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AC7



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**Scott Ellis**

Clerk Of Courts, Brevard County

#Pgs: 24 #Names: 2  
Trust: 12.50 Rec: 193.00 Serv: 0.00  
Deed: 0.00 Excise: 0.00  
Mtg: 0.00 Int Tax: 0.00

**DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
SONESTA WALK**

THIS DECLARATION is made this 3 day of June, 2004, by  
DAIRY TOWNS COMMUNITY DEVELOPERS, INC., (the "Declarant").

**RECITALS:**

A. The purpose of this Declaration is to subject all of SONESTA WALK, which is described in Plat Book 51, Pages 84-86, Public Records of Brevard County, Florida, to the Covenants and Restrictions contained in this document. This document is sometimes referred to as the "Covenants".

B. Declarant declares that SONESTA WALK Subdivision, shall be conveyed and occupied subject to all matters set forth in this document and the plat. These Covenants shall run with the title to land and shall be binding upon the Declarant and all parties acquiring any interest in the Subdivision after the recording of these Covenants in the Public Records.

**ARTICLE I**

**Mutual Benefits and Obligations**

The Covenants contained in this document are for the purpose of protecting the value and desirability of the Subdivision and made for the mutual benefit of each and every Owner of a Lot in the Subdivision. They are intended to be nondiscriminatory. They are also intended to create enforceable rights and obligations in favor of and against each Lot and it's Owner. Each Owner, his or her family, friends, guests and invitees shall comply with the provisions of these Covenants while present within this Subdivision.

**ARTICLE II**

**Definitions**

**Section 2.1: Subdivision.** This term shall mean all the property known as SONESTA WALK, as recorded in Plat Book 51, Pages 84-86 of the Public Records of Brevard County, Florida; and as may be modified or amended.

**Section 2.2: Board of Directors.** The Board of Directors of the Association.

**Section 2.3: Lot.** Each platted Lot in the Subdivision, regardless of whether a dwelling has been constructed on such Lot.

**Section 2.4: Owner.** Each person who owns record title to a Lot, excluding those having such title merely as security for performance of an obligation as described in Section 697.01, Florida Statutes.

**Section 2.6: Assessments.** Annual, special and insurance Assessments by the Association against Lots in the Subdivision made in accordance with the terms of these Covenants.

**Section 2.7: Association.** SONESTA WALK Homeowners Association of Brevard County, Inc., a Florida not-for-profit corporation.

**Section 2.8: Declarant.** The Declarant shall be DAIRY TOWNS COMMUNITY DEVELOPERS, INC..

**Section 2.9: Surface Water or Stormwater Management System.** "Surface Water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water or to prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

**Section 2.10: Common Property.** Common Property shall mean and refer to all tracts and lands owned by the Association. It shall also be synonymous with Common Area.

**ARTICLE III**  
**Subdivision Assessments**



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**Section 3.1. Conservation Easement Areas.** Pursuant to the provisions of Section 704.06, Florida Statutes, Developer will grant and convey to the St. Johns River Water Management District (the "District") a conservation easement in perpetuity over the Conservation Easement Areas (the "Conservation Easement"). Developer will fully warrant title to said Conservation Easement Areas, and will warrant and defend the same against the lawful claims of all persons whomsoever. Developer will grant this Conservation Easement as a condition of permit number **40-009-79881** issued by the District, solely to offset adverse impacts to natural resources, fish and wildlife, and wetland functions. The Conservation Easements Areas will be comprised of both wetland areas and upland buffers.

**Purpose.** The purpose of this Conservation Easement is to assure that the Conservation Easement Areas will be retained forever in their existing natural

condition and to prevent any use of the Conservation Easement Areas that will impair or interfere with the environmental value of these areas.

**Prohibited Uses.** Any activity in or use of the Conservation Easement Areas inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

**Wetland Conservation Areas.** Wetland Conservation Area means all lands defined as wetlands and contained within the Conservation Easement Area identified as **TRACT K** as shown on the plat of SONESTA WALK. The Wetland Conservation Area shall be subject to an additional Wetland Conservation Deed Restriction pursuant to Section 704.06, F. S. in favor of the St. Johns River Water Management District ("District"), for the purpose of retaining and maintaining the Wetland Conservation Area in its predominantly natural condition as a wooded water recharge, detention, percolation and environmental conservation area. In furtherance of this Wetland Conservation Deed Restriction, all the following uses of the Wetland Conservation Areas are hereby prohibited and restricted without the prior written consent of the St. Johns River Water Management District, to wit:

- (a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- (b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
- (c) Removing, destroying or trimming trees, shrubs, or other vegetation.
- (d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- (e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- (g) Acts or uses detrimental to such retention of land or water areas.
- (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.



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**Responsibilities.** The Developer, its successors and assigns, shall be responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement Areas.

**Reserved Rights.** Developer reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Conservation Easement Areas, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Areas, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

Notwithstanding the prohibitions listed in (a) through (h) above, the Developer, and its successors and assigns, reserve the right:

- (a) To construct, operate and maintain a raised boardwalk across the north and west sides of the conservation easement. The boardwalk shall be constructed of pressures treated wood, and shall be 6' wide and have a minimum elevation of the deck of 30.00 NGVD. Furthermore, the boardwalk shall be constructed as permitted by District permit no. 40-009-79881-1, including any subsequent modifications. Prior to the commencement of construction of the boardwalk, the Developer shall obtain all necessary federal, state and local permits.
- (b) To construct, operate and maintain an outfall structure. The outfall structure shall be constructed in accordance with District permit no. 40-009-79881-1, including any subsequent modifications.

**Rights of District.** To accomplish the purposes stated herein, the Developer conveys the following rights to the District:

(a) To enter upon and inspect the Conservation Easement Areas in a reasonable manner and at reasonable times to determine if Developer or its successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Conservation Easement Areas that may be damaged by any activity inconsistent with the Conservation Easement.

**District's Discretion.** District may enforce the terms of the Conservation Easement at its discretion, but if Developer breaches any term of the Conservation Easement and District does not exercise its rights under the Conservation Easement, District's forbearance shall not be construed to be a waiver by District of such term, or of any subsequent breach of the same, or any other term of the Conservation Easement, or of any of the District's rights under the Conservation

Easement. No delay or omission by the District in the exercise of any right or remedy upon any breach by Developer shall impair such right or remedy or be construed as a waiver. District shall not be obligated to Developer, or to any other person or entity, to enforce the provisions of the Conservation Easement.

**District's Liability.** Developer will assume all liability for any injury or damage to the person or property of third parties which may occur in the Conservation Easement Areas arising from Developer's ownership of the Conservation Easement Areas. Neither Developer, nor any person or entity claiming by or through Developer, shall hold District liable for any damage or injury to person or personal property which may occur in the Conservation Easement Areas.

**Acts Beyond Developer's Control.** Nothing contained in the Conservation Area Easement shall be construed to entitle District to bring any action against Developer for any injury to or change in the Conservation Easement Areas resulting from natural causes beyond Developer's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Developer under emergency conditions to prevent, abate or mitigate significant injury to the Conservation Easement Areas or to persons resulting from such causes.

**Amendment.** The provisions of the Conservation Area Easement may not be amended without the prior written approval of the District.

**Successors.** The covenants, terms, conditions and restrictions of the Conservation Area Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Conservation Easement Areas.

**Section 3.2: General Purpose.** The Association is organized for the purpose of providing common services to the Lot Owners, owning and maintaining minimal landscaping and lighting on the Common Property, providing for management and maintenance of surface water or stormwater management systems including but not limited to work within retention areas, drainage structure and drainage easements. All Lot Owners are members of the Association. Provisions relating to the Association are contained in the Articles of Incorporation and By-Laws of the Association. The Association shall have the right to increase or reduce the services it provides by affirmative vote of the members in accordance with the By-Laws of the Association. In order to pay for these services, the Association will charge Assessments against the Lots and their Owners. Each Owner is personally obligated for Assessments which become due during the time such owner owned the Lot, provided, however, that the Declarant shall not be responsible for any assessments on units owned by the Declarant.



**Section 3.3: Use, Responsibility and Maintenance of Stormwater Management System.** The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system(s), shown on the Plat of SONESTA WALK. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. Assessments shall be used for the maintenance and repair of the surface water or stormwater management system including, but not limited to, work within the retention areas, drainage structures and drainage easements.

**Section 3.4: Creation of Lien for Assessments.** All Lots owned by Owners other than Declarant are subject to a continuing lien to secure unpaid Assessments due to the Association in accordance with the provisions of these Covenants. This continuing lien will also secure interest on unpaid Assessments and the cost of collecting unpaid Assessments including reasonable attorney's fees. The Association shall have the right to a lien on each Lot for unpaid Assessments commencing upon the initial conveyance of the Lot to an Owner other than the Declarant. The lien will be effective from and after recording a Claim of Lien in the Public Records of Brevard County, Florida, stating the Lot description, the name of the record Owner, the amount due, and the due date. The lien will remain in effect until all sums due to the Association have been fully paid. All Lots shall be sold subject to the terms and provisions of the continuing lien described in this paragraph.

**Section 3.5: Annual Assessments.** The Association shall fix the amount and the due date of the annual assessment. Initially, annual Assessments shall be payable in one annual installment. The Board shall notify the Owners of each Lot of the amount and the date on which the Assessments are payable and the place of payment of Annual Assessments shall be uniform.

**Section 3.6: Date of Commencement of Annual Assessments.** The annual Assessment for each Lot shall begin upon conveyance of the Lot to a Class A Member. The first annual Assessment for each Lot shall be made for the balance of the fiscal year of the Association. The first annual Assessment shall be due and payable in advance in the installments and at the place established by the Association at the time of such conveyance. Vacant lots conveyed by Declarant shall not be required to pay lot assessments for a period of one year from date of conveyance by Declarant or date of issue of certificate of occupancy for home occupancy whichever comes first.

**Section 3.7: Special Assessments.** The Association may levy a special Assessment to pay in whole or in part for the cost of any major repair or replacement of a capital improvement owned by the Association without concurrence of the Owners. A major repair is a repair made to an existing capital improvement which exceeds Five

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Hundred Dollars (\$500.00) and the useful life of which is greater than one (1) year. Replacement of a capital improvement mean any replacement of an existing capital improvement. The Association may levy or collect a special Assessment to acquire a new capital improvement if the special Assessment is approved by a vote of sixty percent (60%) of the Owners. The Association may also levy a special assessment to pay, in whole or in part, for the cost of maintenance of unimproved Lots. Any such assessment may be levied against the Owner of any such Lot, or paid by the Association.

**Section 3.8: Effect of Non-Payment of Assessments: Remedies of the Association.** Any Assessment not paid within 15 days after the due date shall bear a late fee of \$25.00 and interest from the due date at the highest rate allowed by law until paid. The Association may bring an action against the Owner of the Lot for payment of the Assessment and may enforce its lien for the Assessment by foreclosure or any other means available under the law. The Association shall adopt a Resolution outlining these collection procedures. The Association may waive payment of late fees and interest on an Assessment, but may not waive payment of the Assessment. No Member may waive or otherwise escape liability for Assessments by non-use of common property or by abandonment of the Lot owned by such Owner.

**Section 3.9: Subordination of Lien to Mortgages.** The lien of any Assessment authorized by these Covenants shall be subordinate to the lien of any first mortgage on the Lot so long as all Assessments levied against the Lot which fell due on or prior to the date the Mortgage is recorded have been paid. The sale or transfer of any Lot pursuant to a mortgage foreclosure proceeding or by a deed in lieu of foreclosure shall extinguish the lien for Assessments which fell due prior to the date of such sale, transfer or foreclosure, but not for Assessments which fall due after such date.

**Section 3.10: Damage by Owners.** The Owner of a Lot shall be responsible for any expense incurred by the Association to repair or replace common property which is necessary by reason of his carelessness, neglect or willful action or by that of his family, his guests, agents or invitees. Any such expense shall be a part of the Assessment to which the Owner's Lot is subject and shall be due and payable in the same manner as annual Assessments provided for in these Covenants.

**Section 3.11: Maximum Annual Assessment.** Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$2400.00 per lot for Class "A" Members (\$200.00 per month). The Declarant, Class "B" member, shall not be required to pay any annual fees.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be

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increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 3.12: Initial Assessment and Initiation Fee.** Every Owner of a platted Lot shall be a member of the Association upon acquiring title to the Lot. There shall be a one-time initiation fee of **\$200.00** per Lot, payable to the Association at the time a Lot is conveyed to its initial Owner. Each subsequent Lot Owner may reimburse the previous owner the initiation fee that was paid at the time of the initial lot acquisition. A Lot acquired by a Builder from the Declarant shall be subject to the initiation fee at that time of acquisition. The Association may spend some or all of the initiation fee for inspection of the Lot after completion of the improvements to certify compliance with the terms and provisions of this Declaration.

**Article IV  
Owner's Rights**



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**Section 4.1: Right to Use Common Property.** Each Owner and members of such Owner's family residing with the Owner, or the Tenant of a non-residential Owner, has the non-exclusive right to use common property for the purpose for which it is intended. This right shall pass with title to the Lot owned by the Owner. Further the common area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3rds) of the lot owners (excluding the developer).

**Section 4.2: Utilities.** Each Owner may use the utilities constructed in the roads or other easements as the same may be relocated from time to time, subject to regulations and ordinances of Brevard County.

**Article V  
Rights of the Homeowners' Association**

**Section 5.1: Enforcement Rights.** The Association, its agents or employees, shall have the right, but not the obligation, to enter upon any Lot to cure any violation of these Covenants, including, without limitation, the right to remove any structure which is in violation of these Covenants and to enforce maintenance and repair of Lots and improvements. Any such removal, curing, maintenance or repair shall be at the expense of the Owner of the Lot on which the violation has occurred or exists, which expense shall be payable by such Owner to the Association on demand. Entry to remove and cure any violation of these Covenants shall not be a trespass and the Association shall not be liable for any damages on account of the entry.



The rights of the Association described in this Article shall not be construed as a limitation of the rights of the Declarant or any Owner to prosecute proceedings at law or in equity for the recovery of damages against persons violating or attempting to violate these Covenants or for the purpose of preventing or enjoining any violations or attempted violations. The remedies contained in this paragraph shall be construed as cumulative of all other remedies provided at law or in equity. The failure of the Association to enforce these Covenants, however long continuing, shall not be a waiver of the right to enforce these Covenants at a later time.

**Section 5.2: Enforcement by St. Johns River Water Management District.** The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system,

**Section 5.3: Other Assessments.** Any amounts owned by the Owner to the Association as the result of the Association's abating or curing violations of these Covenants or maintaining or repairing Lots or Residences shall be due and payable within 15 days from the date of receipt of a statement for such amounts from the Association. If any of said sums are not paid when due, they shall be added to and become a part of the annual Assessment to which the Lot is subject and enforceable as provided in Article III, Section 3.4 of these Covenants.

**Section 5.4: Common Property Rights.** Every owner shall have a right and easement in and to the Common Property which shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(a) To adopt reasonable rules and regulations pertaining to the use of the Common Property, the preservation of such property, and the safety and convenience of the other users of the Common Property;

(b) To convey or encumber any Common Property if authorized by two-thirds (2/3) of the Class A Members and the Class B Member. No dedication or transfer will be effective unless an instrument agreeing to the dedication or transfer, executed by 2/3 of the Class A Members and the Class B Member (until Class B membership terminates), is recorded.

(c) To assess fines for violation of these Covenants which shall be added to the next installment of the annual Assessment to which the lot is subject and enforceable as provided in Article III of these Covenants.



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**Section 5.6: Membership and Voting.**

(a) Every Owner of a platted Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(b) The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member(s) shall be the Declarant and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership no later than three (3) months after ninety percent (90%) of the Lots in the Subdivision have been conveyed to Members, not including conveyances to a person, firm or entity to whom Declarant assigns its rights.

**ARTICLE VI**

**Rights Reserved by Declarant**

**Section 6.1: Eminent Domain.** If all or part of any easement granted by Declarant over property of the Declarant is taken for eminent domain, no claim shall be made by the Association or any owner other than Declarant for any portion of any award, provided Declarant shall grant a similar easement, if necessary, to provide Owners with access to their Lots and with utility services.

**Section 6.2: Easements for Utilities.** The Declarant reserves a perpetual easement on, over and under the easements and Common Property shown on the subdivision plat for construction and maintenance of electric and telephone poles, wires, cables, conduits, water mains, drainage lines or drainage ditches, sewers, irrigation lines and other conveniences or utilities. To the extent permitted by law, the Declarant may grant an exclusive easement over each Lot for the installation and maintenance of radio and television cables within the Subdivision. The Owners of Lots subject to the easements reserved in this paragraph shall acquire no right or interest in utility or cable television equipment placed on, over or under the portions of the Subdivision which are subject to said easements. All easements reserved by Declarant are and shall remain private easements and the sole and exclusive property of the Declarant.

**Section 6.3: Drainage Easement.** The Association shall have perpetual non-exclusive easements over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the surface

water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual non-exclusive easement for the drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

**Section 6.4: Maintenance Easement.** The Declarant reserves an easement in, on, over and upon each Lot for the purpose of preserving, maintaining or improving the Common Property.

**Section 6.5: Declarant Rights Regarding Temporary Structures, Etc.** Declarant reserves the right to erect and maintain temporary dwellings, model houses, and/or other structures upon Lots owned by Declarant and to erect and maintain such commercial and display signs as Declarant, in its sole discretion, deems advisable. Declarant reserves the right to do all acts necessary in connection with the construction of improvements on the Lots. Nothing contained in these covenants shall be construed to restrict the foregoing rights of the Declarant.

**Section 6.6: Further Restrictions.** Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way on any Lot in the Subdivision owned by Declarant and on the Common Property. The easements granted by Declarant shall not materially or adversely affect any improvements or unreasonably interfere with use of the Subdivision Common Property.

**Section 6.7: Release of Restrictions, Easements.** If a Residence is erected, or the construction of the Residence is substantially advanced, in a manner that violates the restrictions contained in these Covenants or in a manner that encroaches on any Lot line, Common Property, or easement area, Declarant shall have the right to release the Lot from the restriction it violated. Declarant shall also have the right to grant an easement to permit encroachment by the Residence over the Lot line, or on the Common Property, or the easement area, so long as Declarant, in the exercise of its sole discretion, determines that the release or easement will not materially and adversely affect the health and safety of Owners, the value of adjacent Lots and appearance of the Subdivision. The Declarant may not release any restrictions pertaining to drainage easements or conservation easements without the prior written consent of the St. Johns River Water Management District.

**ARTICLE VII**  
**Architectural Control and Restrictions**



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**Section 7.1: Architectural Review Committee.** There shall exist a Review Committee (hereinafter referred to as "ARC"), which shall consist of three (3) members, appointed by the Declarant, all of Brevard County, Florida. The ARC may designate a

representative to act for it, which representative need not be a member of the ARC or a Lot Owner and may be natural or artificial. The designation of said representative shall be in writing and signed on behalf of the ARC by a majority of its members. Neither members of the ARC or its designated representative shall be entitled to any compensation for services rendered pursuant to this Declaration. All members of the ARC or its designated representative, shall serve at the pleasure of the Declarant and may be removed or replaced at will.

It is the plan of the Declarant to develop SONESTA WALK into a restricted Community of quality homes. The ARC shall evaluate the proposed improvements with emphasis upon their harmonious incorporation into the Community as a whole and with specific emphasis on external design, location of the improvement in relation to the surrounding structures and/or improvements, topography and conformity to the Declaration.

The ARC shall review all construction plans prior to the commencement of any construction on any Lot. The ARC shall review any such plans to determine whether they are in compliance with the Covenants contained herein, as well as any other restriction or covenant applying to such Lot.

**Section 7.2: Construction Plan Review.** No dwelling, building, or structure of any kind shall be constructed, erected, or altered on any Lot or in any part of the subdivision until the builder, contractor, plans, specifications and locations thereof and thereof shall have been first submitted to and approved by the ARC. The plans, specifications and location of all contemplated construction shall be in accordance with the terms hereof and with all applicable Codes and Ordinances of Brevard County, State of Florida, in effect at the time of such proposed construction or alteration. The approval or disapproval of plans, specifications and location by the ARC shall be based on reasonable grounds including purely aesthetic reasons, which shall be at the discretion of the ARC, and as may be deemed sufficient. With respect to approval of builder or contractor, the ARC reserves the right, in its sole discretion (based upon reasonable or unreasonable grounds), to approve same. Detailed and scale sketches (1/4" - 1" scale), including location sketches, shall be submitted by the Lot Owner to the ARC for any construction, improvements, additions or alterations which may be sought to be erected or placed on any Lot at least thirty (30) days prior to the date that approval thereof is required. The plans submitted shall include all plans necessary for construction of the improvement.

Plans and specifications as regards to topography, landscaping and finished grade elevation must also be reviewed and approved by the ARC prior to the commencement of any excavations work, or prior to the commencement of any activity which will alter the natural contour of the land.

Prior to the commencement of construction of any Lot, a Tree Survey shall be submitted to the ARC. The Tree Survey shall show existing trees, those trees to be removed and those trees being relocated. The ARC shall approve or reject the Tree

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Survey and/or require any modification of the plan in the interest of health, safety, welfare and appearance.

The ARC shall provide Lot Owners with a written instrument acknowledging receipt of any evidence, instrument, or drawing required by the paragraph, indicating thereon the date and time such evidence, instrument or drawing is received by the ARC. The ARC shall notify the Lot Owner, in writing, within fifteen (15) days of receipt of all required evidence, of the ARC's approval or disapproval of any project. All approvals by the Committee intended to be relied upon by a Lot Owner, his agents or servants, and whether relating to the provisions of this paragraph or any other covenant contained in this Declaration, must be in writing and signed or initialed by a member of the ARC and the ARC's designated representative and by Declarant.

In the event any required approvals are not obtained prior to commencement of improvements, or in the event improvements are made which vary from those approved, it shall be deemed that no approvals were given and that a violation and/or break of this Declaration has occurred, and all enforcement provisions contained herein shall be applicable.

The ARC shall not be responsible for any defects in plans or improvements, and the ARC's review of plans is limited solely to appearance of the improvements and does not include compliance with applicable building codes.

**Section 7.3: Construction Restrictions.** The following construction restrictions are adopted by the ARC and are imposed upon each Lot as a restriction.

- (a) A minimum of 20 feet set back shall be required from the nearest part of the front of the building to the front Lot line. A minimum of 7.5 feet set back shall be maintained between the sidewalls of all structures and the sidelines of the Lot unless waived by the ARC on irregularly shaped Lots. A minimum of 20 feet set back shall be maintained between the rear wall of all structures and the rear Lot line. The minimum set backs required by The City of Melbourne in the specific zoning of SONESTA WALK shall apply and may exceed those outlined.
- (b) omitted
- (d) The minimum floor area of each dwelling shall be 1,000 square feet of living area, exclusive of the garage, utility area and open or enclosed porches, and shall contain a one (1) car garage which may be detached.
- (e) All utilities whatsoever shall be installed underground. Any aboveground transformers shall be landscaped and screened from view.
- (e) T-111 type and similar type siding shall not be permitted.



(f) Fiberglass garage doors shall not be permitted.

(g) Recommended roofing materials include approved fiberglass standard three tab or better. Other roofing materials must be approved by the ARC.

(h) Exterior Color Plan. The ARC shall have final approval of all exterior color plans and each Owner must submit to the ARC a color plan showing the color of the roof, exterior walls, shutters, trims, etc. The ARC shall consider the extent to which the color plan is consistent with the homes in the surrounding areas and the extent to which the color plan conforms with the natural color scheme of SONESTA WALK.

(i) Driveway Construction. All dwellings shall have a paved driveway of at least 8 feet in width at the entrance to the garage. Unless prior approval is obtained from the ARC, all driveways must be constructed of concrete, brick, pavers, or other approved surfaces. The grade of any portion of a driveway that is constructed on and across any part of the adjacent street right-of-way or drainage easement must be constructed in accordance with the original subdivision engineering plans or governmental driveway requirements.

(j) Games and Play Structures. All basketball backboards and any other fixed games and play structures other than basketball structures, shall be located at the rear of the dwelling, or on the inside portion of corner Lots as specifically approved by the ARC. No platform, dog house, playhouse or structure of similar kind or nature shall be constructed on any part of a Lot located in front of the rear line of the residence constructed thereon, and any such structure must have prior approval of the ARC. Basketball structure may be located in rear of front building setback upon written approval from ARC.

(k) Swimming Pools. Any swimming pool or tennis court to be constructed on any Lot shall be subject to the approval of the ARC. Any lighting of a pool or other recreational area shall be designed so as to buffer the surrounding residences from the lighting and must be approved by the ARC.

(l) If one Owner elects to purchase two (2) adjoining Lots and use one for recreational purposes, the Lot used for recreational purposes must be adequately screened by landscaping and/or walls or fences on both the front and side as required by the ARC. It shall be the intent of the ARC to screen any such use from public view.

(m) Any swimming pool constructed on any Lot shall be subject to the following restrictions, reservations and conditions:

(1) Construction may be only of concrete or a concrete-type material. The pool deck shall be no higher than 2" below the slab level of the first floor.



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(2) The outside edge of any pool wall may not be closer than four (4) feet to a line extended and aligned with the sidewalls of the house. All swimming pools shall be situated in the rear of the house.

(3) No screening of pool area may extend beyond the building set back lines established by the controlling governmental agency.

(4) Pool screening may not be higher than the roof of the house.

(n) Air Conditioning Compressor Units. No compressor units shall be placed on the front of any dwelling or otherwise placed or located so as to be visible to or from any public street. If said compressor unit must be placed to the side or rear of any such dwelling, but is still visible to or from any public street, it shall be permissible to so locate said unit if the same is screened with a permanent type of building material.

(o) Solar Water Heating Panels. No roof mounted Solar Water Heating Panels shall be placed on the front of any dwelling or otherwise placed or located so as to be visible to or from any public street and must be approved by the ARC.

(o) Window Air Conditioning Units. No window or wall air conditioning units shall be permitted.

(p) Bare Aluminum Colors. Colored or painted finishes are required on all exposed metal including, but not limited to trim, exterior flashings, gutters, windows, doors and screened material. No aluminum color will be accepted.

(q) The construction of homes on any Lots must be completed within 12 months following the receipt of a Building Permit. Any failure to comply with this requirement shall subject the Lot Owner to an assessment of \$25.00 per week of non-compliance.

#### **Section 7.4: Maintenance of Residences and Lots.**

(a) All Lots, residences and improvements on the Lots shall be maintained by the Owner in a neat and attractive condition. All landscaping of Common Property will be maintained by the Association.

(b) In the event of damage or destruction by fire or other casualty to the Residence, or improvements on any Lot, the Owner shall, upon receipt of the insurance proceeds, repair or rebuild such damaged or destroyed residence or improvements in a good workmanlike manner in strict compliance with the original plans and specifications and building layout of said improvements as constructed by the Declarant within a reasonable time not to exceed one (1) year and in accordance with the provisions of these Covenants. All debris must be removed and the Lot restored to a slightly condition within 60 days of such damage or destruction.

#### **Section 7.5: Miscellaneous Use Restrictions.**



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(a) All fences and shrub lines must be approved by the Association prior to construction. The Association may require that the composition and color of any fence be consistent with fences around surrounding Residences. Fences shall conform to the Resolutions adopted by the SONESTA WALK Homeowners Association and the Architectural Review Committee (ARC) for SONESTA WALK Subdivision. No fences shall be erected on any lot prior to receiving written approval from the ARC. All fences, side and rear lot line fences shall be maintained by individual lot owners and shall apply to any fence initially installed by Developer.

(b) All Lots in the Subdivision are residential parcels and shall be used exclusively for single-family residential purposes. Detached auxiliary buildings, including doghouses or storage buildings, are not permitted without prior approval of the Association. No Lot may be subdivided without the prior written consent of the Declarant, which consent shall be recorded in the Public Records of Brevard County, Florida in order to be effective.

(c) Trash, garbage or other waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened as not to be visible from any road or adjacent property within sight distance of the Lot at any time except during refuse collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. Clotheslines, if any, shall be contained within the rear yard area. No clothing or cleaning articles shall be hung or displayed on any part of the Lot so that it is visible outside of the Lot. Nothing herein contained shall be construed to conflict with Florida Statute 163.05.

(d) No animals, except household pets, shall be kept on any Lot. Pet shall be kept only in the residence or within a fenced area. Residents shall not breed such animals as a hobby or for profit, and are encouraged to have such animals neutered. No animal shall be permitted off the Lot unless on a leash. Further, no pet shall be permitted on the Common Area unless accompanied by its owner. The Common Area may not be used by pets attached to any fixed leash.

(e) No commercial activity shall be conducted on any Lot with the exception of the Declarant's real estate sales office or agent.

(f) No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot.

(g) All signs, billboards and advertising structures of any kind are prohibited. Builder/Owner signs are permitted during construction periods. No sign may be nailed or attached to trees. For Sale signs shall not exceed four (4) square feet or be taller than 30 inches.





(h) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) feet and six (6) feet above any roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. Except as herein provided, no trees shall be permitted to remain within such distance of such intersections unless the foliage is maintained at sufficient height to prevent obstruction of such sight lines. Any such tree or a rare or unusual species may be permitted to remain in place upon application to and written permission from the Declarant and approval by the appropriate city, county or state official or department.

(i) No mailbox or paper box of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected on any Lot until the size, location, design and type of material for the box is approved by the ARC. If the United States mail services involved shall indicate a willingness to make delivery to wall receptacles attached to the Residence, each Owner, on the request of the Association, shall promptly replace the boxes previously employed for such purposes with wall receptacles attached to the Residence.

(j) Owners shall not do anything that will disturb or interfere with the reasonable rights and comforts of other Owners.

(k) The parking of vehicles in the Subdivision restricted as follows:

1. Automobiles- Automobiles without any advertising or logos on the vehicle shall be permitted to be parked in driveways and garages. Automobiles with advertising or logos shall be parked only in garages.

2. Passenger Vans- Passenger vans not outfitted for recreational purposes and without any advertising or logos shall be permitted to be parked in driveways and garages. Passenger vans outfitted for recreational purposes or with advertising or logos shall be permitted only in garages. Lot owners shall not park vehicles overnight in any Public Roadway.

A "passenger van" is a van that weighs less than 5,000 pounds, has seating for more than two (2) passengers, and has non-commercial license plates. "Outfitted for recreational purposes" shall mean a van that has 110-120 volt electrical service, running water, LP gas or sanitary waste facilities. No removable ladders or other commercial equipment shall be stored on the exterior of any "passenger van". A "non-passenger van" is any van that does not comply with the definition of a "passenger van". A non-passenger van shall be subject to the same restrictions as a truck rated one-half (3/4) ton or less, as more fully provided in subparagraph (3) below.



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3. Trucks and Non-Passenger Vans-Trucks rated 3/4 ton or less, without any advertising or logos, used as the resident's regular or usual form of transportation, and non-passenger vans without any advertising or logos shall be permitted in the subdivision if parked in garages. Such trucks and non-passenger vans shall also be permitted in driveways for periods of less than four (4) hours. Trucks of more than 3/4 ton, or trucks or non-passenger vans with any advertising or logos, or trucks not the resident's regular or usual form of transportation are not permitted to be parked in the Subdivision unless present solely for the actual and continuous repair or construction of a residence.

4. Motorcycles, Golf Carts, Boats, Campers, Trailers-Boats, motorcycles, golf carts, campers and trailers not exceeding six (6) feet in height measured from the ground shall be permitted to be parked in the Subdivision only if parked in garages

5. Travel Trailers, Motor Coaches, Motor homes, Mobile Homes-Travel trailers, motor coaches, motor homes, mobile homes and any other trailer or vehicle not specifically permitted by sections 1 through 4 above shall not be parked in the Subdivision at any time.

6. Lawns, Streets-No vehicle shall be parked on any lawn, yard, travel area of streets or other area not intended for vehicular use.

(1) Fences

- i. No fence with a height above six (6) feet shall be permitted on any Lot.
- ii. No fence shall be permitted to be constructed with a height above
- iii. four (4) feet within 35 feet of the high water line of any lake in the Subdivision.
- iv. No fence shall be constructed extending beyond the front set back line or side yard of abutting the street of corner lots. extend beyond the side yard building.
- v. Prior approval in writing must be received from the ARC before the construction of any fence shall be permitted.

**Section 7.6: Variance.** The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require. Such variances must be evidenced in writing signed by at least two (2) members of the Committee after such variance report was approved by the Board. If such variances are granted, no violation of the Covenants, conditions and restrictions contained in this Declaration or any Supplement 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, however, operate to waive any of the terms and provisions of this Declaration or of any Supplement Declarations for any purpose except as to the particular property and particular provisions hereof covered by the variance. Nor shall such variance affect in any way the Owner's obligation to comply

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with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

**Section 7.7: Duty to Maintain Drainage Easements.** It shall be the duty of the Association to maintain the drainage easements as described in Section 9.1 of this Agreement if said duty is not assumed by any governmental agency pursuant to a dedication agreement. Said duty shall include the obligation to cut grass, cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to maintain reasonable standards of health, safety and appearance. If any assessment, penalty or fee is charged by any governmental agency for the maintenance of the above-described easement, any such assessment, penalty or fee shall be paid by the Association. Any assessments, penalties, or fees associated with a violation of St. Johns River Water Management District Permit No. 4-009-67164-1, including modifications, shall be paid by the permittee.

**Section 7.8: Duty to Subdivision Entrance Sign.** The Association shall have the duty to maintain and repair the Subdivision Entrance Sign and any property related thereto. This duty shall include, but not be limited to, service and maintain of sign, irrigation, lighting, or drainage fixtures or any structural improvements, the obligation to cut grass, trim shrubbery and otherwise keep said property in a safe and attractive condition maintaining standards of health, safety and appearance.

**Section 7.9: Duty to Maintain Drainage Easements.** The Association shall have the duty to maintain the drainage easement as shown on the plat of SONESTA WALK and any property related thereto. This duty shall include, but not be limited to, the obligation to cut grass, trim shrubbery and otherwise keep said property in a safe and attractive condition maintaining standards of health, safety and appearance. Any irrigation, lighting, or drainage fixtures or improvements placed on said premises shall be maintained by the Association. This obligation shall include, but not be limited to, the maintenance of any and all structures erected on said premises keeping any painted surfaces clean and attractive, as well as keeping all irrigation, lighting, or drainage fixtures in a safe and working condition.

**ARTICLE VII**  
**Utility Provisions**

**Section 8.1: Water System.** The central water supply system provided by the City of Cocoa for the service of the Subdivision shall be used as the sole source of water. Each Owner shall pay water meter charges established with the City and shall maintain and repair all portions of such water lines located within the boundaries of his Lot. No individual water supply system or well shall be permitted on any Lot.

**Section 8.2: Sewage System.** Each Owner shall maintain and repair all portion of the sewage disposal system located within the boundaries of his Lot.

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**Section 8.3: Garbage Collection.** Garbage, trash and rubbish shall be removed from the Lots by the entity selected by Brevard County. Each Lot Owner shall pay when due the periodic charges or taxes for such garbage collection service.

**Section 8.4: Electrical and Telephone Service.** All telephone, electric and other utilities lines and connections between the main or primary utilities lines and the residence and the other buildings located on each Lot shall be concealed and located underground in a manner acceptable to Brevard County.



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**ARTICLE IX  
Easements**

**Section 9.0: Drainage Easement.** Any and all drainage easements as described on the plat recorded in Plat Book 51, Pages 84-86, and those recorded in official records book \_\_\_\_\_, page \_\_\_\_\_, Public records of Brevard County, Florida, shall be held by the Declarant and shall be freely assignable by it to either the Association or any appropriate governmental agency.

**Section 9.1: Easements over Lots.** For so long as Declarant is the Owner of any Lot, the Declarant hereby reserves unto itself the right to reserve an easement to itself or grant an easement to any other entity over each Lot owned by Declarant for purposes of ingress and egress, to include drainage, utility, gas, telephone, cable TV and electrical services. With respect to an easement thus granted, the Declarant shall have and does hereby retain and reserve the right to release the Lot from the encumbrance of the easement; provided, however, that Declarant shall not have the power to release any portion of a utility easement on a Lot without the consent of the utility company providing the utilities served by that utility easement. Drainage easements and conversation easements may not be released without the prior written consent of the St. Johns River Water Management District.

**ARTICLE X  
General Provisions**

**Section 10.1: Duration and Amendment.** These Covenants shall run with and bind the land submitted or subjected hereto and shall be and remain in effect for a period of 20 years, after which time they will be automatically extended for periods of ten (10) years, and shall inure to the benefit of and be enforceable by the Declarant, the Association, the Owners and their respective legal representatives, heirs, successors and assigns, unless modified or terminated by a duly recorded written instrument executed in conformance with the requirements as described below. These Covenants may be modified or terminated only by a duly recorded written instrument executed by the President and Secretary of the Subdivision Association upon an affirmative vote of 2/3 of

the Owners, provided; however, no such amendment shall affect the right or lien of any institutional mortgagee without such mortgagee's express consent. The Declarant specifically reserves the absolute and unconditional right, so long as it owns any Lots, to amend the Declaration to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the purchases and sale of home loan mortgages or to clarify the provisions herein, without the consent of joinder of any party. Notwithstanding anything in these Covenants to the contrary, the provisions of these Covenants affecting the rights or duties of the Declarant shall not be amended or terminated at any time without the consent in writing of the Declarant. Any amendment to the covenants and restrictions which alters any provisions relating to the surface water or stormwater management systems.

Any amendment to the Covenants and Restrictions which alter the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

**Section 10.2: Notices.** Any notice required to be sent to any person pursuant to any provisions of these Covenants will be effective if such notice has been deposited in the United States mail, postage prepaid, addressed to the person for whom it is intended at his last known place of residence or to such other address as may be furnished to the Secretary of the Association. The effective date of the notice shall be the date of mailing.

**Section 10.3: Severability.** Whenever possible, each provision of these Covenants shall be interpreted in a manner that is effective and valid. If any provision of these Covenants is prohibited or held invalid, the prohibition or invalidity shall not effect any other provision which can be given effect. To this end, the provisions of these Covenants are declared to be severable.

**Section 10.4: Assignment by Declarant.** Declarant shall have the sole and exclusive right to transfer to such persons, firms or corporations, as it shall select, any or all of the easements and rights whatsoever given to or reserved by Declarant in these Covenants. All easements and rights reserved in these Covenants shall be for the benefit of Declarant, its successors and assigns.

**Section 10.5: Disputes and Construction of Terms.** In the event of any dispute arising under these Covenants, or in the event of any provision of these Covenants requiring construction, the issue shall be submitted to the Board of Directors of the Subdivision Association. The Board of Directors shall give all persons having an interest in the issue an opportunity to be heard after reasonable notice. The Board shall, when appropriate, render its decision in writing, mailing copies thereof to all parties who have noted their interest.



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**ARTICLE XI**  
**Annexation and Expansion**

**Section 11.1 Definition of "Project".** SONESTA WALK, is a residential townhome community, composed of approximately 55.15 acres, more or less, which development is referred to in this Declaration of Covenants, Conditions and Restrictions for SONESTA WALK as the "Project". It is Declarant's intent (albeit non-binding) that each phase of development in the Project will be subject to this Declaration of Covenants, Conditions and Restrictions for SONESTA WALK.

**Section 11.2: Future Phases** With respect to certain properties currently identified as Tracts F, J and P, which are part of the Plat of the Property, Declarant hereby reserves the right to Re-Plat said tracts as future phases which will create additional Lots at Declarant's option and at any such time. Declarant shall have the sole and exclusive authority to redefine the Tracts and Common Property and increase the number of Lots which are subject to these Covenants and Restrictions

**Section 11.3 Expandable Association,** Upon the recordation of this Declaration of Covenants, Conditions and Restrictions for SONESTA WALK, the SONESTA WALK Homeowners Association of Brevard County, Inc. shall have as members, all owners of Lots in SONESTA WALK, and the Properties shall be subject to the jurisdiction of the said Association, as provided in these Declaration of Covenants, Conditions and Restrictions for SONESTA WALK. The cost of maintenance, repair and operation of the Tracts and the Common Property shall be borne on an equal basis with all other Lot Owners subject to the jurisdiction of the Association, all in accordance with the Association Articles and By-Laws and the terms and conditions of this Declaration and the Amendment to the Declaration submitting additional Lots to the jurisdiction of the Association and the Declaration. The said Owners shall also have rights of use and enjoyment in and to the Tracts and Common Property as shall be coextensive with that of the Lot Owners in SONESTA WALK, according to the plat thereof, as recorded in the Public Records of Brevard County, Florida, in such a manner that the Owners of all Lots within the jurisdiction of the Association and subject to this Declaration shall have rights of use and enjoyment.

**Section 11.4 Future Development Within The Project.** The Declarant reserves to itself the sole and absolute right to determent the timing, method of ownership, and manner of development of any and all sections of the Project. In no event shall any provision of this Declaration be construed as imposing upon the Declarant any obligation whatsoever to submit to the jurisdiction of the Association and to subject to the provision of this Declaration, any portion of any Tract or Common Property, improvements or Lots other than those hereby or heretofore submitted. The consent or joinder of the Lot Owners, other than the Declarant, or any mortgage holder, shall not be required to add any Lots; or construct additional improvements to the Common Property; or subject additional lands to the jurisdiction or ownership of the Association, or subject the same to provisions of the Declaration.



**Article XII**  
**Miscellaneous**

**Section 12.1 Leases.** Article I provides that all persons who are present in the Subdivision must comply with the Covenants. In order to enforce this provision, all Owners leasing or renting their Lots shall be required to incorporate the following provision in their lease or rental agreement (substantially in the following form):

The Leased Premises are a part of a Subdivision. All persons occupying property in SONESTA WALK are required to observe the Covenants and Restrictions of the SONESTA WALK Homeowners Association Inc. Copies of all Covenants and Restrictions are to be obtained from the Landlord.

In addition, all Owners leasing their property are required to provide the Association with a copy of the lease and the names and addresses of the Landlord and the Tenant unless they are contained in the lease or rental agreement.

**Section 12.2 FHA/VA Approvals.** So long as there is a Class B membership, the following actions require the prior approval of FHA/VA: Annexation of additional properties, mergers and consolidations, mortgaging of common area, dedication of common area, dissolution and amendment of the Articles of Incorporation.

**(Signature Page to Follow)**



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IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set their hand and seal the day and year first above written.

Signed, sealed and delivered

DAIRY TOWNS  
COMMUNITY DEVELOPERS, INC.  
(The "Declarant").

in the presence of :

Mary J. Nagle  
MARY J. NAGLE

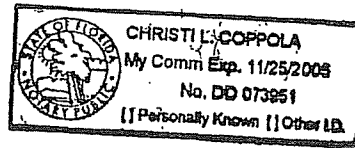
James Morris Smith, Jr.  
James Morris Smith, Jr.

STATE OF FLORIDA  
COUNTY OF BREVARD

Boaz Bar-Navon  
By: Boaz Bar-Navon

The foregoing instrument has been acknowledged before me this 3 day of June, 2004, by Boaz Bar-Navon, the Vice President of DAIRY TOWNS COMMUNITY DEVELOPERS, INC. on behalf of said corporation.

Christi L. Coppola  
NOTARY PUBLIC  
My commission expires:



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