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PAVESH LAW FIRM
1833 HENDRY ST
FT MYERS FL 33901

DECLARATION OF CONDOMINIUM FOR TERRACE II AT HERITAGE BAY, A CONDOMINIUM

MADE this 26th day of October, 2006, by U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, hereinafter called the "Developer," for itself and its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. **THE LAND.** The Developer owns certain real property located in Collier County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").
2. **SUBMISSION STATEMENT.** The Developer hereby submits the Land described in Exhibit "A" and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of recording this Declaration, excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms.
3. **NAME.** The name by which this Condominium shall be identified is Terrace II at Heritage Bay, a Condominium, (the "Condominium") and its address is 10245th Heritage Bay Blvd., Naples, FL 34114.
4. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.
 - 4.1 "Architectural Review Committee" or "ARC" means the Architectural Review Committee as established and empowered in Section 6 of the Club Declaration.

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4.2 "**Assessment**" means a share of the funds required for the payment of common expenses which from time to time is assessed against each of the units.

4.3 "**Association**" means Terrace II at Heritage Bay Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.4 "**Association Property**" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.5 "**Board of Directors**" or "**the Board**" means the representative body which is responsible for the administration of the Association's affairs, and is the same body sometimes referred to in the Condominium Act as the "board of administration".

4.6 "**Club**" or "**the Club**" means Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Club Common Areas within Heritage Bay Golf & Country Club, as described in the Governing Documents.

4.7 "**Club Common Areas**" means the real property and all improvements thereon owned or to be owned by the Club for the use and benefit of the members of Heritage Bay Golf & Country Club.

4.8 "**Club Declaration**" means the Declaration of Covenants, Conditions and Restrictions for Heritage Bay Golf & Country Club, as recorded in the Official Records of Collier County, Florida, in Book 3989, at Pages 2218 *et seq.*, as the same is amended from time to time.

4.9 "**Condominium Documents**" means this Declaration and all recorded exhibits hereto, as amended from time to time.

4.10 "**County.**" All references in the condominium documents to "a County" or "the County" or to a specific Florida County are intended to refer to Collier County, Florida, and shall be construed to do so.

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

(A) One natural person.

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

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

4.12 "**Fixtures**" means items of tangible personal property which, by being physically annexed or constructively affixed to a unit, have become accessory to it and part and parcel of it, including but not limited to, interior partition walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.13 "**Guest**" means any person (other than the unit owner and his family) who is physically present in, or occupies an unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without the payment of consideration.

4.14 “Institutional Mortgagee” means:

(A) a lending institution holding a first mortgage lien upon a unit, 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 private agency that is engaged in the business of buying, selling, holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration) and which holds, guarantees or insures a first mortgage encumbering a unit; 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 a mortgage held by an Institutional Mortgagee encumbering a unit.

4.15 “Lease” means the grant by a unit owner of a temporary right to reside in the owner’s unit for valuable consideration.

4.16 “Limited Common Elements” means those common elements which are reserved for the use of a certain unit or units to the exclusion of the other units.

4.17 “Occupant,” when used in connection with a unit, means a person who uses a unit as his or her place of residence on two or more consecutive days. “Occupy” means the act of staying overnight in a unit.

4.18 “Primary Institutional Mortgagee” means that institutional mortgagee which, at the time a determination is made, holds more first mortgages on units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.19 “Rules and Regulations” means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

4.20 “Voting Group” means a group of members of the Club whose units or parcels are represented by one (1) or more Directors of the Club, as more particularly described in Section 11.7 of the Club Declaration, and in a Supplemental Declaration or amendment to the Club Declaration to be recorded as provided therein.

4.21 “Voting Interests” refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are sixty (60) units, so the total number of voting interests is sixty (60) votes.

4.22 **"Voting Representative"** means the representative selected by the Members of this Condominium to be responsible for casting all votes of the unit owners in all Club matters other than the election of Directors.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 **Survey and Plot Plans.** Attached to this Declaration as part of Exhibit "B" and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements.

Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 **Unit Boundaries.** Each unit shall include that part of the building in which the unit is located that lies within the following boundaries:

(A) **Upper and lower boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) **Upper boundaries.** The horizontal plane or planes of the unfinished lower surface of the ceiling of the unit.

(2) **Lower boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the unit.

(B) **Perimeter boundaries.** The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard walls bounding the unit as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries.

(C) **Interior walls.** No part of the non-structural interior partition walls within an unit shall be considered part of the boundary of a unit, but shall be considered part of the unit.

(D) **Apertures.** Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware therefor, are excluded from the unit.

(E) **Utilities.** The unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the common elements. Such utility installations shall be common elements.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of Section 5.2(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 Shares of Ownership. The Condominium contains sixty (60) units. The owner of each unit also owns a one sixtieth (1/60th) undivided share in the common elements and the common surplus.

6.2 Appurtenances to Each Unit. The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

- (A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D" respectively.
- (C) Membership in the Club with all rights and obligations provided in the Club Declaration.
- (D) Non-voting membership in the Heritage Bay Umbrella Association, Inc., with all rights and obligations provided in the Umbrella Declaration.
- (E) The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements. These use rights are subject to the use restrictions set forth in the governing documents, and to the rules of the Association.
- (F) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (G) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "condominium parcel."

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and common areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

7. COMMON ELEMENTS; EASEMENTS.

7.1 Definition. The term "common elements" means all of the condominium property that is not included within the units, and includes without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements on the Land not included within the

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units, including limited common elements.

(C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.

(D) An easement of support in every portion of the condominium property that contributes to the support of a building or structure.

(E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

7.2 Easements. Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(A) Utility and other easements. The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. This power also includes a limited power to convey easements, as provided for in Chapter 73, Florida Statutes. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

(B) Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, 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 unit owner and occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements 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 common elements 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) Construction; maintenance. The Developer (including its designees and contractors) shall have the right to enter the condominium property 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 of the condominium property by the unit owners.

(E) Sales activity. For as long as it holds any unit in the Condominium for sale in the ordinary course of business, the Developer and its designees shall have the right to use, without charge, any units owned by it, and the common elements in order to establish modify, maintain and utilize, as it and they deem appropriate, model units and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model units or the common elements to prospective purchasers or tenants, erect on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales, leases and promotion of the Condominium.

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

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and passes with the title to the unit, whether separately described or not. No owner may maintain an action for partition of the common elements. A unit owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his unit.

8. LIMITED COMMON ELEMENTS.

8.1 Description of Limited Common Elements. Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant are as described in this Declaration, and as further shown on the attached survey and plot plan.

(A) Covered Parking Spaces. There are shown in Exhibit "B" certain covered parking spaces as limited common elements. The exclusive right to use each covered parking space is assigned as an appurtenance to the unit bearing the same number.

(B) Air Conditioning and heating equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, are limited common elements.

(D) Lanai. The airspace comprising a lanai attached to and serving exclusively a unit is a limited common element.

(E) Storage Areas. Certain storage areas are shown on the survey and plot plan as limited common elements. Each unit has been assigned to the exclusive use of a certain storage area as identified on the survey and plot plan. No unit may be assigned or acquire the use of more than one storage area.

(F) Others. Any part of the common elements that is connected to and exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by, or at the expense of, the unit owner, shall be deemed a limited common element, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware, locks and frames therefor.

8.2 Exclusive Use. The exclusive right to use a limited common element is an appurtenance to the unit or units to which that right is designated or assigned. The use right passes with the unit, whether separately described or not, and cannot be separated from it.

9. ASSOCIATION. The operation of the Condominium is by Terrace II at Heritage Bay Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

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

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

9.3 Delegation of Management. The Board of Directors may contract for the management and maintenance of the condominium property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership. The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and in the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose reasonable fees for use of common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

9.7 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 9.8 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without need for authorization by the unit owners.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

9.12 Approval of Certain Litigation. Notwithstanding any other provisions of the governing documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests of the Association prior to paying or incurring any obligation to pay any 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 condominium 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) the filing of a compulsory counterclaim.

10. ASSESSMENTS AND LIENS. The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors enters into a contract for pest control or cable television services in bulk for all units, the cost of such services shall be a common expense.

10.2 Share of Common Expenses. The owner of each unit is liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

10.4 Liability for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit for which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees.

10.6 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 paid by the tenth (10th) day shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for the 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 as required by law. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any special assessment or quarterly installment of regular assessments as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for the current fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner,

the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. Except as otherwise provided by law, the Association's lien for unpaid assessments is subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or claim of lien was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.11 Certificate as to Assessments. Within fifteen (15) days after request by a unit owner, unit purchaser or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

10.12 Statutory Assessment Guarantee; Liability of Developer for Common Expenses. The Developer guarantees that from the recording of this Declaration, until December 31, 2006, or such earlier date as unit owners other than the Developer first elect a majority of the Directors of the Condominium Association (the "turnover date"), assessments against unit owners for common expenses will not exceed \$585.00 per quarter. If the turnover date has not occurred by December 31, 2006, the Developer further guarantees that from January 1, 2007, until the first to occur of December 31, 2007, or the turnover date, assessments for common expenses against each unit will not exceed \$672.75 per quarter. If the turnover date has not occurred by December 31, 2008, the Developer further guarantees that from January 1, 2008, until the turnover date, assessments for common expenses against each unit will not exceed \$773.66 per quarter. During this guarantee period, the Developer and units owned by the Developer shall be exempt from the payment of assessments for common expenses. The Developer shall, however, be obligated to fund any deficit caused by the failure of assessments at the guaranteed level receivable from other unit owners to meet the common expenses incurred by the Association.

11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS. Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Water lines, up to the individual unit cut-off valve.

- (C) Cable television lines up to the wall outlet.
- (D) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.
- (E) Air-conditioning coolant lines.
- (F) Sewer lines, up to the point where they enter the individual unit.
- (G) The exterior surfaces of the main entrance door to each unit.
- (H) All exterior building walls, including painting, waterproofing, and caulking.
- (I) All building roofs, and skylights (if any).
- (J) Dryer and bath fan vents up to the point where they enter the unit.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense unless the need for the work was caused by the unit owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and of certain limited common elements. The owner's responsibilities include, without limitation:

- (A) All screens, windows, window glass, and related hardware and frames.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, built-in cabinets, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and related installations serving the unit exclusively, regardless of where located, except the concrete pad on which air conditioning compressors are located, and all coolant lines located outside the units which are common elements.
- (H) Carpeting and other floor coverings.

(F) Modifications and alterations. If a unit owner makes any modifications, installations or additions to the common elements with or without association approval, the unit owner, and his successors in title, shall thereby become financially responsible for:

- (1) insurance, maintenance, repair and replacement of the modifications, installations or additions; and
- (2) all damages to other property or persons caused by such modifications, installations or additions; and
- (3) the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property; and
- (4) damage to the modifications, installations or additions caused by work being done by the Association.

(G) Use of licensed and insured contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the voting interests in writing, the Association may enter into such contractual undertakings. The costs of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

11.5 Alteration of Units or Common Elements by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the ARC, as well as the approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

11.6 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the

Association shall make no material alteration of, nor substantial additions to, the common elements or real property owned by the Association costing more than \$20,000 in the aggregate in any calendar year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required. All alterations are subject to the prior approval of the ARC.

11.7 Enforcement of Maintenance. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any common elements or of any portion of the unit to be maintained by the Association pursuant to this Declaration. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses or collection, if any.

11.8 Negligence; Damage Caused by Condition in Unit. Each unit owner is liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from an owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.9 Association Access to Units. The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units or the common elements. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment, as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of unit access shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides a key to the Association. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by forced entry, and all damage resulting from delay in gaining entrance to his unit caused by the non-availability of a key.

11.10 Pest Control. The Association may opt to supply pest control services inside of each unit, with the cost being a common expense. An owner has the option to decline to receive the service unless the

Association determines that the service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is a common expense, the election of any owner not to use the service shall not reduce the owner's assessments.

11.11 Lanai Enclosures. The Board of Directors, in its discretion, may adopt standard approved plans for screening and/or glassing-in of lanais, subject to ARC approval. A unit owner may screen or enclose the lanai serving his unit in accordance with the standard plan (if any) without specific consent from the Board of Directors, but only if the screening or enclosure conforms in all respects to the approved basic plans and specifications.

11.12 Hurricane Shutters. Notwithstanding Section 11.11 above, the Board of Directors has approved and adopted a standard model, style and color of hurricane shutter. This standard hurricane shutter has been provided to each unit, and the repair and replacement of those shutters is a common expense. The unit owner is responsible for installing and removing those shutters. No hurricane shutter except the standard hurricane shutter may be installed without approval of the Board of Directors. The Board may adopt plans for other models, colors and styles of hurricane shutters if it wishes.

12. USE RESTRICTIONS. The use of the units and the common elements shall be in accordance with the following provisions, and with Section 5 of the Club Declaration, as long as the Condominium exists:

12.1 Units. Each unit shall at any time be occupied by only one family, its servants and guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any unit, nor may the name of the Condominium or the address of any unit be publicly advertised as the location of any business. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 12.1 is, however, intended to prohibit commercial or business activity by a unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers or clients.

12.2 Age. There is no restriction on the age of occupants of units. All occupants under eighteen (18) years of age must be closely supervised at all times by an adult to insure that they do not become a source of annoyance to other residents.

12.3 Pets. The owner of each unit may keep no more than two (2) small pets, of a normal domesticated household type (such as a cat or dog) in the unit. Dogs and cats must be leashed or carried at all times while outside of the unit. The ability to keep pets is a privilege, not a vested right, and the Board of Directors may order and enforce the removal of any pet which becomes a reasonable source of annoyance to other residents. The owner is responsible for cleaning up after his pet. No pets of any kind are permitted in leased units. No reptiles, rodents, poultry, amphibians, swine or livestock may be kept in the Condominium, but tropical fish or caged birds in reasonable numbers are permitted.

12.4 Nuisances. No owner shall use his unit, or permit it to be used, in any manner that is unreasonably disturbing, detrimental or a nuisance to the occupants of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws, the governing documents and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.5 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 Properties, including those posted in windows of buildings or motor vehicles. If any sign is erected in violation of this provision, the Declarant, the Club, 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. A unit owner may display one portable, removable United States or the State of Florida flag in a respectful way and such other flags, as provided by Chapter 718.113(4), Florida Statutes.

12.6 Motor Vehicles; Parking. No motor vehicle shall be parked anywhere on the condominium property except on a designated parking surface. No commercial trucks, or other vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept on the condominium property. For the purpose of this Section, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less. Because the number of parking spaces is very limited, the right of the residents of any unit to keep more than one motor vehicle in the Condominium may be limited or regulated by the Association. No house trailer, mobile home, motor home and the like may be kept in the Condominium more than two (2) times in any month. Any vehicle parked in violation of this Section is subject to being towed away at the owner's expense without further warning.

13. LEASING OF UNITS. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section 13. The ability of a unit owner to lease his unit is a privilege, not a vested right. The privilege may be revoked by the Board of Directors if it is abused by the unit owner, or the owner fails or refuses to follow the required procedures.

13.1 Procedures.

(A) **Notice.** An owner intending to lease his unit must give to the Board of Directors (or its designee) written notice of such intention at least five (5) days prior to the starting date of the proposed lease, together with the name and address of the proposed lessee, and other information about the lessee or the lease that the Board may reasonably require.

(B) **Failure to give notice.** Any lease entered into without notice in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee by summary proceedings without securing consent to such eviction from the unit owner.

13.2 Term of Lease and Frequency of Leasing. The minimum lease term is thirty (30) consecutive days. No lease may begin sooner than thirty (30) days after the beginning of the last lease. No subleasing or assignment of lease rights by the lessee is allowed.

13.3 Occupancy During Lease Term. The total number of overnight occupants of a leased unit is limited to six (6) persons. Pets are not permitted in leased units.

13.4 Use of Common Elements and Common Areas. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

13.5 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. The Association may require lessees to post a security deposit as provided by law to protect against damage to the common elements. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

14. OWNERSHIP OF UNITS. The transfer of ownership of units shall be subject to the following restrictions and requirements:

14.1 Notice to Association. An owner intending to sell his 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.

14.2 Designation of Member of the Club. Where legal title to a unit is held in the name of two or more natural persons who are not husband and wife, or in the name of a corporation, partnership, or other entity which is not a natural person, the owner shall designate in writing one family as the member of the Club, as provided in Section 4 of the Club Declaration. For purposes of applying restrictions on the occupancy of units, the designated Club member shall also be deemed the owner of the unit.

14.3 Life Estate. A unit 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 of the Club from such unit, and occupancy of the 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 unit. 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.

15. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 By the Unit Owner. The owner of each unit is responsible for insuring the unit, and the personal property therein; all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and counter tops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service the unit, regardless of where located, and all alterations, additions and improvements made to the unit or to the Common Elements by the owner or his predecessors in title. The foregoing is intended to establish the property insuring responsibilities of the individual unit owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner. Each unit owner is expected to carry adequate homeowner's insurance (commonly referred to as an "HO-6"), with appropriate endorsements (if available) for commonly excluded losses caused by sewer backups, leakage, seepage and wind-driven rain, mold, inability to use the unit for an extended period of time during reconstruction and repairs, and loss Assessment protection. An owner who fails to do so assumes financial responsibility for any damage to his property or liability to others that would otherwise be covered by the insurance.

15.2 Association Insurance; Duty and Authority to Obtain. The Association is required by law to obtain and keep in force the insurance coverages which are mandated by law and under the Condominium Documents. Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

- (A) All portions of the Condominium Property located outside the units;
- (B) The Condominium Property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and
- (C) All portions of the Condominium Property for which the Declaration of Condominium requires coverage by the Association.

The term as "Condominium Property," "building," "improvements," "insurable improvements," "common elements," "Association Property," or any other term found in this Declaration that defines the scope of property or casualty insurance that the Association must obtain shall exclude the items listed in Section 15.1, above, that are required to be insured by the unit owner. The Association may purchase any or all additional insurance coverage the Board deems necessary. The name of the insured shall be the Association, the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure. The Association has the authority to amend this Declaration without regard to any requirement for mortgagee approval of amendments affecting insurance requirements, to conform this Declaration to the coverage requirements of the Condominium Act.

15.3 Required Coverage. The Association shall maintain or arrange for adequate insurance covering the buildings and other improvements on the Condominium Property that the Association is required by Section 15.2 above and the Condominium Act, to insure, as well as all Association Property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors in the exercise of its good business judgment, and in cooperation with the Operating Owner, such insurance to afford at least the following protection:

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

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

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

(D) Statutory Fidelity Bond. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks, and the President, Secretary, and Treasurer of the Association.

15.4 Optional Coverage. The Association may also obtain and maintain liability insurance protecting directors and officers, health or other insurance for the benefit of Association employees, an endorsement for losses caused by operation of local ordinances, and flood insurance covering the common elements, Association property, and units. The Association may also purchase and carry other insurance the Board of Directors determines to be in the best interest of the Association and its members.

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

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

(A) Damage to property maintained by the Association. Proceeds on account of damage to common elements, association property, and any parts of the units which are required to be maintained, repaired and replaced by the Association shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements and common surplus, as provided in Section 6 above.

(B) Damage to property insured by Association but maintained by unit owners. Proceeds received from Association policies on account of damage within the units or to limited common elements that is the responsibility of the unit owner to maintain, repair or replace shall be held in percentage shares based on the estimated dollar amount within each damaged unit or its limited

common elements as a percentage of the total damage within all units or their limited common elements.

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

(D) Deductibles. In the case of losses covered by Association property insurance, the burden of paying for damage not covered because of a deductible shall be borne by the person or entity that would be required to pay to repair or reconstruct the property in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them according to the percentage of the total uninsured loss each party must bear.

15.7 Distribution of Proceeds. Insurance proceeds from Association policies held by the Association in the shares provided for above, shall be distributed to or for the benefit of, the unit owners as provided herein.

(A) Costs of protecting and preserving the property. If a person other than the person responsible for repair and reconstruction has in good faith advanced funds to preserve or protect the property to prevent further damage or deterioration before repairs are made, the funds so advanced shall first be repaid, with interest if required.

(B) Cost of repair or reconstruction. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the costs as provided in Sections 15.7 (A) and (B) above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

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

15.8 Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner, with full authority to assert, negotiate, waive or settle any and all claims arising under insurance policies purchased by the Association for damage or loss to the unit or the unit owner's property.

16. REPAIR OR RECONSTRUCTION AFTER CASUALTY. If any part of the condominium property or association property is damaged, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where "less than very substantial" loss or damage occurs, and is confined largely or entirely within one or more units, the shares specified in Section 15.7 above, of any insurance

proceeds from Association policies on account of the loss or damage shall be paid to or on behalf of the owner of each damaged unit, who shall be responsible to undertake and complete repairs within his unit.

16.2 Damage to Common Elements - "Less than Very Substantial." Where the common elements or association property are damaged, but the loss is "less than very substantial," as defined below, the Association must repair, restore and rebuild the damage in accordance with the following:

(A) The Board of Directors, without unreasonable delay, shall seek detailed estimates of the costs and methods of repair and restoration, and negotiate the contract for same.

(B) If an insufficient amount of insurance proceeds and reserves for capital expenditures and deferred maintenance are available to pay for repair and reconstruction of the common elements and association property, the Board of Directors shall promptly, upon determination of the deficiency, levy a special assessment in that amount. Such special assessments do not require prior approval by the unit owners. The revenue from the special assessment shall be added to the funds available for repair and restoration of the property.

16.3 "Very Substantial Damage." As used in this Declaration, the term "very substantial damage" means loss or damage caused by a common occurrence resulting in at least a majority of the total units being so badly damaged that they cannot reasonably be rendered habitable within sixty (60) days from the date of the casualty. Should such "very substantial damage" occur:

(A) The Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such actions as may reasonably appear at the time to be necessary under emergency conditions, including but not limited to actions authorized in Section 4.16 of the Bylaws. This authority includes the right to take actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

(B) The Board of Directors shall seek comprehensive, detailed estimates of the cost of repairs and shall proceed to settle all insurance claims that will provide funds for reconstruction.

(C) A meeting of the members shall be held within sixty (60) days after the Board has obtained the information to determine the will of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If, as a result of its investigation of the amount of damage, the costs of repairs and reconstruction, and the likely sum of all insurance proceeds, reserves and other association funds available for the restoration and repairs, a majority of the Board determines that it is reasonable to anticipate that repairs and reconstruction can be accomplished without the need to levying additional assessments in excess of fifteen percent (15%) of the total annual budget (including reserves) for the Condominium in the year in which the casualty occurred, the damage shall be repaired and the Condominium rebuilt unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel, engineers, and other experts, it appears unlikely that the then applicable zoning or other regulatory laws and administrative rules will allow reconstruction of the same number and general types of units; or if it appears that the insurance proceeds, reserves and other association funds available for repairs and reconstruction will not be sufficient to cover the estimated cost without also levying assessments exceeding fifteen percent (15%) of the total annual budget (including reserves) for the Condominium in the year in which the casualty occurred, the Condominium shall be terminated, unless at least two-thirds (2/3rds) of the total voting interests of the Condominium vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments it deems necessary, and shall proceed with repairs and reconstruction. If the requisite number of unit owners do not vote against termination, the officers and the Board shall promptly take action to terminate the condominium pursuant to Section 18 below.

(D) If any dispute shall arise as to whether "very substantial damage" has occurred, a determination by a majority vote of the entire Board of Directors shall be conclusive.

16.4 Application of insurance proceeds. It shall be presumed that the monies used or distributed for repairs and reconstruction are insurance proceeds, until all insurance funds are depleted. If it is determined that there are unused funds held in trust by the Association after the paying all costs of repair and reconstruction, the balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

16.5 Equitable relief. If damage to the condominium property temporarily prevents occupancy of one or more units, and the Association does not undertake and complete repairs or reconstruction sufficient to make the unit useable within a reasonable period of time, the unit owner may petition a court for equitable relief, which in the discretion of the court may include termination of the Condominium, followed by partition of the former condominium and association property. For purposes of this Section 16.5, in the event of "very substantial damage" there is a rebuttable presumption that repairs and reconstruction have occurred within a reasonable period of time if substantial work begins within six (6) months after the casualty occurred, and the work is substantially completed within nine (9) months thereafter.

16.6 Plans and specifications. All reconstruction and repairs must substantially conform to the plans and specifications for the original buildings, unless different plans and specifications are first approved by the Board of Directors, by the owners of at least two-thirds (2/3rds) of the units, by the ARC, and by the Primary Institutional Mortgagee. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

17. CONDEMNATION.

17.1 Deposit of awards with Association. The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken. Awards for the taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after a taking by condemnation or eminent domain will be determined in the same manner provided for determining whether damaged property will be repaired or reconstructed or after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated, the proceeds of all awards and other payments will be deemed association property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated, but the size of the Condominium will be reduced, the owners of units to be diminished or eliminated, if any, will first be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with a condemning authority for the purpose of realizing just compensation.

17.5 Units Reduced but Habitable. If the size of a unit must be reduced, and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) Rehabilitation of unit. The unit shall be made habitable. If the cost of doing so exceeds the amount of the award, the additional funds required shall be the obligation of the owner of the unit.

(B) Distribution of surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

17.6 Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) Payment of award. The award shall be paid to the owner of the unit and to each mortgagee of the unit as their interests may appear, the remittance being made payable jointly to the owner and mortgagee(s).

(B) Addition to common elements. If possible and practical, any remaining portion of the unit shall become part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.

(C) Adjustment of shares in common elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to equitably distribute the ownership of the common elements among the changed number of units.

(D) Assessments. If the award to the Association for damage to the common elements resulting from a taking is not sufficient to pay the cost of converting the remaining portions of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after

the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.

17.7 Taking of Common Elements. Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall become part of the common surplus.

17.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and Exhibits "A" and "B" in conformity to the changes mandated by Sections 17.5 and 17.6 above. Such amendments require approval by the owners of at least a majority of the units. Approval of, or joinder by, lien holders is not required for any such amendment.

18. TERMINATION. The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourths (3/4ths) of the units, and the Primary Institutional Mortgagee.

18.2 Very Substantial Damage. If the Condominium suffers "very substantial damage" as defined in Section 16.3 above, and it is not decided, as therein provided, that the Condominium will be rebuilt, the condominium form of ownership of the property in this Condominium will be terminated.

18.3 Certificate of Termination. The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Trustee, and shall be executed by the Trustee indicating willingness and ability to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Collier County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

18.4 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, for the purpose of winding up the affairs of the Association in accordance with this Section.

18.5 Trustee's Powers and Duties. The Termination Trustee shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Trustee shall be entitled to reasonable fees for acting in such capacity, and such fees, and all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or paid from the proceeds of the sale of the former condominium and association property, or other Association assets, and shall constitute a lien on the property superior to any other lien. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Trustee unless such liabilities are the result of gross negligence or malfeasance. The Termination Trustee may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. In the event of the resignation or incapacity of the Trustee, a successor Trustee may be appointed by the Circuit Court on the petition of the Association.

18.6 Partition; Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former condominium and association property within 1 year after the recording of the Certificate of Termination, the Trustee may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

18.7 New Condominium. The termination of the Condominium does not bar creation of another condominium including all or any portion of the same property.

18.8 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former condominium property and winding up the affairs of the Association, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

19. OBLIGATIONS OF OWNERS.

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner

against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies a unit; or
- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.
- (E) Directors designated by the Developer, for actions taken by them prior to the time control of the Association is assumed by unit owners other than the Developer.

19.2 Waiver of Rights. The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a prospective purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys fees as may be awarded by the court.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

20. RIGHTS OF MORTGAGEES.

20.1 Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the percentage interests of the unit in the ownership of the common elements, except as provided in Section 17.6(C) above.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

20.3 Mortgage Foreclosure. If the mortgagee of a first mortgage of record, or any other person, acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the new owner for payment of the shares of common expenses or

assessments attributable to the condominium parcel, which came due prior to the acquisition of title shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which such the new owner is exempt from paying becomes a common expense collectible from all unit owners, including the acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure (or by a deed in lieu of foreclosure) may, during his period of ownership, whether the parcel is occupied or not, be excused from paying any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. A mortgagee has an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to institutional mortgagees, upon written request, current copies of the recorded condominium documents, and the books, records and financial statements of the Association. "Available" means ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies provided at the request of the mortgagee shall be at the expense of the mortgagee.

20.6 Financial Statements. Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement or financial report of the Association as delivered to the owners for the immediately preceding fiscal year.

20.7 Lender's Notices. Upon written request to the Association, an institutional mortgagee is entitled to timely written notice of:

- (A) Any delinquency of sixty (60) days or longer in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (C) Any proposed action that requires the consent of a specified number or percentage of mortgage holders.

21. DEVELOPER'S RIGHTS AND DUTIES. Notwithstanding any other provision of this Declaration, so long as the Developer or any successor in interest to the developmental rights of the Developer is offering any units in the Condominium for sale in the ordinary course of business, the following shall apply:

21.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the units in the Condominium neither the unit owners nor the Associations may use the condominium property in any way that unreasonably interferes with the completion of construction and the sale of units. The Developer may make any use of the unsold units and the common elements as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of a sales office, display of signs, leasing units, and showing the units for sale to prospective purchasers.

Until it no longer owns any units for sale in the ordinary course of business, the Developer also reserves the right to sell and lease back one or more units for use as "hospitality suites," providing short term guest accommodations for prospective purchasers or other business guests of the Developer,

21.2 Assignment. All or any of the rights, privileges, powers and immunities granted or reserved to the Developer in the condominium documents may be assigned by the Developer to a successor developer without the consent of any other unit owner or any holder of a mortgage secured by any unit. In the event of the foreclosure of any construction 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.

21.3 Amendments by Developer. The Developer has the right under the Condominium Act to amend this Declaration and any of its exhibits for certain specific purposes. Said amendments may be made and executed solely by the Developer and recorded in the Public Records of Collier County, Florida, and without any requirement of securing the consent of any unit owner, the Association, or the owner and holder of any lien encumbering a condominium parcel. Developer reserves the right to construct any mix of unit types in each building, including omitting a particular unit type altogether, based on customer demand.

21.4 Sale of Units. The Developer shall have the right to sell or transfer any unit owned by it to any person, on such terms and conditions as it deems in its own best interest.

21.5 Transfer of Association Control. By electing a majority of the Directors, the unit owners other than the Developer assume control. At that time the Developer must deliver to the Association all property and records of the Association held or controlled by the Developer. The Developer may turn over control of the Association to unit owners other than the Developer before the statutory deadlines by causing all of its appointed Directors to resign, whereupon it becomes the affirmative obligation of unit owners other than the Developer to elect Directors and assume control. Provided at least sixty (60) days notice of the Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with the resignations if unit owners other than the Developer refuse or fail to assume control.

21.6 Developer's Rights. As long as the Developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer.

- (A) Any amendment of the condominium documents which would adversely affect the Developer's rights.
- (B) Any assessment of the Developer as a unit owner for capital improvements.
- (C) Any action by the Association that would be detrimental to the sales of units by the Developer. However, an increase in assessments for common expenses shall not be deemed to be detrimental to the sales of units.

22. AMENDMENT OF DECLARATION. Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted as follows:

22.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by

TERRACE II AT HERITAGE BAY – DECLARATION

EXHIBIT "1"

written petition signed by the owners of at least one-fourth (1/4th) of the units.

22.2 Procedure. If any amendment to this Declaration is proposed as provided above, the proposed amendment shall be submitted to a vote of the unit owners not later than the next annual meeting for which proper notice can be given. In the case of proposed amendments by petition of the unit owners, the Association may have Association counsel revise the wording of the amendment or its manner of presentation, but only for the purpose of meeting minimum requirements for form or presentation of amendments, and to clarify or correct the wording of the amendment without materially changing the intent and effect of the amendment if it is adopted. The Association is under no obligation to present to the members for a vote any proposed amendment that in the opinion of Association counsel would require or permit any person to perform an unlawful act or omission to act.

22.3 Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Condominium who are present in person, or by proxy, and voting at any annual or special meeting called for the purpose. Prior to the assumption of control of the Association by unit owners other than the Developer, this Declaration and all exhibits may be amended by vote of a majority of the Directors, and no vote of the unit owners is required.

22.4 Certificate; Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

22.5 Proviso. An amendment to this Declaration may change the configuration or size of any unit in a material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, only if the record owner of the unit, his institutional mortgagee, if any, and the owners of at least a majority of the units, consent to the amendment. This proviso does not apply to changes ordered by a governmental agency as a result of condemnation or a taking by eminent domain under Section 17 above, nor to mergers under Section 22.7 below.

22.6 Amendment of Provisions Relating to Developer. As long as the Developer is offering any units in the Condominium for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

22.7 Mergers and Consolidations. The Heritage Bay Golf & Country Club development is planned to contain several condominiums or other forms of residential development, each with its own mandatory membership association, and with all owners sharing the use of certain common facilities operated by the Club. This multi-development, multi-association structure is administratively convenient and desirable from the Developer's perspective.

(A) **Corporate mergers or consolidations.** It is possible, however, that the unit owners in two or more of the condominiums and/or other residential developments in Heritage Bay Golf & Country Club, after they have assumed control of their associations, will determine that it is financially beneficial and in their best interests collectively to consolidate or merge any or all of the neighborhood associations in Heritage Bay Golf & Country Club into one association, in the manner provided in Chapter 617, Florida Statutes, as it may be amended from time to time, for

the merger or consolidation of non-profit corporations, without merging the property comprising the condominiums with the property comprising other neighborhoods operated by the neighborhood associations involved. In that event, this Declaration and all recorded exhibits to it can be amended in any way necessary to facilitate or permit such a merger or consolidation of associations, by the approval of at least a majority of the voting interests of this Condominium who are present in person or by proxy and voting at a meeting of the members called for the purpose of approving the proposed merger or consolidation.

(B) Mergers of condominiums. It is also possible that the unit owners in two or more condominiums in Heritage Bay Golf & Country Club after they have assumed control of their associations, will determine that it is financially beneficial and in their best interests collectively to consolidate or merge the property comprising two or more Neighborhoods in Heritage Bay Golf & Country Club into a single condominium, operated by one association, as provided for in Section 718.110(7), Florida Statutes. For that reason, regardless of any other provision in this Declaration to the contrary, this Declaration and all of the recorded exhibits to it may be amended in any way reasonably necessary to accomplish such a property merger by the written consent of a least seventy-five percent (75%) of the voting interests of each condominium involved, and the approval of all record owners of liens on the units. No other approval, consent or joinder of any other person shall not be necessary. Proviso: the amendments or new documents accomplishing a property merger must provide that:

- (1) The security and priority of all existing mortgages and liens, and the rights of existing mortgagees and lienholders, shall not be impaired by the merger;
- (2) The then-existing restrictions on the use, occupancy and transfer of units shall not be materially changed as part of the merger; and
- (3) The share of common expenses and ownership of the common elements for each unit in the new condominium shall be a fraction, the numerator of which is the number "one" (1), and the denominator of which is the total number of dwelling units in all condominiums or other developments being merged.

23. MISCELLANEOUS.

23.1 Severability. The invalidity or non-enforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not affect the remaining portions thereof.

23.2 Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date of recording this Declaration in the Public Records of Collier County, Florida.

23.3 Conflicts. If there is an irreconcilable conflict between any provision of this Declaration and the Governing Documents or the Condominium Act, this Declaration or the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, this Declaration shall control.

TERRACE II AT HERITAGE BAY — DECLARATION

EXHIBIT "1"

23.4 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless 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 such interpretation.

23.5 Exhibits. There is hereby incorporated within this Declaration any materials contained in any of the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

23.6 Headings, emphasis, and capitalization. The headings used in the condominium documents, the use of bold print and italics, and the capitalization of certain words, are intended to enhance the clarity and readability of the documents, but they do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.



IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written.

Signed in the presence of:

Barbara J. Fallool-Field
 Witness Signature
BARBARA J. FALLOOL-FIELD
 Printed Name of Witness

Janie Jones
 Witness Signature
Janie Jones
 Printed Name of Witness

U.S. HOME CORPORATION,
 a Delaware corporation

By: *Andrew Sorensen*
 Printed: ANDREW SORENSEN
 Title: DIVISION PRESIDENT
 10481 Six Mile Cypress Parkway
 Fort Myers, FL 33912

(CORPORATE SEAL)

STATE OF FLORIDA)
 COUNTY OF LEE)

The foregoing instrument was executed before me this 20th day of July
 2006 by ANDREW SORENSEN, DIVISION PRESIDENT (title),
 of U.S. Home Corporation, a Delaware corporation, on behalf of the corporation. He/she is
 personally known to me, or did produce PERSONALLY KNOWN as identification.

Bonnie G. Creach

Notary Public Signature

Bonnie G. Creach
 Printed Name of Notary Public

(SEAL)



Bonnie G. Creach
 Commission # DD305640
 Expires March 31, 2008
 Bonded Thru
 American Fidelity Co., Inc.

TERRACE II AT HERITAGE BAY - DECLARATION

LEGAL DESCRIPTION
TERRACE II AT HERITAGE BAY, A CONDOMINIUM
Being a portion of Section 24,
Township 48 South, Range 26 East,
Collier County, Florida

A parcel of land being a portion of tract "B", Heritage Bay, as recorded in Plat Book 43, Pages 15 through 45, and being a portion of Section 24, Township 48 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

BEGINNING at the Northeast corner of Tract "B", Heritage Bay as recorded in Plat Book 43, pages 15 through 45, Collier County, Florida; thence S.14°04'30"E., a distance of 313.58 feet along the West Right-of-way of Heritage Bay Boulevard to a point of curvature; thence continue along said Right-of-way along the arc of a tangent curve concave to the West, having for its elements a radius of 370.00 feet, a central angle of 15°38'44", a chord of 100.72 feet, a chord bearing of S.06°15'08"E., an arc distance of 101.04 feet; thence continue along said Right-of-Way S.01°34'15"W., a distance of 196.85 feet; thence leaving said Right-of-Way N.88°25'45"W., a distance of 52.00 feet; thence S.50°59'25"W., a distance of 36.87 feet; thence N.88°25'45"W., a distance of 18.00 feet; thence S.89°03'46"W., a distance of 127.12 feet to a point on the West line of Tract "B"; thence N.01°34'15"E., a distance of 226.39 feet to a point of curvature; thence continue along said West line along the arc of a tangent curve concave to the west, having for its elements a radius of 145.00 feet, a central angle of 15°38'44", a chord of 39.47 feet, a chord bearing of N.06°15'08"W., an arc distance of 39.59 feet; thence continue along said West line N.14°04'30"W., a distance of 313.58 feet to a point on the North line of Tract "B"; thence N.75°55'30"E., a distance of 225.00 feet to the **POINT OF BEGINNING**.

Containing 3.10 acres, more or less.

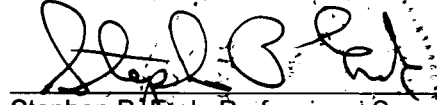
Subject to easements, restrictions, reservations and Rights-of-Way of record.

Bearings are based on the South line of the Tract "B" as being S79°07'33"W.

See attached sketch.

Prepared by:

WilsonMiller, Inc.,



Stephen P. Brek, Professional Surveyor & Mapper
Florida Registration No. LS 3273

December 14, 2005
Date

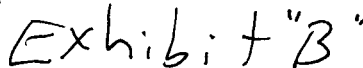
Not valid without the signature and the original raised seal of a Florida licensed Surveyor and Mapper.
P.I.N.: N0442-203-302 GCS00
Ref.: D-0442-186
Date: December 14, 2005

Exhibit "A"

Offices strategically located to serve our clients 800.649.4336

Fort Myers Office 4571 Colonial Boulevard • Fort Myers, Florida 33966 • 239.939.1020 • Fax 239.939.3412

wilsonmiller.com



Bearings are based on the Northern boundary line of Tract B as being
 A.75°35'30"E, according to Maritime Bay, Plot Book 43, Pages 15 through 45.
 Unless a comparison is made, measured bearings and distances are identical
 with plot volumes.
 Dimensions are in feet and decimals thereof.
 Subject parcel is within Zone "A" according to Third Insurance Rate
 laws 120087-027262. (Also revised 6/1/98). (Also revised 6/1/98).
 Index maps 200087-027262-1125. (Also revised 6/1/98).

* Hazardous waste sites, if any, are not located or shown.

* Elevations are in feet relative to the National Geodetic Vertical Datum (Sea Level Datum 1929).

Subject 14, and together with a nonexclusive pedestrian and vehicular access easement in favor of the owner's of all lands lying within Marjorie Bay, a subdivision according to the map or plat thereof, recorded in Plat Book 41, Pages 15 through 43, Public Records of Collier County, Florida.

ABBREVIATIONS :

P.C.P. = PERMANENT CONTROL POINT
R.O.R. = RIGHT OF WAY
R.C.P. = RECOVERED POINT
P.U.L. = PUBLIC UTILITY EXISTENT
A.E. = DRAINAGE EXISTENT
M.E. = MAINTENANCE EXISTENT
L.A.E. = LAKE MAINTENANCE EXISTENT
P.T. = POINT OF TANGENCY
C.F. = FLOOD CONTROL
S.E.T. = SET (P.C. Concrete Manholes Spaced 100-125' long) (Distance otherwise noted)
S.E.T. 3/4" = SET (P.C. Concrete Manholes Spaced 18-21' long) (75' long)
S.E.T. 5/8" = SET (P.C. Concrete Manholes Spaced 18-21' long) (75' long)
S.E.T. 3/4" = SET (P.C. Concrete Manholes Spaced 18-21' long) (Distance otherwise noted)
S.E.T. 5/8" = SET (P.C. Concrete Manholes Spaced 18-21' long) (Distance otherwise noted)

We hereby certify that the survey was done under the direction and meets the applicable provisions of Chapter 14C, Minimum Technical Standards

BT: Stephen P. Felt, Professional Journalist and Author, 12/23 -

CERTIFICATE OF AUTHORIZATION / 18-43

This Boundary Survey is only for the lands as described. It is not a certificate of title, nor does it constitute an assessment of the accuracy of the survey.

Subject to embargos, restrictions, non-reservations of record.

ABSTRACT NOT REQUIRED.

DATE OF SURVEY: SEPTEMBER 19, 1905

DATE	05/17/80	CLERK:	U.S. HOUSE
BY	WILLIAM H. HARRIS		1001 2ND C. STREET NW WASHINGTON DC 20540

ROUGH 45	11/27/78	05300	1 = 8	D-042-1062
DA				

[illegible]

April 1987						
No.	Radius	Area	Length	Depth	Depth	Depth
1	1.5	1.5	1.5	1.5	1.5	1.5
2	1.5	1.5	1.5	1.5	1.5	1.5
3	1.5	1.5	1.5	1.5	1.5	1.5
4	1.5	1.5	1.5	1.5	1.5	1.5
5	1.5	1.5	1.5	1.5	1.5	1.5
6	1.5	1.5	1.5	1.5	1.5	1.5
7	1.5	1.5	1.5	1.5	1.5	1.5
8	1.5	1.5	1.5	1.5	1.5	1.5
9	1.5	1.5	1.5	1.5	1.5	1.5
10	1.5	1.5	1.5	1.5	1.5	1.5
11	1.5	1.5	1.5	1.5	1.5	1.5
12	1.5	1.5	1.5	1.5	1.5	1.5
13	1.5	1.5	1.5	1.5	1.5	1.5
14	1.5	1.5	1.5	1.5	1.5	1.5
15	1.5	1.5	1.5	1.5	1.5	1.5
16	1.5	1.5	1.5	1.5	1.5	1.5
17	1.5	1.5	1.5	1.5	1.5	1.5
18	1.5	1.5	1.5	1.5	1.5	1.5
19	1.5	1.5	1.5	1.5	1.5	1.5
20	1.5	1.5	1.5	1.5	1.5	1.5
21	1.5	1.5	1.5	1.5	1.5	1.5
22	1.5	1.5	1.5	1.5	1.5	1.5
23	1.5	1.5	1.5	1.5	1.5	1.5
24	1.5	1.5	1.5	1.5	1.5	1.5
25	1.5	1.5	1.5	1.5	1.5	1.5
26	1.5	1.5	1.5	1.5	1.5	1.5
27	1.5	1.5	1.5	1.5	1.5	1.5
28	1.5	1.5	1.5	1.5	1.5	1.5
29	1.5	1.5	1.5	1.5	1.5	1.5
30	1.5	1.5	1.5	1.5	1.5	1.5
31	1.5	1.5	1.5	1.5	1.5	1.5
32	1.5	1.5	1.5	1.5	1.5	1.5
33	1.5	1.5	1.5	1.5	1.5	1.5
34	1.5	1.5	1.5	1.5	1.5	1.5
35	1.5	1.5	1.5	1.5	1.5	1.5
36	1.5	1.5	1.5	1.5	1.5	1.5
37	1.5	1.5	1.5	1.5	1.5	1.5
38	1.5	1.5	1.5	1.5	1.5	1.5
39	1.5	1.5	1.5	1.5	1.5	1.5
40	1.5	1.5	1.5	1.5	1.5	1.5
41	1.5	1.5	1.5	1.5	1.5	1.5
42	1.5	1.5	1.5	1.5	1.5	1.5
43	1.5	1.5	1.5	1.5	1.5	1.5
44	1.5	1.5	1.5	1.5	1.5	1.5
45	1.5	1.5	1.5	1.5	1.5	1.5
46	1.5	1.5	1.5	1.5	1.5	1.5
47	1.5	1.5	1.5	1.5	1.5	1.5
48	1.5	1.5	1.5	1.5	1.5	1.5
49	1.5	1.5	1.5	1.5	1.5	1.5
50	1.5	1.5	1.5	1.5	1.5	1.5
51	1.5	1.5	1.5	1.5	1.5	1.5
52	1.5	1.5	1.5	1.5	1.5	1.5
53	1.5	1.5	1.5	1.5	1.5	1.5
54	1.5	1.5	1.5	1.5	1.5	1.5
55	1.5	1.5	1.5	1.5	1.5	1.5
56	1.5	1.5	1.5	1.5	1.5	1.5
57	1.5	1.5	1.5	1.5	1.5	1.5
58	1.5	1.5	1.5	1.5	1.5	1.5
59						

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RESEARCH: 1994

BOUNDARY SURVEY
PART OF TRACT B, HERITAGE BAY

05/17/08

U.S. HOME
10-01 0210 C. HUNTER DR. WILLY CARRERA PHOTO

DATE	GC-500	1 - 8	D
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1

THE FOLLOWING INFORMATION WAS OBTAINED FROM THE RECORDS OF THE BUREAU OF PRISONS, STATE OF CALIFORNIA, DURING THE YEAR 1934:

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

THE 60 MINUTE VIDEO FOR BUSINESS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RESEARCH: 1994

BOUNDARY SURVEY
PART OF TRACT B, HERITAGE BAY

05/17/08

U.S. HOME
10-01 0210 C. HUNTER DR. WILLY CARRERA PHOTO

DATE	GC-500	1 - 8	D
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1

ABRICATIONS :

- 1. P.C.R. - PERMANENT CONTROL POINT
- 2. R.A.R. - RIGHT OF WAY
- 3. A.C.E.S. - ACCESS EASEMENT
- 4. P.U.E. - PUBLIC UTILITY EASEMENT
- 5. D.E. - DRAINAGE EASEMENT
- 6. M.E. - MAINTENANCE EASEMENT
- 7. L.M.E. - LAKE MAINTENANCE EASEMENT
- 8. L.B.U.E. - LANDSCAPE BUFFER EASEMENT
- 9. F.C.M.E. - FOUND CONCRETE MOUND/SLUMP EASEMENT
- 10. S.T. - SET
- 11. S.T. 4" - Concrete Movement Slab
- 12. S.T. 4" - Iron Pile and Cap Slab
- 13. S.T. 4" - Iron Pile and Cap Slab
- 14. S.T. 4" - Iron Pile and Cap Slab
- 15. S.T. 4" - Iron Pile and Cap Slab
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- 98. S.T. 4" - Iron Pile and Cap Slab
- 99. S.T. 4" - Iron Pile and Cap Slab
- 100. S.T. 4" - Iron Pile and Cap Slab

[illegible]

Exhibit "B" (cont.)

[illegible]

Exhibit "B" (cont.)

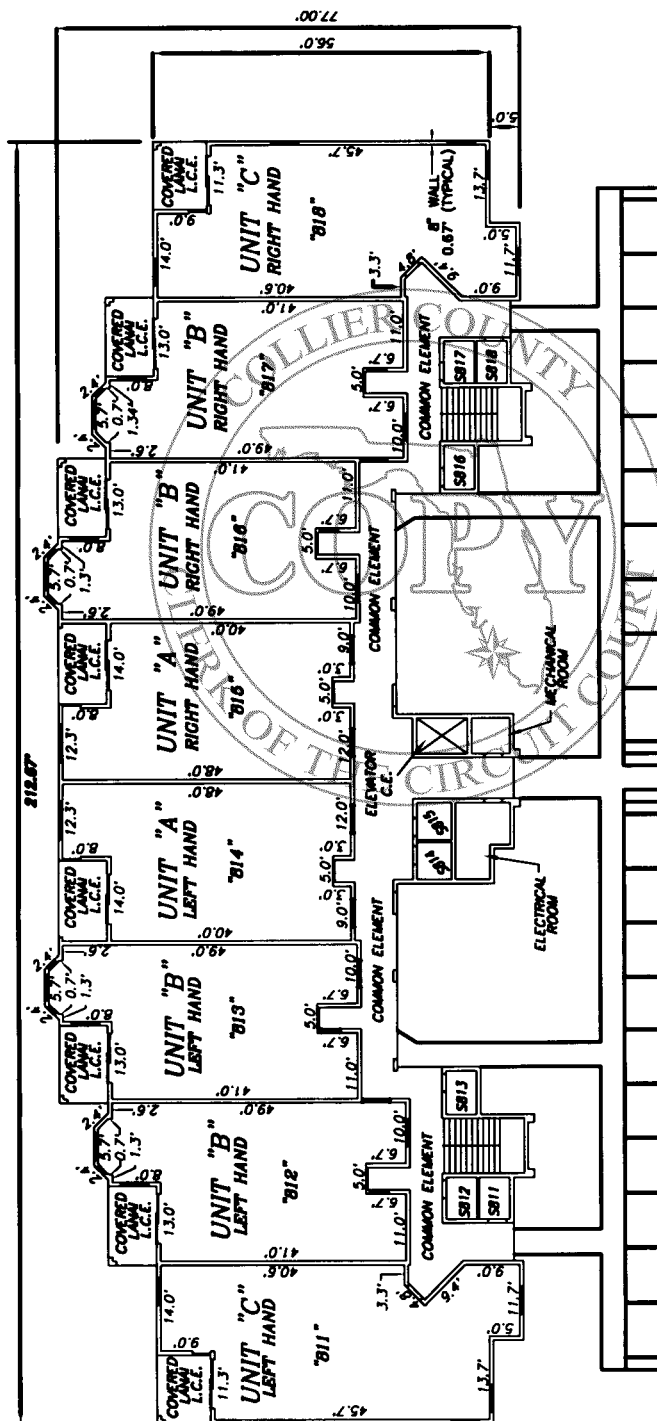
EXHIBIT "B"
UNIT BOUNDARIES FOR
FIRST FLOORS FOR THE
330 UNIT BUILDING WITH UNITS
A, B AND C.

BUILDING NUMBER 8 OR 9

FOR CLARITY, ONLY BUILDING 8 UNIT DESIGNATIONS HAVE BEEN SHOWN.

BUILDING 9 IS OF THE SAME UNIT NUMBER LAYOUT.

ALL STORAGE AREAS SHOWN ARE MARKED "S" WITH THE UNIT NUMBER IMMEDIATELY FOLLOWING, AND ARE LIMITED COMMON ELEMENTS TO SAID UNIT.



FIRST FLOOR

A horizontal scale bar with markings at 0, 10, 20, 30, 40, and 50 feet. The text "SCALE IN FEET" is written vertically to the left of the bar.

[illegible]

**TERRACE II AT HERITAGE BAY
A CONDOMINIUM
COLLER COUNTY, FLORIDA**

OR: 4128 PG: 1750

BUILDING NUMBER 8 OR 9

FOR CLARITY, ONLY BUILDING 8 UNIT DESIGNATIONS HAVE BEEN SHOWN.
BUILDING 9 IS OF THE SAME UNIT NUMBER LAYOUT.

ALL STORAGE AREAS SHOWN ARE MARKED "S" WITH THE UNIT NUMBER
IMMEDIATELY FOLLOWING, AND ARE LIMITED COMMON ELEMENTS TO SAID UNIT.

EXHIBIT "B"

UNIT BOUNDARIES FOR

**SECOND AND THIRD FLOORS FOR THE
30 UNIT BUILDING WITH UNITS**

A, B AND C.

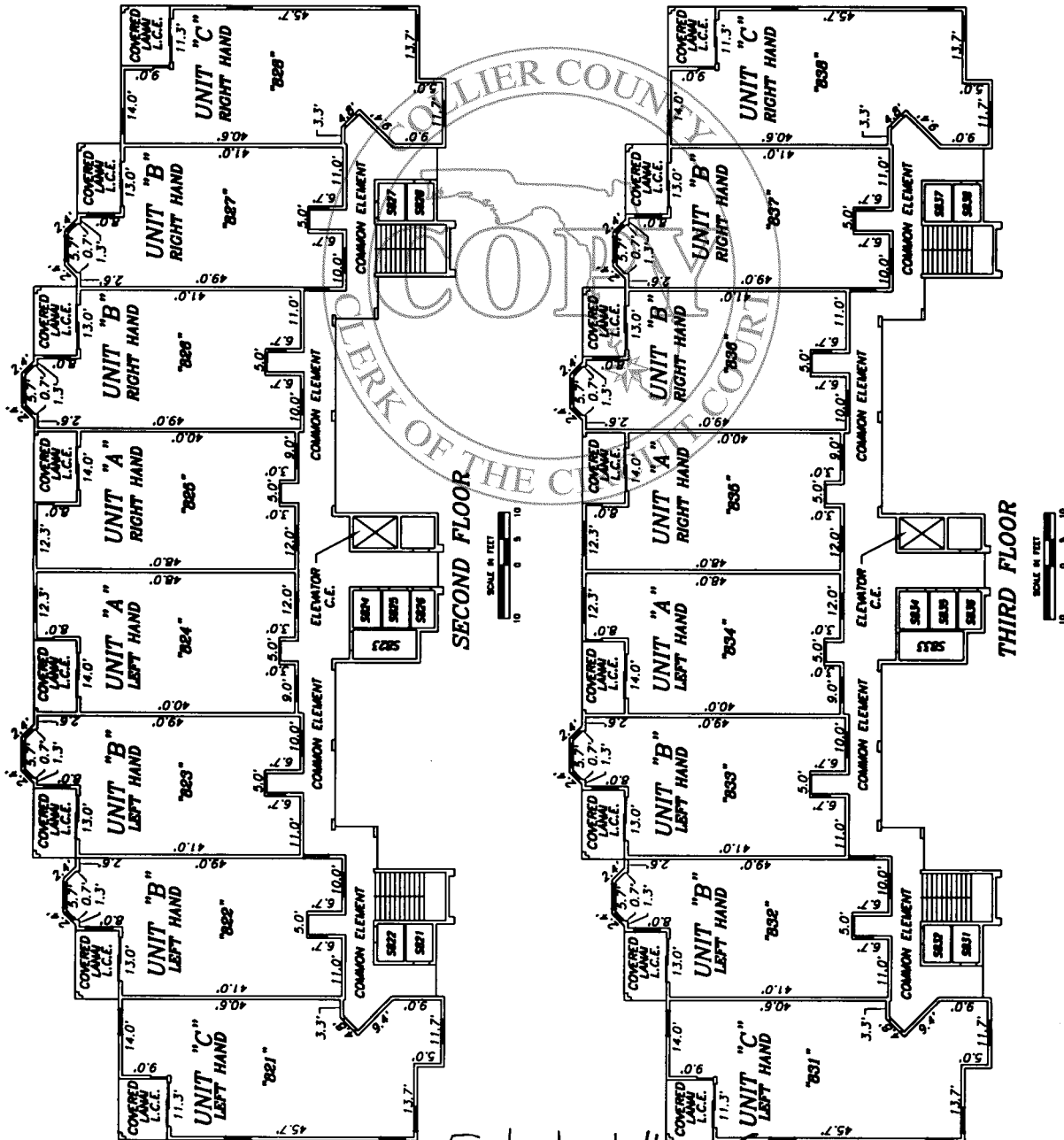
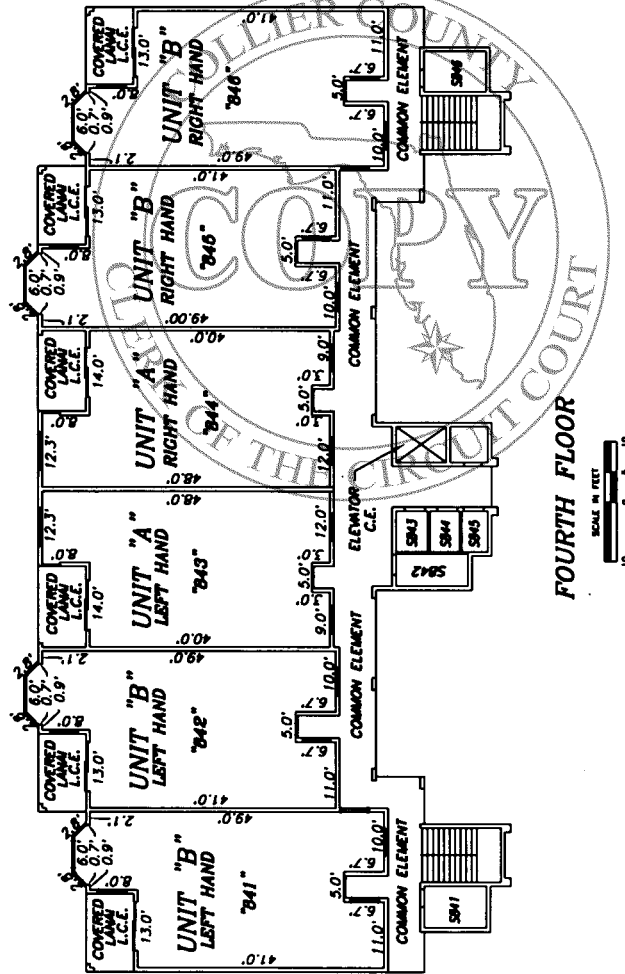


Exhibit "B" (cont.)

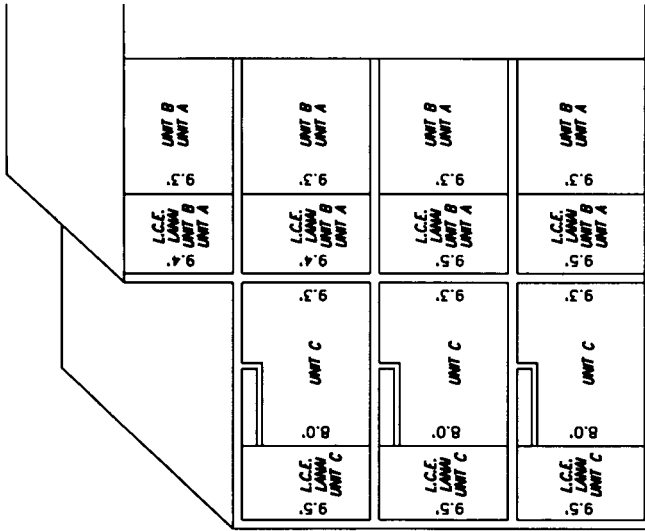
UNIT BOUNDARIES TERRACE II AT HERITAGE BAY A CONDOMINIUM COLLER COUNTY, FLORIDA		CLIENT: NAME: [blank] ADDRESS: [blank] CITY: [blank] STATE: [blank] ZIP: [blank]	U.S. NOTE: UNIT NO. 5, 6, 7, 8, 9, 10, 11, 12 UNIT NO. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 UNIT NO. 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 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785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 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BY: [blank]		FOR: [blank]	
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97. APPROVED: [blank]		98. APPROVED: [blank]	
99. APPROVED: [blank]		100. APPROVED: [blank]	

**TERRACE II AT HERITAGE BAY
A CONDOMINIUM
COLLER COUNTY, FLORIDA**



BUILDING NUMBER 8 OR 9

FOR CLARITY, ONLY BUILDING B UNIT DESIGNATIONS HAVE BEEN SHOWN.
BUILDING 9 IS OF THE SAME UNIT NUMBER LAYOUT.
ALL STORAGE AREAS SHOWN ARE MARKED "S" WITH THE UNIT NUMBER
IMMEDIATELY FOLLOWING, AND ARE LIMITED COMMON ELEMENTS TO SAID UNIT.



**TYPICAL SECTION
(NOT TO SCALE)**

EXHIBIT "B"
UNIT BOUNDARIES FOR
FOURTH FLOORS FOR THE
30 UNIT BUILDING WITH UNITS
A AND B.

OR: 4128 PG: 1751

Exhibit "B" (cont.)

UNIT BOUNDARIES TERRACE II AT HERITAGE BAY COLLIER COUNTY, FLORIDA		TITLE: UNIT BOUNDARIES	DATE: 1/14/08	BY: [Signature]	FOR: [Signature]
CLIENT: U.S. HOME CORPORATION 10000 W. 11th Ave., Suite 100 Miami, FL 33157		DATE: 1/14/08	BY: [Signature]	FOR: [Signature]	PROJECT: TERRACE II AT HERITAGE BAY
REVISIONS: 1. 1/14/08: Initial drawing 2. 1/14/08: Revised drawing		DATE: 1/14/08	BY: [Signature]	FOR: [Signature]	PROJECT: TERRACE II AT HERITAGE BAY

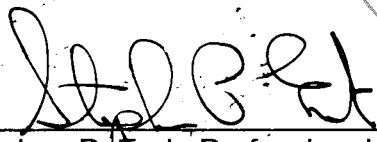
OR: 4128 PG: 1752

SURVEY CERTIFICATION

TERRACE II AT HERITAGE BAY, A CONDOMINIUM
BUILDING 8
Part of Section 13, Township 48 South, Range 26 East,
Collier County, Florida

We certify pursuant to Section 718.104(4)(e) F.S. as amended that the construction of the improvements shown on the attached exhibits is substantially complete; so that such material together with the provisions of the Declaration of Condominium of Terrace II at Heritage Bay, A Condominium describing the condominium property is an accurate representation of the locations and dimensions of the improvements and that the identification, location and dimensions of the common elements and of each unit can be determined from these materials and that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common element facilities serving the building in which the units to be conveyed are located have been substantially completed.

WilsonMiller, Inc.

By 
Stephen P. Erek, Professional Surveyor & Mapper
Florida Registration No. L.S. 3273

October 19, 2006
Date

Proj. No.: N0442-203-302
Ref: D-0442-186

Exhibit "B" (cont.)

Offices strategically located to serve our clients 800.649.4336

Fort Myers Office 4571 Colonial Boulevard • Fort Myers, Florida 33966 • 239.939.1020 • Fax 239.939.3412

wilsonmiller.com

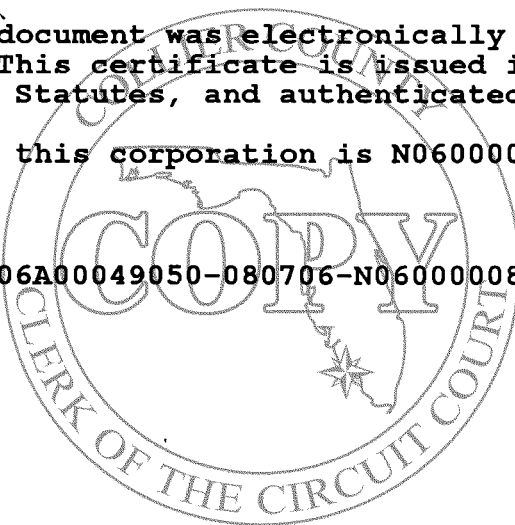


I certify the attached is a true and correct copy of the Articles of Incorporation of TERRACE II AT HERITAGE BAY ASSOCIATION, INC., a Florida corporation, filed on August 4, 2006, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H06000196575. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below

The document number of this corporation is N06000008266.

Authentication Code: 306A00049050-080706-N06000008266-1/1



Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Seventh day of August, 2006



Sue M. Cobb
Sue M. Cobb
Secretary of State

Exhibit "C"

OR: 4128 PG: 1754



August 7, 2006

FLORIDA DEPARTMENT OF STATE
Division of CorporationsTERRACE II AT HERITAGE BAY ASSOCIATION, INC.
10481 SIX MILE CYPRESS PKWY
FORT MYERS, FL 33912

The Articles of Incorporation for TERRACE II AT HERITAGE BAY ASSOCIATION, INC. were filed on August 4, 2006, and assigned document number N06000008266. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H06000196575.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4 or by going to their website at www.irs.ustreas.gov.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Claretha Golden
Document Specialist
New Filings Section
Division of Corporations

Letter Number: 306A00049050

P.O BOX 6327 - Tallahassee, Florida 32314

Received Time Aug. 7. 11:53AM

**ARTICLES OF INCORPORATION
OF
TERRACE II AT HERITAGE BAY ASSOCIATION, INC.**

Pursuant to Section 617.02011, Florida Statutes, these Articles of Incorporation are created by Christopher J. Shields, Esq., 1833 Hendry Street, Fort Myers, FL 33901, as sole incorporator, for the purpose set forth below.

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is Terrace II at Heritage Bay Association, Inc., and its initial address is 10481 Six Mile Cypress Pkwy., Ft. Myers, FL 33912.

ARTICLE II

DEFINITIONS: The definitions set forth in Section 4 of the Declaration of Condominium shall apply to the terms used in these Articles.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of Terrace II at Heritage Bay, a Condominium, located in Collier County, Florida. The Association is organized and shall exist upon a non-stock basis as a Florida corporation not for profit. No portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit except as expressly limited or modified by these Articles, the Declaration of Condominium or Chapter 718, Florida Statutes, as it may hereafter be amended, including without limitation the following powers and duties:

- (A) To levy and collect assessments against members of the Association to defray the costs, expenses and losses of the Condominium, and to use the proceeds of assessments in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property for the protection of the Association and its members.
- (D) To reconstruct improvements after casualty, and further improve the property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.

(F) To approve or disapprove the transfer of ownership, leasing and occupancy of units, to the extent provided for in the Declaration of Condominium.

(G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any rules and regulations of the Association.

(H) To contract for the management and maintenance of the condominium property and association property, and to delegate any powers and duties of the Association in connection therewith, except such as are specifically required by law or by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.

(I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.

(J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

(K) To borrow money if necessary to perform its other functions hereunder.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP:

(A) The members of the Association are all owners of record legal title to one or more units in the Condominium, as further provided in the Bylaws.

(B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.

(C) The owners of each unit, collectively, shall be entitled to one indivisible vote in Association matters, as further set forth in the Declaration of Condominium and the Bylaws. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded as provided therein.

ARTICLE VII**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 determined by the Bylaws. Directors may be removed, and vacancies on the Board of Directors filled, in the manner provided in the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors, and they shall serve at the pleasure of the Board.

ARTICLE VIII

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

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Directors, or by written petition to the Board signed by the owners of at least one-fourth (1/4) of the units.

(B) Procedure. If any amendment to these Articles is so proposed, 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 given.

(C) Vote required. Except as otherwise required by law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by a majority of the total voting interests at any annual or special meeting called for the purpose, or if it is approved in writing by a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains the text of the proposed amendment.

(D) Effective date. An amendment which is duly adopted shall become effective upon filing with the Secretary of State, and subsequently recording a certified copy in the Public Records of Collier County, Florida, with the same formalities as required for the recording of an amendment to the Bylaws.

ARTICLE IX

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

Matt Devereaux
10481 Six Mile Cypress
Pkwy.
Ft. Myers, FL 33912

John Hagen
10481 Six Mile Cypress
Pkwy.
Ft. Myers, FL 33912

John Debitetto
10471 Six Mile Cypress
Pkwy.
Ft. Myers, FL 33912

ARTICLE X

INITIAL REGISTERED AGENT:

The initial registered office of the Association shall be at:

1833 Hendry Street
Fort Myers, FL 33901

The initial registered agent at said address shall be:

Christopher J. Shields, Esq.

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 appeal of such proceeding) to which he may be made a party because of his being, or having been, a director or officer of the Association. The foregoing right to 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) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the Association or a member.

(E) 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 a settlement, the right to indemnification shall not apply unless a majority of the disinterested directors approves such 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 4th day of August, 2006.

STATE OF FLORIDA
COUNTY OF LEE

By: _____

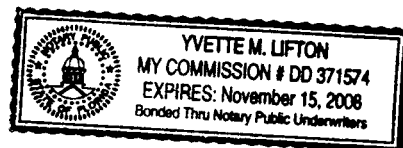
CHRISTOPHER J. SHIELDS

The foregoing instrument was acknowledged before me this 4th day of August, 2006, by Christopher J. Shields, who is personally known to me and did not take an oath.

(Seal)


Notary Public

Printed Name of Notary Public



ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for Terrace II at Heritage Bay 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.


CHRISTOPHER J. SHIELDS



CJS\HERITAGE BAY GOLF & CC\ARTICLES.Terrace II at Heritage Bay.8-4-06

**BYLAWS
OF
TERRACE II AT HERITAGE BAY ASSOCIATION, INC.**

1. GENERAL. These are the Bylaws of Terrace II at Heritage Bay Association, Inc., hereinafter the "Association," or "Neighborhood Association," a Florida corporation not for profit organized for the purpose of operating a residential condominium pursuant to the Florida Condominium Act.

1.1 Principal Office. The principal office of the Association shall be at the Condominium or at such other place in Florida, as the Board of Directors may determine.

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

1.3 Definitions. The terms used herein shall have the same definitions as stated in the Declaration of Condominium to which these Bylaws are attached as an Exhibit.

1.4 Incorporation by Reference of Certain Statutes. The entire text of Paragraphs 718.112(2)(a) through (2)(m), Florida Statutes is hereby incorporated within these Bylaws, as though it was set forth at length, regardless of whether it actually appears.

2. MEMBERS. The members of the Association shall be the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit solely for purposes of determining voting and use rights.

2.1 Qualification. Membership becomes effective upon the recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.

2.2 Voting Rights; Voting Interests. The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of votes ("voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a condominium unit is owned by one natural person, that person may vote. If a unit is owned jointly by two or more persons, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not agree among themselves as to how their one vote shall be cast on any question, that vote shall not be counted on that question. If the owner of a unit is a corporation, the vote of that unit may be cast by the president or a vice president of the corporation. If a unit is owned by a partnership, its vote may be cast by any general partner. If the unit is owned in trust, any trustee may vote. If the unit is subject to a life estate, any life tenant may vote.

2.3 Approval or Disapproval of Matters. Whenever the decision of a unit owner is required upon any matter whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the written joinder of all record owners is specifically required.

2.4 Termination of Membership. Termination of membership in the Association does not relieve or release any former member from liability or an obligation incurred under, or in any way connected with, the Condominium during the period of his membership, nor does it impair any rights or remedies the

Association may have against any former member arising out of, or in any way connected with, the membership and the covenants and obligations incident thereto.

3. MEMBERS' MEETINGS; VOTING.

3.1 Annual Meeting. The annual meeting of the members shall be held in Collier County, Florida, during each calendar year, not later than the month of March, at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. At the time of the annual meeting all ballots cast in the annual election of Directors (if an election is needed) shall be counted and the election results announced.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called by the President or by a majority of the Board of Directors. Special meetings may also be called by members having at least ten percent (10%) of the voting interests, provided that the notice of the meeting is signed by all the members calling the meeting. Business at any special meeting shall be limited to the items specified in the notice of meeting.

3.3 Notice of Meetings. Notice of all members' meetings must state the time, date, and place of the meeting and include an agenda for the meeting. The notice must be mailed to each member at the most recent address which appears on the books of the Association, or may be furnished by personal delivery. The unit owner bears the responsibility for notifying the Association of any change of address. The notice and agenda must be electronically transmitted (if requested by a unit owner), mailed or delivered at least fourteen (14) days before the meeting. An affidavit of the officer or other person making such mailing, delivery, or transmission shall be retained in the Association records as proof of Notice. Notice of a meeting to vote on the proposed recall of a Director may not be given by the electronic transmission. Notice of any meeting may be waived in writing by any person entitled to receive such notice.

3.4 Notice of Annual Meeting; Special Requirements. Notice of the annual meeting, together with an agenda, shall be posted in a conspicuous place on the condominium property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda of the annual meeting shall also be sent electronically (if requested by an owner) or sent by first class mail to each owner at least fourteen (14) days before the meeting, and an affidavit of the officer or other person making such mailing or transmission shall be retained in the Association records as proof of mailing. Notice of the annual meeting may be delivered in person to any unit owner, instead of by mail or electronic transmission, if a written waiver of mailing is obtained.

3.5 Quorum. A quorum at a members' meeting is attained by the presence, either in person or by proxy, of persons entitled to cast at least one-third (1/3rd) of the votes of the entire membership. Once a quorum has been attained, the subsequent withdrawal of some members from a meeting does not negate the fact that a quorum was attained, and does not require that the meeting be adjourned.

3.6 Vote Required. The acts approved by a majority of the votes cast at a duly called meeting of the members at which a quorum has been attained shall be binding upon all unit owners for all purposes, except where a greater number of votes is required by law or by any provision of the condominium documents.

3.7 Proxy Voting. To the extent lawful, a person entitled to attend and vote at a members meeting is also entitled to establish a presence and vote by proxy.

(A) Limited Proxies. Only limited proxies may be used to vote by proxy on substantive issues such as whether to waive the funding of reserves or financial statement requirements, or whether to approve proposed amendments to the Condominium Documents, and for voting on all other substantive matters on which a vote of the members is required or permitted by law.

(B) General Proxies. General proxies may be used only to establish a quorum, for votes on procedural questions, and for voting on non-substantive amendments to proposals for which a limited proxy is being used.

A proxy is valid only for the specific meeting for which originally given, and any lawful reconvening of that meeting, and in no event for longer than ninety (90) days after the date of the meeting for which it was originally given. A proxy is always revocable at the pleasure of the person who signed it. To be valid, a proxy must be in writing and bear the dated signature of a person authorized to cast the unit's vote under Section 2.2 above. It must also specify the date, time and place of the meeting for which it is given. The original signed proxy (or a legal substitute for the original) must be filed with the Association at or before the time of the meeting (or reconvening of the meeting after an adjournment). Holders of proxies need not be Association members. A proxy that names more than one (1) natural person as proxyholder is invalid, but the proxyholder may, if the proxy expressly so provides, substitute another person to act as proxyholder.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specific later time and place by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

3.9 Order of Business. The order of business at members' meetings shall be substantially as follows:

- (A) Call for and counting of ballots in an election (if necessary)
- (B) Call of the roll or determination of quorum
- (C) Reading or waiver of reading the minutes of the last members' meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

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

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian to advise on matters of procedure, but the decision of the Presiding Officer 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.

3.12 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 3.12, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

3.14 Polling of Members. To the extent feasible and practical, the Association shall poll its members on questions to be decided by a vote of the members of the Club, so that this Association's votes are more likely to be cast in the manner preferred by the majority of the members. If such a poll is conducted, the Board shall instruct its Voting Representative to cast all votes of the Association in a block, supporting the point of view preferred by the majority of the members who responded to the poll. The Voting Representative may not vote by proxy at Club meetings, but the Board of Directors may designate in writing an alternate representative to substitute if the Voting Representative cannot attend any meeting of the Club. The Voting Representative is the agent of the Association and as such is obligated to cast the votes as instructed by the Board, if instruction is given. The failure of the Voting Representative to cast the votes as directed, or in accordance with the outcome of the poll, does not invalidate the votes cast, and shall not be grounds to challenge the results of the vote at the Club level.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be 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 unit owners only when expressly required.

4.1 Number and Terms of Service. The number of Directors which shall initially constitute the whole Board of Directors shall be three (3). In order to provide for an appropriate number of non-Developer Directors and for a continuity of experience, by establishing a system of staggered terms of office, in the first election in which unit owners other than the Developer elect at least a majority of the Directors, the number of Directors shall increase to five (5), and the three (3) candidates receiving the highest number of votes shall each be elected for a term which expires at the annual election after the next annual election. The candidate(s) receiving the next highest number of votes shall each be elected for a term which expires at the next annual election. Thereafter, all Directors shall be elected for two (2) year terms. A Director's term ends at the annual election in conjunction with which his successor is 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 Developer, each Director must be a member or the spouse of a member.

4.3 Elections. In each annual election the members shall elect, by written secret ballot, as many Directors as there are vacancies to be filled, unless the balloting is dispensed with as provided for by law.

(A) **First Notice: Candidates.** Not less than sixty (60) days before the election, the Association shall mail or deliver to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person wishing to be a candidate may qualify as such by giving written notice to the Association at least forty (40) days before the annual election. The candidate information sheet described in (B) below shall be provided to the Association by the candidate at least thirty-five (35) days prior to the meeting.

(B) **Second Notice: Candidate Information Sheets.** If there are more candidates than there are Directors to be elected, balloting is required. At least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election, together with the notice of the annual meeting, to all unit owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname. Upon timely request of a candidate, the Association shall also include an information sheet (no larger than 8-1/2 inches by 11 inches, furnished by the candidate) in the mailing. The costs of mailing and copying the candidate information sheets are borne by the Association.

(C) **Balloting.** Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, each unit shall have as many votes as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method required or permitted by law.

(D) If for any reason there arise circumstances in which one or more Directors must be elected for a two-year term at the same time as another Director must be elected for a one-year term, the candidate receiving the most votes shall be elected to the longest term.

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

(A) If a vacancy occurs because of an increase in the number of Directors, or the death, disqualification, resignation, or for any other cause except recall of a majority or more of the Directors, a majority of the remaining Directors, even if less than a quorum, shall appoint a successor, who shall hold office until the next regularly scheduled election for any Board position, at which time a successor shall be elected to fill the remaining unexpired term, if any, unless otherwise provided by law.

(B) If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled in accordance with procedural rules of the Division of Florida Land Sales, Condominiums and Mobile Homes governing the method of selecting successors, and providing procedures for the operation of the Association during the period after the recall but prior to the designation of successor Directors sufficient to constitute a quorum.

4.5 Removal of Directors from Office. Any or all Directors, except those appointed by the Developer, may be removed from office with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than fourteen (14) days nor more than sixty (60) days from the date that notice of the meeting is given.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

4.7 Other Meetings. Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.

4.8 Notice to Owners. Except as otherwise provided below, all meetings of the Board of Directors must be open to attendance by all unit owners. The right of owners to attend Board meetings includes the right to speak on all designated agenda items, subject to reasonable rules adopted by the Board of Directors governing the manner, duration and frequency of doing so. Notices of all Board meetings, together with an agenda of the business to be conducted, shall be posted conspicuously on the condominium property at least forty-eight (48) continuous hours in advance, except in an emergency, and subject to the following special circumstances:

(A) **Assessments to be Considered.** Notice of any Board meeting at which assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and disclose the nature of such assessments. Notice of any Board meeting at which a special assessment will be considered must also be posted in a conspicuous place on the condominium property and mailed to the owners of each unit at least fourteen (14) days before the meeting, except in an emergency, and an affidavit of mailing must be retained as proof of mailing.

(B) **Budget Meetings.** Notice of any Board meeting held to formally adopt a budget, or to amend a previously adopted budget, must be mailed to the unit owners as further provided in Section 6.2 below.

(C) **Non-agenda Items.** Any item of business not included in the meeting notice may be taken up on an emergency basis by at least a majority plus one of the Directors present. Such emergency action must then be taken up and ratified at the next non-emergency meeting of the board.

(D) **Meetings with Association Legal Counsel.** Meetings between either the Board, or a committee, and Association legal counsel, regarding proposed, threatened, impending or ongoing litigation, to the extent the meeting is held for the purpose of seeking or rendering legal advice regarding that litigation, may be held without notice to unit owners and may be closed.

4.9 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting, and the 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.

4.10 Quorum of Directors. A quorum at a Board meeting exists only when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation in a meeting by such means is equivalent to presence in person. Directors may not vote or participate in Board meetings by proxy or by secret ballot, except that officers may be elected by secret ballot.

4.11 Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the prevailing point of view on every question, unless he expressly voted against that point of view or abstained from voting because of a fully disclosed conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

4.12 Adjourned Meetings. The majority of the Directors present at any duly called meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. When a meeting is reconvened, provided a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

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

4.14 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for proper out-of-pocket expenses actually incurred relating to the proper discharge of their respective duties.

4.15 Committees. The Board of Directors may appoint from time to time such standing or temporary committees as it deems necessary or convenient for the efficient and effective operation of the Condominium. A committee has only such powers and duties as are assigned to it in the Board resolution creating the committee. Meetings of a committee for the purpose of taking final action on behalf of the Board, or to make recommendations to the Board regarding a budget, must be noticed and conducted with the same formalities as are required for Board meetings in Paragraph 718.112(2)(c), Florida Statutes (2004), as amended. Meetings of committees that do not take final action on behalf of the Board, or make recommendations to the Board, regarding a budget are exempt from this requirement. Meetings between a committee and Association legal counsel are exempt to the extent of the attorney-client privilege.

4.16 Emergency Powers. In the event of any "emergency" as defined in Paragraph 4.16(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by law, including those stated in Subsections 617.0207, and 617.0303, Florida Statutes (2004), 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 officers to whom they are assistant during the period of the emergency, to accommodate the incapacity or non-availability 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 only, an "emergency" exists only during a period of time that the condominium, or the immediate geographic area in which the condominium is located, is subjected to:

- (1) a state of emergency declared by local civil or law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order
- (4) federal or state "disaster area" status; or
- (5) a catastrophic occurrence, whether natural or manmade, which seriously damages or threatens to seriously damage the physical existence of the condominium, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or act of terrorism.

An "emergency" also exists for purposes of this Section during the time when a quorum of the Board cannot readily be assembled because of the occurrence or impending occurrence of a catastrophic event, such as a hurricane, earthquake, act of war or terrorism, or other similar event. A determination by any two (2) Directors, or by the President, that an emergency exists shall have presumptive validity.

5. OFFICERS. 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 or appointed by a majority vote of the Board of Directors. Any officer may be removed with or without cause at any meeting by vote of a majority of the Directors. Any person except the President may hold two or more offices. The Board 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. Any officer may resign at any time by giving written notice to the Association and unless otherwise specified therein, the resignation shall become effective upon receipt.

5.1 President. The President shall be the chief executive officer of the Association; 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. The President 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 assign.

5.3 Secretary. The Secretary shall attend meetings of the Board of Directors and of the members and cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for standing committees when required. The Secretary shall give, or cause to be given, proper 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. The Secretary 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 condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, in the absence of the Secretary, if one is appointed.

5.4 Treasurer. The Treasurer shall be responsible for Association funds and securities, budget preparation, and the keeping of full and accurate accounts in books belonging to the Association. The Treasurer is responsible for the deposit of 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. The Treasurer shall oversee the disbursement of Association funds, keeping proper vouchers for disbursements, and shall render to the President and Directors, at meetings of the Board, or whenever they may require it, a full accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed in the Treasurer's absence or disability by an Assistant Treasurer, if one is appointed.

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

6.1 Depository. The Association shall maintain its funds in federally insured accounts in any financial institutions authorized to do business in the State of Florida as the Board may designate. Withdrawal of funds from the accounts shall be only by persons authorized by the Board. All funds collected by the Association shall be maintained separately in the Association's name, except that for investment purposes only, reserve funds may be commingled with operating funds, but must always be accounted for separately and the balance in a commingled account may not, at any time, be less than the amount identified as reserve funds.

6.2 Budget. The Board of Directors shall adopt in advance a budget of common expenses for each fiscal year. 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 adopted, shall be electronically transferred (if requested by an owner), mailed to or served on the owners of each unit not less than fourteen (14) days before that meeting, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. The proposed budget must be detailed, and must show the amounts budgeted by income and expense classifications, including without limitation those specified in Section 718.504 of the Condominium Act.

6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to operating expenses, the proposed budget must include provisions for funding reserve accounts for capital expenditures and deferred maintenance, as required by law. These accounts shall include roof replacement, building painting, and pavement resurfacing. They shall also include any other planned or foreseeable capital expenditure or deferred maintenance item with a current estimated cost of \$10,000 or more. The amount to be reserved for each item shall be computed by a formula based on the estimated remaining useful life and estimated replacement cost of the item. These reserves must be funded unless the members of the Association have, by a majority of the vote at a duly called meeting of the Association, determined to fund no reserves, or less than adequate reserves, for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in Section 6.2 above. The funds in a reserve account established under this Section 6.3, and all interest earned on the account, shall be used only for the purposes for which the reserve account is established, unless use for another purpose is approved in advance by a majority of the voting interests, who may vote in person or by a limited proxy.

6.4 Operating Reserves. In addition to the statutory reserves described in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts in the operating budget for contingencies, operating expenses, repairs, minor improvements or special projects. These reserves offset cash flow shortages, provide financial stability, and avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be included in the proposed annual budget. These funds may be spent for any purpose approved by the Board.

6.5 Assessments; Installments. Regular annual assessments based on an adopted budget shall be payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date, but failure to send (or receive) the notice does not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of that installment is the same as the last quarterly installment, and payments shall be continued at that 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 unit's next due quarterly installment.

6.6 Special Assessments. Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

6.7 Fidelity Bonds. The President, Secretary and Treasurer, and all other persons who are authorized to sign checks, shall be bonded in at least such amounts as may be required by law. The cost of such bonding is a common expense.

6.8 Financial Reports. The Board shall prepare or cause to be prepared and distributed to the owners of each unit pursuant to Section 718.111(13) of the Condominium Act, a report showing in reasonable detail the financial condition of the Association as of the close of the fiscal year, and an income and expense statement for the year, detailed by accounts. Within 21 days after the final financial report is completed by the Association or received from the third party, but not later than 120 days after the end of the fiscal

year or other date as provided in the bylaws, the Association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

6.9 Fiscal Year. The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may adopt a different fiscal year in accordance with law and the regulations of the Internal Revenue Service.

7. RULES AND REGULATIONS. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners, and uniformly applied and enforced.

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following shall apply:

8.1 Fines. The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the Condominium Documents, or the rules and regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law, and no fine may be levied against an unoccupied unit. The procedure for imposing fines shall be as follows:

(A) **Notice:** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable written notice of not less than fourteen (14) days, and the notice shall include:

- (1) A statement of the date, time and place of the hearing;
- (2) A specific designation of the provisions of the Declaration, Bylaws or rules that are alleged to have been violated;
- (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
- (4) The possible amounts of any proposed fine.

(B) **Hearing:** At the hearing the party sought to be fined shall have a reasonable opportunity to respond, to present evidence, to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony presented by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the panel, by majority vote does not agree with the fine, it may not be levied.

8.2 Mandatory Non-Binding Arbitration. In the event of any dispute as defined in Section 718.1255(1) of the Condominium Act, between a unit owner and the Association arising from the operation of the

Condominium, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes before filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

8.3 Availability of Remedies. Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the right of the majority to enjoy the condominium property free from unreasonable disruptions and annoyance by the minority.

9. TRANSFER OF ASSOCIATION CONTROL; DEVELOPER'S RIGHTS.

9.1 Members' Rights to Elect Directors. When unit owners other than the Developer own fifteen percent (15%) or more of the units, they are entitled to elect at least one-third (1/3rd) of the Directors. Unit owners other than the Developer become entitled to elect at least a majority of the Directors upon the first of the following events to occur:

- (A) Three years after fifty percent (50%) or more of the units that will be operated ultimately by the Association have been conveyed to purchasers;
- (B) Three months after ninety percent (90%) or more of the units that will be operated ultimately by the Association have been conveyed to purchasers;
- (C) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business;
- (D) When all the units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; or
- (E) Seven (7) years after the Declaration of Condominium was recorded.

9.2 Developer's Right to Designate Directors. The Developer is entitled to designate one Director as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the units.

9.3 Notice of Election. Within seventy-five (75) days after unit owners other than the Developer are entitled to elect one or more Directors, the Association shall call, upon not less than sixty (60) days notice, a meeting of the members, and an election in which the unit owners shall elect the Directors that the unit owners are entitled to elect. The election, and the meeting in conjunction with which the election is to be held, may be called, and the notice given, by any unit owner if the Association fails to do so. All non-developer unit owners may vote in the election of Directors. The meeting in conjunction with which unit owners other than the Developer first elect a majority of the Directors is commonly referred to as the "turnover meeting."

9.4 Transfer of Association Control. Unit owners other than the Developer assume control by electing at least a majority of the Directors of the Association. At that time the Developer must deliver to the Association all property of the unit owners, and of the Association, held or controlled by the Developer,

and all items and documents that the Developer is required to deliver or turn over to the Association under Section 718.301 of the Condominium Act. The Developer may in its sole discretion turn over control of the Association to unit owners other than the Developer before the dates stated in Section 9.1 above, by causing all of its appointed Directors to resign, whereupon it becomes the affirmative obligation of unit owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of the Developer's decision to cause its appointees to resign is given to each unit owner, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if unit owners other than the Developer refuse or fail to assume control.

10. AMENDMENT OF BYLAWS. Except as otherwise provided in the Declaration of Condominium, amendments to these Bylaws may be proposed and adopted in the following manner:

10.1 Proposal. Amendments to these Bylaws 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.

10.2 Procedure. Upon any amendment to these Bylaws being proposed by said Board or unit owners, the proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.

10.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium Documents, these Bylaws may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that notice of the amendment has been given to the members in accordance with law. Prior to the assumption of control of the Association by unit owners other than the Developer, these Bylaws may be amended by the approval of a majority of the Directors, without need for a vote of the unit owners.

10.4 Recording; Effective Date. A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted, which certificate shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium is recorded.

11. MISCELLANEOUS.

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

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

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

11.4 Compliance of Condominium Units to Applicable Fire and Life Safety Code. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board of Directors as evidence of the compliance of the condominium units with the applicable fire and life safety code.

The foregoing constitute the first Bylaws of Terrace II At Heritage Bay Association, Inc., and were duly adopted at a meeting of the Board of Directors held on August 5th, 2006.

Date: October 26, 2006.

TERRACE II AT HERITAGE BAY
ASSOCIATION, INC.

Attest:

John Hagan
John Hagan, Secretary

MATT DEVELEUX, President

TERRACE II - BYLAWS

**TERRACE II AT HERITAGE BAY ASSOCIATION, INC.
INITIAL RULES AND REGULATIONS**

The Rules and Regulations hereinafter enumerated as to the Association properties, condominium property, the common elements, the limited common elements, shall be deemed in effect until amended by the Board of Directors of the Association, and shall apply to and be binding upon all unit owners. The unit owners shall, at all times, obey said Rules and Regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, and invitees, servants, lessees, and persons over whom they exercise control and supervision. The initial Rules and Regulations are as follows:

1. BUILDING APPEARANCE AND MAINTENANCE:

- (a) The streets, sidewalks, walkways, entrances, and stairs must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the units, nor shall any carriages, bicycles, wagons, shopping carts, chairs, benches, tables, or any other object of a similar type and nature be left therein or thereon.
- (b) Personal property of unit owners shall not be stored outside their units.
- (c) No garbage cans, supplies, containers, or other articles shall be placed in or on the walkways, hallways, and entry ways, nor shall any linens, cloths, clothing, curtain, rugs, mops, or laundry of any kind, or other articles be shaken or hung from any of the windows, doors, walkways, or entry ways, or exposed on any part of the limited common elements or common elements. The limited common elements and the common elements shall be kept free and clear of refuse, debris and other unsightly material.
- (d) No person shall allow anything whatsoever to fall from the windows, walkways, entry ways or doors of the premises, nor sweep or throw any dirt, waste or other substances out of the unit or on the common elements of the Condominium.
- (e) Refuse and garbage shall be deposited only in the area provided therefor. All garbage must be bagged and secured.
- (f) No unit owners shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, or licensees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of other unit owners. No unit owner shall play upon or permit to be operated a phonograph, television, radio or musical instrument in such a manner as to unreasonably disturb or annoy other occupants of the Condominium.
- (g) No exterior radio or television antenna installation, or other wiring, shall be made without the prior written consent of the Board of Directors, except as otherwise provided by law.
- (h) No sign, advertisement, notice or other similar material shall be exhibited, displayed, inscribed, painted or affixed, in or upon any part of the units, limited common elements or common elements by any unit owner or occupant without written permission of the Association.
- (i) No flammable, combustible, or explosive fluid, chemical or substance, shall be kept in any unit or limited common element, except those necessary and suited for normal household use.
- (j) Grills, and the like, for outdoor cooking are not allowed to be used anywhere in the unit, including porches, lanais and balconies. All outdoor cooking must be done at least ten feet (10') from any building.
- (k) Unit owners, residents, their families, guests, servants, employees, agents, or visitors shall not at any time or for any reason whatsoever enter upon or attempt to enter upon the roof of the building.

2. ALTERATION OF CONDOMINIUM: Unit owners are specifically cautioned that their right to make any addition, change, alteration, or decoration to the exterior appearance of any portion of the Condominium is subject to the provisions of the Declaration of Condominium, and

is also subject to prior approval of the ARC. For example, no unit owner may install screen doors, or apply any type of film or covering to the inside or outside of window or door glass without the prior approval of the Board and the ARC. All such additions, changes or alterations must be presented in writing to the board of Directors for approval, accompanied by written plans when requested or drawings and specifications. The Board of Directors may approve such requests only if the Association is protected against, or indemnified as to construction liens and/or claims arising from such work.

3. EMERGENCIES IN OWNER'S ABSENCE: In order that proper steps and procedures may be taken in a minimum amount of time during an emergency situation, the Association shall retain pass-keys to all units. The locks of each unit are not to be changed or altered without providing the Association with a duplicate key.

Any unit owner who plans to be absent from his unit for an extended period of time must prepare his unit prior to his departure in the following manner:

(a) By removing all furniture, plants and other objects from around the outside of the unit; and

(b) By designating a responsible caretaker to care for his unit should his unit suffer any damage caused by storms, hurricanes, winds or other violent acts of nature. The Manager and the Association shall be provided with the name of each unit owner's aforesaid designated caretaker. Such caretaker will notify the Association prior to making any entry to the unit during the owner's absence.

4. PETS: The Board may impose reasonable restrictions upon how and where pets may be permitted upon the common elements.

5. PARKING OF VEHICLES: Parking spaces have been provided for the parking of private passenger automobiles of owners and their guests. Parking spaces are not intended for the storage of boats, motorcycles, commercial trucks, recreational vehicles, motor homes, trailers, semitrailers, house trailers, campers, truck campers, trucks, non-operational or invalidly licensed automobiles. Parking of such vehicles on the condominium property is not permitted, except for service vehicles temporarily present on business. No repairs or maintenance of vehicles may be performed, except emergency repairs. Vehicles may be washed only in areas designated by the Board of Directors (if any). Because there are limited parking spaces, each owner is specifically cautioned that the Board of Directors may prohibit owners from keeping more than one motor vehicle on the premises on a permanent basis. Any vehicle parked in violation of the parking restrictions is subject to towing, with the owner of the vehicle responsible for all costs of towing.