

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
CLUB HOMES III
AT HERITAGE GREENS**

THIS DECLARATION is made this 2nd day of August, 2001, by U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, (the "Declarant") for itself and its successors, grantees and assigns.

2837875 OR: 2871 PG: 1657
RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
08/06/2001 at 11:58AM DWIGHT B. BROCK, CLERK
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Retn:
SWALM & BOURGEOU
2375 TAMIAHI TR N #300
NAPLES FL 34103

(for use by Clerk of Court)

PREMISES:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" to this Declaration, and desires to create thereon a residential neighborhood of up to forty-two (42) single family Villas, grouped in pairs of attached residences; and

WHEREAS, Declarant desires to preserve the values and ensure the maintenance of the amenities in the Neighborhood, and to create a corporate entity to which will be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, maintaining the Neighborhood Common Areas and insuring the improvements, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has created under the laws of the State of Florida, a corporation not for profit known as Club Homes III at Heritage Greens Association, Inc., for the purpose of exercising the aforesaid functions;

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

1. DEFINITIONS. Certain words and phrases used in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions and Restrictions for Heritage Greens, as originally recorded in the Official Records of Collier County, Florida, in Book 2337, at Pages 619, *et seq.*, of the Official Records of Collier County, Florida (the "Community Declaration"), as the same is amended from time to time, and the meanings stated below, unless the context clearly requires a different interpretation.

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1.1 "**Architectural Review Board**" or "**ARB**" means the committee described in Section 6 of the Community Declaration.

1.2 "**Association**" means Club Homes III at Heritage Greens Association, Inc., a Florida corporation not for profit.

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

1.4 "**CDD**" means Heritage Greens Community Development District.

1.5 "**Club Homes III at Heritage Greens**" means, and is the name of, the Properties.

1.6 "**Community Association**" means Heritage Greens Community Association, Inc., a Florida corporation not for profit.

1.7 "**Community Declaration**" means the Declaration of Covenants, Conditions and Restrictions for Heritage Greens, as originally recorded in Book 2337, at Pages 619 *et seq.*, of the Official Records of Collier County, Florida, as amended from time to time.

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

1.9 "**Declarant**" or "**Developer**" means U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, which in this case is both the Declarant and the Developer. Wherever either term is used in this Declaration, or in the Articles or Bylaws of the Association, it shall always be deemed to include any successor in interest to the U.S. Home's development rights and obligations.

1.10 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Club Homes III at Heritage Greens, as amended from time to time.

1.11 "**Family**" or "**Single Family**" means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly and regularly reside together as a single housekeeping unit, each of whom is related by blood, marriage, or adoption to each of the others.

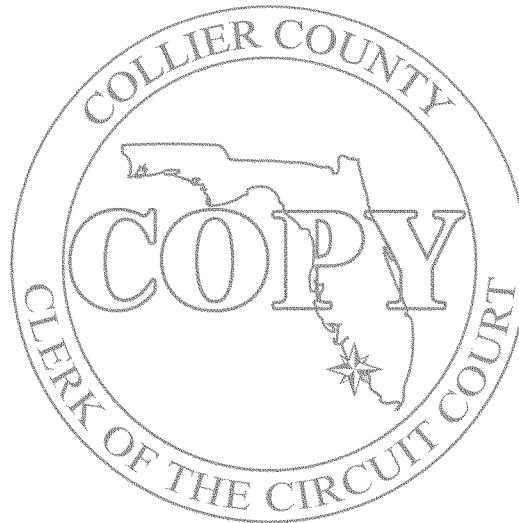
(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them not more than one person who is not so related to some or all of the others.

1.12 "**Governing Documents**" means the Community Declaration, and the Articles of Incorporation and Bylaws of the Community Association, as well as this Declaration, and the Articles of Incorporation and Bylaws of the Association. If there is irreconcilable conflict in the interpretation of provisions in any two (2) of these Governing Documents, the order of priority shall be the same as the order in which they appear in this Section 1.12.

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1.13 "Guest" means a person who is physically present in, or occupies a Villa on a temporary basis at the invitation of the owner or another legally permitted occupant, without the payment of consideration.



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1.14 "Institutional Mortgagee" means:

(A) a lending institution having a first mortgage lien upon a Lot, Living Unit or Parcel, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or privately-owned corporation or other entity that is engaged in the business of buying, selling, holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration) which holds, guarantees or insures a first mortgage upon a Lot, Living Unit or Parcel; or

(C) the Developer, and any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Developer to acquire, develop, or construct improvements in the Community, and who hold a lien on all or a portion of the Community securing such loan. An "**Institutional Mortgage**" is any recorded mortgage encumbering a Lot or Living Unit, held by an Institutional Mortgagee.

1.15 "Lease" means the grant by a Villa owner or primary occupant to another person of a right to occupy the owner's Villa for valuable consideration.

1.16 "Living Unit" or "Villa" means any or all the forty-two (42) Villa residences which are, or will be, constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever either term is used, it shall be interpreted as though it were followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

1.17 "Lot" means one or more of the forty-two (42) numbered parcels of land, as graphically shown in Exhibit "B" hereto, into which the Properties have been subdivided, upon each of which a Living Unit has been, or is intended to be, constructed. Wherever "Lot" is used, it shall be interpreted as though it were followed by the words "and the Living Unit constructed thereon," unless the context clearly requires another meaning.

1.18 "Neighborhood Common Areas" means all portions of the Properties exclusive of the Lots.

1.19 "Occupant," when used in connection with a Villa, means a person who uses a Villa as his place of abode for two or more consecutive days. "**Occupy**" means the act of being an occupant.

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

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

1.22 "Properties" or "Neighborhood" means all real property described in Exhibit "A," which is subject to this Declaration, including both Neighborhood Common Areas and the Lots.

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

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

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

1.26 "Villas Documents" means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

1.27 "Voting Group" means a group of members of the Community Association who are represented by one (1) or more Trustees of the Community Association, as more particularly described in Section 11.7 of the Community Declaration, and in a Supplemental Declaration to be recorded as provided therein.

1.27 "Voting Representative" means the representative selected by owners in this Neighborhood to be responsible for casting the votes of this Neighborhood in all Community Association matters other than the election of Trustees.

2. CONTINUING DEVELOPMENT. This Neighborhood is being developed by the Declarant into Lots intended for "zero lot line" cluster housing. Other areas of Heritage Greens will contain other types of residential development, and may be under construction for an extended time. Incident to the development process, the quiet enjoyment of the Properties may unavoidably be interfered with to some extent by construction and sales operations. From time to time, Declarant and others may present to the public certain renderings, plans, and models showing possible future development of Heritage Greens. Declarant does not warrant in any way the accuracy of these renderings, plans or models. They are primarily thematic and do not represent a guaranteed final development plan of Heritage Greens.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The operation of the Neighborhood, and the management and ownership of the Neighborhood Common Areas shall be by Club Homes III at Heritage Greens Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

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

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

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3.3 Delegation of Management. The Association may contract for the management and maintenance of the Properties and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance of the Neighborhood Common Areas, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents and in Chapter 617 and 720, Florida Statutes, as amended.

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

3.5 Association As Owner of Lots. The Association has the power to purchase Lots and Living Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests.

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

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

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

3.9 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 617, Florida Statutes, as amended. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.10 Community Association Voting. All votes of the members pertaining to the Community Association, except in the election of Trustees, shall be cast by the Voting Representative of this Neighborhood Association, as further provided in Sections 3.12 and 3.13 of the Bylaws. The failure of the Voting Representative to cast votes in the manner instructed by the Association or its members shall not invalidate the votes as cast. Nothing herein shall be construed to require or prohibit the use of secret ballots. Votes

of the Declarant Member shall be cast by its designated representative. Voting in the election of Trustees shall be by ballots the members personally cast, as further provided in the Bylaws.

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

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

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

3.13 Termination of the Association. If the Association no longer exists for any reason, and if no other similar entity has assumed its duties and functions, the Community Association shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

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

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

- (A) the Lot's share of annual assessments based on the annual budget of common expenses adopted by the Association;
- (B) the Lot's share of special assessments for Association expenditures not provided for in the annual budget; and
- (C) any special charge against one or more Lots specifically authorized in this Declaration or the Bylaws.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The obligation to pay the assessments provided for herein commences as to each Lot on the day of the first conveyance of the Lot to an owner other than the Developer, except that no Lot shall be subject to assessment until a certificate of occupancy or like authorization has been issued by the county as to the Villa located on the Lot. The annual assessments, special assessments and special charges, together with interest, late payment fees, costs, and reasonable attorney's fees, shall be the personal obligation of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title to a Lot, voluntary or otherwise, the new owner shall be jointly and severally liable with the previous owner for all unpaid assessments and charges coming due prior to the time of such conveyance, without prejudice to the right of the new owner to recover from the previous owner any such amounts paid by the new owner. Except as provided in Section 4.3 below as to the Developer, and in Section 4.6 below as to certain persons acquiring title through foreclosure, or deed in lieu of foreclosure, of a first mortgage, no owner may be excused from the payment of assessments and charges unless all owners are similarly excused.

4.2 Share of Assessments. Each Lot and its owner(s) are liable for a share of all annual and special assessments levied by the Association, which share shall be a fraction of the whole, the numerator of which is the number "one" (1) and the denominator of which is the actual number of Lots in the Neighborhood. Until the development of the Neighborhood is completed, and all Villas have been sold to purchasers other than a developer, the denominator shall be conclusively presumed to be the number "forty-two (42)."

4.3 Application of payments; failure to pay; interest. Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees, and costs, and finally to unpaid assessments, in such manner as determined by law. A payment by check may be deemed received only after the check has cleared.

4.4 Establishment of Liens to Secure Payment. Any and all assessments and charges levied by the Association, together with interest at the highest rate allowed by law, and other costs and collection (including, but not limited to attorney's fees) are hereby declared to be a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made. The lien relates back to the date of recording this Declaration, and is superior to any Homestead rights any owner may acquire. No owner may exempt himself from personal liability, or release the Lot owned by him from the liens and charges hereof

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by waiving the use and enjoyment of the Common Areas, or by abandoning the Villa. The lien is perfected by the Association by recording a Claim of Lien in the Public Records of the county, setting forth the amount and due date of each unpaid assessment or charge. To be valid the Claim of Lien must be signed by an officer or authorized agent of the Association, and must contain the legal description of the Lot. A recorded Claim of Lien secures payment of all assessments or charges due at the time of recording, as well as all assessments or charges coming due subsequently, including all interest, late payment fees, attorney's fees and costs incident to the collection process, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a satisfaction.

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

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

(A) To charge interest on the unpaid amount, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment fee of up to five percent (5%) of the delinquent amount. This fee shall not be considered a "fine" as provided for in Section 11.3 below, and the procedural requirements for levying fines shall not apply to the imposition of late payment fees.

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

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

(D) To bring an action at law for a money judgment against the owner, without waiving any lien foreclosure rights.

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The Association may refuse any tendered payment that bears a restrictive endorsement, and such will be the equivalent of no payment. Payment by check is not deemed received until the check has cleared.

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

4.8 Developer's Guarantee of Assessments and Share for Lots Owned By It. The Developer guarantees that from the recording of this Declaration in the public records of the County, until December 31, 2001, or until such earlier date as owners other than the Developer first elect at least a majority of the Directors of the Association as provided in Section 16 of this Declaration (the "turnover date"), assessments against the Lots for all Association purposes will not exceed \$384.00 per quarter (\$128.00 per month). If the turnover date has not occurred by December 31, 2001, then the Developer further guarantees that from January 1, 2003, until the first to occur of the turnover date or December 31, 2003, assessments against the Lots will not exceed \$441.60 per quarter (\$147.20 per month). If the turnover date has not occurred by December 31, 2003, then the Developer further guarantees that from January 1, 2004, until the turnover date, assessments against the Lots will not exceed \$507.84 per quarter (\$169.28 per month). During this guarantee period, the Developer shall be excused from the payment of assessments for Lots owned by it, and instead shall be obligated to pay all Association expenses actually incurred which exceed assessments receivable from all other owners at the guaranteed level, less other Association revenues from all other sources. Such difference (if any), shall not include the cost of funding reserves for operating expenses, depreciation, capital expenditures or deferred maintenance. After this guarantee period, the Developer shall have the same responsibility to pay assessments on Lots with completed Villas for which a certificate of occupancy has been issued as any other owner.

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

6. APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.

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

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

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

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

(D) Membership and voting rights in the Community Association, and the non-exclusive right to use Community Association Common Areas, subject to the restrictions and limitations provided in the Governing Documents.

(E) Other appurtenances as may be provided in the Governing Documents.

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

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

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

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

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

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

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

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

6.5 Easements. Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot is subject to a permanent easement in favor of all other portions of the Properties for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

(A) **Utility and other Easements.** The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, and to

relocate any existing easements in any portion of the Properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

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

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

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

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

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

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

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6.6 Easements for Playing Golf. Non-specific, non-exclusive easements are hereby created over all Lots, Living Units and the Neighborhood Common Areas to permit every act necessary, incidental, or appropriate to the playing of golf. These acts include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across Lots, Living Units or Common Areas, the landing of errant golf balls upon the Lots, Living Units or Common Areas, the use of necessary and usual golf carts and maintenance equipment, the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course. The Association shall not be liable for damage to persons or property from errant golf balls.

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

7. MAINTENANCE; IMPROVEMENTS.

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

7.2 Maintenance of Lots and Villas.

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

(B) **Villas.** The Association shall clean and provide ordinary maintenance, repair and replacement of the roofs, structural components and the exterior walls and other surfaces of the Villas and appurtenant structures such as privacy walls and garages, the need for which is caused by normal wear and tear and weathering keeping the appearance of the same in a condition comparable to the condition of such improvements at the time of their initial construction, except for normal weathering, wear and tear. The cost shall be a common expense. Painting the outside of exterior doors, door and window frames and exterior caulking, are Association responsibilities. Maintenance, repair and replacement of mailboxes and street lighting is the Association's responsibility. Otherwise the maintenance, repair and replacement of the Villas is the responsibility of the owners thereof. The owner of each Villa shall maintain, repair and replace, at his own expense, all portions of his Villa except those portions specifically required to be maintained, repaired and replaced by the Association. Specifically it is the owner's responsibility to repair, reconstruct or replace all damage resulting from windstorm, fire, flood, hail, hurricanes, sinkholes,

and other natural disasters, acts of God, and casualties that are or could be covered by property insurance carried by the owner under Section 8.1 below. The owner is responsible for any deductibles. By way of illustration, and not limitation, the owner's responsibilities include:

- (1) Windows, glass and screens, doors, door and window frames, hardware and locks.
- (2) All wiring, plumbing, and electrical or mechanical equipment or fixtures which serve only the Villa, regardless of location.
- (3) Pools, pool cages and related structures and improvements.

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

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

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

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

and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

7.6 Alterations and Additions. Funds necessary for material alterations or substantial additions to the Neighborhood Common Areas by the Neighborhood Association may be levied as special assessments by the Association only upon prior approval by a majority of the whole Board of Directors and approval by two-thirds (2/3rds) of the voting interests present and voting at a meeting called for the purpose. Prior to the commencement of any such project relating to the Neighborhood Common Areas or to the buildings, the Association shall obtain the written approval of the ARB. However, if changes that are necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval by the owners is necessary.

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

7.8 Hurricane Shutters. Notwithstanding anything to the contrary above, the Board of Directors shall adopt, with the approval of the ARB, a model, style and color of hurricane shutter as a standard for use in the Properties. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors and approved by the ARB shall be used.

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

8.1 By the Villa Owner. The owner of each Villa is responsible for insuring:

(A) the contents of his own Villa, and the personal property therein;

(B) all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the Villa and required to be repaired or replaced by the owner; and

(C) all alterations, additions and improvements made to the Lot or the Villa by the owner or his predecessors in title, including any swimming pool, spa, screening and related fixtures, equipment and installations.

Each Villa owner is expected to carry at his own expense adequate homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property, or liability to others, that might otherwise be covered by such insurance.

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8.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force any insurance coverage which it is required to carry by law and under the Governing Documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The insurance may be subject to reasonable and customary deductibles. To the extent permitted by law, the Association may self-insure.

8.3 Required Coverage. The Association shall maintain adequate insurance covering the buildings and other improvements on the property that the Association is required to insure, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors in the exercise of its good business judgment, such insurance to afford at least the following protection:

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

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Villa owners as a group to a Villa owner.

(C) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) Officers and Directors Liability Insurance. in such limits of protection and with such coverage as may be determined by the Board of Directors.

8.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Villa owners. Some of the more common options include:

(A) Workers' Compensation insurance (if required by law).

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Flood Insurance.

(D) Leakage, seepage and wind-driven rain.

(E) Endorsement for loss by operation of local ordinance.

8.5 Description of Coverages. A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection and copying by Villa owners or their authorized representatives upon request.

8.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Villa owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

8.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Villa owners and their mortgagees, as their respective interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse the proceeds for the purposes stated herein and for the benefit of the Villa owners and their respective mortgagees in the following shares:

(A) Common Areas. Proceeds on account of damage to improvements to the Common Areas shall be held in as many undivided shares as there are Villas, the shares of each Villa owner being the same.

(B) Villas. Proceeds received on account of damage to or within the Villas shall be held in prorated shares, based on the amount of damage to or within each damaged Villa as a percentage of the total damage to or within all Villas.

(C) Mortgagee. If a mortgagee endorsement has been issued as to a Villa, the shares of the mortgagee and the Villa owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a Villa, unless insurance proceeds on account of damage to that Villa are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid or borne by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

8.8 Distribution of Proceeds. Insurance proceeds from Association policies shall be distributed to or for the benefit of the Villa owners in the following manner:

(A) Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) Cost of Repair or Reconstruction. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the costs as provided in Sections 8.7 (A) and (B). Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to Villa owners and their mortgagees being paid jointly to them.

(C) Failure to Repair or Reconstruct. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to Villa owners and their mortgagees being payable jointly to them.

8.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each Villa owner to adjust all claims arising under insurance policies purchased by the Association.

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9. PARTY WALLS.

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

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

9.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who uses the wall may restore it, and if any other owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the repair obligations of the Association under Section 9.1 above.

9.4 Weatherproofing. Notwithstanding any other provision of this Section 9, an owner who by his negligent or willful act or failure to act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements, as well as liability for consequential damages.

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

9.6 Binding Arbitration. Any dispute concerning a party wall must be submitted to arbitration under Chapter 682, Florida Statutes, before a lawsuit can be filed. Each party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

10. REPAIR OR RECONSTRUCTION AFTER CASUALTY. If any part of the Properties is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

10.1 Damage to Villas. Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged Villa(s) in shares proportional to the amount of damage in each Villa. The owner(s) of the damaged Villa(s) shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault. All such repairs or replacements must restore the improvements to substantially their original character, design and condition; shall utilize and conform with the original foundation and boundary of the original improvements; and shall be structurally compatible with any adjoining improvements which share a party wall as that term is defined in Section 9.1 above.

10.2 Damage to Neighborhood Common Areas. Where loss or damage occurs to the Neighborhood Common Areas, it shall be mandatory for the Association to repair, rebuild and repair the damage and the following procedures shall apply:

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(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Neighborhood Common Areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Villa owners for the deficiency. Such special assessments need not be approved by the owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

10.3 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair and reconstruction, such balance shall become part of the common surplus.

10.4 Equitable Relief. If damage to the Properties renders any unit uninhabitable, and if repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable Villa may petition a court for equitable relief, which may include partition. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

10.5 Plans and Specifications. Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original Villas, or according to different plans and specifications approved by the Board of Directors, by the owners of at least three-fourths (3/4ths) of the Villas, by the ARB, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Villa without the consent of the unit owner and his institutional mortgagee, if any.

11. GENERAL COVENANTS AND USE RESTRICTIONS.

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

11.2 Occupancy of Villa when Owner is not in Residence. An owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Villa in his absence. Except as otherwise provided in Section 13.1 below, this provision is not intended to allow any owner to use his Villa as short-term transient accommodations for several individuals of families. The owner must register

all guests with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The owner is responsible for the conduct of his guests. When the owner is not in residence, no more than six (6) overnight occupants are allowed at any time.

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

- (A) The lease must be written, and a fully executed copy must be provided to the Association not less than fifteen (15) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.
- (B) No lease may be for a period of less than thirty (30) consecutive days.
- (C) No more than six (6) overnight occupants are allowed in a leased Villa.
- (D) No subleasing or assignment of lease rights is allowed.
- (E) No one but the lessee and the lessee's spouse if any, and their unmarried children who live with their parents, may occupy the unit during a lease.

All of the provisions of the Villas Documents and the Rules and Regulations of the Association pertaining to use and occupancy of the Villas shall be applicable to and enforceable against any person occupying a 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 Villas 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 VILLAS OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A VILLA MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

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

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

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11.6 Signs. In order to maintain an attractive community, no sign, banner, advertisement or poster (including "open house", "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed, in, on or upon any part of the Properties. This provision includes signs inside of Villa windows or the windows of motor vehicles. This Section 11.6 shall not apply to signs used by Developer or its agents to market Villas owned by Developer.

11.7 Appearance; Refuse Disposal. Each owner shall keep his Lot and Villa free of trash and debris, and shall reasonably maintain his Villa. Personal property of residents shall not be left on the lawns or landscaped areas outside the Villas. Trash, garbage or other waste must be kept in appropriate containers suitably screened from view from the street and adjacent Lots. Porches, and lanais shall be used only for the purposes intended, and shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

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

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

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

11.11 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved by the Developer. Maintenance and repair of all driveways, parking and other paved parking facilities shall be the responsibility of the Association. Driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

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

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

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

11.15 Parking and Storage of Vehicles. Except for service vehicles temporarily present on business, no commercial truck or other commercial vehicle, or any boat, trailer, semi-trailer, recreation vehicle, motorcycle, house trailer, mobile home, motor home, bus, tractor, or any other such vehicle may be parked, stored or kept anywhere in the Neighborhood, unless it is enclosed within a garage. No person may park, store or keep any motor vehicle on grassed or landscaped areas, or any place outside of paved driveways, garages, or other designated parking areas. Vehicles which are in wrecked, junked, partially dismantled, inoperative or abandoned condition, whether attended or not, and those not bearing current license plates, are not permitted on the Properties. Guest parking may be limited in some areas, so each owner is specifically cautioned that he and all other occupants of his Villa may be limited or restricted as to the number of motor vehicles they may park or keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the Properties. For purposes of this paragraph "kept" shall mean present in the Neighborhood for either a period longer than twelve (12) consecutive hours or overnight, whichever is less. No house trailer, mobile home, motor home and the like may be kept more than two (2) times in any month. Any vehicle parked in violation of this Section is subject to being towed away at the owner's expense without further warning.

11.16 Antennas, Radio Equipment and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, unless expressly approved in writing by the ARB, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Community Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Community Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location meet all ARB guidelines and restrictions. No approved flagpole shall be used to mount an antenna. It is the intent of this Section 11.16 to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment, as well as to prevent or limit the proliferation of unsightly antennae. This Section 10.16 shall not apply to the Developer or its agents marketing Villas owned by Developer.

11.17 SOME OR ALL LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION

PROGRAM INCLUDED IN THE CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. PROPERTY OWNERS ARE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WHICH MAINTENANCE WILL BE MAINTAINED TO THE GREATEST DEGREE LAWFUL BY THE COMMUNITY ASSOCIATION.

No person shall undertake or perform any activity in Conservation Areas described in the approved permits and Plats of Heritage Greens, or remove native vegetation that becomes established within the Conservation Areas and without prior written approval of the ARB, the County, and the South Florida Water Management District. Prohibited activities within Conservation Areas include the removal of native vegetation, excavation, placement or dumping of soil, trash or land clearing debris, and construction or maintenance of any building, Unit or other structure. "Removal of native vegetation" includes dredging, application of herbicides, and cutting.

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

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

12. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every owner, and all guests, tenants and occupants of Villas, shall at all times comply with Chapter 617, Florida Statutes, particularly Sections 617.301-617.312 (1999), the Governing Documents, and the rules of the Association. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, this Chapter 617, the Governing Documents of the Neighborhood, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against:

(A) The Association;

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(B) A member;

(C) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and

(D) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover its reasonable attorney's fees and costs, including those incurred in appellate proceedings. This Section is not intended to deprive any person of any other available rights or remedies.

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

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

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

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

(B) The procedures of this subsection do not apply to the imposition of late payment fees, interest, suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due.

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

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

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

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

13. THE COMMUNITY ASSOCIATION. By taking title to a Lot, the owner also becomes a member of Heritage Greens Community Association, Inc. (The "Community Association") and is subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for Heritage Greens, as originally recorded in Book 2337, at Pages 619 *et seq.*, of the Official Records of Collier County, Florida, (the "Community Declaration"), as it may be amended from time to time.

13.1 Community Association Assessments. Pursuant to the Community Declaration, the Community Association has the right to assess its members for all expenses incurred in the performance of its duties. These assessments are collected directly by the Community Association from each member.

13.2 Voting in Community Association Affairs; Voting Representative. In accordance with the provisions of the Governing Documents, all owners are automatically and irrevocably members of the Community Association. Notwithstanding such membership, only representative members, known as the "Voting Representatives," shall be entitled to vote on behalf of all members of this Association, at meetings of the members of the Community Association, as further provided in the Community Declaration. "Voting Representative" means the Declarant (as to the votes allocated the Declarant Member) and the authorized designee of the Association (as to the votes allocated to Regular Members).

13.3 Notices to Community Association. Copies of all amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, and any easements or conveyances affecting the Common Areas, shall be forwarded to the Community Association no later than fifteen (15) days after recording in the Official Records of the County. The Association shall also provide a current list of the names and mailing address of all owners within fifteen (15) days after receiving a written request for same from the Community Association.

14. TRANSFERS OF OWNERSHIP OF LOTS AND VILLAS. In order to foster a community of congenial, financially responsible residents with the objectives of inhibiting transiency, protecting the value of the Villas and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Villa by an owner other than the Developer shall be subject to the following restrictions, which each owner covenants to observe:

14.1 Forms of Ownership.

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

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

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

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

14.2 Transfers.

(A) Sale or Gift. No owner may effectively convey title to a Villa or any interest therein by sale or gift without the prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any owner acquires his title by devise or inheritance, his right to occupy or use the Villa shall be subject to the approval of the Association. The approval of the Association shall not be denied to any devisee or heir who was the decedent's lawful spouse or related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy the Villa shall be subject to the approval of the Association by the procedure outlined in Section 14.3 below.

14.3 Procedures.

(A) Notice to Association.

(1) Sale or gift. An owner intending to make a sale or gift of his Villa or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20)

days prior to the date of the proposed transfer, together with the name, and address of the proposed purchaser or donee and such other information as the Board may reasonably require.

(2) Devise, Inheritance, or Other Transfers. The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the Villa following the procedures provided in this Declaration.

(3) Failure to give Notice. If no notice is given, the Association shall review the circumstances when it learns of the change of ownership, and may disapprove the transfer if it appears the failure to seek or obtain approval is indicative of an attitude by the new owner of disrespect for rules. If it disapproves, the Association shall proceed as if it received notice of the transfer on the date of disapproval. The proposed transferee may provide the Board with the required notice and request reconsideration.

(B) Board Action: Approval. Within twenty (20) days of receipt of the required notice and all information requested, but not later than sixty (60) days after receipt of the notice, whichever occurs first, the Board must approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee or the closing agent. If the Board neither approves or disapproves within twenty (20) days, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval.

(C) Disapproval.

(1) The Board may disapprove a transfer of ownership only if a majority of the whole Board so votes, after receiving a written opinion of counsel that such disapproval is for a good cause. Only the following shall be deemed to constitute good cause:

(a) The application for approval on its face indicates that the person seeking approval is likely to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Neighborhood;

(b) The person seeking approval has a history of disruptive behavior or an attitude of disregard for the rights and property of others, as evidenced by his conduct in other social organizations or associations, or by his conduct as a tenant, owner or occupant of a Living Unit in Heritage Greens; or

(c) The person seeking approval failed to provide the information or make the appearance required to process the application in a timely manner, or concluded the transaction without obtaining approval.

14.4 Exception. The provisions of Sections 14.2 and 14.3 do not require Association approval of transfers of ownership by the Developer or of the acquisition of title by any person who acquires title through an institutional mortgage, whether at a public sale resulting from foreclosure of the mortgage, or by deed in lieu of foreclosure; however, Association approval is required for transfers of title by that person.

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14.5 Unapproved Transfers. Any sale or other transfer of ownership which is not approved pursuant to the terms of this Declaration shall be void or voidable, unless subsequently approved by the Board.

15. DEVELOPER'S RIGHTS AND DUTIES. Except as otherwise expressly required by law, as long as the Developer is offering Lots in the Neighborhood for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary:

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

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

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

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

THE DEVELOPER, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED IN LAW OR IN FACT, WITH RESPECT TO THE LIVING UNITS AND OTHER IMPROVEMENTS, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC

PERFORMANCE OR OPERATION OF THE MATERIALS, FURNITURE OR EQUIPMENT USED IN THE COMMON AREAS AND FACILITIES.

16. TURNOVER OF CONTROL.

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

16.2 Procedure for Calling Turnover Meeting. No more than 75 days and no less than 60 days prior to the Turnover Meeting, the Association shall notify in writing all members of the date, time and place of the Turnover Meeting. The turnover meeting, regardless of any contrary provision in the Bylaws, shall be deemed the annual meeting for the year in which it occurs, unless the annual meeting has already been held.

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

17. DURATION OF COVENANTS; AMENDMENT OF DECLARATION.

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

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

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

17.4 Certificate: Recording. A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Official Records where this Declaration is recorded, and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Official Records of the County.

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

18. GENERAL PROVISIONS.

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

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

18.3 Headings and Capitalization. The headings of the sections subsections, paragraphs and subparagraphs herein, the use of bold print or italics, and the capitalization of certain words, are for emphasis and ease of reading only, and are not intended to affect the meaning or interpretation of the contents.

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

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

IN WITNESS WHEREOF, U.S. Home Corporation, a Delaware corporation, does hereby execute this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized agent, this 2nd day of August, 2001.

Barbara J. Upton
Witness
Print name: BARBARA J. UPTON

U.S. HOME CORPORATION,
a Delaware corporation

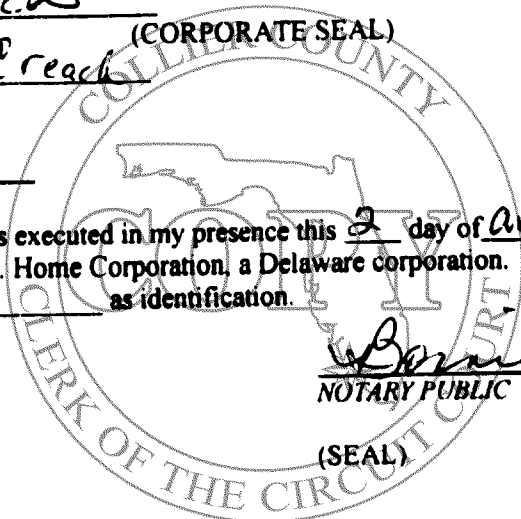
Alan R. Burns
Alan R. Burns
Vice President
10481 Six Mile Cypress Pkwy., Suite 101
Ft. Myers, Florida 33912

Bonnie Creach
Witness
Print Name: BONNIE Creach

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF Fla

The foregoing instrument was executed in my presence this 2 day of Aug, 2001, by Alan R. Burns, Vice President of U.S. Home Corporation, a Delaware corporation. He is personally known to me, or did produce _____ as identification.



Bonnie Creach
NOTARY PUBLIC

(SEAL)



Bonnie G. Creach
Commission # CC 906398
Expires Feb. 21, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

**LEGAL DESCRIPTION
CLUB HOMES III AT HERITAGE GREENS**

**Lots 1 through 42, inclusive, Block "D," of the plat of Heritage Greens, as recorded in Plat Book 28,
Pages 78 through 94, inclusive, Public Records of Collier County, Florida.**



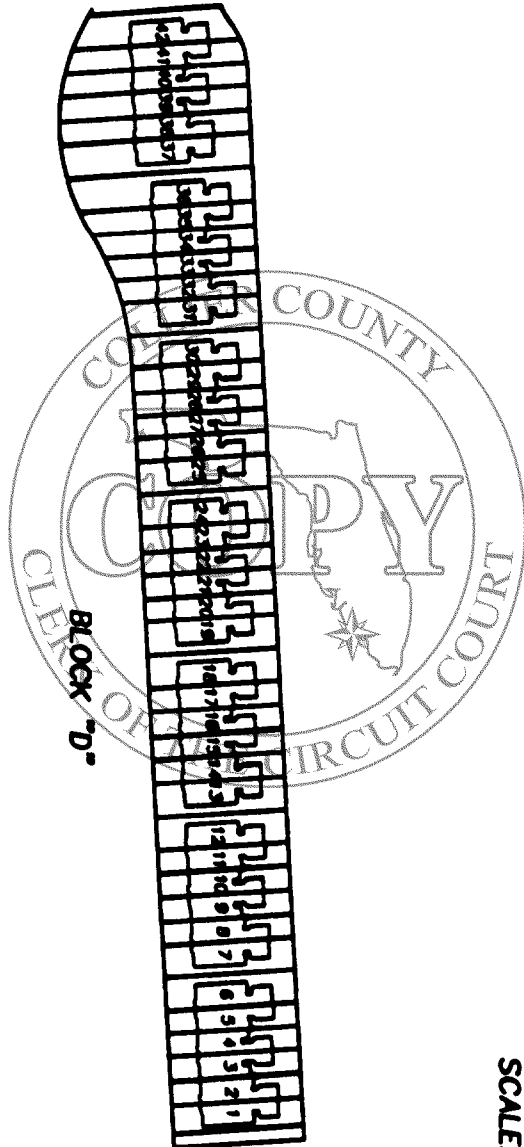
EXHIBIT "A"

**CLUB HOMES II HERITAGE GREENS
EXHIBIT TO DECLARATION**

**EXHIBIT "B"
SHEET 1 of 1**



SCALE: 1" = 200'



**ACAD 6338-Z.DWG
SEPTEMBER 25, 1997**

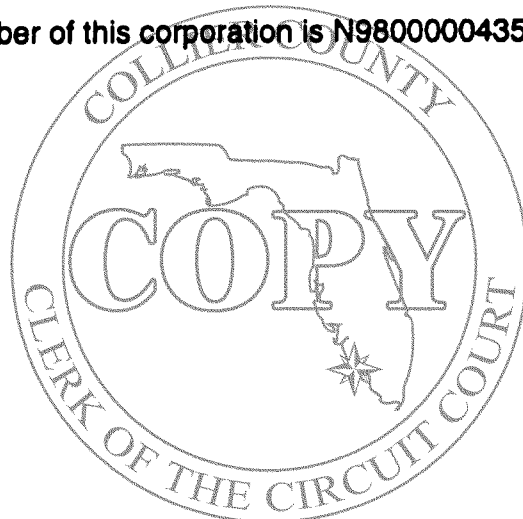
State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of CLUB HOMES III HERITAGE GREENS ASSOCIATION, INC., a Florida corporation, filed on July 27, 1998, as shown by the records of this office.

The document number of this corporation is N98000004351.



OR: 2871 PG: 1691

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Twenty-eighth day of July, 1998



CR2EO22 (2-95)

A handwritten signature in cursive script, reading "Sandra B. Northam".

Sandra B. Northam
Secretary of State

**ARTICLES OF INCORPORATION
OF
CLUB HOMES III AT HERITAGE GREENS ASSOCIATION, INC.**

Pursuant to Section 617.01201, Florida Statutes (1997), these Articles of Incorporation are created by Anthony Persichilli, 10491 Six Mile Cypress Pky., Suite 101, Ft. Myers, Florida 33912, as sole Incorporator, for the purposes set forth below.

ARTICLE I

NAME: The name of the corporation is Club Homes III at Heritage Greens Association, Inc., sometimes hereinafter referred to as the "Association."

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation is located at 10491 Six Mile Cypress Pky., Suite 101, Ft. Myers, Florida 33912.

ARTICLE III

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit and will make no distribution of its income to its members, officers or Directors. It is a corporation not for profit organized on a non-stock basis for the purpose of establishing a corporate residential neighborhood homeowners association which will, subject to Chapter 617, Florida Statutes (1997), as amended, and to a Declaration of Covenants, Conditions and Restrictions to be recorded in the Public Records of Collier County, Florida, have the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit provided by law, except where expressly limited by these Articles and the Bylaws, and the Declaration of Covenants, Conditions and Restrictions to which these Articles shall be an exhibit; and it shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential neighborhood, subject to the Declaration, as it may from time to time be amended, including but not limited to the power to:

- (A) Fix, levy, collect and enforce payment by an lawful means all charges or assessments liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property of the corporation;
- (B) 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 corporation;
- (C) Borrow money, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

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(D) Participate in mergers and consolidations with other associations organized for the same or similar purposes, provided that merger or consolidation shall require the consent of at least a majority of the voting interests of the Association;

(E) Exercise any and all powers, rights and privileges which a corporation organized under Chapter 617 of Florida Statutes may now or hereafter have or exercise; subject always to the Declaration, as amended from time to time;

(F) Assist, cooperatively, with Heritage Greens Community Association, Inc., in the administration and enforcement of the Declaration of Covenants, Conditions, and Restrictions for Heritage Greens.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and voting rights shall be as set forth in Section 3 of the Declaration of Covenants, Conditions and Restrictions and Section 2 of the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BY-LAWS: The Bylaws of the Association may be altered, amended or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

(B) Procedure. A proposed amendment must be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

(C) Vote Required. Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved at any annual or special meeting called for the purpose by at least a majority of the voting interests of the Association, or if it is approved in writing by a majority of the voting interests without a meeting, as authorized in Section 3.11 of the Bylaws, provided that notice of any proposed amendment must be given to the members of the Association, and the notice must contain the full text of the proposed amendment.

(D) Effective Date. An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors shall be elected by the members in the manner provided in the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

ARTICLE IX

INITIAL DIRECTORS: The initial Directors of the Association shall be:

Anthony Persichilli
10491 Six Mile Cypress Pky., Suite 101
Ft. Myers, FL 33912

Alan R. Burns
10491 Six Mile Cypress Pky., Suite 101
Ft. Myers, FL 33912

Darin McMurray
10491 Six Mile Cypress Pky., Suite 101
Ft. Myers, FL 33912

ARTICLE X

INITIAL REGISTERED AGENT: The initial registered office of the Association shall be at:
2375 Tamiami Trail N., Suite 308
Naples, Florida 34103

The initial registered agent at said address shall be:

Swalm & Murrell, P.A.

ARTICLE XI

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney/s fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding or settlement (or any appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Wrongful conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

In the event of an out-of-court settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of all other rights to which a Director or officer may be entitled.

WHEREFORE the Incorporator has caused these presents to be executed this 17th day of June, 1998.

[Handwritten Signature]
Anthony Persichilli

STATE OF FLORIDA
COUNTY OF Collier

This instrument was acknowledged before me this 17th day of June, 1998, by Anthony Persichilli, who is personally known to me or did produce personally known to me as identification.

NOTARY PUBLIC - STATE OF FLORIDA
JANICE M. GIVEN
COMMISSION # CCT-6770
EXPIRES 6/30/02
BONDED THRU ASA 1-888-NOTARY1

[Handwritten Signature]
Notary Public (SEAL)
Print name: JANICE M. GIVEN

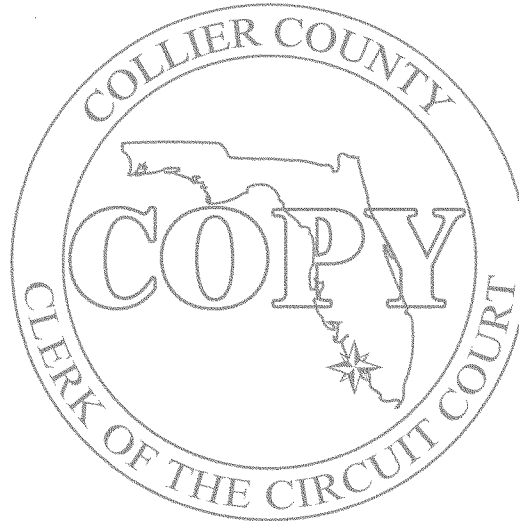
ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for Club Homes III at Heritage Greens Association, Inc., at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.

SWALM & MURRELL, P.A.



Robert E. Murrell, Vice President



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TALLAHASSEE, FLORIDA

CLUB HOMES III AT HERITAGE GREENS - ARTICLES EXHIBIT "C"

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**BYLAWS
OF
CLUB HOMES III AT HERITAGE GREENS ASSOCIATION, INC.**

1. GENERAL. These are the Bylaws of Club Homes III at Heritage Greens Association, Inc. (the "Association"), a Florida corporation not for profit organized to serve as a residential neighborhood homeowners' association.

1.2 Principal Office. The principal office of the Association will initially be at 10481 Six Mile Cypress Pky., Ft. Myers, Florida 33912, and subsequently at such location as may be determined by the Board of Directors.

1.3 Seal. The seal of the Association will be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document where a seal may be required.

1.4 Definitions. The definitions for various terms used in these Bylaws will be as set forth in Section 1 of the Declaration of Covenants, Conditions and Restrictions for Club Homes III at Heritage Greens (the "Declaration") to which these Bylaws are attached as Exhibit "D."

2. MEMBERS; VOTING RIGHTS. Every record owner of legal title to any Lot in the Community is a member. If a Lot is subject to an agreement for deed, whether recorded or not, the purchaser in possession will be treated as the owner solely for purposes of determining voting and use rights. membership is appurtenant to, runs with, and may not be separated from, the real property interest upon which membership is based.

2.1 Voting Interests. The members of the Association are entitled to one (1) vote for each Lot owned by them in Association matters where a vote of the members is permitted or required. The vote of a Lot is not divisible. The total number of votes (also called "voting interests") is equal to the total number of Lots subject to this Declaration. If a Lot is owned by one natural person or a trustee, the right to vote is established by the record title to the Lot. If a Lot is owned jointly by two or more persons or trustees, the Lot's vote may be cast by any one of the record owners. If two or more owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted. If the owner of a Lot is a corporation, the vote of that Lot shall be cast by the president or vice-president of that corporation. If the owner is a partnership, the vote may be cast by any general partner.

2.2 Approval or Disapproval of Matters. Whenever the decision or approval of an owner is required upon any matter, whether the subject of an Association meeting or not, such decision or approval may be expressed by any person who could cast the vote of that owner's Lot at an Association meeting, as stated in Section 2.1 above, unless the written approval or joinder of record owners is specifically required.

2.3 Termination of Membership. Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS.

3.1 Annual Meeting. The annual meeting of the members shall be held in Collier County, Florida, during the first three months of the calendar year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting other business duly authorized to be transacted by the members. The annual meeting is a general meeting, and unless the law requires otherwise, it is not necessary to include with the notice of the annual meeting a description of specific purpose or purposes for which the meeting is called.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by members representing at least twenty-five percent (25%) of each class of the voting interests. Business at any special meeting is limited to the items specified in the notice of meeting.

3.3 Notice of Meetings. Notices of all meetings of the members must be mailed or hand-delivered to the owner or owners of each Lot at least fourteen (14) days before the meeting, and must state the time, date, and place of the meeting, and include a detailed agenda. Mailed notices must be sent to the address of the owner as it appears on the books of the Association. Each member bears the responsibility for notifying the Association in writing of any change of address. A person entitled to receive notice of any meeting may waive notice altogether by written waiver. Notice of any meeting may be hand-delivered if a written waiver of mailing is obtained. If ownership of a Lot is transferred after a notice has been mailed, separate notice to the new owner is not required. Attendance at any meeting by a member constitutes a waiver of notice by that member, unless the member objects to the lack of notice at the beginning of the meeting.

3.4 Quorum. The percentage of voting interests required to be in attendance, in person or by proxy in order to constitute a quorum at a meeting of the members is thirty percent (30%) of the total voting interests.

3.5 Vote Required. The acts approved by a majority of the votes cast at a meeting of the members at which a quorum has been attained shall be binding upon all owners for all purposes, except where a higher vote is required by law or by any provision of the Governing Documents.

3.6 Proxies. To the extent lawful, any person entitled to attend and vote at a members' meeting may establish his presence and cast his vote by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast the vote for the Lot, and specify the date, time and place of the meeting for which it is given. The signed and dated original must be delivered to the Secretary at or before the time of the meeting or continuance thereof. Holders of proxies need not be members. No proxy is valid if it names more than one person as the proxy holder, but the proxy holder has the right, if the proxy so provides, to substitute another person to hold the proxy.

3.7 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meeting to a

different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Section 617.303(2), Florida Statutes (1999), as amended. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Section 617.0707, Florida Statutes (1999), as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

3.8 Order of Business. The order of meetings shall be substantially as follows:

- (A) Determination of existence of quorum.
- (B) Reading or waiver of reading of minutes of last members' meeting.
- (C) Reports of Officers.
- (D) Reports of Committees.
- (E) Election of Directors (annual meeting only).
- (F) Unfinished Business.
- (G) New Business.
- (H) Adjournment.

3.9 Minutes. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner, available for inspection and copying by owners or their authorized representatives at all reasonable times for at least seven (7) years after the meeting. Minutes of all meetings of the members must be maintained in written form, or in another form that can be converted into written form within a reasonable time, and must be reduced to written form within thirty (30) days after the meeting to which they relate.

3.10 Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The Presiding Officer may appoint a Parliamentarian to advise on issues of parliamentary procedure, but the Presiding Officer's decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11 Action by Members Without Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law. If the vote is taken by the method described in this Section 3.11, the list of owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

3.12 Voting Representative to Club. In accordance with the requirements of the Bylaws of the Club, the Board of Directors shall, at least annually, appoint one member of the Association, who need not be a Director or officer, as the Association's Voting Representative to the Club. Written notice of the appointment shall be given to the Club. The Voting Representative shall attend the meetings of the members of the Club, and shall cast, in a block, all votes of the members of this Association on any and all questions which may arise, except the election of Trustees of the Club. The votes shall be cast in the manner directed by the Board of Directors, or absent such direction, in the manner determined by the Voting Representative. The Voting Representative shall also perform the other duties specified in Section 3.6 of the Club Bylaws. The Voting Representative shall serve at the pleasure of the Board of Directors.

3.13 Polling of Members. To the extent feasible and practical, the Association shall poll its members on questions to be decided by a vote of the members of the Club, so that this Association's votes are more likely to be cast in the manner preferred by the majority of the members. If such a poll is conducted, the Board shall instruct its Voting Representative to cast all votes of the Association in a block, supporting the point of view preferred by the majority of the members who responded to the poll. The Voting Representative may not vote by proxy at Club meetings, but the Board of Directors may designate in writing an alternate representative to substitute if the Voting Representative cannot attend any meeting of the Club.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association is by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the members only when specifically required.

4.1 Number and Terms of Service. The Board of Directors shall initially consist of three (3) Directors. In order to provide for a continuity of experience by establishing a system of staggered terms of office, in the first election in which owners other than the Developer elect a majority of the Directors, the two (2) candidates receiving the highest number of votes shall each be elected for a term which expires at the final adjournment of the annual meeting at which his successor is to be elected. The candidate receiving the next highest number of votes shall be elected for a term which expires at the final adjournment of the next annual meeting. Thereafter, all Directors shall be elected for two (2) year terms, ending at the final adjournment of the annual meeting at which successors are to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in 4.4 below.

4.2 Qualifications. Except for Directors appointed by the Declarant, each Director must be a member, or the lawful spouse of a member. No person shall be elected or appointed for successive terms totaling more than four (4) years, unless there occurs a hiatus of at least one (1) year between terms. Initial terms by appointment for less than one year shall be excluded from consideration in determining the total number of years served.

4.3 Nominations and Elections. At each Annual Meeting the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The nominating committee, if any, shall submit the names of its recommended candidates for the office of Director in time to be included with the notice to the members of the annual meeting; and any other eligible person may be nominated as a candidate from the floor at the annual meeting. Nothing herein shall be construed to mandate or prohibit the use of a secret ballot. Directors shall be elected by a plurality of the votes cast at the annual meeting.

In the election of Directors, there shall be appurtenant to each Lot as many votes as there are Directors to be elected. No member may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. The candidates receiving the highest number of votes shall be elected. A tie vote shall be broken by agreement among the candidates who are tied, or by lot.

4.4 Vacancies on the Board. Except as otherwise provided by law for the filling of vacancies occurring during the time when the Developer is entitled to appoint at least one Director, if the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

(A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office for the remaining unexpired term.

(B) If a vacancy occurs as a result of a recall and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

4.5 Removal of Directors. Any Director may be removed from office, with or without cause, by the vote or agreement in writing of a majority of the voting interests. The notice of a meeting of the owners to recall one or more Directors must name the specific Director(s) sought to be removed, and a separate vote for each Director sought to be removed shall be taken. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. Any Director who is removed from office is not eligible to stand again for election to the Board, or be appointed to the Board, until the next annual election. A Director who is removed from office shall turn over to the Association within 72 hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county may summarily order the Director to relinquish his office and turn over corporate records upon application of any owner. In any such action, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

4.6 Board Meetings. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board meetings must be posted in a conspicuous place in the Neighborhood at least forty-eight (48) hours in advance of every meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Neighborhood, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting included a statement that assessments will be considered and the nature of the assessment. Any owner may tape-record or videotape meetings of the Board of Directors and meetings of the members. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

4.7 Waiver of Notice by Directors. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

4.8 Quorum of Directors. A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee by means of a conference telephone call or other similar communicative arrangement whereby all persons present can hear and speak to all other persons, and participation by this means is deemed equivalent to presence in person at a meeting.

4.9 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum is then present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.10 Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall preside at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

4.11 Vote Required. The acts approved by a majority of the Directors present and voting at a Board meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by law. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

4.12 Directors' Fees and Reimbursement of Expenses. No compensation or fees shall be paid to Directors for their service as Directors. Directors may be reimbursed for out-of-pocket expenses related to the proper discharge of their respective duties.

4.13 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Neighborhood. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. This Section 4 also applies to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of Association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the Neighborhood.

4.14 Emergency Powers. In the event of an "emergency" as defined in Section 4.14(G) below, the Board of Directors may exercise the following emergency powers, and any other emergency powers authorized by Section 617.0207, Florida Statutes (1999), as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable

manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any officer, director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section 4.14, an "emergency" exists only while the Neighborhood, or the immediate geographic area in which the Neighborhood is located, is subjected to:

- (1) a state of emergency declared by law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) designation by federal or state government as a "disaster area;" or
- (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Neighborhood, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

5. OFFICERS. Officers are elected by a majority of the Board at its first meeting after every election, and serve at the pleasure of the Board. The executive officers of the Association shall be a President, and a Vice-president, who must be Directors, and a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed from office with or without cause by a majority of the Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

5.1 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be *ex-officio* a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

5.2 Vice-Presidents. The Vice-Presidents in the order of their seniority shall, in the absence or disability

of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.

5.3 Secretary. The Secretary attends meetings of the Board of Directors, and meetings of the members and shall be responsible for the recording of all votes, and the minutes of all proceedings, in a book to be kept for the purpose, and shall perform like duties for standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is designated.

5.4 Treasurer. The Treasurer is responsible for the safekeeping of Association funds and assets, budget preparation and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

5.5 Compensation of Officers. No compensation shall be paid to any member for services as an officer of the Association.

6. FISCAL MATTERS. The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 Depository. The Association shall maintain its funds in federally insured accounts at financial institutions in the State of Florida designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, provided they are backed by the full faith and credit of the United States.

6.2 Accounts and Accounting Procedures. The financial and accounting records of the Association must be kept according to good accounting practices, and kept for a period of at least seven (7) years. The financial and accounting records must include:

(A) Accurate, itemized, and detailed records of all receipts and expenditures.

(B) A current account and a period statement of the account for each Lot, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

(C) All tax returns, financial statements, and financial reports of the Association.

(D) Any other records that identify, measure, record or communicate financial information.

6.3 Budget. The Board of Directors shall adopt, in advance, a budget of common expenses for each fiscal year. The annual budget must reflect the estimated revenues and expenses for the next fiscal year, and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another person. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be considered shall be mailed to or served on owner of each Lot not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income accounts and expense classifications. The minutes of the Association shall reflect the adoption of the budget, and copies of both the proposed and adopted budgets shall be attached to the minutes of the meeting at which the proposed budget was adopted, and shall be maintained as part of the financial records of the Association. If an annual budget has not been adopted at the time the first quarterly installment of assessments for a fiscal year is due, it shall be presumed that the amount of that installment is the same as the last quarterly payment, and payments shall be continued at the same rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Lot's next due quarterly installment.

6.4 Reserves. The Board may establish in the annual budget one or more reserve accounts for contingencies, cash flow shortfalls, capital expenditures, and deferred maintenance. The purpose of reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

6.5 Assessments. Regular annual assessments based on the adopted budget shall be paid in advance in quarterly installments due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to members at least ten (10) days prior to the due date, but failure to send or receive the notice does not excuse the obligation to pay.

6.6 Special Assessments. Subject to the limitations stated in Section 7.6 of the Declaration, special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving the assessment. The notice to owners of the adopted special assessment must state the specific purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or credited back to the members' accounts.

6.7 Fidelity Bonds. The President, Secretary, Treasurer, and any persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or by the Board of Directors. The premiums on such bonds shall be a common expense.

6.8 Financial Reporting. The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year, and shall, within ten (10) business days after the report is prepared, provide a copy to each member, or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either:

(A) Financial statements presented in conformity with generally accepted accounting principles;
or

(B) A financial report of actual receipts and expenditures, cash basis, which report must show:

- (1) The amount of receipts and expenditures by classification; and
- (2) The beginning and ending cash balances of the Association.

6.9 Audit. A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all owners.

6.10 Application of Payments. All payments on account by an owner shall be applied first to interest, then to late payment fees, then to attorney's fees and costs, then to other charges, and finally to unpaid regular and special assessments, in the order they came due.

6.11 Fiscal Year. The fiscal year of the Association coincide with the calendar year.

7. RULES AND REGULATIONS; USE RESTRICTIONS. The Board of Directors may from time to time adopt and amend reasonable rules and regulations governing the operation, use, maintenance, management and control of the Neighborhood Common Areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each owner. The Board shall have the power to impose fines and suspensions of common area use privileges, as further provided in Section 11.3 of the Declaration, for violations of the rules and regulations.

8. AMENDMENT OF BYLAWS. Except as otherwise provided by law, amendments to these Bylaws shall be proposed and adopted in the following manner:

8.1 Proposal. Amendments may be proposed by a majority of the Board, or by petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

8.2 Procedure. If any amendment to these Bylaws is so proposed by the Board or the members, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be reasonably given. The full text of any proposed amendment must be given to the members with notice of the meeting.

8.3 Vote Required. Except as otherwise provided by law, or by specific provision of the governing documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose. Prior to the turnover of control of the Association by the Developer at the time provided for in Section 15 of the Declaration of Covenants, Bylaw amendments may also be adopted by vote of a majority of the Directors, without need for a vote of the members.

8.4 Recording. A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted. The certificate shall be signed by the President or Vice President of the Association with the formalities of a deed, and must identify the book and page of the Official Records where the Declaration of Covenants was originally recorded. The amendment shall become effective

when the certificate and copy of the amendment are recorded in the Official Records of Collier County, Florida.

9. MISCELLANEOUS.

9.1 Gender: Number. Whenever a masculine or singular pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

9.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

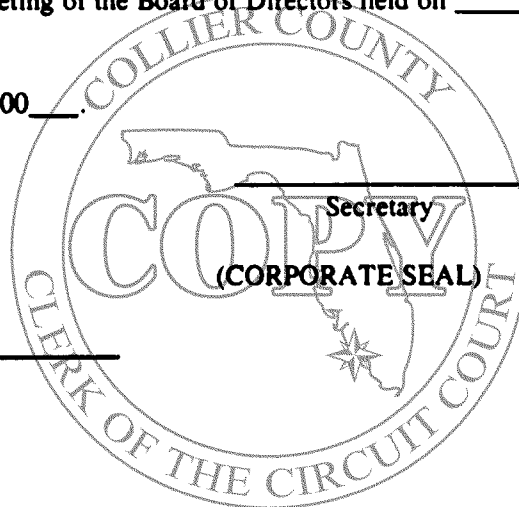
9.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Covenants or the Articles of Incorporation, the provisions of the Declaration and the Articles of Incorporation shall prevail over the provisions of these Bylaws.

The foregoing constitute the first Bylaws of Club Homes III at Heritage Greens Association, Inc., and were duly adopted at the first meeting of the Board of Directors held on _____, 200__.

Date: _____, 200__.

Attest:

President



Secretary

(CORPORATE SEAL)