel, or any other style shutter, 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. All storm shutters must be returned to the open or up position within seventy-two (72) hours after such hurricane watch expires or is otherwise no longer in effect. In no event shall an owner rely upon any other party to operate the owner's storm shutters, to either remove, close or open such shutters, and each owner is individually responsible for the full operation of their storm shutters. If any owner fails to comply with the terms of this Section, such owner shall be subject to the imposition of fines as detailed in this Declaration.

5.32 Motorized Scooters, "ATV"s, etc., The operation of any motor vehicle as defined under Chapter 322, Florida Statutes, which is compelled 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 vehicle while on public streets, roads and thoroughfares within the State of Florida to possess a valid driver's license shall be prohibited to be operated or used on streets, roads and/or sidewalks within the Community, on home sites within the Community, whether vacant, completed or under construction, or in or on the common areas of Community, 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 is not limited to, motorized bicycles (mopeds), motorized skateboards, motorized scooters (mopeds), go-carts, golf carts, and similar motorized toy vehicles. The term "motor vehicle" does not include motor wheelchairs that are operated by persons who require wheelchairs for mobility.

5.33 Ownership through Corporate Entities or Trusts. In those cases where the Lot or Living Unit is not owned by individuals but instead by a corporation, a limited liability company, a partnership

(general or limited), or similar entity, or by a land trust created pursuant to §§ 689.071, Florida Statutes (the "Florida Land Trust Act") or any other sort of trust, the Owner of that Lot or Living Unit must present to the Master Association a person acceptable to the Master Association who will execute a personal guaranty to the Master Association, on a form prepared by the Master Association, in which the individual personally guarantees all of the amounts due by the Owner to the Master Association, including but not limited to assessments, fines and collection charges.

5.34 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board of Directors and under no circumstances may more than one (1) such event be held on any Lot in any period of twelve (12) consecutive months.

6. ARCHITECTURAL AND AESTHETIC CONTROL

6.1 General, 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 ARC. 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 Association shall be administered and performed by the ARC. The ARC shall consist of not less than three (3) individuals, who need not be members of the Association. The term of office, composition, compensation (if any), qualifications and meeting procedures of the ARC shall be as provided in Section 6 of the Bylaws.

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 No. 36-00678-S), the County, and the RPD to:

(A) Propose the adoption, modification or amendment by the Board of Directors, of written Design Review Guidelines (also known as the "ARC Manual"), which may set forth such matters 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 owner 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;

(C) Approve or disapprove the erection or alteration of any building, structure or other improvement, or any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood

Common Area;

(D) Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fees, if any, shall be payable to the Association, in cash or check, at the time the request is submitted to the ARC; or

(E) Adopt procedures for inspecting approved changes during and after construction, to ensure conformity with approved plans.

6.4 Appeals of ARC Decisions. All decisions of the ARC shall be forwarded in writing to the Board. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within sixty (60) days after notification of the decision. The determination by the Board, upon a prompt review of any such decision, shall, in all events, be final, and shall not be unreasonably delayed.

6.5 Enforcement. Decisions of the ARC that the Board has not revised or reversed shall be enforced by the Association.

7. EASEMENTS. In addition to the easements created elsewhere herein, and those already of public record at the time this Declaration is recorded, easements are hereby provided for:

7.1 Utilities, Services and Support. Each Lot, Unit, Tract and Parcel and the Common Areas (except Conservation 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 Association in its sole discretion may in the future grant.

(B) The Association hereby reserves the right, and the power, to declare, grant, modify, vacate 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 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 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 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 **Cable T.V. and Broadband Telecommunications and Utilities Services System.** The Association hereby reserves for itself and its successors, assignees and licensees, the right, without obligation, to permit construction or installation over, through, under, across and upon any portion of the Community for the use and benefit of the Owner and authorized guests, invitees, tenants and family Members:

(A) one (1) or more cable, broadband and/or internet access telecommunications receiving and distribution systems and electronic surveillance systems, internet access, emergency, medical and surveillance monitoring, or alarm systems; and

(B) utility services for supplying irrigation, lake maintenance, natural gas, potable and non-potable water and sewage;

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 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 Association) together with a perpetual and exclusive right and privilege of:

(A) 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 a limitation, television and radio signals, electronic banking, surveillance, fire, police and emergency medical protection.

(B) Transmitting, the facilities and equipment of which, shall be owned and exclusively controlled by Association.

7.3 **Right to Contract with Service Providers.** The Association shall have the right, but not the obligation, to enter into one or more contracts for the provision of one or more System Services for all or any part of the Community.

Any such contract for cable television or other similar services shall provide, and if it does not, shall be deemed to provide, that during any period of occupancy of a Living Unit by a hearing impaired or legally blind Unit Owner who does not occupy the Living Unit with a non-hearing impaired or sighted person, said Owner may refuse or discontinue the service without incurring disconnect fees, penalties or subsequent service charges, and as to such Living Units, the Owners shall not be required to pay any charge related to such service.

7.4 **Collection of "System" Assessments by the 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, cable

television services and utility services. The 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 the same and remit payment to the contractual designee(s) providing the System services. System Assessments are levied by the Association and are not to be confused with or considered the same as a non-ad valorem assessment levied by the CDD.

7.5 Construction and Maintenance. The Association (including its designees and contractors) shall have the right to enter any part of the Community and take any action reasonably necessary or convenient for maintenance purposes provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the Living Units or Lots by owners.

7.6 Conservation Easements. The Association hereby grants, creates, and establishes a perpetual conservation easement as defined in Section 704.06, Florida Statutes (2002), for the South Florida Water Management District, and the U.S. Army Corps of Engineers permit, over the Conservation Areas shall run with the land and be binding upon the 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 often conveyed to many governmental and quasi-governmental Districts, including, but not limited to: Florida Game and Fresh Water Fish Commission, United States Fish and Wildlife Service, 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 Association and its successors or assigns, at the time of such entry; and

(2) To enjoin 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 such retention of land and water areas.

(8) Use of recreational motor vehicles such as motorcycles, ATV's, four-wheel drive vehicles except for maintenance and monitoring purposes.

(C) Reservation of Rights. The following rights are specifically reserved to the 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 Association reserves to itself 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 Association reserves to itself he right to excavate and recover fill dirt at any time in accordance with applicable governmental regulations.

(D) The Association shall minimize and avoid, to the fullest extent possible, impact to any wetland or buffer areas with 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 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, to the extent legally required, indemnify and hold the SFWMD harmless therefrom.

(G) The Association, its successors or assigns, shall pay any and all real property taxes and assessments levied by competent authority 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 Association, its successors or assigns shall be borne by, and be recoverable against the Association its successors or assigns as long as the SFWMD is the prevailing party in such proceedings.

(I) Any costs incurred by the 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.

(1) 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 Association, its successors or assigns shall not be deemed or construed to be a waiver of the SFWMD's rights here under in the event of a subsequent breach.

(K) 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 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.

(L) 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.

(M) 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.

(N) The Association must follow the State laws of Florida pertaining to notification of any subsequent party, buyer, or filing of other legal instruments, when the Association divests itself of any interest in the conservative areas.

8. COMMON AREAS; CONVEYANCE, USE AND MAINTENANCE.

8.1 Designation

(A) The Common Areas of the Community include:

(1) the Clubhouse;
(2) the recreational facilities adjacent to the Clubhouse (*e.g.*, swimming pool, tennis courts, basketball courts, skating rink, playground, softball field, open/soccer field)
(3) the streets and sidewalks, as well as jogging/bike paths;
(4) the lakes and conservations areas; and
(5) any other areas within the Community that have not been included as part of a Lot or Unit.

(B) The Association shall have the right to charge reasonable fees, rents, or other charges for the use of the Commons Areas.

The foregoing, not withstanding, the CDD shall own and maintain the surface water management system of the Community which have either been constructed by or accepted by the CDD, unless those duties and obligations are transferred to the Association.

8.2 EXCEPT AS OTHERWISE PROVIDED IN THE CONSERVATION EASEMENTS, MAINTENANCE OF THE CONSERVATION EASEMENTS AND CONSERVATION AREAS (INCLUDING THE UPLAND BUFFER AREAS IN THE EASEMENTS) SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND 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. THE ASSOCIATION SHALL TAKE ACTION AGAINST LOT OWNERS AS NECESSARY TO ENFORCE THE CONDITIONS OF CONSERVATION EASEMENTS AND OF THE SFWMD PERMIT. MITIGATION MONITORING AND/OR FINANCIAL ASSURANCES REQUIRED BY THE SFWMD PERMIT SHALL ALSO BE THE RESPONSIBILITY OF THE ASSOCIATION.

8.3 Conveyance and Use.

(A) Any real property conveyed, leased, or the use of which has been granted 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 Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Association must accept such property.

(C) The Association shall not accept a conveyance of real property from any third party other than the CDD, in either an improved or unimproved condition.

8.4 Maintenance and Alteration. The Association is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas except those for which the CDD is responsible for, in accordance with the applicable laws, and keep the same in a good, safe, clean, attractive and sanitary condition, and in good working order at all times. There shall be no material alterations of or substantial additions to the Community Common Areas costing more than $250,000.00, in the aggregate during any fiscal year unless first approved by a majority of the voting interests of the members of the Association. However, if work that is reasonably necessary to meet the Association's obligations under the first sentence of this Section 8.4 also constitutes a material alteration 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 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 two-thirds (2/3rds) of the voting interests. The foregoing shall not be construed to limit the authority of the 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 a 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 Association's Rights and Powers. No Common Areas shall be used in violation of any rule or regulation or other requirement of the Association established pursuant to the provisions of this Declaration or the Bylaws.

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 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 Association.

(D) System Assessments (*e.g.,* Broadband Telecommunications, internet access, security, Bulk Service Cable Television).

(E) Irrigation and water utility assessments.

(F) 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.

(G) Except as otherwise provided in Section 15.2 below as to certain mortgagees, 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.

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

(I) The owner of each Lot or Living Unit regardless of how title was acquired, is liable for all assessments coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 15.2 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.

(J) No land shall be subject to assessment by the 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: The following are purposes for which the Board of Directors may

consider an assessment, but are not exclusive:

(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 Association and Community Common Areas, the Conservation Areas, the Association equipment and facilities, and the Storm water Management System; and to establish and maintain adequate repair and replacement reserves;

(C) To provide utility, cable television, and other systems of telecommunications services by bulk contract with third parties;

(D) 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;

(E) To pay the operating expenses of the Association; and

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

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 of Directors) 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.

9.5 Special Assessments. Any special assessments levied by the 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 benefitted, in accordance with the apportionment described in Section 9.6 above for the apportionment of annual assessments.

9.6 Charges. Any charge by the 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 9.8 and 9.9 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 9.4 above, and shall still be deemed "assessments." For example, if the 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 cable 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 Liens on Assessments and other fees. The Association may file 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 Association in enforcing this lien. The lien relates back to the date of recording this Declaration in the Public Records of Lee, 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 authorized agent of the Association, which may include its legal counsel. 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's 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 Association's lien may be foreclosed by the procedures and in the manner provided in Section 720.3085 of the Florida Statutes Homeowners Associations, as it may be amended from time to time, for the foreclosure of a lien upon a Lot for unpaid assessments. The Association may also bring an action at law against any owner liable for unpaid charges or assessments. If final 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's 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 Association's lien for unpaid assessments and charges shall have the same priority with respect to first mortgagees holding mortgages on Lots and Living Units the lien of a homeowner's association for unpaid assessments under Section 720.3085, Florida Statutes, as amended from time to time, has with respect to first mortgagees or other acquirers of title through the first mortgage. The 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 Association, regardless of when the lease was executed.

9.11 Resale Capital Assessment. In addition to the Initial Capital Assessments, the Association shall 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 will be at ONE THOUSAND DOLLARS and 00/100 ($1,000.00 US) unless raised or lowered by action by the Board; 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 Director 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. If, however, a Lot or Living Unit is owned by an entity other than a trust and the ownership of that entity is transferred to a new person, then the Resale Capital Assessment shall be due and payable.

9.12 Ownership. Assessments, resale capital assessments, and charges collected by or on behalf of the Association become 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.

10. COVENANT AND RULE ENFORCEMENT. The Association has the power to enforce all covenants, conditions, restrictions, rules and agreements applicable to any real property within the Community, 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 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 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 Association, are governed by and must comply with Chapter 720, Florida Statutes, the Governing Documents and rules of the Association. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of the Governing Documents and Association rules may be brought by any owner, or the Association against:

(A) the Association;

(B) a member;

(C) any occupant of a Living Unit;

(D) any Director or officer of the Association who willfully and knowingly fails to comply with these provisions;

(E) any tenants, guests, or invitees occupying a parcel or using the common areas; and

(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 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 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 and Suspensions; Liens

(1) The Association may levy reasonable fines allotted by law per violation against any member or any member's tenant, guest, or invitee for failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the Association. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fines may not exceed $2,500 in the aggregate unless otherwise provided in the governing documents or as allotted by law, whichever is greater. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the non-prevailing party as determined by the Court.

(A) A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law.

(B) The payment of fines shall be the ultimate responsibility of the unit owner, even when the violations for which the fines have been levied arise out of the conduct of family members, guests or tenants.

(C) All monies received from fines shall become part of the common surplus.

(D) Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may otherwise be legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover at law from each owner.

(2) The Association may suspend, for a reasonable period of time, the right of a member or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the Association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may 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. This includes suspending access control cards and transponders.

(3) A fine or suspension may not be imposed without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the

committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the association imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(4) If a member is more than 90 days delinquent in paying a monetary obligation due to the Association, the Association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. Suspension does 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. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(5) The Association may suspend voting rights of a parcel or member for the nonpayment of any monetary obligation due to the association that is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the Association.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved a properly noticed Board meeting. Upon approval, the Association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.

10.5 Storm Water Management System. The beneficiaries of the Storm Water 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.

10.6 Alternative Dispute Resolution.

(1) **Consensus for Association Action.** Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds of the Voting Members. A Voting Member representing Units owned by persons other than the Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds of the total number of Units represented by the Voting Member. This Section shall not apply, however, to: (i) actions brought by the Association to enforce Governing Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counter claims brought by the Association in proceedings instituted against it.

(2) **Alternative Method for Resolving Disputes.** The Association, its Officers, Directors and Committee Members, and all persons subject to this Declaration (each such entity being referred to as a "Bound Party") agree that it is in the best interest of all concerned to avoid litigation of disputes where possible. As such, the Bound Parties agree that where required, or where the

parties agree, disputes shall be as set forth herein. Additionally, the filing of any petition for arbitration or the serving of a demand for pre-suit mediation as provided for in this section shall toll the applicable statute of limitations.

(3) **Claims Subject to Mandatory Binding Arbitration.** Election and recall disputes shall be arbitrated by the Department, whose decision shall be binding. Any fees paid by the prevailing party, as well as the prevailing party's reasonable costs and attorney's fees, shall be awarded to the prevailing party by the arbitrator.

(4) **Claims Subject to Mandatory Pre-Suit Mediation.**

(a) The following disputes shall be subject to Mandatory Pre-Suit Mediation before the dispute is filed in court:

(i) Disputes between the Association and an Owner regarding use of or changes to the Lot or the Common Areas and other covenant enforcement disputes;
(ii) disputes regarding amendments to the Association's documents;
(iii) disputes regarding meetings of the Board and committees appointed by the Board, membership meetings not including election meetings, and
(iv) disputes regarding access to the official records of the Association.

(b) Pre-suit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and thee proceedings shall be privileged and confidential to the same extent as court-ordered mediation.

(c) The following disputes shall not be subject to the Pre-Suit Mediation:

(i) disputes regarding the collection of any assessment or fine, or other financial obligation, including attorneys' fees and costs;
(ii) disputes regarding any action to enforce a prior mediation settlement agreement between the parties.

(d) In any dispute subject to pre-suit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the pre-suit mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section.

(e) An arbitrator or judge may not consider any information or evidence arising from the pre-suit mediation proceeding except in a proceeding to impose sanctions for failure to attend a pre-suit mediation session or to enforce a mediated settlement agreement.

(f) Persons who are not parties to the dispute may not attend the pre-suit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the Association. When mediation is attended by a quorum of the Board, such mediation is not a Board meeting for purposes of notice and participation as required for board meetings under Florida law.

(5) **Procedure for Pre-Suit Mediation.**

(a) An aggrieved party shall serve on the responding party a written demand to participate in pre-suit mediation as prescribed by the Department or applicable statute, and served as required by law.

(b) The responding party has 20 days from the date of the mailing of the statutory demand to serve a response to the aggrieved party in writing. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory demand.

(c) The parties shall share the costs of pre-suit mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise, and the mediator may require advance payment of its reasonable fees and costs.

(d) Notwithstanding the foregoing, once the parties have agreed on a mediator, the mediator may reschedule the mediation for a date and time mutually convenient to the parties. If any pre-suit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline.

(e) The failure of any party to respond to a demand or response, to agree upon a mediator, to make payment of fees and costs within the time established by the mediator, or to appear for a scheduled mediation session without the approval of the mediator, shall constitute the failure or refusal to participate in the mediation process and shall operate as an impasse in the pre-suit mediation by such party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation.

(f) As to any issue or dispute that is not resolved at pre-suit mediation, and as to any issue that is settled at pre-suit mediation but is thereafter subject to an action seeking enforcement of the mediation settlement, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the pre-suit mediation process

(g) Notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in the entire mediation process may not recover attorney's fees and costs in subsequent litigation relating to the dispute

(h) A mediator or arbitrator shall be authorized to conduct mediation or arbitration under this section only if he or she has been certified as a circuit court civil mediator or arbitrator, respectively, pursuant to the requirements established by the Florida Supreme Court.

(i) Settlement agreements resulting from mediation shall not have precedential value in proceedings involving parties other than those participating in the mediation to support either a claim or defense in other disputes.

(6) Amendment of Article. This article may be amended by either:

(a) a vote of at least 66 2/3% of the voting interest in approval of such amendment; or

(b) by an amendment of existing Florida law applicable to homeowners' association.

11. NEIGHBORHOOD ASSOCIATIONS.

11.1 Enforcement of Covenants. If any Neighborhood Association fails to enforce any provisions of its Neighborhood Covenants, or to perform any of its duties and responsibilities thereunder, the Association may, in its sole discretion, enforce such Neighborhood Covenants, and perform such duties and responsibilities, including any and all maintenance provisions, and shall be entitled to recover the costs and expense (including attorney's fees) of such enforcement or maintenance pursuant to the provisions of Sections 9 and 10.

11.2 Entry Rights. Each Neighborhood Association and each owner shall permit Association or any authorized agent or employee of Association, to enter upon a Neighborhood 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. This provision shall not be construed as authorizing into the interior of any Living Unit that is owned by a person other than Association except in emergency.

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

11.4 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.

12. INSURANCE: RECONSTRUCTION AFTER CASUALTY.

12.1 Duty to Insure, and to Reconstruct or Clean Up. Each owner or 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:

(A) Cause repair or replacement to be commenced within six (6) months after the date such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. 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; or

(B) 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 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 Association exercises the rights afforded to it by this Section, the owner or Neighborhood Association shall be deemed to have assigned to the Association any right he or it may have to insurance proceeds that may be available because of the damage or destruction. The 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 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 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 Association shall maintain adequate public liability insurance coverage for all Common Areas.

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

12.7 Association's Right of Entry. For the purpose of performing the duties authorized by this Section 12, the 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.

13. SECURITY

The Association shall not be liable to any Owner if security services are not provided.

ALL PERSONS USING OR OCCUPYING ANY PORTION OF THE COMMUNITY ARE RESPONSIBLE FOR THEIR OWN SECURITY AND THE SECURITY OF THEIR OWN PROPERTY.

NEITHER THE ASSOCIATION NOR THE CDD ARE INSURERS OR GUARANTORS OF SECURITY FOR PERSONS OR PROPERTY WITHIN THE COMMUNITY.

NEITHER THE 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. NEITHER THE ASSOCIATION OR THE CDD MAKE ANY 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.

13.1 DISCLAIMER OF LIABILITY OF ASSOCIATION.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR

ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE LANDS INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OFANY SUCH PERSONS, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(A) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE LANDS HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE LANDS AND THE VALUE THEREOF.

(B) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT "BEEN CREATED" TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES.

(C) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE LANDS (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING, ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANTES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

13.2 Miscellaneous. The 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:

(A) Promote a quality environment which will preserve the value of the Lots and Living Units; and

(B) Foster the attractiveness and functional utility of the Community as a place to live and play, including a harmonious relationship among structure, vegetation and topography.

13.3 Proximity to Landfill, Incinerator and Southwest Florida Regional Airport. The Community is located in close proximity to the Lee County Landfill and Incinerator, as well as the Southwest Florida International Airport. Due to its close proximity to Lee County Landfill and Incinerator, this project may be affected by the natural consequence of having "a landfill and incinerator being located and operated nearby. In addition, the project may be visually impacted by the landfill and incinerator's presence.

In addition, this project may be affected by the aircraft noise caused by the operation of aircraft traffic over the subject property. Each purchaser acknowledges the risks and negative potential impacts of purchasing within a community that is developed within the vicinity of the Lee County Landfill and Incinerator, as well as the Southwest Florida Regional Airport.

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. In the event that an Institutional Mortgagee having a first mortgage acquires title to a Lot, Living Unit, Tract or Parcel as a result of foreclosure of that first mortgage, or as the result of a deed given in lieu of foreclosure of that first mortgage, the liability of that Institutional Mortgagee holding the first mortgage shall be the maximum as provided for under §720.3085, Florida Statutes, as amended and in effect at the time of the issuance of a certificate of title to the Institutional Mortgagee. Furthermore, the limitations on liability of the Institutional Mortgagee holding a first mortgage, as provided by this section, apply only if the Institutional Mortgagee filed suit against the parcel owner and initially joined the Association as a defendant in the mortgagee foreclosure action.

14.3 Right to Inspect Documents and Books. The Association shall make available to Institutional Mortgagees requesting the same the current Governing Documents and Rules and Regulations of the Association and financial statements of the 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 the same.

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

14.5 Lender's Notices. Upon written request to the 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 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.

15. DURATION OF COVENANTS; AMENDMENT.

15.1 Duration of Covenants. 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, the 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 Association vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the 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 therein 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 this 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 any 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 at least sixty-six and two-thirds (66 2/3^{rds}) 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 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 Association's responsibilities for the Storm Water Management System and 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 SFWMD Permit. If the surface water management system is administered by a CDD, any such amendment shall likewise require the consent of a CDD.

15.8 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of two-thirds (2/3rds) or more of the voting interests of the members is required to authorize 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 9.5 or 9.6 above, unless all members affected first consent in writing to said amendment.

16. GENERAL AND PROCEDURAL PROVISIONS.

16.1 Other Documents. The 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 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 Association. Upon a merger or consolidation of the Association with another corporation as provided by law, the 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 Association as the surviving corporation. The surviving or consolidated corporation or the 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 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 Association or the successor or assigns of the Association (as the case may be) for such assessment to the extent that such assessments are required to enable Association or any such successors or assigns acquiring any real property previously owned by the 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 Association. Notices to the Association shall be in writing and delivered or mailed to the 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 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 a CDD at its principal place of business as shown by the records of the State of Florida Department of Community Affairs.

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, including the premises.

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 any way 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 Association legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively 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 and then as subsequently amended.

RIGHTS LIMITED TO EXPRESS TERMS OF GOVERNING DOCUMENTS. EVERY MEMBER OF THE ASSOCIATION ACKNOWLEDGES THAT HIS OR HER RIGHTS, DUTIES OR OBLIGATIONS ARE LIMITED TO THE EXPRESS TERMS OF THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND THE RULES AND REGULATIONS (GOVERNING DOCUMENTS). EVERY PROSPECTIVE MEMBER SHOULD MAKE HIS DECISION TO PURCHASE WITHIN STONEYBROOK AT GATEWAY BASED UPON THESE REPRESENTATIONS AS SET OUT IN THE GOVERNING DOCUMENTS WHICH CONTAIN THE ENTIRE UNDERSTANDING AT THE PARTIES.

Oral representations cannot be relied upon as correctly stating the representations of the Association. For correct representations, reference should be made to the Governing Documents.

IN WITNESS WHEREOF:

STONEYBROOK AT GATEWAY ASSOCIATION, INC., a Florida not- for-profit corporation.

Printed Name: Melissa Azbell

By: _____
Print Name: Paul Kielmeyer
Title: President

Printed Name: Mandy Schutt

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was executed before me this 4th day of September, 2015 by PAUL KIELMEYER as President of Stoneybrook At Gateway Association, Inc., a Florida not for profit corporation who is personally known or produced _____ as identification.

_____
Notary Public – State of Florida

DARRIN R. SCHUTT
MY COMMISSION #FF033672
EXPIRES: JUL 04, 2017
Bonded through 1st State Insurance

Exhibit "A"

STONEYBROOK AT GATEWAY – UNIT 1, A SUBDIVISION RECORDED IN PLAT BOOK 75, AT PAGES 51 TO 68, OF THE PUBLIC RCORDS OF LEE COUNTY, FLORIDA.