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**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
HERITAGE GREENS SINGLE
FAMILY HOMES**

THIS DECLARATION is made this 12th day of June, 1998, by U.S. HOME CORPORATION, a Delaware corporation authorized to do business in the State of Florida, hereinafter called the "Developer" or "Declarant," for itself and its successors, grantees and assigns.

(for use by Clerk of Court)

WITNESSETH:

WHEREAS Declarant is the owner of certain real property located in Collier County, Florida, as more particularly described in Exhibit "A" to this Declaration, and desires to create thereon a neighborhood of detached single family residential dwelling units; and

WHEREAS, Declarant desires to provide for the preservation of the property values and amenities in the neighborhood, and to create a corporate entity to which should be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has created a Florida corporation not for profit, known as Heritage Greens Single Family Homeowners Association, Inc., for the purpose of exercising the functions aforesaid; and

NOW, THEREFORE, the Declarant declares that the real property described in Exhibit "A" to this Declaration, as that Exhibit may be amended from time to time, and all improvements thereon, shall be held, transferred, sold, conveyed and occupied subject to the Governing Documents and to the covenants, restrictions, easements, charges and liens hereinafter set forth, which shall run with the land and be binding upon and inure to the benefit of all present and future owners of Lots and Living Units. The acquisition of fee simple interest in any Lot, or the lease, occupancy, or use of any portion of a Living Unit, shall constitute an acceptance and ratification of all provisions of this Declaration and an agreement to be bound by its terms.

1. DEFINITIONS. All terms and words 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 recorded in Book 2337, at Pages 619 *et seq.*, of the Official Records of Collier County, Florida, or, if different, the meanings stated below, unless the context clearly requires otherwise.

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

1.2 "Association" or "Neighborhood Association" means Heritage Greens Single Family Homeowners Association Inc., a Florida corporation not for profit.

HERITAGE GREENS SFH - DECLARATION

Page 1

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

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

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

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

1.7 "**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.

1.8 "**Declarant**" or "**Developer**" means U.S. Home Corporation, a Delaware corporation, which in this case is both the Declarer and the Developer. Wherever either term is used in this Declaration or its recorded exhibits, it shall always be deemed to include any successor in interest to the U.S. Home Corporation's development rights and obligations.

1.9 "**Declaration**" means this Declaration of Covenants, Conditions and Restrictions for Heritage Greens Single Family Homes, as amended from time to time.

1.10 "**Governing Documents**" means the Community Declaration, and the Articles of Incorporation and Bylaws of the Community Association, as well as this Declaration and all recorded exhibits to it, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any of these documents, the first document to appear in the foregoing list shall prevail.

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

1.12 "**Heritage Greens Single Family Homes**" means the real property subject to this Declaration.

1.13 "**Heritage Greens Single Family Homes Documents**" means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

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

HERITAGE GREENS SFH - DECLARATION

Page 2

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 held by an Institutional Mortgagee encumbering a Lot, Living Unit, or Parcel.

1.15 "**Lease**" means the grant, by an owner or primary occupant to another person, of a temporary right to occupy the owner's Living Unit for valuable consideration.

1.16 "**Living Unit**," "**Unit**" or "**Residence**" means any or all the residential dwellings which will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.17 "**Lot**" or "**Parcel**" means any one or more of the up to one-hundred sixty-three (163) platted parcels of land into which the Community has been or will be subdivided, upon each of which a Residence has been or will be constructed. Wherever it appears, "Lot" shall be interpreted as if it is followed by the words "and Living Unit constructed thereon," except where the context clearly requires a different interpretation.

1.18 "**Neighborhood**" means all the real property which is subject to this Declaration. "**Neighborhood Common Areas**" or "**Common Areas**" means all real property (if any) described in Exhibit "A" to this Declaration, as amended from time to time, that is not included in the Lots.

1.19 "**Occupant**" when used in connection with a Living Unit, means any person who uses a Living Unit as his place of residence on two or more consecutive days, including staying overnight. "**Occupy**" means the act of being an occupant.

1.20 "**Owner**" or "**member**" means a record owner of legal title to a Lot.

1.21 "**Rules and Regulations**" means the administrative rules and regulations governing procedures for administering the Association and the Neighborhood, as adopted amended or rescinded by resolution of the Board of Directors.

1.22 "**SWFWMD**" means Southwest Florida Water Management District.

1.23 "**Service Charge**" means a charge against one or more Lots for any service, material or combination thereof which may be provided by the Neighborhood Association for the use and benefit of those owners, 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 the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots or Living Units so benefited. The owner(s) are deemed to have agreed to the charge by subscribing, requesting, or accepting the material or service.

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

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

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

2. CONTINUATION OF DEVELOPMENT. The Neighborhood is being developed by the Declarant into Lots intended for the construction of single family residences, and are located within the Heritage Greens development. Other areas of Heritage Greens may be developed as other forms of residential housing or commercial development, and may be under construction for an extended time. Incidental to that development, the quiet enjoyment of the Community may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Declarant and others may make public certain renderings, plans, or 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 in nature, and do not necessarily represent a guaranteed final development plan for Heritage Greens.

3. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS. The management of this Neighborhood and the administration of the Association's affairs shall be by Heritage Greens Single Family Homeowners 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 "B."

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

3.3 Delegation of Management. The Association may contract with a management agent to assist it Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in Chapter 617, Florida Statutes, particularly, Sections 617.301-617.312, Florida Statutes (1997) as amended from time to time, and in the Governing Documents.

3.4 Members. Every person or entity who is a record owner of legal title to any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and cannot 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.

3.5 Voting Interests. The members of the Association are entitled to one (1) vote in Association affairs for each Lot owned by them. Votes shall be cast as provided in the Bylaws.

HERITAGE GREENS SFH - DECLARATION

3.6 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 which 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.

3.7 Association as Owner of Lots. The Association has the power to purchase Lots, 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.

3.8 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.

3.9 Board of Directors. Except as otherwise specifically provided by law or in this Declaration or the Bylaws, 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.

3.10 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, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the 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.

3.11 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Board of Directors must obtain the prior approval of at least a majority of the voting interests of the Association 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 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.

3.13 Official Records. The official records of the Association as defined by law 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.

3.14 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 in the Neighborhood 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.

4.1 Covenant to Pay Assessments. The Developer, for each Lot within the Neighborhood, hereby covenants, and each subsequent owner of any 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 prorata share of annual assessments based on the annual budget adopted by the Association;
- (B) the Lot's prorata share of any special assessments levied for expenses not provided for by the annual budget; and
- (C) any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, late payment fees, reasonable attorney's fees, and costs shall bind

each Lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to the Developer and persons taking title as a result of foreclosure or deed in lieu of foreclosure of an Institutional Mortgagee, no owner may be excused from the payment of assessments unless all owners are similarly excused.

4.2 Share of Assessments. Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments for common expenses, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots then included within the Neighborhood. Until the development of the Neighborhood is completed, and all Lots have been sold to purchasers other than a developer, the denominator shall be conclusively presumed to be the number "one-hundred sixty-three (163)."

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. All assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs, and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot and Living Unit against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot and Living Unit assessed. This lien is superior to any Homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by a waiver of use rights, or by abandoning the Lot. The Association's lien is activated by the Association 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 as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

4.5 Priority of Liens. Except as otherwise provided herein or by law, the Association's lien for unpaid assessments and charges is subordinate and inferior to that of a recorded Institutional Mortgage, 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 Living Unit is also subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by,

through or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. Any unpaid assessment or charge which cannot be collected by reason of this Section, shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

4.6 Collection of Assessments. If any owner fails to pay any assessment, charge, 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 such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment fee which may not exceed the greater of Twenty-five Dollars (\$25.00), or such other maximum amount as may be in the future provided for by law.

(B) To file an action in equity to foreclose its lien. Unless the use of another procedure is required by law, the lien may be foreclosed by an action brought by the Association in the same manner as provided in Section 718.116 (1997) of the Florida Condominium Act, as it may be amended from time to time, for the foreclosure of liens on condominium parcels for unpaid assessments for common expenses.

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

4.7 Certificate. The Association shall, within fifteen (15) days after receiving a written request for same, furnish to any owner liable for assessments or mortgage lender a certificate in writing signed by an officer of the Association, setting forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate shall be protected thereby. There shall be no charge for providing this certificate.

4.8 Developer's Guarantee of Assessments and Share for Lots Owned by it. The Developer guarantees that until December 31, 1998, annual and special assessments against each Lot for all Association purposes will not exceed \$75.00 per year. During this period, Developer shall be excused from the payment of all assessments for Lots owned by it, and instead shall pay that portion of all Association expenses actually incurred which exceeds Association revenues from all other sources. After December 31, 1998, the Developer reserves the right to unilaterally extend this guarantee period, and to change the amount guaranteed. The guarantee period shall not, under any circumstances extend beyond the period of Developer control. After this guarantee period, the Developer shall have the same responsibility for paying assessments as to Living Units owned by it as any other owner; provided however, that under no circumstances shall the Developer ever have an obligation to pay assessments for any Lot that is owned by the Developer and being offered for sale in the ordinary course of business, as long as the Lot remains unimproved.

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 Living Units, after the initial construction of the Living Units by the Developer, no owner shall make any material change whatsoever

in the exterior color of any portion of his Living Unit or any appurtenant structure, nor in the color or style of roofing materials used on the Living Unit or appurtenant structure, without prior written approval of Architectural Review Board of the Community Association (the "ARB"). Except for the initial construction of Living Units 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, the 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.

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 any Neighborhood Common Areas that may exist for the purposes intended, subject to the covenants, restrictions and limitations 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 the 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 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 Lots.

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 any Neighborhood Common Areas that might exist in accordance with the purposes for which they are intended, but no use of any Lot or Common Area may unreasonably interfere with the rights of other owners or residents. No Lot may be subdivided 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 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 easements 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.

(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. If any Neighborhood Common Areas exist, on or before the date when owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey those 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 any and all Neighborhood Common Areas that may exist, 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.

NOTHING IN THIS DECLARATION SHALL BE CONSTRUED AS A REPRESENTATION OR WARRANTY BY THE DEVELOPER THAT THIS NEIGHBORHOOD WILL CONTAIN ANY NEIGHBORHOOD COMMON AREAS. IF THERE ARE ANY SUCH COMMON AREAS, THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO THE NEIGHBORHOOD COMMON AREAS AND ALL IMPROVEMENTS THEREON, 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 expressly provided elsewhere 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. The ownership of any Lot and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not own record legal title to 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 Community 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 Community. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Community for the location of utilities, and for surface water drainage, for lateral and adjacent 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 Community.

(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 Community, and to relocate any existing easements in any portion of the Community, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Community. 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 Living Unit or Lot 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 shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the 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 shall exist 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 improvements thereon, 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 effluent 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 Community 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 Lots.

(F) Sales activity. The Developer and its agents, employees and contractors shall have an easement to use, without charge, any Lot 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 Living Units and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model Living Units or the Neighborhood Common Areas to prospective purchasers or tenants, erect signs in the community, and take all other action helpful for sales, leases and promotion of the Community.

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

6.6 Easements for Playing Golf. Non-specific, non-exclusive easements are hereby created over all Lots, Living Units and the Neighborhood Common Areas in favor of the golf course users 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 such 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 cars 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 individual Lots or Living Units 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 Living Units. The maintenance, repair and replacement of each Lot and Living Unit is the responsibility of its owner. The owner shall keep the appearance of the Lot and Living Unit and all landscaping and improvements in a condition comparable to when they were new, except normal wear and weathering. The owner is responsible for his own driveway and the components of the irrigation system serving his Lot, up to and including the tap into the main irrigation line, timers, switching devices and heads.

7.2 Completion of Neighborhood. Developer shall undertake the work of developing all Lots and Living Units within the Neighborhood. The completion of that work, or the sale, lease, or other disposition of Lots and Living Units, 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 they may reasonably determine to be 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 exclude purchasers of Lots improved with completed Living Units.

7.3 Enforcement of Maintenance. If the owner of a Lot and Living Unit fails to maintain it as required in this Declaration, the Association may 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 a significant 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 as service assessments, together with reasonable attorney's fees and all other expenses of enforcement.

7.4 Negligence; Damage Caused by Condition in Living Unit. The owner of each Lot and Living Unit shall be personally 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; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available to the injured person.

8. INSURANCE; DUTY TO RECONSTRUCT.

8.1 Duty to Insure and to Reconstruct. Each owner shall at all times maintain property insurance on his Living Unit and all other insurable improvements in an amount equal to the full replacement cost thereof, except for a reasonable deductible. If any Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, tornado, hurricane or other casualty, the owner shall cause repair or replacement to be commenced within six (6) months from the date that such damage or destruction occurred, and shall complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the ARB.

8.2 Failure to Reconstruct. If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 8.1 above, the Association shall give written notice to the owner of his default. If the owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the association mailed such notice, the Association shall be deemed to have been granted the right by the owner, as such owner's attorney-in-fact, to remove all debris and damaged improvements, or to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section 8, which shall be in the sole discretion of the Board of Directors, the owner of the Lot shall be deemed to have assigned to the Association any right he may

have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot and Living Unit to secure payment.

8.3 Failure to Insure; Association as Additional Insured. For the purpose of this Section 8, each owner of a Lot within the Neighborhood agrees that the Association shall automatically be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may, from time to time exist. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason, causes the same to become ineffective, the Association may but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof.

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

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

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

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

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

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

(D) **Fidelity bonding.** Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

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

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

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

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

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

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

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

9. GENERAL COVENANTS AND USE RESTRICTIONS.

9.1 Residential Use. Each Living Unit 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 Lot or Living Unit. No person may publicly advertise the address of a Lot or Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 9.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 9.1 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, employees or other business associates, or customers and clients. Notwithstanding

the above provisions, the Declarant may, in its sole discretion, permit one or more of its Living Units to be used or maintained as a sales office or as model homes.

9.2 Building Setback Lines, Size of Buildings, Site Restrictions and Building Height. All structures shall conform to the requirements of the County and the Governing Documents.

9.3 Leasing. An owner may lease his Living Unit without prior Association approval, subject to the following restrictions and conditions:

(A) The lease must be written, and a fully executed copy must be provided to the Association not less than three (3) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.

(B) No Living Unit may be leased or rented for a term of less than thirty (30) consecutive days.

(C) No subleasing or assignment of lease rights is allowed. All of the provisions of the Heritage Greens Single Family Homes Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Living Unit 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 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 DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING LIVING UNITS OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT HIS LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGES OF OWNERSHIP.

9.4 Nuisance. No noxious or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents.

9.5 Temporary Structures. No structure of a temporary character, including trailer, tent or shack shall be used on any Lot, either temporarily or permanently, except for Declarant.

9.6 Signs. No signs, banners, billboards or advertisements of any kind, including without limitation, those of realtors, politicians, contractors or subcontractors, shall be erected or displayed anywhere within the Community, including those posted in windows of buildings or motor vehicles. If any sign is erected in violation of this provision, the Declarant, the Community Association, or the Neighborhood Association shall have the right to enter the property on which the sign is located and remove it. The foregoing shall not apply to signs, banners, flags, billboards or advertisements used or erected by Declarant, entry and directional signs installed by Declarant, and signs required by law. The Board of Directors shall have the right to summarily remove and destroy all unauthorized signs. This Section 9.6 shall not apply to signs used by Declarant or its employees and agents to market Lots or Living Units owned by it.

HERITAGE GREENS SFH - DECLARATION

Page 16

9.7 Appearance; Refuse Disposal. After closing of title, each owner shall keep his Lot free and clear of weeds, underbrush, unsightly growths, trash and debris, and shall reasonably maintain his Living Unit. Trash, garbage or other waste must be kept in containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of refuse shall be kept clean and in good repair. No garbage incinerators shall be permitted.

9.8 Maintenance. The Developer shall care for all vacant or unimproved Lots within the Community, and clear tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary or desirable in the reasonable judgment of the Developer to keep the Lot in good order. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner, and the charge shall be a lien on the Lot which may be foreclosed, and which shall secure the Association's attorney's fees and other costs in connection with said foreclosure.

9.9 Awnings and Windows. Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the ARB.

9.10 Fences. No fence, wall, hedge or other similar structure shall be erected on any Lot, except as originally installed by Developer, and except any approved by the ARB.

9.11 Lawns; Landscaping. Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas. Stone, gravel, or paving may not be used as a substitute for grass in a lawn. Certain areas as determined by the Developer shall remain in a natural or unimproved state. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall thereafter be kept in good condition by the owner. Lawns must be regularly cut and mulched areas regularly re-mulched. The landscaping on Lots, including without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the owner thereof. No landscaping shall be installed, cut down, destroyed or removed without the prior written approval of the ARB.

9.12 Outside Lighting. Except as may be initially installed by a Developer, no spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon without the written authorization of the Community Association. Low intensity lighting which does not unreasonably disturb the owners or other occupants of the Community shall be allowed. Each owner shall maintain the front yard lamp (if any), and keep it operating during all hours of darkness. The owner's responsibility includes the photoelectric cell and replacement of light bulbs.

9.13 Pets. The owner of each Lot may keep no more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds in a Living Unit, subject to reasonable regulation by the Community Association or the Association. All pets must be carried under the owner's arm or leashed at all times while off of the owner's Lot. The owner is responsible for cleaning up after his pet. The ability to keep such 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 Neighborhood. No reptiles, amphibians, poultry or livestock may be kept in the Neighborhood. Pets shall not be left unattended on screened porches, lanais, yards or in garages.

9.15 Parking and Storage of Motor Vehicles.

(A) No commercial vehicle of any kind shall be parked in the Neighborhood, except for service vehicles temporarily present on business.

(B) No boat, trailer of any kind, semitrailer, house trailer, camper, mobile home, motor home, bus, commercial truck, truck camper, pick-up truck or disabled, inoperative or unlicensed vehicle shall be permitted to be parked, kept or stored unless kept fully enclosed inside a structure. For purposes of this paragraph only, an open carport is not deemed to be a structure. For purposes of this paragraph "kept" shall mean present in the Neighborhood for any period of longer than twelve (12) consecutive hours. Any vehicle parked in violation of this Section is subject to being towed away at the owner's expense without further notice.

(C) No motor vehicle shall be parked anywhere other than on paved or designated areas designated for that purpose, or in garages. Parking on lawns or landscaped areas is prohibited.

(D) No motor vehicle shall be used as a domicile or residence, either permanent or temporary while in the Neighborhood.

9.16 Garages, Carports and Accessory Buildings.

(A) No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1), nor more than three (3), automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.

(B) Carports are not permitted.

(C) No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the ARB. All garages must have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

9.17 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board of Directors; and under no circumstances may more than one (1) such event be held on any Lot in any period of twelve (12) consecutive months.

9.18 Mailboxes, Lamp Posts. Mailboxes, front yard lamps, and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the ARB.

9.19 Antennas, Radio Equipment and Flagpoles. No outside antennas, satellite receiving dishes, antenna poles, antenna masts, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennas shall be permitted, except as approved by the ARB, or except as otherwise required by law as to satellite antennas less than one meter in diameter, antennas or aerials to receive over-the-air television broadcast, or antennas designed to receive multichannel, multipoint distribution service, which

may be installed at a location approved by the ARB. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the Community Association. An approved flagpole shall not be used to mount an antenna. It is the intent of this provision to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment. This Section shall not apply to equipment used by the Developer or its agents to market Lots owned by Developer.

9.20 Swimming Pools. An owner may, if approved by the ARB, construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause.

9.21 LOTS MAY CONTAIN OR ABUT CONSERVATION AREAS, WHICH ARE PROTECTED UNDER RECORDED CONSERVATION EASEMENTS. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE CONSERVATION EASEMENT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN, CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. PROPERTY OWNERS ARE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE PERMIT ISSUED BY SOUTHWEST 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 the Community Association, or remove native vegetation that becomes established within the Conservation Areas and without prior written approval of the ARB, the County, and the Southwest 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.

9.22 Lakes; Water Retention Ponds. No Lot, Tract 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 SWFWMD. 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.

9.23 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.

10. OWNERSHIP OF LOTS. The transfer of ownership of Lots shall be subject to the following restrictions:

10.1 Notice to Association. An owner intending to sell his Living Unit shall give the Association written notice of such intent at least seven (7) days prior to the closing of the sale, including the name of the purchaser and such other information about the purchaser as the Association may reasonably require. A new owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurred.

10.2 Life Estate. A Lot may be subjected to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the member from such Lot, and occupancy of the Living Unit shall be as if the life tenant was the only owner. The life tenant shall be liable for all assessments and charges against the Lot. Any consent, approval or vote required may be given by the life tenant, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

11. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every owner, and all guests, tenants and occupants, shall at all times comply with Chapter 617, Florida Statutes, particularly Sections 617.301 through 617.312 (1997), as amended from time to time, 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, the Neighborhood Covenants, 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 a member against:

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

The prevailing party in any such litigation is entitled to recover 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 right or remedy.

11.1 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, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, conditions and restrictions; 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.

11.2 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 Declarant, 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.

11.3 Suspension of Neighborhood 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 Neighborhood Common Areas. The Association may also levy reasonable fines not to exceed the maximum allowed by law, against any member or any tenant, guest, or invitee.

(A) A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a hearing panel 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 panel, by majority vote (which may be taken by secret ballot), does not approve a proposed fine or suspension, it may not be imposed.

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

(C) Suspension of Neighborhood Common Area use rights shall not impair the right of an owner or tenant to have vehicular and pedestrian ingress to and egress from his 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 itself be the subject of a late payment fee, and may become a lien against a lot.

(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.

12. THE COMMUNITY ASSOCIATION. By taking title to a Lot, the owner becomes subject to the terms and conditions of the Community Declaration as it may be amended from time to time.

12.1 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.

12.2 Membership and Voting in the Community Association. All owners of legal title to Lots in this Neighborhood are automatically members of the Community Association. Notwithstanding such membership, only authorized representatives of the members shall be entitled to vote on behalf of all members at meetings of the members of the Community Association. At Community Association meetings, the votes shall be cast as provided in Sections 3.6 and 4.4 of the Bylaws of the Community Association.

12.3 Notices to the Community Association. Copies of all recorded amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, shall be forwarded to the Community Association no later than thirty (30) days after becoming effective. 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. Failure to perform these duties does not invalidate an amendment.

13. DEVELOPER'S RIGHTS AND DUTIES: So long as the Developer holds any Lots in the Neighborhood for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary.

13.1 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 Living Units shall unreasonably interfere with the completion of the contemplated improvements or sales of Lots. The Developer may make any use of unsold Lots and Living Units as may reasonably be allowed by law.

13.2 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 person or entity, without the consent of any other owner or any holder of a mortgage secured by any Lot. Upon the acceptance of such assignment by the assignee, the assignor shall be relieved of all liabilities and responsibilities 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.

13.3 Amendment of Declaration. In addition to any other right of amendment or modification provided for in this Declaration and its recorded exhibits, the Developer, or any entity which succeeds to the Developer's position as developer of any of the property described in Exhibit "A", may by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to any provision of this Declaration or any of its exhibits. This right specifically includes the right to amend this Declaration and its exhibits to bring additional land within the Community, and to increase the number of Lots. The right to amend set forth in this paragraph expires when the Declarant is no longer offering any Lots and Living Units in the Neighborhood for sale in the ordinary course of business. Any amendment made under this Section 13.3 may be made by the Developer without notice to, or consent of, the members or any other entity.

13.4 Sales or Leases of Living Units. The Developer intends to sell all Lots and has no program for leasing. However, the Developer shall have the right to sell, lease or transfer any Living Unit 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.

14. TURNOVER OF CONTROL OF ASSOCIATION.

14.1 Time of Turnover. Owners other than the Developer shall be entitled to assume control of the Association by electing the entire Board of Directors not later than ninety (90) days after the conveyance of title, to owners other than Developer, of at least ninety percent (90%) of the Lots within the Community. At that time the Directors appointed by the Developer shall resign. The election shall occur at or in conjunction with a meeting of the members (the "Turnover Meeting").

14.2 Procedure for Calling Turnover Meeting. No less than sixty (60) days prior to the Turnover Meeting, the Association shall notify in writing all owners 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.

14.3 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 the Developer gives at least sixty (60) days notice of Developer's decision to cause its appointees to resign, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if owners other than the Developer refuse or fail to assume control.

15. DURATION OF COVENANTS; AMENDMENT OF DECLARATION:

15.1 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Neighborhood, and shall inure to the benefit of and be enforceable by the Association, the Developer and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period that expires on the thirtieth (30th) anniversary of the date of recording of this Declaration of Covenants, Conditions and Restrictions for Heritage Greens Single Family Homes. 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 ten (10) year renewal periods hereunder 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; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, the owners of at least sixty-seven percent (67%)

of the voting interests of the Association vote in favor of revoking or nullifying this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the members so vote, the President and Secretary of the Association shall execute with the formalities of a deed, 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 Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

15.2 Amendments; Proposal. Notwithstanding the foregoing, this Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

15.3 Amendments; Vote Required. Except as otherwise provided by law, or by specific provision of the Heritage Greens Single Family Homes Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association who are present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that a copy of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be substantially in the form as is required in Chapter 718, Florida Statutes, for the notice to unit owners of proposed amendments to a Declaration of Condominium. No amendment shall change any Lot's share of liability for common expenses or any owner's voting rights, unless the owner consents to the amendment.

15.4 Amendments; Certificate; Recording; Effective Date. A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration was originally 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 public records of the County.

15.5 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of more than two-thirds (2/3rds) of the voting interests of the Association, is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

15.6 Amendment of Provision Relating to Developer. As long as the Developer holds any Lot for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Developer without the Developer's written consent.

16. GENERAL PROVISIONS.

16.1 Waiver. Any waiver by Developer of any provisions of this Declaration of breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

16.2 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration 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 it's invalidity shall not affect the validity of the remaining portions hereof.

16.3 Headings and Capitalization. The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and are not intended as substantive material that can affect the meaning or interpretation of any provisions of this Declaration.

16.4 Notices. Any notice required to be sent to any owner under the provisions of 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 in 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.

16.5 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. It's interpretation 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, the Declarant has hereby executed this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized officer, this 12th day of June, 1998.

U.S. HOME CORPORATION,
a Delaware corporation

WITNESSES:

Karen Fischer
Print name: Karen Fischer

By: [Signature]
Anthony Persichilli, Regional Vice President
10491 Six Mile Cypress Pky., Suite 101
Ft. Myers, FL 33912

(CORPORATE SEAL)

Dawn [Signature]
Print name: DAWN [Signature]

STATE OF FLORIDA
COUNTY OF Collier

The foregoing instrument was executed in my presence this day of June 12, 1998, by Anthony Persichilli, Regional Vice President of U.S. Home Corporation, a Delaware corporation, on behalf of corporation. He is personally known to me, or did produce _____ as identification.

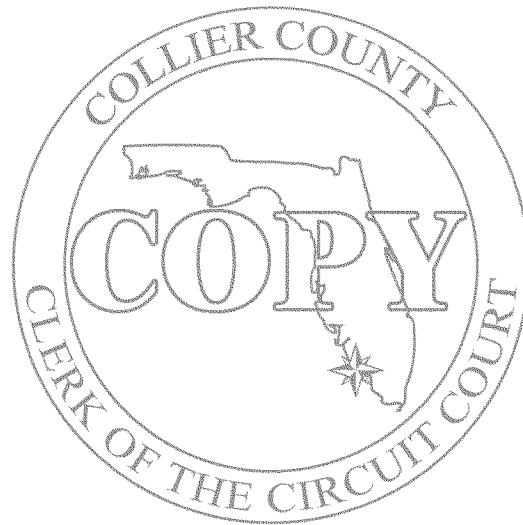
[Signature]
Notary Public
Print name: Karen Fischer
(SEAL)

20504
[Signature]

OR: 2430 PG: 0355

**LEGAL DESCRIPTION
HERITAGE GREENS SINGLE FAMILY HOMES**

Lots 10, 11, 22, 25, 26, 27, 28, 30, 33, 37, 38, 39, 41, 42, 43, 45, 53, 54, 55, 56, 57, 62, 154, 158 and 163, Block "B," of the plat of Heritage Greens, as recorded in Plat Book 28, Pages 78 through 94, inclusive, Public Records of Collier County, Florida.



OR: 2430 PG: 0356

EXHIBIT "A"

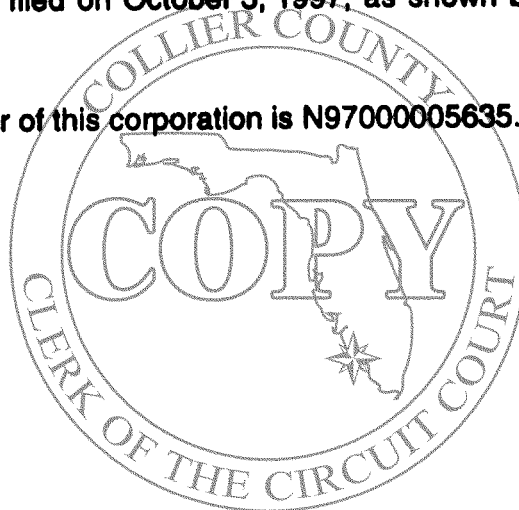
State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of HERITAGE GREENS SINGLE FAMILY HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on October 3, 1997, as shown by the records of this office.

The document number of this corporation is N97000005635.



OR: 2430 PG: 0357

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Sixth day of October, 1997



CR2EO22 (2-95)

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

Sandra B. Northam
Secretary of State

FILED
ST 007-3 11:13:55
HERITAGE GREENS SINGLE FAMILY HOMEOWNERS ASSOCIATION, INC.

**ARTICLES OF INCORPORATION
OF
HERITAGE GREENS SINGLE FAMILY HOMEOWNERS
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 Heritage Greens Single Family Homeowners 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;

(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 23rd day of September 1997.

[Signature]
Anthony Persichilli

STATE OF FLORIDA
COUNTY OF COLLIER

This instrument was acknowledged before me this 23rd day of SEPTEMBER 1997, by Anthony Persichilli, who is personally known to me or did produce personally known as identification.

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



JANICE M GIVEN
My Commission CC377333
Expires Jun. 01, 1998
Bonded by ANB
800-982-5878

OR: 2430 PG: 0361

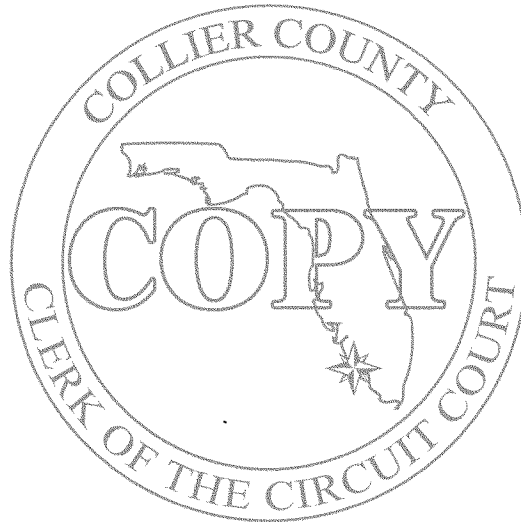
ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for Heritage Greens Single Family Homeowners 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.



John M. Swalm III, President



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TALLAHASSEE, FLORIDA

OR: 2430 PG: 0362

**BYLAWS
OF
HERITAGE GREENS SINGLE FAMILY HOMEOWNERS
ASSOCIATION, INC.**

1. GENERAL. These are the Bylaws of Heritage Greens Single Family Homeowners 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 10491 Six Mile Cypress Pky., Suite 101, 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 is 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 words and phrases used in these Bylaws are as set forth in Section 1 of the Declaration of Covenants, Conditions and Restrictions for Heritage Greens Single Family Homes (the "Declaration") to which these Bylaws are attached as Exhibit "C."

2. MEMBERS; VOTING RIGHTS. Every owner of record legal title to a Lot in the Neighborhood 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 in Association matters where a vote of the members is permitted or required for each Lot owned by them. The vote of a Lot is not divisible. The total number of votes (also called the "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 a member is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of that 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 members 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 each member at his address 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, no separate notice to the new owner is 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 (1997), 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 (1997), 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, but only when they are 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 Community Association. In accordance with the requirements of the Bylaws of the Community Association, 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 Community Association. Written notice of the appointment shall be given to the Community Association. The Voting Representative shall attend the meetings of the members of the Community Association, 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 Community Association. 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 Community Association 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 Community Association, 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 Community Association 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 Community Association.

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 at least 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 after the next annual meeting. 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 their 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; any other eligible person may also be nominated as a candidate from the floor at the annual meeting. Nothing herein shall be construed as mandating or prohibiting 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 if there is no agreement, 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 majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office for the remaining unexpired term.

4.5 Removal of Directors. Any Director may be removed from office, with or without cause, by the vote or agreement in writing of at least a majority of the voting interests. The notice of a meeting of the members 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 includes 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. The provisions of this Section 4 governing the calling and holding of Board meetings shall also apply to any committee or similar body appointed by the Board or any member thereof, or elected by the members, but only to the least extent required or permitted by law. This section 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 (1997), 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 shall attend 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 member, 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 Annual assessments. Regular annual assessments based on the adopted budget shall be paid annually in advance due on the first day of January of each year. Written notice of each annual 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. In its discretion, the Board may require payment in semi-annual installments instead.

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 first came due.

6.11 Fiscal year. The fiscal year for the Association shall begin on the first day of January of each 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 written petition to the Board signed by at least one-fourth (1/4th) of the voting interests of the members.

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 Effective date: recording. A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted, which certificate shall be signed by the President or Vice President of the Association. The certificate 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.

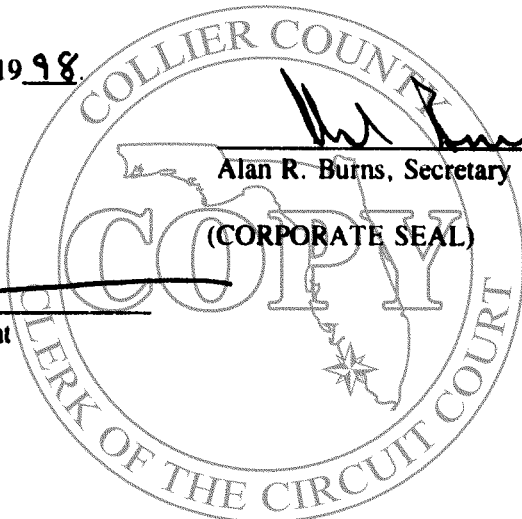
9.1 Gender: number. Whenever a masculine or singular pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

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 Heritage Greens Single Family Homeowners Association, Inc., and were duly adopted at the first meeting of the Board of Directors held on October 9, 1997.

Date: 6/12, 1998.



[Signature]
Alan R. Burns, Secretary

Attest:

[Signature]
Anthony Persichini, President

*** OR: 2430 PG: 0373 ***