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03/12/2008 at 10:31AM DWIGHT E. BROCK, CLERK

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Prepared by and return to:  
CRAIG D. GRIDER, ESQ.  
GOODLETTE, COLEMAN, JOHNSON  
YOVANOVICH & KOESTER, P.A.  
4001 TAMiami TRAIL NORTH, SUITE 300  
NAPLES, FL 34103

Retn:  
NOBLE TITLE & TRUST  
PICK UP / CITY HALL

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

**FOR**

**MOORGATE POINT**

**THIS FIRST AMENDMENT ("Amendment") to the Declaration of Covenants, Restrictions and Easements for Moorgate Point is made and executed this 27 day of February, 2008, by Stock Development, LLC, a Florida limited liability company, (hereinafter referred to as "Developer").**

**WHEREAS, Developer recorded the Declaration of Covenants, Restrictions and Easements for Moorgate Point at Official Records Book 4140, Page 1267, of the Public Records of Collier County, Florida (referred to herein as the "Declaration");**

**WHEREAS, Developer holds all the rights, title and interest as Developer under the Declaration and is the developer of Moorgate Point;**

**WHEREAS, Developer has determined that certain amendments to the provisions of the Declaration are necessary in relation thereto, as more fully set forth herein; and**

**WHEREAS, Developer has the power to amend the Declaration as set forth in Section 14.1 thereof.**

**NOW THEREFORE, in accordance with Section 14.1 of the Declaration, Developer hereby amends the Declaration as follows:**

- 1. Section 2.2.9 is deleted in its entirety and replaced with the following:**

**Moorgate Point**  
First Amendment to Declaration  
of Covenants, Restrictions & Easements

2.2.9 Setbacks. All setbacks for all Dwelling Units shall comply with applicable governmental zoning ordinances and nothing contained herein shall be deemed more restrictive than such applicable governmental zoning ordinances, as amended.

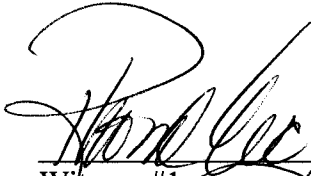
**EXCEPT AS AMENDED HEREBY**, all terms and provisions of the Declaration shall remain in full force and effect.

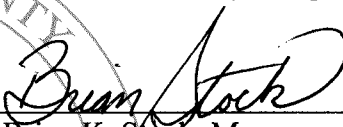
**IN WITNESS WHEREOF**, the Developer has executed this First Amendment to the Declaration on the year and date first stated above.


**WITNESSES:**

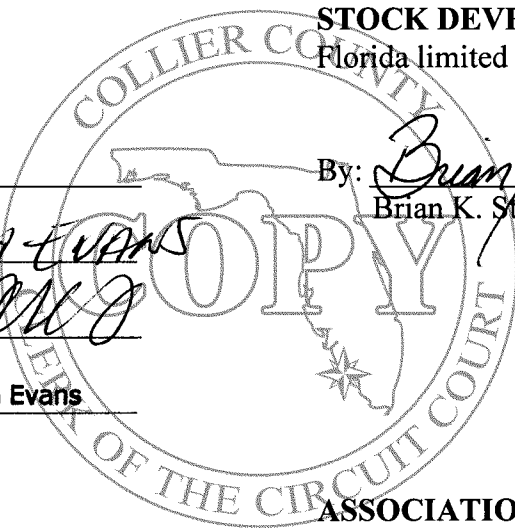
**DEVELOPER:**

**STOCK DEVELOPMENT, LLC**, a Florida limited liability company

  
Witness #1  
Print Name: Sharon Evans

By:   
Brian K. Stock, Manager

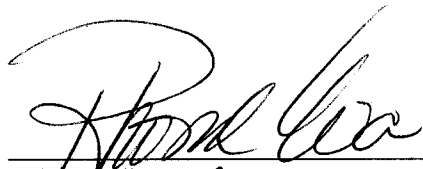
  
Witness #2  
Print Name: Lauren Evans

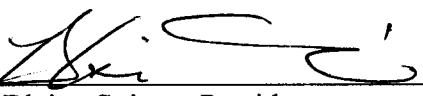


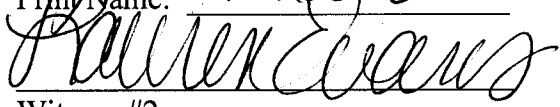
**WITNESSES:**

**ASSOCIATION:**

**MOORGATE POINT HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation

  
Witness #1  
Print Name: Rhonda Evans

By:   
Blaine Spivey, President

  
Witness #2  
Print Name: Lauren Evans

STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Brian K. Stock, as Manager of STOCK DEVELOPMENT, LLC, a Florida limited liability company, who is personally known to me. WITNESS my hand and official seal in the County and State last aforesaid this 27 day of February, 2008.

(SEAL)

*[Handwritten Signature]*

Notary Public Signature

Printed Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_



STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Blaine Spivey, as President of Moorgate Point Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who [] is personally known to me or [] has produced \_\_\_\_\_ as identification. WITNESS my hand and official seal in the County and State last aforesaid this 27 day of February, 2008.

(SEAL)

*[Handwritten Signature]*

Notary Public Signature

Printed Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_



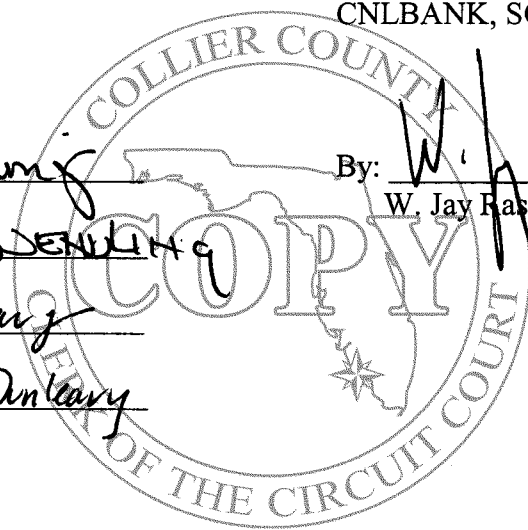
MORTGAGEE JOINDER AND CONSENT

CNLBANK, SOUTHWEST FLORIDA ("Mortgagee") is the mortgagee of the property legally described in and pursuant to the terms of that certain Mortgage and Security Agreement executed by STOCK DEVELOPMENT, LLC, a Florida limited liability company ("Mortgagor") in favor of Mortgagee, dated September 17, 2007, and recorded in Official Records Book 4283, Page 1874, as amended; and that certain Assignment of Rents, Leases, Profits and Contracts executed by Mortgagor on September 17, 2007, and recorded September 19, 2007, in Official Records Book 4283, Page 1888; and that certain UCC-1 Financing Statement recorded September 19, 2007, in Official Records Book 4283, Page 1893, all recorded in the Public Records of Collier County, Florida (collectively, the "Mortgage"); does hereby consent to the Amendment to the Declaration described herein.

Signed this 5 day of March, 2008.

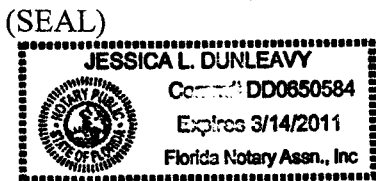
IN THE PRESENCE OF:

CNLBANK, SOUTHWEST FLORIDA


  
 Witness #1: Torey Wendling By: W. Jay Rasmussen  
 Print Name: Torey WENDLING W. Jay Rasmussen, Sr. Vice President  
 Witness #2: Jessica L. Dunleavy  
 Print Name: Jessica L. Dunleavy

STATE OF FLORIDA  
COUNTY OF Lee

The foregoing instrument was acknowledged before this 5<sup>th</sup> day of March, 2008, by W. Jay Rasmussen, as Senior Vice President of CNLBank, Southwest Florida, who  is personally known to me or [ ] has produced \_\_\_\_\_ as identification.



Jessica L. Dunleavy  
 Notary Public  
 Printed Name: Jessica L. Dunleavy  
 My Commission Expires: 3/14/2011



Prepared by and return to:  
Craig D. Grider, Esq.  
GOODLETTE, COLEMAN, JOHNSON  
YOVANOVICH & KOESTER, P.A.  
4001 Tamiami Trail North, Suite 300  
Naples, FL 34103

Retn:  
GOODLETTE COLEMAN ET AL  
4001 TAMAMIAMI TR N #300  
NAPLES FL 34103

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR**

**MOORGATE POINT**

**THIS SECOND AMENDMENT ("Amendment") to the Declaration of Covenants, Restrictions and Easements for Moorgate Point** is made and executed this 14<sup>th</sup> day of May, 2008, by **Stock Development, LLC**, a Florida limited liability company, (hereinafter referred to as "Developer"), and the **Moorgate Point Homeowners Association, Inc.**, a Florida non-profit corporation ("Association").

**WHEREAS**, Developer recorded the Declaration of Covenants, Restrictions and Easements for Moorgate Point in Official Records Book 4140, Page 1267, as amended by the First Amendment to Declaration of Covenants, Restrictions and Easements for Moorgate Point recorded in Official Records Book 4337, at Page 4091, all of the Public Records of Collier County, Florida (collectively referred to herein as the "Declaration");

**WHEREAS**, Developer holds all the rights, title and interest as Developer under the Declaration and is the developer of Moorgate Point; and

**WHEREAS**, the Developer and the Association have determined that certain amendments to the provisions of the Declaration are necessary in relation thereto, as more fully set forth herein;

**NOW THEREFORE**, in accordance with the terms of the Declaration, the Developer and Association hereby amend the Declaration as follows:

**Section 2.2.10 is hereby added to and incorporated into the Declaration:**

2.2.10 Leasing. An owner may lease his Dwelling Unit or Villa without prior Association approval, 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 three (3) days before the beginning of the lease term, together with such other information about the tenants as the Board of Directors may reasonably require.
- (B) No Dwelling Unit or Villa may be leased or rented for a term of less than thirty (30) consecutive days. Further, no Dwelling Unit or Villa may be leased more than four (4) times in any twelve (12) month period.
- (C) No subleasing or assignment of lease rights is allowed. All of the provisions of the Moorgate Point Documents, the Master Documents and the then applicable and approved rules and regulations of the Association and the Master Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Dwelling Unit or Villa 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 Moorgate Point 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 OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A DWELLING UNIT OR VILLA MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT ITS OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGES OF OWNERSHIP AND LEASING.**

**EXCEPT AS AMENDED HEREBY, all terms and provisions of the Declaration shall remain in full force and effect.**

***[SIGNATURES APPEAR ON FOLLOWING PAGES]***

IN WITNESS WHEREOF, the Developer and the Association have executed this Second Amendment to the Declaration on the year and date first stated above.

WITNESSES:

DEVELOPER:

STOCK DEVELOPMENT, LLC, a Florida limited liability company

Sandy Holdsworth  
Witness #1  
Print Name: SANDY HOLDSWORTH

By: Brian K. Stock  
Brian K. Stock, Manager

Ronda Evans  
Witness #2  
Print Name: RONDA EVANS

WITNESSES:

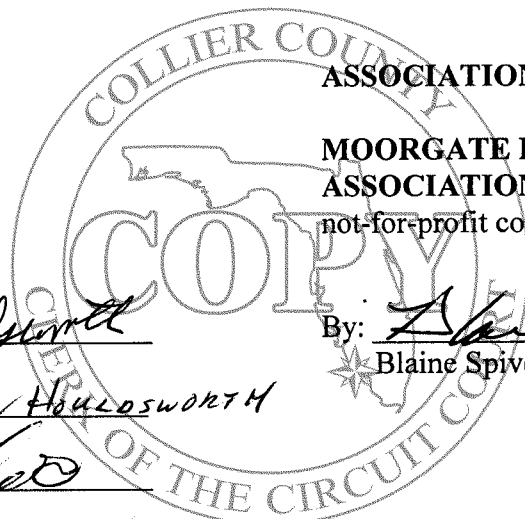
ASSOCIATION:

MOORGATE POINT HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation

Sandy Holdsworth  
Witness #1  
Print Name: SANDY HOLDSWORTH

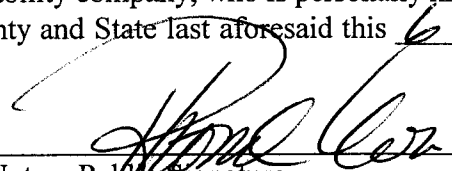
By: Blaine Spivey  
Blaine Spivey, President

Ronda Evans  
Witness #2  
Print Name: RONDA EVANS



STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Brian K. Stock, as Manager of STOCK DEVELOPMENT, LLC, a Florida limited liability company, who is personally known to me. WITNESS my hand and official seal in the County and State last aforesaid this 6 day of MAY, 2008.

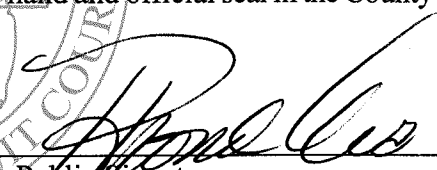
  
\_\_\_\_\_  
Notary Public Signature  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

(SEAL)



STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Blaine Spivey, as President of Moorgate Point Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who  is personally known to me or  has produced \_\_\_\_\_ as identification. WITNESS my hand and official seal in the County and State last aforesaid this 6 day of MAY, 2008.

  
\_\_\_\_\_  
Notary Public Signature  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

(SEAL)



**MOORGATE POINT  
SECOND AMENDMENT TO DECLARATION  
OF COVENANTS, RESTRICTIONS & EASEMENTS**

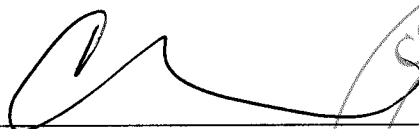
MORTGAGEE JOINDER AND CONSENT


CNLBANK, SOUTHWEST FLORIDA ("Mortgagee") is the mortgagee of the property legally described in and pursuant to the terms of that certain Mortgage and Security Agreement executed by STOCK DEVELOPMENT, LLC, a Florida limited liability company ("Mortgagor") in favor of Mortgagee, dated September 17, 2007, and recorded in Official Records Book 4283, Page 1874, as amended; and that certain Assignment of Rents, Leases, Profits and Contracts executed by Mortgagor on September 17, 2007, and recorded September 19, 2007, in Official Records Book 4283, Page 1888; and that certain UCC-1 Financing Statement recorded September 19, 2007, in Official Records Book 4283, Page 1893, all recorded in the Public Records of Collier County, Florida (collectively, the "Mortgage"); does hereby consent to the Amendment to the Declaration described herein.

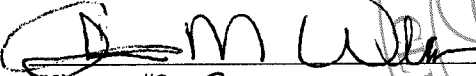
Signed this 7 day of MAY, 2008.

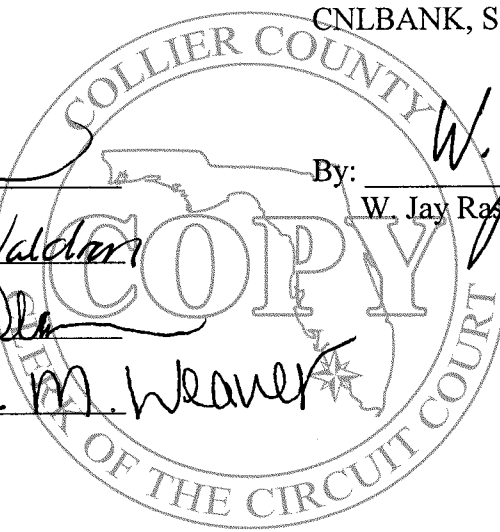
IN THE PRESENCE OF:

CNLBANK, SOUTHWEST FLORIDA

  
 Witness #1 \_\_\_\_\_  
 Print Name: Carrie Waldman

  
 By: \_\_\_\_\_  
 W. Jay Rasmussen, Sr. Vice President

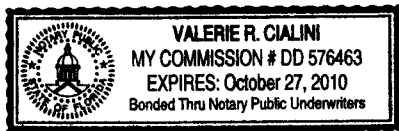
  
 Witness #2 \_\_\_\_\_  
 Print Name: Kristine M. Weaver

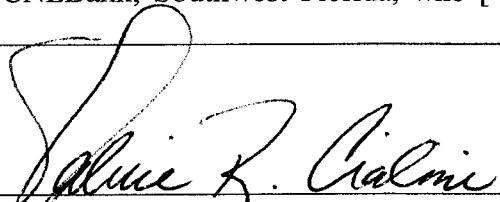


STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before this 7<sup>th</sup> day of MAY, 2008, by W. Jay Rasmussen, as Senior Vice President of CNLBank, Southwest Florida, who [] is personally known to me or [] has produced \_\_\_\_\_ as identification.

(SEAL)



  
 Notary Public  
 Printed Name: VALERIE R. CIALINI  
 My Commission Expires: 10/27/10

L75

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS**

**FOR**

**MOORGATE POINT**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR MOORGATE POINT** is made this 22<sup>nd</sup> day of May, 2006, by **STOCK DEVELOPMENT, LLC**, a Florida limited liability company, (hereinafter referred to as "Developer").

**WHEREAS**, Developer and/or the other parties signing this instrument are the owners or mortgagees of the real property more particularly described on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Land"); and

**WHEREAS**, Developer intends to develop or has developed or has caused to be developed on portions of said Land a planned residential community known as "Moorgate Point" all in accordance with the applicable zoning ordinances and as set forth on the Plat thereof; and

**WHEREAS**, Developer desires to provide for the preservation of the values and amenities of the Land and subject the Land to the land use covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth; and

**WHEREAS**, Developer has deemed it desirable for the effective preservation of the values and amenities established as aforesaid to create a corporation known as the Moorgate Point Homeowners Association, Inc., a Florida not-for-profit corporation, hereinafter referred to as the "Association", to which there has been or will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair of the Land and improvements, the enforcement of the covenants, restrictions, easements, reservations, regulations, burdens and liens contained herein and the collection and distribution of the assessments and charges hereinafter more particularly set forth; and

**WHEREAS**, the Land is subject to that certain Declaration of General Covenants, Conditions and Restrictions for Lely Resort (as hereinafter defined) pursuant to which the Lely Resort Master Property Owners Association, Inc. has been established to enforce the provisions thereof; and

**WHEREAS**, each member of the Moorgate Point Homeowners Association, Inc., and each Owner (as defined below) shall be required to submit a membership application, and if accepted, become a member of and maintain such membership in the Players Club and Spa, LLC, a Florida limited liability company (also known as the Club), Membership is mandatory for all dwelling unit owners. Each member is responsible for any dues, fees or other charges levied by The Club. The rights and obligations of dwelling unit owners with regard to Club are found in the Membership Plan (also known as the Plan) and a copy of the Membership Plan, Rules and Regulations and

Membership Agreement can be obtained from The Club. The Club is owned and operated by Soccer Development, LLC, at the time of recording of this Declaration, but such ownership and/or operation may subsequently be conveyed to another entity.

**WHEREAS**, the parties signing this instrument desire to join in and consent to this Declaration to acknowledge their consent and joinder in the same;

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, Developer and the other parties signing this instrument hereby declare that the Land shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

The following words and phrases when used in this Declaration shall have the following meanings:

1.1 **ARTICLES** mean the Articles of Incorporation of the Moorgate Point Homeowners Association, Inc., a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

1.2 **ASSOCIATION** means the Moorgate Point Homeowners Association, Inc., a Florida corporation not-for-profit, which is hereby designated as a "Neighborhood Association" as such term is defined in the Master Declaration. A copy of the Association's Bylaws are attached hereto as Exhibit "C" and incorporated herein by reference.

1.3 **ASSOCIATION EXPENSES** means the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation thereof described in Article V and VI hereof and includes, but is not limited to, the following:

1.3.1 Common Area Expense which means and includes all expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance and repair of the Common Areas or any part thereof, including any berms or other areas which the Association is responsible to maintain (even if title is not vested in the Association); and

1.3.2 Lot, Villa and Dwelling Unit Expenses which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of Lots, Villas and Dwelling Units but only as set forth in the provisions of this Declaration;

1.3.3 Recreation Facilities Expense which means the maintenance, repair or replacement expenses of any and all recreational facility(ies) that may be owned, operated or utilized by the Association or any other Association

which maintains, owns or operates recreational facilities for the benefit of owners of Lots, Villas and Dwelling Units subject to this Declaration, including the Moorgate Point Homeowners Association, Inc; and

- 1.4 **BOARD OF DIRECTORS** means the Board of Directors of the Association.
- 1.5 **BYLAWS** mean the Bylaws of the Association.
- 1.6 **COMMON AREAS** means the portions of the Land not included within the Lots nor dedicated to a party other than the Association unless the Association maintains such dedicated area pursuant to the plat or the terms hereof, and such additional Common Areas as may hereafter be declared as such. Common Areas will include the internal road system for Moorgate Point. Common Areas will also include any guard house(s), fountains(s), walls, entry features, community signage or buffer areas which serve the Land, any recreational facilities which may be deeded to the Association and any area or property which is to be maintained by the Association (such as berms) even if not owned by the Association.
- 1.7 **COUNTY** means Collier County, Florida.
- 1.8 **DECLARATION** means this instrument and any amendments, supplements or modifications hereto.
- 1.9 **DEVELOPER** means Stock Development, LLC, a Florida limited liability company, its successors and assigns; provided, however, that an Owner shall not, solely by the purchase of a Dwelling Unit or Villa, be deemed a successor or assignee of Developer or of the rights of the Developer under this Declaration unless such Owner is specifically so designated as a successor or assignee of such rights in the respective instrument of conveyance or any other instrument executed by the Developer. The Developer shall have the right to designate any other party or entity as a successor Developer, and if such a designation occurs, the designated party or entity shall succeed to all of the Developer's rights and powers as set forth in the documents.
- 1.10 **DWELLING UNIT or VILLA** means and refers to the improvements on the Lot comprising the residential unit or villa and the amenities appurtenant thereto.
- 1.11 **INSTITUTIONAL MORTGAGEE** means any lending institution or real estate investment trust having a first mortgage lien upon a Lot or Dwelling Unit and includes any insurance company doing business in Florida and approved by the Commission of Insurance of the State of Florida; a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the State of Florida and approved by the office of the Comptroller, Division of Banking of the State of Florida; a mortgage banking company licensed in the State of Florida; and "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; and any mortgagee which has loaned money to Developer secured by a mortgage encumbering any portion of the Land.



1.12 **LAND** means the land more particularly described on Exhibit "A", which is committed by this Declaration to the provisions hereof and any additional real estate which may hereafter be declared to be subject to this Declaration in accordance herewith and all improvements made to such land including Dwelling Units.

1.13 **LELY RESORT** means the overall development and community commonly known as "Lely Resort" and the real property described in the Master Declaration.

1.14 **LOT** means a portion of the Land upon which is or will be located a Dwelling Unit or Villa, the legal description of which is set forth in the deed of conveyance of the Dwelling Unit or Villa.

1.15 **MASTER ASSOCIATION** means Lely Resort Master Property Owners Association, Inc., as defined in the Master Declaration.

1.16 **MASTER DECLARATION** means the Declaration of General Covenants, Conditions and Restrictions for Lely Resort recorded at Official Records Book 1513, Page 823 et. seq., of the Public Records of Collier County and any amendments, supplements and modifications thereto.

1.17 **MOORGATE POINT or MOORGATE POINT NEIGHBORHOOD** means the residential community planned as a distinctive neighborhood within Lely Resort, which is to be developed upon the Land and all improvements now or hereafter located thereon and includes the Land and all improvements on any Land submitted to the provisions of this Declaration, and any lands added hereafter pursuant to the right to add additional lands as set forth herein.

1.18 **MOORGATE POINT ARB or ARB** means the architectural review board for Moorgate Point established in accordance with Section 2.2 of this Declaration.

1.19 **MOORGATE POINT DOCUMENTS** means in the aggregate this Declaration and any and all Supplemental Declarations or Amendments, the Articles, the Bylaws, the Master Declaration and all supplements or amendments thereto, the Articles of Incorporation and Bylaws of the Master Association, and the Rules and Regulations of the Association and the Master Association and all of the instruments and documents referred to or incorporated therein or attached thereto as the same may be amended from time to time.

1.20 **OWNER** means the owner or owners of the fee title to a Lot, Dwelling Unit or Villa located within the property identified as the Land.

1.21 **PARTY WALL** shall mean and refer to any wall common to two (2) Dwelling Units, which wall shall be owned equally by the Owners of such Dwelling Units.

1.22 **PLAYERS CLUB AND SPA or PLAYERS CLUB or CLUB** means the entity that operates and manages the Club Property and facilities, as further described in Article III below.

1.23 **SINGLE FAMILY OCCUPANCY** shall mean and refer to occupancy by a single family unit.

1.24 **SUPPLEMENTAL DECLARATION** means a Supplemental Declaration of Covenants, Restrictions and Easements recorded by the Developer in the Public Records of Collier County, Florida, submitting all or a portion of additional land to the terms and provisions of this Declaration.

1.25 **TURNOVER EVENT** means an event as specified in Section 2.6 hereof.

**ARTICLE II**  
**COVENANTS AND RESTRICTIONS;**  
**CONVEYANCE TO ASSOCIATION OF COMMON AREAS**

Developer does hereby declare that the Land shall be used, transferred, demised, sold, conveyed and/or occupied subject to and in accordance with the following:

2.1 **LAND USE COVENANTS.**

2.1.1 **Lots.** All Lots shall be used only for single family residential purposes as set forth in the Master Declaration and this Article II.

2.1.2 **Common Areas.** The portions of the Land not included within the Lots nor dedicated to a party other than the Association shall be used and conveyed solely in accordance with this Declaration.

2.1.3 **Land Use.** Except for the road right-of-way and other improvements located within Exhibit "A", the Common Areas shall be grassed and planted and kept grassed or planted as green open space, or planted with such other form of ground cover or landscaping as Developer or the Board of Directors considers consistent with the plan for development for beautification of Moorgate Point Neighborhood.

2.1.4 **Private Use.** The Common Areas hereinafter described are not for the use and enjoyment of the public, but are expressly reserved for the private use and enjoyment of Developer, the Association, Owners and their lessees and their family members, guests and invitees in accordance with this Declaration.

2.2 **RESTRICTIONS ON OCCUPANCY AND USE OF THE LAND.**

In consideration of the benefits hereinafter contained and the payment of the Association Expenses referred to herein, Developer does hereby declare the Land, including but not limited to, the Lots and Dwelling Units, shall at all times be used, constructed, occupied and held subject to the following:

2.2.1 Plans and Specifications and Architectural Review Board. For the purpose of ensuring the development of the Moorgate Point Neighborhood as an area of high standards, the Moorgate Point ARB shall be established and shall have the following obligations:

- (A) Moorgate Point ARB. Initially, the ARB shall consist of at least three (3) persons designated by Developer, and Developer shall also retain the power to replace such designees. At such time as Developer no longer owns any property within Moorgate Point, or when Developer voluntarily so elects, Developer shall assign to the Association Developer's rights, powers, duties and obligations as to the ARB, whereupon the Board of Directors of the Association shall appoint the members of the ARB. In the event of the death or resignation of any member of the ARB, the Developer or its assignee shall have the full authority to designate a successor. Neither the members of the ARB nor its designated representative shall be entitled to any compensation for any services pursuant to this Declaration.
- (B) Moorgate Point ARB Action. A majority of the ARB may designate a member of the ARB to act on its behalf. Approval or disapproval by a majority of the members of the ARB (or by the member designated by the majority of the members) shall constitute the official approval or disapproval of the ARB.
- (C) Requirement of Moorgate Point ARB Approval. No improvement, exterior change or structure of any kind, including without limitation, any building, gazebo, wall, fence, pond, fountain, shutters, swimming pool, screened enclosure, additional landscaping or change in paint colors or roof colors shall be erected, placed or maintained and no addition, alteration, modification, removal or change to any such improvement, landscaping or structure shall be made without the prior written approval of the ARB.
- (D) Method of Obtaining Architectural Review Board Approval. In order to obtain the approval of the ARB, a complete set of plans and specifications for proposed construction, alterations, additions and any and all other reasonably requested information and materials related thereto ("Plans") shall be submitted to the ARB for its review. The Plans shall include, but not necessarily be limited to, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, landscaping plans, approximate costs and nature, type and color of materials to be used. The lot grading plan shall be in conformance with the approved construction plans for Moorgate Point. The ARB may also require the submission of additional information and materials as may be reasonably

necessary for the ARB to evaluate the proposed construction or alteration. The ARB shall evaluate all Plans utilizing standards of the highest level as to the aesthetic quality and materials and workmanship to be used and as to suitability and harmony of location, structure and external design in relation to surrounding topography and structures. Any improvements on the Lots described on Exhibit A that are existing on the date of recordation of this Declaration ("Existing Improvements") shall be exempted from the approval required hereby, but any modification, alteration, or replacement of Existing Improvements shall be subject to the provisions hereof if such Lot is within the Land. All work shall be properly permitted and performed by properly licensed contractors and verification of this request shall solely be the responsibility of the Owner. The Owner shall further hold the Association harmless for any claims or damages arising from action of the Owner, of the Owner's agents, contractors or employees of same.

- (E) Approval or Disapproval by the Architectural Review Board. The ARB shall have the right to refuse to approve any Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the ARB shall be in writing and shall be sent to the Owner. In the event the ARB fails to approve or to disapprove in writing any proposed Plans within thirty (30) days after their submission to the ARB, then said Plans shall be deemed to have been approved by the ARB and the appropriate written approval delivered forthwith.
- (F) Indemnification. Each and every member of the ARB, specifically including but not limited to, Developer's designated members, shall be indemnified by the Association and the Owners against all costs, expenses and liabilities, including counsel fees at all trial and appellate levels, reasonably incurred or imposed upon him or her in connection with any proceeding, litigation or settlement in which he or she becomes involved by reason of being or having been a member of the ARB. The foregoing provisions for indemnification shall apply whether or not he or she is a member of the ARB at the time such expenses are incurred. Notwithstanding the above, in instances where a member of the ARB admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Declaration shall not apply. Otherwise the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a member of the ARB may be entitled whether by statute or common law.

- (G) Enforcement. There is specifically reserved unto Moorgate Point ARB the right of entry and inspection upon any Lot or other portion of the Land for the purpose of determining by the ARB whether there exists any construction of any improvement which violates the terms of any approval by the ARB, or the terms of this Declaration or of any other covenants, conditions and restrictions to which this deed or other instrument of conveyance make reference. Nothing herein shall grant to the ARB the right of entry into any improvement upon the Land. This ARB is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party in such litigation shall be entitled to recover all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the ARB from all costs, expenses and liabilities, including attorneys' fees incurred by virtue of any member of the ARB's service as a member of the ARB.
- (H) Development Standards. Moorgate Point ARB is empowered to publish or modify from time to time, design and development standards ("Standards") for Moorgate Point Neighborhood, including, but not necessarily limited to, standards for the following: (i) architectural design of improvements; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior landscaping; (v) exterior appurtenances relating to utility installation; (vi) signs and graphics, mailboxes and exterior lighting; (vii) building setbacks, pools and pool decks, side yards and related height bulk and design criteria; (viii) pedestrian and bicycle ways, sidewalks and pathways; (ix) all buildings, landscaping and improvements on land owned or controlled by the Association; and (x) exterior colors and materials. The Standards shall be reasonable and in conformance with the plan of development of Moorgate Point Neighborhood and Lely Resort. A copy of any Standards promulgated and any modification or amendment thereof shall be available to owners and mortgagees.
- (I) Scope of Review. Moorgate Point ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of the aesthetic consideration and overall benefit or detriment which would result to the immediate vicinity and to Lely Resort and the Land as a whole. The ARB shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any

plans or design be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes. Such approval is limited solely to aesthetics.

- (J) Variance from Standards. Moorgate Point ARB may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of the Moorgate Point Neighborhood or Lely Resort, variances from compliance with the Standards, as the same may be modified or amended by Moorgate Point ARB from time to time, when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted by Moorgate Point ARB, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to that particular property and particular provision hereof or standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing and executed by a member of the ARB and be approved by the Master Association. Site drainage may not be altered. The Owner is further responsible for meeting all federal, state and local codes or other regulatory requirements.
- (K) Developer Exempt. The Developer, its successors and assigns, shall be exempt from ARB approval for so long as the Developer, its successor or assigns, hold any property in Moorgate Point Neighborhood for sale or in the normal course of Developer's business or is in the process of completing construction of improvements sold by the Developer or is actually involved in marketing or development of the Moorgate Point Neighborhood.

2.2.2 Other Provisions as to Use of the Land. The following occupancy and use restrictions shall apply to each Owner and his lessees and family members, guests and invitees:

- (A) Residential Use. All Lots shall be used only for single family residential purposes. No business may be conducted on any Lot nor shall any building nor portion thereof be used or maintained as a professional office. Notwithstanding the above provisions, Developer may, in its sole discretion, permit one or more dwelling units to be used for the development of the Land and/or conduct of Developer's business or for such other purposes as are deemed necessary by the Developer.

- (B) Completion of Construction Remedies. If, for any reason, work is discontinued and there is no substantial progress toward completion continuously for a one (1) month period, then the Board of Directors shall have the right to notify the owner of record of the Lot of its intentions herein, invade the premises and take such steps as might be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot. The reason for such correction shall be solely at the discretion of the Board of Directors and may include, but not be necessarily limited to, purely aesthetic grounds. The Owners shall be liable for all costs incurred in any such action and the total cost thereof will be a lien on the Owner's Lot, which lien may be foreclosed in the manner provided for in Article IX hereof. The Association may also take action to force completion and to take down partially completed improvements through court order or otherwise and charge the Owner for same. The provisions of this subparagraph shall not apply to any Lots or Dwelling Units owned or being constructed by Developer.
- (C) Fences and Walls. The establishment and placement of all fences, walls or hedges and/or aesthetic plantings creating a barrier or screen shall require the prior written approval of the ARB which may set guidelines for the placement thereof.
- (D) Garages. Operable doors shall be provided for all garages. Garage doors shall be closed except when vehicles are entering or exiting.
- (E) Parking. Parking at individual residences, other than in enclosed garages, either on a Lot or an adjoining right-of-way shall be limited to guests and authorized service vehicles. Residents' vehicles shall be garaged at all times. Except during construction of a single family residence, there shall be no parking on any unpaved area within the Moorgate Point Neighborhood and the Owner of any Lot in the Moorgate Point Neighborhood, by accepting a deed to such Lot, grants the Association an easement to remove any car parked on an unpaved area within the Moorgate Point Neighborhood.
- (F) Garbage. During construction of a Dwelling Unit or other improvement, each Lot shall be maintained in a clean condition. Once construction is completed, all Owners shall be required to have mandatory trash pick-up.
- (G) Utilities. Any transformer box placed on any Lot shall be concealed by landscaping, at Owner's expense. Pumping station control panels located on any Lot shall be landscaped at the Owner's expense to

reduce the aesthetic impact thereof, while, at the same time, not impeding the use thereof by maintenance personnel. The Developer may install the foregoing landscaping and charge the Owner. Any landscaping installed by the Developer shall be maintained as installed until the Turnover Event unless the Developer approves alteration and after the Turnover Event may be altered only with approval of the Association.

- (H) Landscaping. The landscape design for any Lot shall promote and preserve the appearance, character and value of the surrounding areas. Upon development of any Lot, underground landscape irrigation systems which are designed to irrigate the entire landscape portion, including the right-of-way adjacent to any portion of the Lot, shall be installed. Where landscaping has been installed by the Developer or the Association or in any event where landscaping has been installed prior to the transfer of a Dwelling Unit to the Owner, the Owner shall not remove or add to the existing landscaping without the prior written approval of the ARB. Once landscaping is installed, it shall be maintained by the Association at the Owner's expense, including right-of-way areas. It is understood that the Owner will pay for and supply water. Furthermore, the Owner will supply the Association with access to the power source for sprinkling system(s) located on the Owner's property at all times, and if access is blocked, the Association may gain access (even by using force) as the Association deems appropriate.
- (I) Sidewalks. It shall be the Owner's responsibility to repair and replace any damage occurring to the sidewalks as a result of any construction on the Owner's Lot.
- (J) Mailboxes and Meters. All mailboxes and irrigation meters shall be purchased from the Master Association or from such suppliers as are designated by the Master Association. All mailboxes shall be constructed of uniform style, design and color as determined by the Developer. No deviation from this requirement shall be permitted.
- (K) Nuisance. No noxious or offensive activity shall be carried on upon the above-described property or any part, portion or tract thereof, nor shall anything be done thereon which may be or may become a nuisance or annoyance to other Owners or persons lawfully residing or present within the Moorgate Point Neighborhood.
- (L) Outside Storage. No outside storage or outbuilding of any kind will be permitted without the prior written approval of the ARB.



Temporary construction trailers during the actual construction of any Dwelling Unit shall be permitted. There shall be no outside storage or permanent placement of recreational vehicles or equipment of any kind including motor homes, campers, motorcycles, boats, canoes, kayaks, waverunners, jet skis, wind surfers, volleyball nets, basketball goals, swing sets, lawn care equipment, toys or play equipment. Play equipment may be approved on an individual basis by the ARB. Storage or permanent placement shall exist if an item or vehicle remains outside for a period of more than twenty-four (24) consecutive hours.

- (M) Roofs. Roofs shall have a minimum of 4:12 slope and shall be constructed of cement tile and color to be in conformance with the community. In the event that some new, attractive material for roofing surfaces is discovered or invented, the ARB may allow its use.
- (N) Signage. Any signage placed on any Lot by the Developer is allowed and an easement is reserved to Developer to enter upon any Lot for the purposes of replacing, improving, altering and maintaining any signage thereon. The aforesaid reservation of easement right shall be freely assignable by Developer either in whole or in part to any entity or entities at Developer's sole and absolute discretion and without further Association approval thereof. Except for the aforesaid Developer's reservation of easement right together with Developer's right of assignment thereof, no sign shall be placed on or allowed to be placed on or adjacent to a Lot or improvements by an Owner without the prior written approval of the ARB and the Master Association. For so long as the Developer owns a Lot or is actually selling Dwelling Units located or to be built on the Land, no sign may be placed on the Land or improvements thereon without the Developer's consent.
- (O) Irrigation and Sprinklers. All Lots, and any unpaved street rights-of-way adjacent thereto, shall contain adequate automatic electric irrigation systems, provided by the Owner if not otherwise installed by the Developer or the Association, as described in subparagraph (H) above. Each Owner may be charged an initial service connect fee and water meter fee due at closing by the Developer or the Association. Sprinkler controls must be accessible from the exterior of all Dwelling Units constructed in the Moorgate Point Neighborhood. Power source and breakers for sprinkler systems must also be accessible to the Association. Each Owner shall also supply and maintain an irrigation timer and will provide the Association with

access to same. An Owner shall water the aforesaid lawn and landscaping sufficiently to maintain it in a healthy condition and, upon failure of any Owner to do so, the Association shall have the right to enter upon his Lot and water the lawn and landscaping and charge the Owner a reasonable fee and costs for same. Such charges, until paid, shall be a lien against the Lot. The Owner of any Lot, by accepting a deed to a Lot in the Moorgate Point Neighborhood, grants an easement to the Association to enter upon the Lot for the purposes of watering the lawn and landscaping if necessary. Each Owner covenants that he shall at all times maintain the exterior portions of his Lot and any residence thereon in a neat, aesthetically pleasing and proper condition.

- (P) Screen Enclosures. All screen enclosures shall be constructed of bronze, or bronze painted, structural materials.
- (Q) Exterior Lamp Posts. There shall be no exterior lighting lamp posts unless such exterior fixture is approved by the ARB, on an individual basis.
- (R) Firearms. The discharged of firearms is prohibited.
- (S) Antennas and Solar Water Panels. No antennas, satellite dishes, solar water panels, aerials or other appurtenant structures are allowed, without the approval of the ARB.
- (T) Storm Precautions. Although the Association is not required to promulgate storm precautions, each Owner shall be required to conform with any storm precautions promulgated by the Association.
- (U) Time Shares. No time shares program shall be permitted on any Lot.

2.2.3 Reconstruction. Any repair, rebuilding or reconstruction of damaged Dwelling Units shall be substantially in accordance with the architectural plans and specifications for: (i) the originally constructed Dwelling Unit; (ii) a previously reconstructed Dwelling Unit; or (iii) new plans and specifications approved by the Association.

2.2.4 Owner Liability. An Owner shall be liable for the expense of any maintenance, repair or replacement of any real or personal property in the Moorgate Point Neighborhood rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, invitees, agents or lessees. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or

abandonment of a Dwelling Unit or the Common Areas. An Owner shall also be liable for any personal injuries caused by his negligent acts or those of any member of his family, or his or their guests, employees, invitees, agents or lessees. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

- 2.2.5 Rules and Regulations. Each Owner shall be subject to such rules and regulations with respect to the Moorgate Point Neighborhood as the Association determines from time to time to be in the best interest of the Moorgate Point Neighborhood and the Owners, provided that no rules and regulations promulgated by the Association shall conflict with the provisions of the Declaration.
- 2.2.6 Because of the importance of keeping vehicles within garaged areas, no Owner may convert any garage area for any other use. This restriction shall not apply to original construction by the Developer, nor shall it prevent the Developer from using a garage as a sales office.
- 2.2.7 Normal household pets shall be permitted, subject to rules and regulations established by the Association. No other animals shall be permitted upon the Lot.
- 2.2.8 Minimum Dwelling Unit Size. No Dwelling Unit shall contain less than 1,500 square feet of air conditioned enclosed living area. The method of determining the square footage of the enclosed living areas of a Dwelling Unit, structure or addition thereto, shall be to multiply together the horizontal dimensions of the walls forming the outer boundaries of the Dwelling Unit, structure or addition for each floor level. Open porches, atriums, screened in patios, courtyards, garages and other similar type space shall not be taken into account in calculating the minimum air conditioned enclosed living area square footage as required herein.
- 2.2.9 Setbacks. No part of any Dwelling Unit shall be located nearer than: twenty feet (20') to the front lot line; ten feet (10') or zero feet (0') to the side lot line of the Lot, as measured from any of the exterior finished surfaces and exclusive of roof over-hangs and other similar appurtenances; provided, however, only one (1) side yard setback may be zero feet (0') and the structure thereon may be connected with a Dwelling Unit on the adjacent lot thereto; and ten feet (10') from the rear lot line, except accessory structures - ten feet (10'); provided, however, the setback may be waived by the Developer in the event a variance is obtained from the applicable governmental agency. Accessory structures include swimming pools, pool enclosures and decking, privacy walls, and other structures so designated by the ARB.

**2.3 NON-SEVERABLE INTERESTS OF OWNERS.** The ownership of a Lot, the Dwelling Unit constructed thereon, all easement rights appurtenant thereto as provided in this Declaration or any Supplemental Declaration including, but not necessarily limited to, utility and governmental services easements, easements for encroachments and maintenance, and structural cross easements with respect to common structural easements; membership in the Association; and all other appurtenances thereto under the Moorgate Point Documents (hereinafter collectively referred to as the "Interests"); shall not be severable and an Owner shall not and may not sell, convey, demise, lease, assign, pledge or otherwise transfer or encumber any of his right, title or interest in and to his respective Interests or any of such Interests unless such sale, conveyance, demise, lease, assignment, pledge or other form of transfer or encumbrance includes all of his right, title and interest in and to the Interests including, but not limited to, the Dwelling Unit and the Lot upon which it is constructed.

**2.4 RIGHTS OF DEVELOPER.** Notwithstanding any provision in this Declaration as to use or otherwise to the contrary, Developer reserves the right to carry on construction, development and sale activities; place equipment, machinery, supplies and signs; construct and maintain models or other structures; and park vehicles of prospective or actual purchasers, lessees or employees and personnel of Developer on any part of the Land owned by the Developer or the Association; and exercise the easement rights and all other rights granted Developer under the Moorgate Point Documents.

**2.5 DISPUTES AS TO USE.** In the event there is any dispute as to whether the use of the Land or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Moorgate Point Board of Directors, and a determination rendered by the Board of Directors with respect to such dispute shall be final and binding on all parties concerned therewith. Provided, however, any use by Developer of the Land or any part thereof determined by Developer, in its sole discretion, to be in accordance with Section 2.4 above, regarding rights of Developer, shall be deemed a use of the Land which complies with this Declaration and such determination by Developer shall not be subject to any further determination or review to the contrary by the Board of Directors.

**2.6 CONVEYANCE TO ASSOCIATION.** Developer agrees that it shall turnover control of the Association as provided in the Florida Statutes at F.S. Sec. 720.307, members of the Association other than Developer shall elect a majority of the board of directors, and Developer shall convey to the Association fee simple title in and to the Common Areas together with the improvements located thereon on or before the "Conveyance Date" which shall be on or before ninety (90) days after the earlier of the following ("Turnover Event"):

- 2.6.1 The conveyance by Developer of a total of ninety percent (90%) of the Lots within Moorgate Point; or
- 2.6.2 At such earlier time as Developer, at its sole discretion, may elect.

Notwithstanding anything to the contrary in the foregoing, Developer shall be entitled to elect at least one member of the board of directors of the Association as long as the developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots in all phases of Moorgate Point. After Developer relinquishes control of the Association, Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the Board of Directors.

All such conveyances to the Association described herein shall be by Special Warranty Deed subject to (1) taxes and taxing districts for the year of conveyance and subsequent years; (2) such facts as an accurate survey would show; (3) the terms and provisions of the Moorgate Point Documents; (4) easements, restrictions, reservations, conditions, and limitations of record and common to the subdivision; and (5) applicable zoning ordinances and regulations. The Association shall be obligated to accept all conveyances of any property within the Land from the Developer. The Association shall have the right and power to convey Association property and/or easements therein to any grantee for consideration or for no consideration.

**ARTICLE III  
MANDATORY MEMBERSHIP;  
PLAYERS CLUB AND SPA**

3.1 **INTENT.** This Declaration imposes upon the Land a requirement that each Owner of Lots within Moorgate Point apply for and maintain a Club Membership and pay Club Membership dues and fees to the Club, and further should an Owner fail to pay any Club Charges owed to the Club in a timely manner, as set forth in the Plan (as defined below), the Owner's Lot shall be subject to such lien and other rights set forth herein.

The Club shall be responsible for the management and operation of the Amenity Center and the Developer is released of all liability hereunder.

3.2 **DEFINITIONS.**

The following terms when used in this Article III regarding the Club shall have the following meanings:

- 3.2.1 "Classics Club Member" shall mean and refer to any person who, at the time of the acquisition of any Lot within the Property, currently owns and maintains (in good standing), and subsequent to the acquisition of any Lot within the Property continues to own and maintain (in good standing), a full golf membership in The Classics at Lely Resort & Country Club.
- 3.2.2 "Club" shall mean the Players Club and Spa, LLC, a Florida limited liability company (or a similar-named entity to be formed to operate and manage the Club Property), its affiliates or designees, or its successors; or a successor-in-title to the Club Property, and in the event of a transfer of title to the Club

Property, such successor shall have all of the rights of the Players Club and Spa, LLC, and the Players Club and Spa, LLC, and Developer will be released of all liability relating to the operation, maintenance or ownership of Club.

- 3.2.3 “Club Charges” shall mean and refer to all initiation, dues, fees, use charges and other charges including the membership purchase price, required to be paid by a Club Member to obtain and maintain a Club Membership.
- 3.2.4 “Club Property” shall mean and refer to the portions of the property within Lely Resort, Collier County, Florida, now owned or to be owned by Developer, upon which the Club operates the Amenity Center for recreational purposes, including but without limitation, the health and fitness facilities, swimming pool, tennis and related recreational and ancillary facilities (without any food and beverage facilities or services), if any such improvements are constructed.
- 3.2.5 “Designated Merchant Builder” shall mean and refer to those builders, developers and/or subdevelopers designated by Developer, in writing, as exempt from the definition of Owners, subject to the conditions set forth in subsection 3.2.8 below.
- 3.2.6 “Club Member” shall mean and refer to any person entitled to membership in the Club, as provided herein and in the Plan.
- 3.2.7 “Club Membership” shall mean and refer to the license granted to Club Members under the Plan.
- 3.2.8 “Owner” shall mean and refer to the record title holder, whether one (1) or more persons or entities, of the fee simple title to any Lot. For purposes of this Article III only, Owners shall not include the following:
- (A) Developer.
  - (B) Any Designated Merchant Builders, unless and until such Designated Merchant Builder occupies the Lot for residential occupancy.
  - (C) Any Classics Club Member so long as such Classics Club Member continues to own and maintain (in good standing) a full golf membership in The Classics at Lely Resort & Country Club, or until such time as such Classics Club Member conveys the Lot to a third party, in which event such third party shall be bound by the terms of this Article III of this Declaration and the Plan.

- (D) Any institutional mortgagee, unless and until such institutional mortgagee acquires title to a Lot pursuant to an action for foreclosure or any proceeding in lieu of foreclosure.

In the event any of the conditions set forth in subsections (B), (C) or (D) of this Section 3.2.8 occurs, such owner of the Lot shall immediately be deemed an "Owner" for purposes of this Article III and the Plan.

- 3.2.9 "Plan" shall mean and refer to the Membership Plan, Rules and Regulations and Membership Agreement promulgated by the Club relating to Club Membership and use of the Club Property, all as may be amended from time to time.

### 3.3 CLUB MEMBERSHIP DUES, ASSESSMENTS AND CHARGES.

#### 3.3.1 Club Membership Requirements.

By acquisition of title to a Lot, each Owner, Classics Club Member and Designated Merchant Builder acknowledges and agrees that the Club Property is or will be owned by the Developer and operated by the Club, and that each Owner of a Lot is required to own and maintain a Club Membership. Upon transfer of title to a Lot, the Club Membership of the transferring Owner shall terminate and the transferee shall be required to apply for and acquire a Club Membership, provided, regardless of whether or not an application is completed, the Owner shall be required to pay the Club Charges for the Club Membership. Until an application is completed and submitted to the Club, the transferee will not be permitted to use the Club Property as a Club Member. Privileges to use the Club Property shall be subject to the terms and conditions of the Plan. The amount of the Club Charges for Club Membership shall be determined by the Club from time to time as set forth in the Plan.

In the event that an Owner is rejected for Club Membership, such Owner shall not be required to pay the Club Charges and shall not be permitted to use the Club Property as a Club Member. Such rejection for Club Membership shall not prohibit the conveyance of the Lot to the transferee; however, the requirements and restrictions set forth in this Article III and the Plan shall remain effective as to the Lot for any future conveyance. The Club's rejection of a Club Membership to any Owner of a Lot shall not be deemed a rejection of any future Owner of such Lot.

#### 3.3.2 Creation of the Lien and Personal Obligation for the Club Charges.

Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Club, Club Charges for the Club Membership associated with the Lot. If a Lot is owned by more than one Owner (e.g., husband and wife), the obligation to pay the Club Charges is a joint and several obligation of each of the Owners of that Lot, regardless of which Owner is designated to use

the Membership as provided in the Plan. If an entity owns a Lot and a Club Membership, the entity and the designated user of the Club Membership shall be jointly and severally liable for the Club Charges. The Club Charges, together with such interest thereon and costs of collection thereof as hereinafter provided, shall, in addition to being the personal obligation of the Club Member and Owner, be a charge on the Lot and shall be a continuing lien upon the Lot against which such Club Charge is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Club Charges became due. The failure of any Owner and Club Member to pay any of the required Club Charges shall constitute grounds for suspension and/or termination of Club Membership by the Club. Any Lot owned by a Designated Merchant Builder shall be exempt from the obligation to pay the Club Charges, unless and until the Designated Merchant Builder occupies the Lot for residential purposes. At such time, the Designated Merchant Builder shall have use of the Club Facilities, subject to the requirements and restrictions set forth herein and in the Plan. A Classics Club Member shall be exempt from the obligation to pay the Club Charges for so long as such Classics Club Member continues to own and maintain (in good standing) a full golf membership in The Classics at Lely Resort & Country Club; provided that, once the Classics Club Member sells the Lot to a third party, such third party shall be bound by the terms of this Article III and the Plan. In no event shall any individual be entitled to use the Club's Facilities unless such individual occupies the Lot as their residence.

### 3.3.3 Collection of Club Charges; Effect of Non-Payment of Club Charges; the Personal Obligation of the Owner; the Lien; Remedies of the Club.

If the Club Charges are not paid when due as provided in the Plan, then such Club Charges shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Owner's Lot which shall bind such property in the hands of the Owner, his or her heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for all unpaid Club Charges with respect to such Lot. In any voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Club Charges made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from grantor the amounts paid by the grantee therefore.

If the Club Charges are not paid when due, the Club may impose a late charge and interest on the delinquent amount as set forth in the Plan. The Club may bring an action at law against the Owner and the Club Member personally obligated to pay the same, and/or may record a claim of lien against the Lot on which Club Charges are unpaid, and may foreclose the lien against the property on which Club Charges are unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more of remedies set forth herein or available at law at the same time or successively, and there shall be added to the amount of such Club Charges, reasonable attorney's fees and costs of collecting or attempting to collect the Club Charges through all appeals.

Any payments made to the Club by any Owner shall be applied or be disbursed by the Club, in order, for (i) any sums advanced and paid by the Club for taxes and payments on account of superior mortgages, liens, or encumbrances which may have been advanced by the Club in order to



preserve and protect its Club Charges lien; (ii) reasonable attorney's fees and costs incurred by the Club incidental to the collection of Club Charges and other monies owed to the Club by the Owner for the enforcement of its Club Charges lien; (iii) interest on any Club Charges or other monies due to the Club, as provided in the Plan; (iv) any late charges, as provided in the Plan; and (v) any unpaid Club Charges owed to the Club with application to the oldest Club Charges first.

The Club shall have the right to enforce this Article III and the obligation to pay Club Charges without interference from any third party.

#### 3.3.4 Subordination of the Lien to Institutional First Mortgage.

The lien of any Club Charges provided for herein shall be subordinate to the lien of any Institutional Mortgage. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage shall hold title subject to the liability and lien of any Club Charges becoming due after such foreclosure or conveyance in lieu of foreclosure.

#### 3.3.5 Estoppel.

The Club shall, upon the written request of any Owner, furnish, within ten (10) days after such written request, to any person liable for Club Charges, a certificate in writing signed by an authorized signatory of the Club setting forth whether Club Charges have been paid as to the Lot of the Owner. With respect to all persons other than the Owner of that Lot, such certificate may be relied upon as conclusive evidence of payment to the Club of such Club Charges therein stated to have been paid. The Club may require the advance payment of a processing fee not to exceed twenty-five and 00/100 dollars (\$25.00) for the issuance of each such certificate.

### 3.4 MEMBERSHIP POLICIES.

#### 3.4.1 **The Club Property is not common area owned by the Association or any other Neighborhood Association as defined in the Master Declaration.**

The Club shall have the right to amend the Plan which permits the Club to set and amend membership and use policies and rules and regulations from time to time. The Club Property shall be developed and provided at the discretion of the Club. The Club has the exclusive right to determine from time to time, in its sole discretion and without notice, how and by whom these facilities shall be used, if at all. **Ownership of a Lot or any other portion of the Property or membership in the Association or any other Neighborhood Association does not give any vested right or easement, prescriptive or otherwise, to use the Club Property. Only Club Members may use Club Property.**

#### 3.4.2 Non-Equity Club Membership.

**The Club owns the Club Property and will manage and operate the Club Property. Club Membership does not grant any ownership of any of the Club Property or the Club to any Club Member or Owner.**

**As set forth in the Plan, the Club may be converted into an equity, member-owned club in the Club's sole and absolute discretion. The Club shall not be bound to convert to an equity, member-owned club.**

### **3.5 GENERAL**

#### **3.5.1 Term.**

The covenants set forth in this Article III shall run with and bind the Land, and shall inure to the benefit of and shall be enforceable by the Club for a term of thirty (30) years from the date this Declaration is recorded, after which time the covenants set forth in this Article III shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by sixty-seven percent (67%) of the then Owners and a written consent signed by the Club, has been recorded within the year preceding the beginning of each successive period of ten (10) years agreeing to terminate the same, in which case the covenants shall be terminated as specified therein.

#### **3.5.2 Notice of Transfer of Lot.**

In the event that any Owner (other than the Developer), Classics Club Member or Designated Merchant Builder desires to sell or otherwise transfer title to a Lot (by sale, gift or judicial decree), such Owner shall give the Club at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Club may reasonably require. Until such written notice is received by the Club, the transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner of the Lot, including payment of Club Charges, notwithstanding the transfer of title to the Lot.

#### **3.5.3 Documents to Grantees.**

All Owners shall be obligated to deliver the Plan to any purchaser or transferee of their Lot. Copies of the Plan may be acquired from the Club upon payment of a reasonable reproduction fee.

## **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD OF DIRECTORS**

**4.1 MEMBERSHIP AND VOTING RIGHTS.** Membership in the Association shall be established and terminated as set forth in the Articles. Each Owner shall be entitled to the benefit of and is subject to, the provisions of the Moorgate Point Documents as same may be amended from time to time. The voting rights of the Members shall be as set forth in the Articles.

4.2 **BOARD OF DIRECTORS.** The Association shall be governed by the Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

4.3 **INITIATION OF LEGAL ACTION.** Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of the Owners of no less than three-quarters (3/4) of all Lots or Dwelling Units within the Land (at a duly called meeting of the Association at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- 4.3.1 The collection of assessments and "Maintenance Fees"; or
- 4.3.2 The collection of other charges which Owners are obligated to pay pursuant to the Moorgate Point Documents; or
- 4.3.3 The enforcement of the use and occupancy restrictions contained in the Moorgate Point Documents; or
- 4.3.4 In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Land or to Owner(s).

4.4 **DEVELOPER APPROVALS.** If Developer is offering for sale homes built or to be built within Moorgate Point in the ordinary course of business, none of the following actions may be taken without the Developer's prior written approval:

- 4.4.1 Assessment of Developer as an Owner for capital improvements;
- 4.4.2 Any action by the Association that would be detrimental to the sale of Lots or Dwelling Units by Developer. The determination as to what actions would be detrimental to sales shall be at the sole discretion of Developer; and
- 4.4.3 Initiation of any legal action, including civil action, arbitration or pursuit of action before a governmental body or agency by the Association.

**ARTICLE V**  
**USE AND MAINTENANCE OF THE LAND,**  
**MAINTENANCE OF COMMON AREAS**  
**AND MAINTENANCE OF BUILDINGS**

5.1 **COVENANTS FOR USE.**

- 5.1.1 Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Moorgate Point Neighborhood whether or not it

shall be so expressed in such deed or instrument, covenants and agrees that the Dwelling Unit or Villa and the Lot shall be used, held, maintained and conveyed solely in accordance with the covenants, reservations, easements, restrictions and lien rights regarding same as are or may be set forth in the Moorgate Point Documents including, but not limited to, this Declaration and all applicable Supplemental Declarations.

5.1.2 No Owner shall in any way damage, injure or impair the Common Areas.

**5.2 MAINTENANCE AND REPAIR OF LAND.** The maintenance and repair of the Land is either the responsibility of the Owners or the Association as hereinafter more particularly set forth:

5.2.1 Responsibility of Owners.

(A) Except as set forth in Section 5.2.2 regarding ordinary lot maintenance and Section 5.21(D) regarding exterior building maintenance, each Owner shall maintain in good condition and repair at his own expense:

(i) All portions of his Lot and Dwelling Unit. This obligation includes, but is not necessarily limited to, the obligation to maintain all exotic and additional landscaping not maintained by the Association, or "Areas of High Maintenance" (as defined in Section 5.2.2 below).

(ii) All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under the Lot and which service only the Dwelling Unit of the Owner thereof.

(iii) All glass and screens in windows and doors, in a manner consistent and in uniformity with the standards promulgated by the Association. Any window, screen or door treatment visible from the exterior must be approved by the Developer for so long as the Developer is actually selling Villas built or to be built on the Land, and thereafter by the Association. No solar or reflective materials may be used on or as window treatments or covers.

Each Owner shall perform promptly all such maintenance and repairs and shall be liable for any damages that arise due to the failure to perform such maintenance and repairs. Furthermore, should the Owner neglect to perform such

maintenance and repair, the Association shall have the right to have maintenance performed by its agents or employees and the Owner in question shall be liable to the Association for the cost and expense so incurred and shall be subject to a special assessment therefore.

- (B) Each Owner shall promptly report to the Association any defect known to such Owner which requires repair of the property for which the Association or a party other than that Owner is responsible.
- (C) Any repairs, alterations, improvements or maintenance must be completed by an Owner within thirty (30) days of commencement by an Owner.
- (D) The Owners shall have no right to repair, paint, or otherwise modify any portion of the exterior Dwelling Unit, or the roofs thereof, without the prior written approval of the Association. The Association shall have the right to maintain, paint, repair or otherwise modify the exterior of the buildings within the development, and the same shall be a Common Expense.

5.2.2 Landscaping. In order to provide a means by which landscape maintenance of Lots may be fulfilled without jeopardizing the security of Moorgate Point by the possibility of admission thereto of a large number of landscaping maintenance contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care of each and every Lot within the Moorgate Point Neighborhood and such maintenance shall be part of the Association Expenses. This shall also include fertilization and insect and disease treatment. Owners with pools or additional landscaping shall be charged an extra maintenance assessment as determined by the Association at the Association's sole discretion to cover the cost of maintaining the additional landscaping. Such maintenance shall not extend to areas requiring unusual maintenance such as rose gardens or areas specifically designated by the Association as an "Area of High Maintenance". Areas of High Maintenance shall be maintained by the Owner of the Lot or by such special arrangement as may be approved by the Association. In the event the Owner makes special arrangements to have the Association perform maintenance on the Owner's Areas of High Maintenance, the cost of said maintenance shall be billed to the Owner as a "special assessment", for which the Owner shall be solely liable and for the payment of which the Association shall have a lien against the Owner's Dwelling Unit.

- 5.2.3 The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.
- 5.2.4 Maintenance and Repair of Common Areas. Maintenance and repair of Common Areas and any improvements located thereon is the responsibility of the Association including landscape maintenance and drainage maintenance. The Association shall also maintain all berms even where located on an Owner's Lot. The Association shall not waive or abandon the foregoing maintenance obligations without the prior written consent of all Institutional Mortgagees.

**ARTICLE VI**  
**PARTY WALL AND COMMON ROOF**

**6.1 PARTY WALL**

- 6.1.1 Declaration of Party Wall. It is hereby declared that any Party Wall, and any extensions of it, shall be subject to the covenants, restrictions and easements set forth in this Declaration.
- 6.1.2 Encumbrances and Claims. Any Owner who purchases a Dwelling Unit with a Party Wall acknowledges that they have physically examined the Party Wall prior to closing on the purchase of the Dwelling Unit and it is mutually agreed that both owners of the Party Wall (hereinafter referred to as the "co-owners") waive any and all claims, damages, demands, actions, proceedings, rights or remedies that each may have as against the other arising out of or relating to the Party Wall, including the construction of chimneys and flues therein already constructed as of the date of closing of the purchase of the Dwelling Unit, if any.
- 6.1.3 Damage and Repairs.
  - A. In the event of damage or destruction of the Party Wall from any causes, other than the negligence of either party, the then co-owners shall, at joint and equal expense, repair or rebuild the Party Wall on the same spot and on the same line, and be of the same size, and of the same or similar material and of like quality with the present wall, and each co-owner, his heirs, successors, and assigns shall have the right to the use of the Party Wall so repaired or rebuilt. The parties agree that repairs and reconstruction of the Party Wall shall be undertaken wherever a condition exists which may result in damage or injury to

any person or property if repair or reconstruction work is not undertaken. Either co-owner, upon discovering the possibility of damage or destruction, shall notify the other of the nature of the damage, the work required to remedy the situation, and the estimated cost of the repair or reconstruction. The other co-owner shall then have twenty (20) days from the receipt of the notice either to object to the repairs or reconstruction or to pay the co-owner's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons or property) the co-owner may make such repairs as are necessary to remove the emergency condition without waiting for objection from the other co-owner; provided the co-owner provides immediate notice of such action taken, which notice shall also state that an emergency existed, and the co-owners shall equally share the cost thereof.

- B. If either co-owner's negligence or willful misconduct shall cause damage to or destruction of the Party Wall, such co-owner shall bear the entire cost of repair or reconstruction.
- C. If either co-owner shall neglect or refuse to pay the co-owner's share, or all of the cost as provided herein, the other co-owner may have the Party Wall repaired or restored and shall be entitled to have a mechanics' lien and lis pendens on the Dwelling Unit of the co-owner failing to pay for the amount of such defaulting co-owner's share of the repair or replacement cost.

#### 6.1.4 Easement for Party Wall.

- A. Each co-owner and his respective successors, heirs, or assigns shall have any easement in that part of the land of the other co-owner on which the Party Wall is located, as may be necessary or desirable to carry out the terms of this Article.
- B. Each co-owner and his respective successors, heirs, assigns, contractors, licensees, agents, and employees shall have an easement in that part of the land of the other co-owner necessary or desirable to repair, restore, or extend the Party Wall, as approved and in accordance herewith.
- C. Each co-owner shall permit the other co-owner and said other co-owner's contractors, licensees, agents and employees to enter such co-owner's property for the purpose of repairing or restoring the Party Wall, as approved and in accordance herewith, and shall secure the permission of the tenants, if any, occupying the property for such entrance.

- 6.1.5 Duration and Amendment. The covenants, restrictions and easements contained in this Article shall run with and bind the land, and shall inure to the benefit of and be enforceable by each co-owner, his respective heirs, successors, and assigns.
- 6.1.6 Notices. Any notice or report required under this Article shall be sent to the co-owner at the address of the Dwelling Unit unless the address is changed by written notice to the other co-owner, in which event the new address given shall be used for the sending of the notice or report. In addition, any notice or report shall be sent by certified mail, properly addressed and postage pre-paid.
- 6.1.7 Severability. The invalidation of any one of the covenants, restrictions and easements contained in this Article, by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.
- 6.1.8 Insurance. Each co-owner shall be required to obtain, and maintain, "All Risks" insurance for his respective Dwelling Unit in an amount equal to one hundred percent (100%) of the full replacement value of such Dwelling Unit (exclusive of the cost of excavation and foundations), without deductions for depreciation. The co-owners shall not do or permit any act or thing to be done in or to the Party Wall contrary to law or which invalidates or is in conflict with the co-owner's insurance policy.
- 6.1.9 Indemnity. Each co-owner agrees to indemnify and hold the other co-owner harmless against any liability or personal or property damage, when such liability or damage shall result from, arise out of, or is attributable to the acts of omissions of such co-owner.
- 6.1.10 Transfer of Title to a Dwelling Unit. Upon any transfer of title to a Dwelling Unit, the selling co-owner ("Grantor") and the Purchaser ("Grantee") of such Dwelling Unit shall be jointly and severally liable for all unpaid amounts pertaining to the Party Wall accrued up to the date of the conveyance without prejudice to the rights of the Grantee but the Grantee, shall be exclusively liable for those accruing after the conveyance.
- 6.1.11 Disputes. The co-owners agree and consent that any controversy or difference arising between the co-owners with respect to any of the provisions of this Article shall be submitted to the decision of three arbitrators, one to be chosen by each co-owner and the third to be chosen by the two chosen by the co-owners. If a co-owner fails to choose an arbitrator within ten (10) days after the first one is chosen, then two (2) other arbitrators shall be chosen by the American Arbitration Association. If the two (2) arbitrators chosen by the co-owners fail to choose a third arbitrator within ten (10) days after they have been



selected, then a third arbitrator shall be chosen by the American Arbitration Association. Each co-owner will pay the cost of its experts, evidence, and legal counsel, but the other expenses of the arbitration will be borne equally by the co-owners. The arbitration will be governed by the Commercial Rules of the American Arbitration Association then in effect. A decision of a majority of arbitrators shall be final and conclusive on the co-owners. Judgment upon any award of the arbitrators may be entered in any court of competent jurisdiction. Any co-owner may institute arbitration under this section upon ten (10) days written notice.

- 6.1.12 Use of Party Wall. Either co-owner shall have the right to use the side of the Party Wall facing the co-owner's Dwelling Unit in any lawful manner, including attaching structural or finishing materials to it; however, a co-owner shall not create windows or doors in the Party Wall without the written consent of the other co-owner. Any consent given to one of the co-owners to make openings in the Party Wall shall be subject to the right of the other co-owner to close up such openings at such times as that co-owner desires to use that part of the Party Wall.

## 6.2 COMMON ROOF

- 6.2.1 Common Roof. Each Dwelling Unit may share a common roof with one or more other Dwelling Units ("Common Roof"). It is hereby declared that each Dwelling Unit sharing a Common Roof shall be subject to the covenants, restrictions and easements set forth in this Article of the Declaration.
- 6.2.2 Damage and Repair. In the event of damage or destruction of the Common Roof from any causes, other than the negligence of any co-owner, the then co-owners shall, at joint and equal expense, following ARB approval as set forth herein, repair or rebuild the Common Roof on the same line, and of the same size, and of the same or similar material, and of like quality with the current roof and each co-owner, his heirs, successors and assigns shall have the right to use to Common Roof so repaired or rebuilt. The parties agree that the repairs and reconstruction of the Common Roof shall be undertaken whenever a condition exists which may result in damage or injury to any person or property if repair or reconstruction work is not undertaken. Any co-owner, upon discovering the possibility of damage or destruction, shall notify the other co-owners of the nature of the damage, the work required to remedy the situation and the estimated cost of the repair or reconstruction. The other co-owner(s) shall then have twenty (20) days from receipt of the notice either to object to the repairs or reconstruction or to pay the co-owner's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons or property) the co-owner(s) may make such repairs as are necessary to remove the emergency condition

without waiting for objection from the other co-owner(s); provided the co-owner(s) provides immediate notice of such action taken, which notice shall state that an emergency existed, and the co-owners shall equally share the cost thereof. If any co-owner's negligence shall cause damage to or destruction of the Common Roof, the negligent co-owner shall bear the entire cost of the repair or reconstruction. If any co-owner shall neglect or refuse to pay his pro-rata share, or all of the costs in the case of negligence, the other co-owner(s) may have the roof repaired or restored and shall be entitled to have a mechanic's lien and lis pendens on the Dwelling Unit of the co-owner failing to pay for the amount of such defaulting co-owner's share of the repair or replacement cost.

6.2.3 Easement.

- A. Each co-owner and his respective successors, heirs or assigns, shall have an easement over the other co-owner(s)' Dwelling Unit as may be necessary or desirable to carry out the terms of this Article.
- B. Each co-owner and his respective successors, heirs, assigns, contractors, licensees, agents and employees shall have an easement in that part of the land of the other co-owner(s) necessary or desirable to repair, restore or replace the Common Roof, as approved and in accordance herewith.
- C. Each co-owner shall permit the other co-owner(s) and said other co-owner's contractors, licensees, agents and employees to enter his property for the purpose of repairing, restoring or replacing the Common Roof, as approved and in accordance herewith, and shall secure the permission of the tenants, if any, occupying the property for such entrance.

6.2.4 Duration. The covenants, restrictions and easements contained in this Article shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, each co-owner, his respective heirs, successors and assigns.

6.2.5 Notices. Any notice or report required under this Article shall be sent to the co-owner at the address of the Dwelling Unit unless the address is changed by written notice to the other co-owner, in which event the new address given shall be used for the sending of the notice or report. In addition, any notice or report shall be sent by certified mail, properly addressed and postage pre-paid.

6.2.6 Severability. The invalidation of any one of the covenants, restrictions and easements contained in this Article, by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

- 6.2.7 Insurance. Each co-owner shall be required to obtain, and maintain, "All Risks" insurance for his respective Dwelling Unit in an amount equal to one hundred percent (100%) of the full replacement value of such Dwelling Unit (exclusive of the cost of excavation and foundations), without deductions for depreciation. The co-owners shall not do or permit any act or thing to be done in or to the common wall contrary to law or which invalidates or is in conflict with the co-owner's insurance policy.
- 6.2.8 Indemnity. Each co-owner agrees to indemnify and hold the other co-owner(s) harmless against any liability or personal or property damage, when such liability or damage shall result from, arise out of, or is attributable to the acts of omissions of such co-owner(s).
- 6.2.9 Transfer of Title to a Dwelling Unit. Upon any transfer of title to a Dwelling Unit, the selling co-owner ("Grantor") and the purchaser ("Grantee") of such Dwelling Unit shall be jointly and severally liable for all unpaid amounts pertaining to the Common Wall accrued up to the date of the conveyance without prejudice to the rights of the Grantee but the Grantee, shall be exclusively liable for those accruing after the conveyance.
- 6.2.10 Disputes. The co-owners agree and consent that any controversy or difference arising between the co-owners with respect to any of the provisions of this Article shall be submitted to the decision of arbitrators, one to be chosen by each co-owner and an additional arbitrator to be chosen by the arbitrators chosen by the co-owner(s) provided, however, if there are an odd number of co-owners then the arbitrators selected by the co-owners shall select two additional arbitrators. If a co-owner fails to choose an arbitrator within ten (10) days after the first one is chosen, then any other required arbitrators shall be chosen by the American Arbitration Association. If the arbitrators chosen by the co-owners fail to choose the additional arbitrator(s) within ten (10) days after they have been selected, then the additional arbitrator(s) shall be chosen by the American Arbitration Association. Each co-owner will pay the cost of its experts, evidence, and legal counsel, but the other expenses of the arbitration will be borne equally by the co-owners. The arbitration will be governed by the Commercial Rules of the American Arbitration Association then in effect. A decision of a majority of arbitrators shall be final and conclusive on the co-owners. Judgment upon any award of the arbitrators may be entered in any court of competent jurisdiction. Any co-owner may institute arbitration under this section upon ten (10) days written notice.

**ARTICLE VII**  
**ASSOCIATION EXPENSES**

In order to fulfill the covenants contained in this Declaration and in order to maintain and operate the Common Areas for the use, safety, welfare and benefit of Owners, their families, invitees, guests and lessees there is hereby imposed upon each Lot and its Owners the affirmative covenant and obligation to pay to the Association (in the manner set forth in Article V and this Article VII hereof), and upon the Association, the obligation to assess, collect and expend, the Association Expenses, for those Association expenses described in this Declaration, including but not limited to the following:

**7.1 COMMON AREA.**

- 7.1.1 Taxes. Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments, and water drainage districts, and in general, all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue on such taxes.
- 7.1.2 Utility Charges. All charges levied for utilities providing services for the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas, electricity, irrigation, street lighting, telephone, sewer and any other type of utility or service charge.
- 7.1.3 Insurance. The premiums on any policy or policies of insurance obtained by the Association under this Declaration or the Moorgate Point Documents.
- 7.1.4 Maintenance, Repair and Replacement. Any and all expenses necessary to:
- (A) Maintain and preserve the Common Areas (including such expenses as grass cutting, tree trimming and other landscape maintenance, operating and maintaining sprinklers and the like); and
  - (B) To keep, maintain, repair and replace any and all improvements upon the Common Areas in a manner consistent with the development of the Moorgate Point Neighborhood, the covenants and restrictions contained herein, but not necessarily limited to, and all orders, ordinances, rulings and regulations of any and all federal, state and city governments having jurisdiction thereover as well as the statutes and laws of the State of Florida and the United States; and

- (C) Provide any other maintenance or services for which the Association is responsible; and
- (D) The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.

7.1.5 Administrative Expenses. The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular Owners. In addition, the Association may retain a managing company or contractors to assist in the operation of the Moorgate Point Neighborhood and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company, contractor, attorney or certified public accountant so retained shall be deemed to be part of the Common Area Expenses.

7.1.6 Indemnification. The costs to the Association to indemnify and save harmless Developer from and against any and all claims, suits, actions, damages and/or causes of action arising from any personal injury, loss of life and/or damage to property sustained in or about the Common Areas or the appurtenances thereto; from and against all costs, counsel fees, expenses and liabilities incurred relating to any such claim or in settlement thereof, the investigation thereof or the defense at any levels of any actions or proceedings brought thereon, and from and against any order, judgments and/or decrees which may be entered therein. Included in the foregoing provisions for indemnification are any expenses that Developer may incur in bringing suit for the purpose of enforcing rights hereunder, or for the purpose of compelling the specific enforcement of the provisions, conditions, covenants and restrictions contained in this Declaration to be kept and performed by the Association and/or the Owners, including the payment of Association Expenses. Further, the costs to the Association of indemnifying its officers and members of the Board of Directors for all pursuance of their duties, obligations and functions hereunder and in any legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding, costs of investigation and discovery, etc. Nothing in the provisions of this Section 7.1.6 shall require an Institutional Mortgagee to pay any Association Expense or portion thereof attributable to costs to the Association of indemnifying and saving

harmless Developer in accordance with such Section. Any such Association Expense shall be reallocated amongst the Owners other than the Institutional Mortgagees.

- 7.1.7 **Enforcement.** Any and all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms and conditions of this Declaration, including without limitation, attorney's fees and court costs, or in curing any default, violation or failure to perform to abide by such covenants, restrictions, terms and conditions.
- 7.1.8 **Reserve Funds.** The costs to establish, at the discretion of the Association, an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association. Each Owner acknowledges, understands and consents that such reserve funds are the exclusive property of the Association as a whole and that no Owner shall have any interest, claim or right to any reserve funds. The Association shall be responsible for maintaining the reserve funds in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.
- 7.1.9 **Miscellaneous Expenses.** The costs of all items of expense pertaining to or for the benefit of the Common Areas or any part thereof, or the Association of the Moorgate Point Neighborhood not herein specifically enumerated and which is determined to be a Common Area Expense by the Association including, but not limited to, the cost of refuse collection if billed to the Association and the cost of providing security services including gate(s), any guard house(s) and fountain(s) for the Moorgate Point Neighborhood in the event the Board of Directors elects to provide such services. The cost of maintaining the lawns on Lots within the Moorgate Point Neighborhood shall also be an Association Expense; however, maintenance of Areas of High Maintenance is not an Association Expense even though such maintenance may be performed by the Association. The Association may include the planting and replacement of annuals or other decorative plants and shrubs as part of its expenses, if deemed appropriate at the discretion of its Board of Directors. Areas of High Maintenance within individual Lots will be billed separately to the individual Owners.
- 7.1.10 **Recreation Expense.** The cost of membership in any association or entity providing recreational facilities and the maintenance, repair and improvement of any recreational facilities of the Association shall be an Association Expense.

**ARTICLE VIII**  
**METHOD OF DETERMINING ASSESSMENT OF ASSOCIATION EXPENSES**

8.1 **ASSESSMENTS.** It is hereby declared, and all Owners and the Association agree, that the Association Expenses shall be disbursed by the Association out of funds assessed and collected from all Owners in the Moorgate Point Neighborhood.

8.2 **DETERMINING INDIVIDUAL ASSESSMENTS.**

8.2.1 As provided in the Bylaws of the Association, the Board shall prepare an annual estimated Budget which shall reflect the annual common expense described in Article VII. Thereupon the Board of Directors shall allocate to all the Moorgate Point Neighborhood Lots for which a Certificate of Occupancy for a Dwelling Unit has been issued by the appropriate governmental authority an equal share of the said annual Common Expenses. The share of the annual Association Expenses allocated to a Dwelling Unit Owner is the "Individual Assessment" for each Dwelling Unit.

8.2.2 For purposes of assessments, the number of Dwelling Units located in the Moorgate Point Neighborhood shall include only Dwelling Units located upon Land for which a Certificate of Occupancy has been issued by an appropriate governmental agency.

8.2.3 The Individual Assessment (as defined in Section 8.2.1 above) shall be payable at such time as the Board of Directors determines.

8.3 **DETERMINATION OF INDIVIDUAL ASSESSMENTS DURING THE INTERIM PERIOD.**

8.3.1 The term "Interim Period" means that period of time commencing with the date of the recordation of this Declaration in the Public Records of the County and continuing for a period of one (1) year or until the Turnover Event, whichever is the sooner to occur.

8.3.2 Notwithstanding anything in Article VII to the contrary, it is declared and agreed by the Association and Developer that the Owners shall pay the "Guaranteed Assessments" (as hereinafter defined) to the Association as Individual Assessments during the Interim Period prorated as of the date of the conveyance of title to the Owner. The Guaranteed Assessment shall be One Hundred Eighty-Four and 91/100 Dollars (\$184.91) per Dwelling Unit per month. The Guaranteed Assessment paid by non-developer Owners during the Interim Period shall be in addition to the assessment payable to the Master Association and to the assessment for maintenance of Areas of High Maintenance and pool maintenance, if any. Developer covenants and agrees

with the Association and the Owners that, during the Interim Period, Developer will pay the difference, if any, between: (i) the Association Expenses, including that portion of the maintenance fee attributable to landscape maintenance but not including the portion of expense attributable to Areas of High Maintenance, pool maintenance, or any expenses incurred due to an Owner's negligence or willful misconduct; and (ii) the Guaranteed Assessments assessed against non-developer Owners. During the Interim Period, Developer shall not be required to make any payments of Individual Assessments for Dwelling Units owned by Developer.

8.3.3 Developer may extend the Interim Period for an unlimited number of additional six (6) month periods by providing the Association notice at least sixty (60) days prior to the then current date set forth as the end of the Interim Period of Developer's intention to extend the Guaranteed Assessments and such notice shall specify the new termination date of the Interim Period.

8.4 **SPECIAL ASSESSMENTS.** "Special Assessments" include, in addition to other assessments designated as Special Assessments in the Moorgate Point Documents and whether or not for a cost or expense which is included within the definition of "Association Expenses", those assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for, or on, the Common Areas or the cost (whether in whole or in part) of reconstructing or replacing such improvement or improvements on the Land and also any other assessments in addition to the Individual Assessments as shall be levied by the Board of Directors as a result of: (i) extraordinary items of expense under this Declaration; (ii) the failure or refusal of other Owners to pay assessments of Association Expenses; and (iii) such other reason or basis determined by the Board which is not inconsistent with the terms of any of the Moorgate Point Documents. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, the Guaranteed Assessment and any such Special Assessments assessed against the Moorgate Point Neighborhood Owners shall be paid by such Owners in addition to any such Guaranteed Assessments. Special Assessments shall be assessed in the same manner as the Individual Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board of Directors shall from time to time determine.

8.5 **LIABILITY OF OWNERS FOR INDIVIDUAL ASSESSMENTS.** By the acceptance of a deed or other instrument of conveyance of a Lot in the Moorgate Point Neighborhood, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Assessment and their applicable portion of any Special Assessments as well as for all assessments for which they are liable as provided for herein. Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner for Owner and Owner's heirs, executors, successors and assigns, that in the event Owners fail or refuse to pay their Individual Assessment or any portion thereof or their respective portions of any Special Assessments, then the other Owners may be responsible for increased Individual Assessments or Special Assessments due to the nonpayment by such other Owners and such increased Individual



Assessment or Special Assessment can and may be enforced by the Association and the Developer in the same manner as all other assessments hereunder as provided in this Declaration.

**ARTICLE IX**  
**ESTABLISHMENT AND ENFORCEMENT OF LIENS**

9.1 **LIENS.** Any and all Individual Assessments for Fines, Association Expenses, and Special Assessments and all installments thereof (collectively the "Assessments") with interest thereon at the highest rate allowed by law and costs of collection, including attorneys' fees are hereby declared to be a charge and continuing lien upon the Lot and Dwelling Unit against which each such Assessment is made. Each Assessment against a Lot and Dwelling Unit, together with interest thereon at the highest non-usurious rate allowed by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) and costs of collection thereof, including attorneys' fees, shall be the personal obligation of the person, persons or entity owning the Lot and the Dwelling Unit assessed. As to Institutional Mortgagees, said lien shall be effective only from and after the time of recordation in the Public Records of the County, of a written, acknowledged, or sworn statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. Where an Institutional Mortgagee obtains title to a Lot or Dwelling Unit as a result of foreclosure of its mortgage or deed given in lieu of foreclosing, such acquirer of title, its successors and assigns, shall not be liable for the share of Assessments pertaining to such Lot and/or Dwelling Unit or chargeable to the former Owner which became due prior to the acquisition of title by the Institutional Mortgagee, unless such share is secured by a claim of lien of Assessments that is recorded prior to the recording of the foreclosed first mortgage. Such unpaid share of Assessments shall be added to the Assessments collectible from all other Lots and Dwelling Units in the Moorgate Point Neighborhood. The foregoing shall not exclude an Institutional Mortgagee from payment of Assessments pertaining to a Lot and/or Dwelling Unit which accrue during the period of ownership of such Lot and/or Dwelling Unit by such Institutional Mortgagee whether or not such Lot and/or Dwelling Unit is occupied. The lien for fines, assessments, installments, interest, attorneys' fees and cost of collection shall be deemed to be effective and shall relate back to the date of the recording of this Declaration in the Public Records of Collier County, Florida, as to all other lien holders.

9.2 **ENFORCEMENT.** In the event any Owner shall fail to pay Assessments or any installment thereof charged to his Lot within fifteen (15) days after the same becomes due ("Delinquent Owner"), then the Association, through its Board of Directors, shall have any of the following remedies to the extent permitted by law:

- 9.2.1 To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

- 9.2.2 To advance on behalf of the Delinquent Owner funds to accomplish the needs of the Association and the amount of or amounts of monies so advanced, including reasonable monies so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of the Delinquent Owner, together with interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum), may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
- 9.2.3 To place of record a claim of lien against the Dwelling Unit and/or Lot of the Delinquent Owner.
- 9.2.4 To file a court action to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
- 9.2.5 To file an action at law to collect said Assessment plus interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) plus court costs and attorneys' fees without waiving any lien rights and/or rights of foreclosure in the Association.

9.3 **COLLECTION BY DEVELOPER.** In the event, for any reason, the Association fails to collect the Assessments, then in that event Developer, until the Developer no longer owns a Lot in the Moorgate Point Neighborhood, shall have the right to collect the same in the same manner as the Association.

9.4 **COLLECTION BY ASSOCIATION.** The Master Declaration provides that where land has been submitted to a Neighborhood Association, said Association shall have the duty and responsibility for collecting and timely remitting to the Master Association any and all Master Association assessments and other charges; provided, however, that the Master Association may, in its sole discretion, elect to collect due and unpaid Master Association assessments and other charges directly from any Owner for the payment of such assessments and charges which are due and payable. The Association or its members may also be liable for dues, maintenance and assessments of other associations established or for maintenance, repair and operation of recreational or other common property, which may be billed or collectable by the Association. The Association, through its Board of Directors, shall have the right to take such actions as are necessary to enforce such provisions and the Owners shall each pay to the Association such amounts as the Association is directed to charge and collect on behalf of the Master Association which shall be timely remitted to the Master Association or such other Association as may be appropriate.

**ARTICLE X**  
**INSURANCE**

**10.1 COMMON AREAS INSURANCE.** The Association shall purchase coverage for the Common Areas subject to the following provisions:

- 10.1.1 **Liability Insurance.** The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or Owners policies insuring the Association against any and all claims and demands made by an person or persons whomsoever for injuries received in connection with the use, operation and maintenance of Common Areas and improvements and buildings located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have reasonable limits as determined by the Board of Directors. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of law suits related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, liability of hazards related to usage and liability for property of others. All such policies will name the Association (and Developer for so long as Developer shall own any portion of the Common Areas as their respective interests may appear) as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association, the Developer or any other Owners or deny the claim of either the Developer or the Association because of the negligent acts of an Owner.
- 10.1.2 **Casualty Insurance.** The Association shall purchase and pay the costs of a policy or policies of insurance to allow the Association to insure any improvements, if any, now located or which may hereafter be located, built or placed upon the Common Areas against loss or damage caused by or resulting from at least the following: Fire and other hazards covered by the standard extended coverage endorsement, sprinkler leakage, windstorm, vandalism, malicious mischief, water damage, flood, debris removal and demolition, and such other risks as the Association shall determine are customarily covered with respect to developments similar to the Moorgate Point Neighborhood in construction, location and use.
- 10.1.3 **Fidelity Coverage.** The Association shall purchase adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible

for handling funds of the Association, such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board of Directors.

- (A) Such bonds shall name the Association as an obligee.
- (B) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

**10.2 MISCELLANEOUS INSURANCE.** The Association may also obtain such other forms of insurance and such coverages as the Association shall determine for the protection and preservation of the Common Areas. Such insurance may include, without limitation, worker's compensation insurance and flood insurance.

**10.3 POLICY CANCELLATION.** All insurance policies and fidelity bonds obtained by the Association shall provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association. In the event of cancellation, the Association shall make its best effort to replace the policy and coverage without lapse.

**10.4 INSURANCE TRUSTEE.** The Board of Directors may, if it deems it to be in the best interest of the Moorgate Point Neighborhood or the Association, provide that insurance policies be deposited with an Insurance Trustee whose duty shall be to receive any and all proceeds from the insurance policies held by it and to pay such proceeds to the Association pursuant to the terms hereof.

## **ARTICLE XI**

### **GRANT AND RESERVATION OF EASEMENTS**

The signatories hereby reserve and grant the following easements over and across the Land for the duration of the term of this Declaration (except as hereafter provided) and for the benefit of the parties or properties as hereinafter specified for the following purposes:

**11.1 UTILITY AND GOVERNMENTAL SERVICES EASEMENTS.** An easement or easements to provide utility services, including (but not necessarily limited to) power, electric transmission, television cable, light, telephone, gas, water, sewer and drainage and governmental services including police and fire protection, rights of access to maintain, repair, replace or install fixtures and appurtenances necessary for such utility and governmental services for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies, etc.

**11.2 RIGHTS-OF-WAY.** A perpetual non-exclusive easement is hereby declared, granted and reserved in favor of Developer, the Association, the Master Association, and Owners, their lessees and family members, guests and invitees over and through the walks, road rights-of-way and other rights-of-way within the Common Areas to provide ingress, egress and access to and from,

through and between the land and publicly dedicated roads.

**11.3 EASEMENT FOR ENCROACHMENT.**

- 11.3.1 An easement for encroachment in favor of all Owners in the event any portion of any part of a Dwelling Unit now or hereafter encroaches upon any of the other Dwelling Unit or Units, Lot or Lots, or other portions of the Moorgate Point Neighborhood as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement.
- 11.3.2 An easement for encroachment in favor of Developer, Owners and the Association where any portion of the Common Areas encroaches upon any portion of the Land on any Lot therein.
- 11.3.3 An easement in favor of the Owner of each Dwelling Unit for encroachment of any portion of the Dwelling Unit upon the Common Areas.
- 11.3.4 Any encroaching improvements shall remain undisturbed for so long as the encroachment exists. The easements for encroachment include an easement for the maintenance and use of the encroaching improvements in favor of the Owner or Owners thereof and their designees.

**11.4 MAINTENANCE EASEMENT.** There shall be easements over and across any abutting Lot on the side lot lines for maintenance and repair of any Dwelling Unit or structure, constructed on the adjacent lot, provided the easement does not extend beyond five feet (5') from the property line and that maintenance and repair is conducted in a reasonable, timely manner, with reasonable notice to the Owner of the Servient Lot, and during reasonable hours, and further provided that the Owner of the Dominant Lot is responsible for all costs for all and any damage or other liability arising from such maintenance and repair activities. The Owner of the Dominant Lot shall also have the right to ingress and egress over the non-improved portions of the Servient Lot as necessary to obtain access to the maintenance easement for maintenance and repair activities. In the event the Developer or the Association shall exercise its rights to maintain or repair any structure or improvements benefited by this easement, they shall possess and be entitled to exercise the same rights as the Owner of the Dominant Lot. This right of easement shall not affect the rights of the Owner of the Servient Lot to construct and maintain such principal or accessory structure upon the Servient Lot as are authorized by the Moorgate Point Documents and comply with the applicable setback requirements. Placement of landscape structure by the Developer, Association, or the Moorgate Point ARB shall accommodate access to this easement.

**11.5 RIGHT OF ASSOCIATION TO ENTER UPON THE LAND.** An easement or easements for ingress and egress in favor of the Association by its Board of Directors or the designees of the Association to enter upon each portion of the Land, including Lots, for the purpose of fulfilling its duties and responsibilities of ownership, administration, maintenance and repair in accordance with the Moorgate Point Documents.

**11.6 USE AND ENJOYMENT OF COMMON AREAS.** A nonexclusive easement for the use and enjoyment and for access over and to the Common Areas on behalf of Developer, the Association, and Owners, their lessees, family members, guests and invitees; provided, however, an Owner's easement to such use and enjoyment may be temporarily suspended by the Association upon written notice for a period not to exceed thirty (30) days for failure of an Owner, his lessee, or their family members, guests or invitees to conform to the rules and regulations promulgated by the Association in regard to use of the Common Areas.

**11.7 EASEMENT FOR OWNERS WITHIN LELY RESORT.** An easement in favor of the owners of any residential dwelling unit now or hereafter located upon any portion of Lely Resort for purposes of emergency ingress and egress across, over and upon the Land and the private roadways located or to be located thereon to and from publicly dedicated rights-of-way. This easement shall not prevent the Association from erecting a gate so as to maintain its private roads in non-emergency times.

**11.8 ASSIGNMENT; ADDITIONAL EASEMENTS.** The easements reserved hereunder may be assigned by Developer in whole or in part to the Association, any city, county or state government or agency thereof, or any duly licensed franchised public utility, or any other designee of Developer. The Owners, by the acceptance of a deed of conveyance of a Lot, authorize Developer and/or the Association to execute on their behalf and without further authorizations, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Land or any portion or portions thereof in accordance with or to implement the provisions of this Article. Notwithstanding the foregoing, no such easement shall be permitted or deemed to exist which causes any buildings, permanent structures or other permanent facilities within the Moorgate Point Neighborhood which have been constructed (i) in accordance with the Moorgate Point Documents; and (ii) prior to the use of such easements, to be materially altered or detrimentally affected thereby nor shall any such easement be granted or deemed to exist under any such structures or buildings so built in accordance with this Declaration and the Moorgate Point Documents prior to the actual use of such easement. The foregoing shall not preclude such easements under then existing improvements other than buildings or structures provided that the use and enjoyment of the easement and the installation of facilities in connection therewith would not result in other than minor, temporary alterations to such improvements other than a building or structure (such as, but not necessarily limited to, temporary alteration or removal of a fence or temporary excavation within a paved area) and provided that same is repaired and/or restored by the one making use of such easement at its expense and within a reasonable time thereafter.

## **ARTICLE XII**

### **CONDEMNATION**

**12.1 TAKING OR PARTIAL TAKING.** If at any time during the term of this Declaration the whole or any portion of the Common Areas shall be taken ("Taken Area") for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of eminent domain or by agreement between those authorized to exercise such right (hereinafter for the purpose of this Section called "Condemnation"), this Declaration and all obligations hereunder as the

then Taken Area shall terminate and expire on the date of such taking, and Expenses provided to be paid for such Taken Area shall be appointed and paid to the date of such taking. The Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and/or agreements with the condemning authority for acquisition of the Taken Area, or part thereof, by the condemning authority.

**12.2 DIVISION OF AWARDS.** The rights of Developer and other Owners in and to the net award or awards ("Taken Area Award") after any Condemnation (after reasonable fees and expenses of collection) shall be determined as follows:

12.2.1 To the extent that Developer owns any the Moorgate Point Neighborhood Dwelling Units or Lots, Developer shall participate in any Taken Area Awards for its interest in the Common Areas along with and to no lesser degree than other Owners.

12.2.2 The Association shall have the right to attend and participate in all hearings relevant to the Condemnation and to receive notice from Developer of such hearings.

**12.3 REPAIR AND REPLACEMENT.** If any improvements upon the Common Areas not included in the Taken Area shall be damaged or partially destroyed by such Condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace or rebuild such improvements so such improvements are complete and in good condition and repair. The Association shall hold that portion, if any, of the Taken Area Award which represents consequential damages to said improvements or replacements thereof in trust for application of the same to the cost and expense as herein provided. Repair of such improvements shall be conducted under the supervision of any architect or engineer licensed in the State of Florida selected by the Association, and such work shall be done in accordance with plans and specifications prepared and approved in writing by such architect or engineer and submitted to Developer for approval, which approval shall not unreasonably be withheld.

**12.4 TEMPORARY USE.** If the temporary use of the whole or any part of the Common Areas shall be taken at any time during the term of this Declaration by the exercise of the right of Condemnation, the term of this Declaration shall not be reduced or affected in any way, and the Association Expenses herein provided to be paid shall continue to be due and payable and the various Owners shall be entitled to the entire award granted by reason of such taking.

**12.5 TAKING OF LAND.** In the event of any Condemnation of the Land, the award therefore and with interest thereon as shall represent compensation for the value of the property taken shall be payable jointly to the record Owner or Owners and Institutional Mortgagee or Institutional Mortgagees thereof as of the date of taking in accordance with respective interests in such property.

**ARTICLE XIII**  
**ENFORCEMENT**

The covenants and restrictions contained in the Moorgate Point Documents may be enforced by Developer, the Association, any Owner and any Institutional Mortgagee holding a first mortgage on a Dwelling Unit upon a portion of the Land in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant or restriction hereunder. The failure by any party to enforce any covenant, restriction or easement herein contained shall in no event be deemed a waiver of such covenant, restriction or easement. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees.

**ARTICLE XIV**  
**AMENDMENT AND MODIFICATION**

14.1 Prior to conveyance of a Lot to an Owner as evidenced by the recording of the deed or other instrument of conveyance in the Public Records of the County, Developer may modify and or amend this Declaration; provided, however, that any such modification and/or amendment shall be reflected in an instrument executed by Developer and recorded in the Public Records of the County.

14.2 In addition to amendments as provided for elsewhere in this Article, following the Turnover Event (as set forth in Section 2.6 above), this Declaration may be amended at any regular or special meeting of the Owners called and held in accordance with the Bylaws by the affirmative vote of the Owners, including the Developer for any Lots owned by Developer, owning a majority of the Lots provided that any amendment shall be approved or ratified by a majority of the Association as a whole. An amendment to the Declaration shall be evidenced by a certificate executed by the Association. A true copy of such amendment shall be sent by certified mail by the Association to Developer and all Institutional Mortgagees ("Mailing"). The amendment shall become effective upon the recording of the certificate in the Public Records of the County, but the certificate shall not be recorded until thirty (30) days after the Mailing, unless such thirty (30) day period is waived in writing by Developer and all Institutional Mortgagees.

14.3 Whenever it shall appear to the Association that there is a technical or minor defect, error or omission in the Declaration, the Association, through its Board of Directors, may amend the Declaration. The amendment shall become effective upon the recording of a certificate amongst the Public Records of the County.

14.4 Prior to the conveyance of one hundred percent (100%) of the Lots to Owners other than Developer, Developer may amend this Declaration provided that such amendment does not materially and adversely affect any Owner's, other than Developer's, property rights. It shall not be material or adverse for the addition or deletion of land subject to this Declaration. This amendment shall be signed solely by Developer. Developer may add or subtract land to or from the Moorgate Point Neighborhood and provide for recreational facilities to be owned and operated by the Association without appeal of any Owner, Institutional Mortgagee or the Association and may amend



this Declaration to reflect such additions or subtractions without consent of any Owner, Institutional Mortgagee or the Association.

14.5 For so long as the Developer owns a Lot or any portion of the Land, no amendment shall be adopted which shall materially impair or prejudice the rights or priorities of Developer without the prior written approval of Developer. In addition, no amendment shall be adopted which shall materially impair or prejudice the rights or priorities of the Association, the Club or any Institutional Mortgagee under this Declaration without the specific written approval of the Association, the Club or any Institutional Mortgagee affected thereby, nor shall any amendment which would affect the surface water management system, including the water management portions of the Common Areas, be made without the prior approval of the South Florida Water Management District.

14.6 The following amendments shall require the affirmative votes of the Owners owning at least sixty-seven percent (67%) of the Lots.

- 14.6.1 Amend Article VIII of this Declaration to change the method of determining the obligations, assessments, or other charges which may be levied against any Owner.

**ARTICLE XV**  
**TERM**

This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, easements, burdens and liens contained herein, including without limitation, the provisions for assessment of a Dwelling Unit, shall run with and bind the Land and inure to the benefit of Developer, the Association, Owners and their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date of the recording of this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless at least one (1) year prior to the termination of such twenty-five (25) year term or any such ten (10) year extension thereof there is recorded amongst the Public Records of the County, an instrument signed by the then Owners owning two-thirds (2/3) of the Lots and all Institutional Mortgagees in existence one (1) year prior to the termination of such term or extension agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the twenty-five (25) year term or the ten (10) year extension during which such instrument of termination is recorded.

**ARTICLE XVI**  
**GENERAL PROVISIONS**

16.1 **NOTICES.** Any notices or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid to: (i) any Owner, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing; (ii) the

Association at such address as the Association shall hereafter notify Developer and all Owners of in writing; and (iii) Developer at such address or addresses as Developer shall hereafter notify the Association of in writing, any such notice to the Association of a change in Developer's address being deemed notice to the Owners.

**16.2 CAPTIONS.** Article and Section captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms and provisions of this Declaration.

**16.3 SEVERABILITY.** In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, such determination shall in no way affect any of the other provisions hereof which shall remain in full force and effect. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or a reduction in the term of the same by reason of the rule of law known as the "rule against perpetuities" shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

**16.4 MANAGEMENT.** The Association, pursuant to resolution duly adopted by its Board of Directors, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board of Directors from time to time.

**16.5 ATTORNEYS' FEES.** Any provision herein for the collection or recovery of attorneys' fees shall be deemed to include, but not be limited, court costs and attorneys' fees for the attorneys' services at all trial and appellate levels and post judgment proceedings and, unless the context clearly indicates a contrary intention, whether or not suit is instituted.

**16.6 INTERPRETATION.** In the event of a conflict between the provisions of this Declaration and the Articles and Bylaws, the provisions of this Declaration shall control. In the event of a conflict between this Declaration and the Master Declaration, the Master Declaration shall control.

**16.7 RULE AGAINST PERPETUITIES.** In the event any court should hereafter determine any provisions as originally drafted herein are in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, "measuring lives" shall be those of the signatories hereof.

**16.8 SECURITY SYSTEM.** The Developer is not obligated to install a security system. The Developer may elect to install such a security system. In that event, the Association shall provide and pay for monitor service for such security system as may be installed by the Developer. Owners shall be responsible for maintenance and repair of any security system equipment located on their Lot and the Association shall be responsible for maintenance and repair of security system equipment

located on Common Areas. An easement to the Association for access and maintenance or repair of security system equipment is hereby established. No Owner may change, alter or replace any security system equipment that is part of the system for which the Association arranges and pays for monitoring without written approval of a majority of the Association's Board of Directors. If an Owner fails to keep security system equipment in good maintenance and repair, the Association may, but need not, effect any needed maintenance or repair. The Association and its directors, agents, employees, and assigns shall not be liable to Owners for any action or inaction in connection with or arising from the security system or security system equipment, including, but not limited to, its own negligence or delay in maintenance or repairs.

16.9 **CONTEXT.** Whenever the context so requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereto and vice versa.

16.10 **COMPREHENSIVE SERVICES AGREEMENT.** Each Owner, by accepting a deed to any portion of the Land, acknowledges and agrees that Developer has negotiated, or is in the process of negotiating and finalizing, a comprehensive services and water use agreement to be entered into by and among the Lely Community Development District ("Lely CDD"), the Lely Resort Master Property Owner's Association, other neighborhood associations within Lely Resort, the Moorgate Point Homeowners' Association, and/or future associations formed for the purpose of administering and assessing members under such agreement ("Comprehensive Services Agreement"). Each Owner shall be bound by all the terms and conditions of such Comprehensive Services Agreement, and Developer shall have the right to encumber the Land with such Comprehensive Services Agreement and/or other documentation evidencing the terms and conditions thereof. Further, each Owner shall cooperate with Developer in finalizing such Comprehensive Services Agreement and shall execute any documentation necessary to accomplish the same.

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IN WITNESS WHEREOF, this Declaration of Covenants, Restrictions and Easements for the Moorgate Point has been signed by Developer and the Association the day and year first above set forth.

WITNESSES:

Nancy Crawford  
Witness #1  
Print Name: Nancy Crawford

ALP  
Witness #2  
Print Name: AMY L. PESCIETTO

DEVELOPER:

STOCK DEVELOPMENT, LLC, a Florida limited liability company

By: [Signature]  
Brad Black, Vice President

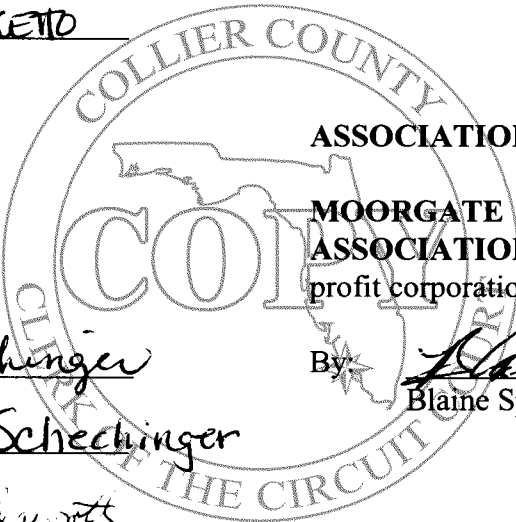
ASSOCIATION:

MOORGATE POINT HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation

Valerie Schechinger  
Witness #1  
Print Name: Valerie Schechinger

By: [Signature]  
Blaine Spivey, President

Sandra Holdsworth  
Witness #2  
Print Name: SANDRA HOLDSWORTH

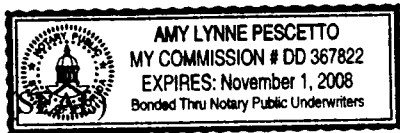


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STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Brad Black as Vice President of STOCK DEVELOPMENT, LLC, a Florida limited liability company, who is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 17<sup>th</sup> day of May, 2006.

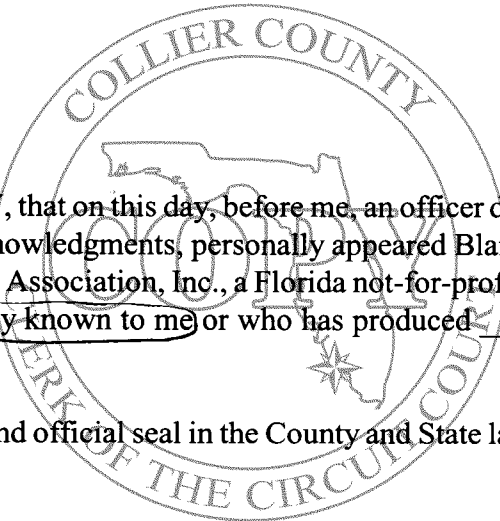


[Signature]  
Notary Public Signature  
Printed Name: AMY L. PESCIETO  
My Commission expires: 11/1/2008

STATE OF FLORIDA  
COUNTY OF COLLIER

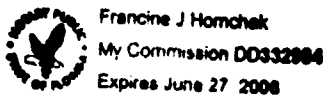
I HEREBY CERTIFY, that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Blaine Spivey as President of the Moorgate Point Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation, who is personally known to me or who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 22<sup>nd</sup> day of May, 2006.



(SEAL)

Francine J. Homchak  
Notary Public Signature  
Printed Name: FRANCINE J. HOMCHAK  
My Commission expires: 6/27/08



**MORTGAGEE JOINDER AND CONSENT**

AmSouth Bank, an Alabama banking corporation, mortgagee of the property legally described in Exhibit "A" hereto by the terms of that certain Mortgage, Security Agreement and Assignment of Rents executed by Stock Development, LLC, a Florida limited liability company, dated April 17, 2002, and recorded April 22, 2002, in Official Records Book 3022, at Page 2108; Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4095, Public Records of Lee County, Florida, as modified by First Loan Modification Agreement, Notice of Future Advance Receipt and Spreader Agreement dated September 22, 2003, recorded in Official Records Book 3405, Page 846, Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4124, Public Records of Lee County, Florida; as modified by Second Loan Modification Agreement and Notice of Future Advance recorded in Official Records Book 3652, Page 3056, Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4135, Public Records of Lee County, Florida, as modified by Third Loan Modification Agreement and Notice of Future Advance Receipt dated November 4, 2004, and recorded in Official Records Book 3683, Page 2751, Public Records of Collier County, Florida, and as recorded in Official Records Book 4498, Page 4141, Public Records of Lee County, Florida, and as again modified by Fourth Loan Modification Agreement and Notice of Future Advance Receipt dated July 26, 2005, and recorded in Official Records Book 3854, Page 46, as also recorded in Official Records Book 4819, Page 1600, Public Records of Lee County, Florida; and as further modified by Fifth Loan Modification Agreement and Notice of Future Advance Receipt and Mortgage Spreader Agreement dated December 9, 2005, and recorded in Official Records Book 3947, Page 452, Public Records of Collier County, Florida, and also recorded under Instrument No. 2005000172194, Public Records of Lee County, Florida; does hereby consent to and join in the submission of the foregoing property to all of the duties, obligations, responsibilities and encumbrances as provided for under the Declaration of Covenants, Restrictions and Easements, and all exhibits thereto, for Moorgate Point.

Signed this 22<sup>nd</sup> day of May, 2006.

IN THE PRESENCE OF:

AmSOUTH BANK,  
an Alabama banking corporation

By: Thomas E. Finlay

Its: Vice President

Sandra H. Van Horn  
Witness #1  
Print Name: SANDRA H. VAN HORN

Kimberly S. Best  
Witness #2  
Print Name: Kimberly S. Best

[NOTARY BLOCK APPEARS ON FOLLOWING PAGE]

STATE OF FLORIDA  
COUNTY OF COLLIER

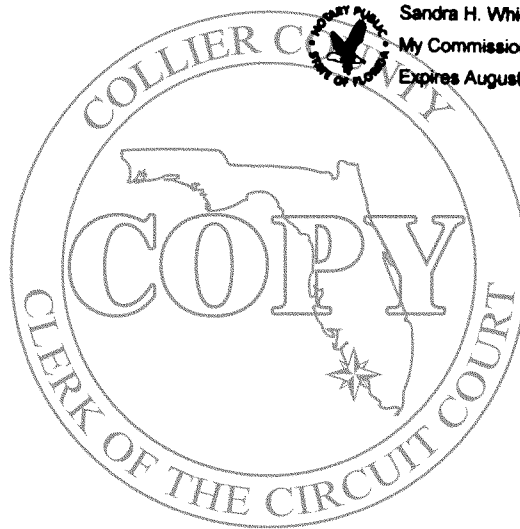
The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of May, 2006, by **Thomas E. Finlay**, as Vice President of AmSouth Bank, an Alabama banking corporation, who [] is personally known to me or [] has produced \_\_\_\_\_ as identification.

*Sandra H. Whidden*  
\_\_\_\_\_  
Notary Public Signature

(SEAL)

Printed Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_



Sandra H. Whidden  
My Commission DD211382  
Expires August 09, 2007

## EXHIBIT "A"

## LEGAL DESCRIPTION

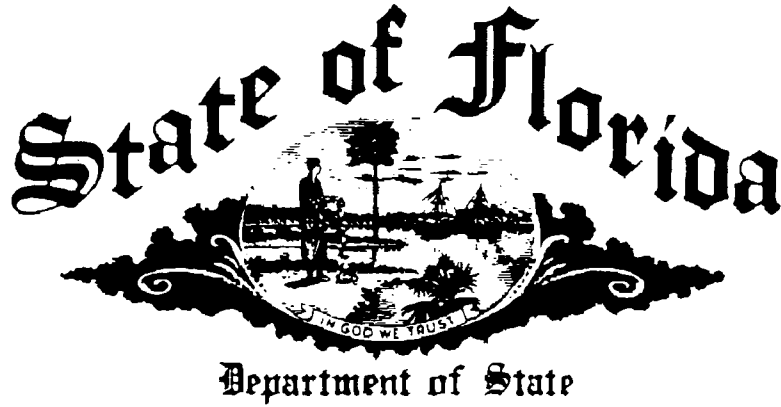
A PARCEL OF LAND LYING IN THE EAST HALF OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT "A" LELY RESORT PHASE TWO AS RECORDED IN PLAT BOOK 18, PAGES 43-45 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 26 EAST; THENCE NORTH  $85^{\circ}56'57''$  WEST ALONG A WESTERLY PROJECTION OF THE SOUTHERN BOUNDARY LINE OF AFORESAID TRACT "A" LELY RESORT PHASE TWO A DISTANCE OF 160.00 FEET TO A POINT ON THE EASTERN BOUNDARY LINE OF TRACT GC-7 LELY RESORT PHASE FOUR AS RECORDED IN PLAT BOOK 38, PAGES 56-66 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE NORTH  $04^{\circ}03'03''$  EAST ALONG SAID EASTERN BOUNDARY LINE, A DISTANCE OF 81.45 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE FOLLOWING ALONG THE EASTERN BOUNDARY LINES OF SAID TRACT GC-7 THE FOLLOWING THREE COURSES: NORTH  $65^{\circ}08'00''$  WEST A DISTANCE OF 660.21 FEET; THENCE NORTH  $11^{\circ}21'00''$  EAST A DISTANCE OF 761.43 FEET; THENCE NORTH  $35^{\circ}32'00''$  WEST A DISTANCE OF 470.52 FEET; THENCE DEPARTING SAID EASTERN BOUNDARY, CONTINUE NORTH  $35^{\circ}32'00''$  WEST ALONG A PROJECTION OF SAID EASTERN BOUNDARY, A DISTANCE OF 99.24 FEET; THENCE NORTH  $33^{\circ}16'38''$  EAST A DISTANCE OF 76.81 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, 326.54 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 470.00 FEET, THROUGH A CENTRAL ANGLE OF  $39^{\circ}48'25''$  AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH  $53^{\circ}10'50''$  EAST, 320.01 FEET TO A POINT OF COMPOUND CURVE; THENCE NORTHEASTERLY 14.94 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF  $08^{\circ}33'41''$  AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH  $77^{\circ}21'53''$  EAST, 14.93 FEET TO A POINT OF TANGENCY; THENCE NORTH  $81^{\circ}38'44''$  EAST A DISTANCE OF 137.65 FEET TO A POINT OF CURVATURE; THENCE EASTERLY 13.26 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF  $07^{\circ}35'41''$  AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH  $77^{\circ}50'53''$  EAST, 13.25 FEET TO A POINT OF TANGENCY; THENCE NORTH  $74^{\circ}03'03''$  EAST A DISTANCE OF 371.23 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY 39.27 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF  $90^{\circ}00'00''$  AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH  $60^{\circ}56'57''$  EAST, 35.36 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF GRAND LELY DRIVE OF THE PROPOSED PLAT OF GRAND LELY DRIVE AND CULTURAL PARKWAY ALSO KNOWN AS TRACT "A"; THENCE SOUTH  $15^{\circ}56'57''$  EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 17.87 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY 321.14 FEET ALONG SAID WESTERLY RIGHT- OF-WAY LINE AND ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 920.00 FEET, THROUGH A CENTRAL ANGLE OF  $20^{\circ}00'00''$  AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH  $05^{\circ}56'57''$  EAST, 319.51 FEET TO A POINT OF TANGENCY; THENCE SOUTH  $04^{\circ}03'03''$  WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 1523.53 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,071,926 SQUARE FEET OR 24.608 ACRES, MORE OR LESS.



EXHIBIT B

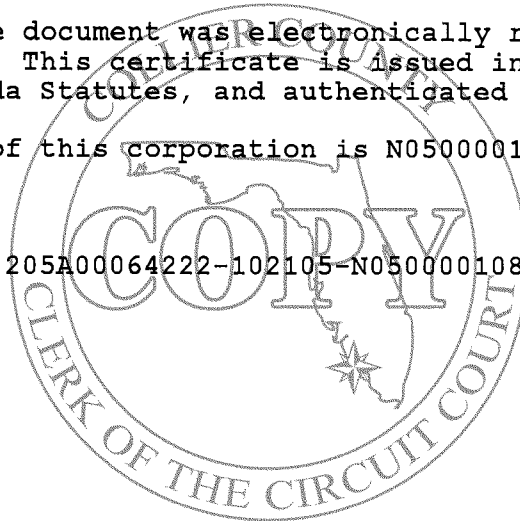


I certify the attached is a true and correct copy of the Articles of Incorporation of MOORGATE POINT HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on October 20, 2005, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H05000248239. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below

The document number of this corporation is N05000010859.

Authentication Code: 205A00064222-102105-N05000010859-1/1



Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Twenty-first day of October, 2005



*Glenda E. Hood*  
 Glenda E. Hood  
 Secretary of State

OR: 4140 PG: 1318

**ARTICLES OF INCORPORATION  
OF  
MOORGATE POINT HOMEOWNERS ASSOCIATION, INC.**

The undersigned hereby submits these articles for the purpose of forming a not-for-profit corporation under Chapter 617, Florida Statutes, and certifies as follows:

**ARTICLE I  
Corporate Name**

The name of the corporation is Moorgate Point Homeowners Association, Inc., hereinafter called the "Association".

**ARTICLE II  
Address**

The initial mailing address of the Association shall be 4501 Tamiami Trail North, Suite 300, Naples, Florida 34103. The principal office of the Association shall be located at the mailing address or at such other place as may be subsequently designated by the Board of Directors of the Association.

**ARTICLE III  
Purpose and Powers of the Association**

This Association does not contemplate pecuniary gain or profit to the members thereof and shall make no distribution of income to its members, directors or officers. The specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residential lots, common areas and improvements (as defined in the DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR MOORGATE POINT, referred to hereinafter as the "Declaration") according to the provisions of the Declaration and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose.

The Association shall have the following powers:

(a) To exercise all of the common law and statutory powers of a corporation not for profit organized under the laws of the State of Florida that are not in conflict with the terms of the Declaration, these Articles or the Bylaws of the Association.

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration applicable to the property and recorded or to be recorded in the Public Records of Collier County, Florida, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth in its entirety.

(c) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including but not limited to all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(d) To maintain, repair and operate the property of the Association;

(e) To purchase insurance upon the property of the Association and insurance for the protection of the Association and its members as Lot Owners;

(f) To reconstruct improvements after casualty and make further improvements upon the property;

(g) To enforce by legal means the provisions of the Declaration, and the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant thereto;

(h) To employ personnel to perform the services required for proper operation of the Association;

(i) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the association.

#### **ARTICLE IV Membership**

Section 1. **Membership Generally:** No person except an Owner or a Developer, as such terms are defined in the Declaration, is entitled to membership in the Association; and all Owners and Developers, regardless of whether a Developer is also an Owner, shall be either Class A or Class B members of the Association, as provided in this Article.

Section 2. **Class A Membership:** Until termination of Class B membership, as provided in Section 3 of this Article, every Owner who holds record title to a residential lot that is subject to assessment under the Declaration, except a Developer, shall be a Class A member of the Association. Each Class A membership shall be appurtenant to the residential lot and shall be transferred automatically by a conveyance of record title to such lot. An owner of more than one lot is entitled to one Class A membership for each residential lot to which such Owner holds record title. If more than one person holds an interest in any residential lot, all such persons shall be members; provided however, that only one vote shall be cast with respect to any one residential lot. No person other than an Owner may be a Class A member of the Association, and a Class A membership may not be transferred except by a transfer of record title to the residential lot to which it is appurtenant.

Section 3. **Class B Membership:** The Developer, as defined in the Declaration, shall be a Class B member of the Association. The Class B membership shall terminate and be converted to Class A membership upon the happening of either of the following, whichever occurs first:

(a) Three (3) months after ninety percent (90%) of the residential lots have been conveyed to third party purchasers other than the Developer; or

(b) As otherwise determined by the Declaration.

Upon termination of Class B membership, all provision of the Declarations, Articles, or Bylaws referring to Class B membership shall be without further force or effect.

**ARTICLE V  
Voting Rights**

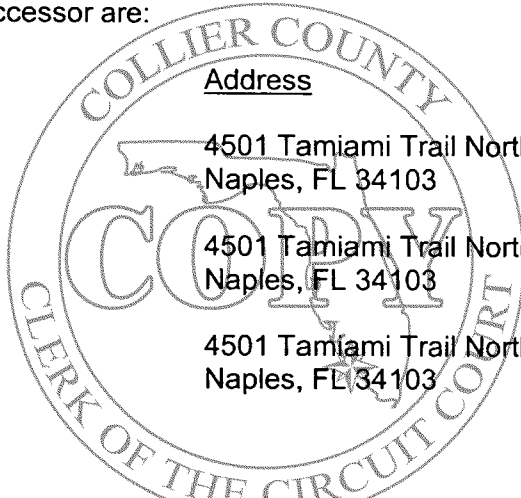
Section 1. Class A Voting: All Class A members shall be entitled to one (1) vote for each residential lot owned. If more than one (1) person holds record title to a residential lot, there shall be only one vote cast with respect to such lot, exercised as the owners determine among themselves.

Section 2. Class B Voting: The Class B members shall be entitled to one vote for each residential lot owned. In addition, until such time as the Class B membership is converted to Class A membership, the Class B membership shall have a right of veto on all questions coming before the membership for a vote thereon.

**ARTICLE VI  
Board of Directors**

The affairs of this Association shall be managed and governed by a Board of Directors consisting of at least three (3) Directors, who need not be members of the Association, and who shall be elected. The number of Directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successor are:

<u>Name</u>	<u>Address</u>
Blaine Spivey	4501 Tamiami Trail North, Suite 300 Naples, FL 34103
Sandy Houldsworth	4501 Tamiami Trail North, Suite 300 Naples, FL 34103
Valerie Schechinger	4501 Tamiami Trail North, Suite 300 Naples, FL 34103



**ARTICLE VII  
Officers**

The affairs of the Association shall be administered by a President, a Vice-President, a Secretary and a Treasurer and such other Officers as may be designated from time to time by the Directors. The Officers shall be elected or designated by the Board of Directors at its first meeting following the annual meeting of the members of the Association. The names and addresses of the Officers who shall serve until their successors are elected or designated by the Board of Directors are as follows:

<b>President</b>	Blaine Spivey
<b>Vice President</b>	Sandy Houldsworth
<b>Secretary/Treasurer</b>	Valerie Schechinger

**ARTICLE VIII  
Indemnification**

Every Director and every Officer of the Association, and every member of the Association serving the Association at its request, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement of any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a Director or Officer of the Association, or by reason of his having served the Association at its request, whether or not he is a Director or Officer or member serving the Association at the time such expenses or liabilities are incurred, except when the director, Officer or member serving the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement before entry of judgment, the indemnification shall apply only when the Board of Directors approve such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director, Officer or member serving the Association may be entitled.

**ARTICLE IX  
Bylaws**

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded, at a duly called regular or special meeting of the members, by an affirmative vote of a majority of all the members present in person or by proxy.

**ARTICLE X  
Dissolution**

The Association may be dissolved upon written assent signed by members holding not less than one hundred percent (100%) of the total number of votes of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or organization to be devoted to such similar purposes.

**ARTICLE XI  
Term**

The term of the Association shall be perpetual.

**ARTICLE XII  
Amendments**

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

Section 1. Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

Section 2. Vote: A resolution for the adoption of an amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such resolutions must be adopted by not less than seventy-five percent (75%) of the votes of the entire membership of the Association.

Section 3. Limit on Amendments: No amendment shall make any changes in the qualifications for membership, nor in the voting rights of members, without approval in writing by all members.

Section 4. Certification: A copy of each amendment shall be certified by the Secretary of State.

**ARTICLE XIII  
Incorporator**

The name and address of the incorporator of these Articles of Incorporation is as follows:

**Blaine Spivey  
Stock Development  
4501 Tamiami Trail North, Suite 300  
Naples, Florida 34103**

**ARTICLE XIV  
REGISTERED OFFICE AND AGENT**

The street address of the initial registered office of this corporation is **4501 Tamiami Trail North, Suite 300, Naples, FL 34103**, and the name of the initial registered agent of this corporation is **Blaine Spivey**.

IN WITNESS WHEREOF the subscriber, being the undersigned person, named as incorporator, has hereunto set his/her hand and seal, this 9th day of October, 2005.

By: Blaine Spivey  
Blaine Spivey  
Its: President

**ACCEPTANCE OF DESIGNATION AS REGISTERED AGENT**

Having been named as registered agent to accept service of process for the above stated corporation, at the place designated in the certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.

Blaine Spivey  
Blaine Spivey  
Registered Agent

**BYLAWS**

**OF**

**MOORGATE POINT HOMEOWNERS ASSOCIATION, INC.**

Moorgate Point Homeowners Association, Inc., a corporation not for profit under the laws of the State of Florida, hereinafter referred to as the "Homeowners Association" or the "Association" sets forth these Bylaws:

**ARTICLE I**

**IDENTITY AND DEFINITION**

1.1 This Homeowners Association is organized for the purpose of providing an entity for the preservation and enhancement of property values in Moorgate Point, a planned community located in Collier County, Florida, in accordance with the Declaration of Covenants, Restrictions and Easements for Moorgate Point, herein called the "Declaration", which is to be recorded in the Public Records of Collier County, Florida, as same may be amended. The terms and provisions of these Bylaws are expressly made subject to the terms, provisions, conditions and authorization contained in the Declaration executed by Stock Development, LLC, a Florida limited liability company (hereinafter referred to collectively as "Declarant").

1.2 All terms which are defined in the Declaration have the same meanings herein as defined in the Declaration.

**ARTICLE II**

**LOCATION OF PRINCIPAL OFFICE**

The principal office of the Association is located at 4501 Tamiami Trail North, Suite 300, Naples, Florida 34103, or at such other place as may be established by resolution of the Board of Directors of the Association.

**ARTICLE III**

**MEMBERSHIP VOTING, QUORUM AND PROXIES**

3.1 The qualifications of members, the manner of their admission to membership and termination of such membership, and voting by the Members, shall be as set forth in the Declaration.

3.2 A quorum at any meeting of the Association's Members shall consist of persons entitled to cast votes representing more than thirty-three percent (33%) of the total votes entitled to be cast as determined in the manner set forth in the Declaration.

3.3 Where a vote is entitled to be exercised by more than one person or by a corporation, partnership or other entity, the vote shall be cast by the person named in a certificate signed by all of the individual owners or the appropriate official(s) or representative(s) of such entity. Such certificates shall be filed with the Secretary of the Association and shall remain valid until revoked

by subsequent certificate.

3.4 Votes may be cast either in person or by proxy. Proxies are valid only for the particular meeting designated thereon and must be filed with the Secretary at or before the time of the meeting. A proxy is not valid for longer than ninety days after the date of the first meeting for which it was given, unless the proxy specifically states otherwise.

3.5 Except where otherwise required under the provisions of the Articles of Incorporation, these Bylaws, the Declaration or where the same may otherwise be required by law, the affirmative vote of the holders of more than one-half (1/2) of the total votes represented at any meeting at which a quorum is present is necessary for approval of any matter that is to be binding upon all Members.

3.6 The Association is entitled to give all notices required to be given to the Members of the Association by these Bylaws or the Articles of Incorporation or the aforesaid Declaration to the person or entity shown by the Association's records entitled to receive such notices at the last known address shown by the records of the Association, until the Association is notified in writing that such notices are to be given to another person or entity or at a different address.

3.7 Change of membership in the Association is established by recording in the Public Records of Collier County, Florida, a deed or other instrument establishing a change in record title to the property interest underlying a right to vote as a Member of the Association. The owner established by such instrument becomes a Member of the Association, and the membership of the prior owner is terminated. The Association may establish reasonable rules requiring appropriate evidence of any such change as may reasonably be required by the Association to be furnished. The Association may rely upon its record of Members.

3.8 Matters coming before the Association for consideration shall fall into two categories. General matters relating to the affairs of the Association which are subject to the approval or disapproval of the Association Members will be voted on at a meeting of the Association through votes cast by each Member. Matters requiring Association approval and relating to amendment of the Declaration, approval of additional property being added to the lands subject to the Declaration, or the approval of Improvement Assessments will require the direct vote of the Members of the Association.

3.9 Subject to the Declaration, voting at any meeting may be by roll call, voice vote or by written ballot. Whenever written approval is required, or whenever an amendment to or termination of the Declaration is proposed, or any borrowing of funds, pledge, or other disposition of the Common Property or other assets is proposed, the voting must be by written ballot. Routine matters such as approval of Minutes, adjournment, acceptance of reports, and social business shall be determined by "yeas" or "nays". A roll call vote, or a written ballot vote, may be required instead of a voice vote by the Board of Directors, or by the holders of twenty votes.



ARTICLE IV  
ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

4.1 The annual meeting of the membership of the Association shall be held at the office of the Association, or at such other place as may be designated by the Board of Directors, at a time designated by the Board of Directors in the notice of the meeting, on the third Tuesday in January of each year for the purpose of electing directors and transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, then the meeting shall be held at the same hour on the next succeeding Tuesday which is not a legal holiday.

4.2 Special meetings of the Members of the Association shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors. Such meeting must be called by such officers upon receipt of a written request from Members of the Association whose votes represent more than one-half (1/2) of the total votes of the Association as determined in the manner set forth in the Declaration.

4.3 Notice of all members' meetings, regular or special, shall be given by the President, Vice-President, or Secretary of the Association, or other officer of the Association designated by the Board of Directors, to each Member, unless waived in writing. Such notice shall be written or printed and shall state the time, place and the subject for which the meeting is called. Unless a longer notice period is required by the Declaration or these Bylaws in instances where direct voting is required, such notice shall be given not less than fourteen (14) nor more than thirty (30) days prior to the date set for such meeting, which notice shall be mailed or presented personally, or electronically transmitted to each Member within said time. If presented personally, a receipt of such notice shall be signed by the Member, indicating the date on which such notice was received. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, postage prepaid, addressed to the Member at such post office address as appears on the records of the Association. If electronically transmitted, such notice shall be deemed to be properly given when sent, addressed to the Member at such electronic address as appears on the records of the Association. Proof of compliance with the notice requirements set forth herein shall be given by the affidavit of the person giving the notice and filed in the Association's official records. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and agenda. Any Member may, by written waiver of notice signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether executed and filed before or after the meeting, shall be deemed to be equivalent to the giving of such notice to such Member.

4.4 Special meetings will be held in Collier County, Florida, as designated by the Board of Directors in the Notice of Meeting.

4.5 If any membership meeting cannot be organized because a quorum has not attended or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these Bylaws or the Declaration, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

4.6 In meetings of the membership, the President, or, in his or her absence, the Vice-President, shall preside, or in the absence of both, the membership shall select a chairman.

4.7 The order of business at the annual meeting of the Members and, as far as applicable and practical, at any other Members' meeting, shall be as follows:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of the meeting or waiver of notice;
- (c) Reading of minutes;
- (d) Report of officers;
- (e) Reports of committees;
- (f) Appointment by the President of inspectors of election;
- (g) Election of directors;
- (h) Unfinished business;
- (i) New business;
- (j) Adjournment.

4.8 Whenever the vote or the approval of the Members is required or permitted, the action may be taken without a meeting if those Members holding not fewer than seventy-five percent (75%) of the total votes entitled to be cast if a meeting were to be held, agree in writing to take the action and waive the formality of a meeting. If a greater percentage of approval is required, not less than such percentage must agree in writing to waive the meeting. The Declaration, Articles, and these Bylaws may not be amended without a meeting. Notice of any action taken without a meeting shall be given in writing to all Members who did not approve such action within ten (10) days of such action.

## ARTICLE V BOARD OF DIRECTORS

5.1 The affairs of the Association shall be managed by a Board of Directors initially consisting of three (3) directors, which number of Directors may be increased in accordance herewith. A majority of the Board of Directors shall constitute a quorum to transact business at any meeting of the Board, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the Board of Directors.

5.2 Any vacancy occurring on the Board of Directors because of death, resignation, removal or other termination of services of any Director, shall be filled by the Board of Directors. The Director appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office and shall continue to serve until his or her successor shall have been elected or appointed and qualified.

5.3 The term of each Director's service shall extend to the next annual meeting at which the Director's term is scheduled to expire, and then until the successor Director is duly elected and qualified, or until the Director is recalled in the manner provided below. Initially, the Declarant and the Board may establish Director terms of more than one year so that the terms are staggered to assure continuity. However, in no event shall a Director's term, except those selected by the Declarant, exceed three (3) years. Excepting the initial implementation of staggered terms, each Director's term shall be of the same length.

5.4 Any Director, except those selected by the Declarant, may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all votes entitled to be cast for Directors. A special meeting of the members to recall a member or members of the Board of Directors may be called by the holders of ten percent (10%) of the votes entitled to be cast for Directors, giving notice of the meeting as required by these Bylaws. The notice shall state the purpose of the meeting. Any vacancy on the Board of Directors thus created shall be filled by the Members of the Association at the same meeting.

(a) If the recall is approved by a majority of all votes entitled to be cast for Directors, the recall is effective immediately, and the recalled member or members of the Board of Directors shall turn over to the Board any and all records of the Association in their possession within 72 hours after the meeting.

(b) If the proposed recall is by an agreement in writing by a majority of all votes entitled to be cast for Directors, the agreement shall be served on the Association by certified mail. The Board of Directors shall call a meeting of the Board within seventy-two (72) hours after receipt of the agreement and shall either certify the agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board, within seventy-two (72) hours, any and all records of the Association in their possession, or in writing challenge such recall setting of the facts and legal basis for not certifying such recall.

(c) During a meeting of Members to recall one (1) or more members of a Board of Directors, the Members shall select and announce the name and address of a representative to receive pleadings, notice, or other papers on behalf of the petitioning members in the event that the vote at the meeting is disputed and a petition for arbitration is filed as provided in Florida Statutes Chapter 682. If a proposed recall is sought by written agreement, pleadings, notices, or other papers on behalf of the members executing the agreement in the event the Board of Directors determines not to certify the agreement to recall and files a petition for binding arbitration.

(d) Unless otherwise provided in the Declaration or Bylaws, the proposed recall of more than one (1) member of the Board of Directors shall require a separate vote for each member sought to be recalled or, where recall is attempted by written agreement, a separate agreement is required for each member of the Board being recalled.

5.5 Any Director may resign at any time by sending or personally delivering a written notice of resignation to the Association, addressed to the Secretary. The resignation shall take effect on receipt by the Secretary, unless it states differently.

ARTICLE VI  
ELECTION OF DIRECTORS

6.1 The affairs of the Association shall be managed initially by a board of three (3) Directors as set forth in the Articles of Incorporation of the Association. The number of Directors shall never be less than three (3). The number of Directors may be increased by vote of the holders of more than one-half (1/2) of the total votes of the Association; provided there shall not exist more than nine (9) Directors. Other than those selected by the Declarant, Directors must be Members or their spouses; officers of a corporate Member; or partners of a partnership Member.

6.2 Directors shall be elected at the annual meeting of Members by a plurality of the votes entitled to be cast for Directors which are present in person or by proxy. Each eligible voter shall be entitled to cast votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. Not less than sixty (60) days before the annual meeting of the Members, a nominating committee of five Members shall be appointed by the Board of Directors and the committee shall nominate one person for each directorship to be filled. Nominations for additional directors created at the meeting shall be made from the floor. Other nominations also may be made from the floor.

6.3 The members of the Board of Directors elected or appointed in accordance with the procedures set forth in this Article shall take office as of the date of the first meeting of the Board of Directors following the meeting of Members at which they were elected.

6.4 Anything herein to the contrary notwithstanding, the Declarant shall have the right to appoint all the members of the Board of Directors until the turnover of the Association as set forth in the Declaration, and the Declarant shall not be bound by the Board of Directors election requirements set forth herein, including without limitation, the nomination provisions described in Section 6.2 above.

6.5 The Directors elected or appointed by Declarant need not be Members of the Association.

6.6 Upon the turnover of the Association as set forth in The Declaration, the Declarant shall call a special meeting within ninety (90) days after such termination. This meeting shall be called on not fewer than fourteen (14) nor more than thirty (30) days notice. At this special meeting, all Members shall elect a Board of Directors, to serve until the annual meeting date that is not fewer than eighteen (18) months after such election. Thereafter, Director's shall be elected annually at the annual meeting.

6.7 The Declarant may waive its right to elect or designate any one (1) or more Directors. However, any such waiver will apply only to the specific election at which the waiver is made. If the Declarant does waive such right, the Members shall elect the Board member or members who would otherwise have been elected or designated by Declarant.

ARTICLE VII  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 The Board of Directors has all power, authority, discretion and duties necessary for the administration and operation of the Association as contemplated by the Declaration, the Articles, and these Bylaws except as otherwise reserved or granted in the Declaration, the Articles, or these Bylaws.

7.2 The Board of Directors may enforce by legal means the provisions of the Declaration, the Articles, these Bylaws and Rules and Regulations for the use of the Common Properties. In the event that the Board of Directors determines that any member is in violation of any of the provisions of these documents, the Board, or its agent, shall notify the member of the nature of the violation. If the violation is not cured within five days, or if the violation is repeated, the Board may levy a fine not exceeding twenty-five dollars (\$25.00) per offense against the Member. Each day during which the violation continues will be a separate offense. Such fines shall be assessed as a Special Assessment against the member and shall constitute a lien upon the Member's property, and may be foreclosed by the Association in the same manner as any other lien. Before foreclosure of any lien arising from a fine, the defaulting member shall be entitled to a hearing before the Board, upon reasonable written notice, specifying the violation charged. The member may be represented by counsel. However, no fine may be levied against any member to use recreational facilities located on the Common Property for any period during which an assessment against such member's property remains unpaid. The Board may also suspend the right of any member to use recreational facilities located on the Common Property for any single infraction of the Rules and Regulations of the Association. Any suspension of a right to the use of recreational facilities, other than for failure to pay assessments, may be made only after a hearing before the Board, upon reasonable written notice to the Member specifying the violations charged. The Member may be represented by counsel.

7.3 The Board of Directors has the power to adopt budgets and make assessments, to sue and expend assessments and other monies of the Association as necessary to carry out the powers and duties of the Association pursuant to the Declaration and these Bylaws.

7.4 The Board of Directors has the power to employ, dismiss, control and contract for personnel and contractors for the administration of the Association, including but not limited to manager, maintenance personnel, attorneys, accountants and other professional as the Board may determine.

7.5 The Board has the power to adopt, amend and rescind reasonable rules and regulations relating to the administration to the Association and the operation of the Common Property, subject to the Declaration and Bylaws. Any rules or regulations adopted by the Board may be changed or rescinded by the affirmative vote of not less than two-thirds of the total votes entitled to be cast.

7.6 The Board has the power to create and to disband such committees as the Board determines is necessary or useful in the administration of the Association. The Board has the power to reasonably delegate the Board's authority to such committees, subject always to the provisions of the Declaration, the Articles, and these Bylaws. All committees of this Association shall keep

records and conduct meetings in the same manner as is required of the Board of Directors, to the extent applicable. However, nothing contained in this section shall be deemed to restrict the authority of the President of this Association from appointing advisory committees not inconsistent with committees created by the Board of Directors or the members.

7.7 The duties of the Board of Directors include:

- (a) To keep a complete record of all its acts and corporate affairs.
- (b) To supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
- (c) With reference to assessments of the Association:
  - (i) To fix the amount of the Regular Assessment against each Member for each assessment period in accordance with the provisions of the Declaration, Articles of Incorporation and these Bylaws at least thirty days in advance of such date or period;
  - (ii) To prepare a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association which shall be open to inspection by any Member; and
  - (iii) To send written notice of each assessment to every Member subject thereto.
- (d) To issue or cause an appropriate officer to issue, upon request by any Member, a certificate in recordable form setting forth whether any assessment has been paid; and if not, the amount then due and owing. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- (e) To make payment of all taxes and assessments assessed against Association property, if any, real or personal.
- (f) To pay all expenses incurred by the Association for repairs, maintenance, services, insurance and other operating expenses.
- (g) To enforce by appropriate legal means the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, and any and all applicable laws and regulations.
- (h) Prior to commencement of any legal action against Declarant for claims, disputes and liabilities pertaining to or arising out of Declarant's obligations and duties in the development of Common Property, the Board shall in good faith undertake mediation or structured negotiation with Declarant and attempt to resolve the claim, dispute or liability. The Board of Directors is only entitled to bring such legal action upon (i) the failure of the Board of Directors and

Declarant to negotiate or mediate a settlement to the claim, dispute or liability; and (ii) the affirmative vote of seventy-five percent (75%) of all votes entitled to be cast by Members of the Association to bring such legal action, at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws; and (iii) the unanimous vote of all Directors of the Board of Directors, at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws. Regardless of anything herein to the contrary, this provision of the Bylaws may not be modified or superseded by amendment or other provision of these Bylaws or the Articles of Incorporation of the Association, except upon the affirmative vote of seventy-five percent (75%) of all votes entitled to be cast at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws. It is the intent of this paragraph that expenditure of Association funds in litigation should be made only upon the agreement by Members holding seventy-five percent (75%) of the votes entitled to be cast and only after bona fide attempts at negotiation and settlement have been unsuccessful.

ARTICLE VIII  
MEETINGS OF DIRECTORS

8.1 The organizational meeting of the newly elected Board of Directors, which shall also be the Board's annual meeting, shall be held within twenty (20) days of their election at such time and at such place as fixed by the Directors at the annual meeting of Members at which they were elected.

8.2 Regular meetings of the Board of Directors shall be held at such time and place as provided by a corporate resolution of the Board of Directors.

8.3 Special meetings of the Board of Directors shall be held when called by an officer of the Association or by any two directors.

8.4 Notice of regular or special meetings of the Board shall be given to each Director, personally or by mail, telephone, telegram or facsimile, at least two days prior to the day named for each meeting. Each notice shall state the time, place and purpose of the meeting, unless such notice is waived.

8.5 The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held at the regular call and notice, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

8.6 A quorum at Director's meetings shall consist of a majority of the entire Board of Directors. The acts approved by majority of those present at a meeting at which a quorum is present shall constitute the act of the Board of Directors, except where the approval of a greater number of Directors is required by the Declaration or these Bylaws. The written joinder of a Director in the action of a meeting will constitute the concurrence of such Director for the purpose of determining necessary majorities on any action taken or to create a quorum.

8.7 Meetings of the Board of Directors are open to all Members.

ARTICLE IX  
OFFICERS

9.1 The officers shall be a President, Vice-President, Secretary and a Treasurer, and such other officers as may be elected in accordance with the Articles of Incorporation. The President shall be a member of the Board of Directors. An individual may simultaneously hold more than one office so long as the President is not also the Secretary.

9.2 All of the officers of the Association shall be elected by the Board of Directors. If the election of such officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New officers may be created and filled thereafter as convenient. New officers may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified or until earlier resignation or removal.

9.3 A vacancy of any office because of death, resignation, or other termination of service may be filled by the Board of Directors for the unexpired portion of the term.

9.4 All officers hold office at the pleasure of the Board of Directors.

9.5 The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and shall sign all notes, leases, mortgages, deeds and other written instruments. The President, may, but need not, be a required signatory on checks of the Association.

9.6 The Vice-President shall perform all the duties of the President in his absence. The Vice-President shall perform such other acts and duties as may be assigned by the Board of Directors.

9.7 The Secretary shall be ex officio the Secretary of the Board of Directors and shall record the votes and keep the minutes of all proceedings in a book to be kept for that purpose. He or she shall sign all certificates of membership; shall keep the records of the Association, and shall record in a book for that purpose the names of all of the Members of the Association together with each Member's current address as registered by such Member.

9.8 The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution by the Board of Directors, provided, however, that a resolution by the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of the budget adopted by the Board. The Treasurer may, but need not, be a required signatory on checks and notes of the Association.



9.9 The Treasurer, or the Treasurer's appointed agent, shall keep proper books of account, and shall prepare an annual budget, a statement of receipts and disbursements, and a balance sheet, and the same shall be available for inspection upon reasonable request of a member.

9.10 The salaries, if any, of the officers and any assistant officers of the Association shall be determined from time to time by the Board of Directors.

ARTICLE X  
COMMITTEES

10.1 The standing committees of the Association shall be:

- (a) The Nominating Committee; and
- (b) The Maintenance Committee.

Unless otherwise provided herein, each committee shall consist of a chairperson and two or more members and shall include a member of the Board of Directors. The committees shall be appointed by the Board of Directors within thirty (30) days after each annual meeting of the Board of Directors, and the members of each committee shall serve until the succeeding committee members have been appointed.

10.2 The Nominating Committee shall have the duties and function pertaining to the nomination of members to the Board of Directors as prescribed in Article 6 of these Bylaws.

10.3 The Maintenance Committee shall advise the Board of Directors of all matters pertaining to the maintenance, repair or improvement of Common Property as contemplated by the Declaration and shall perform or see to the performance of such other functions as the Board, in its discretion, determines.

10.4 The Board of Directors may appoint such other committees from time to time as it deems desirable.

10.5 The committees appointed by the Board of Directors shall have power to appoint sub-committees from among their membership and may delegate to any such sub-committee any powers, duties, and functions.

10.6 It is the duty of each committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association which is further concerned with the matter presented.

ARTICLE XI  
ASSESSMENTS

11.1 The Association has the right to obtain funds with which to operate by assessing its Members in accordance with the provisions of the Declaration, the Articles of Incorporation and these Bylaws. Assessments not paid when due shall bear interest from the date when due until paid at the rate of eighteen (18%) percent per annum, or as set by the Board of Directors, and shall also result in the suspension of voting privileges during any period of such nonpayment. The method of assessment and the manner of enforcing collection thereof shall be as set forth in the Declaration.

11.2 Regular Assessments shall be made in advance on or before December 31st preceding the year for which the assessment is made. Such assessment shall be due in monthly installments, which will be due on the first day of each quarter beginning as of the first day of the fiscal year for which the assessments are made, unless other payments are provided by the Board. If a Regular Assessment is not made as required, an assessment will be presumed to have been made in the amount of the last prior Regular Assessment.

11.3 In the event the Regular Assessment proves to be insufficient, the budget may be amended at any time by the Board of Directors and a Supplementary Assessment levied. The Supplementary Assessment shall be due on the first day of the month following the month in which the Supplementary Assessment is made or as otherwise provided by the Board of Directors.

11.4 Special Assessments may also be made from time to time by the Board as provided in the Declaration with Association approval where required.

11.5 Upon default in payment of an assessment, the Board may elect to accelerate remaining installments due on any outstanding assessment. Such assessment will be considered accelerated ten days after delivery or receipt of written notice to or by the delinquent Member, or twenty days after mailing of written notice by certified or registered mail, whichever occurs first.

11.6 Any property which becomes subject to assessment during the fiscal year shall be assessed on a pro rata basis for that year.

11.7 The Association may post lists of Members who are delinquent in payment of assessments in such locations as the Board decides.

ARTICLE XII  
FISCAL MANAGEMENT

The provisions of fiscal management of the Association, as set forth in the Declaration, Articles of Incorporation and Bylaws shall be supplemented by the following provisions:

12.1 The Regular Assessment roll, hereinafter called "Assessment Roll", shall be maintained in a set of accounting books in which there shall be an account for each Member. The account shall designate the name and address of the Member, the amount of each assessment, the dates in which such assessments become due, and the amounts paid on the account and the balance

due on prior assessments.

12.2 The fiscal year of the Association shall begin on January 1. The Board of Directors shall adopt a budget for each fiscal year which shall contain estimates of the costs of performing the functions of the Association and which shall include, but not be limited to, the following items:

(a) Regular budget, which shall include provisions for the accomplishment of those duties and objectives contemplated by the Declaration, Articles of Incorporation and these Bylaws.

(b) Water management budget, which shall pay for the operation and maintenance of the water management system serving the lots.

(c) Proposed Regular Assessment against each member as set forth in the Declaration.

Copies of the proposed budgets and proposed assessments shall be transmitted to each Member at least thirty (30) days prior to the beginning of the year for which the budgets are made. If the budgets are subsequently amended before the assessments are made, a copy of any amended budget shall be furnished to each Member. Delivery of a copy of such budget or amended budget shall not be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the rights of the Board of Directors, at any time in their sole discretion, to levy any Special Assessment in the event that the budget originally adopted appears to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

12.3 The depository of the Association shall be such Federally insured bank or banks as designated by the Directors and in which the monies of the Association shall be deposited. Withdrawal of money from such accounts shall be only by check or wire transfer signed or presented by such persons as are authorized by the Board of Directors.

12.4 Fidelity bonds may be required by the Board of Directors from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the Directors. The premiums of such bonds shall be paid by the Association and be a Common Expense of the Association.

ARTICLE XIII  
OFFICIAL SEAL

The Association shall have an official seal which shall be circular in form bearing the name of the Association, the words "Florida" the words "Corporation Not For Profit" and the year of incorporation.

ARTICLE XIV  
BOOKS AND RECORDS

The books, records and other papers of the Association shall be available at the Association's office and subject to the inspection of any of the Association Members during regular business hours.

ARTICLE XV  
AMENDMENTS

Except as provided in Article VII, these Bylaws may be altered, amended or repealed by a vote of seventy-five percent (75%) of the Directors present at a duly constituted meeting of the Board of Directors provided that the proposed alteration, amendment or repeal is contained in the notice of such meeting. No repeal of these Bylaws shall be effective without the prior written consent of Declarant, so long as Declarant owns any lots within the development. No amendment affecting the Declarant shall be effective without the prior written consent of Declarant, or its successors or assigns.

ARTICLE XVI  
NOTICE; RECORDS

Upon written request to the Association, identifying the name and address of the holder or insurer and the property and address of any property encumbered or insured, any mortgage holder or insurer is entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of the property.
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by a Member on the property on which it holds the mortgage.
- (c) A lapse or cancellation of any insurance policy or fidelity bond maintained by the Association.

The Association is required to make available to Members and lenders, and to holders of any first mortgage, current copies of the Declaration, Articles, Bylaws, other rules concerning the Lots and Common Area and the books, records, and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Any holder of a first mortgage is entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year.

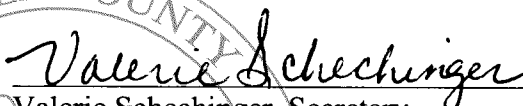
ARTICLE XVII  
CONFLICTS

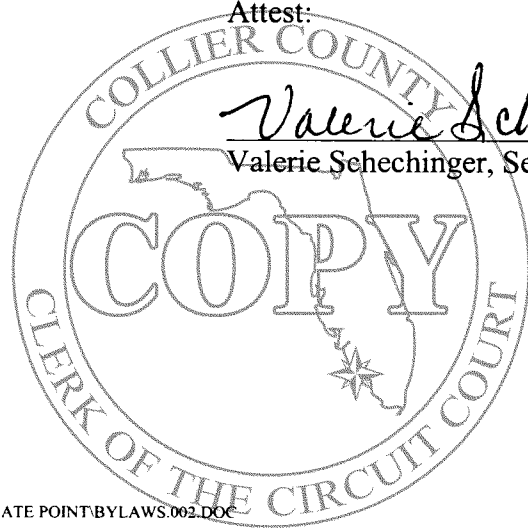
Any conflict between these Bylaws and the Articles of Incorporation for Moorgate Point Homeowners Association, Inc., or the Declaration of Covenants, Restrictions and Easements for Moorgate Point, shall be governed by the Articles and/or the Declaration, respectively.

The foregoing were adopted as the Bylaws of MOORGATE POINT HOMEOWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida on this 19<sup>th</sup> day of May, 2006.

  
Blaine Spivey, President

Attest:

  
Valerie Schechinger, Secretary



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MORTGAGEE'S CONSENT  
Plat of Moorgate Point

STATE OF FLORIDA  
COUNTY OF COLLIER

AMSOUTH BANK, a banking corporation organized and existing under the laws of the State of Alabama, authorized to transact business in the State of Florida, hereby certifies that it is the holder of a mortgage upon the property in Collier County, Florida, more particularly described on Exhibit "A" attached hereto and by reference incorporated herein (the "Property").

The mortgage is described as Mortgage, Security Agreement, and Assignment of Rents executed by Stock Development, LLC, a Florida limited liability company, in favor of AmSouth Bank dated April 17, 2002, and recorded in O.R. Book 3022, Page 2108, Public Records of Collier County, Florida, and re-recorded in Official Records Book 4498, Page 4095, Public Records of Lee County, Florida, as modified by First Loan Modification Agreement, Notice of Future Advance Receipt and Spreader Agreement dated September 22, 2003, and recorded in Official Records Book 3405, Page 846, as re-recorded in Official Records Book 4498, Page 4124, Public Records of Lee County, Florida; as modified by Second Loan Modification Agreement and Notice of Future Advance Receipt dated September 30, 2004, and recorded in Official Records Book 3652, Page 3056, Public Records of Collier County, Florida, as re-recorded in Official Records Book 4498, Page 4135, Public Records of Lee County, Florida, as modified by Third Loan Modification Agreement and Notice of Future Advance Receipt and Mortgage Spreader Agreement dated November 4, 2004, and recorded in Official Records Book 3683, Page 2751, Public Records of Collier County, Florida, and recorded in Official Records Book 4498, Page 4141, Public Records of Lee County, Florida; as modified by Fourth Loan Modification Agreement and Notice of Future Advance dated July 26, 2005, and recorded in Official Records Book 3854, Page 46, Public Records of Collier County, Florida, and recorded in Official Records Book 4819, Page 1600, Public Records of Lee County, Florida; and modified by Fifth Loan Modification Agreement and Notice of Future Advance Receipt and Mortgage Spreader Agreement dated December 9, 2005, recorded in Official Records Book 3947, Page 452, and recorded under Instrument No. 2005000172194, Public Records of Lee County, Florida, along with UCC-1 Financing Statement recorded in O.R. Book 3947, Page 469, Public Records of Collier County, Florida.

By execution hereof, AMSOUTH BANK does hereby join in and consent to the dedication of the Property by the owner under the Plat of Moorgate Point, as recorded in Plat Book 4140, at Page 1405, Public Records of Collier County, Florida, and agrees that its mortgage shall be subordinated to the dedications shown thereon.

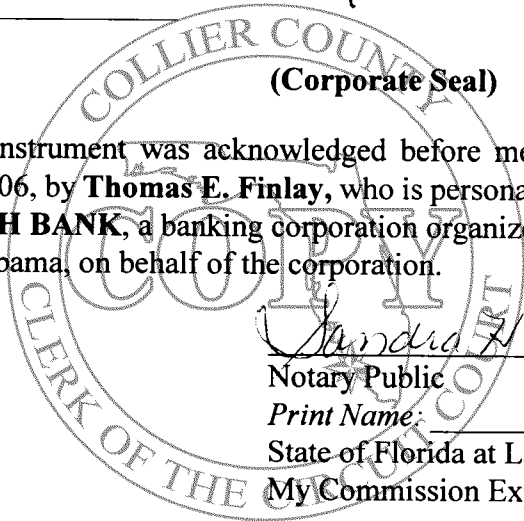
*Sandra H. Van Horn*

Print Name: SANDRA H. VAN HORN

AMSOUTH BANK, a banking corporation organized and existing under the laws of the State of Alabama

*Kimberly S. Best*  
Print Name: Kimberly S. Best

By: *Thomas E. Finlay*  
Thomas E. Finlay, Vice President




(Corporate Seal)

The foregoing instrument was acknowledged before me on this 22<sup>nd</sup> day of March, 2006, by **Thomas E. Finlay**, who is personally known to me, as Vice President of **AMSOUTH BANK**, a banking corporation organized and existing under the laws of the State of Alabama, on behalf of the corporation.

(Notary Seal)

*Sandra H. Whidden*  
Notary Public  
Print Name: \_\_\_\_\_  
State of Florida at Large  
My Commission Expires: \_\_\_\_\_

 Sandra H. Whidden  
My Commission DD211382  
Expires August 09, 2007

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

A PARCEL OF LAND LYING IN THE EAST HALF OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT "A" LELY RESORT PHASE TWO AS RECORDED IN PLAT BOOK 18, PAGES 43-45 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; SAID POINT ALSO BEING A POINT ON THE EAST LINE OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 26 EAST; THENCE NORTH 85°56'57" WEST ALONG A WESTERLY PROJECTION OF THE SOUTHERN BOUNDARY LINE OF AFORESAID TRACT "A" LELY RESORT PHASE TWO A DISTANCE OF 160.00 FEET TO A POINT ON THE EASTERN BOUNDARY LINE OF TRACT GC-7 LELY RESORT PHASE FOUR AS RECORDED IN PLAT BOOK 38, PAGES 56-66 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE NORTH 04°03'03" EAST ALONG SAID EASTERN BOUNDARY LINE, A DISTANCE OF 81.45 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE FOLLOWING ALONG THE EASTERN BOUNDARY LINES OF SAID TRACT GC-7 THE FOLLOWING THREE COURSES: NORTH 65°08'00" WEST A DISTANCE OF 660.21 FEET; THENCE NORTH 11°21'00" EAST A DISTANCE OF 761.43 FEET; THENCE NORTH 35°32'00" WEST A DISTANCE OF 470.52 FEET; THENCE DEPARTING SAID EASTERN BOUNDARY, CONTINUE NORTH 35°32'00" WEST ALONG A PROJECTION OF SAID EASTERN BOUNDARY, A DISTANCE OF 99.24 FEET; THENCE NORTH 33°16'38" EAST A DISTANCE OF 76.81 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY, 326.54 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 470.00 FEET, THROUGH A CENTRAL ANGLE OF 39°48'25" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 53°10'50" EAST, 320.01 FEET TO A POINT OF COMPOUND CURVE; THENCE NORTHEASTERLY 14.94 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 08°33'41" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 77°21'53" EAST, 14.93 FEET TO A POINT OF TANGENCY; THENCE NORTH 81°38'44" EAST A DISTANCE OF 137.65 FEET TO A POINT OF CURVATURE; THENCE EASTERLY 13.26 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 07°35'41" AND BEING SUBTENDED BY A CHORD WHICH BEARS NORTH 77°50'53" EAST, 13.25 FEET TO A POINT OF TANGENCY; THENCE NORTH 74°03'03" EAST A DISTANCE OF 371.23 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY 39.27 FEET ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 60°56'57" EAST, 35.36 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF GRAND LELY DRIVE OF THE PROPOSED PLAT OF GRAND LELY DRIVE AND CULTURAL PARKWAY ALSO KNOWN AS TRACT "A"; THENCE SOUTH 15°56'57" EAST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 17.87 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY 321.14 FEET ALONG SAID WESTERLY RIGHT- OF-WAY LINE AND ALONG THE ARC OF A CIRCULAR CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 920.00 FEET, THROUGH A CENTRAL ANGLE OF 20°00'00" AND BEING SUBTENDED BY A CHORD WHICH BEARS SOUTH 05°56'57" EAST, 319.51 FEET TO A POINT OF TANGENCY; THENCE SOUTH 04°03'03" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE A DISTANCE OF 1523.53 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,071,926 SQUARE FEET OR 24.608 ACRES, MORE OR LESS.



**ARTICLES OF INCORPORATION  
OF  
MOORGATE POINT HOMEOWNERS ASSOCIATION, INC.**

The undersigned hereby submits these articles for the purpose of forming a not-for-profit corporation under Chapter 617, Florida Statutes, and certifies as follows:

**ARTICLE I  
Corporate Name**

The name of the corporation is Moorgate Point Homeowners Association, Inc., hereinafter called the "Association".

**ARTICLE II  
Address**

The initial mailing address of the Association shall be 4501 Tamiami Trail North, Suite 300, Naples, Florida 34103. The principal office of the Association shall be located at the mailing address or at such other place as may be subsequently designated by the Board of Directors of the Association.

**ARTICLE III  
Purpose and Powers of the Association**

This Association does not contemplate pecuniary gain or profit to the members thereof and shall make no distribution of income to its members, directors or officers. The specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residential lots, common areas and improvements (as defined in the DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR MOORGATE POINT, referred to hereinafter as the "Declaration") according to the provisions of the Declaration and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose.

The Association shall have the following powers:

(a) To exercise all of the common law and statutory powers of a corporation not for profit organized under the laws of the State of Florida that are not in conflict with the terms of the Declaration, these Articles or the Bylaws of the Association.

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration applicable to the property and recorded or to be recorded in the Public Records of Collier County, Florida, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth in its entirety.

(c) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including but not limited to all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(d) To maintain, repair and operate the property of the Association;

(e) To purchase insurance upon the property of the Association and insurance for the protection of the Association and its members as Lot Owners;

(f) To reconstruct improvements after casualty and make further improvements upon the property;

(g) To enforce by legal means the provisions of the Declaration, and the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant thereto;

(h) To employ personnel to perform the services required for proper operation of the Association;

(i) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the association.

**ARTICLE IV**  
**Membership**

Section 1. **Membership Generally:** No person except an Owner or a Developer, as such terms are defined in the Declaration, is entitled to membership in the Association; and all Owners and Developers, regardless of whether a Developer is also an Owner, shall be either Class A or Class B members of the Association, as provided in this Article.

Section 2. **Class A Membership:** Until termination of Class B membership, as provided in Section 3 of this Article, every Owner who holds record title to a residential lot that is subject to assessment under the Declaration, except a Developer, shall be a Class A member of the Association. Each Class A membership shall be appurtenant to the residential lot and shall be transferred automatically by a conveyance of record title to such lot. An owner of more than one lot is entitled to one Class A membership for each residential lot to which such Owner holds record title. If more than one person holds an interest in any residential lot, all such persons shall be members; provided however, that only one vote shall be cast with respect to any one residential lot. No person other than an Owner may be a Class A member of the Association, and a Class A membership may not be transferred except by a transfer of record title to the residential lot to which it is appurtenant.

Section 3. **Class B Membership:** The Developer, as defined in the Declaration, shall be a Class B member of the Association. The Class B membership shall terminate and be converted to Class A membership upon the happening of either of the following, whichever occurs first:

(a) Three (3) months after ninety percent (90%) of the residential lots have been conveyed to third party purchasers other than the Developer; or

(b) As otherwise determined by the Declaration.

Upon termination of Class B membership, all provision of the Declarations, Articles, or Bylaws referring to Class B membership shall be without further force or effect.

**ARTICLE V  
Voting Rights**

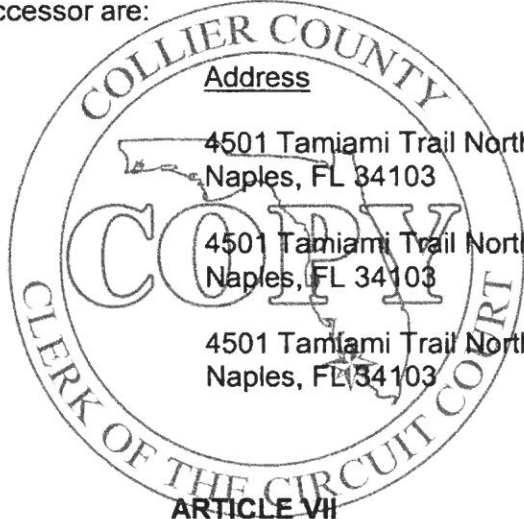
Section 1. Class A Voting: All Class A members shall be entitled to one (1) vote for each residential lot owned. If more than one (1) person holds record title to a residential lot, there shall be only one vote cast with respect to such lot, exercised as the owners determine among themselves.

Section 2. Class B Voting: The Class B members shall be entitled to one vote for each residential lot owned. In addition, until such time as the Class B membership is converted to Class A membership, the Class B membership shall have a right of veto on all questions coming before the membership for a vote thereon.

**ARTICLE VI  
Board of Directors**

The affairs of this Association shall be managed and governed by a Board of Directors consisting of at least three (3) Directors, who need not be members of the Association, and who shall be elected. The number of Directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successor are:

<u>Name</u>	<u>Address</u>
Blaine Spivey	4501 Tamiami Trail North, Suite 300 Naples, FL 34103
Sandy Houldsworth	4501 Tamiami Trail North, Suite 300 Naples, FL 34103
Valerie Schechinger	4501 Tamiami Trail North, Suite 300 Naples, FL 34103



**ARTICLE VII  
Officers**

The affairs of the Association shall be administered by a President, a Vice-President, a Secretary and a Treasurer and such other Officers as may be designated from time to time by the Directors. The Officers shall be elected or designated by the Board of Directors at its first meeting following the annual meeting of the members of the Association. The names and addresses of the Officers who shall serve until their successors are elected or designated by the Board of Directors are as follows:

<b>President</b>	Blaine Spivey
<b>Vice President</b>	Sandy Houldsworth
<b>Secretary/Treasurer</b>	Valerie Schechinger

## **ARTICLE VIII Indemnification**

Every Director and every Officer of the Association, and every member of the Association serving the Association at its request, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement of any proceeding to which he may be a party or in which he may become involved by reason of his being or having been a Director or Officer of the Association, or by reason of his having served the Association at its request, whether or not he is a Director or Officer or member serving the Association at the time such expenses or liabilities are incurred, except when the director, Officer or member serving the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement before entry of judgment, the indemnification shall apply only when the Board of Directors approve such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director, Officer or member serving the Association may be entitled.

## **ARTICLE IX Bylaws**

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded, at a duly called regular or special meeting of the members, by an affirmative vote of a majority of all the members present in person or by proxy.

## **ARTICLE X Dissolution**

The Association may be dissolved upon written assent signed by members holding not less than one hundred percent (100%) of the total number of votes of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or organization to be devoted to such similar purposes.

## **ARTICLE XI Term**

The term of the Association shall be perpetual.

## **ARTICLE XII Amendments**

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

Section 1. Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

Section 2. Vote: A resolution for the adoption of an amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such resolutions must be adopted by not less than seventy-five percent (75%) of the votes of the entire membership of the Association.

Section 3. Limit on Amendments: No amendment shall make any changes in the qualifications for membership, nor in the voting rights of members, without approval in writing by all members.

Section 4. Certification: A copy of each amendment shall be certified by the Secretary of State.

**ARTICLE XIII  
Incorporator**

The name and address of the incorporator of these Articles of Incorporation is as follows:

Blaine Spivey  
Stock Development  
4501 Tamiami Trall North, Suite 300  
Naples, Florida 34103

**ARTICLE XIV  
REGISTERED OFFICE AND AGENT**

The street address of the initial registered office of this corporation is 4501 Tamiami Trall North, Suite 300, Naples, FL 34103, and the name of the initial registered agent of this corporation is Blaine Spivey.

IN WITNESS WHEREOF the subscriber, being the undersigned person, named as incorporator, has hereunto set his/her hand and seal, this 19th day of October, 2005.

By: Blaine Spivey  
Blaine Spivey  
Its: President

**ACCEPTANCE OF DESIGNATION AS REGISTERED AGENT**

Having been named as registered agent to accept service of process for the above stated corporation, at the place designated in the certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.

Blaine Spivey  
Blaine Spivey  
Registered Agent