

AMENDED DECLARATION OF PROTECTIVE COVENANTS
LELY COUNTRY CLUB - TORREY PINES
(as amended/modified 08/26/80, 05/23/06 and 6/24/14)

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AMENDED DECLARATION OF PROTECTIVE COVENANTS LELY COUNTRY CLUB - TORREY PINES

This declaration is made by Lely Estates, Inc., a Texas corporation authorized to do business in Florida, developer of certain lands in Collier County, Florida, described as:

LELY COUNTRY CLUB - Torrey Pines Section, as
filed in Plat Book 12, Page 32, of the Public Records
of Collier County, Florida (the "Subdivision"),

and identified as DEVELOPER in the Declaration of Protective Covenants, for the Subdivision, recorded in Book 751, p. 253 of the Public Records of Collier County, Florida (the "Declaration").

WHEREAS, under Article XX of the Declaration, the Owners of a majority of the Lots in the Subdivision have the right to make reasonable modifications in the covenants contained therein;
and

WHEREAS, the DEVELOPER is the Owner of a majority of Lots in the Subdivision; and

WHEREAS, the DEVELOPER declares that certain additions, deletions and changes to such covenants are necessary to assure the continued protection of the value, desirability and attractiveness of the Subdivision;

NOW THEREFORE, the DEVELOPER hereby amends the Declaration to read as follows:

Lots in the Subdivision shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are established for the sole purpose of enhancing and protecting the value, attractiveness and pleasant living quality of LELY COUNTRY CLUB - TORREY PINES Section. These covenants shall run with the land and shall be binding on all parties, whether grantees, mortgagees, devisees, heirs, personal representatives, successors or assigns or any other person claiming right, title or interest, present or future, in the described property, or any part or portion thereof.

I

DEFINITIONS

As used herein the following definitions shall apply:

1. DEVELOPER shall mean and refer to Lely Estates, Inc., a Texas corporation authorized to do business in Florida, its successors in ownership or its assigns.
2. PLAT shall mean and refer to the plan of the Subdivision described above.

3. LOT shall mean and refer to any parcel of land shown upon the plat which bears a numerical designation.

4. OWNER shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot within the Plat, but not including those having an interest merely as security for the performance of an obligation.

5. ASSOCIATION shall mean and refer to the Lely Country Club Property Owners Association, Inc., a Florida corporation not for profit.

6. DEVELOPMENT of a Lot shall mean and refer to the construction of any building permitted by this Declaration thereon.

II

LOT USAGE

All Lots within the Subdivision may only be used for single family residential purposes, which may include single family houses used as models from time to time. No building or structure of any kind shall be constructed or altered in exterior appearance, placed on the premises, or used, until the plans therefore, including the exterior color scheme, drive and other paved area plans, landscape and landscape irrigation plans, have been submitted to and approved in writing by the Association, and the Association reserves the right to reject for any reason, including aesthetic reasons. Each single-family residence shall have a minimum of 1,650 square feet of living area, exclusive of garages and open or screened porches, and shall incorporate an enclosed automobile garage for a minimum of two automobiles, which is structurally integrated with the residence. If the size of any Lot is such that a house of the above described size will not fit on such lot, then in that case the Association may permit a house of a smaller size, such smaller size to be within the discretion of the Association. Flat, built-up roofs are permitted on the rear of residences. Standing seam metal roofs are permitted in lieu of shingle or tile roofs, color and design to be approved by the Architectural Committee of the Board of Directors. Existing shingle roofs may be replaced with shingles, concrete/clay tile, or standing seam metal material, with color and design approved by the Architectural Committee of the Board of Directors. Tile roofs may only be replaced with tile or standing seam metal material, color and design approved by the Architectural Committee of the Board of Directors. All roof slopes, if changed from the existing, shall be approved by the Architectural Committee of the Board of Directors. *[as modified 05/23/06]*

III

ARCHITECTURE

All principal buildings, other than single family and duplex residences, shall be designed by a registered Florida architect.

IV

LANDSCAPING

Lot landscape design, installation and maintenance, including the unpaved street right-of-way adjacent to the Lot, shall promote and preserve the appearance, character and value of the surrounding areas. Development of all Lots, other than single family Lots, shall include landscape planning and installation supervision by a registered Florida landscape architect. The Owner, upon Development, shall install underground landscape irrigation systems which are designed to irrigate the entire landscaped portion of the Lot and the landscaped edge of the street right-of-way immediately abutting the Lot. If for any reason an Owner permits his landscaping to become unsightly the Association may take appropriate action to place it in a neat condition and in such event shall charge the Owner for the cost of the work. Such charge, until paid, will be a lien against the Lot. Vacant Lots shall be maintained by the Association from the date of closing until a building permit is obtained for such Lot, and the Association shall assess a reasonable fee for such service. Such fee shall be a lien against the Lot until paid.

V

CONSTRUCTION COMPLETION

When the physical construction of any building is started, such construction shall be prosecuted diligently and completed within a reasonable time. If for any reason, a building is not completed within 150 days from the issuance of the county building permit, or if landscaping and the landscape irrigation system are not completed within 60 days after completion of the principal building, then the Association may, after notifying the Owner of record of the premises of its intention, invade the premises and take such steps as it determines are required to correct an undesirable condition; the corrective steps taken shall be in the discretion of the Association, and may serve aesthetic, nuisance abatement, or other reasonable purposes. The Owner shall be liable for all costs incurred in such action and the total costs thereof will be a lien on the property, which lien may be foreclosed in the manner provided by law.

VI

SIGNS

No sign or advertising matter shall be placed or allowed to be placed on or adjacent to a Lot by an Owner, except one sign, of not more than two square feet in area, containing the name and address of the Owner. This prohibition shall not apply to model homes or homes under construction.

VII

POST LANTERNS, MAIL BOXES, NAME AND ADDRESS PLATES

Single family residences shall only include an Association approved gas or electric post lantern at the street property line. Address plates, resident name plates, and/or mail boxes which are not attached to the residence shall be approved by the Association and attached to the lantern standard.

VIII

MOTOR VEHICLES AND BOATS

No Owner shall park or permit to be parked, either on a Lot or within a street right-of-way within the plat, any vehicle used for commercial purposes (except vehicles of persons performing services for a Lot in the Subdivision) or containing exterior advertising matter; any swamp buggy, stock car, or other vehicle not normally used for highway travel; or any boat or trailer, except when such motor vehicle, boat or trailer is parked or stored within an enclosed garage or within a screened area wherein it is not visible from a street or an adjoining Lot. Parking at individual residences, other than in enclosed garages, either on a Lot or adjoining rights-of-way shall be limited to guests of residents and authorized service vehicles. Residents' vehicles shall be garaged or parked in the driveway.

IX

ANIMALS

No animals of any kind shall be kept on a lot or within a building on a Lot except dogs, cats, birds, etc., of the customary household pet variety, provided that no pet may be kept, bred or maintained for any commercial purpose.

X

OUTSIDE ANTENNA

No television or other antenna which is visible from the street or adjoining property is permitted unless specific approval for such is granted in writing by the Association. No such antenna will be approved once television cable is available to the Lot.

XI

OUTSIDE STORAGE

No outside storage or out building of any kind will be permitted. No structure of a temporary character, such as a trailer, tent, shack, barn or other out-buildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

XII

TRASH AND GARBAGE

Garbage containers shall either be stored within the dwelling structure or in a screened enclosure approved by the Association. Garbage containers, lawn trimmings and trash stored for pickup shall comply with garbage and trash collection service rules. With the exception of garbage and trash properly stored for pickup, no refuse or unsightly objects shall be permitted to accumulate on or adjacent to a lot. Garbage or trash burning shall not be permitted. All horticultural trimmings shall either be removed from the Lot on the day they are accumulated or stored for removal in a screened enclosure.

XIII

DRIVEWAYS

Driveways and off-street parking areas shall be paved or gravel surfaced.

XIV

GARAGE DOORS

Operable doors shall be provided for all garages. Garage doors shall be closed except when in use.

XV

CLOTHES DRYING

Clothes lines or drying yards shall be so located as not to be visible from the street or adjoining properties.

XVI

UTILITIES EASEMENTS

Developer hereby dedicates an easement along all street rights-of-way, along the rearmost ten feet of each Lot, and along the outer five feet of all side yards (where more than one Lot is used as a building site or where parts of one or more Lots are used as a building site, the outside

boundaries of said building site shall carry said side yard easement), for the installation and maintenance of drainage facilities and public utilities including water lines, butane and propane fuel lines, sewer lines, electric lines, telephone line, T.V. cable and any other pipes, lines or distributors for utilities or services to be furnished to the Lots within the Subdivision. All telephone, electric, water, sewer, fuel lines and pipes or other distributors must be underground from the Lot line to the use connection.

XVII **LOT GRADE**

The grade of any Lot, or portion thereof, may not be altered without the written consent of the Association, and the Association will have the right to withhold such consent if the proposed change of grade would be visually objectionable or would adversely affect drainage patterns.

XVIII **VEGETATION**

Any trees, shrubs or specimen vegetation shall not be removed without the written consent of the Association.

XIX **MEMBERSHIP IN ASSOCIATION** **[As Amended on 08/26/80]**

1. **ASSOCIATION MEMBERSHIP.** Each Owner of a Lot in the Subdivision is hereby made a member of the Association, and subject to all powers, duties, dues, liens and assessments which may be exercised thereby. Membership in the Association is appurtenant to ownership of a Lot and cannot be transferred or otherwise dealt with separately from such Lot.

2. **ASSOCIATION FUNCTIONS.** As more fully described in the Articles of Incorporation, the purposes of the Association are principally to carry out the duties and responsibilities imposed on the Association by this Declaration, to hold title to, improve, repair and maintain such garden areas, roads, recreational and other facilities as may be deeded to the Association for the benefit of its members, and to maintain, repair, replace, improve, operate and manage any water management system within or, to the extent permitted by this Declaration, outside but for the benefit of, the Subdivision.

3. **ASSESSMENT AND LIEN RIGHTS.** The Association shall have the power to make and collect assessments against members to defray the cost, expenses, and losses of the property owned or maintained by the Association. Each owner of a residential unit or other property interest within the Subdivision, by acceptance of a deed therefore, whether or not it shall be so expressed in any deed or other conveyance, hereby covenants and agrees to pay assessments for capital improvements as may be fixed, established and collected from time to time by the Board of Directors of the Association. The annual and special assessments, together with interest thereon and costs of collection shall be a charge on each Lot and shall be a continuing lien upon

the property against which such assessment is made. Each such assessment, together with interest thereon and costs of collection as hereinafter provided shall also be the personal obligation of the person who is the Owner of each individual Lot or undivided interest therein at the time when the assessment fell due. The assessments levied by the Association shall be used exclusively for the purposes set forth in this Declaration and in the Articles of Incorporation of the Association, and specifically for the purpose of any construction or reconstruction, unexpected repair or replacement of any of the property owned or maintained by the Association. The Board of Directors of the Association shall have the authority to consider current maintenance cost and needs of the Association and to affix annual assessments for such costs to be paid by the members of the Association. Such assessments shall be levied in accordance with subparagraph 5 below. In addition to the annual assessments, the Association may levy a special assessment applicable to that year only for the purposes of defraying in whole or in part the costs of any unexpected repair or replacement of any improvement in property owned or maintained by the Association, provided that any such assessment shall have the assent of two-thirds of the votes of the members who are voting in person or by proxy at a meeting called for that purpose. The quorum required for any action authorized by the preceding section shall be two-thirds of the members.

If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with interest thereon at eight percent and all costs of collection, including a reasonable attorneys' fee, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owners, their heirs, devisees, personal representatives and assigns. Should legal proceedings be required to enforce collection of payment of an assessment, the same may be foreclosed as a lien against the Lot against which such assessment was made in the manner provided for enforcement of liens pursuant to the laws of the State of Florida.

The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages placed upon the properties subject to the assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such property pursuant to a decree of foreclosure. Such sale shall not relieve such property from liability for any assessments thereafter becoming due or from the lien of any subsequent assessment.

4. **PROPERTY RIGHTS IN THE ASSOCIATION'S PROPERTY.** Every member of the Association, including the Developer, and all persons lawfully on and entitled to occupancy rights in any property within the Subdivision and all persons now or hereafter becoming fee owners of an interest in and to property within the Subdivision shall have and are hereby given a right and perpetual easement of enjoyment in and to the lands owned by the Association.

5. **SHARE OF OWNERSHIP.** The undivided share of assets owned by the Association appurtenant to each residential unit in the subdivision, and the fraction of sharing common expenses initially, shall be 1/62.

XX

MODIFICATION OF COVENANTS

Reasonable modifications to these covenants may be made from time to time by the Owners of a majority of Lots in the Subdivision, either by way of additions, deletions or changes, so that they may better assure the protection of the value, desirability and attractiveness of the Subdivision, except that after 30% of the Lots in the Subdivision have been sold or 3 years from the date of first sale, whichever first occurs, Lots owned by the Developer shall not be counted for purposes of determining either the total number of Lots or the existence of a majority. These covenants are supplemental to and independent of any zoning, present or future, of the County of Collier. No variance or zoning change permitted by the county shall in any way be construed to reduce or modify the covenants contained herein.

XXI

ACCEPTANCE OF COVENANTS BY LOT OWNERS

Each Owner, by accepting an interest in any Lot, hereby and thereby agrees to be bound by all the conditions, limitations, reservations and restrictions as contained herein, and in the event of a breach agrees to pay all costs, including a reasonable attorneys' fee, for the enforcement of these covenants.

XXII

REMEDIES

In the event of a violation or breach of any of these restrictive covenants, the Association shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation, restriction, condition or limitation herein contained, however long contained, shall not be deemed a waiver of the right to do so thereafter. The invalidation by a court of any covenant herein contained shall not in any way affect any of the other covenants, which shall remain in full force and effect. Any delinquent Owner agrees to pay a reasonable attorneys' fee for the enforcement of these use restrictions.

XXIII

MAINTENANCE OF OFF-SITE DRAINAGE

[As added by Amendment of 08/26/80]

A portion of the drainage system for the Subdivision is located on golf course property adjacent to the Subdivision and owned by the Developer, which property is more particularly identified as follows:

Tracts A and B as shown on the Plat of LELY

COUNTRY CLUB as described in Collier County Ordinance No. 76-41 and recorded in OR Book 663, Pages 281-330 of the Public Records of Collier County, Florida ("Golf Course Property").

Developer, for itself and for its successors in ownership to the Golf Course Property, hereby covenants and agrees with the Owners of Lots in the Subdivision that (1) if the surface water management system is not maintained in accordance with the surface water management permit ("permit") issued by the South Florida Water Management District, and (2) if the Developer and Collier County should each fail to correct such condition, the Association, at its own expense, shall have the right to enter on the golf course property and to correct the nuisance or condition. The issue of whether the operation of the surface water management system is in compliance with the permit shall be determined solely by the South Florida Water Management District.

IN WITNESS THEREOF, LELY ESTATES, INC., has caused this Amended Declaration of Protective Covenants to be signed by its duly authorized officer and its corporate seal affixed hereto this 15th day of January, 1978.

Signed in the presence of:

LELY ESTATES, INC.

s/ _____

s/ _____

Christiaan W. Duvekot
Executive Vice-President

s/ _____

(SEAL)

STATE OF FLORIDA)

) ss:

COUNTY OF DADE)

I HEREBY CERTIFY that on this day, before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared the above named CHRISTIAAN W. DUVEKOT, well known to me to be the person described as Executive Vice-President of the above named corporation well known to me to be the person who executed the foregoing Amended Declaration of Protective Covenants in the name of and for that corporation.

WITNESS my hand and official seal in the County and State named above this 15th day of January, 1978.

s/ _____
Notary Public