

# STONEHAVEN ESTATES

## HOMEOWNERS ASSOCIATION

### DOCUMENTS

#### Change Log:

- Draft Version ..... July, 2000
- Version 1.0 ..... May 24, 2001
- Amendment to Article 14 (GENERAL PROVISIONS)
  - Section 14.7 (Enforcement) ..... June 09, 2005
- Amendment to Article IV (BOARD OF DIRECTORS)
  - Section 1 (Number, Term and Qualifications) ..... June 30, 2005
- Amendment to Article 9 (USE RESTRICTIONS)
  - Section 9.9 (Parking) ..... May 30, 2007
- Amendment to Article 9 (USE RESTRICTIONS)
  - Section 9.25 (Water and Sewage Systems) ..... Oct. 30, 2007
- Amendment to Article 8 (USE AND OCCUPANCY: LEASES: OWNER'S MAINTENANCE)
  - Section 8.1 (Single Family Residential Use Only) ..... April 10, 2008
  - Section 8.2.1 (Instrument in Writing) ..... April 10, 2008
  - Section 8.2.2 (Minimum Lease Term) ..... April 10, 2008
  - Section 8.2.5 (Compliance with Declaration) ..... April 10, 2008
- Amendment to Article 6 (ASSESSMENTS)
  - Section 6.13 (Effect of Non-Payment of Assessment: The Personal Obligation of the Owner:  
The Lien: Remedies of the Association ..... April 10, 2008
  - Section 6.14 (Subordination of the Lien to the Mortgages; Mortgagees' Rights) .. April 10, 2008
- Amendment to Article 9 (USE RESTRICTIONS)
  - Section 9.5 (Campers, Boats and Recreational Vehicles, *Commercial Vehicles*  
*and Otherwise Prohibited Vehicles*) ..... June 10, 2010
- Amendment to Article 8 (USE AND OCCUPANCY: LEASES: OWNER'S MAINTENANCE)
  - Section 8.2.2 (Minimum Lease Term; Association's Right to Withhold Approval  
or to Limit Renewal) ..... June 13, 2013
- Addendum to Exhibit F (BOUNDARY AND DEVELOPMENT SETTLEMENT AGREEMENT)
  - (Sketch of East Boundary Survey) ..... June 10, 2019
- Amendment to Article 8 (USE AND OCCUPANCY: LEASES: OWNER'S MAINTENANCE)
  - Section 8.1 (Single Family Residential Use Only) ..... July 08, 2021
- Amendment to Article 8 (USE AND OCCUPANCY: LEASES: OWNER'S MAINTENANCE)
  - Section 8.2.2 (Minimum Lease Term) ..... July 08, 2021

New Language is indicated by underscoring type.  
Deleted Language is indicated by ~~struck through~~ type.

PREPARED BY & RETURN TO:

Kenneth Y. Gordon, Esquire  
Centex Homes  
8198 Jog Road, Suite 200  
Boynton Beach, Florida 33437

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR STONEHAVEN ESTATES  
PALM BEACH COUNTY, FLORIDA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, is made this 25 day of May, 2001, by CENTEX HOMES, a Nevada general partnership, hereinafter referred to as the "**Declarant**", and joined by STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, hereinafter referred to as the "**Association**".

**RECITALS**

Declarant is the owner of certain real property in Palm Beach County, Florida ("**County**"), described in **Exhibit "A"**, attached hereto (the "**Property**").

Declarant desires to provide for the preservation and enhancement of the value, desirability and attractiveness of the Property by imposing mutually beneficial covenants, conditions, restrictions and easements on the Property; and to provide for a reasonable and flexible procedure for the overall development of the Property and to establish a method of administration, maintenance, preservation, use and enjoyment of the Property.

Declarant has formed the Stonehaven Estates Homeowners Association, Inc., as a Florida non-profit corporation to own, operate, and maintain the Common Area, (defined in Article 1), and to administer and enforce the provisions of this Declaration and other Governing Documents..

The Association is joining in this Declaration in order to acknowledge its obligations hereunder.

**STATEMENT OF DECLARATION**

Declarant, declares that the Property and any additional property hereinafter subjected to this Declaration by Supplemental declaration (as defined in Article 1 below) shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens, liens and all other provisions of this Declaration hereinafter set forth, which shall run with the title of the Property , and be binding on everyone having any right, title, or interest in the Property or any Portion thereof, their heirs, successors, successors-in-title, licensees, invitees, and assigns.

By acceptance of a deed or other instrument evidencing an ownership interest, each Owner, Builder and Declarant accepts membership in the Stonehaven Estates Homeowners Association, Inc., acknowledges the

authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration; the Articles of Incorporation and the By-Laws of the Association.

## GENERAL PLAN OF DEVELOPMENT

### THE STONEHAVEN ESTATES COMMUNITY

The Stonehaven Estates Community plan for development contemplates the construction of a residential community and the establishment of Common Areas intended to be available for the benefit of all of the residential community planned for development thereon all in the manner as, and subject to the reservations of rights, set forth in this Declaration. Among other things, the Declaration (a) requires the Association to maintain and care for the Common Areas; (b) compels membership in the Association by the Owners; (c) provides for the promulgation of assessments and enforcement by lien of collection of payment therefore; (d) affords Owners of Lots non-exclusive rights to the use and enjoyment of the Common Property; (e) provides for various use restrictions.

Declarant's general plan of development for Stonehaven Estates, as more particularly described in the Site Plan approved by Palm Beach County, Florida, as it may be amended from time to time, currently permits the construction of one hundred ninety-five (195) single family residential dwelling units, Common Areas including Open Space Tracts, Lake, a Recreational Area, Preserve Areas, and landscape and buffer areas. Tracts "B" and "C", (the "**Future Development Tracts**") are shown as Open Space Tracts on the Plat reserved by Declarant for future development. The Future Development Tracts, if approved by the governmental authorities, provide up to an additional fifty-eight (58) single family Lots (the "**Future Lots**") within the Stonehaven Estates Community..

Association shall join in the execution of any and all re-plats of the Property or portion thereof in order to subdivide the Future Development Tracts into Future Lots. The Association, and each Owner by acceptance of a deed or other instrument evidencing an ownership interest in a Lot or Tract in Stonehaven Estates, agrees to abide by and be bound by the provisions and covenants stated herein, and consents to the re-plat creating the Future Lots, and incident thereto acknowledge and consents to the (i) vacation of the cul-de-sacs abutting Lots 8,9,44,45,122,123, and 126 (the "**Cul-de-sacs**"), or any portion thereof, to create a through street open to two-way traffic, ingress and egress to and from the Future Lots and a public road, , (ii) Association's conveyance to Declarant , without fee, cost, consideration or charge, of the portion of the Cul-de-sacs that is not required for roadway as shown on the re-Plat, and (iii) Association's consent and joinder to such re-plat.

The Declarant intends to develop the Property in accordance with the approved Site Plan, plan of development, but hereby reserves the right to modify the Plat, the Site Plan, and plan of development in such manner as it, in its sole discretion, chooses but always in accordance with applicable regulatory requirements. Nothing contained herein shall be construed as obligating Declarant to develop or construct the Future Development Tracts, or to develop the Property according to the present plan of development.

## ARTICLE 1

### DEFINITIONS

**Section 1. Definitions:** The following words and terms when used in this Declaration or any Supplemental Declaration hereto (unless the context shall clearly indicate otherwise) shall have the following meanings:

**1.1. "Architectural Review Committee" or "ARC":** The committee established by the Board of Directors of the Association described in Article 7 of this Declaration.

**1.2. "Area(s) of Common Responsibility":** The Common Area together with any other area, for which it the Association has or assumes maintenance or other responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contract, permits or agreements.

1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation for Stonehaven Estates Homeowners Association, Inc., a Florida not-for-profit corporation, as filed with the Florida Secretary of State, a copy attached hereto as **Exhibit "C"**, as such may be amended from time-to-time.

1.4. "Assessment" or "Assessments": Assessments shall mean and refer to any and all assessments and charges rendered by the Association in accordance with this Declaration and as further defined in Article 6 hereof.

1.5. "Association": The Stonehaven Estates Homeowners Association, Inc., a Florida corporation not-for-profit, its successors and assigns.

1.6. "Board of Directors" or "Board": The Board of Directors is the governing body of the Association, appointed or elected in accordance with the Bylaws of the Association.

1.7. "Builder": Centex Homes, a Nevada general partnership and any other residential building company acquiring Lots or tracts of vacant land from the Declarant for the purpose of construction and sale of homes.

1.8. "By-Laws": The By-Laws of the Stonehaven Estates Homeowners Association, Inc., attached hereto as **Exhibit "D"**, as such may be amended from time to time.

1.09. "Common Areas" or "Common Property": Any property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by or leased to the Association, or which is dedicated to the Association on any recorded plat of any portion of the Property, or which is declared to be a Common Area by this Declaration. The initial Common Property to be owned, operated and maintained by the Association pursuant to this Declaration includes without limitation, the tracts of land described in **Exhibit "B"** attached hereto and incorporated herein by reference, including the Surface Water and Storm Water Management System retention ponds shown on the Plat. The lands over which easements have been granted to Association or Declarant under the "Boundary and Development Settlement Agreement" between and among Declarant, Association and The Banyan Golf Club of Palm Beach, Inc., attached as **Exhibit "F"** (the "**Boundary Agreement**") are deemed Common Area or Common Property.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, for administering, operating, maintaining, financing, repairing, replacing or improving the Common Areas, or any portion thereof and improvements thereon, and other services required or authorized to be performed by the Association which is attributable to the Areas of Common Responsibility, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-laws, and the Articles of Incorporation.

1.11. "Community" or "Stonehaven Estates" or "Stonehaven Estates Community": The real property described in **Exhibit "A"**, together with such additional property as is subjected to this Declaration in accordance with Article II.

1.12. "Community-Wide-Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standards may be more specifically determined by the Board of Directors and by the Declarant so long as the Declarant owns one or more Lots within the Community.

1.13. "Declarant": Centex Homes, a Nevada general partnership, or any successor or assign (partial or otherwise) of Declarant's rights hereunder, but only to the extent that such assignment is evidenced by a written assignment of Declarant's rights recorded in the Public Records of Palm Beach County, Florida.

1.14. "Declaration": This document entitled Declaration of Covenants, Conditions and Restrictions, as it may be amended or supplemented from time to time.

**1.15. "Future Development Tract":** Tracts "B" and "C," shown on the Plat are reserved for future development of not more than fifty-eight (58) single family units, subject to approval of Palm Beach County, Florida.

**1.16. "Governing Documents":** The Declaration, any Supplemental Declaration, the By-Laws, and Articles of Incorporation, or any of the above, as each may be amended from time to time.

**1.17. "Institutional Lender":** The owner and holder of a Mortgage encumbering a Unit or Lot, which owner and holder of said Mortgage may be a bank, savings bank, mortgage company, life insurance company, federal or state savings and loan association, an agency of the United States government; private or public pension fund, Department of Veterans Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a credit union, real estate or mortgage investment trust or a lender who makes loans in the ordinary course of its business and is generally recognized in the community as an institutional lender .

**1.18. "Lake":** The natural or manmade body of water identified on the Plat, as amended from to time, including but not limited to **Tract "L"** identified as the **"Water Management Tract."** All Lakes, if any, shall be subject to the Surface Water and Storm Water Management System. Tract "L" is subject to the Littoral Zone Restrictive Covenant Agreement recorded in Official Records Book 11615, Page 1554, Palm Beach County, Florida. A copy of the Littoral Zone Restrictive Covenant Agreement is on file at the office of the Association.

**1.19. "Lot":** Any one of the plots of land designated a "Lot" (each of which bears a separate identification number) creating a single-family homesite as delineated on the Plat or re-plat..

**1.20. "Member":** All those persons or entities who are members of the Association as provided in Article 3 hereof.

**1.21. "Mortgage":** A permanent or construction mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

**1.22. "Mortgagee":** A beneficiary or holder of a Mortgage.

**1.22. "Notice":** The delivery of any document by mail with postage prepaid to the last known address according to the records of the Association of the person or entity who appears as Owner in the records of the Association. If available from the records of the Association, notices to an Owner will be sent to a tenant of Owner occupying the Unit. Notice to one of two or more co-owners shall constitute notice to all Owners.

**1.24. "Open Space":** An exterior open area from the ground upward devoid of residential and commercial buildings, accessory structures and impervious areas. Tracts "OS1" through "OS8," and Tracts "B", "C" and "D" have been designated as Open Space on the Plat. Tracts "OS6" through "OS8", inclusive, are subject to the Lakeworth Drainage District Easement shown on the Plat. Tracts "B" and "C" are reserved for future development and may, if approved by the governmental authorities, contain up to fifty-eight (58) single family Lots. Tract "D" is subject to the terms, provisions, limitations and impositions set forth in the Covenants and Restrictions attached as **Exhibit "E"** hereto.

**1.25. "Owner":** One or more Persons who hold the record title to any Lot or Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation, unless and until such holder has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure. If a Lot or Unit is sold under a recorded contract for sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**1.26. "Person(s)":** A Person is a human being, a coporation, a partnership, a trustee, or any other legal entity.

1.27. **"Plat"**: The Plat of Stonehaven P.U.D. recorded in Plat Book 89, at Page 1 through 11, inclusive, of the Public Records of Palm Beach County, Florida, as the same may be amended from time to time; and any future subdivision plat or Re-plat applicable to the Future Development Tract.

1.28. **"Preserve Areas"**: Tracts "W1" and "W2" shown on the Plat are Preserve Areas. Preserve Areas are to be retained primarily in an undeveloped state and maintained and preserved as such, as more fully described in Article 9, Section 9.34, and Article 11, Section 11.2.4.

1.29. **"Private Street"**: Any roadway which is dedicated exclusively to the Association, including Tract "A" as shown on the Plat.

1.30. **"Property" or "Properties"**: The real property described on **Exhibit "A"** and such additional lands as may be brought within the jurisdiction of the Association and made subject to this Declaration by a Supplemental Declaration or Supplement thereto.

1.31. **"Recreational Tract"**: Tract "R" as shown on the Plat.

1.32. **"Supplemental Declaration" or "Supplement"**: Any supplement, amendment or modification of the Declaration recorded in the Public Records of Palm Beach County, Florida.

1.33. **"Surface Water and Storm Water Management System"**: The portion of the Properties including improvements thereon which are designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from such systems as permitted pursuant to the Florida Administrative Code, including, but not limited to, lakes, retention areas, culverts and related appurtenances.

1.34. **"Turnover" or "Turnover Date"**: The date upon which the Declarant's control of the Board of Directors of the Association terminates and control of the Board is turned over to the Board of Directors elected by the Members.

1.35. **"Unit"**: A portion of the Properties, whether developed or undeveloped, intended for development, use and occupancy as a detached residence for a single family and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) vacant land intended for development as such, as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Property. The term shall include all portions of the Lot together with all improvements thereon. In the case of a parcel of vacant land or land in which improvements are under construction, the parcels shall be deemed to contain the numbers of Units designated for such parcel on the Plat, until such time as a certificate of occupancy is issued on all or a portion thereof by a local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above, and the number of Units in the remaining land, if any, shall continue to be determined in accordance with this paragraph. Provided, however, with respect to Tract "B" identified as a Future Development Tract on the Plat, Tract "B" shall be deemed to consist of one (1) Unit until such date Tract "B" is subdivided by a plat or subdivision map of Tract "B" approved by Declarant and the applicable governmental authorities, upon which date Tract "B" shall then contain the number of Units designated by such plat or subdivision map.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO DECLARATION**

#### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

**Section 2. 1. Property Subject to this Declaration.** From and after the time that this Declaration is

recorded in the Public Records of Palm Beach County, Florida, the Property shall be subject to the terms and conditions of this Declaration. The Property (including each Lot) shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained in this Declaration, which shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors or assigns and shall inure to the benefit of each owner thereof.

**Section 2.2. Annexation.**

**2.2.1. Annexation by Declarant.** Declarant shall have the right and power, from time to time prior to the Turnover Date, without the consent or joinder of the Owners or any other person or entity, in its sole and absolute discretion and by its sole act, to add "additional property" to the terms and conditions of this Declaration. Annexations under this Subsection 2.2.1 shall be accomplished by filing a Supplemental Declaration describing the real property to be annexed (or withdrawn pursuant to Section 2.3 of this Article 2, as the case may be), and shall become effective when such Supplemental Declaration is filed among the Public Records of Palm Beach County, Florida, unless otherwise provided therein. Such Supplement may contain such additions or modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land and as are not inconsistent with the scheme of this Declaration. Declarant shall have the unilateral right to transfer to any other person or entity the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

**2.2.2. Annexation by Association.** After the Turnover Date, subject to the consent of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the votes of each class of Members of the Association. The annexation of land under this Subsection 2.2.2 shall be accomplished by filing in the Public Records of Palm Beach County, Florida, a Supplemental Declaration describing the property being annexed and signed by the President and Secretary of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

**2.2.3.** No provision of this Declaration shall be construed to require Declarant or any other person or entity to annex any real property to this Declaration.

**2.2.4.** The Declarant intends to develop the Property in accordance with the Plat, but hereby reserves the right to modify the Plat (with respect to the Property included in the Plat) from time to time in its sole discretion and at its option but always in accordance with applicable regulatory requirements. The Declarant shall not be required to follow any predetermined order of improvement and development within the Plat or Property; and it may annex additional lands and develop them before completing the development of the Property.

**2.2.5.** Covenants and restrictions applicable to annexations to the Property shall be compatible with, but need not be identical to, the covenants and restrictions set forth in this Declaration.

**2.2.6.** In the event that either the Federal Housing Administration or the Department of Veteran Affairs insures or guarantees any mortgage encumbering a Lot or Unit, and the regulations or procedures of such agency require under such circumstances approval of annexations by such agency or determination by such agency that such annexation is consistent with the general plan of development for Stonehaven Estates, then such approval or determination as described in Article 14 shall be a prerequisite to such annexation.

**Section 2.3. Withdrawal.** The Declarant may, without the consent or joinder of the Owners or any other person or entity, when necessary or desirable to accommodate changes in the Plat or Site Plan, withdraw from the provisions of this Declaration any of the Property that continues to be owned by Declarant, and its successors or assigns. Withdrawals under this Section 2.3 shall be accomplished by filing a Supplemental Declaration describing the real property to be withdrawn and shall become effective when such Supplemental Declaration has been recorded in the Public Records of Palm Beach County, Florida, unless otherwise provided therein.

**Section 2.4. Conveyance of Common Areas to the Association.** In accordance with Article 11 of this Declaration, Declarant shall convey fee simple title to all Common Property to the Association.

**Section 2.5. Changes in Use or Boundaries.** Declarant shall have the right, by an amendment or Supplement executed by Declarant alone, without the consent of the Association or the Owners, to take such action as may be required to relocate portions of, change the use or extent of use, or modify the boundaries of any of the Common Area, or any Future Development Tract of which Declarant is the Owner; provided that such amendment or supplement does not deprive any Owner of a means of ingress and egress from his/her Unit to a publicly dedicated road or of a means of being furnished those public utilities which were immediately prior thereto being furnished to his/her Unit.

### **ARTICLE 3**

#### **CREATION OF ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS**

**Section 3.1. Creation of Association.** The Association has been created by recording the Articles of Incorporation with the Secretary of State of Florida.

**Section 3.2. Membership.** Every Owner of a Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association. The term “**Member**” shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of this Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Common Area or other portion of the Property.

**Section 3.3. Voting Rights of Members of the Association.** The Association shall have three classes of membership: Class "A", Class "B" and Class "C." Members of the Association shall be allocated votes as follows:

##### **3.3.1. Classes of Voting Membership:**

**Class "A".** Class "A" Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned. No vote shall be exercised for any Property which is exempt from assessment under Section 6.16.

**Class "B".** The Class "B" Member shall be the Declarant, or its specifically designated (in writing) successor and or assigns. Prior to the Turnover Date (defined in Section 3.5.1), Declarant shall have the total number of votes equal to the number of votes held by all other Members plus one (1) vote. On the Turnover Date the Class “B” membership shall cease and be converted to Class "A" membership. Upon conversion to Class "A" membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association.

**Class "C".** All Builders, as defined herein, (except the Declarant) shall be Class "C" Members. Class C Members shall have one (1) vote for each Lot or Unit they own in the Property.

##### **3.3.2. Common Ownership.** When any Unit or Lot is owned of record in the name of two or



more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary

relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

#### Section 3.4.      **Change of Membership.**

3.4.1. Change of membership in the Association shall be established by recording in the Public Records of Palm Beach County, Florida, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall be terminated; provided, however, any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Notwithstanding the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date upon which the Board; receives such notice or copy of the conveyance instrument, after which the original Owner shall be released from the obligation to pay assessments levied after the date such notice is received. In the event that a copy of said instrument is not delivered to the Association, said Owner shall become a Member, but shall not be entitled to voting privileges until delivery of a copy of the conveyance instrument to the Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired. Notwithstanding the foregoing, the Declarant shall have the right to notify the Association in writing of conveyance of a Unit to an Owner without the requirement of providing a copy of the deed, and the Association shall recognize the Owner identified in such written notice as a Member of the Association and Owner of the Unit.

3.4.2. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

#### Section 3.5.      **Class "B" Membership Status.**

3.5.1.      **Duration.** The Declarant's Class "B" membership status shall continue, and shall be in effect, during the period from the inception of this Declaration until the earlier of the following events ("**Turnover**" or "**Turnover Date**"):

- a.            Ninety (90) days after ninety (90%) percent of the maximum number of Lots permitted in the Property that will ultimately be operated by the Association have been conveyed to Class " A " Members; or
- b.            Such earlier date as Declarant, in its sole discretion, may determine in writing; or

c. January 1, 2007.

After Turnover, Class " A " Members may vote to elect the majority of the members of the Board. After Turnover, for so long as the Declarant owns as least five (5%) percent of the Lots within the Property, the Declarant may appoint the minority members of the Board, or not less than one (1) Director. After Turnover, the Declarant shall be a Class "A" Member with respect to the Lots which it owns, and shall have the rights and obligations of the Class " A " Members, except that it may not cast its votes for the purpose of reacquiring control of the Association or selecting the majority of the members of the Board.

The Declarant, prior to the Turnover of the Association, at its sole discretion, may create temporary committees for the purposes of aiding in the transition of the Association from Declarant control to control by the Members.

**3.5.2. Assignment.** Any or all of the rights, privileges, or options provided to or reserved by Declarant in this Declaration, the Articles, or the Bylaws, may be transferred or assigned by Declarant, in whole or in part, as to all or any portion of the Property, to any person or entity pursuant to an assignment recorded in the public records of the county in which the Property is located. Any partial assignee of any of the rights of Declarant shall not be deemed the Declarant, and shall have no other rights, privileges or options other than as are specifically assigned. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

**Section 3.6. Class "C" Membership Status.** The Class "C" Membership status shall cease and be converted to Class "A" Membership upon conversion of Class "B" Membership to Class "A".

## **ARTICLE 4**

### **FUNCTIONS OF ASSOCIATION AND RELATED MATTERS**

**Section 4.1. Function of Association.** The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for administering and enforcing this Declaration and other Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of Florida. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property conveyed to it by the Declarant. The Board shall be responsible for management of the Association and may contract with a property manager for such purposes.

**Section 4.2. Services.** The Association shall have the following powers:

**4.2.1.** Maintenance of Common Areas, Lakes, Open Space, Surface Water and Storm Water Management Systems, Preserve Areas and Conservation Easements, Areas of Common Responsibility, Private Streets, Recreational Areas, landscaping, irrigation systems, lands covered by the Plat and all city, county, district or municipal properties and rights-of-way (to the extent permitted by any governmental authority) which are located within or in a reasonable proximity to the Property where deterioration of any of the described items would adversely affect the appearance of the Property or the operation of systems appurtenant thereto. The Association shall have the power to enter into, and perform the obligations and exercise the rights of Association (or those assigned to it by Declarant) under to the Boundary Agreement.

**4.2.2.** Maintenance of any real property located within the Property upon which the Association has accepted an easement for said maintenance.

**4.2.3.** Maintenance of any Lake and bulkheads owned by or dedicated for the use of the

Association within the Property, as well as maintenance of water bodies if and to the extent permitted or required by any contract or by any governmental authority having jurisdiction thereof.

4.2.4. Insect, pest and aquatic control where necessary or desirable in the judgment of the Board to supplement the service provided by the state and local governments. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to provide such services.

4.2.5. Taking any and all actions necessary to enforce all covenants, conditions and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property or in the Articles or Bylaws.

4.2.6. Conducting business of the Association, including but not limited to administrative services such as legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, and other important events. The Association shall have the right to enter into management agreements with companies affiliated with the Declarant in order to provide its services, and perform its functions.

4.2.7. Establishing and operating the Architectural Review Committee pursuant to Article 7 hereof.

4.2.8. The right and power to control, regulate and restrict usage of the Common Areas, and to adopt, publish and enforce such Rules and Regulations as the Board deems necessary .

4.2.9. Lighting of roads, sidewalks, walking and bike paths throughout the Property as deemed necessary by the Board. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to provide such services.

4.2.10. At the sole option and discretion of the Board, conducting recreation, sport, craft, and cultural programs of interest to Members, their families, tenants and guests and charging admission fees for the operation thereof.

4.2.11. Constructing improvements on the Common Property and easements as may be required to provide the services as authorized in this Article.

4.2.12. Employment of guards, maintenance of control centers for the protection of persons and property within the Property , installation, operation and maintenance of communication systems by the Association or a contractual designee of the Association, and assistance in the apprehension and prosecution of persons who violate the local, state or federal laws within the Property. However, neither the Association, nor the Declarant shall be obligated to provide any security measures to the Property nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, tenants, guests, and invitees of any Owner, as applicable, acknowledge that the Association and the Declarant, are not insurers and that each Owner, tenant, guest, and invitee assumes all risk of loss or damage to persons, to Units and to the contents of Units and further acknowledge that Declarant has made no representations or warranties, nor has any Owner, tenant, guest, or invitee relied upon any representations or warranties, express or implied, including any warranty of merchantability or fitness for any particular purpose relative to any security measures recommended or undertaken. **Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant and any successor or assign of each are not insurers and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

4.2.13. The Association may, but shall not be obligated to provide exterior maintenance upon any Unit or upon any structure on a Lot which, in the reasonable opinion of the Board of Directors of the Association, requires such maintenance because said Unit or structure is being maintained in a manner inconsistent with the overall appearance and standards prevailing within the Association. The Association shall notify the Owner of said Unit or structure in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected the

condition within thirty (30) days after date of said notice, the Association (after approval of a majority of the Board) may correct such condition. Said maintenance shall include but not be limited to painting, repairs, replacement and maintenance of roofs, gutters, down spouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Unit or exterior of any Unit or other structures or improvements located in Stonehaven Estates at reasonable hours on any day, except Saturday and Sunday; provided, however, the Association shall have the right of entry without notice if necessary to correct an emergency situation. The cost of such maintenance shall be assessed against the Unit upon which such maintenance is performed as a Special Assessment as provided in Article 6, Section 6.7.

4.2.14. Establish use fees and promulgate rules and regulations respecting the use of Common Property and Association facilities by Members and persons other than Members.

4.2.15. Engage in any activities reasonably necessary and legally required to remove from the Common Areas, Lakes, Open Space, Surface Water and Storm Water Management Systems, Preserve Areas and Conservation Easements, Private Streets and Areas of Common Responsibility any pollutants, hazardous waste or toxic materials, and by Special Assessment, recover costs incurred from the Owner( s ) causing or upon whose property such materials were located or generated.

4.2.16. Accept conveyance of all Common Areas from the Declarant, including all improvements, structures, equipment, apparatus or personal property thereon, and cooperate with and assist Declarant, its agents, employees and contractors in periodic inspection and maintenance thereof, and accept assignment or transfer of all necessary permits or other forms of governmental authorization concerning the Common Areas pursuant to Article II.

The functions and services allowed in this Section to be carried out or offered by the Association at any particular time shall be determined by the Board taking into consideration proceeds of assessments and the needs of the Members of the Association and the statutes, ordinances, rules and regulations of the State of Florida, the United States, the South Florida Water Management District ("**SFWMD**"), or Palm Beach County, Florida. The functions and services which the Association is authorized to carry out or to provide, may be added to or reduced at any time upon the affirmative vote of a majority of the Board. The Association may provide the permitted services by contract with third parties, including agreements with applicable governmental agencies.

Section 4.3. Mortgage and Pledge. The Board shall have the power and authority (subject to the provisions of Article 5, Subsection 5.9.5 hereof) to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its functions.

Section 4.4. Conveyance to Association. The Association shall be obligated to accept by Quit Claim Deed any and all conveyances to it by Declarant of fee simple title, easements or leases to Open Space, Lake, Surface Water and Storm Water Management Systems or Common Property, subject to any and all obligations and restrictions imposed on such lands, or incumbent on the owner of such lands for the continued maintenance and operation of such lands, including, but not limited to, all environmental and drainage permits issued by any governmental authority.

Section 4.5. Conveyance by Association. The Association may convey or dedicate lands or easements to Palm Beach County, Florida. The Association may also convey lands or easements, owned by the Association, to the Declarant in connection with any Re-platting of any portion of the Property.

Section 4.6. Contracts with Other Associations. The Association is authorized to enter into any contracts or easement arrangements with any other Association, provided that such contracts or easements are necessary or beneficial for the operation of the Association or the maintenance of the Property; provided that the costs or expenses of operating, performing, or maintaining such contracts or easements shall be allocated between this Association and such other association in accordance with the cost incurred or benefit received by each association. Any such contracts or easements shall be approved by the vote or written consent of a majority of the Board of the Association.

Section 4.7. Gatehouse and/ or Entry Gate. The Association shall have the right, but not the obligation to provide a security guard and/or other gate control measures at the entrance to the Property. The Board of Directors of the Association shall determine the extent of security services, if any, to be provided by the Association as part of its annual budgeted expenses. No Owner shall have any claim or cause of action whatsoever against the Association or the Declarant for the absence of security guards or other gate control measures at the entrance to the Property. Declarant and the Association shall not have any liability for injury, damage, or loss, of any kind or nature whatsoever due to the fact that any gatehouse is not manned, or due to the failure of any person staffing the gatehouse or due to the failure of any mechanical or electrical entry system to prevent or to detect a theft, burglary, or any unauthorized entry into the Property. The Board of Directors shall establish all rules and regulations concerning gate operation and access, provided, however, the Association shall not restrict access to the Property by Declarant, its agents, employees, contractors, customers or invitees at all reasonable hours. Any entry gate or gatehouse erected by the Declarant shall be dedicated to the Association, and shall be accepted by the Association pursuant to Article 11 and maintained, repaired and replaced by the Association as part of the Common Property. **Stonehaven Estates is a gated, not a secured community. No security system is in place to prevent or detect any thefts, burglaries or other unauthorized entry into the Property or any portion thereof.** Neither the Association, nor the Declarant shall in any way be considered insurers or guarantors of security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system, or measures undertaken, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

## ARTICLE 5

### EASEMENTS

Section 5.1. Owners' Easements of Access and Environment. Subject to the provisions below, every Owner shall have a right to use and an easement of enjoyment in and to the Common Areas, together with an easement of access to and from the Common Areas, which shall be appurtenant to and shall pass with the title to the Lot or Unit owned by such Owner, subject to the following:

5.1.1. The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

5.1.2. All provisions of the Declaration and the Articles and Bylaws of the Association and rules and regulations adopted by the Association;

5.1.3. Rules and regulations governing the use and enjoyment of the Common Areas adopted by the Association; provided, however, that the Association may not restrict the persons described in Section 5.4 of this Article from the reasonable use of the Common Areas in connection with the construction and sale of Units and other improvements upon the Property.

5.1.4. Restrictions contained on any and all plats of all or any part of the Common Areas or filed separately with respect to all or any part or parts of the Common Areas.

5.1.5. The additional restrictions set forth in Section 5.9 of this Article 5.

5.1.6. The rights and reservations of Declarant as herein set forth.

Section 5.2. Delegation of Use. Any Owner may delegate, in accordance with the appropriate Bylaws, his right of ingress and egress over and across the Common Areas and right of use and enjoyment of the Common Areas to his guests, invitees and family members, and to tenants and contract purchasers of his Unit, and their respective guests, invitees and family members.

**Section 5.3. Utility Easements.** The Declarant reserves to itself (and its successors or assigns) for so long as Declarant owns any of the Property, and the Association thereafter, the right to grant easements to any private company, public or private utility or governmental authority providing utility and other services within the Property and the Common Property upon, over, under and across the Property. Said easements shall only be given for the purpose of maintaining, installing, repairing, altering and operating sewer lines, irrigation lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal lines and systems, pipes, wires, fiber optics lines, power lines, telephone service, gas lines, syphons, valves, gates, pipelines, cable television service, alarm systems and all machinery and apparatus appurtenant thereto to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities and providing services to Owners, the Property and Common Property. All such easements to be of a size, width and location as Declarant, or the Association, in its discretion, deems best but selected in a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Property .

**Section 5.4. Declarant Easements.** Declarant hereby reserves to itself, its successors and assigns, the following rights, privileges and easements, for the use and benefit of Declarant and such persons, entities and/or property as Declarant shall determine in its sole and exclusive judgment, which rights, privileges and easements may be transferred or assigned, in whole or in part, for the exclusive or nonexclusive use and benefit of the assignee provided that such transfer or assignment shall be in writing and recorded in the Public Records of Palm Beach County, Florida.

**5.4.1.** There is hereby reserved unto Declarant, its successors and assigns, a perpetual easement, privilege and right in and to, over, under, on and across the Common Property for ingress and egress as required by Declarant, its officers, directors, employees, agents, independent contractors, invitees and designees; provided, however, that such access and use does not unnecessarily interfere with the reasonable use and enjoyment of the Common Property by the Owners. Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any of the Property owned by Declarant. The easements herein reserved by Declarant shall not structurally weaken any improvements or unreasonably interfere with enjoyment of the Property.

**5.4.2.** There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right to install erect, operate, maintain, repair and replace utility lines, facilities, apparatus and equipment, including, but not limited to, water, sewer, electricity, natural gas, telephone, television, electronic communication, fiber optic and other service lines, facilities, apparatus and equipment, together with the right of ingress and egress, in, on, over, under and upon all easements, rights-of-way and Common Areas depicted on the Plat, save and except any portion of the said areas upon which the Declarant has erected any portion of the Unit or other improvements, in which event that portion of the easement area underlying the improvements shall be deemed abandoned.

**5.4.3.** There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right to connect the drainage facilities serving adjacent lands not encumbered by this Declaration with and to the Surface Water and Storm Water Management System to receive and/or discharge surface water runoff in accordance with the approved drainage plans and permits applicable to the Property and such adjacent lands.

**5.4.4.** There is hereby reserved unto Declarant, its successors and assigns, a perpetual nonexclusive easement, privilege and right of access, ingress and egress for vehicles, equipment and pedestrians over, on and upon all streets, roads, alleys, Private Streets, Preserve Areas, Recreational Areas, Open Space and other Common Areas and parking facilities located within the Property for access to the Property and to adjacent lands not encumbered by this Declaration.

**5.4.5.** There is hereby reserved unto Declarant, and its successors and assigns a blanket easement in, through, over, under and across the Lots.

**5.4.6.** For as long as Declarant owns any portion of the Property, there is hereby reserved unto Declarant, and its successors and assigns, and designees, an easement over, upon, across and under the Property as may

be reasonably required by Declarant in connection with the development, construction, sale and promotion, or leasing of any Lot or Unit within the Property, including but not limited to the free right to access and use the recreational building/facility located or to be located on the Property, the street in front of any model areas designated by Declarant for parking by visitors and staff, to maintain and show model homes, to construct residential dwellings and related improvements, to have employees in the office, and the free right to use the Common Properties, in connection with the development, construction, sale, promotion, marketing, or leasing, of any Lot or Unit within the Property. In addition, the Declarant shall have the right, without the prior approval of the Association or any Owner, to erect marketing signs within and on Declarant owned Units, and within all Tracts, and to change, move, remove, repaint, maintain and otherwise exercise complete and unfettered control over such marketing signs at all times prior to the sale of the last Unit constructed by Declarant in Stonehaven Estates, and all such marketing signs shall be and remain the exclusive property of the Declarant and shall not be deemed part of the Common Property owned by the Association

**Section 5.5. Easement to Public Rights-of-Way.** Notwithstanding anything to the contrary set forth in this Declaration, to the extent necessary, each Owner shall have a nonexclusive easement for vehicular and pedestrian access to and from his Unit over the Private Streets to a public right-of-way. The easement herein granted shall be subject to the reasonable regulation of traffic by the Association, including but not limited to, speed limits, one-way streets, stop signs, yield signs and other common traffic control signs and devices. The Association shall have the right to restrict access to the Private Streets to Owners, resident members of the Owner's household, invited guests, commercial delivery services, government officials, including but not limited to, postal, police, fire and safety officials, vendors, contractors and tradesmen engaged by an Owner, Builder or the Declarant. The Association shall have the right, but not the obligation, to require nonresident requesting entry to the Private Streets to stop at the entry gate and provide evidence of authorization from an Owner. The right of the Owner to use the Private Streets for access to the Owner's Unit may not be suspended or withheld for any reason, including nonpayment of assessments or failure to obey traffic regulations, however, the Association shall have the right to exercise all other remedies available at law or in equity to recover from any such Owner all unpaid assessments, and to enforce all traffic regulations, and, in the event the Association incurs any expense in so doing, in addition to any other relief obtained by the Association, either voluntarily, by agreement, through arbitration or court action, the Owner shall reimburse the Association for all its costs and expenses, including, but not limited to, all attorney's fees, expert witness fees, investigation costs and other expenses incurred by the Association at the pre-trial, trial or appellate levels. Notwithstanding anything herein to the contrary, no portion of the Private Streets may be altered without the prior written authorization of the Palm Beach County Engineer, or his authorized designee. No amendment to this Declaration that materially affects the Private Streets or the use of the Private Streets shall be made without the prior written approval of the Palm Beach County Engineer, or his authorized designee.

**Section 5.6. Service Easements.** Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities which have been granted rights to service the Units within the Property, and to such other persons as Declarant from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Private Streets and Common Property for the purposes of performing their services and investigations.

**Section 5.7. Drainage Easements.** Drainage flow shall not be obstructed or diverted from drainage easements. The Association may, but shall not be required to, cut drain ways for surface water wherever and whenever such action may appear to the Association to be necessary to maintain reasonable standards of health, safety and appearance. These easements include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other action reasonably necessary to install utilities and to maintain reasonable standards of health and appearance but shall not include the right to disturb any improvements erected within the Property that are not located within the specific easement area designated on the Plat or in this Declaration. Except as provided herein, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. Once elevations and slopes have been established by the Declarant, no Owner or Association may alter any such elevations or slopes except upon written consent of the Declarant and the Association. The Association shall maintain all drainage easements in accordance with the conditions of the applicable drainage permits, if any. Without limitation, drainage easements may be established by the Declarant or by the Association after receiving any necessary permits or approvals from the governmental authorities,

within any Lake, Open Space or Preserve Area shown on the Plat, as well as on any Lot prior to conveyance of such Lot by the Declarant to a Class A Member. Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage for any Lot. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage improvements within the Property.

**Section 5.8. Entry Easement.** In the event that the Owner fails to maintain the Lot or Unit as required herein, or in the event of emergency, the Association shall have the right to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot or Unit as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

**Section 5.9. Extent of Easements.** The rights and easements of enjoyment created in this Article 5 shall be subject to the following:

**5.9.1.** The right of Declarant or the Association, in accordance with its Bylaws, to borrow money from any lender for the purpose of improving and/or maintaining the Common Areas, Lakes, Open Space, Surface Water and Storm Water Management Systems, Recreational Areas, Preserve Areas, Private Streets, landscaping, and irrigation systems and providing services authorized herein and, in aid thereof, to mortgage said Common Areas.

**5.9.2.** The right of the Association to suspend the rights and easements of enjoyment of any Member or any tenant of any Member for any period during which any assessment remains unpaid, and for any period, not to exceed sixty (60) days, for any infraction of its published rules and regulation, it being understood that any suspension for either non-payment of any assessment or breach of any rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment. Notwithstanding the foregoing, no such suspension shall be imposed in violation of applicable laws.

**5.9.3.** The right of the Association to charge reasonable admission and other fees for the use of any recreational facility that may be situated on or in the Common Property.

**5.9.4.** The right and authority of the Board to place (and remove) after notice any reasonable restrictions upon any roadways owned by the Association including, but not limited to, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of such roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Common Property shall not make such restrictions unreasonable.

**5.9.5.** The right of the Association to give, dedicate, mortgage or sell all or any part of the Common Property (including leasehold interests therein) to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be determined by the Association; provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized pursuant to Article 14, Section 14.2 of this Declaration. The Association shall deliver written notice of the meeting and of the proposed agreement and action thereunder to each Member thereof prior to such meeting as set forth in Article 14. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association, and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

**5.9.6.** The terms, conditions, and restrictions on use in the Boundary Agreement and the Easements executed pursuant to it.



Section 5.10. Sign Easement/ Wall and Landscape Buffer Easement.

**5.10.1. Tracts "OS1" through "OS 8".** There is hereby reserved for the benefit of the Declarant and the Association, an easement (the "Sign/Landscape Easement") in, over, under, upon and across Open Space Tracts "OS1" through "OS8", both inclusive, for construction, erection, installation, operation, maintenance, repair and replacement of subdivision signs and monuments, together with landscaping, lighting and irrigation facilities. No Owner shall obstruct access to the Sign Easement, or install or remove any plant or other improvement or installation placed in the Sign Easement by the beneficiaries thereof, or obstruct the view of the Sign Easement from the adjacent Private Street. All subdivision signs, monuments, landscaping, lighting, irrigation and other permanent improvements installed in the Sign/Landscape Easement by the Declarant shall become the Common Property of the Association upon conveyance thereof from the Declarant, and the Association shall maintain the Sign/Landscape Easement and the improvements therein as part of the Common Property.

In addition, the Declarant shall have the right, without the prior approval of the Association or any Owner, to erect marketing signs within the Sign /Landscape Easement, and to change, move, remove, repaint, maintain and otherwise exercise complete and unfettered control over such marketing signs at all times prior to the sale of the last Unit constructed by Declarant in Stonehaven, and all such marketing signs shall be and remain the exclusive property of the Declarant and shall not be deemed part of the Common Property owned by the Association.

**5.10.2. Tracts "BT1", "BT2" and "BT3".** There is hereby reserved for the benefit of the Declarant and the Association, an easement over, upon, under and across Tracts "BT1", "BT2" and "BT3" (the "**Landscape Buffer Easement**"), for the installation, erection, maintenance, repair and replacement of a wall, or fence, pedestrian path signs, landscaping, including, without limitation, berms, swales, planters, hedges, trees, shrubs, ground cover, flowers, and other plants and accessories, landscape lighting and irrigation lines, equipment and facilities. All subdivision signs, landscaping, lighting, irrigation and other permanent improvements installed in the Landscape Buffer Easement by the Declarant shall become the Common Property of the Association upon conveyance thereof from the Declarant, and the Association shall maintain the Landscape Buffer Easement and the improvements therein as part of the Common Property.

**Section 5.11. Lake Maintenance Easement.** There is hereby reserved for the benefit of the Association, and the South Florida Water Management District, a perpetual, non-exclusive easement for maintenance of the Lake (the "**Lake Maintenance Easement**") upon, across, over and under the land extending landward twenty (20') feet from the top of bank of the Lake for ingress, egress, and access to the Lake in order to maintain the Lake and the area comprising the Lake Maintenance Easement, together with any necessary appurtenances incidental to and necessary therefor. Neither the Association, nor any Owner shall obstruct access to the Lake Maintenance Easement, and no fence, hedge, landscaping or other improvement that would impair or restrict access to the Lake Maintenance Easement shall be installed or permitted to remain within said Lake Maintenance Easement. Neither the Association, nor any Owner shall install any bulkhead, pier or other structure within any Lake or Lake Maintenance Easement, and all Owners whose Lots abut the Lake Maintenance Easement shall be responsible for maintaining their Lots, including the repair or prevention of erosion, within the Lake Maintenance Easement, subject to the obligations of the Association to perform landscape maintenance set forth elsewhere in this Declaration. The beneficiaries of the Lake Maintenance Easement shall have the right to enter the Lake Maintenance Easement at all reasonable times for the purposes of maintenance of the Lake Maintenance Easement.

**Section 5.12. Easement for Unintentional Encroachment.** The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Property to the extent of such encroachment.

**Section 5.13. Temporary Construction Easement.** All Lots and Common Areas shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, serving

and completion of dwellings and landscaping upon adjacent Lots.

## ARTICLE 6

### ASSESSMENTS

**Section 6.1. Creation of the Lien and Personal Obligations of Assessments.** Declarant covenants, and each Owner of any Lot or Unit shall by acceptance of a deed therefor, regardless of whether it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay the Association: (1) Annual Assessments, (2) Special Assessments, (3) Initial Capital Assessments, and (4) Individual Lot Assessments all fixed, established and collected from time to time as hereinafter provided. The Annual Assessments, Special Assessments, Initial Capital Assessment, and Individual Lot Assessments together with such interest thereon and costs of collection provided herein shall be a charge and continuing lien as provided herein on the real property and improvements of the Owner against whom each such assessment is made. Each such assessment, together with such interest thereon and cost of collection, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Unit or Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the property against which the assessment was made. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority .

**Section 6.2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association may be used for the improvement, maintenance, enhancement and operation of the Area of Common Responsibility, Common Areas, Common Property, Surface Water and Storm Water Management Systems, Preserve Areas and Conservation Easements, and further to provide services which the Association is authorized or required to provide by contract or otherwise, including, but not limited to, the payment of taxes and insurance thereon, utility charges, maintenance, construction, repair or replacement of Common Property improvements, fees necessary for the implementation of the Maintenance and Monitoring Plan for the Preserve Areas and Conservation Easements, payment of the costs to acquire labor, equipment, materials, management and supervision necessary to carry out its authorized functions, and for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association enabling the Association to perform its authorized or required functions.

The Board may annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Common Areas, the expected life of each asset, and the expected repair or replacement cost. No such reserves shall be established for any Unit for which a certificate of occupancy has not yet been obtained. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of reserves shall be and shall remain the exclusive property of the Association and no Lot Owner shall have an interest, claim or right to such reserves or any fund composed of same. Declarant shall not be subject to any assessment for reserves without its prior written consent.

**Section 6.3. Duty of the Board.** It shall be the duty of the Board, at least thirty (30) days in advance of each fiscal year of the Association, to establish the annual budget and to fix the amount of the Annual Assessment against each Lot or Unit for the coming fiscal year, and to prepare a roster of the Lots and Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner. Failure to fix the amount of the Annual Assessment within the time period set forth above will not preclude the Board from fixing the Annual Assessment at a later date. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect

for the immediately preceding year shall continue for the current year, and the Annual Assessment for the immediately preceding year shall continue for the current year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof.

**Section 6.4. Rate of Assessment.** Annual Assessments shall be established by dividing the total anticipated Common Expenses of the Association each year by the total number of Lots or Units subject to assessment to derive a uniform base assessment amount applicable to all Lots. Special Assessments for capital improvements or expenses applicable to all Lots within the Property shall be established in the same manner. Individual Lot Assessments applicable to a particular Lot for expenses attributable exclusively to such Lot, or the Owner thereof, shall be determined by dividing the applicable expense by the number of Lots to which it applies. After such amounts have been determined, the amounts due from the Class "B" and Class "C" Members shall be adjusted according to the following provisions. Declarant and each Builder will have the following option for each assessment year:

**6.4.1. Declarant Exemption.** Notwithstanding anything herein to the contrary, during the period in which Declarant has the status of Class "B" Member, Declarant shall not be liable for any Assessments as long as Declarant pays the difference (the "deficit") between Association revenues from all sources and any surplus carried forward from the preceding years and the actual expenses incurred. In calculating such deficit, only actual expenses (other than capital expenses, Special Expenses, reserves, and delinquent assessments owed by Class "A" Members) shall be computed. Notwithstanding anything to the contrary, Declarant shall be exempt from and shall not be responsible, obligated or liable for any assessment on any Lots or Units it owns for reserves, capital contributions, and Special Assessments; and Declarant shall not be liable for the payment of any Assessments applicable to Lots it owns which relate in any way to the payment of legal fees or other fees to persons or entities engaged for the purpose of suing, or making, preparing or investigating possible claims against Declarant..

During the period in which Declarant has the status of the Class "B" Member, all Lots and Units owned by a Class "C" Member Builder, unless otherwise elected in writing by the Builder owning the Lot or Unit, shall be assessed at fifty percent (50%) of the rate of assessment applicable to units owned by Class "A" Members, provided however, that in the event that the actual operating expenses of the Association during the year for which the Builder's assessment is 50% of the Class "A" Membership assessment exceed the actual income of the Association derived from all assessments imposed on all Members, each Class "C" Member electing to pay assessments at 50% of the Class "A" assessment rate shall reimburse the Association the difference between its actual operating expenses and its actual assessment income for such year, save and except any portion of such deficit attributable to delinquent assessments owed by Class "A" Members. The amount to be paid by each Class "C" Member shall be prorated among all Class "C" Members on the basis of the number of Lots owned by each party divided by the total number of Lots owned by all such parties. Payment of such reimbursement shall be made by each Builder within 30 days after receipt of the Association's annual statement of accounts. Notwithstanding the foregoing, the Declarant and/or any Builder shall have the right, but not the obligation, to reimburse the Association for deficits attributable to delinquent assessments owed by Class "A" Members, or by a Builder and, in that event, the Association shall promptly institute collection proceedings, including legal action if necessary, to recover such unpaid amount(s) from such Owner(s), and, upon receipt of such recovery, the Association shall reimburse the Declarant and any Builder the amount(s) so recovered up to the amount of any operating deficit funded by Declarant or Builder which arose from such non-payment.

**6.4.2.** In the alternative, Declarant or any Builder may elect, by written notice to the Board, to pay the full Class "A" rate of assessment for each Lot or Unit owned by the Declarant or such Builder within the Association and subject to assessment without thereby waiving its Class "B" status, and, in such event, shall not be liable for the operating deficit of the Association as provided in Subsection 6.4.1.

**6.4.3.** At such time as Class "B" status shall cease, all Lots and Units owned by Declarant or any Builder shall be assessed at the full Class "A" rate and neither Declarant nor any Builder shall have any obligation to fund any operating deficit of the Association thereafter.

**6.4.4.** Notwithstanding anything contained herein to the contrary, in the event the Association incurs any Common Expense, which by its nature is applicable only to a completed Unit, such expense shall only be assessed

to and payable by the Owners of completed Units, and shall not be included within any Assessments payable by Declarant. Such expenses include, for example, expenses for bulk cable television or home security monitoring service, which may be incurred pursuant to this Declaration.

**Section 6.5. Builder Assessments.** Lots or Units owned by Class "C" Members shall be assessed as described in Section 6.4 during the period of Class "B" membership. Upon conversion of Class "B" membership to Class "A", Class "C" shall also be converted to Class "A", and full assessments shall apply.

**Section 6.6. Initial Maximum Annual Assessment: Increases in Maximum Assessment: and Annual Assessment Rates.**

**6.6.1. Initial Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Unit by the Declarant or a Builder to a Class " A " Member, the maximum Annual Assessment per Unit imposed by the Association shall be \$200.00.

**6.6.2. Increases in Maximum Annual Assessment -Without Consent of the Members.** From and after such date, the maximum Annual Assessment shall be increased each year by the Board without a vote of the Membership of the Association by an amount not more than either (a) ten percent (10%) above the sum of (1) the maximum assessment for the previous year, plus (2) increases mandated by governmental agencies and/or increased fixed costs incurred for insurance, taxes, recycling, waste disposal, or to obtain services from utility companies, or (b) the percentage increase, if any, in the current U.S. Government's Consumer Price Index (Urban Price Index -All Urban Consumers), herein referred to as the "CPI," over the CPI published for the preceding period, or other statistical index providing similar information if the CPI ceases to be published, whichever amount, (a) or (b), is greater.

**6.6.3. Increases in Maximum Annual Assessment -Requiring Consent of the Members.** The maximum Annual Assessment may not be increased above the amount described in Subsection 6.6.2 above without the approval of a simple majority of each class of Members who are voting either in person or by proxy, at a meeting of the Association duly called for this purpose, or whose approval is evidenced by the written consent of the majority of such Members.

**6.6.4. Establishing the Annual Assessment.** The Board of Directors of the Association shall set the Annual Assessment for each fiscal year at an amount not in excess of the maximum allowable Annual Assessment then in effect as established pursuant to Subsections 6.6.1, 6.6.2 or 6.6.3 above. If the Board sets the Annual Assessment at an amount which is less than the allowable maximum Annual Assessment, the Board shall have the right to increase the Annual Assessment to any amount not greater than the allowable maximum then in effect without the consent of the Members upon thirty (30) days written notice. The election of the Board to set the Annual Assessment at an amount less than the maximum shall not affect the calculation of the maximum Annual Assessment for ensuing years pursuant to this Section 6.6.

**Section 6.7. Special Assessments.** In addition to the Annual Assessments authorized herein, the Association may levy in any fiscal year a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto; provided, such assessment shall have the affirmative vote or written consent, or combination thereof, at least a simple majority of the votes of each class of Members as evidenced by the result of a vote taken by the Association. The obligation to pay Special Assessments shall be computed on the same basis as for Annual Assessments. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

**Section 6.8. Individual Lot Assessments.** The Association (by simple majority vote of the Board) may also levy an Individual Lot Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit or Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, which Special Assessment may be levied upon the vote

of the Board after notice to the Member and an opportunity for a hearing.

**Section 6.9. Initial Capital Assessment.** In addition to all other assessments described herein, each Lot shall be subject to an Initial Capital Assessment equal to three (3) months of the then prevailing Annual Assessment, which shall be paid to the Association upon conveyance of the Lot from a Builder or Declarant to a Class A Member. The obligation to pay the Initial Capital Assessment shall be borne by the purchaser of the Lot, and the Initial Capital Assessment shall be collected and paid to the Association at the closing at which title to the Lot is conveyed to the purchaser, however failure of the title company or settlement agent to collect such Initial Capital Assessment on behalf of the Association shall not relieve the purchaser of the obligation to pay such amount, nor shall any such title company, settlement agent or Declarant or any Builder be responsible for such payment.

**Section 6.10. Notice and Quorum Requirements.** Written notice of any proposed action to be taken pursuant to Subsection 6.6.3 or Section 6.7, Section 6.8, or Section 6.9 shall be delivered to each Member at least 30 days in advance of ( 1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a written description of the proposed assessment. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Association has, or is planned to have, 250 Members or less -the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members -the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members -the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**Section 6.11. Date of Commencement of Annual Assessments; Due Dates.** The Annual Assessments provided for herein shall commence as to each Lot or Unit on the first day of the month next following the month in which the Lot or Unit is subjected to the terms and conditions of this Declaration by recordation of this Declaration or any Supplemental Declaration annexing Lots or Units into the Association, or on the date the Association Articles of Incorporation are filed with the Secretary of State of Florida, whichever occurs later. The dates when such Annual Assessments shall become due shall be established by duly adopted resolution of the Board. The Annual Assessments shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit. The Association may delegate to a mortgage company, financial institution or management company responsibility for collection of assessments. The Annual Assessments shall be payable in advance in monthly installments, or in annual, semiannual or quarter-annual installments if so determined by the Board of Directors of the Association ( absent which determination they shall be payable monthly).

**Section 6.12. Records of Payment.** The Board shall prepare a roster of Owners and Annual Assessments and Special Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner at reasonable times with reasonable notice. Any Owner shall have the right to request the Association to issue a written statement signed by an officer of the Association, setting forth whether all Annual Assessments and/or Special Assessments owed by such Owner have been paid. The Association shall have the right to impose a fee for the issuance of such statements not to exceed \$50.00 per statement. Requests for such statements shall be in writing addressed to the address to which Annual Assessment payments are made. Each request shall contain the street address and legal description (by platted lot and block) of the property and the full name of the Owner. The Association shall issue the requested statement within 30 days after receipt of the written request, subject to the payment of any fee for such service imposed by the Association. Such written statement issued by the Association shall be prima facie evidence of payment of any assessment therein stated to have been paid.

**Section 6.13. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association.**

**6.13.1** If any assessment (e.g. any Annual Assessment, or Special Assessment, or Individual Lot

Assessment) is not paid on the date due, then such assessment shall become delinquent and the entire assessment shall, together with interest thereon and cost of collection thereof as hereinafter provided, become due and payable and be a continuing lien on the property which shall bind such property in the hands of the then Owner, the Owner's heirs, devisees, personal representatives and assigns. The obligation of the Owner to pay such assessment is a personal obligation and any assessments that are due but remain unpaid at the time the Owner disposes of his or her ownership interest, whether by foreclosure or otherwise, shall be enforceable by the Association against such person or against such person's successor in interest to the property subject to the assessment. In the specific event that title is transferred incident to foreclosure to the foreclosing lender, then the lender shall owe to the Association the greater of all assessments, collection costs, late charges, interest and attorney's fees posted to the account at any time that remain unpaid to the greatest extent provided by any applicable Florida statute or all assessments, collection costs, late charges, interest and attorney's fees that have accrued since the date on which the lender acquired title to the property.

6.13.2. The Association may record a notice of lien for delinquent assessments in the public records and foreclose the lien in the same manner as a mortgage. The lien shall not be valid against subsequent bona fide purchasers or mortgagees for value unless so recorded. Upon recording, the lien shall secure the amount of delinquency stated therein and all unpaid assessments thereafter until satisfied of record, together with interest thereon, as provided herein, and the reasonable cost of (a) notices of delinquency, (b) demands for payment, (c) notices of liens, (d) assignment of liens, (e) releases of liens, (f) recording costs, (g) attorney's fees, and (h) management company fees.

6.13.3. If the assessment is not paid within thirty (30) days after the due date it shall be deemed delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

6.13.4. The Association, acting on behalf of the Owners, shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be assessed or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure.

6.13.5. Suit to recover a money judgment for delinquent amounts owed to the Association and attorney's fees and costs shall be maintainable without foreclosing or waiving the lien securing the same.

#### Section 6.14. Subordination of the Lien to the Mortgages' Rights.

6.14.1. The lien of the assessments provided for herein is subordinate to the lien of any purchase money or home equity Mortgage given to an Institutional Lender now or hereafter placed upon a Unit or Lot recorded prior to the recording of a notice of lien pursuant to Section 6.13 of this Article 6; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure to the Lender and then only to the minimum extent required by any applicable Florida statute as amended from time to time. Such sale or transfer to the Lender shall not relieve such property otherwise from liability for any assessments due, nor from the lien of any such assessment.

An Institutional Lender, upon request, shall be entitled to written notification from the Association of any default of an Owner of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from the Institutional Lender. An Institutional Lender may pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Property and Institutional Lenders making such payments shall be owed immediate reimbursement therefor from the Association.

6.14.2. The lien of assessments provided for herein is also, with respect to the Future Development Tract, subordinate to the lien of Jeffrey M. Rosenberg, Trustee, which Future Development Tract is encumbered by a mortgage held by the above stated Trustee; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Jeffrey M. Rosenberg, Trustee, upon request, shall be entitled to written notification from the Association of any default of an Owner of all or a portion of Future Development Tract of any obligation hereunder which is not cured within sixty (60) days. The Association may provide such notice without receiving a request from Jeffrey M. Rosenberg, Trustee. Jeffrey M. Rosenberg, Trustee may pay taxes or other charges which are in default and policies or secure new hazard insurance coverage on the lapse of a policy for such Common Property and Jeffrey M. Rosenberg, Trustee shall then be owed immediate reimbursement therefore from the Association.

**Section 6.15. Damage to Common Property by Owners.** Any maintenance, repairs or replacements within the Common Property arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense or a Special Assessment therefore shall be made against his Lot or Unit.

**Section 6.16. Exempt Property.** The following property subject to this Declaration shall be exempted from all assessments, charges and liens created herein: (a) all easements, rights-of-way or other interest dedicated and accepted by the local public authority and devoted to public use; and (b) all Common Property.

**Section 6.17. Declarant Exemption.** All Lots, Property or additional property annexed pursuant hereto and owned by Declarant shall be exempt from payment of Annual Assessments for so long as Declarant funds any deficit in the annual budget as described in Section 6.4.1. Declarant's obligation to funding deficits shall terminate at such time as Declarant, in its sole discretion, elects to pay the Annual Assessment for each Lot owned by it, or after Turnover, whichever shall first occur. Declarant may, but is not obligated to, assign this exemption right to any entity it may determine, including without limitation, any builder owning Lots solely for the purpose of constructing Units intended to be sold to ultimate purchasers. Any such assignment of Declarant's exemption shall have no effect on Declarant's exemption hereunder.

## **ARTICLE 7**

### **ARCHITECTURAL CONTROL**

**Section 7.1. Enforcement of Architectural Standards.** The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in Section 7.2 and 7.3 of this Article 7.

No construction, which term shall include within its definition, staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article until the requirements of the ARC have been fully met, and until the approval of the appropriate entities has been obtained.

**Section 7.2 Architectural Review Committee.** The Board may establish an Architectural Review Committee ("ARC") which shall have jurisdiction over all construction on any portion of the Property except Units or improvements constructed or installed by the Declarant and whose duties, powers and responsibilities shall be as follows:

**7.2.1.** The ARC shall consist of three (3) or more persons designated by the Board.

7.2.2. The ARC shall have the right of approval of all architecture and landscaping of any Units. All construction and development within the Property is subject to local governmental control; however, the ARC may in its sole discretion, impose standards of architectural and landscaping design, which standards are greater or more stringent than standards prescribed in applicable building, zoning, planning or other local governmental codes. Notwithstanding the foregoing, all Units and improvements constructed or installed by the Declarant shall be deemed approved by the ARC and shall not be subject to review or approval by the ARC.

7.2.3. No building, sign, outside lighting, fence, hedge, wall, walk, dock or other structure or planting shall be constructed, erected, or planted until the plans and specifications showing the nature, kind, shape height, materials, floor plans, color scheme and the location of same shall have been submitted to and approved in writing by the ARC.

7.2.4. Prior to the initiation of construction upon any Lot, the Owner thereof shall first submit to the ARC a complete set of plans and specifications for the proposed improvements, including site plans, grading plans, landscape plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ARC for the performance of its function. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and a projected commencement and completion date.

7.2.5. All plans for the construction of any improvements within the Property impacting drainage of any lot shall contain a drainage plan which shall be consistent with the master drainage plan.

7.2.6. Upon receipt by the ARC of all of the information required by this Article 7, it shall have 30 days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ARC, (1) the improvements will be of an architectural style and of materials that are compatible with the other structures in the Property; (2) the improvements will not violate any restrictive covenant or encroach upon any easement or platted building set back lines; (3) the improvements will not result in the reduction in property value or use of adjacent property; (4) the individual or company intended to perform the work is acceptable to the ARC; and (5) the improvements will be substantially completed, including all cleanup, within six (6) months of the date of commencement (twelve (12) months for the construction of a complete house). In the event that the ARC fails to issue its written approval or disapproval of the proposed construction within 30 days of its receipt of the last of the materials or documents required to complete the Owner's submission, the ARC's approval shall be deemed to have been granted without further action.

7.2.7. In the exercise of its sole discretion, the ARC may require the Owner to provide assurances that the improvements will be completed in accordance with the approved plans. Such assurances may include the posting of a performance bond and/or a completion bond in favor of the Association, independent professional inspection reports or sworn progress reports.

7.2.8. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article 7 to the same extent as if erected without prior approval of the ARC. The ARC or the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

7.2.9. There is specifically reserved unto the ARC, the right of entry and inspection upon any Unit or Lot, save and except any Unit or Lot owned by Declarant for the purpose of determination by ARC whether there exists any construction of any improvement which violates the terms of any approval by the ARC or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The ARC is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith. The Association shall



indemnify and hold harmless the ARC from all costs, expenses and liabilities including attorney's fees incurred by virtue of any member of the ARC's service as a member of the ARC.

7.2.10. A majority of the ARC may take any action of the committee and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ARC, the Board shall designate a successor. If a request for approval is pending before the ARC that must be approved or rejected before the Board has appointed a successor to the ARC member who has resigned or died or become disabled, the surviving member(s) of the ARC shall be deemed to have been named as the agent or representative of the ARC and shall have the authority to act on behalf of the ARC with respect to any such pending applications.

7.2.11. The ARC may impose reasonable fees and charges upon Owners to enable it to carry out its functions.

7.2.12. In each instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restriction contained in this Declaration or any other covenants which the ARC has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the Board of Directors of the Association shall have the authority to release the property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ARC, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Property.

7.2.13. The Board of Directors of the Association has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration upon its own action or at the request of the ARC. The granting of any waiver for any portion of the Property may be given or withheld in the Board's sole discretion and a prior grant of a similar waiver shall not impose upon the Board the duty to grant new or additional requests for such waivers.

7.2.14. The Association, Declarant and ARC, and any officer, employee, director or member thereof, shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or ARC, or any officer, employee, director or member thereof, to recover any such damages. Further, each Builder, if any, agrees to indemnify and hold the Declarant harmless from and against any cost, claim, damage, expense or liability whatsoever, including, attorney's fees at all tribunal levels, arising out of any approval of plans given by the ARC hereunder.

**Section 7.3. Declarant Exemption and Approval of Fences and Docks.** This Article, except for the requirement to construct improvements in accordance with required governmental approvals, shall not apply to the original structures erected on any Lot built by or on behalf of, and/or sold by Declarant, its successors and assigns. Notwithstanding any other provision to the contrary, as long as the Declarant continues to own any Lot or Unit in the Property, no fence, dock or pier shall be constructed on any Lot or Common Area without the express written consent of the Declarant, which may be withheld, conditioned or delayed in the sole and absolute discretion of the Declarant. The authority reserved to the Declarant to approve, disapprove or condition any request for construction of a fence, dock or pier shall supersede the authority of the ARC, and the ARC shall not accept any application or request for approval of a fence, dock or pier unless such application or request is accompanied by the written consent of the Declarant.

**Section 7.4. Modifications.** The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Units or structures containing Units and the Open Space, if any, appurtenant thereto. The ARC may promulgate detailed standards and procedures governing modifications to existing Units or structures. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the ARC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of a Unit or to paint the interior of his Unit any color desired. In the event that the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within thirty (30) days after submission, the plan shall be deemed approved.

**Section 7.5. Review and Appeal of ARC Decisions.** The Board of Directors shall have the right to review and overturn the decisions of the ARC. Any Owner whose request for approval from the ARC has been denied shall have the right to submit a written request to the Board for a review of the decision of the ARC. Such request must be accompanied by a complete copy of each and every plan, drawing and document submitted to the ARC, as well as copies of any correspondence or written communication between the Owner, or applicant, and the ARC, and shall state the arguments the Owner, or applicant, desires the Board to consider, and the exact form of relief requested. All such appeals shall be deemed *de novo* applications which shall be reviewed by the Board rather than the ARC, but which shall otherwise be governed by the requirements and procedures described in Section 7.2 of this Article 7. The Board shall not review decisions by the ARC granting its approval of applications presented in compliance with Section 7.2.

**Section 7.6. Address for Notice.** Requests for ARC approval or correspondence with the ARC shall be addressed to the Architectural Review Committee - Stonehaven Estates Homeowners Association, Inc., and mailed or delivered to the principal office of Declarant in Palm Beach County, Florida area, or such other address as may be designated from time to time by the ARC. No correspondence or request for approval shall be deemed to have been received until actually received by the ARC in form satisfactory to the ARC.

## **ARTICLE 8**

### **USE AND OCCUPANCY : LEASES: OWNER'S MAINTENANCE**

**Section 8.1. Single Family Residential Use Only.** All Lots and dwellings shall be used and occupied for single family residence purposes only. In the event that a lot is owned by a corporation or other legal entity, at least one officer of the corporation, manager of the limited liability corporation, or member or partner of the partnership, shall be required to reside in the home. No Lot or dwelling may be used for commercial, institutional or other nonresidential purpose if such use involves the attendance or entry of nonresident upon the Lot or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to (a) "garage sales" conducted with the prior written consent of the Board of Directors of the Association provided that no Owner shall conduct more than one (1) garage sale of no more than two (2) days duration during any six (6) month period, or (b) the use of any Unit by Declarant or any Builder as a model home or sales office, or (c) the use of any Lot as a site for a construction office trailer or sales office trailer by Declarant or any Builder. All prospective purchasers of any interest in any Unit in Stonehaven Estates who are under a binding contract for sale and purchase shall be subject to a background investigation under the terms and conditions found below in Subparagraphs 8.2.1 and 8.2.2. The selling Owner shall provide all required information within five (5) days of the execution of the contract for sale and purchase. The right of the Association to perform its investigation into the backgrounds of the prospective purchasers and other occupants of the Unit under contract and the Association's approval thereof shall be made an express condition of the closing of the transaction.

**Section 8.2. Rental of Units: Leases.** No Unit may be subdivided or leased by the room, and all leases shall comply with this Declaration.

**8.2.1. Instrument in Writing.** All leases shall be in writing, and complete copies of all leases shall be delivered to the Board of Directors of the Association no less than ten (10) days prior to the date of occupancy of the Tenant (herein so called) under any such lease so that the Association may perform a background investigation of all proposed tenants and/or occupants. To offset the cost of the background investigation, the Owner shall remit to the Association a sum per tenant/occupant as determined by the Board of Directors from time to time that shall accompany the lease submitted. Occupancy of any leased Dwelling Unit shall be strictly limited to those persons disclosed to the Association in advance. Each lease shall set forth the name, address and telephone number of the Owner of the Unit; the name, address and telephone number of the Tenant; the proposed date of occupancy; the date of termination; the names and ages of all persons who will occupy the Unit and their relationships to the Tenant; the make, model, year of manufacture and license plate number of each motor vehicle owned or operated by the Tenant or members of the Tenant's household; and a description of all outdoor pets to be kept at the Unit. No lease shall be effective prior to written approval thereof by the Board of Directors of the Association or its delegate. Approval of any lease, tenant and/or occupants shall not be unreasonably withheld.

**8.2.2. Minimum Lease Term; Association's Right to Withhold Approval or to Limit Renewal.** All leases shall be for a term of 6 months or longer. No Owner may rent any portion or all of a Unit for a period of less than 6 months. No Owner may rent all or any portion of a Unit more than twice in any 12-month period. No home may be used for transient rental purposes, nor may any home be licensed to a third party through a short term rental website such as www.airbnb.com, www.homeaway.com, www.vrbo.com or any similar websites primarily used for transient

rental purposes. Notwithstanding anything in the Declaration of Covenants, Conditions and Restrictions, the Association's By-Laws, Articles of Incorporation and Rules and Regulations to the contrary, no Unit may be leased by an Owner prior to two (2) years from the date of obtaining ownership of the Unit by such Owner. In all other instances, leasing shall be permitted in accordance with the other provisions of this Declaration only upon the expiration of said initial two (2) years of ownership, which for the purposes of this provision shall consist of twenty four (24) consecutive months of record title ownership. Any Owner that owns a Unit as of the effective date of this amendment and any institutional first mortgagee that holds a mortgage on a Unit as of the effective date of the amendment shall be deemed to have satisfied the two (2) year ownership requirement. The Board shall have the sole discretion to waive this leasing restriction prior to the expiration of the two (2) year ownership period in cases resulting in undue hardship to the Owner. Such waiver shall not constitute a waiver of any rights against the Owner thereafter or against any other Owner. If a Tenant, who has signed a lease of 6 months or longer, defaults on the lease or abandons the Unit before the expiration of the lease term, the Owner shall have the right to find a replacement Tenant provided that the term of the lease for the replacement Tenant shall be at least 6 months, and provided further that if the replacement Tenant defaults or abandons the Unit, or if the term of the replacement lease expires before the expiration of 12 months after the date of the original lease, the Owner may not replace the replacement Tenant until the 12-month period has expired. If at any time prior to the effective date of the lease or to the expiration of the original term of the lease, the Board determines (after a hearing of which the Owner and the Tenant have notice and an opportunity to appear and be heard) that the Tenant's or any proposed occupant's background, conduct or maintenance of the Unit would make the initial lease or any renewal or extension of the lease undesirable to the health, welfare, safety, order or aesthetics of Stonehaven Estates, the Board shall notify the Owner and he/she shall not be permitted to effectuate the initial lease or renew or extend the term of the lease with that Tenant and/or one or more of those occupants related to the lease under review.

**8.2.3. Subleases.** If an Owner elects to permit a Tenant to sublease the Unit during the term of any lease, such sublease shall be subject to the limitations and requirements established in this Declaration to the same extent and effect as original leases.

**8.2.4. Roommates and Paying Guests.** Any person unrelated to the Owner of a Unit by parentage or marriage who pays rent or other financial consideration or otherwise contributes financially to the upkeep of the Unit or income of the Owner as a condition of cohabitation with the Owner or other occupancy of the Unit shall be considered a Tenant and shall be subject to this Declaration. Such roommate / guest / tenant arrangements shall be in writing and shall comply with the conditions of Subsections 8.2.1; 8.2.2 and 8.2.3 above.

**8.2.5. Compliance with Declaration.** All Owners and Tenants shall certify in writing to the Association, at the time copies of the leases are delivered to the Board of Directors pursuant to Subsection 8.2.1 above, that the Owner has delivered to the Tenant a complete copy of the Declaration and of the rules and regulations then in effect, and that the Tenant acknowledges the obligation of the Tenant and all members of the Tenant's household to comply with the covenants, conditions and restrictions contained in this Declaration and with all rules and regulations. No Owner may assign or otherwise transfer the Owner's rights and obligations under this Declaration to any Tenant, and the Association shall have the right to enforce the covenants, conditions and restrictions set forth in this Declaration and each rule and regulation against the Owner, Tenant or any member of the Tenant's household, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between the Owner and Tenant requiring prior notice or imposing other conditions on the rights of the Association. The Association shall have the right to collect all annual and special assessments imposed on the Unit from the Owner thereof, and shall not be obligated to collect any such amount from a Tenant.

**8.2.6. Association as Third Party Beneficiary.** The Association shall be deemed a third party beneficiary of all leases of Units, and shall have the right, but not the obligation, to enforce the terms and conditions of such leases against the Tenant or the Owner. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement prior to commencement of the lease term shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or Tenant contained in the lease or otherwise.

**8.2.7. Vicarious Liability of Owner for Acts of Tenant.** Notwithstanding any condition of any lease to the contrary, Owner, by acceptance of the deed to the Unit, hereby covenants and agrees with the Association and all other Owners of Units or Lots in Stonehaven, including but not limited to Declarant, that Owner shall be responsible for the acts or omissions of any Tenant or member of the Tenant's household to the same extent that Owner would be liable for such acts or omissions if committed by Owner or a member of Owner's household. Owner's obligations hereunder shall be deemed a guaranty of performance by Tenant, and the Association shall have the right to take any action or seek any remedy for Tenant's failure or refusal to comply with the covenants, condition and restrictions of this Declaration directly from or against the Owner without first taking such action or obtaining such remedy from or against the Tenant.

**Section 8.3. Owners' Maintenance Obligations.** Each Owner, at its own cost, shall be exclusively responsible for performance of all maintenance obligations for their Unit including, without limitation:

a. **Lawn Care and Landscape Maintenance.** Mowing, trimming, edging of lawns, and all grass areas of said Unit and in the area between the front Lot line and the curbing or road pavement, and pruning, trimming, weeding, of trees, shrubs and flower beds;

b. **Lake Banks.** Certain Units within the Property abut a Lake Tract, as more specifically set forth in the Plat. Each Owner of such a Unit shall be responsible for the maintenance of the "lake bank" as hereinafter defined, including the maintenance and replacement of all grass and plants therein, and such Owner shall be responsible for maintaining an extension of such Owner's sprinkler system upon such "lake bank" and to irrigate such "lake bank." For the purposes hereof, the term "lake bank" is defined to mean the upland area abutting a Unit which

is bounded by the water's edge, and the extension, to the water's edge, of the Unit's boundary lines which are perpendicular to the water's edge.

c. **Irrigation System.** Operation, maintenance and replacement of all irrigation system lines, pumps, meters, timers, sprinkler heads or other apparatus, equipment or machinery;

d. **Exterior of Unit.** Maintenance, repair and replacement of all portions of any Unit, including but not limited to all plumbing and electrical components thereof, exterior elements of the Unit, including but not limited to the walls, roof, paint, garage doors, entry/exit doors, window screens, all glass surfaces and window, all swimming pools, pool equipment and machinery, swimming pool screen enclosures, swimming pool decks, all planters and landscaping incorporated into swimming pool decks or enclosures, or affixed to the Unit or any patio or extension of the Unit, patios, walkways and driveways, outbuildings or other improvements.

**Section 8.4. Alterations.** Owners shall not make any alterations or additions to any Unit, including any changes or alterations of landscaping, ground cover or grass, without first obtaining the written consent of the ARC pursuant to Article 7.

**Section 8.5. Liability for Actions.** Each Owner shall be liable for the expense incurred by the Association for any maintenance, repair or replacement of any real or personal property made necessary by the act, neglect or carelessness of the Owner or the Owner's tenants or any member of their families, or their guests, employees or agents (normal wear and tear excepted). Each Owner shall also be liable for any personal injuries caused by his negligent acts or those of his tenants or any member of their families, or their guests, employees or agents. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies' of rights of subrogation.

**Section 8.6. Exculpation of Association and Declarant.** Neither the Declarant nor any Builder shall have any obligation whatsoever for the performance of any service described in this Declaration, or for the failure or refusal of the Association to perform such services.

**Section 8.7. Events of Force Majeure.** Notwithstanding anything herein to the contrary, neither the Association, nor its officers or directors, nor Declarant shall be liable for any damages suffered by any Owner resulting from acts of God, natural disaster, bad weather or other events or conditions beyond the control of the Association, including but not limited to, damage or destruction of landscaping (including trees, shrubs and other plants), or damage caused by wind blown debris. In the event of loss or damage to landscaping on any Lot, the Owner of said Lot shall be exclusively responsible for payment of all costs of restoration or replacement, and shall cause such damage to be completely repaired within six (6) months after the event. If any Owner shall fail to repair such damage within such time period, the Association shall have the right, but not the obligation, to perform such restoration, repair or replacement, and the cost thereof shall be assessed against the Lot as a Special Assessment. By acceptance of the deed to the Lot, each Owner, for and on behalf of himself / herself and any insurer, hereby waives all rights of subrogation against the Association, its officers and directors, and Declarant for recovery of costs expended by any such insurer for the restoration, repair or replacement of damage to, or caused by, any landscaping (including trees, shrubs and other plants) or wind blown debris.

## **ARTICLE 9**

### **USE RESTRICTIONS**

**Section 9.1. Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Community.

**Section 9.2. Development Activity.** Notwithstanding any other provision herein, Declarant and its successors and assigns, including Builders, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of dwelling units on the Property .

**Section 9.3. Temporary Structures.** No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, construction offices or material storage facilities.

**Section 9.4. Signs.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the subdivision or carried by any person or by any other means displayed within the subdivision except the following:

a. **For Sale Signs.** An Owner may erect one (1) sign not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground property for advertising the property for sale.

b. **Declarant's Signs.** Signs or billboards may be erected by the Declarant or any Builder

c. **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

d. **Address Signs.** An Owner may display an address sign or marker in the form and style first installed by the Declarant or Builder of the Unit, or in such other form or style approved by the ARC pursuant to Article 7.

e. **Compliance with Laws.** Notwithstanding the foregoing, Owners erecting signs permitted by this Section 9.4 shall comply with all local and state laws, ordinances and regulations governing such signs, including any requirements for permits. This paragraph shall not be deemed to permit any signs except those specifically enumerated in paragraphs (a) through (d) above.

**Section 9.5. Campers, Boats and Recreational Vehicles.** No campers, boats, boat trailers, recreational vehicles and other types of non-passenger vehicles, equipment, implements or accessories may be kept on any Lot unless the same are fully enclosed within the garage located on such Lot, and said vehicles and accessories are in an operable condition. The ARC as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by the ARC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph. No dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle bearing commercial insignia or names shall be parked on any Lot except within an approved enclosed structure which prevents such view thereof from adjacent lots and streets, unless such vehicle is temporarily parked for the purpose of serving such Lot.

In addition to a vehicle bearing commercial insignia or names, "commercial vehicle" as used herein shall also include, but shall not be limited to, vehicles not used solely for personal non-business activities and vehicles that exhibit in plain view attached, built-in or portable equipment commonly accepted as work-related such as, but not limited to, ladders or lifts, pipes, lawn equipment, tanks for liquids of any kind, hoses, pumps, generators, or other similar equipment or apparatus not typical of a strictly passenger-transporting vehicle. The following types of vehicles shall also be considered prima facie commercial" for the purposes of this section: Panel-type vans without rear passenger side windows, semi-trailer tractors, taxi cabs, tow trucks, buses, or any vehicle with 3 or more axles. Finally, any vehicle that exceeds 85 inches in height as measured from the ground to the highest fixed point of the vehicle or that exceeds more than 24 feet in total overall length shall be prohibited by this Section as its size is incompatible with the Community's aesthetics. Exceptions to the foregoing shall only include otherwise non-permitted vehicles that may be parked without regard to such restrictions by operation of law, such as emergency vehicles.

Section 9.6.     **Animals and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except for cats, dogs or other generally recognized household pets of a reasonable number, provided that they are not kept, bred, or maintained for any commercial purpose; and provided further, than no more than two (2) adult animals may be kept on a single Lot. All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws) and in accordance with all rules established by the Association. Any pet must be carried or kept on a leash when outside a dwelling unit. No pet shall be kept outside of a dwelling unit or in any screened area unless someone is present in the dwelling unit. Any pet must not be an unreasonable nuisance or annoyance to other Lot Owners. All Owners shall pick up and remove any solid animal waste deposited by his or her pet.

**Section 9.7. Garbage and Refuse Disposal.** 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. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No cans, bags, containers or receptacles for storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any Lot where visible from any street adjacent to any Lot except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

**Section 9.8. Sight Distance at Intersections.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and ten (10) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and in a line connecting them at points thirty-five (35) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

**Section 9.9. Parking.** No vehicles, trailers, implements or apparatus may be driven or parked in the Common Area not intended for vehicular access or on any easement unless in use for maintaining such Common Areas. No Vehicle may be parked on any roadway between the hours of 2:00 AM and 5:00 AM. Vehicles parked in violation of these restrictions may be towed at the sole expense of the vehicle's record owner. The Association shall be held harmless with respect to all such towing expenses.

**Section 9.10. Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other nonresidential purposes, except for construction offices, model homes and sales offices as set forth in this Declaration. Notwithstanding the foregoing, and subject to applicable statutes and ordinances, an owner may maintain a home business office within a Home for such Owner's personal use; provided, however, business invitees, customers, and clients shall not be permitted to meet with Owners in Homes unless the Board provides otherwise in Rules and Regulations.

**Section 9.11. Garage Sales** No garage sales are permitted except as permitted by the Association. Prior to the Community completion date, Association shall not permit any garage sales without the prior written consent of Declarant.

**Section 9.12. Detached Buildings.** No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ARC. Every outbuilding, inclusive of such structures as a storage building, greenhouse or children's playhouse shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. In no instance shall an outbuilding exceed one (1) story in height or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling.

**Section 9.13. Fences and Walls.** No fence or wall shall be erected or maintained on any Lot except for (1) fences erected in conjunction with model homes or sales offices, (2) Common Area walls, fences or buffering or screening structures, landscaping or improvements erected by the Declarant or the Association, (3) walls erected by the Declarant or Builder as part of the original architecture of the Unit to which they are appurtenant and in compliance with the plans and specifications therefor approved by the Declarant or the ARC, or (4) fences, walls or enclosures for swimming pools in compliance with local or state ordinances and laws, subject to approval by the ARC pursuant to Article 7.

**Section 9.14. Landscaping.** Decorative ground cover rock in the front and side yard may not exceed ten (10) percent of the total area of the front and side yard. Lawns must be properly maintained (not to exceed six (6) inches in height).

**Section 9.15. Solar Energy Devices.** Subject to the provisions of Section 163.04 Florida Statutes, to the extent applicable, no Owner may erect or maintain solar collector panels or other solar energy devices or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view at a



point in the center of the public street right-of-way directly in front of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ARC.

**Section 9.16. Exterior Finish.** All exterior walls of all dwellings, garages and approved accessory buildings shall be completely finished with wood, stucco, brick, stone, paneling or other material acceptable to the ARC. No unpainted concrete block surfaces shall be visible on any exterior wall. Notwithstanding the foregoing, the ARC is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the neighborhood.

**Section 9.17. Chimneys.** All fireplace flues, smoke stacks and spark arresters shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling or otherwise approved by the ARC.

**Section 9.18. Clothes Hanging Devices.** No rugs, or laundry of an kind, or other similar type article, shall be shaken, hung or exposed so as to be visible outside the Unit; and Clothes hanging devices exterior to a dwelling shall not be permitted on any Lot, Unit or Common Area. However, if such restriction is prohibited by legislation having jurisdiction over the Property, then only portable outdoor clothes drying devices located behind the Unit, as approved by Association shall be permitted and all such devices shall be screened from public view and shall be removed when not in use.

**Section 9.19. Window Treatment.** No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

**Section 9.20. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

**Section 9.21. Mail Boxes.** Mail boxes shall be erected and maintained upon areas determined by the U .S. Postal Service in accordance with the current postal authority standards and the approval of the ARC. If the Postal Service requires the use of cluster type mailboxes, such mailboxes shall be erected and maintained by the Association within the right-of-way of the Private Streets or on other Common Property at locations required or approved by the Postal Service. If the Postal Service provides door-to-door delivery service, each Owner shall be responsible for erecting and maintaining the Owner's mail box in accordance with Postal Service regulations, subject to approval of the ARC of any deviation from the original mail box installed by the Builder.

**Section 9.22. Roof.** No exposed roof surfaces on any principal and/or secondary structures shall be of wood shingles or wood shakes unless rated by the State Insurance Board or other appropriate governmental authority as meeting fire retardant standards. The ARC shall have the authority to approve roof treatments and materials when in its determination such treatments and materials, in the form utilized will not be a detriment to the quality of the neighborhood.

**Section 9.23. Setback Lines.** All buildings or other structures, permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback lines shown on the recorded Plat or imposed by the governmental authorities. Notwithstanding the foregoing, the ARC shall have the right and authority to approve variances from the setback requirements for reasonable cause or to alleviate a hardship, however, no such variances granted by the ARC shall effect to rights of the governmental authorities to enforce the setback requirements shown on the Plat.

**Section 9.24. Sports Equipment: Athletic and Recreational Facilities.** Outdoor sports equipment, athletic, playground and recreational facilities, such as basketball goals, swing sets and sport courts of either a

permanent or temporary nature shall not be placed on any Lot in the subdivision between the street right-of-way and the front of a Unit and must be approved by the ARC.

**Section 9.25. Water and Sewage Systems.** No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks. Water wells used for the sole purpose of landscape irrigation are permitted.

**Section 9.26. Exterior Holiday Decorations.** Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ARC shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 15th of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday. The Association shall have the right, upon thirty (30) days prior written notice to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

**Section 9.27. Television and Radio Receiving Devices.** No exterior radio or television antenna, satellite dish, microwave antenna or other antenna or device for sending or receiving television or radio signals may be erected or maintained on the exterior of any Unit in the Property in such a manner as to be visible to an observer from the street in front of the Unit. Television and/or radio receiving devices may be erected on the exterior of a Unit in a location that does not allow them to be visible to an observer from the street in front of the Unit if such devices are approved for installation by the ARC, provided however, that satellite receiving dishes in excess of 39 inches in diameter shall be prohibited on all Lots. Notwithstanding the foregoing, the Board of Directors of the Association shall have the authority to establish size limitations for television and radio receiving devices that do not have a material effect upon the appearance of the Unit which devices may be approved for use in areas that are visible to an observer from the street if advances in technology create devices that are unobtrusive and do not materially affect the appearance of the Unit. By acceptance of a deed to a Unit within the Property, each Owner agrees that this restrictive covenant is a reasonable limitation on the Owners' ability to receive television and/or radio transmissions, and (1) does not unreasonably delay or prevent installation, maintenance or use of television or radio receiving devices, (2) does not unreasonably increase the cost of installation, maintenance or use of television or radio receiving devices, (3) does not preclude reception of an acceptable quality television or radio signal, and (4) does not impose an unnecessary burden, expense or delay on any Owner. Each Owner covenants with Declarant and every other Owner that the rights of the Association and all other Owners of Units in the Property in the protection of property values and the architectural character and aesthetics of the Property supersedes and takes precedence over the interests of each individual Owner in the placement of television and radio receiving devices, and that the limitations established in this Declaration provide each Owner reasonable alternatives for receiving quality television and radio signals without the necessity of erecting receiving devices in locations that are visible to observers from the street in front of the Unit or otherwise materially affect the appearance of the Unit. Therefore, each Owner agrees to be bound by this limitation and waives the benefits of any contrary rule or regulation promulgated by the Federal Communications Commission or other governmental body or agency.

**Section 9.28. Maintenance of Premises and Landscaping.** No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot. All lawns, landscaping and irrigation systems, and any property, structure, improvement and appurtenance shall be kept in good, safe, clean, neat and attractive condition. All areas not covered by Structures, walkways or paved parking facilities shall be maintained as lawn or landscape areas, with underground irrigation systems, to the pavement edge of any abutting streets and to the water line of any abutting lakes, canals or water bodies. No stone, gravel, or paving of any type shall be used as a lawn unless approved as part of the final landscape plan.

**Section 9.29. Lakes.** No swimming is permitted. The use of gasoline motors is prohibited. Electric motors not larger than three (3) horsepower are permitted. Sailboats, rowboats, and other boats without engines or motors are

permitted. Declarant and the Association shall not be obligated to provide supervisory personnel for the Lakes. No lakefront property shall be increased in size by filing in the water which it abuts; no lake or waterway shall be dug or excavated into any lakefront property; and no slope or abutting lakefront shall be altered in any manner whatsoever. ANY INDIVIDUAL USING THE LAKES SHALL DO SO AT HIS./HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

**Section 9.30. Docks.** Docks, ramps or floats are prohibited in any of the water bodies or lake banks within the Community. Any permanent disturbance to the existing natural shoreline is not permitted. This prohibition does not apply to the Declarant or the Association for a Common Area installation.

**Section 9.31. Air Conditioning.** Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted, without the prior written consent of Declarant or the ARC.

**Section 9.32. No Interference With Construction.** No Owner nor the Association, nor the ARC shall interfere with or impede any of Declarant's development, construction and marketing activities within the Property, so long as Declarant shall be performing same.

**Section 9.33. Discharge into Water Bodies.** Nothing other than storm water or irrigation waters may be discharged into any lake, canal, or other body of water located within or adjacent to the Property. The construction and/or installation of any device through which water is drawn shall be subject to the prior written approval of the ARC as set forth in Article 7 of the Declaration. Irrigation water may not be withdrawn from any body of water within the Property or the ground without the consent of the Board of Directors of the Association, which consent may be withheld in the sole discretion of such Board.

**Section 9.34. Preserve Areas/Conservation Easements.** Tracts "W1", (Cypress Wetland), "W2" (Upland Preserve) identified on the Plat as Preserve Areas and the areas identified on the Plat as Conservation Easements shall be preserved in substantially natural state, and may not be altered from their natural / permitted condition (SFWMD ERP Permit Number 50-04559-P), except in the instance of removal of exotic or nuisance vegetation, or restoration in accordance with the restoration plan, or as may be permitted by modification or amendment to SFWMD ERP Permit Number 50-04559-P. Exotic vegetation may include, but is not limited to, Melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern or any other species currently listed by the Florida Exotic Pest Plant Council. Nuisance vegetation may include cattails, primrose willow and grapevine. Neither the Association, nor the Declarant, nor any Owner shall cut, trim or remove trees or understory vegetation from any Preserve Area, nor shall any person perform any excavation, filling or grading within any Preserve Area, nor shall any person dump or deposit trash, garbage, debris, lawn trimmings or other material in any Preserve Area, nor shall any person cultivate, farm or garden on any part of any Preserve Area, nor shall any person erect, construct or install any permanent or temporary structure or improvement on any Preserve Area, nor shall any person use any part of any Preserve Area to store construction materials, vehicles, boats, trailers, machinery, apparatus, or any other thing, unless such use or activity is first approved in writing by the appropriate governmental authorities and the Association and the Declarant, and all necessary permits for such activities shall have been issued by the governmental authorities and remain current and valid. All activities involving filling, excavating, removing of vegetation (both trees and understory) and storing of materials shall be prohibited within Preserve Areas, unless written approval is first obtained from the SFWMD. There shall be no use of heavy equipment or machinery during maintenance activities of drainage easements within Preserve Areas. Maintenance within the mitigation Preserve Area shall be conducted by hand or hand-operated tools. Any areas designated as Preserve Areas and/or Conservation easements may not be altered from their natural and permitted conditions except as provided under the terms of applicable permits as such permits may be modified or amended. Subject to development approvals, Tract "B" and Tract "C", are reserved for the future development of up to fifty-eight (58) single family units.

**Section 9.35. Lake Maintenance Easement.** Any structure or improvement on a Lot which is placed within a Lake Maintenance Easement, if any, shall be removed, if required by the Declarant or the Association. The cost of such removal shall be paid by the Lot Owner(s) of such dwelling.

**Section 9.36. Swimming Pools.** No above-ground swimming pools, spas, or the like, shall be installed without the consent of the Association.

**Section 9.37. Business Use.** Except for normal construction activity, sale, and re-sale of a Unit, sale or re-sale of other property owned by Declarant, administrative offices of Declarant or its designees, or Association, no trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted upon any portion of the Property nor within any Unit, if in connection therewith customers or patients come to the Unit or if such non-residential use is otherwise apparent from the exterior of a Unit.

**Section 9.38. Hurricane Shutters.** Any hurricane or other protective devices visible from outside a Unit shall be of a type approve by the ARC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season. Any such approved hurricane shutters may be installed or closed up to seventy-two (72) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise.

**Section 9.39. Assumption of Risk.** Without limiting any other provision herein, each person within any portion of the Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of such Common Areas, including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within Stonehaven Estates, and (e) design of any portion of Stonehaven Estates. Each such person also expressly indemnifies and agrees to hold harmless Declarant, Association, and all employees, directors, representatives, officers, and agents of the foregoing, from any and all damages, whether direct or consequential arising from or related to the person's use of the Common Areas, including for attorneys' fees, paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas, including without limitation, all waterbodies, lakes, pools or arms adjacent to a lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, SNAKES, RACCOONS, DEER, SWINE, TURKEYS, AND FOXES. DECLARANT AND ASSOCIATION, SHALL HAVE NO RESPONSIBILTY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

## **ARTICLE 10**

### **PICKETING AND DEMONSTRATIONS**

By acceptance of the deed to any Lot covered by this Declaration, the Owner covenants and agrees with the Owners of all other Lots within the subdivision, that no Owner or resident of any Lot shall engage in picketing, protest marches, sit-in demonstrations, protest speeches or other forms of public protest, including without limitation, displaying signs or placards within public view, upon any Lot or within any Common Area, easement or street adjacent to any Lot, or affixed to any vehicle or apparatus upon or adjacent to any Lot. This prohibition shall not affect the right of any person to participate in any other form of public protest conducted outside the area depicted on the recorded Plat. No Owner or resident of any Lot shall engage in conduct that tends to vilify, ridicule, denigrate, or impugn the character of any other Owner or resident if such conduct occurs on any Lot, Common Area, easement or street depicted on any Plat of Stonehaven Estates. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on his or her constitutional right of free speech and to recognize and agree that all Owners have the right to the peaceful enjoyment of their property; the right of privacy; the right to practice their own religion; the freedom of association; the right to engage in a profession, business or lifestyle of their own choosing provided that the conduct of such profession, business or lifestyle is not illegal and does not otherwise violate any provision of this Declaration.

**ARTICLE 11****ACCEPTANCE AND MAINTENANCE OF COMMON PROPERTY:  
MAINTENANCE OF AREAS OF COMMON RESPONSIBILITY**

**Section 11.1. Construction and Ownership of Common Property Improvements.** It is anticipated that Declarant will designate certain portions of the Property to be Common Property. Declarant may elect to construct or install certain improvements or facilities upon portions of the Common Property, but is not obligated to do so. Declarant shall have the absolute right and power to determine what improvements or facilities, if any, it will install or construct on the Common Property at all times prior to conveying such Common Property to the Association, and within (2) years thereafter. All lands designated by the Declarant as Common Property shall be conveyed to, and title shall be held by, the Association, together with all improvements or facilities constructed or installed thereon, subject to all matters of record the terms, conditions and obligations of any drainage permits, environmental permits or other applicable governmental approvals or permits.

**Section 11.2. Acceptance of Common Property.** If requested by Declarant, within thirty (30) days after receipt of written notice from the Declarant informing the Association that Declarant has completed construction or installation of improvements upon any portion of the Common Property, the President of the Association, or in the absence of the President, any Vice President of the Association, together with a duly authorized representative of the Declarant, shall conduct a thorough inspection of the improvements or facilities, and shall report in writing any incomplete or defective conditions. In such event, the Association shall have the right to engage the service of a professional engineer, or other qualified inspector, to assist with the inspection and preparation of the written report. Declarant shall convey all of its right, title and interest in and to the Common Property by quit claim deed, including the improvements or facilities, to the Association, and the Association shall accept and acknowledge the deed of conveyance, and/or the certificate of completion, and shall thereafter own all right, title and interest in the Common Property and improvements or facilities subject to any applicable easements or other matters of record and any permits or approvals applicable to the Common Property. The dedications, creation by easement or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. The Common Area, personal property and equipment thereon and appurtenances shall be dedicated or conveyed in "as is", "where is" condition without any representation or warranty, expressed or implied, in fact or by law, as to the condition, fitness, or merchantability of the Common Property being conveyed.

**Section 11.3. Maintenance of the Common Property.** The Association shall own, operate and maintain all Common Property, including but not limited to the Private Streets, and the improvements or facilities constructed or installed thereon in first class condition, subject to normal wear and tear, depreciation, and the elements. Maintenance of the Common Property shall include periodic inspection and preventive maintenance for the improvements and facilities owned by the Association.

**Section 11.4. Inspections of the Common Property by Declarant.** Declarant hereby reserves the right and easement, at all times after conveyance of the Common Property to the Association, to enter the Common Property, without prior notice, and to inspect the condition of the improvements and facilities owned by the Association. If Declarant determines, in its sole judgment, that the improvements or facilities are in need of repair or maintenance, it shall so notify the Association in writing, and it shall be the Association's sole obligation to promptly complete such repairs or maintenance. Failure of the Association to properly maintain and repair the Common Property shall relieve the Declarant of any liability to the Association or to any Member for any condition of the Common Property. Declarant shall have the right to make a record of its inspections, without limitation, by photographing and/or videotaping the Common Property, and shall have the right to perform tests or examinations to determine the condition of the Common Property, provided that Declarant shall indemnify the Association from any claims for personal injury, death, property damage or nonpayment asserted by persons claiming by, through or under the Declarant for injury, death or damage occurring as a result of such examinations or tests. Notwithstanding the foregoing, Declarant shall

have no obligation to perform inspections of the Common Property owned by the Association. The deeds conveying the Common Property to the Association may contain a recitation of this reservation, however failure to recite such reservation in such deeds shall not affect the rights of Declarant herein reserved.

**Section 11.5. Maintenance and Repair Records.** The Association shall keep records of maintenance and repairs performed on the Common Property, and Areas of common Responsibility and such records shall be made available to the Declarant and to any Member upon written request. Failure of the Association to maintain appropriate records of maintenance and repairs shall be conclusive evidence that such maintenance and repairs were not performed.

**Section 11.6. Surface Water and Storm Water Management System.** The Declarant has caused or will cause to be constructed within the geographic area shown by the Plat drainage canals, lakes and drainage retention/detention ponds. These drainage structures are part of the overall drainage plan for the Property. The Association shall have unobstructed ingress to and egress from all retention/detention ponds and lakes within the Property at all reasonable times to maintain said ponds and lakes in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. Should the Association fail to sufficiently maintain any portion of the Surface Water and Storm Water Management System within its boundaries ( or any portion of a surface water management system which connects with the Surface Water and Storm Water Management System), the Association shall have the authority to maintain such portion and the cost of such maintenance shall be assessed against and become a debt of the Owner to the Association as a special assessment and shall become immediately due and payable as provided for other assessments of the Association. Consequently, no Owner shall utilize, in any way, any of the drainage facilities or incorporate such facilities in the Owner's development plans, without the express prior written consent of the Declarant and the Association. Further, where an Owner of a Lot is contiguous to any of the drainage facilities, the Owner shall prepare its site plan so that the utilization of its property will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

**Section 11.7. Environmental and Drainage Permits.** The Association shall maintain, as part of the common elements, the Surface Water and Storm Water Management System drainage structures for the Property, and comply with conditions of the permits from the South Florida Water Management District ("SFWMD"), Palm Beach County , the State of Florida, the United States government and their agencies, bureaus and instrumentalities for the drainage system, including, without limitation, perpetual maintenance of all signage and notices required by such permits (herein referred to as the "Environmental and Drainage Permits"). The Association, shall, when requested by Declarant, accept transfer of the Environmental and Drainage Permits applicable to the Property .The conditions of the Environmental and Drainage Permits include monitoring and record keeping schedules, and maintenance.

**Section 11.8. Monitoring.** Water quality data for the water discharged from the permittee's property (i.e., from the Lots and/or Common Property) or into the surface waters of the state shall be submitted to the SFWMD as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Waste Water by American Public Health Association of Methods for Chemical Analyses of Water and Wastes by the U. S. Environmental Protection Agency. If water quality data are required, the permittee (i.e., the Association as assignee of the Environmental and Drainage Permits) shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from the Property or into surface waters of the state.

**Section 11.9. Control.** The Association agrees to operate and maintain the system, and has sufficient ownership so that it has control over all water management facilities authorized.

**Section 11.10. Hold Harmless.** The Association shall hold and save the SFWMD and the Declarant harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the permit.

**Section 11.11. Operation.** The Association shall at all times properly operate and maintain the systems of

treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the Environmental and Drainage Permits, as required by the SFWMD or by any other governmental authority issuing an Environmental and Drainage Permit. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the Environmental and Drainage Permit and when required by SFWMD rules.

**Section 11.12. Access and Inspection.** The Association, specifically agrees to allow authorized SFWMD personnel, upon presentation of credentials or other documents as may be required by law, access to the premises, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with the Environmental and Drainage Permit and SFWMD regulations, such as:

- a. Having access to and copying any records that must be kept under the conditions of the Environmental and Drainage Permit; and
- b. Inspecting the facility, equipment, practices, or operations regulated or required under the Environmental and Drainage Permit; and
- c. Sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the Environmental and Drainage Permit or SFWMD rules; and
- d. Gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

**Section 11.13. Littoral Areas.** Establishment and survival of littoral areas, if required by SFWMD, provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

**Section 11.14. Reports.** The Association shall submit inspection reports in the form required by SFWMD if such reports are required, in accordance with the following schedule unless specified otherwise here or in the permit application:

- a. For systems utilizing effluent filtration or exfiltration, the inspection shall be performed eighteen (18) months after operation is authorized and every eighteen (18) months thereafter.
- b. For systems utilizing retention and wet detention, the inspections shall be performed two (2) years after operation is authorized and every two (2) years thereafter.

**Section 11.15. Surface Water Management Plan.** It shall be the responsibility of each Lot Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40E-4, F.A.C., approved and on file with the SFWMD.

**Section 11.16. Notice to Owners: Non-Disturbance: and Maintenance.** Certain Lots or Units may include, or be adjacent to wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements, including, but not limited to Tracts "W1", "W2", and "BT-3". It is the Lot Owner's responsibility not to remove native vegetation that becomes established within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements abutting their property. Removal includes dredging, the application of herbicide, and cutting. Lot Owners should address any question regarding authorized activities within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements to SFWMD, Environmental Resource Regulation Department. The SFWMD may authorize removal of certain exotic or nuisance vegetation upon application by Lot Owners or the Association. Each Lot Owner, by acceptance of the deed conveying title to the Owner, is deemed thereby to have accepted the partial assignment of

the surface water permit(s) affecting the Lot and to have agreed to abide by all conditions of the permit(s) including, but not limited to, agreement of the Lot Owner not to violate the conditions of the permit(s) regarding dumping of household trash, fill or landscape trimmings or planting or removal of plant life. Lot Owners are hereby notified that activities such as planting grass, sodding, planting any shrub, tree or flower, trimming or removing dead or damaged vegetation, filling low areas, distributing dirt more evenly, digging drainage ways, erecting fences, paving, constructing playhouses or treehouses, or in any other way disturbing the wetlands or preserve areas is subject to strict regulation, and no such activities should occur unless a valid permit has been first obtained.

**Section 11.17. Prior Approval.** No Owner of a Lot within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements described in the approved permit and recorded Plats of the subdivision, unless prior approval is received from the SFWMD pursuant to Chapter 40E-4, F.A.C.

**Section 11.18. Effect of Dissolution.** In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which would comply with Section 40E, Florida Administrative Code, and be approved by SFWMD prior to such termination, dissolution or liquidation. In the event that no other entity exists to receive such transfer, the obligations of the Association shall be deemed assumed by the Owners, and all such Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water and Storm Water Management System in accordance with the requirements of the permits.

**Section 11.19. Special Amendments Relating to Surface Water and Storm Water Management System.** Any amendment to this Declaration which alters the Surface Water and Storm Water Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have the prior written approval of the South Florida Water Management District. This section may not be amended without the consent of such District.

**Section 11.20. Shared Facilities.** It is expected that certain portions of the Surface Water and Storm Water Management System will serve the drainage needs of adjacent lands not owned by Declarant and not within the Property subject to this Declaration. Declarant reserves the right to grant such drainage and/or use easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Property and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

**Section 11.21. Water Levels in Lake.** The Surface Water and Storm Water Management System is designed to provide drainage for the Properties. NEITHER THE ASSOCIATION, THE DECLARANT, PALM BEACH COUNTY NOR THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY OWNER FOR CLAIMS OR DAMAGES ALLEGED BY AN OWNER DUE TO WATER LEVELS IN THE LAKES AND/OR RETENTION PONDS, IF ANY, BEING BELOW NORMAL OR OTHERWISE UNACCEPTABLE TO THE OWNER. Recreational use and aesthetic appearance of the retention ponds is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the retention ponds may recede, and neither the Association, the Declarant, Palm Beach County nor the South Florida Water Management District shall have any liability for such conditions. Provided that the Surface Water and Storm Water Management System is constructed in substantial compliance with the plans and specifications therefor approved by the appropriate governmental authorities, neither the Declarant, nor the Association nor any governmental authority shall be liable to the Association or any Owner for damage caused by flooding, and each Owner acknowledges and agrees that as long as the Declarant and the Association have acted in good faith in reliance on reasonable engineering criteria approved by the governmental authorities in the design and construction of the Surface Water and Storm Water Management System, they shall not be liable for damages sustained by any Owner caused by weather events not taken into consideration in the design or construction of such system and facilities.

**Section 11.22. Bulkhead Maintenance and Replacement.** All bulkheads or retaining walls installed in or around any Lake within the Property by the Declarant or the Association, but not private bulkheads or retaining walls



installed by Lot Owners, shall be part of the Common Area, and shall be maintained, repaired and replaced by the Association as an Association expense, provided however, that if such maintenance, repair or replacement is caused by the failure of the Lot Owner whose Lot abuts the bulkhead or retaining wall to use reasonable diligence and care in the maintenance of the Lot, the Association shall have the right to impose a special assessment against the Owner of such Lot for the reasonable and necessary expense incurred by the Association in so doing. Nothing herein shall limit the right of the Association to enter into agreements with the Association or other governmental or quasi-governmental authority for the maintenance, repair or replacement of such bulkheads and retaining walls.

Section 11.23. Maintenance of Bridge. The vehicular bridge crossing the Lakeworth Drainage District E1 canal (the "Bridge") and road adjacent to the Bridge connecting the Bridge to the Property and to US 441 (State Road 7), providing vehicular and pedestrian passage to and from the Property and US 441 (the "Access Road"), together with the Bridge improvements, the median, pavement, and landscaping within the Access Road are shall be maintained by the Association.

Section 11.24. US 441 Landscape Median. Maintenance of the median landscaping including the irrigation system, if any, therefore within the US 441 median adjacent to the Property shall be the responsibility of the Association in accordance with the Palm Beach County, Florida, Board of County Commissioners, Resolution No. R-96-1944. Maintenance includes, but is not limited to, pruning, fertilizing, irrigation, and alternate watering of Xeriscape material during periods of drought in order to maintain healthy plant material.

Section 11.25. Maintenance and Monitoring of Preserve Areas. The Maintenance and Monitoring of the Cypress Preserve Area shall be the sole and perpetual responsibility of the Association in accordance with the Cypress Preserve Area Management Plan approved by the South Florida Water Management District; and the Maintenance and Monitoring of the Upland Preserve Area shall be the sole and perpetual responsibility of the Association in accordance with the Upland Preserve Management Plan approved by the Palm Beach County Department of Environmental Resource Management. The Cypress Preserve Area Management Plan and the Upland Preserve Management Plan are on file at the office of the Association.

Section 11.26. Changes in Use or Boundaries. Declarant shall have the right by an amendment of Supplement executed by Declarant alone, without the consent of the Association or the Owners, to take such action as may be required to relocate portions of, change the use or extent of use, or modify the boundaries of any Common Area, or any Tract or parcel of land of which the Declarant is the Owner; provided that such amendment or supplement does not deprive any Owner of a means of ingress or egress from his Lot to a publicly dedicated road or of a means of being furnished those public utilities which were immediately prior thereto being furnished to his Lot.

Section 11.27. Areas of Common Responsibility. The Association may maintain property which it does not own, including without limitation, property dedicated to the public, if such maintenance is required by this Declaration or if the Board of Directors determines that such maintenance is necessary or desirable in order to maintain the Community-Wide-Standard or to cause compliance with this Declaration, governmental order, permit, or agreement

Section 11.28. Street Pavers. In compliance with the Palm Beach County approval of the use of paver bricks as an alternative to the standard roadway surface normally approved by Palm Beach County for the streets which form part of the Common Areas, the Association shall indemnify and hold harmless Palm Beach County and any subdivision, department, or agency of Palm Beach County from and against any and all claims for damage to property or personal injury or from any repairs or other work performed upon public utilities located within, upon, or under said alternative roadway surface resulting from the use of street pavers, as an alternative roadway surface. Prompt replacement of the paver brick street surface is the responsibility of the Association after any repairs or other work performed, upon written notification by the County of completion of said work as is reasonable under the circumstances.

## **ARTICLE 12**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Units in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**Section 12.1. Rights of Eligible Holders.** An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association (such request to state (1) the name and address of such holder, insurer, or guarantor; (2) the name of the Owner; (3) the address of the Unit; and (4) the Lot and Block numbers and identification of the Unit, thereby becoming an "**Eligible Holder**"), will be entitled to:

- a. the right to inspect Association documents and records on the same terms as Members;
- b. copies of all written notices to the Unit Owner of material amendments to the Declaration, Articles of Incorporation or Bylaws of the Association when such notices are required to be given to Owners pursuant to such documents;
- c. copies of written notices to the Unit Owner of extraordinary actions to be taken by the Association when such notices are required to be given to Owners pursuant to this Declaration or the Bylaws;
- d. copies of written notices to the Unit Owner of ( 1) any property loss, condemnation or eminent domain proceeding affecting the Common Property resulting in losses greater than ten percent (10%) of the current annual budget, or (2) any Unit insured by the Association in which the Eligible Holder has an interest;
- e. copies of written notices to the Unit Owner of any termination, lapse or material modification of an insurance policy held by the Association;
- f. written notice of any default by an Owner of a Unit subject to a mortgage held by the Eligible Holder in paying assessments or charges to the Association which remains uncured for sixty (60) consecutive days;
- g. written notice of any proposal to terminate the Declaration or dissolve the Association at least thirty (30) days before such action is taken;
- h. the right of a majority of Eligible Holders (determined on the basis of one vote for each Unit standing as security for a mortgage held by the Eligible Holder) to demand that the Association retain a professional management company; and
- i. the right of a majority of Eligible Holders (determined on the basis of one vote for each Unit standing as security for a mortgage held by the Eligible Holder) to demand an audit of the Association's financial records.

**Section 12.2. Voting Rights of Eligible Holders.** For purposes of this Section, an Eligible Holder of a Mortgage shall be entitled to one (1) vote for each first Mortgage owned.

**12.2.1.** Unless at least two-thirds ( $\frac{2}{3}$ ) of the Eligible Holders consent, the Association shall not:

- a. by act or omission abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Property which the Association owns, directly or indirectly (The granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection.);
- b. change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner (A decision, including contracts, by the Board or provisions of any declaration

subsequently recorded on any portion of the Property shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

c. by act or omission change, waive, or abandon any material aspect of the scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Property (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

d. fail to maintain insurance, as required by this Declaration; or

e. use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

12.2.2. Any election to terminate the legal status of the Association shall require:

a. the approval of at least fifty-one percent(51 %) of the Eligible Holders if the election to terminate the legal status is the result of substantial destruction or a substantial taking in condemnation of the Common Property; or

b. the approval of at least sixty-seven percent (67%) of the Eligible Holders if the termination is sought for any other reason.

12.2.3. In the event a portion of the Common Property is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the project unless fifty-one (51 %) of the Eligible Holders approve the taking of other action by the Association.

12.2.4. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Association to engage a professional management company.

12.2.5. The affirmative vote fifty-one percent (51%) of the Eligible Holders shall be sufficient to require the Association to conduct an audit of its financial records.

Section 12.3. **Voluntary Payments by Eligible Holders.** Eligible Holders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of a Association policy, and Eligible Holders making such payments shall be entitled to immediate reimbursement from the Association.

Section 12.4. **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the Eligible Holder of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 12.5. **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the Eligible Holder of any Mortgage encumbering such Owner's Unit.

Section 12.6. **Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently modify any of their respective requirements which necessitate the provisions of this Article, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 12.7. **Applicability of this Article.** Nothing contained in this Article shall be construed to reduce

the percentage vote that must otherwise be obtained under the Declaration, the Bylaws, or Florida corporate law for any of the acts set out in this Article.

**Section 12.8. Failure of Eligible Holder to Respond.** Any Eligible Holder who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Eligible Holder within thirty (30) days of the date of the Association's request.

## **ARTICLE 13**

### **INSURANCE AND CASUALTY LOSSES**

#### **Section 13.1. Association Insurance.**

a. **Required Coverages.** The Association, acting through the Board or its duly authorized agent, shall obtain and continue in effect, as a Common Expense, the following types of insurance, if available at a reasonable cost, or, if not reasonably available, the most nearly equivalent coverages as are reasonably available:

i. Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair, and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

ii. Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

iii. Workers compensation insurance and employers liability insurance, if and to the extent required by law;

iv. Directors' and officers' liability coverage;

v. Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

vi. Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the

contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

b. **Policy Requirements.** The Board shall annually review the types and amounts of insurance coverage for sufficiency. All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 13.1 (a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, however, if the Board reasonably determines, after notice and an opportunity to be heard in accordance of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 6.7.

All insurance coverage obtained by the Board shall:

- i. be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- ii. be written in the name of the Association (Policies on the Common Areas shall be for the benefit of the Association and its Members);
- iii. not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- iv. contain an inflation guard endorsement; and
- v. include an agreed amount endorsement, if the policy contains a co- insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- vi. a waiver of subrogation as to any claims against the Board and the Association's officers, employees, and manager, and the Owners and their tenants, servants, agents, and guests;
- vii. a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- viii. an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of anyone or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- ix. an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- x. an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- xi. a cross liability provision; and

xii. a provision vesting in the Board exclusive authority to adjust losses, provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

c. **Damage and Destruction.** Immediately after damage or destruction to all or any part of the Community covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

i. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" and Class "C" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition.

ii. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagee and may be enforced by the Mortgagee of any affected Unit. If insurance proceeds are sufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

**Section 13.2. Owners' Insurance.** By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 7. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

## **ARTICLE 14**

### **GENERAL PROVISIONS**

**Section 14.1. Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, Members representing three-fourths ( $\frac{3}{4}$ ) the votes of the Association vote in favor of terminating this Declaration at the end of its then current term. Termination of this Declaration is deemed to be an **"Extraordinary Action"** subject to the provisions of Section 14.2.

Written notice of any meeting at which such 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 sixty ( 60) days in advance of said meeting. In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution.

Said certificate shall be recorded in the Public Records of Palm Beach County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. Termination of the Association shall not have the effect of terminating easements herein provided or granted prior to such termination, or terminating contractual rights created prior to termination which from the context of the contract were meant to survive termination.

**Section 14.2. Amendment.** This Declaration may be amended at any time by an instrument signed by the Declarant until Turnover, without the approval of any other party, and after Turnover, by an instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been adopted in accordance with this Declaration, the Articles of Incorporation and/or the By-Laws. The amendment shall become effective upon its filing in the public records of Palm Beach County, Florida. Provided, however, that:

a. As long as Declarant is an Owner of any Lot or Unit, no amendment shall become effective without the written consent of Declarant.

b. Until Turnover, any amendments to this Declaration (including, without limitation, any amendment which results in the annexation of additional lands into the Property , the merger or consolidation of the Association with any other owners associations, the dedication of any part of the Common Property for public safety, and the conveyance, mortgaging, or encumbrance of any part of the Common Property) must have prior written approval of the FHA or VA in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

c. Declarant specifically reserves that absolute and unconditional right (subject only to FHA or VA approval as set forth above, if required), so long as it owns any of the Property, to amend this Declaration without the consent or joinder of any party: (i) to conform to the requirements of any holder of a Mortgage; (ii) to conform to the requirements of title insurance companies; (iii) to conform to the requirements of any governmental entity having control or jurisdiction over the Property; (iv) to clarify the provisions of this Declaration; or (v) in such other manner as Declarant may deem necessary or convenient.

d. After the Turnover Date, but subject to the general restrictions and amendments set forth above, this Declaration may be amended with the approval of sixty-six and  $\frac{2}{3}$  ( 66  $\frac{2}{3}$  % ) percent of the Board and Members.

e. As long as Jeffrey M. Rosenberg, Trustee holds a mortgage on the Future Development Tract no amendment shall materially amend, modify, or change any rights of said mortgage holder regarding the Future Development Tract, without the prior written consent of Jeffrey M. Rosenberg, Trustee, which consent shall not be unnecessarily withheld or delayed.

Amendments to the Articles and By-Laws shall be made in accordance with the requirements of the Articles and By-Laws and need not be recorded in the public records of Palm Beach County, Florida.

**Section 14.3. Material Amendments and Extraordinary Actions.** The Association may amend this Declaration in regard to the matters identified herein as "Material Amendments," or may undertake the actions herein listed as "Extraordinary Actions" only in the following manner:

**14.3.1. Material Amendments.** The matters listed below are deemed to be material to this Declaration, and any proposed amendment concerning such matters shall be deemed to be a "**Material Amendment**":

- a. the manner of determining the basis for assessments or the administration of assessment liens;
- b. any method of imposing or determining any charges to be levied against individual Unit Owners;
- c. reserves for maintenance, repair or replacement of Common Area improvements;
- d. maintenance obligations;
- e. allocation of rights to use Common Areas;
- f. any scheme of regulation or enforcement of standards for maintenance, architectural design or appearance of improvements on Units;
- g. reduction of insurance requirements;
- h. restoration or repair of Common Area improvements;
- i. the addition, annexation or withdrawal of land to or from the project;
- j. voting rights;
- k. restrictions affecting leasing or sale of a Unit; or
- l. any provision which is for the express benefit of Mortgagees, or Eligible Holders.

**14.3.2. Extraordinary Actions.** The matters listed below are deemed to be extraordinary under this Declaration, and any proposed action concerning such matters shall be deemed to be an "**Extraordinary Action**":

- a. merging or consolidating the Association (other than with another nonprofit entity formed for purposes similar to the Association);
- b. determining not to require professional management, if that management has been required by the Association documents, a majority of Eligible Holders or a majority vote of the Members;
- c. expanding the Association to include land which increases the overall land area of project or number of Units by more than 10 %;
- d. abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of the Common Areas (except for (1) granting easements which are not inconsistent with, or which do not interfere with the intended Common Area use; (2) dedicating Common Area as required by a public authority; (3) limited boundary line adjustments made in accordance with the provisions of this Declaration; or (4) transferring Common Area pursuant to a merger with a nonprofit entity formed for purposes similar to the Association);
- e. using insurance proceeds for purposes other than reconstruction or repair of insured improvements;
- f. making capital expenditures (other than for repair or replacement of existing



improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget for that period;

- g. termination of the Declaration or other termination of the planned unit development;
- h. dissolution of the Association; or
- i. using Association funds to pay legal expenses, including without limitation, attorney's fees, expert witness fees, filing fees, court costs, investigation expenses or other expenses arising from the investigation, feasibility analysis, preliminary assessment, legal review or consultation, filing suit, gathering or giving evidence, appeals, motions or trials, concerning taking any legal action intended to compel the Declarant to perform any obligation set forth herein or to recover from the Declarant any monetary damages, payment or reimbursement of any kind.

**14.3.3. Notice Required for Material Amendment or Extraordinary Action.** Written notice of any proposed Material Amendment or Extraordinary Action shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a summary of any Material Amendment or Extraordinary Action to be considered. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**14.3.4. Approval Required for Material Amendment or Extraordinary Action.** Material Amendments and Extraordinary Actions may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67 % of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at the meeting called as described in the notice at which a quorum is present, and the affirmative vote of the Declarant, or (2) by the written consent of at least 67 % of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

**14.3.5. Additional Approval Requirements.** In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

- a. any Material Amendment or Extraordinary Action that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either: (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at a meeting called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% of all Members of such Class to any action taken in lieu of a meeting.
- b. any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written

notice was delivered to the FHA and VA and no objection was timely received from such agencies.

**14.3.6. Notice of Material Amendment or Extraordinary Action.** Upon approval of a Material Amendment or Extraordinary Action, the Association shall record appropriate written notice thereof in the Public Records of Palm Beach County, Florida, and take all such further action as may be prudent or necessary to implement and carry out the Material Amendment or Extraordinary Action.

**Section 14.4. Non-Material Amendments.** The Association may amend this Declaration in regard to all matters, except those identified in Section 14.2 as "Material Amendments," in the following manner.

**14.4.1 Amendments by Declarant.** During the period in which the Declarant retains the status of the Class "B" Member, Declarant shall have the right to amend this Declaration, without the necessity of joinder by Owners or any other persons or entities, to make non substantial changes that do not materially or adversely affect the interests of other Owners or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in this Declaration.

**14.4.2. Amendments by Members - Notice Required for Non-Material Amendment.** Written notice of any proposed Non-Material Amendment shall be delivered to each Member at least 30 days in advance of (1) any meeting at which such matter is to be discussed or (2) any action which is to be taken by written approval of the Members in lieu of a meeting. The notice shall state the purpose of the meeting or proposed written approval and shall contain a summary of any Non-Material Amendment to be considered. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting. If the Association has, or is planned to have, 250 Members or less - the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in this Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**14.4.2. Approval Required for Non-Material Amendment.** Non-Material Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 51% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at the meeting called as described in the notice at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 51 % of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting.

**14.4.3. Notice of Non-Material Amendment.** Upon approval of a Non-Material Amendment, the Association shall record appropriate written notice thereof in the Public Records of Palm Beach County, Florida, and take all such further action as may be prudent or necessary to implement and carry out the Non-Material Amendment.

**Section 14.5. Assignment of Rights and Duties.** Any and all of the rights, powers and reservations of the Association and Declarant may be assigned to any person, corporation or association which will assume the duties of the Association or Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assume such duties, he or it shall to the extent of such assignment have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Association or Declarant. Further, the Association or Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate.

**Section 14.6. Municipal Service Taxing Units.** In order to perform the services contemplated by this Declaration, the Association or Declarant, in conjunction with Palm Beach County, Florida, may seek the formation of special purpose municipal service taxing units ("MSTUs"). The MSTUs will have responsibilities defined in their enabling resolutions which may include, but are not limited to, maintaining roadway informational signs, traffic control

signs, benches, trash receptacles and other street furniture, keeping all public roadways and roadside pedestrian easements clean of wind blown trash and debris, mowing, payment of electrical charges, maintenance of drainage canals, ponds and structures, maintenance of designated landscape areas, payment of energy charges for street and pedestrian lighting, and other services benefiting the Property. In the event such MSTU s are formed, the Property will be subject to assessment for the cost of services performed within the MSTU and personnel working for or under contract with Palm Beach County shall have the right to enter upon lands within the Property to affect the services contemplated. Each Owner by acquiring lands within the Property agrees to pay each and every MSTU assessment imposed upon the Owner's land in a timely manner, failing which such assessments and special charges shall be a lien upon those lands. The Association retains the right to contract with Palm Beach County to provide the services funded by the MSTUs. Services performed by an MSTU that would otherwise be performed by the Association and for which the MSTU imposes assessments on the Owners shall be removed from the Association's budget and the Board shall reduce the Annual Maintenance Assessment accordingly.

**Section 14.7. Enforcement.**

a. Except to the extent prohibited by law, in the event of a violation of the provisions contained in the Declaration, Articles of Incorporation or Bylaws as amended, or the Rules and Regulations as amended from time to time, by an Owner or a person acting by, through, or under an Owner, the Association shall have the right to levy reasonable monetary fines or suspend the privileges of the Owner or any person acting by, through, or under an Owner. Each day of an Owner's failure to comply with the Declaration, Articles of Incorporation or Bylaws as amended, or the Rules and Regulations as amended from time to time, shall be treated as a continuing violation to the maximum aggregate fine allowed by law for that violation. Fines shall be in such reasonable and uniform amounts as the Association shall determine. Suspensions and fines shall be imposed in the manner, and subject to the limitations, provided in Section 720.305 of the Florida Statutes as amended from time to time. The Board shall have the authority to promulgate rules and regulations containing additional procedures to effectuate the enforcement intention of this Section from time to time.

b. In addition to the foregoing and not alternatively, enforcement of these covenants, conditions and restrictions shall may also be in accordance with this Article 14 by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and to enforce any lien created by these covenants; and failure by the Association or any Owner or Declarant, or their successors or assigns, to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter. Further, the Association shall have the right of self help to cure any violations that remain uncured after any required notice is given. If the Association elects to commence enforcement proceeding after delivery of notice thereof to any Owner in violation hereof, and incurs any expense in the commencement of such proceeding, the Association shall prosecute such enforcement proceedings to conclusion notwithstanding subsequent voluntary compliance by the owner until the Association shall have recovered its expenses from such Owner.

**Section 14.8. Mediation and Arbitration of Disputes.** Before commencing any other form of legal action to enforce the provisions of this Declaration, the party desiring enforcement shall first demand mediation by an independent third party professional mediator. If a settlement of the dispute is reached through voluntary mediation, a notice thereof shall be executed by the parties, and, if appropriate, shall be recorded in the real property records to place all successors and assigns of the Owner on notice of such settlement. If no settlement is achieved through voluntary mediation, either party shall have the right to initiate mandatory binding arbitration according to the rules of the American Arbitration Association. All persons owning any portion of any Lot, their family members and tenants, shall be deemed to have consented to mandatory binding arbitration of all disputes arising under this Declaration, and shall cooperate and participate in such arbitration proceedings. The award of the arbitrator may be entered as an agreed judgment in any litigation or legal proceeding concerning the subject matter of the arbitration, and shall be enforceable in accordance with its terms. In any such arbitration proceedings, the arbitrator shall award recovery of the arbitration fees, attorneys' fees, expert witness fees, and other costs and expenses of such proceeding to the prevailing party. Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity and may be instituted by Declarant, its successors or assigns, the Association, its successors or assigns, or any Owner against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and

failure by the Association or any Owner or Declarant to enforce any covenant, condition or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter. Further, the Association shall have the right of self help to cure any violations that remain uncured after any required notice is given.

Section 14.9. **Severability.** Should any covenant, condition or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 14.10. Interpretation.** The Board shall have the right except as limited by any other provisions of this Declaration or the Bylaws to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its good faith, determination, construction or interpretation shall be final and binding. In all cases, the provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the maintenance of Common Areas and the facilities located thereon.

**Section 14.11. Disposition of Common Property on Termination of Declaration.** Should the Members of the Association vote not to renew and extend this Declaration as provided for herein, all Common Property owned by the Association at such time shall be transferred to another association or appropriate public agency having similar purposes. If no other association or agency will accept such property then it will be conveyed to a Trustee appointed by the Circuit Court of Palm Beach County, Florida, which Trustee shall sell the Common Property free and clear of the limitations imposed hereby upon terms established by the Circuit Court of Palm Beach County, Florida. That portion of the Open Space or Common Property consisting of the Surface Water and Storm Water Management System cannot be altered, changed or sold separate from the lands it serves except that Declarant shall be obligated to and shall convey that portion of the Open Space consisting of the Surface Water and Storm Water Management System to the Association upon completion and approval of such system by all applicable governmental authorities. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of the Common Property. The excess of proceeds, if any, from Common Property shall be distributed among Owners in a proportion which is equal to the proportionate share of such Owners in Common Expenses.

**Section 14.12. Execution of Documents.** The Plat may require from time to time the execution of certain documents required by governmental authorities. To the extent that said documents require the joinder of Owners, Declarant by its duly authorized officers may, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section shall recite that it is made pursuant to this Section.

**Section 14.13. Indemnification.** The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Section 14.14. Prohibited Actions.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity which will violate its non-profit status under applicable state or federal law.

**Section 14.15. Singular, Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**Section 14.16. Construction.** The provisions of this Declaration shall be liberally construed to effectuate its

purpose of creating a uniform plan for the operation of the Property

**Section 14.17. Conflicts.** In the event of conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

**Section 14.18. Partial Invalidity.** The invalidation of anyone of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

**Section 14.19. Additional Declarant Rights.** Nothing herein shall be construed to restrict, prohibit or in any way inhibit Declarant's efforts to promote, market and sell dwelling units within the Property. In particular and without limitation, Declarant shall be entitled to operate sales trailers, model homes and sales office in the model homes within the Property. Declarant shall also be entitled to sponsor promotional events, and make or permit such other use of the Property as Declarant deems appropriate to promote the sale of dwelling units within the Property. Declarant hereby reserves for itself, its successors, designees, and assigns, the non-exclusive right to use all Common Areas and all other portions of the Property retained by Declarant in conjunction with and as part of its program of sale, construction, marketing, and development including, but not limited to, the right to carry on construction and to enter and transact business, maintain models and sales and rental offices; employ sales personnel; show dwelling units for sale by Declarant; and use the portions of the Property and improvements owned by Declarant or the Association for the purposes set forth above. This provision may not be modified nor deleted without the express written consent of Declarant, which consent may be withheld for any reason.

**14.20. Amendment of Provision Relating to Declarant.** As long as the Declarant or its successors or assigns holds any property for development or sale in the ordinary course of business within Stonehaven Estates, no amendment shall have the effect of changing any provision relating specifically to the Declarant without the Declarant's written consent.

## **ARTICLE 15**

### **DISCLOSURES AND WAIVERS**

**Section 15.1. TRACT "D"; DECLARATION OF COVENANTS.** THE PROPERTY IS SUBJECT TO CERTAIN DECLARATION OF COVENANTS RECORDED IN OFFICIAL RECORDS BOOK 8582, AT PAGE 506 OF THE PUBLIC RECORDS OF PALM BEACH, COUNTY, FLORIDA, AS AMENDED BY FIRST AMENDMENT TO DECLARATION OF COVENANTS RECORDED IN OFFICIAL RECORDS BOOK 11230, AT PAGE 1402 OF THE PUBLIC RECORDS OF PALM BEACH, COUNTY, FLORIDA, AND SECOND AMENDMENT TO SAID DECLARATION OF COVENANTS (HEREIN COLLECTIVELY REFERRED TO AS THE "DECLARATION OF COVENANTS", COPY ATTACHED HERETO AS EXHIBIT "E"), WHICH IN PART PROVIDES THAT IF ANY GOVERNMENTAL AGENCY, AS A CONDITION TO APPROVING THE DEVELOPMENT OF THE LAND ABUTTING THE NORTH BOUNDARY OF THE E1 CANAL ADJACENT TO THE NORTH BOUNDARY OF THE PROPERTY, REQUIRES AN ADDITIONAL RIGHT OF WAY OVER THE PORTION OF THE PROPERTY IDENTIFIED AS TRACT "D" ON THE PLAT, THE ASSOCIATION OR THE DECLARANT, AS THE CASE MAY BE, SHALL GRANT TO SUCH GOVERNMENTAL AUTHORITY AN EASEMENT OR RIGHT-OF-WAY WITHIN TRACT "D", NOT TO EXCEED FIFTY -FIVE (55) FEET IN WIDTH.

**Section 15.2. DILLMAN ROAD ACCESS.** THERE IS CURRENTLY NO ACCESS TO AND FROM THE PROPERTY AND DILLMAN ROAD. THE PLAT OF STONEHAVEN P.U.D., AND THE MASTER SITE PLAN FOR STONEHAVEN ESTATES DOES NOT PROVIDE ACCESS TO OR FROM DILLMAN ROAD AND THE PROPERTY. IF IN THE FUTURE AN ACCESS ONTO DILLMAN ROAD, (HEREIN REFERRED TO AS THE "ADDITIONAL ACCESS"), IS DESIRED BY DEVELOPER OR BY THE ASSOCIATION, THE COST FOR THE ADDITIONAL ACCESS WHICH INCLUDES, BUT NOT LIMITED TO, PERMITTING AND DESIGN COSTS, BRIDGE CONSTRUCTION COSTS, AND ROADWAY

CONSTRUCTION COSTS SHALL BE PROVIDED BY THE: (A) POD DEVELOPER, IF AT THE TIME OF THE REQUEST FOR THE ADDITIONAL ACCESS, ONE OR MORE DWELLING UNIT LOTS ARE OWNED BY DEVELOPER, OR (B) ASSOCIATION, IF AT THE TIME OF THE REQUEST THERE ARE NO LOTS OWNED BY THE DEVELOPER. IF A CONNECTION TO DILLMAN ROAD IS PROVIDED, A PHYSICAL BARRIER WITH LANDSCAPING AT THE EASTERN TERMINUS OF DILLMAN ROAD AT THE PROPERTIES ENTRANCE, SHALL BE PROVIDED LIMITING VEHICULAR TRAFFIC TO THE IMPROVED PORTION OF DILLMAN ROAD ONLY. THE LANDSCAPE MATERIAL SHALL CONSIST OF CANOPY TREES AND UNDERSTORY PLANTING AS PERMITTED BY THE COUNTY ENGINEER. THE ASSOCIATION, AND EACH OWNER BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE TO A HOME, UNIT OR LOT RECOGNIZES, ACKNOWLEDGES AND AGREES THAT (1) THE ASSOCIATION SHALL BE RESPONSIBLE FOR THE COST OF THE ADDITIONAL ACCESS, IF ON THE DATE OF THE REQUEST DEVELOPER NO LONGER OWNS A DWELLING UNIT LOT IN STONEHAVEN ESTATES, AND (2) RECOGNIZE, AGREE AND CONSENT TO THE REQUIREMENT AND CONDITION PRECEDENT IMPOSED HEREBY THAT ANY REQUEST FOR ACCESS ONTO DILLMAN ROAD MADE BY THE ASSOCIATION WHILE DEVELOPER OR DECLARANT OWN ONE OR MORE LOTS IN STONEHAVEN SHALL REQUIRE THE APPROVAL OF ONE HUNDRED PERCENT (100%) OF THE OWNERS.

Section 15.3. Maintenance of Access Road. The bridge across the Lakeworth Drainage District E1 canal (the "**Bridge**") and the road connecting the Bridge to the Property and to US 441 (State Road 7) hereinafter referred to as the "access road", providing vehicular and pedestrian passage to and from the Property and US 44 1, together with the Bridge improvements, including but not limited to the median, pavement irrigation system, landscaping within the Access Road are Areas of Common Responsibility, and shall be maintained by the Association

Section 15.4. No Liability For Third Party Acts. Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property in Stonehaven Estates. The Association may, but is not obligated to, maintain or support certain activities within the Community which promote or enhance safety or security within the Community. However, the Association, and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Community, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures under-taken.

No representation or warranty is made that any systems or measures, including, without limitation, fire protection, burglar alarm, or other security monitoring systems, or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants and invitees of its Lot that the Association, the Board and its committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Stonehaven Estates assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

Section 15.5. View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any open space within the Community will be preserved without impairment. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association (with respect to the Common Area) has the right to relocate, prune, then, or add trees and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 15.6. Construction Activities. All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, shall, from time to time, conduct construction activities within Stonehaven Estates. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or, Stonehaven Estates generally the Owners and all occupants and users of Lots acknowledge, stipulate, and

agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise), any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (e) that Declarant, and all of its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable for any losses, damages (compensatory, consequential punitive, or otherwise), injuries, or deaths arising from or relating to any breach of this covenant; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within Stonehaven Estates.

**Section 15.7. Water Management.** Each Owner acknowledges and agrees that any lakes or wetlands are designed as water management areas and are not designed solely as aesthetic features. Due to fluctuations in water elevations within the immediate area, water levels will rise and fall. Each Owner further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner agrees to release and discharge Declarant from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' and paralegals' fees, expert witness fees, and court costs' and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations. Owners shall not alter, modify, expand, or fill any lakes or wetlands located within or in the vicinity of Stonehaven Estates without the prior written approval of Declarant and any local state, or federal regulatory or permitting authorities as may have relevant jurisdiction over such matters.

**Section 15.8. Liability for Association Operations.** The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant (including its successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' and paralegals' fees, expert witness fees, and court costs and cost at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement maintenance, and operation of amenities and other portions of the Common Areas and Areas of Common Responsibility and the collection of assessments.

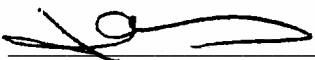
**Section 15.9. Boundary Agreement.** The Association and members are bound by the Boundary Agreement and the Easements executed pursuant to it, to the extent stated therein.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

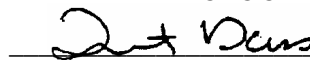
WITNESSES:

**CENTEX HOMES, a Nevada general Partnership**

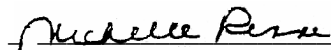
By: Centex Real Estate Corporation, a Nevada corporation  
its managing general partner



Print Name: David Abrams



Trent Bass, Division President



Print Name: Michelle Renne

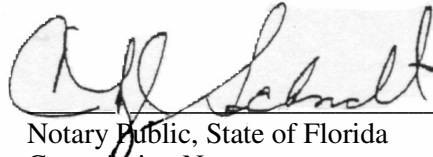


STATE OF FLORIDA )

) SS:

COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 25 day of May, 2001, by TRENT BASS as Division President of CENTEX REAL ESTATE CORPORATION, a Nevada corporation, managing general partner of CENTEX HOMES, a Nevada general partnership, on behalf of the corporation. He is personally known to me.

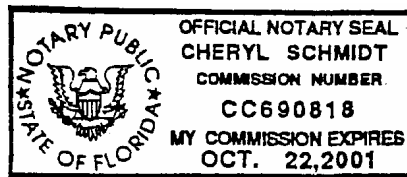


Notary Public, State of Florida

Commission No.: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(Notary Seal)



# JOINDER

STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC. does hereby join in the and the document to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 25 day of May, 2001.

WITNESSES:

STONEHAVEN ESTATES HOMEOWNER 'S ASSOCIATION, INC., a Florida not-for-profit corporation

Michelle Renne  
Print Name: Michelle Renne

By: David Abrams  
David Abrams, President

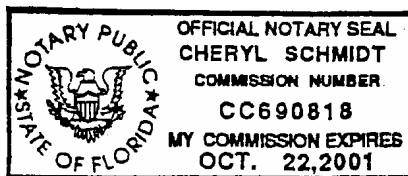
Jessica Poluikoski  
Print Name: Jessica Poluikoski

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 25 day of May, 2001, by DAVID ABRAMS, President of STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, freely and voluntarily under authority duly vested in him by said corporation. He is personally known to me.

Cheryl Schmidt  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

(Notary Seal)





**TABLE OF EXHIBITS**

- EXHIBIT A - Legal Description of Property
- EXHIBIT B - Legal Description of Common Area
- EXHIBIT C - Articles of Incorporation of Stonehaven Estates Homeowner's Association, Inc.
- EXHIBIT D - By-Laws of Stonehaven Estates Homeowners' Association, Inc.
- EXHIBIT E - Declaration of Covenants (referenced in Section 15.1)
- EXHIBIT F - Boundary and Development Settlement Agreement (referenced in Section 1.9)

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

Lots 1 through 195; and Tracts "A"; "B"; "BT1"; "BT2"; "BT3"; "C"; "D"; "L"; "OS1"; "OS2"; "OS3"; "OS4"; "OS5"; "OS6"; "OS7"; "OS8"; "R"; "W1"; and "W2" of Stonehaven P.U.D., a subdivision in Palm Beach County, Florida, according to the Plat thereof recorded in Plat Book 89, Pages 1 through 11, inclusive, of the Official Records of Palm Beach County, Florida.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF COMMON PROPERTY TO BE INCLUDED IN THE**  
**STONEHAVEN HOMEOWNERS ASSOCIATION, INC.**

Tracts "A", "BT1", "BT2", "BT3", "D", "L"; "OS1", "OS2", "OS3", "OS4", "OS5", "OS6", "OS7", "OS8", "R", "W1", and "W2" of Stonehaven P .U .D ., a subdivision in Palm Beach County, Florida, according to the Plat thereof recorded in Plat Book 89, Pages 1 through 11, inclusive, of the Official Records of Palm Beach County , Florida.

**EXHIBIT "C"**

**ARTICLES OF INCORPORATION  
STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC.**

**(Attached)**

**DCCR 11027 final**

02/22/2002 07:33:22 20020096651  
OR BK 13436 PO 1257  
Palm Beach County, Florida

PREPARED BY & RETURN TO:

Centex Homes  
Legal Department  
8198 Jog Road, Suite  
200 Boynton Beach, Florida 33437

**SECOND AMENDMENT  
TO  
DECLARANT OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR STONEHAVEN ESTATES**

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Stonehaven Estates is made as of this 5<sup>th</sup> day of February, 2002, by Centex Homes, a Nevada general partnership ("**Declarant**").

WHEREAS, Declarant has previously executed and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Stonehaven Estates, dated May 25, 2001, recorded June 18, 2001, in Official Records Book 12652, Page 728; as amended by that First Amendment to the Declaration of Covenants, Conditions and Restrictions dated January 2, 2002 and recorded in Official Records Book \_\_\_\_, Page; both of the Official Records of Palm Beach County, Florida ("**Declaration**"); and

WHEREAS, the Declaration designates in Section 14.4.1 that during the period in which the Declarant retains the status of the Class "B" Member, Declarant shall have the right to amend this Declaration, without the necessity of joinder by Owners or any other persons or entities, to make non substantial changes that do not materially or adversely affect the interests of other Owners or other affected parties, and to clarify any ambiguities or conflicts; or correct any scriveners' errors in this Declaration.

WHEREAS, the Declaration was initially recorded without inclusion of "Exhibit "C" Articles of Incorporation Stonehaven Estates Homeowners Association, Inc."; and

WHEREAS, Declarant still retains the status of the Class "B" Member; and

WHEREAS, Declarant desires to amend the Declaration to incorporate Exhibit "C" Articles of Incorporation Stonehaven Estates Homeowner Association, Inc., as initially intended;

NOW THEREFORE, the Declarant hereby amends the Declaration as follows:

Declarant hereby amends the Declaration to incorporate Exhibit "C" Articles of Incorporation



Stonehaven Estates Homeowners Association, Inc., into the Declaration as initially intended;

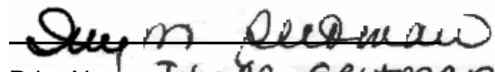
IN WITNESS WHEREOF, the Declarant, has executed this First Amendment as of the day and year first above written.


WITNESSES

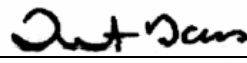
DECLARANT

CENTEX HOMES, a Nevada general Partnership

By: Centex Real Estate Corporation, a Nevada corporation, its managing general partner

  
Print Name: Ivy M. Seitman

  
Print Name: Tracy A. Minertey

By:   
Trent Bass  
Division President

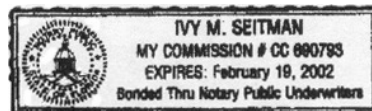
STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on the 5' day of February, 2002 by Trent Bass, as Division President of Centex Real Estate Corporation, a Nevada corporation, managing general partner of Centex Homes, a Nevada general partnership, on behalf of the corporation. He is personally known to me.

[SEAL]

\_\_\_\_\_  
Notary Public State of Florida  
Print Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**EXHIBIT "C"**

**ARTICLES OF INCORPORATION  
STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC.**

**(Attached)**

**DCCR 11027 final**

# State of Florida

## Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on January 2, 2001, for STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H00000062435. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N99000005102.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Third day of January, 2001

Authentication Code: 701A00000289-010301-N99000005102-1/1



CR2EO22 (1-99)

*Katherine Harris*  
Katherine Harris  
Secretary of State

H000000624395

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**OF**

**STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC.,  
a Florida corporation, Not-for-Profit**

In compliance with the requirements of chapter 617.1007, Florida Statutes, the undersigned persons do hereby make, subscribe and acknowledge that they have voluntarily associated themselves together for the purpose of forming a corporation not-for-profit, the articles of incorporation of which read as follows. All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration of Covenants, Conditions and Restrictions for Stonehaven Estates and Stonehaven Estates Homeowners Association, Inc., hereinafter identified.

**ARTICLE I**

**NAME**

The name of the corporation is **Stonehaven Estates Homeowners Association, Inc.**, hereinafter referred to as the "Association" or the "Homeowners' Association".

**ARTICLE II**

**PRINCIPAL OFFICE**

The principal office of the Association is located at 8198 Jog Road, Suite 200, Boynton Beach,

**ARTICLE III**

**REGISTERED OFFICE AND REGISTERED AGENT**

The registered office of the Association shall be at 8198 Jog Road, Suite 200, Boynton Beach, Florida, 33437 with the privilege of having its office and branch offices at other places within or without the State of Florida. The registered agent at that address shall be CENTEX REAL CORPORATION (herein referred to as "Centex").

**ARTICLE IV**

**PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate pecuniary gain or profit to the members thereof, will make no distribution of income to its members, directors or officers and the specific purposes for which it is formed are to provide for the ownership, operation, maintenance and preservation of the Common Area, Area of Common Responsibility, and for the maintenance and improvement of any easements granted to the Association with the lands identified as Stonehaven Estates (the "Association Properties") pursuant to that certain Declaration of Covenants, Conditions and Restrictions for Stonehaven Estates and the Stonehaven Estates Homeowners Association, Inc., recorded in the Public Records of Palm Beach County, Florida, (hereinafter called the "Declaration"), and such additional properties as may be added thereto from time to time by annexation or otherwise as provided in the Declaration and in these Articles. The Association is formed to promote the health, safety and welfare of its members and the residents within the Association Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and to:

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(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration which is hereby incorporated into this instrument as is fully reproduced herein;

(b) Fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes at governmental charges levied or imposed against the property of the Association;

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds (2/3) of the votes of each class of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the Common Area to any Public Agency or authority or utility for such purpose and subject to such conditions as may be agreed to by the Members. Such dedication or transfer shall only be effective with the assent of two-thirds (2/3) of the votes of each class of Members, agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidation with other not-for-profit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the votes of each class of Members; and

(g) Purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of interests in, real or personal property, except to the extent restricted hereby; to contract for the management and maintenance of the Common Area and Area of Common Responsibility and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules and Homeowners, repair and replacement of the Common Area and Area of Common Responsibility with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including but not limited to the making of assessments, promulgation of rules and execution of contracts on behalf of the Association;

(h) Have and to exercise any and all powers, rights and privileges which a corporation organized under the corporation not for profit law of the State of Florida, by law may now or hereafter have to exercise.

## **ARTICLE V**

### **MEMBERSHIP**

Section 5.1. Every Owner of a Lot or Unit within the lands subjected to the Declaration (as defined in the Declaration), including Declarant and any Builders, shall be a member of the Association. Memberships in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Unit

Section 5.2. There shall be three (3) classes of Members as A", Class "A" Members shall be all Owners with the exception of the Declarant and any Builders, Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

Class "A". Class "A" Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

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Class "B". The Class "B" Member shall be the Declarant, or its specifically designated (in writing) successor and or assigns. Prior to the Turnover Date (defined in Section 6.3.1). Declarant shall have the total number of votes equal to the number of votes held by all other Members plus one(1)vote. On the Turnover Date the Class "B" membership shall cease and be converted to Class "A" membership. Upon conversion to Class "A" membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association.

Class "C". All Builders, as defined herein (except the Declarant) shall be Class "C" Members. Class "C" Members shall have one (1) vote for each Lot or Unit they own in the Property.

- ~~(1) Class A Member. Class A Members shall be all Homeowners with the exception of Declarant and any Builders.~~
- ~~(2) Class B Members. The Class B Member shall be Declarant Or its specifically designated (in writing) successor who shall remain a member so long as it owns a Lot or Unit subject to the Declaration; provided that the Class B membership shall cease and be converted to Class A membership as set forth in Section 6.3 hereof.~~
- ~~(3) Class C Members. The Class C Members shall be all Builders, except the Declarant, owning Units or Lots subject to the Declaration; provided that the Class C membership shall cease and be converted to Class A membership upon conversion of the Class B Membership to Class A as set forth in Section 6.3 hereof.~~

## ARTICLE VI

### VOTING RIGHTS

Section 6.1. Members of the Association shall be allocated votes as follows:

6.1.1. Class "A". Class "A" Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

6.1.2. Class "B". The Class "B" Member shall be the Declarant, or its specifically designated (in writing) successor and or assigns. Prior to the Turnover Date (defined in Section 6.3.1). Declarant shall have the total number of votes equal to the number of votes held by all other Members plus on (1) vote. On the Turnover Date the Class "B" membership shall cease and be converted to Class A membership. Upon conversion to Class "A" membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association.

6.1.3. Class "C". All Builders, as defined herein, (except the Declarant) shall be Class "A" Members. Class C Members shall have on (1) vote for each Lot or Unit they own in the Property.

~~Class A. Each Class A Member be entitled to one vote for each Lot or Unit owned. For the purposes of determining voting rights, each Lot or Unit owned by a Class A Member shall be deemed entitled to one (1) vote regardless of the number of persons sharing common ownership interests.~~

~~Class B. The Class B Member shall be allocated three (3) votes for each Lot or Unit owned by it within the Association Property provided, that at such time as the Class B membership shall cease and become converted to Class A membership as set forth in Section 6.3, the Declarant shall have one vote for each Unit or Lot owned by it within the Association Property.~~

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~~Class C. Class C Members shall have one (1) vote for each Lot or Unity they own in the Association Property provided, that at such time as the Class C membership shall cease and become converted to Class A membership as set forth in Section 6.3, the Builders shall have one vote for each Unit or Lot owned by it within the Association Property, provided, that at such time as the Class C membership shall cease and become converted to Class "A" membership as set forth in Section 6.3, the Builders shall have one vote for each Unit or Lot owned by it within the Association.~~

Section 6.2. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, such Owner shall select one official representative to qualify for voting in the Association and shall notify in writing the Secretary of the Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of the Lot or Unit. If the Owners fail to designate their official representative, then the Association may accept the person asserting the right to vote as the voting Owner until notification to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

Section 6.3. Class "B" Membership Status.

6.3.1. Duration. The Declarant's Class "B" membership status shall continue, and shall be in effect during the period from the inception of this Declaration until the earlier of the following events ("Turnover");

- a. Ninety (90) days after ninety (90%) percent of the maximum number of Lots permitted in the Property that will ultimately be operated by the Association have been conveyed to Class "A" Members; or
- b. Such earlier date as Declarant, in its sole discretion, may determine in writing; or
- c. January 1, 2007.

After Turnover, Class "A" Members may vote to elect the majority of the members of the Board. After Turnover, for so long as the Declarant owns at least five (5%) percent of the Lots within the Property, the Declarant may appoint the minority members of the Board, or not less than one (1) Director. After Turnover, the Declarant shall be a Class "A" Member with respect to the Lots which it owns, and shall have the rights and obligations of the Class "A" Members, except that it may not cast its votes for the purpose of reacquiring control of the Association or selecting the majority of the members of the Board.

The Declarant, prior to the Turnover of the Association, at its sole discretion, may create temporary committees for the purposes of aiding in the transition of the Association from Declarant control to control by the Members.

~~Section 6.3. The Declarant's Class B membership status shall continue, and shall be in effect, until the occurrence of the earlier of the following events ("Turnover"): (a) upon recording of a voluntary written notice executed by the Declarant or its duly authorized successor or assignee electing to convert its Class B status to Class A; (b) in any event, ninety (90) days after the conveyance of ninety (90%) PERCENT OF THE Lots in the Property that will ultimately be operated by the Association have been converted to Class A Members; (4) if the Declarant's Class B membership status in the Association as described in the Declaration has been converted to Class A; Then one hundred twenty (120) days after the conveyance of the Unit within this Association to the Class A Member that causes the total number of votes held by all Class A Members of the Association to equal the number of votes in the Association held by the Class B Member, whichever event, (1), (2), (3), or (4), occurs first; provided however, that if Class B status is converted to Class~~

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~~A pursuant to clause (b) and; subsequent to such event, the Declarant annexes additional Lots to the Property which annexation causes the number of Lots or Units owned by the Declarant in the Property to exceed ten percent (10%) OF THE TOTAL NUMBER OF Lots and Units within the Association Property; Declarant's Class B status shall be restored as to all Lots and Units within the Property then owned by Declarant, and shall continue until the next occurrence of an event of conversion described above.~~

Section 6.4. Class "C" Membership Status. The Class "C" Membership status shall cease and be converted to Class "A" Membership upon conversion of Class "B" Membership to Class "A".

Section 6.5. The Declarant shall have the right to partially assign its status as Declarant and Class B Member by recorded instrument executed by the original Declarant and acknowledge and accepted by the assignee Declarant to any person or entity acquiring any portion of the Property, or adjacent lands eligible for annexation into the Property, for the purpose of development of a residential subdivision consistent with the Master Plan, and any such assignee shall hereafter be deemed to be the Declarant as to the Lots or Units owned by such person or entity, and shall have the right to exercise all of the rights and powers of Declarant as to such Lots or Units, while, at the same time, the original Declarant shall continue to exercise the rights and powers of the Declarant as to all Lots and Units owned by such original Declarant. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

## **ARTICLE VII**

### **BOARD OF DIRECTORS**

Section 7.1. The names and addresses of the members of the first Board of Directors who shall hold office until the annual meeting of the members and until their successors are elected or appointed and have qualified, are as follows:

<b>NAME</b>	<b>ADDRESS</b>
Dave Abrams	8198 Jog Road, Suite 200 Boynton Beach, Florida 33437
Kevin Borkenhagen	8198 Jog Road, Suite 200 Boynton Beach, Florida 33437
Leona Hammond	8198 Jog Road, Suite 200 Boynton Beach, Florida 33437

Section 7.2. The affairs of the Association shall be managed by a Board of Directors as provided in and subject to the requirements of Article IV of the Bylaws. Such Board of Directors shall consist of an odd number of directors with a minimum of at least three (3) directors and a maximum of no more than seven (7) directors. Directors need ~~not to~~ be Members of the Association and need ~~not to~~ be residents of the Association Property. Each Director shall serve for a term from the date of the meeting at which he is elected until ~~the next annual meeting his term expires as provided for in the Bylaws,~~ subject to the provisions governing resignation, death, disability, removal and replacement as otherwise set forth in the Declaration, Bylaws and this instrument.

## **ARTICLE VIII**

### **AMENDMENTS**

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Section 8.1. Proposal. An amendment or amendments to these Articles of Incorporation may be proposed by the Board of Directors of the Association acting upon a vote of the majority of the Directors, or by a majority of the Members of the Association, whether meeting as Members or by instrument in writing signed by them. Upon any amendment or amendments to these Articles of Incorporation being proposed by the Board of Directors or Members, such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in his absence, and a Meeting of the Members of the Association shall be called not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

Section 8.2. Notice. It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Homeowners Association and mailed by the Homeowners Association or presented personally to each Member not less thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may be written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Homeowners Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of the proxy that can be cast in lieu of attendance at the meet. If the Homeowners Association has, or is planned to have, 250 Members or less – the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 250 Members but less than 1000 Members – the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 1000 Members – the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements however, more stringent requirements imposed elsewhere in these Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

Section 8.3. Resolution. At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Articles of Incorporation shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

Section 8.4. Approval. Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 76% of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at a meeting called as described in the notice and conducted by the Homeowners Association at which a quorum is present and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply;

(a) Any Material Amendment or Extraordinary Action (as defined in the Declaration that changes the rights of any specific class of Members (ie Class A, Class B, or Class C) must also be approved either (1) by the affirmative vote of at least 51% of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51% OF ALL Members of such Class to any action taken in lieu of a meeting.

(b) Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FRA or VA fails to



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deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Articles of Incorporation, without the necessity of joinder by the Members or any persons or entities, to make non-substantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scriveners' errors in these Articles of Incorporation.

Section 8.5. Limitation. No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members, nor any changes in the provisions of Article IV hereof, without approval of sixty-seven percent (67%) of the votes of each class of Members and the joinder of all Eligible Holders (as defined in the Declaration) of mortgages upon Units. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

Section 8.6. Recording. Any amendment or amendments of these Articles of Incorporation shall be transcribed and certified in such form as may be necessary to file the same in the office of the Secretary of State of the State of Florida. A certified copy of each amendment of these Articles of Incorporation shall be recorded in the Public Records of Palm Beach County, Florida, within thirty (30) days from the date on which the same is filed and returned from the office of the Secretary of State.

## **ARTICLE IX**

### **OFFICERS**

The affairs of the Association will be administered by the officers designated in the Bylaws of the Association. Said officers will be elected by the Board of Directors at the first meeting following the annual meeting of Members of the Association and will serve at the pleasure of the Board of Directors. The names and addresses of the Officers who are to manage the affairs of the Association until the annual meeting of the Board of Directors and until their successors are duly elected and qualified are:

PRESIDENT	Dave Abrams
VICE PRESIDENT	Kevin Borkenhagen
SECRETARY/TREASURER	Leona Hammond

Section 10.1. Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, employee, officer or agent of the Association, against expenses (including attorneys fees and appellate attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceedings, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, has no reasonable cause to believe his conduct was unlawful except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his duty to the

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Association, unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 8.2. Expenses. To the extent that a Director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any action, suit or proceeding referred to in Section 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 10.3. Approval. Any indemnification under Section 10.1 above (unless ordered by a Court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Directors, officers, employees or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or by a majority of the Members

Section 10.4. Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the affected Director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article X.

Section 10.5. Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

Section 10.6. Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## **ARTICLE XI**

### **BYLAWS**

The first Bylaws of the Association will be adopted by the Directors named herein, and may be altered, amended, or rescinded in the manner provided by said Bylaws. Any Bylaws adopted by the Board of Directors shall be consistent with these Articles.

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**ARTICLE XII****TRANSACTIONS IN WHICH DIRECTORS OR OFFICERS  
ARE INTERESTED**

Section 12.1. No contract or transaction between the Association and one or more of its Directors or officers, or between the Association and any other corporation, partnership, or Association or other organization in which one or more of its Directors or officers are Directors or officers have a financial interest, shall be invalid, void or voidable solely for this reason or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contractor or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

Section 12.2. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

**ARTICLE XIII****SUBSCRIBER**

The name and address of the subscriber to these Articles of Incorporation is:

Centex Homes  
9198 Jog Road, Suite 200  
Boynton Beach, Florida 33437

**ARTICLE XIV****DISSOLUTION**


The Association may be dissolved with the assent given by not less than two-thirds (2/3) of the votes of each Class of members. Upon dissolution of the Association other than incident to a merger or consolidation, the assets of the Association shall be disposed of or transferred to another association or appropriate public agency having similar purposes. Dissolution of the Association shall be deemed an Extraordinary Action and shall be subject to the provisions of these Articles of Incorporation and the Declaration governing Extraordinary Actions.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Amended and Restated Articles of incorporation his, 3 day of November, 2000.

CENTEX HOMES, a Nevada general partnership

CENTEX REAL ESTATE CORPORATION, a Nevada corporation, managing general partner

  
DENISE M. SCHERER

  
TRENT M. SEITZMAN

By: 

Trent Bass – Division President

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STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3 rd day of November,        2000, by Trent Bass, Division President of Centex Real Estate Corporation, a Nevada corporation, managing general partner of Centex Homes, a Nevada general partnership, on behalf of the corporation, Said person is personally known to me.



Print Name: Denise M Scherer

Notary Public, State of Florida

Commission No.: CC796102

My Commission Expires: 12/8/02

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**CERTIFICATE DESIGNATING PLACE OF BUSINESS  
FOR SERVICE OF PROCESS WITHIN THIS STATE,  
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

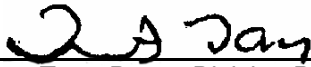
Pursuant to Chapter 48.091, Florida Statutes, the following is submitted in compliance with said Act:

That Stonehaven Estates Homeowners Association Inc., desiring to organize under the laws of the State of Florida, with its principal office at 8198 Jog Road, Suite 200, Boynton Beach, Florida 33437 has named Centex Real Estate Corporation, whose office is located 8198 Jog Road, Suite 200, Boynton Beach, Florida 33437 as its agent to accept service of process within the State.

**ACKNOWLEDGMENT**

Having been named to accept service of process for the above stated corporation, at the place designated in this Certificate, Centex Real Estate Corporation hereby accepts to act in this capacity, and agrees to comply with the provisions of said Act relative to keeping open said office.

CENTEX REAL ESTATE CORPORATION, a Nevada  
Corporation

By:   
Trent Bass - Division President

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**CERTIFICATE OF**  
**THE BOARD OF DIRECTORS**  
**STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC.,**

1. This certifies that the Board of Directors did Amend and Restate the Articles of incorporation of Stonehaven Estates Homeowners Association, Inc., a Florida not for profit corporation on November 3, 2000.
2. There are no members entitled to vote on these amendments. These amendments to the Articles of Incorporation were adopted by the Board of Directors.



\_\_\_\_\_  
David Abrams, Director / President



12/29/00

\_\_\_\_\_  
Kevin Borkenhagen, Director / Vice Pres.

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**EXHIBIT "D"**

**BYLAWS STONEHAVEN ESTATES HOMEOWNERS ASSOCIATION, INC.**

**a Florida corporation, Not-for-Profit**

**ARTICLE I**

**GENERAL PLAN OF OWNERSHIP**

**Section 1. Name.** The name of the corporation is Stonehaven Estates Homeowners Association, Inc., a Florida corporation, and is hereafter referred to as the "Association" or "Homeowners Association". The principal office of the corporation shall be located in the State of Florida.

**Section 2. Bylaws Applicability.** The provisions of these Bylaws are applicable to the Association created pursuant to the Declaration of Covenants, Conditions and Restrictions for Stonehaven Estates and the Stonehaven Estates Homeowners Association, Inc. recorded in the Public Records of Palm Beach County, Florida (herein referred to as the "Declaration"). All capitalized words or phrases used herein shall have the meanings herein ascribed, and if not defined in this instrument, such capitalized words or phrases shall have the meanings given in the Declaration or Articles of Incorporation of the Association.

**Section 3. Personal Application.** All present and future Owners of Lots or Units within the Association Property (as defined in the Articles of Incorporation and Declaration of the Association) and their tenants, guests and invitees are subject to the regulations set forth in these Bylaws.

The recording of a declaration authorizing the creation of a homeowners association and the mere acquisition of a Lot or acquisition or rental of any Unit or the mere act of occupancy of any Unit signify that these Bylaws are accepted, ratified, and will be complied with.

**ARTICLE II**

**MEMBERSHIP .VOTING RIGHTS. MAJORITY  
OF QUORUM. QUORUM. PROXIES**

**Section 1. Membership.** Every Owner of a Unit or Lot, by virtue of the ownership of such Unit or Lot, and the Declarant and its successors and assigns, shall be Members of the Association, and by acceptance of a deed or other instrument evidencing an ownership interest, each Owner and Declarant accepts membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles of Incorporation, the Bylaws and other rules and regulations of the Association. The term "Member" shall include each person or entity owning any right, title or interest in any Unit or Lot, except persons or entities holding mortgages or other security or trust interests unless such persons or entities also have the right of possession. Tenants or others occupying any Unit who do not have an ownership interest therein shall not be Members for the purposes of this Declaration. Membership in the Association is appurtenant to, and may not be severed from, the Unit or Lot. The rights and obligations of a Member may not be assigned or delegated except as provided in this Declaration, the Articles of Incorporation or Bylaws of the Association, and shall automatically pass to the successor-in-interest of any Owner upon conveyance of such Owner's interest in the Lot or Unit. Members shall be responsible for compliance with the terms and conditions of this Declaration, the Articles of Incorporation and Bylaws, and rules and regulations of the Association by all occupants, tenants, guests, invitees and family members while residing in or visiting any Unit, Common Area or other portion of the Property .



**Section 2.      Neighborhoods; Homeowners Associations: and Voting Rights.**

2.1. The Property described in the Declaration of Covenants, Conditions and Restrictions for Stonehaven Estates and the Stonehaven Estates Homeowners Association, Inc. (herein referred to as the "Declaration"). Each Lot or Unit subject to the Declaration will contain Lots or Units sharing common facilities and having similar interests. The Owner of each Lot or Unit will be a member of the Homeowners Association. The Homeowners Association is responsible for performing the services and obligations imposed on it by the Association pursuant to the governing documents.

2.2. The Homeowners Association shall exercise the voting rights herein established on behalf of all Members whose Units or Lots are within the jurisdiction of such Homeowners Association. On all matters requiring the votes of Members as may be described in the Declaration, or in the Articles of Incorporation or Bylaws, such votes shall be conducted by the Homeowners Association.

2.3. Members of the Association shall be allocated votes as follows;

**Class "A".** Class "A" Members shall be all Owners with the exception of the Declarant and any Builders. Each Class "A" Member shall be entitled to one vote for each Lot or Unit owned.

**Class "B".** The Class "B" Member shall be the Declarant, or its specifically designated (in writing) successor and or assigns. Prior to the Turnover Date (defined in Section 4.1), Declarant shall have the total number of votes equal to one (1) vote plus the number of votes held by all other Members. On the Turnover Date the Class "B" membership shall cease and be converted to Class "A" membership. Upon conversion to Class "A" membership, the Declarant shall have one vote for each Unit or Lot owned by it within the Property so long as said Unit or Lot is subject to assessment by this Association. The Class B membership shall cease and be converted to Class A membership as set forth in Section 4.1 hereof.

**Class "C".** All Builders, as defined herein, (except the Declarant) shall be Class "C" Members. Class C Members shall have one (1) vote for each Lot or Unit they own in the Property. The Class C membership shall cease and be converted to Class A membership upon conversion of the Class B Membership to Class A as set forth in Section 4.1 hereof.

2.4. When any Unit or Lot is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Homeowners Association, such Owner shall select one official representative to qualify for voting in the Homeowners Association and shall notify in writing the Secretary of the Homeowners Association of the name of such individual. The vote allocated to any Unit or Lot (including Units or Lots owned by the Declarant or a Builder) may not be divided or cast in any fraction, and the vote of each official representative shall be considered to represent the will of all the Owners of that Lot or Unit. If the Owners fail to designate their official representative, then the Homeowners Association may accept the person asserting the right to vote as the voting Owner until notified to the contrary by the other Owner(s). Upon such notification no affected Owner may vote until the Owner(s) appoint their official representative pursuant to this paragraph.

**Section 3.      Change of Membership.**

3.1. Change of membership in the Association shall be established by recording in the Public Records of Palm Beach County, Florida, a deed or other instrument conveying record fee title to any Lot or Unit, and by the delivery to the Homeowners Association, of a copy of such recorded instrument. The Owner designated by such instrument shall, by acceptance of such instrument, become a Member of the Homeowners Association, and the membership of the prior Owner shall be terminated. In the event that a copy of said instrument is not delivered to the Homeowners Association, said Owner shall become a Member, but shall not be entitled to voting privileges until

delivery of a copy of the conveyance instrument to the Homeowners Association. The foregoing shall not, however, limit the Association's powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot or Unit acquired.

3.2. The interest, if any, of a Member in the funds and assets of the Association shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to the Owner's real property. Membership in the Association by all Owners shall be compulsory and shall continue, as to each Owner, until such time as such Owner of record transfers or conveys his interest in the real property upon which his membership is based or until said interest is transferred or conveyed by operation of law, at which time the membership shall automatically be conferred upon the transferee. Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based.

**Section 4. Class B Membership Status.**

4.1. The Declarant's Class "B" membership status shall continue, and shall be in effect, during the period from the inception of this Declaration until the earlier of the following events ("Turnover");

- a. Ninety (90) days after ninety (90%) percent of the maximum number of Lots permitted in the Property that will ultimately be operated by the Association have been conveyed to Class "A" Members; or
- b. Such earlier date as Declarant, in its sole discretion, may determine in writing; or
- c. January 1, 2007.

After, Class "A" Members may vote to elect the majority of the members of the Board. After Turnover, for so long as the Declarant owns as least five (5%) percent of the Lots within the Property, the Declarant may appoint the minority members of the Board, or not less than one (1) Director. After Turnover, the Declarant shall be a Class "A" Member with respect to the Lots which it owns, and shall have the rights and obligations of the Class "A" Members, except that it may not cast its votes for the purpose of reacquiring control of the Association or selecting the majority of the members of the Board.

The Declarant, prior to the Turnover of the Association, at its sole discretion, may create temporary committees for the purposes of aiding in the transition of the Association from Declarant control to control by the Members.

4.2. **Assignment.** Any or all of the rights, privileges, or options provided to or reserved by Declarant in this Declaration, the Articles, or the Bylaws, may be transferred or assigned by Declarant, in whole or in part, as to all or any portion of the Property, to any person or entity pursuant to an assignment recorded in the public records of the county in which the Property is located. Any partial assignee of any of the rights of Declarant shall not be deemed the Declarant, and shall have no other rights, privileges or options other than as are specifically assigned. If any action of the Association requires the approval, consent or vote of the Declarant, and the original Declarant has partially assigned its rights as Declarant to others pursuant to this paragraph, the consent or vote of all such Declarants shall be required to satisfy the requirement of consent by the Declarant.

**Section 5. Class "C" Membership Status.** The Class "C" Membership status shall cease and be converted to Class "A" Membership upon conversion of Class "B" Membership to Class "A".

**Section 6. Majority of Quorum.** Unless otherwise expressly provided in these Bylaws or the Declaration any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

Section 7.      **Quorum.** The Association meeting required by the Association pursuant to the Declaration shall require the presence, either in person or by proxy, of a quorum of the members of the Homeowners Association.

If the Homeowners Association has, or is planned to have, 250 Members or less -the quorum for any such meeting shall be no less than 20% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 250 Members but less than 1000 Members - the quorum for any such meeting shall be no less than 10% of the total number of votes. If the Homeowners Association has, or is planned to have, more than 1000 Members - the quorum for any such meeting shall be no less than 5% of the total number of votes. The foregoing requirements are minimum requirements, however, more stringent requirements imposed elsewhere in these Bylaws or in the Articles of Incorporation or in the Declaration, or pursuant to applicable laws or regulations shall supersede the requirements contained in this Section, and the Association shall be bound by such more restrictive requirements as if fully reproduced herein.

**Section 8. Proxies.** Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed, and upon conveyance by the Member of his Unit.

### **ARTICLE III**

#### **ADMINISTRATION**

**Section 1. Place of Meetings of Members.** Meetings of the Members shall be held within the Association Property or such other suitable place as close thereto as practicable in Palm Beach County, convenient to the Owners as may be designated by the Board of Directors.

**Section 2. Annual Meetings.** The first annual meeting of the Members shall be held on the date at the place and at the time, as determined by the Board of Directors, provided, however, that said meeting shall be held, to the extent possible, within one (1) year from the date of incorporation of the Association. Thereafter, the annual meeting of the Association shall be held on the anniversary date of the first annual meeting; provided, however, that should the anniversary date fall on a legal holiday, then such annual meeting of the Members shall be held on the next day thereafter which is not a legal holiday. Subject to the provisions of Article IV, Section 1 herein, at each annual meeting there shall be elected by ballot of the Members a Board of Directors, in accordance with the requirements of Section 5 of Article IV of these Bylaws. At the first annual meeting, the Directors shall be elected to serve until the second annual meeting, and at the second annual meeting, Directors shall be elected for a term of one (1) year beginning with the second annual meeting. Unless a Director resigns before the expiration of his term of office, each Director shall hold his office until his successor has been elected and the first meeting involving such successor is held. The term of office of any Director elected to fill a vacancy created by the resignation of his predecessor shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly come before them. Each First Mortgagee of a Unit may designate a representative to attend all annual meetings of the Members.

**Section 3. Special Meetings of Members.** Special meetings of the Members may be called at any time by the President or by a majority of a quorum of the Board of Directors, or upon a petition signed by Class A Members holding at least ten percent (10 %) of the voting power of the Class A Members having been presented to the Secretary. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof.

No business shall be transacted at a special meeting except as stated in the notice, unless by consent of those Members holding at least four-fifths (4/5) of the voting power of the Association, either in person or by proxy. Each First Mortgagee of a Unit may designate a representative to attend all special meetings of the Members.

**Section 4. Notice of Meetings of Members.** It shall be the duty of the Secretary to mail a notice of each annual or special meeting of Members stating the purpose thereof as well as the day, hour, and place where it is to be held, to each Member of record and to each First Mortgagee of a Unit which has filed a written request for notice with the Secretary, at least fourteen (30) but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, after said notice has been deposited in a regular

depository of the United States mail. If no address has been furnished to the Secretary, notice shall be deemed to have been given to a Member if posted in a conspicuous place on the Common Property.

**Section 5. Adjourned Meetings.** If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked for reasons other than the new date of the meeting.

**Section 6. Order of Business.** The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election; (g) election of Directors; (h) unfinished business; and (i) new business. Meetings of Members shall be conducted by the officers of the Association in order of their priority.

**Section 7. Action Without Meeting.** Any action, which under the provisions of Florida law may be taken at a meeting of the Members, may be taken without a meeting if authorized by a writing signed by the required number of Members who would be entitled to vote at a meeting for such purpose, and such writing is filed with the Secretary.

**Section 8. Consent of Absentees.** The transaction of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**Section 9. Minutes, Presumption of Notice.** Minutes or similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

## **ARTICLE IV**

### **BOARD OF DIRECTORS**

**Section 1. Number, Term and Qualifications.** The affairs of this Association shall be governed by a Board of Directors composed of no fewer than three (3) nor more than seven (7) persons as is determined from time to time by the Members. To facilitate continuity in the operations and management of the Association, it is the intention of the Members that the term of each Director shall be two (2) years specifically until the second annual meeting of the Members since the Director was elected or until he is removed in the manner provided in Section 3 below. To implement this intention, at the 2006 Annual meeting and assuming the continuation of the existing three (3) person Board, the successful candidate for election receiving the fewest number of votes shall be elected to serve until the next Annual meeting. The other two successful candidates shall serve a term of office of two (2) years as specifically provided herein. Thereafter, at each succeeding Annual meeting, Board members whose terms are expiring shall be elected for two-year terms. The term of each Director's service shall extend until the next annual meeting of the Members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below.

**Section 2. Powers and Duties.** The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done exclusively by the Members.



Section 3.      **Special Powers and Duties.** Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration and Articles of Incorporation, the Board of Directors is vested with, and responsible for, the following powers and duties:

a. To select, appoint, and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.

b. To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles of Incorporation, the Declaration, and these Bylaws, as the Board may deem necessary or advisable.

c. To change the principal office for the transaction of the business of the Association from one location to another with the State of Florida as provided in Article I hereof; to designate any place within said State for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article III, Section 2 hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment may deem best, provided that such seal shall at all times comply with the provisions of law.

d. To borrow money and to incur indebtedness for the purposes set forth in the Declaration, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges hypothecations or other evidences of debt and securities therefor.

e. To fix and levy from time to time, Assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such Assessments, and the date upon which the same shall become delinquent; provided, however, that such Assessments shall be fixed and levied only to provide for the general benefit and welfare of the Association and its Members in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. Disbursements from such trust reserve fund shall be made only in accordance with the provisions of the Declaration. Should any Owner fail to pay such Assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

f. To enforce the provisions of the Declaration covering the Common Area, and areas on which the Association has an easement (the "**Easement Areas**"), these Bylaws or other agreements of the Association.

g. To contract for and pay fire, casualty, errors and omissions, blanket liability, malicious mischief, vandalism, and other insurance, insuring the Members, the Owners, the Association, the Declarant, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable, which may include without limitation, medical expenses of persons injured on the Common Area and Easement Areas, and to bond the agents and employees of any management body, if deemed advisable by the Board. The Board shall review, not less frequently than annually, all insurance policies and bonds obtained by the Board on behalf of the Association.

h. To contract for and pay maintenance, gardening, utilities, materials and supplies, and services relating to the Common Area, public areas, and Easement Areas and to employ personnel necessary for the operation of the Common Area, public areas and Easement Areas, including legal and accounting services, and to contract for and pay for improvements to the Common Area, public areas and Easement Areas.

i. To delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.

j. To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Association.

k. To fix, determine and name from time to time, if necessary or advisable, the public

agency, fund, foundation or corporation which is then or there organized or operated for charitable purposes to which the assets of this Association shall be distributed upon liquidation or dissolution, according to the Articles of Incorporation of the Association. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

1. To adopt such uniform and reasonable rules and regulations as the Board may deem necessary for the management of the Common Area and Easement Areas which rules and regulation shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of such number of Directors attached to a copy of the rules and regulations of the Association, and (2) they are posted in a conspicuous place in or near the Common Area. For so long as the Declarant enjoys Class B Membership status, such rules and regulations shall not materially adversely affect the rights, privileges or preferences of any Member or owner as established by the Association, the Articles of Incorporation of the Association and these Bylaws and such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws.

Section 4.        **Management Agent.** The Board shall have the option to employ a managing agent to manage the Common Area and Easement Areas and the affairs of the Association. The managing agent shall perform such duties and services as the Board shall authorize.

Section 5.        **Election and Term of Office.** Subject to the provisions of Article IV, Section I herein, at the first annual meeting of the Association, and thereafter at each annual meeting of the Members, Directors shall be elected by secret written ballot by a plurality of Members as provided in these Bylaws, each Member voting being entitled to cast its votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at a special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a Director may be reelected, and there shall be no limitation on the number of terms during which he may serve.

Section 6.        **Books, Audit.** The Board of Directors shall prepare all financial reports required by the Florida Statutes. On an annual basis the Board of Directors shall have prepared either an outside financial review or and audit of the books and records of the Association.

Section 7.        **Vacancies.** Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and such person so elected shall be a Director until a successor is elected at the next annual meeting of the Members of the Association, or a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place.

Section 8.        **Removal of Directors.** At any regular or special meeting of the Members duly called, any one or more of the Directors may be removed with or without cause by a majority vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed, new Directors may be elected at the same meetings.

Section 9.        **Organization Meeting.** The first regular ("**Organization**")\_meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of organization, election of offices and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

**Section 10. Other Regular Meeting.** Other regular meetings of the Board of Directors may be held at such time and place in or near the Association Property as shall be determined, from time to time by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting, and shall be posted at a prominent place or places within the Common Area.

**Section 11. Special Meeting.** Special meetings of the Board of Directors may be called by the President (or, if he is absent or refused to act, by the Vice President) or by any two (2) Directors. At least seventy-two (72) hours notice shall be given to each Director personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places in or near the Association Property. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually received earlier, at 5 :00 P.M. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any Director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such Director, as required by law and as provided herein.

**Section 12. Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board, however, called and notice or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs such a written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

**Section 13. Quorum and Adjournment.** Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 14. Action Without Meeting.** The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

**Section 15. Fidelity Bonds.** The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

**Section 16. Committees.** The Board of Directors by resolution may from time to time designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its Members, as well as a chairman, shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

## **ARTICLE V**

### **OFFICERS**

**Section 1. Designation.** The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary. Officers other than the President and Vice President need not be Directors. The office of Secretary and Treasurer may be held by the same person, but the office of President and Secretary may not be held by the same person.

**Section 2. Election of Officers.** The officers of the Association shall be elected annually by the Board of Directors at the Organization Meeting of each new Board of Directors, and each officer shall hold his office until he shall resign or be removed or otherwise disqualified to serve, or his successor shall be elected and qualified to serve.

**Section 3. Removal of Officers.** Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

**Section 4. Compensation.** Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee, provided that no officer, employee or Director of Declarant or any affiliate of Declarant may receive any compensation.

**Section 5. President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, subject to the provisions of Article IV, Section 16, to appoint committees from among the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex-officio a member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws of the Association.

**Section 6. Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or these Bylaws of the Association.

**Section 7. Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association at the principal office of the Association or at such other places as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct; and the Secretary shall, in general perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board of Directors required by these Bylaws or by law to be given. The Secretary shall maintain a book of record Owners, listing the names and addresses of the Owners as furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Unit is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors.

**Section 8. Treasurer.** The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall co-sign all checks and promissory notes on behalf of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, in accordance with the Declaration, shall render to the President and Directors, upon request, an account of all of his transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

## **ARTICLE VI**

### **OBLIGATIONS OF OWNERS FOR ASSESSMENTS**

**Section 1. Payment.** The Association shall obtain funds with which to operate by assessment of the members of each Member in accordance with the provisions of the Declaration as supplemented by the provisions of the Articles of the Association relating thereto. Said assessments shall be payable monthly, in advance, without notice, and shall be due on the first day of each month. Unless otherwise required by the Board, assessments may not be made payable less frequently than monthly.

**Section 2. Special Assessments.** Special Assessments for charges by the Association against Members for other than Common Expenses or for Common Expenses for emergencies that cannot be paid from the annual Assessments for Common Expenses shall be levied in the same manner as herein provided for regular Assessments, except that notice thereof shall be given and they shall be payable in the manner determined by the Board.

**Section 3. Builder Assessments.** Lots or Units owned by Class "C" Members shall be assessed as described in Section 6.4 during the period of Class "B" membership. Upon conversion of Class "B" membership to Class "A ", Class "C" shall also be converted to Class "A ", and full assessments shall apply.

**Section 4. Individual Lot Assessments.** The Association (by simple majority vote of the Board) may also levy an Individual Lot Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit or Lot into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing.

**Section 5. Initial Capital Assessment.** In addition to all other assessments described herein, each Lot shall be subject to an Initial Capital Assessment equal to three (3) months of the then prevailing Annual Assessment, which shall be paid to the Association upon conveyance of the Lot from a Builder or Declarant to a Class A Member. The obligation to pay the Initial Capital Assessment shall be borne by the purchaser of the Lot, and the Initial Capital Assessment shall be collected and paid to the Association at the closing at which title to the Lot is conveyed to the purchaser, however failure of the title company or settlement agent to collect such Initial Capital Assessment on behalf of the Association shall not relieve the purchaser of the obligation to pay such amount, nor shall any such title company, settlement agent or Declarant or any Builder be responsible for such payment.

**Section 6. Past Due Assessments.** Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate set forth in the Declaration and shall result in the filing of a claim of lien as set forth in the Declaration.

**Section 7. Default.** As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the

property against which the assessment is made. Any assessment, if not paid within thirty (30) days after the due date, shall bear interest from the date of delinquency at the rate of eighteen percent (18 %) per annum, and the Association may bring an action at law

against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

## **ARTICLE VII**

### **AMENDMENTS TO BYLAWS**

**Section 1.** **Proposal.** Amendments to these Bylaws may be proposed by the Board of Directors (the "**Board**") of the Association by resolutions adopted by a majority vote of the Directors present at any regular or special meeting of the Board at which a quorum is present or, in the alternative, by a written instrument signed by a majority of the Board, or by the vote of a majority of a quorum of Members present in person or by proxy at a special or regular meeting of the Members or by written instrument signed by them. Such proposed amendment or amendments shall be transmitted to the President of the Association, or the acting chief executive officer in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association not later than sixty (60) days from the receipt by him of the proposed amendment or amendments.

**Section 2.** **Notice.** It shall be the duty of the Secretary to give each Member written notice of such meeting, stating the proposed amendment or amendments in reasonably detailed form, which notice shall be prepared by and at the expense of the Homeowners Association and mailed by the Homeowners Association or presented personally to each Member not less than thirty (30) days nor more than sixty (60) days before the date set for the meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to the Member at his post office address as it appears on the records of the Association, with postage thereupon prepaid. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver when filed in the records of the Homeowners Association, whether before, during or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Member. The notice shall also contain a copy of a proxy that can be cast in lieu of attendance at the meeting.

**Section 3.** **Resolution.** At the meeting at which the amendment is to be proposed and considered, a resolution for the adoption of the proposed amendment may be made by any member of the Board of Directors of the Association, or by any Member of the Association, present in person or by proxy. The approval of a resolution for the adoption of a proposed amendment to these Bylaws shall require the affirmative vote of a majority of the members of the Board of Directors of the Association.

**Section 4.** **Approval.** Amendments may be approved by the Members, after receipt of notice as set forth above, either (1) by the affirmative vote of at least 67 % of the Class A Members (i.e. all Members except the Declarant and any Builder who retain Class B or Class C status) who are present, in person or by proxy, and voting at a meeting called as described in the notice and conducted by the Homeowners Associations at which a quorum is present, and the vote of the Declarant, or (2) by the written consent of at least 67% of all Class A Members and the Declarant (if the Declarant then retains Class B status) to any action taken in lieu of a meeting. In addition to the approval of the Members and the Declarant set forth above, the following conditions shall apply:

a. Any Material Amendment or Extraordinary Action (as defined in the Declaration) that changes the rights of any specific class of Members (i.e. Class A; Class B; or Class C) must also be approved either (1) by the affirmative vote of at least 51 % of the Members of such Class who are present, in person or by proxy, and voting at meetings called as described in the required notice at which a quorum of such Class of Members is present, or (2) by the written consent of at least 51 % of all Members of such Class to any action taken in lieu of a meeting.

b. Any Material Amendment or Extraordinary Action proposed during the period in which the Declarant retains its Class B status must also be approved by the Federal Housing Administration ("FHA"), and the Department of Veterans Affairs ("VA") if any Unit within the Property has been financed by a



mortgage insured by FHA or guaranteed by VA. The Association shall deliver written notice of the proposed Material Amendment or Extraordinary Action to the FHA and VA simultaneously with its notice to the Members. If the FHA or VA fails to deliver written notice to the Association of its objection to the proposed Material Amendment or Extraordinary Action within 30 days after receipt of the notice, FHA and VA will be deemed to have approved the matters contained in the notice, and the Association shall be entitled to record an affidavit signed by an authorized officer averring that written notice was delivered to the FHA and VA and no objection was timely received from such agencies.

Notwithstanding the foregoing, during the period in which the Declarant retains the status of the Class "B" Member, the Declarant shall have the right to amend these Bylaws, without the necessity of joinder by the Members or any other persons or entities, to make non-substantial changes that do not materially or adversely affect the interests of other Members or other affected parties, and to clarify any ambiguities or conflicts, or correct any scrivener's errors in these Articles of Incorporation.

Section 5.     **Limitation.** No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members without approval of sixty-seven percent (67 % ) of the votes of each class of Members and the joinder of all Eligible Holders (as defined in the Declaration) of mortgages upon Units. No amendment shall be made that is in conflict with the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Declarant, or the designated successor of the Declarant, unless the Declarant or such successor shall join in the execution of the amendment.

Section 6.     **Recording.** Such amendment or amendments of these Bylaws shall be transcribed and certified in such form as may be necessary to file the same in the office of the Association and shall be recorded in the Public Records of Palm Beach County, Florida within thirty (30) days from the date on which the same is approved.

## **ARTICLE VIII**

### **MORTGAGES**

Section 1.     **Notice to Association.** An Owner who mortgages his Unit shall notify the Association through the managing agent or the Secretary of the Board of Directors in the event there is no managing agent, of the name and address of his Mortgagee and the Association shall maintain such information in a book entitled "**Mortgagees of Units**". Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

Section 2.     **Notice of Unpaid Assessments.** The Board of Directors of the Association shall at the request of a Mortgagee of a Unit report any unpaid assessments due from the Owner of such Unit, in accordance with the provisions of the Declaration.

## **ARTICLE IX**

### **MEANING OF TERMS**

All terms appearing herein initially capitalized shall have the same meanings as are applied to such terms in the Declaration, which terms include without limitation: "**Owner**", "**Board**", "**Unit**", "**Articles**", "**Member**", "**Mortgage**", "**Mortgagee**", and "**Assessments**".

## **ARTICLE X**

### **CONFLICTING PROVISIONS**

In case any of these Bylaws conflict with any provisions of the laws of the State of Florida, such conflicting Bylaws shall be null and void upon final Court determination to such effect, but all other Bylaws shall remain in full force and effect. In a case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of conflict between the Declaration and these Bylaws, the Declaration shall control.

## **ARTICLE XI**

### **MISCELLANEOUS**

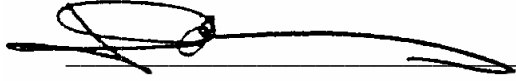
**Section 1. Execution of Documents.** The Board of Directors, except as in these Bylaws otherwise provided, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confirmed to specific instances; and unless so authorized by the Board of Directors, no officer, agent, committee member, or employee shall have any power or authority to bind the Association by any contract or engagement or to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

**Section 2. Inspection of Bylaws.** The Association shall keep in its office for the transaction of business the original or a copy of these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members and all First Mortgagees at all reasonable times during office hours.


**Section 3. Fiscal Year.** The fiscal year of the Association shall be determined by the Board of Directors and having been so determined is subject to change from time to time as the Board of Directors shall determine.

**Section 4. Membership Book.** The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Unit by an Owner shall be recorded in the book together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

WE HEREBY CERTIFY that the foregoing Bylaws of the Association were duly adopted by the Board of Directors of the Association in a meeting held for such purpose on the 25 day of May, 2001.

A handwritten signature in black ink, appearing to read "Dave Abrarns", written over a horizontal line.

Dave Abrarns, President

A handwritten signature in black ink, appearing to read "Kevin Borkenhagen", written over a horizontal line.

Kevin Borkenhagen, Vice President

**EXHIBIT "E"**

**DECLARATIONS OF COVENANTS**

**(Attached)**

**EXHIBIT "F"**

**BOUNDARY AND DEVELOPMENT SETTLEMENT AGREEMENT**

**(Attached)**

BOUNDARY AND DEVELOPMENT SETTLEMENT AGREEMENT

THIS "BOUNDARY AND DEVELOPMENT SETTLEMENT AGREEMENT" ("Agreement") is entered into as of this 26<sup>th</sup> day of April, 2001 (the "Effective Date"), by and between Centex Homes, a Nevada general partnership ("Centex"); Stonehaven Estates Homeowners' Association, Inc. (the "HOA"); and **THE BANYAN GOLD CLUB OF PALM BEACH, INC.**, a Florida corporation ("Banyan").

RECITALS

WHEREAS, Centex is the owner of certain lands known as the Stonehaven PUD ('Stonehaven') as more fully described in the plat thereof (the 'Plat') as recorded in Plat Book 89, Page 1-11, public records of Palm Beach County, Florida, on or about November 27, 2000; and

WHEREAS,- Centex has created a nonprofit Florida corporation known as Stonehaven Estates Homeowners' Association, Inc. (the "HOA") and Centex anticipates that it may convey certain portions of Stonehaven which will be affected by this Agreement to the HOA or other transferees; and

WHEREAS, Banyan is the owner and operator of lands used as a golf course located adjacent to and more fully described on attached Schedule A (hereinafter the "Club Property"); and

WHEREAS, Centex and Banyan have been in disagreement concerning the true location of the boundary between Stonehaven and the Club Property; the location of a fence near the boundary; landscaping to create visual buffers between the properties; and development permits for certain portions of Stonehaven; and

WHEREAS, the parties hereto have now agreed to fully resolve and compromise all claims and disputes between them through this Agreement;

NOW THEREFORE, it is agreed:

1. Location of Boundary. The parties agree the boundary line between Stonehaven and the Club Property has been and shall be as shown on Exhibit I hereto. The line shown on Exhibit I shall hereinafter be referred to as the Boundary. Banyan acknowledges that the survey by Dailey-Fotomy, Inc. dated February 14, 1996, attached hereto as Exhibit 2, depicts the true and accurate Boundary, and Banyan, for itself, its officers, directors, members (as to this Section I only) and heirs, assigns and successors in title, and all persons claiming under it, hereby releases, remises and quitclaims any and all claim, demand, lawsuit or cause of action asserting that the Banyan or its successors in title own any lands or interest in real property to the west of the Boundary. This Section 1 constitutes a complete and final, irrevocable and perpetual settlement of any dispute between the parties, their privies, heirs, assigns, successors in title, concerning the Boundary.

2. Common Berm, Wall and Fences: Subject to and conditioned upon receipt of written approvals or permits from any Governmental Authorities<sup>1</sup> with jurisdiction, and any owners of the land where the Work (as defined in subsection 2.1) is to be done, other than the parties (collectively referred to as "Approval") (this condition being more fully discussed in subsection 2.4). The following Work shall be performed:

2.1. General Description of the Work: Centex shall construct an earth berm along and straddling both sides of the Boundary, in accordance with the general description shown on Composite Exhibit 3 (which consists of Cross-Section "A" and

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<sup>1</sup>Governmental Authorities are any federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court, agency, or other instrumentality of any of them, having jurisdiction over Stonehaven or the Club Property, or any portion thereof, and whose approval is necessary for the satisfaction of any conditions contained in this Agreement.

Cross-Section "B"), as more fully described below. Centex may use and add to an existing berm along the Boundary placed by Banyan (the "Old Berm") and incorporate it into the new berm. Centex shall place a precast concrete wall (the "Wall"), in part on this Boundary, as described in Section 2.2.2. Centex or HOA shall place landscaping on the Stonehaven side of the Boundary. The improvements described in the foregoing sentences shall collectively be referred to as the "Berm". All the work required of Centex which is necessary to construct and complete the Berm and Wall is referred to herein as the "Work". Centex shall not be responsible for placing landscaping on the Banyan side of the Boundary. Banyan, and Centex and the HOA, shall grant each other mutual and reciprocal easements to permit construction, repair, replacement and maintenance of, lateral and structural support to, and access to, that portion of the Berm which is built on the others property. Primary responsibility for maintenance of the Berm and its components shall be as discussed in Section 4 below. Apportionment of costs of construction and maintenance shall be as provided below. Notwithstanding anything to the contrary contained in this Agreement, Centex will not commence construction of any of the Work until such time as it has received all Approvals and permits from the applicable Governmental Authorities. Centex will use its diligent efforts to obtain such approvals and permits.

2.2 Berm Specifications. The design of the Berm shall be as generally depicted in Exhibit 3. Cross Section A of Exhibit 3 shall control the design in the middle 1700 foot segment (the "Middle Segment") of the Boundary as shown in Exhibit 3, and Cross Section B of Exhibit 3 shall control at the northerly 410 foot segment ("North Segment") and southerly 500 foot segments ("South Segment") (collectively the "End Segments") of the Boundary. (All measurements and grades used in this section 2 are approximate and conceptual and are subject to adjustment as necessary to accommodate actual conditions and measurements in the field.) At the hole number 8 tee location, the Berm shall be graded more steeply on the Banyan side of the Boundary so as to not interfere with the existing hole number 8 tee area.



2.2.1. Dimensions. In the Middle Segment, the top of the Berm (exclusive of the wall) shall be not less than 3 feet above finished grade as measured from the rear on the yard elevation of the immediately adjoining lots on the Stonehaven property; but at the End Segments, the height shall be as shown in Cross Section 8, i.e., the top of the Berm shall be approximately at the rear yard elevation of the immediately adjoining lots on the Stonehaven side; then the Berm shall slope down to the Club Property elevation. The approximate grade throughout will be 2 ½ : 1 on the Club Property side; but this shall be subject to adjustment to accommodate actual site conditions.

2.2.2. Wall. Centex will construct a 6 foot high precast concrete wall (the "Wall") on the Berm substantially similar to the existing wall of Stonehaven along US 441. The Wall will be situated as described in Exhibit 3, to-wit in the Middle Segment, it shall run along and straddle the Boundary; however at each end of the Middle Segment it shall turn approximately 45 degrees West for approximately twenty feet, then again turn 135 degrees north or south (as applicable) at the beginning of each End Segment; then run roughly parallel to and approximately seventeen feet west of the Boundary. The Wall will be painted Ligonier Tan SW 2191 (base) and Eaglet Beige. SW 2193 (trim). The Wall will have 2 aluminum picket gates in order to provide access to personnel and maintenance equipment as required by the terms of this Agreement. It is anticipated that the 2 gates will be the access points for each party to the other side of the Wall and Berm, after completion of the Wall, for exercise of the easements for inspection, and for Maintenance pursuant to Section 4.4.

2.2.3. North Segment - Special Condition. The parties acknowledge that Centex cannot, and will not be obligated to, commence placement of the Berm paralleling the North Segment until and unless Centex receives approval by all Governmental Authorities asserting jurisdiction to develop Tract "B" of the Plat. In the event such approvals are received, Centex will connect the wall paralleling the North Segment to Banyan's existing gated cyclone fence. Centex shall not be required to build the Berm within the LWDD easement which is located at the north line of Tract "BT2" of the Plat (hereinafter "Tract BT2").

2.2.4. Removal of Fences. Centex, at its sole cost and expense, shall have the right, but not the duty, to remove the old fence and the new fence presently running parallel, more or less, to the Boundary. Centex may dispose of the fences as it deems appropriate.

2.3. Landscaping - Initial Placement.

2.3.1. Centex Duties. Centex (or, at Centex's election, HOA) will be responsible for initial placement of landscaping on the Stonehaven side of the Boundary, at Centex's expense (or HOA's, if Centex elects). The minimum and maximum extent, quantity, and type of landscaping that Centex (or HOA) is obligated to place on the Stonehaven side is limited to what is required by Palm Beach County Land Development Code; Centex may exceed or provide more landscaping than Code requires in its sole discretion. In addition, Centex shall have the right to place Bahia sod in the End Segment Areas, but shall only be obligated to Banyan to place Bahia sod in these parts of the End Segment Areas which are on the Banyan side of the Wall. Centex is not required to provide irrigation in the End Segment Areas. Centex will complete installation of its landscaping obligations with respect to each segment of the Berm, within 30 days of certification by the Engineer of completion of each segment of the Berm. In addition, Centex and HOA shall have the right, but not the duty, to unilaterally place additional landscaping on the Stonehaven side of the Boundary, at their sole expense, and within their sole discretion; provided that they shall not place landscaping of a type or in a way which materially and adversely affects the structural integrity, condition or Maintenance cost to Banyan of the Berm; nor the health, safety and welfare of adjoining property owners; nor violates any permits of any party's issued by, or regulations of, the Governmental Authorities.

2.3.2. Banyan Duties. Banyan will be solely responsible for placing all landscaping on the Banyan side of the Boundary, both as to cost and execution of the work. The extent, quantity, and type of landscaping that Banyan is obligated to Centex

and HOA is limited to ground cover and sufficient irrigation for the ground cover. Banyan must complete installation of the groundcover and irrigation with respect to each segment of the Berm, within 30 days of certification by the Engineer of completion of each segment of the Berm. In addition, Banyan shall have the right, but not the duty, to unilaterally place additional landscaping and improvements on the Banyan side of the Boundary, at its sole expense, and within its sole discretion; provided that Banyan shall not place landscaping and improvements of a type or in a way which materially and adversely affects the structural integrity, condition or Maintenance cost to Centex or HOA of the Berm; nor violates any permits of any party's issued by, or regulations of, the Governmental Authorities.

2.4. Time for Performance. Centex's receipt of Approval from all of the Governmental Authorities with jurisdiction, and any owners of the land where the work is to be done other than the parties hereto, shall be a condition precedent to any obligation to perform the Work on the each segment of the Berm as described in Section 2.1 et seq. (provided, however, that either party shall have the right to commence work on its side of the Boundary earlier, at its sole risk.) If separate Approvals are required for work relating to separate portions of the Berm, the time for commencement and completion of the affected portion of the Work shall run from receipt of the Approval necessary for that portion of the Berm. Centex will promptly commence performance within 15 days of the occurrence of the last condition precedent to its obligations with respect to the affected portion of the Work. The conditions precedent to Centex's duty to commence are as follows:

- A. Receipt of the last of all required Approvals to be received, and
- B. Delivery by Banyan of the Old Berm in the condition required by in Sec. 2.4.1.
- C. Acceptance or waiver by Centex and HOA of the condition of title under Section 7.

Centex will notify Banyan promptly in writing when Centex is able to proceed with the Work, and give as much advance notice as practical of the actual start date. Centex will complete the Work on or before the later of A) 150 days of the occurrence of the last condition precedent to occur; or B) 105 days following delivery to the Site of the materials for the Wall (see Sec. 2.4.3). Notwithstanding anything herein to the contrary, Centex shall have the right to commence work on the Berm, including the portion on the Club Property, no later than the Effective Date, and Banyan grants Centex an irrevocable license to enter onto the Club Property for such purposes commencing on that date and until the Work is complete.

2.4.1. Banyan's Removal of Landscaping from Old Berm. Centex will be building the Berm in part on top of the Old Berm. To facilitate this process, Banyan agrees to remove all trees, sprinklers, fencing and other landscaping or improvements, at Banyan's sole expense, from the Old Berm, within 14 days of written notice by Centex to do so. Banyan shall procure, at its own expense, any Approvals, required to do this, and provide copies of such Approvals to Centex, as a condition precedent to Centex's obligation to do the Work. If Banyan does not make the Old Berm available to Centex within 14 days of notice, with all necessary Approvals, and free from trees, landscaping, the irrigation system, and any other improvements, Centex shall be entitled, at its option, to (a) proceed with the Work regardless, and receive an extension for time for any resulting delay, and Banyan shall be liable to Centex for any increased reasonable cost of the Work as a result; or (b) Centex may postpone commencement of the Work. Banyan shall reimburse Centex, at cost, for any such additional expense under clause (a) within 30 days of invoice. Centex shall notify Banyan as soon as practicable when it is feasible to replant landscaping on the Berm without disrupting the Work. Notwithstanding anything to the contrary contained herein, Banyan will not be obligated to remove such landscaping until such time as Centex has received all required Approvals and other permits and documents necessary to commence the Work

2.4.2. To the extent that Centex, without any fault or neglect on its own part, is delayed in the completion of the Work by an act of God, weather, unavailability of materials or labor, delays in obtaining Approvals, or causes beyond the control of Centex, Centex shall be entitled to a reasonable extension of time for performance. To the extent that Banyan, without any fault or neglect on its own part, is delayed in the completion of any obligations required by it under this Agreement by an act of God, weather, unavailability of materials or labor, delays in obtaining Approvals, or causes beyond the control of Banyan, Banyan shall be entitled to a reasonable extension of time for performance of such obligations.

2.4.3. Banyan acknowledges that Centex will be unable to commence work on the Wall, due to the unpredictability of delivery of materials, until after Banyan has placed groundcover on the Berm. Banyan acknowledges that placement of the Wall may damage the ground cover, but such ground cover is necessary to prevent erosion. Accordingly, Banyan acknowledges that Centex and HOA may, without liability, damage the groundcover on the Banyan side of the Boundary, and any landscaping on the Banyan side of the Boundary installed by Banyan prior to the date Centex notifies Banyan that it may replant, and that Banyan shall bear the cost of any such loss. Centex and HOA shall use their reasonable efforts not to damage any landscaping. Centex and HOA will be responsible for any landscaping damaged in connection with the construction of the Wall and Berm for landscaping that is 25' or more away on the Banyan side of the Boundary.

## 2.5. Allocation of Cost: Contribution of Fill.

2.5.1. Centex or HOA will pay the cost of Approvals for, design of, and placement of the Berm, construction of the Wall, and placement of all landscaping on the Stonehaven side of the Boundary, except as provided in subsections 2.5.2 and 2.5.3.

2.5.2. In consideration for the promises in this Agreement, Banyan hereby grants Centex the right to take possession of and title to all dirt located within the Old Berm down to grade, free of any other charge, for use in construction the Berm, or replacing other fill used to construct the Berm. In addition, Banyan shall perform, and bear the cost of, removing landscaping, irrigation and any other improvements on the Banyan side of the Boundary. Banyan shall execute, and bear the cost of, the placing of all landscaping on the Banyan side of the Boundary.

2.5.3. Any other costs not expressly provided for herein but required to carry out the Work shall be borne by the entity on whose side of the Boundary the item of Work in question is done, or if this cannot be determined or it is on both sides, 50/50 by Centex and Banyan or other reasonable allocation depending on the percentage of Work on the respective sides of the Boundary. Payment shall be due within 30 days of notice by the claimant to the other party.

### 3. Easements.

3.1 Banyan Grant. Banyan hereby grants Centex, HOA, its successors and assigns a non-exclusive easement over and across the easement premises described in this Section 3.1 (the "Easement Area") for (i) placement of the Berm, running up to 24 feet in width to the East of the Boundary along the Middle Segment of the Boundary, and for a width along the End Segments sufficient to a transition to the design shown in Cross Section B, with the final dimensions of this component of the easement to be determined by a field survey of the actual boundaries of the Berm in place upon completion of Work; and (ii) to provide access to the Berm area for construction, surveying, and inspection, 50' wide and running along the entire Boundary (but only until completion of the Work), and (iii) inspection of the Berm and the Wall, and (iv) Maintenance and repair of the Berm and the Wall, but only as permitted in Section 4.4. The easements described in clauses (iii) and (iv) shall be 40' wide running to the East of the Middle Segment, and shall be 25' wide running to the East of the End Segments, and shall run along the entire Boundary. The easements described in clauses (i), (iii)

and (iv) shall be in perpetuity, and shall be memorialized in a recordable instrument per Section 3.4.

3.2 Centex Grant. Centex (and HOA) hereby grant Banyan an easement (i) over the End Segment Areas (as defined in Exhibit 4) for surveying, inspection, landscaping, Maintenance and repair purposes as permitted in Section 4; and (ii) over the End Segment Areas and Tract BT2 for inspection of the Berm and Maintenance of the Wall; and (iii) over the End Segment Areas and Tract BT2 for Maintenance and repair of the Berm and the Wall in accordance with the terms of this Agreement, but only as permitted in Section 4.4;.4 all in perpetuity.

3.3 Preservation of Protected Trees. Notwithstanding anything else in this Agreement, Banyan may not touch, damage, or adversely impact any trees in the End Segment Areas, such trees being protected under Centex's ERM permit from Palm Beach County. Banyan agrees to-be liable for all losses, including fines, resulting from violation of this section 3.3. Banyan will indemnify, defend and hold Centex harmless from any reasonable loss arising out of damage to the trees in the End Segment Areas, arising out of any act or omission of Banyan, its officer, agents, contractors, employees, or members and their guests.

3.4. Execution and Delivery of Final Easement Instruments. When the Work is complete Centex will cause a Florida licensed surveyor or engineer approved in advance by Banyan to inspect the Berrn and Wall, survey them, and certify whether or not they are complete in accordance with this Agreement, and provide copies of these documents to, Banyan. Within 20 days the later of (1) certification of substantial completion of the Berm and Wall from the engineer and from all applicable Governmental Authorizes and (2) completion of any as-built drawings or surveys by the Engineer, the parties shall exchange fully executed easement(s) in substantially the form attached hereto as Exhibit 5, and consistent with Sections 3.1-3.6. The delivery of the easements and date of the exchange are sometimes referred to hereinafter as the

Closing or Closing Date, respectively. Centex and Banyan shall share the cost of recording equally.

3.5. Easements are Appurtenant. The Easements herein are appurtenant to the Club Property, and all lots and tracts within Stonehaven PUD, respectively, such lands being sometimes referred to as the "Dominant Tenements".

3.6 Termination of Easements. The Easements, this Agreement and the rights and obligations there under may be terminated upon the mutual consent of the Owners of the Club Property and Tract BT2.

4. Maintenance. "Maintenance" includes any necessary inspection, monitoring, replacement of fill, regrading, filling of washouts, painting, cleaning, patching, mowing, raking, pruning, watering, fertilizing, replacing original landscaping planted under Section 2, repairing or rebuilding the Wall, insuring, payment of costs thereof, and payment of taxes, fees or assessments, or other liabilities, relating to the lands described in the following subsections.

4.1. Centex (until conveyance of Tract BT2 to HOA), and after such conveyance, HOA, shall promptly and diligently carry out, in a first class manner, and be responsible for all Maintenance of those portions of the Berm (exclusive of the Wall) on the Stonehaven side of the Boundary; except for the End Segment Areas.

4.2. Banyan shall promptly and diligently carry out, in a first class manner, and be responsible all Maintenance of those portions of the Berm (exclusive of the Wall) on the Club Property side of the Boundary, and for the End Segment Areas.

4.3. Wall Maintenance:

4.3.1. With respect to Maintenance items which can be divided by reference to the part of the Wall where they are done (such as painting and cleaning),



HOA shall be responsible for the carrying out of Maintenance of the HOA side and top of the Wall, at its expense, and Banyan shall be responsible for the carrying out of Maintenance of the Banyan side of the Wall, at its expense (regardless of where the Wall stands in relation to the Boundary).

4.3.2. With respect to Maintenance items other than those covered in 4.3.1., the cost of Maintenance of the Wall will be shared, 50% to HOA and 50% to Banyan. If the Wall is totally or partially destroyed, either party will have the right to replace the wall, and the cost of replacement will be shared, 50% to HOA and 50% to Banyan. Notwithstanding that a portion of the Wall is solely within Stonehaven, it is deemed a 50/50 shared expense maintenance obligation of Banyan and HOA for all purposes. HOA shall have primary responsibility for carrying out Maintenance of the Wall with respect to repairing and rebuilding the Wall; if HOA fails, in the opinion of Banyan, to do so, then Banyan may carry out repairs or maintenance after notice to HOA and recover 50% of the cost thereof as provided in this Section, under the procedure in Section 9.

4.4. Failure to Maintain. In the event either party believes the other has failed to commence and diligently attempt to discharge its Maintenance obligations, to the detriment of that party, that aggrieved party may notify the other in writing of such deficiency. If the notified party fails to cure the deficiency within 7 days of written notice, the aggrieved party may exercise its easement rights under Sections 3.1 (iv) and 3.2 (iii), respectively and do such items of Maintenance which it contended in the notice that the noticed party failed to do. The aggrieved party may seek an agreement that, or compulsory mediation to resolve whether, the cost of such Maintenance should be reimbursed by the other party.

4.5 Insurance. HOA, at its sole cost and expense, will obtain property insurance with respect to the Wall, naming Banyan as an additional insured. HOA will provide Banyan with evidence of such insurance, and Banyan will be entitled to 30 days

notice of cancellation of such insurance. HOA will continue to maintain such property insurance with respect to the Wall.

5. Indemnification.

5.1. Centex and HOA agree to indemnify, defend and hold Banyan, and its officers, directors, employees, affiliates, partners and members harmless from any claim, demand, loss or lawsuit which arises as a result of the actions or omissions of Centex and/or the HOA, or their officers, directors, employees, affiliates, partners and members or which arises as a result of the construction, design, presence, existence, deterioration, repair, or Maintenance of the Berm or any of its components, if the condition causing the claim or loss existed solely on the Stonehaven side of the Boundary, and not within the End Segment Areas. Upon conveyance of Tract "BT2" (as shown on the Plat) to HOA, Centex shall be discharged from this indemnity obligation with respect to claims arising after the date of that conveyance, and it shall be solely borne and discharged by HOA provided the homeowner association documents for the HOA are amended to evidence the HOA's assumption of this obligation.

5.2. Banyan agrees to indemnify, defend and hold Centex and HOA, and their officers, directors, employees, affiliates, partners, and members harmless from any claim, demand, loss or lawsuit which arises as a result of the construction, design, presence, existence, deterioration, repair, or maintenance of the Berm or any of its components, if the condition causing the claim or loss existed solely either (i) on the Banyan side of the Boundary, or (ii) solely within the End Segment Areas; except that this indemnity shall not extend to losses caused in whole or in part by Centex or its forces or their officers directors, employees, affiliates, partners, contractors or subcontractors while performing construction operations on the Club Property, before the Berm is certified to be complete by the project engineer. On the date that is 1 year after issuance of the certificate of completion, the exception in the preceding clause shall expire.

5.3. In the event any claim or loss shall be caused by a condition of the Berm which exists on either (i) both sides of the Boundary (but not in an end Segment Area), or (ii) both in an End Segment Area and elsewhere in the Berm on the Stonehaven side of the Boundary, then Banyan and Centex (or after conveyance of Tract "BT2" to the HOA shall indemnify each other and bear the loss in equal shares; except that (a) this indemnity shall not extend to losses caused in whole or in part by Centex or its forces or their officers, directors, employees, affiliates, partners, contractors or subcontractors while performing construction operations on the Club Property, before the Berm is certified to be complete by the project engineer. On the date that is 1 year after issuance of the certificate of completion, the exception in the clause (a) shall expire.

5.4. Notwithstanding the foregoing subsections or anything else in this Agreement to the contrary, Centex and HOA agree to indemnify, defend and hold Banyan, and its officers, directors, employees, affiliates, partners and members harmless from any claim, demand, loss or lawsuit which arises as a result of the construction or design of the Berm and which is caused in whole or in part by Centex or its construction forces, and its officers, directors, employees, affiliates, partners and members as a result of construction of the Berm. This indemnification provision shall terminate and expire on the date that is 1 year after issuance of a certificate of completion for the Berm by the project engineer, at which time the parties' indemnification obligations shall be controlled by subsections 5.1 - 5.3.

5.5. Warranty. Centex shall cause its contractors, subcontractors and vendors to make Banyan an express third party beneficiary of any warranties they may provide concerning the work. Centex disclaims all other warranties, express or implied, concerning the work.

## 6. Permits and Future Development:

6.1. Banyan acknowledges that Centex must first obtain a modification of its Palm Beach County ERM permit in order for the Work to proceed, and provide for

mitigation of approximately 16 trees. Centex will diligently proceed in good faith to seek such modification and provide a copy of the application and final permit to Banyan promptly after filing. Centex, at its sole cost and expense, does not guarantee the modification can be obtained. Banyan will reasonably assist, at no cost or expense to Banyan, in obtaining the modification if requested by Centex, including without limitation providing letters of support and soliciting assistance of its members. Centex may submit the letter attached hereto as Exhibit 6 to ERM and represent that Banyan supports the application.

6.2. The parties further acknowledge that Centex cannot, and will not be obligated to, commence placement of the Berm paralleling the North Segment until and unless Centex receives Approval by all Governmental Authorities asserting jurisdiction over Centex's plan to develop Tract B of the -Plat. Centex will, at its sole cost and expense, proceed in good faith to seek such Approval of a site plan for no less than 58, lots within Tract B of the Plat, but does not guarantee it can be obtained. Banyan will use its reasonable efforts to affirmatively support and assist, at no cost or expense to Banyan, in obtaining the modification to the extent requested by Centex, including without limitation providing letters of support and soliciting assistance of its members. Centex may submit the letter attached hereto as Exhibit 7 to the Governmental Authorities and represent that Banyan supports the application.

6.3. Banyan has been given an opportunity to review Centex's future phasing plan, zoning, platting and land development plans for Stonehaven which have been submitted to Palm Beach County for approval under Application No. PDD96-084, and acknowledges that Banyan has no objection to them. As part of the consideration for Centex's construction of the Berm, Banyan agrees to waive and/or covenants not to assert any objection to an future planning, zoning, phasing, platting or other land use permit application by Centex with respect to Stonehaven, provided that such application calls for residential or recreational use and is consistent with the Zoning Plans. Upon request Banyan, at no cost or expense to Banyan, will use its reasonable efforts to provide support for such applications, including without limitation providing letters of

support and soliciting assistance of its members. Banyan agrees to use its reasonable efforts to preserve the confidentiality of information provided by Centex concerning such plans until such time as Centex makes them public.

7. Title Examination; Liens; Memoranda of Agreement:

7.1. Condition of Easement to be Conveyed by Banyan. At Closing, the parties shall convey to each other the final recordable easements required by Section 3, free and clear of any and all liens, encumbrances, conditions, easements, assessments, restrictions which would (in the reasonable discretion of the proposed grantee of the Easement) adversely impact the easement rights described in this Agreement and other conditions except the following which shall be referred to herein as the "Permitted Exceptions":

(a) general real estate taxes and special assessments for the year of Closing and subsequent years not yet due and payable;

(b) covenants, conditions, easements, dedications and rights-of-way shown on the Survey referred to in Section 7.3 or otherwise approved in writing by the proposed grantee; and

(c) matters of record to which the proposed grantee fails to object or agrees to accept pursuant to Section 7.2.

7.2 Title Examination. Within 15 days after the Effective Date, Banyan shall cause the Title Company (identified herein) to issue to Centex and HOA a Title Commitment in the amount of \$100,000 covering the portion of the Easement Area located on the Club Property, together with complete copies of all instruments identified as conditions or exceptions in Schedule B thereof, at Banyan's expense. Within 15 days after the Effective Date, Centex shall cause the Title Company (identified herein) to issue to Banyan a Title Commitment in the amount of \$100,000 covering Tract BT2 of

Stonehaven, together with complete copies of all instruments identified as conditions or exceptions in Schedule B.thereof, at Centex's expense.

7.2.1. Review. The parties shall have 15 days after receipt of complete copies of the applicable Title Commitment and all exceptions identified therein, in which to notify the other in writing of any objections to the condition of title. Centex and HOA shall have the right to object to any condition that has a material adverse effect on construction of the Berm, including cost, or its ability to obtain access for construction or maintenance, or if any third party's consent must be obtained to carry out this Agreement. Banyan shall have the right to object to any condition that has a material adverse effect on its ability to obtain access for construction or maintenance, or if any third party's consent must be obtained to carry out this Agreement. If the proposed grantee fails to notify the other party in writing of objections to title within the 15-day review period, title shall be deemed accepted subject to the conditions set forth in the Title Report.

7.2.2. Banyan's Response. Within 10 days after receipt of Centex's or HOA's title objections, Banyan shall notify Centex and/or HOA in writing whether or not Banyan agrees to attempt to cure each objection to Centex's and/or HOA's satisfaction. If Banyan agrees to attempt to cure such objections it shall have a reasonable period of time, not exceeding 30 days, in which to do so. If Banyan (1) fails to respond to Centex's or HOA's written title objections within 10 days after receipt, or (2) declines to attempt to cure the title objections, or (3) agrees to attempt to cure but fails to do so, Centex or HOA shall notify Banyan in writing within 10 days after such event of Centex's or HOA's election. either (a) to waive its title objections and proceed with the Work, or (b) to attempt to cure the title objection at Centex's or HOA's own expense, or (c) to terminate the portions of the Agreement adversely affected by the condition of title. If Centex or HOA elects to attempt to cure the title objection itself pursuant to clause (b), Centex or HOA, at its sole cost and expense, shall have a period of at least 60 days from the date of its notice to Banyan in which to do so. If, at the end of the period allowed for Centex or HOA to cure the title objection, Centex or HOA has been unable

to do so, Centex or HOA shall have the right to 1) waive such uncured title objection and proceed with the Work, or to ii) terminate the portions of the Agreement adversely affected by the condition of title, or iii) proceed with the Work without waiving the objection, Banyan shall have no obligation to take any action or expend any money to cure any title objection raised by Centex or HOA, and Banyan shall not be liable to Centex or HOA for its failure to do so.

7.2.3 Centex's or HOA's Response. Within 10 days after receipt of Banyan's title objections, Centex or HOA shall notify Banyan in writing whether or not Centex or HOA agrees to attempt to cure each objection to Banyan's satisfaction. If Centex or HOA agrees to attempt to cure such objections it shall have a reasonable period of time, not exceeding 30 days, in which to do so. If Centex or HOA (1) fails to respond to Banyan's written title objections within 10 days after receipt, or, (2) declines to attempt to cure the title objections, or (3) agrees to attempt to cure but fails to do so in the time allowed, Banyan shall notify Centex and HOA in writing within 10 days after such event of Banyan's election either (a) to waive its title objections and proceed with the Work, or (b) to attempt to cure the title objection at Banyan's own expense, or (c) to terminate the portions of the Agreement adversely affected by the condition of title. If Banyan elects to attempt to cure the title objection itself pursuant to clause (b), Banyan, at its sole cost and expense, shall have a period of at least 60 days from the date of its notice to Centex or HOA, whichever was earlier, in which to do so. If, at the end of the period allowed for Banyan to cure the title objection, Banyan has been unable to do so, Banyan shall have the right to i) waive such uncured title objection, or to or (ii) terminate the portions of the Agreement adversely affected by the condition of title, or (iii) proceed without waiving the objection. Centex and HOA shall have no obligation to take any action or expend any money to cure any title objection raised by Banyan, and Centex and HOA shall not be liable to Banyan for its failure to do so.

7.2.4. Upon request, within 10 days of Centex's or HOA's request for execution of final easements under Section 3.4, Banyan shall cause the Title Company to issue an updated Title Commitment (the "Update") to be subject to the easements (as

shown by the as-built survey). If the Update contains any new or different conditions of title than the original Title Commitment, and such conditions have not been approved by Centex or HOA in accordance with this Agreement, Centex and HOA shall have the right to object to such new or different conditions in writing prior to execution of the easements. If Centex or HOA so objects, the Closing shall be postponed, and Banyan shall have 10 days after receipt of Centex's or HOA's new title objections in which to notify Centex and HOA in writing if Banyan agrees to attempt to cure the objections to Centex's and HOA's satisfaction. All other rights of the parties shall be governed by Subsection 7.2.1 - 7.2.3 above.

7.2.5 Upon request, within 10 days of Banyan's request for execution of final easements under Section 3.4, the then current owner of Tract BT2 ("Owner") shall cause the Title Company to issue an updated Title Commitment (the "Update") to be subject to the easements (as shown by the as-built survey). If the Update contains any new or different conditions of title than the original Title Commitment, and such Conditions have not been approved by Banyan in accordance with this Agreement, Banyan shall have the right to object to such new or different conditions in writing prior to execution of the easements. If Banyan so objects, the Closing shall be postponed, and Owner shall have 10 days after receipt of Banyan's new title objections in which to notify Banyan in writing if Owner agrees to attempt to cure the objections to Banyan's satisfaction. All other rights of the parties shall be governed by Subsections 7.2.1 - 7.2.3 above.

7.2.6. New Instruments. Banyan agrees that it will not record new instruments affecting the Easement Area on the portion of the Club Property without Centex's prior written consent pursuant to this Agreement, until after the Closing. Centex agrees that it will not record new instruments affecting Tract BT2 of Stonehaven without Banyan's prior written consent pursuant to this Agreement, until after the Closing; except that the DCCR's for Stonehaven, any Amendments thereto, conveyance by Centex to HOA of Tract BT2, and any easements or permit applications required by Centex's documentation plan are deemed approved; provided, however, the



amendments to the DCCRs applicable to the lands encumbered by the Easements, other easements or permit applications or the like will not adversely affect the rights or obligations of Banyan under this Agreement or the Easements.

7.3. Survey. Within 20 days after the Effective Date, Banyan shall deliver to Centex a current boundary survey of the Easement Area, prepared by a licensed surveyor or engineer certified to Centex, Banyan, and the Title Company and acceptable to the Title Company (the "Survey"). The Survey shall depict all boundaries, easements, rights-of-way, improvements and other apparent conditions or revealed by the Title Commitment. The proposed grantee shall have 15 days to review the Survey and if it reveals boundary defects, encroachments, disputes or other matters that are not Permitted Exceptions, the proposed grantee shall have the right to object to such matters within the 15-day review period and such objection shall be governed by the provisions of Section 7.2 concerning title objections. The Survey shall be updated not more than 10 days before execution of the final easements, as to the easement area only, and the proposed grantee shall have the right to object to any new or different conditions revealed by the update. Banyan and Centex shall equally bear the expense of the Survey and any update.

7.4.. Banyan will cause the lien of Dixie Tank Co. dated May 17, 2000, recorded at OR book 11791 page 396, public records of Palm Beach County Florida, to be fully discharged and/or bonded off, and released as a lien against Stonehaven (or any other property of Centex and/or HOA), at Banyan's sole expense, and deliver proof of compliance, within 7 days of the Effective Date.

7.5. The parties shall have the right to record a memorandum of this agreement against Tract BT2 and the Easement Area on the portion of the Club Property (or if any, such smaller tracts with a separate and discrete legal description, within the Club Property, where the Easement lies). Neither party shall record such memorandum until such time as all applicable Approvals have been obtained to permit the commencement of the Work. The memoranda shall be in substantially the form attached as Exhibit 8.

Centex shall cause the Declaration of Covenants for Stonehaven to include substantially those provisions stated in Exhibit 9, and may disclose the existence of this Agreement to potential purchasers of lands within Stonehaven.

7.6. Centex shall keep the Club Property free from any liens arising out of the Work. If required, Centex will record a notice of commencement with respect to the Work. In the event any liens arise with respect to the Work, Centex shall have the liens either satisfied or bonded not later than 30 days after the recording of such liens.

8. Default:

8.1. Notice and Cure; Remedies. If either party breaches any provision of the Agreement, the other party shall (as a condition precedent to enforcement) first give written notice of such breach(es) to the other parties, and may request the defaulting party to provide its plan for corrective action in writing or arrange to present its plan for corrective action within 3 days after written notice. If no plan is presented within the allowed time, or if the plan is not acceptable to the notifying party, then the notifying party may declare the other party in default, and shall have all rights and remedies available at law and equity against the other party, except these excluded under section 8.2 and 8.3; provided, however, that any claim must be submitted to mediation under Section 9 as a condition precedent to the filing of any lawsuit. Notwithstanding anything to the contrary contained in this Agreement, the defaulting party will have a period of 30 days after written notice in which to cure a default, and if such default is not capable of being cured within said 30-day period, then the defaulting party will have an additional 60 days in which to cure provided it diligently attempts to cure such matter.

8.2. Provisions Which May Not Be Terminated For Default The parties acknowledge that, notwithstanding any default of either in their prospective obligations under this Agreement, the following provisions shall be treated as a full, complete, executed and final settlement and shall not be subject to rescission or termination due to any other default:

- i. Section 1 (boundary resolution and quitclaim deed attendant thereto).
- ii. Section 2.2.4 (removal of old fence).
- iii. Section 7.4. (discharge of lien).

In addition, the following sections shall not be subject to rescission or termination due to any other default or for any other reason without express written consent of all parties.

- iv. Section 9 (mediation).

8.3. Limitation of Grounds for Termination. Further, the executory obligations of this Agreement may only be terminated for breach if (a) there is an uncured breach of § 11.1.1, 11.1.4, 11.1.5, 11.1.6 - .10, 11.2, 11.3, 11.4, 11.5.1, and' 11.5.4, or (b) such breaches are so material and substantial that they deprive the aggrieved party of the essence of the bargain. In the event the relevant tribunal shall find that the breach do not rise to this standard, the terminating party shall be limited to remedies other than termination.

9. Compulsory Non-Binding Pre-Suit Mediation. Before any party files any lawsuit either arising out of this instrument or relating to the matters, easements or prior disputes described herein, whether in contract, tort, at law or in equity (except for a temporary injunction proceeding) the claimant must first submit the dispute to mediation as provided in section 9.1, below. If a party files for a temporary injunction, then the parties shall nevertheless proceed to mediation while the injunction litigation proceeds.

9.1. Proceeding. The mediation will be conducted by an impartial mediator agreed to by the parties or selected at random by the Circuit Court mediation program administrator for Broward County from the list of court approved certified mediators for Broward County, Florida. Any party who gives notice of default shall ask the administrator to select the mediator (absent agreement of the parties). The parties agree to participate

and appear in good faith in mediation at the time and place selected by the mediator, to occur within 7 days of the first demand or as soon thereafter as the mediator shall determine, and to continue to participate in the mediation in good faith until and unless 1) a written settlement agreement is executed or 2) the mediator declares an impasse. The mediator may elect to apply the Florida Rules of Civil Procedure to govern the mediation and in that event, the parties will comply with them. The parties agree that time is of the essence of this provision, and either of them, or the mediator, may secure enforcement of this section by injunction.

9.2. The HOA, and each Party's successors in title to the Dominant Tenements and servient tenements, shall be bound by this Section 9 and are deemed "parties" as that term is used herein.

9.3. The cost of the mediator shall be paid as allocated by the mediator.

9.4. Subject to the foregoing, in the event of any lawsuit permitted by or notwithstanding this Section 9, a court of competent jurisdiction for the circuit, district or division encompassing Palm Beach County, Florida, shall be the sole and exclusive proper venue for any action arising out of this Agreement or transaction, unless such court is unable to obtain personal jurisdiction over any necessary party, or declines to hear the action. All parties to this Agreement hereby consent and submit to the personal jurisdiction of any court described in this Section for the limited purpose of any action arising out of this Agreement or transaction, and stipulate that none will assert any objection to the court's personal jurisdiction over them, or to the convenience of the forum. All parties waive trial by jury.

## 10. Termination.

10.1 Notwithstanding anything to the contrary in this Agreement, Sections 1, 2.2.4 and 7.4 and 9 are not subject to termination without the express written consent of all of Banyan, Centex, and HOA.

10.2 In the event Centex is unable to obtain Approvals to develop Tract B of the Plat by July 31, 2003, then either party may terminate the obligations with respect to the Northern Segment only, by giving written notice to the other. The other prospective obligations of the parties under this Agreement shall not be terminated by virtue of such termination.

10.3. In the event Centex is unable to obtain Approvals necessary for the Berm (other than in the Northern Segment) by July 31, 2003, then either party may terminate those portions of the Agreement that relate to construction, maintenance of and easements for the Berm, by giving written notice to the other. Any other prospective obligations of the parties under this Agreement shall not be terminated by virtue of such termination.

10.4. Centex may terminate certain, of the executory obligations of this Agreement as provided in Section 7.

10.5. Either party may give notice of termination of this Agreement for breach (1) if such breaches are so material and substantial that they deprive the aggrieved party of the essence of the bargain, or (2) in the event of uncured breach of any of the sections identified in Section 8.3. Upon final decision by the controlling tribunal that the breach justifies termination, the Agreement (other than those provisions listed in Section 10.1) shall be terminated; but the parties hereby grant the court all powers and authority necessary or convenient to provide for the preservation and maintenance or removal of the Berm and Wall, if necessary, and to apportion the expense thereof.

10.6. In the event (1) of termination by either party as provided above, or (2) if any portion of this Agreement is held unenforceable or (3) any party believes that it has become impossible to perform any executory promise in this Agreement, or (4) if 20 years have passed since the effective date, and either party proposes substantial change to the land use of the Dominant Tenements or Servient Tenements and wishes to modify the

Agreement to accommodate such changes, either party may demand resolution of any and all issues arising out of such circumstances, including an equitable adjustment of the rights in and remaining under this Agreement by mediation under Section 9, by written notice to the other identifying the issues to be resolved.

11. REPRESENTATIONS AND WARRANTIES.

11.1. Banyan's Representations and Warranties. Banyan hereby represents and warrants to Centex and HOA as of the Effective Date and as of the Closing Date as follows:

11.1.1. Authority. The execution and delivery of this Agreement by Banyan, its performance, and the consummation by Banyan, of the transaction contemplated by this Agreement are within Banyan's capacity and all requisite action has been taken to make this Agreement valid and binding on Banyan in accordance with its terms. The officer named in the signature block has full authority to execute this Agreement and bind Banyan.

11.1.2. No Legal Bar. The execution by Banyan of this Agreement, its performance, and the consummation by Banyan of the transaction hereby contemplated does not, and on the Closing Date will not (a) result in a breach of or default under any indenture, agreement, instrument or obligation to which Banyan is a party and which affects all or any portion of the Club Property, or (b) to Banyan's knowledge, constitute a violation of any governmental requirement.

11.1.3. No Default. Banyan is not in default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Banyan is a party and which affects any portion of the Club Property.

11.1.4. Title. Banyan is the owner of marketable fee simple title to the Club Property, free and clear of all liens, encumbrances and restrictions of any kind, except the

Permitted Exceptions (and encumbrances of record which will be discharged at Closing) and no part of the Club Property has ever been occupied by Banyan as a residence or homestead. Banyan has no knowledge of any circumstance or event that may give rise to an attempt by any Governmental Authority to seize the Club Property under any civil or criminal law authorizing seizure or forfeiture as a penalty for violation.

11.1.5. Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Banyan, threatened against the Club Property, including without limitation, condemnation or eminent domain claims, actions or proceedings (except for those identified in an Exhibit signed by Banyan and attached) which would affect the Club Property.

11.1.6. Hazardous Materials. Other than as stated below, Banyan has not received any written notice and has no actual knowledge, without any duty of inquiry, that the Easement Area on the portion of the Club Property has been used to generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Material, as defined herein, whether used in construction or stored on the Easement Area on the portion of the Club Property, and Banyan has not received any summons, citation, directive, letter or other written communication, from any agency or department of the State of Florida or the U.S. Government concerning any intentional or unintentional action or omission which resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Material on the Club Property. Banyan has not received any written notice and has no actual knowledge, without any duty of inquiry, of any Storage Tanks situated on or within the Easement Area. (Hazardous Material means any flammable or explosive materials, petroleum or petroleum products, natural gas or synthetic gas usable for fuel, radioactive materials, hazardous wastes or substances or toxic wastes or substances, including without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic materials" or "toxic substances" under any applicable governmental requirements. Storage tanks are any aboveground hazardous storage tank" or "flow-through process tank," as defined in Ch. 376, Fla. Stat.,

and any underground storage tank or system used to store or process any hazardous substance or petroleum.) The sole exceptions to this Warranty are: Banyan uses "hazardous substances" and utilizes Storage Tanks in the normal course of its operation of the Club Property, however, to Banyan's actual knowledge, without any duty of inquiry, there are no Hazardous Materials stored, and no Storage Tanks located within the Easement Area on the portion of the Club Property.

11.1.7. Parties in Possession. There are no parties in possession of any portion of the Easement Area located on the Club Property side of the Boundary or improvements as lessees, tenants or trespassers.

11.1.8. No Violations of Law. Banyan has no knowledge of any violation of local, state or federal laws, ordinances, rules or regulations applicable to the Club Property.

11.1.9. Site Conditions. Banyan has no knowledge of any condition of the Club Property that will, or may, interfere with or will, or may, materially increase the expense of the Work, except as depicted on the Survey or revealed in the Title Commitment.

11.1.10. No Unrecorded Commitments. The Club Property is subject to no commitments for contributions or assessments of money or land or use agreements, easements or restrictions except as set forth in the official public records of real property.

11.2. Duty to Disclose. Banyan shall disclose to Centex in writing any Conditions or events that arise or occur subsequent to the Effective Date of this Agreement that become known to Banyan and which contradict or modify in any material respect any representation of Banyan set forth herein or otherwise have a material effect upon the Club Property or its use, or on Banyan's capacity or ability to perform its obligations under this Agreement.



11.3. Survival. Banyan's representations and warranties contained in this Section 11 shall survive Closing and shall not be merged therein.

11.4. Covenant Against Waste. Banyan shall not knowingly permit trash or other material to be deposited upon the portion of the Club Property affected by this Agreement and shall deliver it to Centex in substantially the same condition in which the Club Property exists as of the Effective Date. Banyan shall not remove trees, excavate or remove dirt or fill material from the Club Property or do any other act, if any such activity would increase the difficulty or expense of constructing the Work.

11.5. Centex's and HOA's Representations and Warranties. Centex and HOA hereby represent and warrant to Banyan as of the Effective Date and as of Closing Date as follows:

11.5.1. Authority. The execution and delivery of this Agreement by Centex and HOA, its performance, and the consummation by Centex and HOA of the transaction contemplated by this Agreement are within Centex's and HOA's capacity and all requisite action has been taken to make this Agreement valid and binding on Centex and HOA in accordance with its terms. The officer named in the signature block has full authority to execute this Agreement and bind Centex.

11.5.2. No Legal Bar. The execution by Centex and HOA of this Agreement, its performance, and the consummation by Centex and HOA of the transaction hereby contemplated does not, and on the Closing Date will not (a) result in a breach of or default under any indenture, agreement, instrument or obligation to which Centex or HOA is a party and which affects all or any portion of Tract BT2 of Stonehaven, or (b) to Centex's or HOA's knowledge, constitute a violation of any governmental requirement.

11.5.3. No Default. Centex and HOA are not in default under any indenture, mortgage, deed of trust, loan agreement, or other agreement to which Centex and HOA are parties and which affects Tract BT2 of Stonehaven.

11.5.4. Title. Centex or HOA is the owner of marketable fee simple title to Tract BT2 of Stonehaven, free and clear of all liens, encumbrances and restrictions of any kind, except the Permitted Exceptions (and encumbrances of record which will be discharged at Closing) and no part of Tract BT2 of Stonehaven has ever been occupied by Centex as a residence or homestead. Centex has no knowledge of any circumstance or event that may give rise to an attempt by any Governmental Authority to seize Tract BT2 of Stonehaven under any civil or criminal law authorizing seizure or forfeiture as a penalty for violation.

11.5.5. Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Centex or HOA, threatened against Tract BT2 Of Stonehaven, including without limitation, condemnation or eminent domain claims, actions or proceedings (except for those identified in an Exhibit signed by Centex or HOA and attached) which would affect Stonehaven.

11.5.6. Parties in Possession. There are no parties in possession of Tract BT2 of Stonehaven as lessees, tenants or trespassers.

11.5.7. No Violations of Law. Centex and HOA have no knowledge of any violation of local, state or federal laws, ordinances, rules or regulations applicable to Stonehaven.

11.5.8. Site Conditions. Centex has no knowledge of any condition of Tract BT2 of Stonehaven that will, or may, interfere with or will, or may, materially increase the expense of the Work, except as depicted on the Survey or revealed in the Title Commitment.

11.5.9. No Unrecorded Commitments. Tract BT2 of Stonehaven is subject to no commitments for contributions or assessments of money or land or use agreements, easements or restrictions except as set forth in the official public records of real property.

11.5.10. Duty to Disclose. Centex and HOA shall disclose to Banyan in writing any conditions or events that arise or occur subsequent to the Effective Date of this Agreement that become known to Centex and HOA and which contradict or modify in any material respect any representation of Centex and HOA set forth herein or otherwise have a material effect upon Stonehaven or its use, or on Centex's or HOA's capacity or ability to perform its obligations under this Agreement

11.5.11. Survival. Centex's representations and warranties contained in this Section 11 shall survive Closing and shall not be merged therein.

11.5.12. Covenant Against Waste. Centex shall not knowingly permit trash or other material to be deposited upon the portion of Tract BT2 of Stonehaven affected by this Agreement. Centex may improve Tract BT2 as generally shown in the site plan for Stonehaven.

12, NOTICES. Any notice, request, demand, instruction or other communication to be given to either party hereunder, shall be in writing and shall be hand-delivered or sent by Federal Express or a comparable overnight mail service, or mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, to Centex, HOA, or Banyan, at their respective addresses set forth below. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addressees and addresses for the purpose of this Section may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated herein shall be deemed to continue in effect for all purposes hereunder.

If to Banyan: The Banyan Golf Club of Palm Beach, Inc.  
9059 Ranch Road  
West Palm Beach, FL 33411

with a copy to: Nathan E. Nason, Esquire  
Nason, Yeager, Gerson, White & Lioce, P.A.  
1645 Palm Beach Lakes Boulevard, Suite 1200  
West Palm Beach, Florida 33401  
Telephone: (561) 686-3307  
Fax: (561) 686-5442

If to Centex: Centex Homes  
8198 Jog Road  
Boynton Beach, FL 33437  
Attn: David Abrams  
Division Manager  
Telephone: 561-536-1000  
Fax: 561-536-1060

with a copy to: Andrew V. Showen  
Centex Homes  
385 Douglas Ave., Suite 1000  
Altamonte Spring, FL 32714  
Telephone: (407) 661-2101  
Fax (407) 661-9757

If to HOA: Stonehaven Estates Homeowners' Association, Inc.  
8198 Jog Road, Suite 200  
Boynton Beach, FL 33437  
Attn: Dave Abrams, President  
Telephone: (561) 336-1000  
Fax (561) 336-1060

with a copy to: Andrew V. Showen  
Centex Homes  
385 Douglas Ave., Suite 1000  
Altamonte Springs, FL 32714  
Telephone: (407) 661-2101  
Fax: (407) 661-9757

13. ASSIGNMENT, BINDING EFFECT ON SUCCESSORS IN TITLE. The terms and conditions of this Agreement are hereby made binding on the successors, assigns and transferees of the parties hereto. This Agreement shall, for its duration, continue as a covenant running with the land as to both Stonehaven and the Club Property. Nothing in this Agreement shall be construed as a grant by either party of their respective rights to fee simple title to the land on which the Berm, the wall or any extension of the them stands.

14. MISCELLANEOUS.

14.1. Counterparts. This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the Agreement of the parties and each of which shall be deemed an original.

14.2. Section and Paragraph Headings. The section and paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement. References to Section numbers shall be deemed to include any subsections of the numbered Section unless otherwise stated.

14.3. Amendment. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by both Banyan, Centex and HOA.

14.4. Attorneys' Fees. There is no attorneys' fee entitlement under this Agreement.

14.5. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Florida, both substantive and remedial, but without considering Florida's conflict of laws rules.

14.6. Entire Agreement; Survival of ERM Agreement. This Agreement sets forth the entire agreement between Banyan, Centex and HOA relating to the Club Property and all subject matter herein and supersedes all prior and contemporaneous negotiations,

understandings and agreements, written or oral, between the parties; except that the Palm Beach County Department of Environmental Resources Management Settlement Agreement VE-00-023 ("ERM Agreement") survives and is not extinguished by this Agreement, except that last sentence of Paragraph 6 of the ERM Agreement is amended and superceded by this Agreement.

14.7. Time of the Essence. Time is of the essence in the performance of all obligations by Centex, Banyan and HOA under this Agreement.

14.8. Computation of Time. Any reference herein to time periods of less than six (6) days shall exclude Saturdays, Sundays and legal holidays in the computation thereof. Any time period provided for in this Agreement which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full Business Day.

14.9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto, including without limitation Grantees of the Club Property and Tract BT2.

14.10. Construction of Agreement. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

14.11. Gender. As used in this Agreement, the masculine shall include the feminine and neuter the singular shall include the plural and the plural shall include the singular as the context may require.

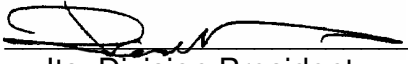
14.12. Exclusivity. Centex Corporation, a Nevada corporation, is not a party to this Agreement and shall have no direct or derivative liability for any obligation of Centex or HOA under this Agreement.

[SIGNATURES ON NEXT PAGE]

CENTEX HOMES

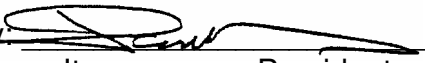
a Nevada general partnership

By: CENTEX REAL ESTATE CORP.,  
a Nevada corporation,  
its general partner

By:   
Its: Division President

(CORPORATE SEAL)

STONEHAVEN ESTATES  
HOMEOWNERS' ASSOCIATION, INC.

By:   
Its: \_\_\_\_\_ President

(CORPORATE SEAL)

THE BANYAN GOLF CLUB OF  
PALM BEACH, INC.

By:   
Its: \_\_\_\_\_ President

(CORPORATE SEAL)

STATE OF Florida )  
 ) SS: 590-01-2649  
 COUNTY OF Palm Beach )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, 2001,  
 by David Abrams, the Division President of  
, a  corporation, general/limited partner  
 of Centex Homes, a Nevada general partnership, on behalf of the corporation and  
 partnership, ( ) who is personally known to me OR ( X ) who produced as identification.



Sandra Kathryn Herba  
 Commission # 00 836447  
 Expires Nov. 3, 2001  
 Bonded Thru  
 Atlantic Bonding Co., Inc.

Sandra Kathryn Herba  
 Notary Signature

Sandra Kathryn Herba  
 Print Notary Name

NOTARY PUBLIC  
 State of Florida at Large  
 My Commission Expires: Nov. 3, 2001

STATE OF FLORIDA )  
 ) SS: 590-01-2649  
 COUNTY OF Palm Beach )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April,  
 2001, by David Abrams, the  
 President of Stonehaven Estates Homeowners' Association, Inc., a  
 corporation, on behalf of the corporation, ( ) who is personally known to me OR ( X ) who  
 produced Drivers License as identification.



Sandra Kathryn Herba  
 Commission # 00 836447  
 Expires Nov. 3, 2001  
 Bonded Thru  
 Atlantic Bonding Co., Inc.

Sandra Kathryn Herba  
 Notary Signature

Sandra Kathryn Herba  
 Print Notary Name

NOTARY PUBLIC  
 State of Florida at Large  
 My Commission Expires: Nov. 3, 2001



STATE OF FLORIDA                     )  
  ) SS: 590-01-2649  
COUNTY OF PALM BEACH         )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of April, by  
Gene R. Hoffman, the \_\_\_\_\_ President of  
The Banyan Golf Club of Palm Beach, Inc., Inc., a Florida corporation, on behalf of  
the corporation, ( X ) who is personally known to me OR (    ) who produced  
\_\_\_\_\_ as identification.



Sandra Kathryn Herba  
Commission # CG 856447  
Expires Nov. 3, 2001  
Bonded Thru  
Atlantic Bonding Co., Inc.

*Sandra Kathryn Herba*

Notary Signature

Sandra Kathryn Huba

Print Notary Name

NOTARY PUBLIC

State of Florida at Large

My Commission Expires: Nov. 3, 2001

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