

AS

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2005277659 48 PGS  
2005 DEC 19 11:37 AM  
KAREN E. RUSHING  
CLERK OF THE CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA  
CBETHEL Receipt#726125

Return to:

This Instrument prepared by:  
William G. Schlothauer, Esq.  
WILLIAMS PARKER HARRISON  
DIETZ & GETZEN  
200 S. Orange Avenue  
Sarasota, Florida 34236  
(941) 366-4800



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

THIS DECLARATION is made this 7<sup>th</sup> day of DECEMBER, 2005 by Rivendell Joint Venture, a Florida general partnership (the "Declarant") for itself and its successors, grantees and assigns.

**PREMISES:**

**WHEREAS**, Declarant is the owner of the real property described in Exhibit "A" to this Declaration, and desires to create thereon a residential Community of up to 106 Town Homes constructed in 11 buildings with 8 or 10 Town Home units to a building

**WHEREAS**, Declarant desires to provide for the preservation of the values and amenities in the Community, and to create a corporate entity to which will be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, maintaining the Community Common Areas and insuring the Properties, and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Declarant has created, under the laws of the State of Florida, a corporation not for profit known as Stoneywood Cove Community Association, Inc., for the purpose of exercising the aforesaid functions;

**NOW, THEREFORE**, the Declarant declares that the real property described in Exhibit "A" to this Declaration, as it may be amended from time to time, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. All provisions of this Declaration shall be equitable servitudes which run with the land, and which bind and inure to the benefit of all present and future owners of Lots and Town Homes. The acquisition of any ownership interest in the Properties, or the lease, occupancy, or use of any portion of a Town Home, shall constitute an acceptance and ratification of all provisions of this Declaration as amended from time to time, and indicate agreement to be bound by its terms.

**ARTICLE 1  
DEFINITIONS.**

1.1 "**Architectural Review Committee**" or "**ARC**" means the committee described in Article 13 of this Declaration.

1.2 "**Association**" means Stoneywood Cove Community Association, Inc., a Florida corporation not for profit.

664582v4

STONEYWOOD COVE - DECLARATION

1.3 **Board** means the Board of Directors of the Association.

1.4 **Townhome(s) Documents** means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

1.5 **County** A reference in any of the Governing Documents to "the County" or to any County other than Sarasota County, Florida, is unintentional and shall be construed as intended to mean and refer to Sarasota County.

1.6 **Declarant** or **Developer** means Rivendell Joint Venture, a Florida general partnership. Wherever either term is used in this Declaration, or in the Articles or Bylaws of the Association, it shall always be deemed to include any successor in interest to the Declarant's development rights and obligations.

1.7 **Declaration** means this Declaration of Covenants, Conditions and Restrictions for Stoneywood Cove, as amended from time to time.

1.8 **Family** or **Single Family** means any one of the following:  
"Family" means one natural person or not more than two natural persons who are not related to each other by blood or adoption, who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit.. The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board of Directors in their sole and unbridled discretion. Once designated and accepted by the Board as a qualifying family unit, no change in persons so constituting the qualifying family unit may be made except for one time in any calendar year and no more than three times in any constituent partner's lifetime, but in all events such change in partner shall be subject to the Board's approval in its sole and unbridled discretion.

1.9 **Governing Documents** means this Declaration, and the Articles of Incorporation and Bylaws of the Association.

1.10 **Guest** means a person who is physically present in, or occupies a Townhome on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.11 **Institutional Mortgagee** means the holder of a mortgage against a Lot or Living Unit, if the mortgagee or assignee is a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Lot or Living Unit if the mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Living Unit.

1.12 **Lease** means the grant by a Townhome owner of a right to occupy the owner's Townhome for valuable consideration.

1.13 "**Living Unit**" or "**Townhome**" means any or all of the 106 Townhome residences which will be constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever either term is used, it shall be interpreted as though it were followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

1.14 "**Lot**" means one or more of the 106 numbered parcels of land, as graphically shown in Exhibit "B" hereto, into which the Properties have been subdivided, upon each of which a Living Unit has been, or is intended to be, constructed. Wherever "Lot" is used, it shall be interpreted as though it were followed by the words "and the Living Unit constructed thereon," unless the context clearly requires another meaning.

1.15 "**Community Common Areas**" means all portions of the Properties exclusive of the Lots.

1.16 "**Occupant**" when used in connection with a Townhome, means a person who is physically present in the Townhome on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

1.17 "**Owner**" or "**Member**" means a person who is the record owner of legal title to a Lot.

1.18 "**Primary Occupant**" means the natural person approved for occupancy, together with that person's family, when legal title to a Townhome is held in the name of more than two persons, or by a Director or a corporation or other entity which is not a natural person, as further provided in Article 14.1 below.

1.19 "**Properties**" or "**Community**" means all real property which is subject to this Declaration, and includes both Community Common Areas and Lots.

1.20 "**Rules and Regulations**" means the administrative rules and regulations governing use of the Community Common Areas and procedures for operating the Association and the Properties, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

1.21 "**Service Charge**" means a fee or charge against one or more owners, Lots or Living Units for any service, material or combination thereof which may be provided by the Association for the use and benefit of the owner on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving such material or service shall be a service charge against the Lots or Living Units so benefited. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.22 "**Temporary**" or "**Temporarily**" means not more than thirty (30) days in any period of six (6) consecutive months.

1.23 "**Stoneywood Cove**" means, and is the name of, the Properties.

## **ARTICLE 2** **CONTINUING DEVELOPMENT.**

2.1 **Description.** This Community is being developed by the Declarant into Lots intended for "zero lot line" 2 – story town homes. The Townhome residences shall be conjoined and constructed together in groups of 8 to 10 units per building. Other areas of Stoneywood Cove will contain other types of residential development, and may be under construction for an extended time. Incident to the

development process, the quiet enjoyment of the properties may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Declarant and others may present to the public certain renderings, plans, and models showing possible future development of Stonewood Cove. Declarant does not warrant in any way the accuracy of these renderings, plans or models. They are primarily thematic and do not represent a guaranteed final development plan of Stonewood Cove.

## **2.2 Community Development District(s).**

A. **Creation, Establishment and Powers.** Declarant or an affiliate of Declarant, reserves the right to petition to establish, on the property set forth in the petition, one or more community development districts, as created by and defined in Chapter 190, Fla. Stat. ( or "CDD"), which may include all or a portion of the Subdivision or of Stonewood Cove, and may also include property in this Community, specifically including any lakes within the Community. A CDD has, pursuant to its state charter, general powers related to the implementation of special powers to provide (through such functions as acquisitions, finance, construction, planning, implementation, maintenance and management) basic community development systems, facilities and services, which constitute projects or infrastructure improvements. A CDD has the power under its charter to levy and collect lienable ad-valorem taxes under certain limitations, lienable non-ad valorem taxes under certain limitations, lienable non-ad valorem special assessments by a variety of names and non-lienable user-based service charges or fees. These revenue sources can also be use to amortize various types of bonds if and as deemed appropriate for the financing of the management functions of the CDD government. The term "assessments" as used in section 2.1 refers to governmental non-ad valorem special assessments as provided for in Chapter 190, Fla. Stats. (2001), not as defined in Chapter 720, Fla. Stat. or in this Declaration. A CDD is empowered to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities, including without limitations, roads , water and sewer, irrigation, water management; street lighting; and related systems, facilities and services. The state charter also grants the CDD additional special powers for such projects or improvements such as parks and facilities for indoor and outdoor recreational, cultural and educations uses, , mosquito control and other such special powers; however, this set of special powers granted by the charter to the CDD may not be exercised without consent of the exercise from the applicable county or city where the CDD is located. There may be plat dedication of such systems, facilities and services to entities other than a CDD, which were offered prior to the establishment of a CDD on this particular property and have not been accepted such systems, facilities and services may be conveyed instead to a CDD. The Declarant reserves the right to amend the Governing Documents in any way convenient or necessary to petition to establish by ordinance or rule the state-chartered and state-created community development district under Section 190, Fla. Stat.

B. **Taxes and Assessments.** IF ESTABLISHED, A CDD IS A SINGLE AND SPECIAL PURPOSE LOCAL GOVERNMENT WITH AUTHORITY TO MANAGE AND FUND ITS OPERATIONS BY LEVYING TAXES OR NON-AD VALOREM SPECIAL ASSESSMENTS, OR BOTH, ON THE PROPERTIES WITHIN A CDD. THE TAXES AND ASSESSMENTS PAY FOR THE CONSTRUCTION, OPERATIONS, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES OF A CDD, AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF SUPERVISORS OF A CDD. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW. THESE TAXES AND ASSESSMENTS WOULD APPEAR ON THE ANNUAL REAL ESTATE TAX BILL FOR EACH OWNER AS A SEPARATE TAX OR ASSESSMENT AND WOULD BE PAYABLE DIRECTLY TO THE SARASOTA COUNTY TAX COLLECTOR. THEY ARE NOT PART OF THE COMMON EXPENSES OF THE ASSOCIATION. THE

TAXES AND ASSESSMENTS OF A CDD MAY CONSTITUTE A LIEN UPON THOSE PORTIONS OF THE PROPERTIES THAT ARE WITHIN A CDD.

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

D. CDD Property Becoming Community Common Areas. If Declarant determines that it is in the best interests of the Association for any of a CDD Property to become Community Common Areas, and if the Board of Supervisors of the CDD determine that a transfer of CDD Property title, jurisdiction, or responsibilities to the Association was appropriate, the CDD may convey to the Association fee simple title, easements, use rights and/or maintenance obligations to those portions of a CDD Property which are to become Community Common Areas. If the CDD desires to convey CDD Property to the Association, the Association and the members are obligated to accept title to a CDD Property, subject to taxes for the year of conveyance, and to restrictions, limitations, conditions, obligations, reservations, duties and easements of record.

E. Community Common Areas Becoming CDD Property. If Declarant determines, subject to any governmental requirements, that it is in the best interests of the Association and its members for any portions(s) of the Community Common Areas to be owned and/or administered by a CDD rather than by the Association, such portion(s) of the Community Common Areas shall cease to be Community Common Areas, even if they have already been conveyed to the Association, and shall thereafter be considered CDD Property, even if legal title has not been deeded to a CDD. Community Commons Areas becoming either owned by or merely administered by a CDD is expressly conditioned upon the CDD's Board of Supervisors agreeing to accept conveyance of title, or merely accepting the jurisdiction to administer, operate or maintain these Community Common Areas under the CDD. When a part of the Community becomes CDD Property, the expenses of administration and maintenance shall cease to be Common Expenses, *unless an Agreement is entered into by the Association and a CDD, making the Association responsible for the administration and maintenance of any CDD Property.* If required by law, or if deemed by Declarant to be in the best interests of the Association, the Association shall convey to a CDD the legal title to any Community Common Area which becomes CDD Property, and a CDD would be obligated to accept title to the Community Common Area, subject to taxes for the year of conveyance, and restrictions, limitations, conditions and obligations, reservations, duties and easements of record. The surface water management system of the Association may be an area of common responsibility.

F. Maintenance Agreement. A CDD, (if established) may enter into an Agreement with the Association requiring the Association to perform some, if not all, of a CDD duties related to maintaining certain CDD Property which the CDD operates or administers regardless of whether or not the CDD owns title to the Property.

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

A Community Development District's "CDD" may be established to manage and finance construction of other improvements and to provide other services as delineated in this Article, depicted on the Subdivision Plat as roadways and streets, parking areas, and road right-of-ways to provide access to and from the Community, as well as to provide everything permitted or allowed under Chapter 190, Florida Statutes.

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

The special assessment bond(s) will be an obligation of the local government called the CDD. Each owner has a duty to pay any lienable revenue levied by the CDD government on the Property and users of the facilities shall have an obligation to pay non-lienable service charges to the CDD.

The CDD may enter into an Agreement with the Association, which requires the Association to operate and perform some, if not all, of the CDD duties relating to maintaining the lakes and the general aesthetic conditions of the lakes within the Community.

A CDD may assume responsibility for maintenance and monitoring of on-site wetland preserve areas pursuant to the Conservation Easement(s) recorded in the Public Records of Sarasota County, Florida.

A CDD may be established and then may exercise its state-chartered powers to levy non-ad valorem special assessments for the purposes of road widening and other road improvements and may enter into a contract with the Sarasota County Tax Collector to have these non-ad valorem special assessments collected as first liens on the property for these purposes or for the purposes of amortizing any bonds which may have been issued by the CDD to finance this road work.

A CDD may own the submerged or lake bottoms for each lake in the Community. Additionally, a CDD may construct, install, maintain and own all irrigation lines, well sites and flow lines.

**ARTICLE 3**  
**ASSOCIATION; MEMBERSHIP; VOTING RIGHTS.**

The operation, of the Community, and the management and ownership of the Community Common Areas shall be by Association, which shall perform its functions pursuant to the following:

**3.1 Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "C."

**3.2 Bylaws.** The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "D" to this Declaration, as they are amended from time to time.

**3.3 Delegation of Management.** The Association may contract for the management and maintenance of the Properties and 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 maintenance of the Community Common Areas, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents and Sections 720.301 through 720.312, inclusive, Florida Statutes (2004), as amended.

**3.4 Board of Director.** Except as expressly otherwise provided by law or by the Townhomes Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members. An owner does not have the authority to act for the Association by virtue of being an owner.

**3.5 Members.** Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

**3.6 Membership Roster.** The Association shall maintain a current roster of names and mailing addresses of owners and primary occupants. A copy of the up-to-date roster shall be available to any owner upon request.

**3.7 Limitation on Liability.** Notwithstanding the duty of the Association to maintain and repair the Community Common Areas, and certain parts of the Townhomes, the Association is not liable to owners for property damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the association, or caused by the elements or owners or other persons.

**3.8 Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

**3.9 Association Voting.** All votes of the members pertaining to the Association, shall be cast by the Voting Member of this Association, as further provided in of the Bylaws. Votes of the Declarant Member shall be cast by its designated representative. Voting in the election of Directors shall be by ballots the members personally cast, as further provided in the Bylaws.

**3.10 Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Governing Documents, the Association must obtain the prior approval of at least two-thirds (2/3rds) of its voting interests before paying or obligating itself to pay legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- A. the collection of assessments;
- B. the collection of other charges which members are obligated to pay;
- C. the enforcement of the Governing Documents;
- D. the enforcement of the rules and regulations of the Association;
- E. in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or

F. filing a compulsory counterclaim.

**3.11 Official Records.** The official records of the Association shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the development. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

#### **ARTICLE 4 ASSESSMENTS.**

The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Community Common Areas and association property, the expenses of insurance for the Association and/or Directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as common expense by this Declaration or the Bylaws. If the Association enters into a contract for bulk service cable television, the cost of a duly franchised cable television service obtained pursuant to a bulk contract shall be a common expense.

**4.1 Covenants to Pay Assessments.** Declarant, for each Lot within the Community, hereby covenants, and each subsequent owner of a Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

A. the Lot's share of annual assessments based on the annual budget of common expenses adopted by the Association;

B. the Lot's share of special assessments for Association expenditures not provided for in the annual budget; and

C. any special charge against one or more Lots specifically authorized in this Declaration or the Bylaws.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The obligation to pay the assessments provided for herein commences as to each Lot on the day of the first conveyance of the Lot to an owner other than the Developer, except that no Lot shall be subject to assessment until a certificate of occupancy or like authorization has been issued by the county as to the Townhome located on the Lot. The annual assessments, special assessments and special charges, together with interest, late payment fees, costs, and reasonable attorney's fees, shall be the personal obligation of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title to a Lot, voluntary or otherwise, the new owner shall be jointly and severally liable with the previous owner for all unpaid assessments and charges coming due prior to the time of such conveyance, without prejudice to the right of the new owner to recover from the previous



owner any such amounts paid by the new owner. Except as provided in Article 4.4 below as to certain persons acquiring title through foreclosure, or deed in lieu of foreclosure, of a first mortgage, no owner may be excused from the payment of assessments and charges unless all owners are similarly excused.

**4.2 Share of Assessments.** Each Lot and its owner(s) are liable for a share of all annual and special assessments levied by the Association, which share shall be a fraction of the whole, the numerator of which is the number "one" (1) and the denominator of which is the actual number of Lots in the Community. Until the development of the Community is completed, and all Townhomes have been sold to purchasers other than a developer, the denominator shall be conclusively presumed to be the number "106."

**4.3 Establishment of Liens to Secure Payment.** Any and all assessments and charges levied by the Association, together with interest at the highest rate allowed by law, and other costs and collection (including, but not limited to attorney's fees) are hereby declared to be a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made. The lien relates back to the date of recording this Declaration, and is superior to any Homestead rights any owner may acquire. No owner may exempt himself from personal liability, or release the Lot owned by him from the liens and charges hereof by waiving the use and enjoyment of the Common Areas, or by abandoning the Townhome. The lien is perfected by recording a Claim of Lien in the Public Records of the county, setting forth the amount and due date of each unpaid assessment or charge. To be valid the Claim of Lien must be signed by an officer or authorized agent of the Association, and must contain the legal description of the Lot. A recorded Claim of Lien secures payment of all assessments or charges due at the time of recording, as well as all assessments or charges coming due subsequently, including all interest, late payment fees, attorney's fees and costs incident to the collection process, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a satisfaction.

**4.4 Priority of Lien; Non-liability of Certain Acquirers of Title.** Except as may be otherwise expressly provided herein or by law, the Association's lien for unpaid assessments shall be subordinate and inferior all mortgages or other liens regardless of when recorded. A lease of a Townhome shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed. Exception: regardless of the priority of the lien, anyone who acquires title to a Lot and Living Unit by foreclosure, or deed in lieu of foreclosure, of an institutional first mortgage (the "acquirer"), and anyone claiming by, through or under the acquirer, shall not be liable to pay any assessments or charges that came due before the acquirer's acquisition of title, other than those assessments which came due during the one hundred eighty (180) days immediately preceding the date of acquisition of title by the acquirer. Any unpaid assessments or charges which cannot be collected by reason of this exception shall be treated as common expenses, divided equally among, payable by, and assessed against, all Lots including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

**4.5 Collection of Assessments.** If the owner of any Townhome fails to pay any charge or assessment, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

A. To charge interest on the unpaid amount, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment fee of up to five percent (5 %) of

the delinquent amount. This fee shall not be considered a "fine" as provided for in Article 12.4 below, and the procedural requirements for levying fines shall not apply to the imposition of late payment fees.

B. To accelerate the due date for any and all remaining unpaid installments of the annual assessment against the owner's Townhome for the fiscal year.

C. To file an action in equity to foreclose its lien. Unless otherwise required by law, the lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 718.116 of the Florida Condominium Act, as it may be amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.

D. To bring an action at law for a money judgment against the owner, without waiving any lien foreclosure rights. The Association may refuse to accept any tendered payment that bears a restrictive endorsement, and such will be the equivalent of no payment. Payment by check is not deemed received until the check has cleared.

**4.6 Estoppel Information.** The Association shall, within fifteen (15) days after receiving a written request for same, certify to any owner, prospective purchaser of a Townhome, or mortgagee in writing (sometimes referred to as an "estoppel letter") signed by an officer of the Association, setting forth whether all assessments and other sums due the Association have been paid. Such certificate may be relied upon by all interested persons except the Townhome owner.

**4.7 Termination of the Association.** If the Association no longer exists for any reason, and if no other community associations have assumed its duties and functions, the Association shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

## **ARTICLE 5 ARCHITECTURAL AND AESTHETIC CONTROL.**

The Developer is seeking to create a Community of architecturally harmonious homes. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Townhomes, after the initial construction of the Townhomes by the Developer, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval of Architectural Review Committee of the Association (the "ARC"). Except for the initial construction of Townhomes and related improvements by the Developer, no building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Community Common Area be performed without the prior written approval of the Board of Directors, as well as the ARC. In obtaining the written approval, owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ARC shall be as provided in this Declaration and Bylaws of the Association.

**ARTICLE 6**  
**APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

**6.1 Appurtenances to Each Lot.** The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

A. Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.

B. The non-exclusive right to use the Community Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.

C. Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Article 4.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.

D. Other appurtenances as may be provided in the Governing Documents. The appurtenances to a Lot and Living Unit automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot and Living Unit. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Townhomes.

**6.2 Use and Possession.** An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Community Common Areas in accordance with the purposes for which they are intended, but no use of any Lot, Townhome or Common Area may unreasonably interfere with the rights of other owners or residents. No Lot or Townhome may be sub-divided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private roads laid out on the Common Areas for use in common with all other owners, their tenants, guests and invitees. The portions of the Community Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

A. The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Community Common Areas and improvements thereon.

B. The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Community Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of the owners to use the Common Areas for the purposes intended.

C. The right of an owner to the non-exclusive use and enjoyment of the Community Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

**6.3 Title to Community Common Areas.** On or before the date when owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey the Community Common Areas to the Association by Special Warranty Deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record. From the date this Declaration is recorded, the Association shall be responsible for the maintenance and operation of the Community Common Areas, and any improvements and personal property thereon. The Developer shall have the right from time to time to enter upon the Community Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Community Common Areas that the Developer elects to build.

THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO THE COMMUNITY COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DEVELOPER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE COMMUNITY COMMON AREAS AND FACILITIES.

**6.4 Partition; Separation of Interests.** There shall be no judicial partition of the Community Common Areas, except as expressly provided elsewhere herein, nor shall the Developer, or any owner or any other person acquiring any interest in the Community, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in cotenancy. The ownership of any Lot and the ownership of the Townhome constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

**6.5 Easements.** Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, for the location of, and access for the operation, maintenance, repair and replacement of plumbing, electrical, mechanical and HVAC equipment (including but not limited to air conditioning compressors, conduits, lines, and other apparatus) which may be situated on certain lots but serves neighboring lots, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

A. Utility and other Easements. The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, and to relocate any existing easements in any portion of the Properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

B. Encroachments. If for any reason other than the intentional act of the owner or the Association, any Townhome encroaches upon any of the Community Common Areas, upon any other Lot, or any Community Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

C. Ingress and Egress. A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Community Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Community Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

D. Drainage. The Stoneybrook at Venice Community Association, Inc. will maintain any lakes collecting drainage runoff within the Community. A perpetual, non-exclusive easement shall exist in favor of Declarant, the Association, the Stoneybrook at Venice Community Association, Inc., and their employees or other designees for the use of drainage areas established throughout the Community, specifically including any lakes, and an easement for ingress, egress, and access to enter any portion of the Community in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Community Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Article or the use rights set forth elsewhere in the Governing Documents.

E. Construction; Maintenance. The Developer and its agents, employees and contractors shall have the right to enter the Properties and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the owners of their property.

F. Sales Activity. The Developer and its agents, employees and contractors shall have an easement to use, without charge, any Townhomes owned or leased by the Developer, and the Community Common Areas (including, but not limited to, all recreational facilities), in order to establish, modify, maintain and utilize, as it and they deem appropriate, model Townhomes and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model Townhomes or the Community Common Areas to prospective purchasers or tenants, erect

signs On the Properties, and take all other action helpful for sales, leases and promotion of the Properties.

G. The easements and rights described in (E) and (F) above shall terminate upon the sale of all Townhomes to purchasers other than a successor Developer.

**6.6 Assignment of Easements.** The easements and easement rights reserved hereunder to the Developer may be assigned by the Developer in whole or in part to the Association, any town, county or state government or agency thereof, or duly licensed or franchised public or private utility, or any other designee of the Developer.

**ARTICLE 7**  
**MAINTENANCE; IMPROVEMENTS.**

**7.1 Maintenance of Community Common Areas.** Except as otherwise provided herein, the Association shall maintain, repair and replace any and all improvements constructed on the Community Common Areas, including without limitation all landscaping, the components of the irrigation systems, including but not limited to the tap into the main line, timers, switching devices and heads, drainage structures, utility lines, walkways, light fixtures, and other structures. Additionally, where the Community Common Areas are contiguous to the right-of-way of a road, the Association shall maintain all landscaping (if any) between the Community Common Areas and the pavement within such right-of-way.

**7.2 Maintenance of Lots and Townhomes.**

A. Lots. The mowing of lawns and all outside maintenance, repair and replacement of landscaping and sprinkler systems is the Association's responsibility, and is a common expense. No person may add to or change the plantings, trees or landscaping without the prior approval of the Association.

B. Townhomes. The Association shall clean and provide ordinary maintenance, repair and replacement of the roofs, structural components and the exterior walls and other surfaces of the Townhomes and appurtenant structures such as privacy walls and garages, the need for which is caused by normal wear and tear and weathering keeping the appearance of the same in a condition comparable to the condition of such improvements at the time of their initial construction, except for normal weathering, wear and tear. The cost shall be a common expense. Painting the outside of exterior doors, door and window frames and exterior caulking, are Association responsibilities. Maintenance, repair and replacement of mailboxes and street lighting are the Association's responsibility. Otherwise the maintenance, repair and replacement of the Townhome is the responsibility of the owners thereof. The owner of each Townhome shall maintain, repair and replace, at his own expense, all portions of his Townhome except-those portions specifically required to be maintained, repaired and replaced by the Association. Specifically it is the owner's responsibility to repair, reconstruct or replace all damage resulting from windstorm, fire, flood, hail, hurricanes, sinkholes, and other natural disasters, acts of God, and casualties that are or could be covered by property insurance carried by the owner under Article 8.1 below. The owner is responsible for any deductibles. By way of illustration, and not limitation, the owner's responsibilities include:

(1) Windows, glass and screens, doors, door and window frames, hardware and locks.

664582v4

STONEYWOOD COVE - DECLARATION

(2) All wiring, plumbing, and electrical or mechanical equipment or fixtures which serve only the Townhome, regardless of location.

(3) Pools, pool cages and related structures and improvements.

Each owner shall maintain his Townhome and all fixtures and appliances located therein in good condition and repair at all times. Garages and storage areas shall be maintained in an orderly condition, and the storage of combustibles or explosives other than ordinary household materials is prohibited. Each owner is prohibited from painting or otherwise decorating or changing the appearance of his Townhome except as permitted in the Declaration.

**7.3 Completion of Community.** The Developer shall undertake the work of developing all Lots and Townhomes within the Community. The completion of that work, or the sale, lease, or other disposition of Townhomes, is essential to the establishment and welfare of the Community as an ongoing residential community. In order that such work may be completed and the Community established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever in their judgment is reasonably necessary or advisable for the completion of the work and the establishment of the Community as a residential community. As used in this paragraph, the words, "its transferees" specifically do not include purchasers of Lots improved with completed Townhomes.

**7.4 Enforcement of Maintenance.** If the owner of a Townhome fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot, with or without consent of the owner. The Association may repair, replace, or maintain any item which constitutes an immediate hazard to other property or residents, or which has a material adverse effect on the appearance of the Community. Any expenses so incurred by the Association shall be assessed against the owner, together with reasonable attorney's fees and other expenses of enforcement.

**7.5 Negligence: Damage Caused by Condition in Townhome.** The owner of each Townhome shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees, only to the extent that such expense is not met by proceeds of insurance. Each owner has a duty to maintain his Townhome, and the personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Townhomes, the Community Common Areas or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other Townhomes, the Community Common Areas, Association property or property within other Townhomes, the owner of the offending Townhome shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Townhomes involved is not occupied at the time the damage is discovered, the Association may enter the Townhome without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

**7.6 Alterations and Additions.** Funds necessary for material alterations or substantial additions to the Community Common Areas by the Association may be levied as special assessments by the Association only upon prior approval by a majority of the whole Board of Directors and approval

by two-thirds (2/3rds) of the voting interests present and voting at a meeting called for the purpose. Prior to the commencement of any such project relating to the Community Common Areas or to the buildings, the Association shall obtain the written approval of the ARC. However, if changes that are necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval by the owners is necessary.

**7.7 Pest Control.** The Association may elect to supply pest control services for the inside of each Townhome, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of other Townhomes, in which case the owner must either permit the Association's pest control company to enter his Townhome, or employ a licensed pest control company of his own selection to enter his Townhome on a regular basis to perform pest control services and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a common expense, so the election of an owner not to use the service will not reduce the owner's assessments.

**7.8 Hurricane Shutters.** Any hurricane or other protective devices visible from the outside of a home or unit shall be of a type as approved by the ARC, and in accordance with the guidelines as promulgated by the ARC. No such devices shall be installed without the prior written approval of the Architectural Committee. Except as otherwise provided in this Article, an owner's accordion, rollup, panel, or other style storm shutters must be left in an open position at all times. Whether they consist of accordion, roll-up, panel, or any other style shutter, the owner may only install, operate, or have in a closed or down position, storm shutters if and when the National Weather Service has issued a hurricane watch for the County or Municipality where the owner's dwelling is located. All storm shutters must be returned to the open or up position within seventy-two (72) hours after such hurricane watch expires or is otherwise no longer in effect. In no event shall an owner rely upon any other party to operate the owner's storm shutters, to either remove, close or open such shutters, and each owner is individually responsible for the full operation of their storm shutters. If any owner fails to comply with the terms of this Article, such owner shall be subject to the imposition of fines as detailed in this Declaration.

## ARTICLE 8

### INSURANCE OF TOWNHOMES; RECONSTRUCTION AFTER CASUALTY.

**8.1 Duty to Insure and to Reconstruct.** Each owner shall at all times maintain full replacement value property insurance on his Townhome and all other insurable improvements on his Lot. If any Townhome or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane other casualty, the owner of such Townhome or improvements shall cause repair or replacement to be commenced within sixty (60) days from the date that such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition; shall utilize and conform with the original foundation and boundary of the original improvements; and shall be structurally compatible with any adjoining improvements which share a party wall as that term is defined in Article 9.1 below.

**8.2 Failure to Reconstruct.** If the owner of any Lot fails to commence or complete construction, or repair or replace any damaged or destroyed improvements within the time periods provided for in Article 8.1 above, the Association shall give written notice to the owner of his default. If after thirty (30) days the owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the

664582v4

STONEYWOOD COVE - DECLARATION



improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Article, which shall be in the sole discretion of the Board of Directors, the owner(s) of the Lot shall be deemed to have assigned to the Association any insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner of the Townhome any costs not paid by insurance, and shall have a lien on the Lot and Townhome to secure payment.

**8.3 Failure to Insure; Association as Co-Insured** For the purpose of this Article 8, each owner of a Lot within the Community agrees that the Association shall be named as an additional insured under any property and/or flood insurance policy relating to his Lot and improvements constructed thereon. If an owner fails or refuses to maintain the insurance coverage required in this Article 8, or if the owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs so incurred by the Association shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner in writing, that it has procured such insurance. The Association has the right from time to time to require each owner to produce proof of insurance.

**8.4 Association's Right of Entry**. For the purpose of performing the duties authorized by this Article 8, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours.

## **ARTICLE 9 PARTY WALLS.**

**9.1 Definition**. Any wall which is built as part of the original construction of any Townhome subject to this Declaration and placed on the dividing line between adjoining Townhomes and Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article 9, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

**9.2 Cost of Repairs**. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who share the wall.

**9.3 Destruction by Fire or Other Casualty**. If a party wall is destroyed or damaged by fire or other casualty, any owner who uses the wall may restore it, and if any other owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the repair obligations under Article 9.2 above.

**9.4 Weatherproofing**. Notwithstanding any other provision of this Article 9, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**9.5 Contribution**. The right of any owner to contribution from any other owner(s) under this Declaration shall be appurtenant to the land and shall pass to such owner's successors in title.

**9.6 Binding Arbitration**. Any dispute concerning a party wall shall be submitted to arbitration under Chapter 682, Florida Statutes. Each party shall choose one arbitrator, and the

arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

**ARTICLE 10**  
**ASSOCIATION INSURANCE.**

Insurance shall be carried and kept in force at all times in accordance with the following provisions:

**10.1 Association Insurance:** Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the owners without naming them, and their mortgagees.

**10.2 Required Coverage.** The Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) that are part of the Community Common Areas, with coverage equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors; such insurance to afford the following protection:

A. Property. Loss or damage by fire, extended coverage (including windstorm) vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.

B. Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the owners as a group to any single owner.

C. Automobile. Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Board of Directors.

D. Fidelity Bonding. Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

**10.3 Optional Coverage.** The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

- A. Flood insurance.
- B. Broad Form Comprehensive General Liability Endorsement.
- C. Directors and Officers Liability.
- D. Medical Payments.

**10.4 Description of Coverage.** A detailed summary of the coverages included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

**10.5 Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to

664582v4

STONEWOOD COVE - DECLARATION

any claim against owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

**10.6 Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

**10.7 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

**10.8 Association as Agent.** The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Townhomes.

## **ARTICLE 11 GENERAL COVENANTS AND USE RESTRICTIONS.**

**11.1 Residential Use.** Each Townhome shall be occupied by only one family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Townhome. No person may publicly advertise the address of a Townhome as the address of any business. The use of a Townhome as a public lodging establishment shall be deemed a business or commercial use. This Article 11.1 shall not be construed to prohibit any Townhome occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Townhome, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Townhome. Such uses are expressly declared customarily incident to residential use. This Article 11.1 is, however, intended to prohibit commercial or business activity by an owner which would noticeably change the residential ambiance of the Community, or make it obvious that a business is being conducted, Such as by regular or frequent traffic in and out of the Community by persons making deliveries or pick-ups, or by employees and business associates, or by customers and clients.

**11.2 Occupancy of Townhome when Owner is not in Residence.** An owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Townhome in his absence. This provision is not intended to allow any owner to use his Townhome as short-term transient accommodations for several individuals or families. The owner must register all guests with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The owner is responsible for the conduct of his guests. When the owner is not in residence, no more than six (6) overnight occupants are allowed at any time.

**11.3 Leasing.** Townhomes may be leased, with the minimum allowable lease period being thirty (30) consecutive days. No lease may begin sooner than thirty (30) days after the first day of occupancy under the last previous lease. All leases are subject to the following restrictions and conditions:

A. The lease must be written, and a fully executed copy must be provided to the Association not less than fifteen (15) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.

B. No lease may be for a period of less than thirty (30) consecutive days.

C. No more than six (6) overnight occupants are allowed in a leased Townhome.

664582v4

STONEYWOOD COVE - DECLARATION

D. No subleasing or assignment of lease rights is allowed.

E. No one but the lessee and the lessee's spouse if any, and their unmarried children who live with their parents, may occupy the unit during a lease.

All of the provisions of the Townhomes Documents and the Rules and Regulations of the Association pertaining to use and occupancy of the Townhomes shall be applicable to and enforceable against any person occupying a Townhome as a lessee or guest, to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Townhomes Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not.

THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING TOWNHOMES OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A TOWNHOME MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

**11.4 Nuisance.** No member shall use or permit a Townhome to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Townhome or which would not be consistent with the maintenance of the highest standards for the first class residential development, nor permit the premises to be used in a disorderly or unlawful way. The use of each Townhome and the Community Common Areas shall be consistent with existing laws and the Governing Documents, and residents shall at all times conduct themselves in a peaceful and orderly manner. No unlawful, disorderly or offensive activity shall be carried on upon any Lot or in any Townhome, nor shall any owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

**11.5 Temporary Structures.** Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents or shacks shall not be used on any Lot at any time as a residence, either temporary or permanent.

**11.6 Signs.** No person other than the Developer may post or display any signs, banners, and the like, anywhere on the condominium property, including "For Sale," "For Rent," "Open House" and other similar signs. If any sign is erected in violation of this provision, the Declarant, the Master Association, or the Neighborhood Association shall have the right to enter the property on which the sign is located and remove it. The foregoing shall not apply to signs, banners, flags, billboards or advertisements used or erected by Declarant, entry and directional signs installed by Declarant, and signs required by law.

**11.7 Appearance; Refuse Disposal.** Each owner shall keep his Lot and Townhome free of trash and debris and shall reasonably maintain his Townhome. Personal property of residents shall not be left on the lawns or landscaped areas outside the Townhomes. Trash, garbage or other waste must be kept in appropriate containers suitably screened from view from the street and adjacent Lots. Porches, and lanais shall be used only for the purposes intended, and shall not be used for hanging or

drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

**11.8 Maintenance.** The Developer shall care for unimproved Lots within the Properties at its expense, remove and destroy tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary to keep the Lot in reasonable order. The Association shall have the right to repair any structure or improvement on any Lot which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Lot owner is given no less than five (5) days notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of the Lot, which charge shall be a lien on the Lot which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

**11.9 Awnings and Windows.** Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the ARC.

**11.10 Fences.** No fence, wall, hedge or other physical and visual barrier shall be erected in the Community Common Areas, except as originally installed by Developer, or as approved by the ARC.

**11.11 Driveways and Parking Areas.** Maintenance and repair of all driveways, parking and other paved parking facilities shall be the responsibility of the Association. Driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

**11.12 Water Supply; Wells; Water Rights.** Each Living Unit may be equipped with dual water lines, one of which may be designated to utilize non-potable water. All irrigation systems would then be connected to the non-potable water line and all outside spigots would be connected to the potable water line. Each owner shall be required to connect the water lines on his Lot to the lines of the utility provider(s) providing service to the Association. No owner may install or operate a private well for any reason, including operation of a water source heat pump.

**11.13 Landscaping.** All landscaping, including without limitation, trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Association. No landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the ARC. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon any Lot outside of the Townhome and the Townhome's privacy walls, unless approved by the ARC.

**11.14 Pets.** The owner of each Townhome may keep not more than two (2) small pets weighing less than 30 pounds each, of a normal domesticated household type (such as a cat or dog) in the Townhome. Reasonable numbers of birds in cages and fish in aquaria are also permitted, subject to reasonable regulation by the Association. Animals must be hand carried or leashed at all times while outside of the Townhome. The owner is responsible for cleaning up after his pet. The ability to keep pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyances to other residents of the Properties. No reptiles, amphibians, poultry, swine or livestock may be kept on the properties. The Board of Directors may restrict the locations where pets may be walked.

**11.15 Parking and Storage of Vehicles.** Except for service vehicles temporarily present on the property, owners and occupants of Townhomes may not park, store or keep on the property any commercial truck or other commercial vehicle, or any boat, trailer, semi-trailer, recreation vehicle, motorcycle, house trailer, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is enclosed within a garage. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any places outside of paved driveways, garages, or other designated parking

664582v4

areas. Vehicles which are in wrecked, junked, partially dismantled, inoperative or abandoned condition, whether attended or not, and those not bearing current license plates, are not permitted on the properties. Because guest parking may be limited in some areas, each owner is specifically cautioned that he and the other occupants of his Townhome may be limited or restricted as to the number of motor vehicles they may keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the properties. For purposes of this paragraph "kept" shall mean present for either a period of twelve (12) consecutive hours or overnight, whichever is less. Any vehicle parked in violation of this Article is subject to being towed away at the owner's expense without further warning.

**11.16 Antennas, Radio Equipment and Flagpoles.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, unless expressly approved in writing by the ARC, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the ARC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Article to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment. This Article 11.16 shall not apply to the Developer or its agents to market Townhomes owned by Developer.

**11.17** LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS, WHICH ARE PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. PROPERTY OWNERS ARE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WHICH MAINTENANCE WILL BE MAINTAINED TO THE GREATEST DEGREE LAWFUL BY THE ASSOCIATION.

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

**11.19 Lakes; Water Retention Ponds.** No Lot, Tract, Parcel or Community Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the ARC and the District. No person other than the Declarant, the Stoneybrook at Venice Community Association, Inc., or the Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

**11.20 Streets and Stormwater Management.** No alterations affecting the storm water management system within the Community may be made without the written consent of SWFWMD and Sarasota County. No alterations affecting the private streets within the Community may be made without the written consent of Sarasota County. No amendment to the Governing Documents affecting the storm water management system within the Community, including the water management portions of the Common Areas, is effective without the written consent of SWFWMD and Sarasota County. No amendment to the Governing Documents affecting the private streets within the Community is effective without the written consent of Sarasota County.

**ARTICLE 12**  
**ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.**

Every owner, and all guests, tenants and occupants of Townhomes, shall at all times comply with Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Association. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, this Chapter 720, the governing documents of the Community, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against:

- A. The Association;
- B. A member;
- C. Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and
- D. Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Article does not deprive any person of any other available right or remedy.

**12.2 Enforcement Action.** Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

664582v4

STONEYWOOD COVE - DECLARATION

**12.3 Self-Help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Declarant, its successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the owner of the land, any construction or other violation that may be or exist thereon. The Developer, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

**12.4 Suspension of Common Area Use Rights; Fines.** The Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities, and may levy reasonable fines, not to exceed the amount allowed by law, against any member or any tenant, guest, or invitee.

A. A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

B. The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

C. Suspension of common area use rights shall not impair the right of an owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

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

E. Application. All monies received from fines shall become part of the common surplus.

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

### **ARTICLE 13** **Architectural Review Committee**

**13.1 General.** Except for the initial construction of Living Units, Community Common Area facilities, and related improvements by the Developer, no building, structure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot, Living Unit, or Community Common Area be performed without the prior written approval of the ARC. In obtaining said

664582v4

STONEYWOOD COVE - DECLARATION



written approval, an owner or any other person applying shall comply with all applicable requirements and procedures.

**13.2 Architectural Review Committee.** The architectural and aesthetic review and control functions of the Association shall be administered and performed by the ARC. The ARC shall consist of not less than three (3) individuals, who need not be members of the Association. The term of office, composition, compensation (if any), qualifications and meeting procedures of the ARC shall be as determined by the Board of Directors.

**13.3 Powers.** The ARC shall have the power, subject to and limited by the guidelines of the approved regulatory permits of Southwest Florida Water Management District, the County, to:

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

B. Require submission to the ARC of complete plans and specifications for any building, structure, or other improvement proposed to be erected or altered, or any proposed grading, excavation, tree or other landscape material removal or installation, change of exterior color or other work which materially alters the exterior appearance of any structure, Lot or Community Common Area. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work;

C. Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot or Community Common Area. All decisions of the ARC shall be forwarded in writing to the Board. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the decision. The determination by the Board, upon prompt review of any such decision, shall, in all events, be final, and shall not be unreasonably delayed;

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

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

**13.4 Enforcement.** Any decisions of the ARC shall be enforced by the Association.

**13.5 Declarant's Rights.** Notwithstanding the foregoing, the Declarant shall have the right, so long as any Developer is offering any property in the Subdivision for sale in the ordinary course of business, to appoint all of the members of the Architectural Review Committee, or such lesser number

664582v4

as it may choose. During this time, the Declarant shall also have the power, in its sole discretion, to establish, amend, or revoke any and all Design Review Guidelines.

**ARTICLE 14**  
**TRANSFERS OF OWNERSHIP OF TOWNHOMES.**

In order to foster a community of congenial, financially responsible residents with the objectives of inhibiting transiency, protecting the value of the Townhomes and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Townhome by an owner other than the Developer shall be subject to the following restrictions, which each owner covenants to observe:

**14.1 Forms of Ownership.**

A. One owner. A Townhome may be owned by one natural person who has been approved as provided herein.

B. Co-ownership. Co-ownership of Townhomes is permitted. However, if the proposed co-owners are other than husband and wife, the Board shall condition its approval upon designation of one of the approved co-owners as "primary occupant," and the use of the Townhome by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Article 14.

C. Ownership by Corporations or Trusts. A Townhome may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Townhome may be used as short term transient accommodations for several individuals or families. The approval of a Director, or corporation or other entity as an owner shall be conditioned upon designation of one natural person to be the "primary occupant", and the use of the Townhome by other persons shall be as though the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Article 14. No more than one such change will be approved in any twelve-month period.

D. Life Estate. A Townhome may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member from such Townhome, and occupancy of the Townhome shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the Lot. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

**14.2 Transfers.**

A. **Devise or Inheritance.** If any owner acquires his title by devise or inheritance, his right to occupy or use the Townhome shall be subject to the approval of the Association. The approval of the Association shall not be denied to any devisee or heir who was the decedent's lawful spouse or related to the owner by blood or adoption within the first degree. The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require.

B. **Other Transfers.** If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy the Townhome shall be subject to the approval of the Association under the procedure outlined in this Article.

## **ARTICLE 15 DEVELOPER'S RIGHTS AND DUTIES.**

As long as the Developer holds any Lots in the Community for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary.

**15.1 Developer's Use.** Until the Developer has completed all of the contemplated improvements and has sold all of the Lots in the Community neither the owners nor the Association, nor their use of the Lots and Community Common Areas shall unreasonably interfere with the completion of the contemplated improvements or the sales of Townhomes. The Developer may make any use of the unsold Lots and the Common Areas as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of sales office, display of signs, leasing Townhomes, and showing the Properties to prospective purchasers. The Developer also reserves the right to lease back one or more Townhomes for use as "hospitality suites", providing short term guest accommodations for prospective purchasers or other business guests of the Developer.

**15.2 Assignment of Development Rights.** All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any successor developer, without the consent of any other owner or any holder of a mortgage secured by any Lot. In the event of such assignment, the assignee shall assume such rights, powers and duties, and the assignee shall be relieved of further liability or obligation to the extent of the assignment. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such interest.

**15.3 Amendment of Documents.** In addition to any other right of amendment or modification provided for in the Townhome Documents, the Declarant, or any entity which succeeds to its position as the Developer of the Property described in Exhibit "A" may, in its sole discretion, by an instrument filed of record in the county, unilaterally modify, enlarge, amend, waive or add to the provisions of this Declaration or any of its recorded exhibits. The rights set forth in this paragraph shall expire when construction of the Community is completed and the Declarant no longer holds any Lots and Townhomes in the Properties for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made without notice to the members or to any other person. However, no amendment shall change the shares of liability for assessments or ownership of the common surplus of the Association, or the voting rights appurtenant to any Townhome, unless the owner of the Townhome and his institutional mortgagee (if any) consent in writing to the amendment.

**15.4 Sales or Leases of Townhomes.** The Developer has the right to sell, lease or transfer ownership of any Townhome owned by it on such terms and conditions as it deems in its own best interest.

## **ARTICLE 16 TURNOVER OF CONTROL.**

**16.1 Time of Turnover.** The turnover of control of the Association by the Developer shall occur not later than ninety (90) days after conveyance of title to at least ninety percent (90%) of the Lots within the Properties. At the Turnover Meeting the members shall elect a Board of Directors and the Directors appointed by the Developer shall resign.

**16.2 Procedure for Calling Turnover Meeting.** No more than 75 days and no less than 60 days prior to the Turnover Meeting, the Association shall notify in writing all members of the date, time and place of the Turnover Meeting.

**16.3 Early Turnover.** The Developer may turn over control of the Association to owners other than the Developer prior to the turnover deadline set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of Developer's decision to cause its appointees to resign is given to the owners, neither the Developer, nor its appointees, shall be liable in any manner for doing so, even if owners other than the Developer refuse or fail to assume control.

**16.4 Developer Representative.** The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5 %) of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

## **ARTICLE 17 DURATION OF COVENANTS; AMENDMENT OF DECLARATION.**

**17.1 Duration of Covenants.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Developer and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of the recording of this Declaration in the public records of the county. Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10) year renewal periods 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, unless during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association the total number of votes cast in favor of such resolution, and the total number of votes

664582v4

STONEYWOOD COVE - DECLARATION

cast against such resolution. The certificate shall be recorded in the public records of the county, and may be relied upon for the correctness of the facts recited therein as they relate to the termination of this Declaration.

**17.2 Proposal.** Amendments to this Declaration may be proposed at any time by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. Any amendments so proposed must be submitted to a vote of the owners not later than the next annual meeting.

**17.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Townhomes Documents, this Declaration may be amended at any time if a duly proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that the text of each proposed amendment has been given to the members with notice of the meeting. However, no amendment shall be effective to change the share of liability for assessments or ownership of the common surplus of the Association, or the voting rights, appurtenant to any Townhome, unless the owner and his institutional mortgagee (if any) consent in writing to the amendment. Until control of the Association has been turned over to owners other than the Developer, this Declaration may also be amended by vote of two-thirds (2/3rds) of the Board of Directors, without need for a vote of the owners.

**17.4 Amendment of Provision Relating to Developer.** As long as the Developer holds any Lot in the Community for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

## **ARTICLE 18 GENERAL PROVISIONS.**

**18.1 Waiver.** Any waiver by any person of any provisions of this Declaration, or breach thereof, must be in writing to be effective, and shall not operate or be construed as a waiver of any other provision or subsequent breach.

**18.2 Severability.** If any Article, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and its invalidity shall not affect the validity of the remaining portions.

**18.3 Headings and Capitalization.** The headings of the Articles subsections, paragraphs and subparagraphs herein, and the capitalization of certain words, are for convenience only, and are not intended to affect the meaning or interpretation of the contents.

**18.4 Notices.** Any notice required to be sent to any owner under this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

**18.5 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretations shall be binding upon all parts unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

IN WITNESS WHEREOF, Rivendell Joint Venture, a Florida general partnership, does hereby execute this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized agent, this 7<sup>th</sup> day of DECEMBER, 2005.

Alexis Wittrock  
Witness #1  
Alexis Wittrock  
Printed Name of Witness #1

Christopher S. Keneer  
Witness #2  
Christopher S. Keneer  
Printed Name of Witness #2

RIVENDELL JOINT VENTURE, a Florida general partnership

By: RIVENHOME CORPORATION, a Florida corporation, as its managing general partner

By: Kenneth J. Stokes  
KENNETH J. STOKES, as its Vice-President

551 N. Cattlemen Rd., #202  
Sarasota, FL 34232

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of DECEMBER, 2005, by KENNETH J. STOKES, as vice president of Rivenhome Corporation, a Florida corporation and managing general partner of of RIVENDELL JOINT VENTURE, a Florida general partnership, on behalf of the corporation and the joint venture. He is personally known to me or did produce \_\_\_\_\_ as identification.

(SEAL)



**Deanna J. Craft**  
Commission # DD415615  
Expires July 20, 2009  
Bonded Troy Pain - Insurance, Inc. 800-385-7019

Deanna J. Craft  
Notary Public  
**Deanna J. Craft**

Printed Name of Notary Public

DESCRIPTION

PARCEL "N", STONEYBROOK AT VENICE, UNIT 4, RECORDED IN PLAT BOOK 45 AT  
PAGE 28 OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

CONTAINING 7.8046 ACRES, MORE OR LESS.

Exhibit A