

LARRY WHALEY
OSCEOLA COUNTY, FLORIDA
CLERK OF CIRCUIT COURT

48P

CL 2003220644 OR 2387/1098
DLB Date 11/19/2003 Time 13:41:27

This instrument prepared by and
after recording return to:

Michael J. Sheahan, Esquire
Godbold, Downing, Sheahan & Bill, P.A.
222 West Comstock Avenue, Suite 101
Winter Park, Florida 32789

-----[SPACE ABOVE THIS LINE FOR RECORDING DATA]-----

**DECLARATION OF COVENANTS AND RESTRICTIONS
FELLS COVE**

This Declaration of Covenants and Restrictions is made this 11 day of September, 2003, by U.S. HOME CORPORATION, a Delaware corporation, hereinafter referred to as "Developer," whose address is 1241 Semoran Boulevard, Suite 185, Casselberry, Florida 32707.

W I T N E S S E T H:

WHEREAS, Developer is the owner or developer of certain real property located in Osceola County, Florida, which is more particularly described in Exhibit "A" attached hereto, and which real property shall hereinafter be referred to as the "Subject Property"; and

WHEREAS, Developer desires to create on the Subject Property a residential community of single family residences with roads, drainage and utility easements, landscape and wall areas, drainage areas, and other open or common areas, all to be known as Fells Cove (the "Development"); and

WHEREAS, Developer desires to provide for the preservation of the value and amenities in said community and for the maintenance of certain common areas, and to this end, desires to subject the Subject Property to the covenants, restrictions, easements, charges and liens hereinafter set forth and those which may arise in the future, each and all of which is and are for the benefit of the Subject Property and each Owner thereof; and

WHEREAS, Developer has created an Association as generally set forth in the Articles of Incorporation and the Bylaws attached hereto as Exhibits "B" and "C," to which Association will be delegated and assigned the powers of maintaining and administering the Common Properties (as defined hereinafter), administering and enforcing the covenants and restrictions hereof, and collecting and disbursing the assessments and charges referred to herein.

NOW, THEREFORE, the Developer hereby declares that the Subject Property is

**FELLS COVE
JOINDER OF OWNER TO DECLARATION OF
COVENANTS AND RESTRICTIONS**

The undersigned, CH LAND DEVELOPMENT, INC., a Florida corporation, is the owner of the real property described in the Exhibit A attached to the Declaration to which this Joinder is made a part and does hereby join into the aforesaid Declaration and hereby declares that the Subject Property is and shall be held, transferred, sold, conveyed and occupied subject to all of the covenants, restrictions, easements, charges and liens set forth in the Declaration, all of which shall run with the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

Signed, sealed and delivered
in the presence of:

CH LAND DEVELOPMENT, INC., a
Florida corporation

By: *Charles J. Huether*
Charles J. Huether, President

Brian L. Sabean
Signature
BRIAN L. SABEAN
Print Name

Sam B. Feinwald
Signature
SAM B FEINWALD
Print Name


STATE OF FLORIDA
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 5 day of June, 2003, by CHARLES J. HUETIER, as President of CH Land Development, Inc., a Florida corporation, on behalf of the corporation. He

is personally known to me, or
 has produced _____ as identification.

IMPRINT NOTARY PUBLIC
RUBBER STAMP SEAL BELOW

Lucille F Barrett
Signature of Person Taking Acknowledgment
Notary Public

 Lucille F Barrett
My Commission DD080459
Expires March 3, 2006

This Document Prepared By:
Michael J. Sheahan, Esquire
Godbold, Downing, Sheahan & Bill, P.A.
222 W. Comstock Avenue, Suite 101
Winter Park, Florida 32789

and shall be held, transferred, sold, conveyed and occupied subject to the following covenants, restrictions, easements, charges and liens (at times hereinafter referred to as "covenants and restrictions"), which are for the purpose of protecting the value and desirability of, and which shall run with, the Subject Property and be binding on all parties having any right, title or interest in the Subject Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I **DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration (as defined hereafter), unless the context shall otherwise prohibit, shall have the following meanings:

a. "Additions to Subject Property" shall mean and refer to any real property which may become subject to this Declaration under the provisions of Article II hereof. Such Additions to Subject Property, which may be added from time to time, may be of any size and contain any number of Lots and in any sequence as determined solely by Developer, along with any Common Property deemed appropriate by Developer.

b. "Architectural Review Committee" or "ARC" shall refer to the committee established by the Board of Directors and described in Article VI hereof.

c. "Association" shall mean and refer to the Fells Cove Homeowners Association, Inc., a nonprofit Florida corporation. The Articles of Incorporation of the Association are attached hereto as Exhibit "B" and the Bylaws of the Association are attached hereto as Exhibit "C," both as may be amended from time to time in accordance with the provisions thereof.

d. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

e. "Common Properties" or "Common Property" shall mean and refer to those tracts of land, together with any improvements thereon, which are actually and specifically dedicated, deeded or leased to the Association, or tracts of land or improvements which the Association undertakes to maintain. The terms "Common Properties" or "Common Property" shall also include any personal property acquired by the Association and any real property within the Subject Property, together with any improvements thereon, upon which the Association has accepted an easement for maintenance.

f. "Developer" shall mean and refer to U.S. Home Corporation, a Delaware corporation. Wherever the term Developer is used in this Declaration, it shall be deemed to include Developer's successors and assigns only to the extent specifically so identified by an instrument in writing executed by Developer.

g. "Development" shall mean and refer to the Fells Cove development constructed by the Developer upon the Subject Property.

h. "Living Unit" shall mean and refer to any portion of a building or a single family structure situated upon a Lot within the Subject Property designed and intended for use and occupancy as a residence by a single family.

i. "Lot" shall mean and refer to any numbered plot of land shown on a recorded subdivision plat of the Subject Property, with the exception of the Common Properties heretofore defined, which is intended for use and construction thereon of a Living Unit. The term Lot shall also include the Living Unit located thereon when a house has been constructed on the Lot.

j. "Member" shall mean and refer to all those Owners who may be designated Members of the Association as provided in Article IV.

k. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is situated within the Subject Property; but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any holder of a security interest in a Lot as security for the performance of an obligation, unless and until such holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

l. "Subject Property" shall mean and refer to those lands described on the attached Exhibit "A."

m. "Surface Water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to the applicable provisions of the Florida Administrative Code. The Surface Water Management System also shall mean and refer to all land, easements and other facilities and appurtenances that together constitute and comprise the master surface water management and drainage system of the Development as reflected on the plans therefor on file with and approved by the applicable Water Management District.

n. "Water Management District" means the water management district of the State of Florida in which the Subject Property is located.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

SECTION 1. Subject Property. The Subject Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Osceola County, Florida, and is more particularly described in Exhibit "A" attached hereto.

SECTION 2. Additions to Subject Property. The Developer, from time to time, may in its sole discretion cause additional lands to become subject to this Declaration, which additional lands have been hereinabove defined as Additions to Subject Property. Until such time as such additions are made to the Subject Property in the manner hereinafter set forth, real property other than the Subject Property shall in no way be affected or encumbered by this Declaration. The Developer's right to cause additional lands to become subject to this Declaration shall not require the prior approval of any other party.

SECTION 3. Supplemental Declaration of Covenants and Restrictions. The Additions to Subject Property authorized under this Article shall be made by the Developer's filing of record a Supplemental Declaration of Covenants and Restrictions, hereinafter referred to as "Supplemental Declaration," with respect to the Additions to Subject Property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Upon the filing of record of such Supplemental Declaration, the lands described therein shall be added to and become a part of the Subject Property under this Declaration.

Such additions may be made whenever the Developer in its sole discretion deems appropriate. Such Supplemental Declaration shall be made by the Developer and shall not require consent of any Owner, Member, mortgagee of a Living Unit, or the Association. Such Supplemental Declaration may contain such additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additions to Subject Property, and to identify any Common Property included in the Additions to Subject Property. The Owner of each Living Unit in any Additions to Subject Property shall become a Member of the Association when the Supplemental Declaration of Covenants and Restrictions is recorded in the Public Records of Osceola County, Florida submitting the Additions to Subject Property in which the Living Unit is located to the terms of this Declaration, and at that time the Owner may exercise all rights of a Member of the Association, including the right to vote, and shall become subject to the terms and conditions of this Declaration as provided in the Supplemental Declaration, including such obligations as the payment of assessments as provided therein.

ARTICLE III
COMMON PROPERTY

SECTION 1. Common Property. The Common Property will be identified by designation as Common Property on plats of the Subject Property from time to time or by other written designation by Developer, or by the Association after the Developer no longer is entitled to elect a majority of the members of the Board of Directors. The Developer shall convey certain portions of the Common Property to the Association by special warranty deed, and the Association shall accept such conveyance, subject to taxes, restrictions, limitations, conditions, reservations, and easements of record. The Association is obligated to accept the Common Property and any improvements or facilities constructed thereon in their "as is" condition, without recourse. Every Member shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot. The rights and easements of enjoyment created hereby shall be subject to the right of the Developer and the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility.

SECTION 2. Easements over Common Property. Perpetual easements for the installation and maintenance of utilities and drainage areas are hereby reserved to Developer, the Association, and the County in which the Subject Property is situated in and to all utility easement and drainage easement areas shown on the plats of the Subject Property (which easements include, without limitation, the Surface Water Management System and the right of reasonable access over Lots to and from the easement areas), and Developer, the Association, and the County each shall have the right to convey such easements on an exclusive or nonexclusive basis to any person, corporation or governmental entity. Neither the easement rights reserved pursuant to this paragraph or as shown on the plats of the Subject Property shall impose any obligation on Developer to maintain such easement areas. Within easement areas, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with access to or the installation, use and maintenance of the easement areas or any utilities or drainage facilities, or which may change the direction of flow or obstruct or retard the flow of drainage water in any easement areas, or which may reduce the size of any water retention areas constructed by Developer in such easement areas. The easement areas of each Lot, whether as reserved hereunder or as created on the plats of the Subject Property, and all improvements in such easement areas shall be maintained continuously by the Owner of the Lot upon which such easement exists, except for those improvements for which a public authority or utility company is responsible. Each Owner also shall be responsible for the normal and day to day maintenance of any land areas which lie adjacent to and outside of such Owner's Lot to the water's edge of an abutting lake, pond or other body of water. With regard to specific easements for drainage shown on the plats of the Subject Property, the Developer shall have the right, but without any obligation imposed thereby, to alter or maintain drainage facilities in such easement areas, including buffer areas, swales and slope control areas, subject to review and approval by Osceola

County and the applicable Water Management District. Developer and the Association shall have the right to enhance the landscaping and maintenance of drainage areas and facilities within the Subject Property in addition to the landscaping and maintenance otherwise performed by the County.

In partial reiteration of the foregoing provisions of this Section 2, and in direct compliance with the requirements and recommendations of the South Florida Water Management District, Developer hereby declares as follows:

The Association shall have a perpetual non-exclusive easement over all areas of the Surface Water Management System for access to operate, maintain and repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the Surface Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Surface Water Management System as required by the South Florida Water Management District permit. Additionally, the Association shall have the perpetual non-exclusive easement for drainage over the entire Surface Water Management System. No person shall alter the drainage flow of the surface water including buffer areas or swales, without the prior written approval of the South Florida Water Management District.

SECTION 3. Drainage Swales. If and to the extent the Developer has constructed a drainage swale upon a Lot for the purpose of managing and containing the flow of excess surface water found upon such Lot from time to time, then each Lot owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the applicable Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of such drainage swales shall be authorized and any damage to any drainage swale, whether caused by natural or human induced phenomena, shall be repaired and the drainage swale returned to its former condition as soon as reasonably possible by the owner of the Lot upon which the drainage swale is located.

ARTICLE IV
STRUCTURE, POWERS AND DUTIES OF, AND
MEMBERSHIP AND VOTING RIGHTS IN, THE ASSOCIATION

SECTION 1. Association. The Association to be created by Developer hereunder shall be a nonprofit corporation charged with the duties and vested with the powers prescribed by law and set forth in this Declaration. Neither the Articles of Incorporation nor the Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors

of the Association shall be required to be either (1) Members of the Association, or (2) officers, directors, agents, representatives or employees of the Developer. The Board of Directors and such officers as the Board may elect or appoint, shall conduct the affairs of the Association in accordance with this Declaration, the Articles of Incorporation and the ByLaws of the Association. Notwithstanding anything contained in this Declaration, the Articles of Incorporation or the ByLaws to the contrary, the Developer shall be entitled to select a majority of the members of the Board of Directors until such time as Developer has sold, transferred or conveyed ninety percent (90%) of the total number of Lots the Developer plans to develop within the Development to third parties.

SECTION 2. Association Purpose and Duties. For the purpose of protecting and continuing the orderly and aesthetically pleasing growth and maintenance of the Development, the Association shall:

a. Provide for the landscaping, maintenance and irrigation of the Common Property.

b. Provide and pay for the maintenance of the Surface Water Management System, to the extent not dedicated to and accepted for maintenance by governmental authorities. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the applicable Water Management District. Any repair or reconstruction of the Surface Water Management System shall be as permitted or, if modified, as approved by the applicable Water Management District.

c. Adopt standards of maintenance and operation which are, at the very least, as stringent as those adopted and/or followed by other first class developments similar to the Development.

d. Take any and all actions necessary to enforce all covenants, conditions and restrictions set forth in this Declaration and to perform any of the functions or services delegated to the Association in this Declaration or in the Articles of Incorporation or Bylaws of the Association.

e. Conduct the business of the Association, including, but not limited to, administrative services such as legal, accounting, and financial, and communications services informing the Members of activities, notices of meetings, and other important events.

f. Purchase general liability and hazard insurance covering improvements and activities on the Common Property at a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value, directors and officers liability and such other insurance as the Board of Directors deems necessary.

Hazard insurance proceeds for losses to any Common Property may not be used other than for the repair, replacement or reconstruction of such property unless the Board of Directors decides otherwise.

g. Establish and operate the Architectural Review Committee as hereinafter defined in Article VI hereof.

h. In addition to the maintenance herein provided, provide landscape maintenance to any Lot or exterior maintenance upon any improvements or structures erected upon any Lot which, in the Association's opinion, requires such maintenance because said landscaping, improvements or structures are being maintained in a sub-standard manner. The Association shall notify the Owner of said Lot in writing, specifying the nature of the condition to be corrected, and if the Owner has not corrected or does not begin and diligently pursue to correct same within fifteen (15) days after the date of said notice, the Association (after approval of a majority affirmative vote of the Board of Directors) may correct such condition. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any structure or improvement at reasonable hours on any day. The cost of such maintenance shall be assessed against the Lot upon which such maintenance is performed, but shall not be considered part of the annual maintenance assessment or charge. Any such special assessment or charge shall be a personal obligation of the Owner and a lien upon said Owner's Lot and shall become immediately due and payable in all respects, together with interest calculated at the highest rate allowable by Florida law, attorneys fees, court costs and other fees or costs of collection as provided for other assessments of the Association.

SECTION 3. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member. The Association membership of each Owner shall be appurtenant to the Lot giving rise to such membership and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to such Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

SECTION 4. Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A members shall be every person or entity who is a record owner of a fee simple interest or undivided fee simple interest in any Lot, with the exception of the Developer. Class A Members shall be entitled to one vote for each

Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Developer and the Class B Member shall have seven (7) votes for each Lot owned by said Member. For purposes of determining voting rights hereunder, the number of Lots owned by the Developer shall be deemed to include the total number of Lots Developer plans to develop within the entire Development, whether or not yet included in a final plat subdividing the Subject Property into single family residential lots.

The Class B membership shall cease and become converted to Class A membership upon the earlier to occur of the following events:

- a. When the Developer has sold, transferred or conveyed ninety percent (90%) of the total number of Lots Developer plans to develop within the Development; or
- b. On December 31, 2008.

SECTION 5. Activation of Association. The Developer shall determine the appropriate time for activation of the Association. Prior to activation of the Association, the Developer may collect any assessments set forth under Article V below, and utilize said sums for the purposes set forth in Article V, Section 2, below.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments.

a. Each Owner of any Lot in the Property, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees to pay (1) an initial capital assessment; (2) annual assessments; (3) resale assessments; and (4) special assessments for capital improvements; such assessments to be fixed, established and collected from time to time as hereinafter provided at a uniform rate applicable to each Lot within the Subject Property. The initial, annual, resale and special assessments may be imposed in Developer's reasoned discretion or by the Association. The charges imposed together with such interest thereon and costs of collection thereof, including court costs and reasonable attorneys' fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. All Lots shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Lots, including, but not limited to, the continuing lien herein described. Each such assessment,

together with such interest, costs and attorneys' fees as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment falls due.

b. Notwithstanding the provisions of subparagraph a. above, the Developer and general contractors shall be exempt from the aforesaid assessments in accordance with the following provisions:

(i) The Developer shall not be subject to any of the aforesaid assessments as to Lots which are owned by Developer. Lots owned by the Developer shall be exempt from the assessments until such time that any of said Lots has been improved by Developer with a completed Living Unit as determined by the issuance of a certificate of occupancy and has been conveyed to a third party homeowner. The Developer shall fund any deficit for payment of the general operating expenses of the Association for as long as the Developer is exempt from the assessments as provided herein, provided that the Developer shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, capital improvement funds, or special assessments. The Developer shall have the right to waive the exemption from assessments set forth herein, at which time the Lots owned by the Developer shall be subject to the assessments in the same manner as the Owners of all other Lots in the Subject Property.

SECTION 2. Purpose of Assessments. Any assessments levied shall be used exclusively for the purposes of the improvement and maintenance of the Common Properties and promoting the recreation, health, safety and welfare of the Owners within the Subject Property, including, but not limited to:

a. Lighting, improvements and beautification of areas along the roads and easement areas in the Subject Property, and the acquisition, maintenance, repair and replacement of directional markers and signs; and

b. Installation, maintenance, improvement and operation of drainage and utility facilities and easements to the extent not maintained by the County; and

c. Installation, management, maintenance, improvement and beautification of landscaping and irrigation on Common Properties; and

d. Installation, maintenance, repair and improvement of any subdivision entry or boundary wall situated within the Subject Property; and

e. Maintenance and repair of the Surface Water Management System, including but not limited to work within retention areas, swales, berms, drainage structures and drainage easements; and

f. Payment of operating expenses of the Association, including, without limitation, real estate taxes and insurance; and

g. Repayment of deficits, if any, previously incurred by Developer or the Association if created, in making capital improvements to or upon the Common Properties, and/or in furnishing the services and facilities provided herein or for the Members of the Association; and

h. Doing any other thing necessary or desirable in the judgment of Developer or the Association to benefit or improve the Development, to keep the Development neat and attractive, to preserve or enhance the value of the properties therein, to eliminate fire, health or safety hazards, or any other thing which, in the judgment of Developer or the Association, may be of general benefit to the Owners or occupants of lands included in the Development.

SECTION 3. Amount of Assessments. The first purchaser of each Lot on which a Living Unit has been constructed and the certificate of occupancy has been issued, at the time of closing of the conveyance to such first purchaser of a Living Unit, shall pay to the Association an initial capital assessment in such amount as may be determined by the Developer; the funds derived from the initial capital assessments shall be used at the discretion of the Association for any purpose, including but not limited to, future and existing capital improvements, reserve funds, operating expenses, support costs and start-up costs. Upon the closing of the first sale of each Lot with a Living Unit constructed thereon, and on the first day of each fiscal year thereafter, an annual assessment shall be assessed against each Lot. The annual assessment shall be in addition to the initial capital assessment and shall be prorated in the year in which the first sale of the Lot with a Living Unit occurs to the actual date of closing. After the closing of the first sale of each Lot with a Living Unit and collection of the initial capital assessment as provided above, a resale assessment shall be assessed against each Lot and shall be paid to the Association by each Owner at the time said Owner closes on its purchase of a Lot; the resale assessment shall be a recurring fee to be paid at the time of each transfer of title to a Lot. The amounts of the initial, annual and resale assessments shall be determined from time to time by the Developer, and subsequently by the Association after the Developer no longer is entitled to select a majority of the members of the Board of Directors as provided in Article IV hereof.

SECTION 4. Special Assessments for Capital Improvements. In addition to the foregoing initial, annual and resale assessments, the Developer or the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, installation, repair or replacement of any capital improvement upon the Common Properties, provided that any such assessment shall have the assent of fifty-one percent (51%) of the total number of votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members

at least thirty (30) days in advance and shall set forth the purpose of the meeting.

SECTION 5. Effect of Nonpayment of Assessments. The Association has a lien on each Lot for any unpaid or past due assessments and charges. If any assessments are not paid on the date when due, then said assessments shall become delinquent and shall, together with such interest thereon and charges and costs of collection thereof as hereinafter provided, be and remain a continuing lien on the Lot which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The lien shall be perfected by recording a Claim of Lien in the public records of the County in which the Subject Property is located; such lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The personal obligation of the then Owner to pay assessments shall remain his personal obligation for the statutory period.

If any assessment is not paid within thirty (30) days after the due date, an administrative charge may be levied by the Developer or the Association and the assessment shall bear interest from the date when due at the rate of 18% per annum. Developer or the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot, and there shall be added to the amount of such assessment, all charges and interest as provided above, and all costs of the action, including legal fees whether or not judicial proceedings are involved, and including legal fees and costs incurred on any appeal of a lower court decision.

SECTION 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the filing of the claim of lien in the public records. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, of any first mortgage recorded prior to the filing of the claim of lien in the public records shall extinguish the lien for such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI **RESTRICTIVE COVENANTS**

SECTION 1. Alterations and Additions. No material alteration, addition or modification to a Lot or Living Unit, or material change in the appearance thereof, shall be made without the prior written approval thereof being first had and obtained from the ARC as required by this Declaration.

SECTION 2. Animals. No animals of any kind shall be raised, bred or kept within the Development for commercial purposes. Otherwise, Owners may keep domestic pets

as permitted by applicable City or County ordinances up to a limit of two (2) such pets and otherwise in accordance with the Rules and Regulations established by the Board from time to time. Notwithstanding the foregoing, pets may be kept or harbored in a Living Unit only so long as such pets or animals do not constitute a nuisance. A determination by the Board that an animal or pet kept or harbored in a Living Unit is a nuisance shall be conclusive and binding on all parties. All pets shall be walked on a leash. No pet shall be permitted outside a Living Unit unless such pet is kept on a leash or within a yard of a Living Unit which contains an invisible fence. No pet or animal shall be "tied out" on the exterior of the Living Unit or in the Common Properties, or left unattended in a yard or on a balcony, porch, or patio. Dog runs or similar pet enclosures shall only be permitted expressly in accordance with criteria established by the ARC; this provision shall not require or imply that the ARC shall permit any such dog runs or enclosures. When notice of removal of any pet is given by the Board, the pet shall be removed within forty-eight (48) hours of the giving of the notice. All pets shall defecate only in the "pet walking" areas within the Development designated for such purpose, if any, or on that Owner's Living Unit. The person walking the pet or the Owner shall clean up all matters created by the pet. Each Owner shall be responsible for the activities of its pet. Notwithstanding anything to the contrary, seeing eye dogs shall not be governed by the restrictions contained in this Section.

SECTION 3. Artificial Vegetation. No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Living Unit or Lot, unless approved by the ARC.

SECTION 4. Commercial Activity. Except for normal construction activity, sale, and re-sale of a Living Unit, sale or re-sale of other property owned by Developer, or administrative offices of Developer, no commercial or business activity shall be constructed in any Living Unit. Notwithstanding the foregoing, and subject to applicable statutes and ordinances, an Owner may maintain a home business office within a Living Unit for such Owner's personal use; provided, however, business invitees, customers, and clients shall not be permitted to meet with Owners in Living Units unless the Board provides otherwise in the Rules and Regulations. No Owner may actively engage in any solicitations for commercial purposes within the Development. No solicitors of a commercial nature shall be allowed within the Development, without the prior written consent of Association. No garage sales are permitted, except as permitted by the Association. No day care center or facility may be operated out of a Living Unit.

SECTION 5. Completion and Sale of Units. No person or entity shall interfere with the completion and sale of Living Units within the Development. Without limiting the foregoing, each Owner, by acceptance of a deed, agrees that picketing and posting negative signs is strictly prohibited.

SECTION 6. Cooking. No cooking shall be permitted nor shall any goods or beverages be consumed on the Common Properties except in areas designated for those

purposes by Association. The ARC shall have the right to prohibit or restrict the use of grills or barbeque facilities throughout the Development.

SECTION 7. Decorations. No decorative objects, including, but not limited to, birdbaths, light fixtures, sculptures, statues, weather vanes, or flagpoles shall be installed or placed within or upon any portion of the Development without the prior written approval of the ARC.

SECTION 8. Extended Vacation and Absences. In the event a Living Unit will be unoccupied for an extended period, the Living Unit must be prepared prior to departure by: (i) notifying Association; (ii) removing all removable furniture, plants and other objects from outside the Living Unit; and (iii) designating a responsible firm or individual to care for the Living Unit, should the Living Unit suffer damage or require attention, and providing a key to that firm or individual. The name of the designee shall be furnished to Association. Association shall have no responsibility of any nature relating to any unoccupied Living Unit.

SECTION 9. Fences/Walls/Screens. Construction and maintenance of fences, walls and hedges which exceed six feet (6') in height is prohibited. Notwithstanding the foregoing, no fence, wall or hedge erected adjacent to or in close proximity of any perimeter subdivision wall constructed by Developer shall exceed the height of the subdivision wall. Except as may be installed by the Developer within certain areas of the Development, no chainlink fences shall be permitted. Otherwise, all fences or walls expressly shall be subject to the prior written consent of the ARC. Invisible fencing may be permitted with the prior written consent of the ARC. All screening and screened enclosures shall have the prior written approval of the ARC. Any such screened enclosures and screening shall be only in such color as may be permitted expressly by the ARC. All enclosures of balconies or patios, including addition of vinyl windows, shall be approved by the ARC and all decks shall have the prior written approval of the ARC.

SECTION 10. Fuel Storage. No fuel storage shall be permitted within the Development, except as may be necessary or reasonably used for swimming pools, spas, barbeques, fireplaces or similar devices.

SECTION 11. Garages. Each Living Unit will have its own garage. No garage shall be converted into a general living area unless specifically approved by the ARC. Garage doors shall remain closed at all times except when vehicular or pedestrian access is required.

SECTION 12. Garbage Cans. Trash collection and disposal procedures established by Association shall be observed. No outside burning of trash or garbage is permitted. No garbage cans, supplies or other similar article shall be maintained on any Living Unit so as to be visible from outside the Living Unit or Lot. Each Owner shall be responsible for properly depositing his or her garbage and trash in garbage cans and trash

containers sufficient for pick-up by the appropriate collection agencies in accordance with the requirements of any such agency. All such trash receptacles shall be maintained in a sanitary condition and shall be shielded from the view of adjacent properties and streets. Garbage cans and trash containers shall not be placed outside the Living Unit for pick-up earlier than 6:00 p.m. on the day preceding the pick-up.

SECTION 13. Holiday Lights and Other Lighting. Holiday lighting and decorations shall be permitted to be placed upon the exterior portions of the Living Unit and upon the Lot in the manner permitted hereunder commencing on Thanksgiving and shall be removed not later than January 15th of the following year. With regard to those portions of a Lot maintained by the Association (if any), no lighting or any facilities or electrical cords related thereto or any decorations shall be permitted to be placed upon or across any grass area maintained by the Association, and the Association and its agents shall be permitted, but shall not be required, to remove any such items which serve as impediments to the mowing of the grass, and the Owner, by placement of any lighting or decorations, hereby assumes the risk that such lighting and decorations may be inadvertently damaged or destroyed. An Owner shall be permitted to place holiday lighting and decorations on and within the shrubs located in the front yard of the Lot, provided that (a) the Association shall not be required to maintain such shrubs for such period of time as the decorations, lighting and cords are contained within the shrubs, and (b) such placement shall not otherwise interfere with the mowing of the grass on the Lot by the Association (if any). Except for seasonal holiday lights, all exterior lighting shall require the approval of the ARC as set forth in this Declaration. The ARC may establish standards for holiday lights. The ARC may require the removal of any lighting that creates a nuisance (e.g., unacceptable spillover to adjacent Living Unit).

SECTION 14. Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Living Unit shall be of a type as approved by the ARC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season. Any such approved hurricane shutters may be installed up to forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event.

SECTION 15. Irrigation. Due to water quality, irrigation systems may cause staining on Living Units, other structures or paved areas. It is each Owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners adopt systems to prevent stains (e.g., automatic deionization systems.) No Owner whose Living Unit adjoins a waterway or lake may utilize the waterway or lake to irrigate unless so provided by Developer as part of original construction, subject to applicable permitting. Association may use waterways and lakes to irrigate Common Properties, as applicable subject to applicable permitting. BY ACCEPTANCE OF DEED TO A LIVING UNIT OR LOT, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL

LAKES AND WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DEVELOPER OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. Developer and the Association, shall have the right to use one or more pumps to remove water from lakes and waterbodies for irrigation purposes at all times, subject to applicable permitting. Developer may utilize a computerized loop system to irrigate the Common Properties and/or Living Units. Any computerized loop irrigation system shall be the maintenance obligation of Association and shall be deemed part of the Common Properties.

SECTION 16. Laundry. Subject to the provisions of all applicable Florida Statutes, to the extent applicable, no mops or laundry of any kind, or any other similar type article, shall be hung or exposed so as to be visible outside the Living Unit or Lot.

SECTION 17. Leases. Living Units may be leased, licensed or occupied only in their entirety and no fraction or portion may be rented. No bed and breakfast facility may be operated out of a Living Unit. Individual rooms of a Living Unit may not be leased on any basis. No transient tenants may be accommodated in a Living Unit. All leases or occupancy agreements shall be in writing and a copy of all leases of Living Units shall be provided to Association if so requested by Association. No Living Unit may be subject to more than two (2) leases in any twelve (12) month period, regardless of the lease term. No time-share or other similar arrangement is permitted. The Owner must make available to the lessee or occupants copies of the Association Documents. No lease term shall be less than ninety (90) days. Notwithstanding the foregoing, this Section shall not apply to a situation where an Owner or resident of a Living Unit receives in-home care by a professional care giver residing within the Living Unit.

SECTION 18. Nuisances. No nuisance or any use or practice that is the source of unreasonable annoyance to others or which interferes with the peaceful possession and proper use of the Development is permitted. No firearms shall be discharged with the Development. Nothing shall be done or kept within the Common Properties, or any other portion of the Development, including a Living Unit or Lot which will increase the rate of insurance to be paid by Association.

SECTION 19. Parking. Owners' automobiles shall be parked in the garage or driveway and shall not block the sidewalk. All lawn maintenance vehicles shall park on the driveway of the Living Unit and not in the roadway or swale. No vehicle which cannot operate on its own power shall remain on the Development for more than twelve hours, except in the garage of a Living Unit. No repair, except emergency repair, of vehicles shall be made within the Development, except in the garage of a Living Unit. No commercial vehicle, limousines, recreational vehicle, boat, trailer, including but not limited to boat trailers, house trailers, and trailers of every other type, kind or description, or camper, may be kept within the Development except in the garage of a Living Unit. Notwithstanding the foregoing, a recreational vehicle, a boat and/or boat trailer may be kept within the yard of a Living Unit for up to twenty-four (24) hours for cleaning, loading and/or unloading

purposes. The term commercial vehicle shall not be deemed to include law enforcement vehicles, recreational or utility vehicles (i.e. Broncos, Blazers, Explorers, etc.) up to 21'5" in length or clean "non-working" vehicles such as pick-up trucks, vans, or cars if they are used by the Owner on a daily basis for normal transportation. Notwithstanding any other provision in this Declaration to the contrary, the foregoing provisions shall not apply to construction vehicles in connection with the construction, improvement, installation, or repair by Developer of Living Units, Common Properties, or any other facility in the Development. No vehicles used in business for the purpose of transporting goods, equipment and the like, or any trucks or vans which are larger than three-quarter (3/4) ton shall be parked in the Development. Recreational vehicles, personal street vans, personal trucks of three-quarter (3/4) ton capacity or smaller, and personal vehicles that can be appropriately parked within standard size parking stalls may be parked in the Development. No vehicles displaying commercial advertising shall be parked within the public view. No vehicles of any nature shall be parked on any portion of the Development or a Lot except on the surfaced parking area thereof. No vehicles bearing a "for sale" sign shall be parked within the public view anywhere on the Development. No vehicle repairs or maintenance shall be allowed in the Development. No vehicles shall be stored on blocks, nor may inoperable vehicles or vehicles with parts removed be stored or parked in the Development, except as may be temporarily required. No tarpaulin covers on vehicles shall be permitted anywhere within the public view. For any Owner who drives an automobile issued by the City, the County or other governmental entity (i.e., police cars), such automobile shall not be deemed to be a commercial vehicle and may be parked in the garage or driveway of the Living Unit. Notwithstanding any other provision in this Declaration to the contrary, the foregoing provisions shall not apply to construction vehicles in connection with the construction, improvement, installation or repair by Developer of Living Units, Common Properties, or any other facility in the Development.

SECTION 20. Personal Property. All personal property of Owners or other occupants of Living Units shall be stored within the Living Units. No personal property, except usual patio furniture, may be stored on, nor any use made of, the Common Properties, any Lot or Living Unit, or any other portion of the Development, which is unsightly or which interferes with the comfort and convenience of others.

SECTION 21. Pools. No above-ground pools shall be permitted. All in-ground pools, hot tubs, spas and appurtenances installed shall require the prior written approval of the ARC as set forth in this Declaration. The design must incorporate, at a minimum, the following: (i) the composition of the material must be thoroughly tested and accepted by the industry for such construction; (ii) any swimming pool constructed on any Lot shall have an elevation at the top of the pool of not over two (2) feet above the natural grade unless approved by the ARC; (iii) pool cages and screens must be of a design, color and material approved by the ARC and shall be no higher than twelve (12) feet unless otherwise approved by the ARC; and (iv) pool screening shall in no event be higher than the roof line of the Living Unit. Pool screening shall not extend beyond the sides of the Living Unit without express approval by the ARC. All pools shall be adequately maintained

and chlorinated (or cleaned with similar treatment). Unless installed by Developer, no diving boards, slides, or platforms shall be permitted without ARC approval.

SECTION 22. Removal of Soil and Additional Landscaping. Without the prior consent of the ARC, no Owner shall remove soil from any portion of the Development, change the level of the land within the Development, or plant landscaping which results in any permanent change in the flow and drainage of surface water within the Development. Owners may place additional plants, shrubs, or trees within any portion of the Development with the prior approval of the ARC.

SECTION 23. Roofs, Driveways and Pressure Treatment. Roof shingles shall be of at least the fungus resistant architectural dimension quality. Roofs and/or exterior surfaces and/or pavement, including, but not limited to, walks and drives, shall be pressure treated within thirty (30) days of notice by the ARC. No surface applications to driveways shall be permitted without the prior written approval of the ARC as to material, color and pattern. Such applications shall not extend beyond the front Lot line or include the sidewalk.

SECTION 24. Satellite Dishes and Antennae. No exterior visible antennae, radio masts, towers, poles, aerials, satellite dishes, or other similar equipment shall be placed on any Living Unit or Lot without the prior written approval thereof being first had and obtained from the ARC as required by this Declaration. The ARC may require, among other things, that all such improvements be screened so that they are not visible from adjacent Living Units, or from the Common Properties. No Owner shall operate any equipment or device which will interfere with the radio or television reception of others. All antennas not covered by the Federal Communications Commission ("FCC") rules are prohibited. Installation, maintenance, and use of all antennas shall comply with restrictions adopted by the Board and shall be governed by the then current rules of the FCC.

SECTION 25. Signs, Flags and Outdoor Equipment. No sign (including brokerage or for sale/lease signs) shall be permitted within the Development, also including without limitation the prohibition of those signs of or for realtors, politicians, contractors or subcontractors. Further, no flag, banner, sculpture, fountain, outdoor play equipment, solar equipment, artificial vegetation, sports equipment, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, or upon any part of the Development that is visible from the outside without the prior written approval thereof being first had and obtained from the ARC as required by this Declaration. No in-ground flag poles (except as Developer may use) shall be permitted within the Development, unless written approval of the ARC is obtained. Notwithstanding the foregoing, flags which are no larger than 24" x 36", attached to a Living Unit and displayed for the purpose of a holiday, shall be permitted without ARC approval.

Notwithstanding the foregoing provisions, limited signs or stickers shall be permitted

on a Living Unit which are furnished by a commercial provider of security and/or alarm services notifying persons that such security and/or alarm services exist on premises for protection; the foregoing shall be subject to reasonable control and limitation by the ARC. Further, the prohibitions of this Section shall not apply to signs, banners, flags, billboards or advertisements used or erected by Developer or by residential builders constructing Living Units on Lots and who are expressly authorized by Developer, nor shall such prohibition apply to entry and directional signs installed by Developer and signs required by law.

SECTION 26. Sports Equipment. No recreational, playground or sports equipment shall be installed or placed within or about any portion of the Development without prior written consent of the ARC. No basketball backboards, skateboard ramps, or play structures will be permitted without written approval by the ARC. Such approved equipment shall be located at the rear of the Living Unit or on the inside portion of corner Living Units within the setback lines. Tree houses or platforms of a similar nature shall not be constructed on any part of a Living Unit. No basketball hoops shall be attached to a Living Unit and any portable basketball hoops must be stored inside the Living Unit.

SECTION 27. Storage. No temporary or permanent utility or storage shed, storage building, tent, or other structure or improvement shall be permitted and no other structure or improvement shall be constructed, erected, altered, modified or maintained without the prior approval of the ARC, which approval shall conform to the requirements of this Declaration. Water softeners, trash containers, propane tanks, and other similar devices shall be properly screened from the street in a manner approved by the ARC.

SECTION 28. Subdivision and Regulation of Land. No portion of any Living Unit or Lot shall be divided or subdivided or its boundaries changed without the prior written approval of Association. No Owner shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to the Development, without the prior written approval of Developer, which may be granted or deemed in its sole discretion.

SECTION 29. Swimming, Boating and Docks. Swimming will not be permitted in any waterbody within the Development. Boating on the lakes and waterbodies within the Development is not permitted. No private docks may be erected within any waterbody forming part of the Common Properties.

SECTION 30. Use of Living Unit. Each Living Unit is restricted to residential use as a residence by the Owner or permitted occupant thereof, its immediate family, guests, tenants and invitees.

SECTION 31. Visibility on Corners. Notwithstanding anything to the contrary in

these restrictions, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the ARC and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs or other planting shall be placed or permitted on a corner Lot where such obstruction would create a traffic problem.

SECTION 32. Windows or Wall Units. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding on (1) week after an Owner or tenant first moves into a Living Unit or when permanent window treatments are being cleaned or repaired. No security bars shall be placed on the windows of any Living Unit without prior written approval of the ARC. No awnings, canopies or shutters shall be affixed to the exterior of a Living Unit without the prior written approval of the ARC. No reflective tinting or mirror finishes on windows shall be permitted unless approved by the ARC.

SECTION 33. Architectural Control. Prior to the commencement of the work described therein, all building plans and specifications (including plot plan, elevations, grading plan and material lists) for the construction, alteration or addition of Living Units or any structures, or for the erection of walls, hedges or fences, and all plans for the landscaping of yards, and all plans or agreements relating to the appearance, colors and materials to be used on the exterior of a structure, shall be approved in writing by Developer or the ARC. The ARC shall be composed of three (3) or more representatives which shall be appointed by the Board of Directors. The Developer or the ARC, as the case may be, shall have the absolute right to approve or disapprove said plans for any reason including aesthetic considerations. All plans must be sent to Developer by certified or registered mail, return receipt requested. Any plans not disapproved within thirty (30) days after their receipt by Developer shall be deemed approved. The rights granted to Developer under this paragraph may be assigned by Developer to the ARC.

SECTION 34. Developer Amendments, Modifications, Variances and Exceptions. Notwithstanding any provisions of this Declaration to the contrary, Developer, its successors and designated assigns, reserves the right and authority for a period of ten (10) years from the date of recording of this Declaration to amend, modify, or to grant exceptions or variances from any of the restrictive covenants set forth in this Article VI, without notice to or approval by the Members of the Association, provided that such amendments, modifications, exceptions or variances shall be substantially consistent with the general uniform plan of residential development set forth in this Article VI.

ARTICLE VII MISCELLANEOUS

SECTION 1. Term and Amendment. The terms, provisions, restrictions and easements set forth or created in this Declaration shall run with the land, regardless of

whether or not they are specifically mentioned in any deeds or instruments of conveyance for any Lots in the Development subsequent to the execution hereof and shall be binding on all parties and all persons claiming an interest in the Subject Property under such deeds for a period of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall automatically extend for successive periods of ten (10) years each, unless prior to the commencement of any ten (10) year period an instrument in writing, signed by a three-quarters (3/4) majority of the Owners of Lots in the Development, has been recorded in the Public Records of the County in which the Subject Property is located, which said instrument rescinds this Declaration, except as hereafter specifically provided. Subject to the provisions of Section 34 of Article VI, this Declaration may not be amended without at least two-thirds (2/3) of the votes of the Owners, subject to the veto authority of either Veterans Administration or Federal Housing Administration as long as there is a Class B Member. No amendment of this Declaration shall be effective which requires Developer to relinquish any rights reserved to Developer under this Declaration. Notwithstanding anything contained herein to the contrary, Developer has the unrestricted right to make Additions to Subject Property by recording a Supplemental Declaration. Any amendment to this Declaration which alters any provision relating to the Surface Water Management System, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the applicable Water Management District.

SECTION 2. Fines and Enforcement. If any person, firm or corporation, or their respective heirs, personal representative, successors or assigns, shall violate or attempt to violate any provisions of this Declaration, it shall be the right of the Developer, the Association, or any Owner of any Lot in the Development to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any term or condition of this Declaration, whether such proceeding is to prevent such persons from so doing or to recover damages. If such person is found in the proceedings to be in violation of or attempting to violate any term or condition of this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorneys' fees (including those incurred on appeal) incurred by the party enforcing the term or condition of this Declaration. The Developer and the Association (acting through its Board of Directors) each also shall have the full right and authority to impose fines upon the Owner of any Lot who causes or permits any violations of any terms or conditions of this Declaration; any and all such fines levied by the Developer or the Association shall be secured by a lien, and shall be due, payable and enforceable in accordance with the same provisions for any nonpayment of assessments as provided in this Declaration. Developer shall not be obligated to enforce any term or condition of this Declaration and shall not in any way or manner be held liable or responsible for any violation of any term or condition of this Declaration by any person other than itself. Failure by Developer or any other person or entity to enforce any term or condition of this Declaration upon breach thereof, however long continued, shall in no event be deemed a waiver of the right to do so thereafter with respect to such breach or as to a similar breach occurring prior or subsequent thereto. Issuance of a building permit or license, which may be in conflict with any term or condition

of this Declaration, shall not prevent Developer or any Owner in the Development from enforcing any term or condition of this Declaration. The applicable Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System.

SECTION 3. Irreparable Harm. Every Owner agrees and acknowledges that a violation of any term or condition of this Declaration by such Owner or its family members, guests, invitees, licensees, tenants or servants constitutes irreparable harm to the Developer and every other Owner in the Development and that any action at law or equity to obtain an injunction against such violation shall require no further proof of irreparable harm other than the admission herein contained.

SECTION 4. Severability. Invalidation of any one provision contained herein by judgment or court order shall not affect any of the other provisions, which shall remain in full force and effect.

SECTION 5. Governmental Authorities. All codes, rules and regulations of the County and all other applicable governmental authorities shall remain fully applicable to the Subject Property, and no restrictions or provisions contained in this Declaration shall be applied or construed in any manner to allow any violations of all such codes, rules and regulations of the governmental authorities.

SECTION 6. HUD/VA Provisions. So long as required in connection with HUD and/or VA financing of the purchase of Living Units, the following provisions shall supersede other provisions herein to the contrary:

A. Annexation of additional properties into the Development, dedication of Common Properties, and amendment of this Declaration so as to materially affect the rights of Owners shall require the approval of HUD and/or VA, as applicable, at any time there is a Class B Membership.

B. The Common Properties cannot be mortgaged or conveyed without the consent of at least two-thirds of the Owners (excluding Developer)

C. The Common Properties shall be conveyed to Association free and clear of all encumbrances before HUD and/or VA insures the first mortgage in the Development.

D. At anytime Class B Membership (Developers weighted vote) exists, such Class B Membership shall cease and convert to Class A Membership upon the earlier of the following:

- i. 75% of the Living Units are deeded to Owners; or

ii. December 31, 2008.

E. In addition to any other requirements for amendments set forth herein, the approval of 2/3 of the Owners shall be required to amend this Declaration in any manner which materially affects the rights of the Owners. For the purpose of this subsection only, Developer shall be considered an Owner of a Living Unit with respect to each Lot owned by it within the Development.

IN WITNESS WHEREOF, the undersigned corporation has caused these presents to be executed in its name, under its corporate seal, by a duly authorized officer, and has executed the same on this 11 day of SEPTEMBER, 2003.

Signed, sealed and delivered in the presence of:

U.S. HOME CORPORATION, a Delaware corporation

[Signature]

By: [Signature]
Francis J. Dolan, Division President

Print Name: John Vavourasis

[Signature]

Print Name: Linda Keffer

STATE OF FLORIDA

COUNTY OF: Osceola

The foregoing instrument was executed before me this 11 day of September, 2003, by FRANCIS J. DOLAN, as Division President of U.S. Home Corporation, a Delaware corporation.

He is personally known to me or has produced _____ as identification.

IMPRINT NOTARY PUBLIC
RUBBER STAMP SEAL BELOW



Rhonda Pemicano
My Commission DD069775
Expires November 04, 2005

[Signature]
Signature of Person Taking Acknowledgment
Notary Public

State of Florida



Department of State

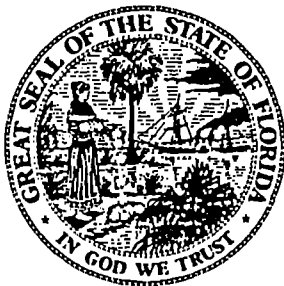
CL 2003220644

OR 2387/1122

I certify the attached is a true and correct copy of the Articles of Incorporation of FELS COVE HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on June 3, 2003, as shown by the records of this office.

The document number of this corporation is N03000004663.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Third day of June, 2003



CR2EO22 (2-03)

Glenda E. Hood

Glenda E. Hood
Secretary of State

EXHIBIT B

FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
03 JUN -3 PM 3:33

ARTICLES OF INCORPORATION
OF
FELLS COVE HOMEOWNERS ASSOCIATION, INC.

By these Articles of Incorporation, the undersigned incorporator forms a corporation not for profit in accordance with Chapter 617, Florida Statutes, and pursuant to the following provisions ("these Articles"):

ARTICLE I
NAME

CL 2003220644

OR 2387/1123

The name of the corporation shall be FELLS COVE HOMEOWNERS ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association."

ARTICLE II
DURATION

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association shall exist in perpetuity. If the Association is dissolved for any reason, the assets of the Association shall be dedicated to a public body or conveyed to a non-profit organization or similar entity with similar purposes. In the event of termination, dissolution or final liquidation of the Association, any responsibility of the Association for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with all applicable provisions of the Florida Administrative Code, and be approved by the South Florida Water Management District prior to such termination, dissolution or liquidation.

ARTICLE III
DEFINITIONS

The term "Declaration" shall mean the DECLARATION OF COVENANTS AND RESTRICTIONS FOR FELLS COVE recorded in the Public Records of Osceola County, Florida, and all amendments or supplements made thereto. All other capitalized words and terms used in these Articles shall have the meaning and definition as provided in the Declaration.

ARTICLE IV
PRINCIPAL OFFICE

The principal office of the Association is located at 1241 Semoran Boulevard, Suite 185, Casselberry, Florida 32707.

ARTICLE V
REGISTERED OFFICE AND AGENT

Walter D. Beeman, Jr., whose address is 1241 Semoran Boulevard, Suite 185, Casselberry, Florida 32707, is hereby appointed the initial registered agent of the Association and the registered office shall be at said address.

ARTICLE VI
PURPOSE AND POWERS OF THE ASSOCIATION

The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, directors or officers. The Association is formed to provide for, among other things, the improvement, maintenance, preservation and architectural control of the Subject Property and to promote the recreation, health, safety and welfare of the Owners. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in these Articles, the Bylaws, or the Declaration. The Association shall have the power and duty to do any and all lawful things which may be authorized, assigned, required or permitted to be done by the Declaration, any Supplemental Declaration, these Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Subject Property and the Common Property. Unless otherwise specifically prohibited, any and all functions, duties and powers of the Association shall be fully transferable, in whole or in part, to any developer, management agent, governmental unit, public body, or similar entity. Any instrument effecting such a transfer shall specify the duration thereof and the means of revocation. Except to the extent maintained by governmental authorities, the Association shall operate, maintain and manage the surface water or stormwater management system(s) in a manner consistent with the South Florida Water Management District permit No. 49-00965-P requirements and applicable District rules, and shall assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the surface water or stormwater management system. Except to the extent maintained by governmental authorities, the Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system. The assessments shall be used for the maintenance and repair of the surface water or stormwater management systems, including but not limited to work within retention areas, drainage structures and drainage easements.

ARTICLE VII
MEMBERSHIP AND VOTING RIGHTS

Each Owner, including the Developer, shall be a Member of the Association. Any person or entity who holds any interest merely as a security for the performance of any obligation shall not be a Member. The Association membership of each Owner shall be

appurtenant to the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof. All voting rights and procedures within the Association shall be governed in accordance with the provisions set forth in the Declaration and in the Bylaws.

ARTICLE VIII DIRECTORS AND OFFICERS

The affairs of this Association shall be managed by a Board of Directors, and the affairs of the Association shall be administered by the Officers. All matters regarding the Directors and the Officers of the Association, including numbers, election, duration, etc., shall be governed in accordance with the provisions set forth in the Declaration and in the Bylaws.

ARTICLE IX INDEMNIFICATION

9.1 Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding whether civil, criminal, administrative or investigative, or any settlement of any proceeding, or any appeal from such proceeding to which he may be a party or in which he may become involved by reason of his being or having been a director or officer of the Association, or having served at the Association's request as a director or officer of any other corporation, whether or not he is a director or officer at the time such expenses are incurred, regardless of by whom the proceeding was brought, except in relation to matters as to which any such director or officer shall be adjudged liable for gross negligence or willful misconduct, provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors of the Association approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

9.2 Expenses incurred in defending a suit or proceeding whether civil, criminal, administrative or investigative may be paid by the Association in advance of the final disposition of such action, suit or proceeding if authorized by all of the non-interested directors upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not to be indemnified by the Association as authorized by these Articles of Incorporation.

9.3 The Association shall have the power to purchase at its expense and maintain insurance on behalf of any person who is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another association, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have

the power to indemnify him against such liability under the provisions of these Articles.

ARTICLE X
BYLAWS

The first Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided by the Bylaws.

ARTICLE XI
AMENDMENTS

Amendments to these Articles of Incorporation shall be made in the following manner:

11.1 Resolution. The Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of Members, which may be either the annual or a special meeting.

11.2 Notice. Within the time and in the manner provided in the Bylaws for the giving of notice of meetings of Members, written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member of record entitled to vote thereon. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

11.3 Vote. At such meeting, a vote of the Members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a two-thirds (2/3) majority of the votes of Members entitled to vote thereon.

11.4 Multiple Amendments. Any number of amendments may be submitted to the Members and voted upon by them at one meeting.

11.5 Limitations. No amendment shall make any changes in the qualifications for membership. No amendment shall be made that is in conflict with the Declaration. HUD/VA shall have a veto power as long as there is a Class B membership over any dissolution of the Association, any amendment of these Articles, any mortgaging of Common Property, any mergers and consolidations affecting this Association, and the annexation of any additional properties.

ARTICLE XII
INCORPORATOR

The name and address of the Incorporator of these Articles of Incorporation is as follows:

Name

Address

Walter D. Beeman, Jr.

1241 Semoran Boulevard,
Suite 185
Casselberry, Florida 32707

ARTICLE XIII
NONSTOCK CORPORATION

The Association is organized on a nonstock basis and shall not issue shares of stock evidencing membership in the Association; provided, however, that membership in the Association may be evidenced by a certificate of membership which shall contain a statement that the Association is a corporation not for profit.

IN WITNESS WHEREOF, the undersigned Incorporator has caused these Articles to be executed as of the 30 day of May, 2003.

Signed, sealed and delivered
in the presence of:

[Signature]
[Signature]

[Signature]
WALTER D. BEEMAN, JR.

STATE OF FLORIDA


COUNTY OF Seminole

I HEREBY CERTIFY that on this 30 day of May, 2003, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared WALTER D. BEEMAN, JR., the incorporator described in the foregoing Articles of Incorporation. He

is personally known to me or
 has produced _____ as identification.

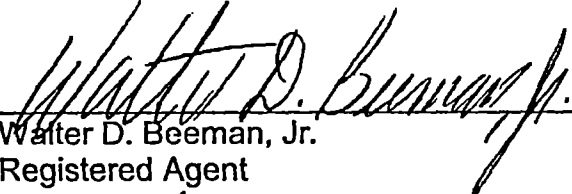
IMPRINT NOTARY PUBLIC
RUBBER STAMP SEAL BELOW

[Signature]
Signature of Person Taking Acknowledgment
Notary Public

 Sharon L. Schaffer
My Commission CC993781
Expires January 18, 2005

FELLS COVE HOMEOWNERS ASSOCIATION, INC.
ACCEPTANCE OF REGISTERED AGENT

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.


Walter D. Beeman, Jr.
Registered Agent

Date: MAY 31, 2003

FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA
03 JUN -3 PM 3:33

BYLAWS**OF****FELLS COVE HOMEOWNERS ASSOCIATION, INC.
A NONPROFIT ORGANIZATION**

1. **Definitions.** When used in these Bylaws, the terms defined in the Articles of Incorporation of the Association (the "Articles") and the Declaration of Covenants and Restrictions for Fells Cove (the "Declaration") shall have the same meanings as in the Articles and the Declaration.

2. **Identity.** These Bylaws, together with the Articles and the Declaration shall be sometimes referred to as the "governing documents" of the Association.

2.1 **Office.** The office of the Association shall be located at 10130 Bertram Lane, Fort Myers, Florida 33912, or at such other place as may be designated from time to time by the Board of Directors.

2.2 **Fiscal Year.** The fiscal year of the Association shall be the calendar year.

2.3 **Seal.** The seal of the Association shall bear the name of the corporation, the word "Florida," the words "Corporation not for profit," and the year of incorporation.

3. **Members.**

3.1 **Qualification.** The members of the Association shall consist of every Owner, including the Developer, and in the case of multiple Owners, every group of record Owners, of Lots in the Property. The foregoing is not intended to include persons or entities who hold an interest merely as security for performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot. A Member does not have the authority to act for the Association by virtue of being a Member. A Member may act only through its voting rights or as is otherwise specifically set forth herein.

3.2 **Change of Membership.** Change of membership in the Association shall be established by recording in the Public Records of the County in which the Property is located a deed or other instrument establishing record title to a Lot under the jurisdiction of the Association. The Owner designated as grantee by such instrument thus becomes a Member of the Association and the membership of the prior Owner is terminated. The new Owner shall notify the Association of such property transfer and furnish the Association a copy of the recorded deed, the new Owner's address, and the Owner's local agent, if any, in the event the Owner is located outside the State of Florida. Any notice requirements set out in these Bylaws and in the Articles shall be deemed to be complied

with if notice to an Owner is directed to the address of said Owner as then reflected in the Association's records.

3.3 Voting Rights. Every Member of the Association, including the Developer, shall have one (1) vote for each Lot to which it holds title. Notwithstanding the foregoing, the Declaration or the Articles may provide for "Class A" Members and "Class B" Members, in which case such Members shall have the number of votes as designated therein.

3.4 Designation of Voting Representative. If a Lot is owned by one person or entity, its rights to vote shall be established by the record title to the Lot. If a Lot is owned by more than one person or entity, the person entitled to cast the votes for the Lot shall be designated by a certificate signed by all of the record Owners of the Lot and filed with the Secretary of the Association. If a Lot is owned by a general or limited partnership, the person entitled to cast the votes for the Lot shall be designated by a certificate of appointment signed by one of the general partners and filed with the Secretary of the Association. If a Lot is owned by a corporation, the person entitled to cast the votes for the Lot shall be designated by a certificate of appointment signed by the President or Vice President of the corporation and filed with the Secretary of the Association. If a Lot is owned in trust, the person entitled to vote for the Lot shall be designated by a certificate of appointment signed by the trustee of record for the trust and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the votes of a Lot may be revoked in writing by any Owner thereof. Provided, however, that no Lot shall vote in excess of the voting rights allocated to that Lot pursuant to the Declaration.

3.5 Approval or Disapproval of Matters. Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the votes of such Owner if at an Association meeting, unless the joinder of record Owners is specifically required by the Declaration, the Articles, or by these Bylaws.

3.6 Restraint Upon Assignment of Shares in Assets. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to that Owner's Lot.

4. Members' Meetings.

4.1 Annual Members' Meetings. The annual Members' meeting shall be held each year for the purpose of appointing or electing Directors, if applicable in that year, and of transacting any other business authorized to be transacted by the Members. The Board of Directors shall determine the date, time and place to hold the annual meeting.

4.2 Special Members' Meetings. Special meetings of the Members must be held when called by the Board of Directors, or by the holders of at least twenty percent (20%) of the total voting interest of the Association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

4.3 Notice of All Meetings of Members. Written notice of a meeting stating the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be provided not less than ten (10) or more than sixty (60) days before the date of the meeting. Notice shall be provided: (a) by posting such notice in a conspicuous place in the Property; (b) by hand delivery; or (c) by first-class mail. Notice shall be provided by or at the direction of the President, the Secretary, or the officer or persons calling the meeting. If the meeting notice is mailed at least thirty (30) days before the date of the meeting, it may be done by a class of United States mail other than first class. If mailed or hand delivered, such notice shall be deemed to be delivered when placed in the Member's mailbox or deposited in the United States mail addressed to the Member at its address as it appears on the books of the Association.

4.4 Quorum. A quorum at Members' meetings shall consist of thirty percent (30%) of the total voting interest in the Association, whether represented in person or by proxy. If a quorum is present, the affirmative vote of a majority of votes represented at a meeting in person or by proxy shall constitute the acts of the Members, except when approval by a greater number of Members is required by the Declaration, these Bylaws, the Articles, or by law. When a specified item of business is required to be voted upon by a particular class of Members, if applicable, thirty percent (30%) of the votes of such class of Members shall constitute a quorum for the transaction of such item of business by that class. After a quorum has been established at a Members' meeting, the subsequent withdrawal of Members so as to reduce the number of votes at the meeting below the number required for a quorum shall not affect the validity of any action taken at the meeting or any adjournment thereof.

4.5 Proxies. Every Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting, or his duly authorized attorney-in-fact, may do so in person or may authorize another person or persons to act for him by proxy. Every proxy must be dated, must state the date, time and place of the meeting for which it was given and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. Every proxy shall be revocable at any time at the pleasure of the Member executing it and shall expire upon the transfer of title to the Lot giving rise to the voting rights to which the proxy pertains. The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the Member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the Association officer responsible for maintaining the list of Members. If the

proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his place.

4.6 Adjourned Meetings. When an annual or special meeting is adjourned to a different date, time or place, the new date, time and place to which the meeting is adjourned must be announced at the meeting at which the adjournment is taken, or notice must be given of the new date, time and place pursuant to Section 4.3 hereof. Any business may be transacted at the adjourned meeting that might have been transacted on the original date of the meeting. If, however, after the adjournment the Board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given in compliance with the Bylaws to Members entitled to vote at such meeting who were not Members as of the previous record date.

4.7 Order of Business. The order of business at annual Member's meetings, and as far as practical at all other Member's meetings, shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading and disposal of any unapproved minutes;
- (d) Reports of officers;
- (e) Reports of Committees;
- (f) Appointment of Directors, when applicable;
- (g) Appointment of Nominating Committee;
- (h) Unfinished business;
- (i) New business; and
- (j) Adjournment.

4.8 Minutes of Meetings. The Association shall maintain minutes of each meeting of the Members and of the Board of Directors in written form or in another form which can be converted into written form within a reasonable time. The minutes shall be kept in a book available for inspection by Members or their authorized representatives at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

5. **Board of Directors.**

5.1. **Governing Body.** The affairs of the Association shall be governed and managed by the Board of Directors, which shall be appointed or elected as set forth herein.

5.2. **Initial Board.** The initial Board shall be comprised of three (3) Directors appointed by the Developer. Their terms shall be governed as set forth herein, except that each initial Director may be reappointed at the Developer's discretion, if otherwise permitted by these Bylaws.

5.3. **Majority Appointed.** Thereafter, the Developer may continue to appoint at least a majority of the Board until the earlier of:

(a) Three (3) months after ninety percent (90%) of the Lots that will be ultimately operated by the Association have been conveyed to Members other than the Developer (not including builders, contractors or others who purchase a Lot for the purpose of constructing improvements thereupon for resale); or

(b) The time at which such other percentage of Lots has been conveyed to Members other than the Developer (not including builders, contractors or others who purchase a Lot for the purpose of constructing improvements thereupon for resale) in order to comply with the applicable requirements of any governmental chartered entity (HUD/VA) regarding mortgage financing of Lots.

5.4. **Less Than Majority Appointed.** The Developer is entitled to appoint at least one (1) Director to the Board so long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots that will be ultimately operated by the Association. After the Developer relinquishes control of the Association, the Developer may continue to exercise its voting rights for any remaining Lots held by it in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting a majority of the Board of Directors.

5.5. **Right of Members Other Than Developer to Elect Board.** The right of Members of the Association other than the Developer to elect members of the Board pursuant to Sections 5.3 and/or 5.4 shall be exercised at the next scheduled annual meeting of the Members.

5.6. **Number.** The Board at all times shall consist of not less than three (3) nor more than nine (9) Directors. After such a time as the Developer no longer is entitled to appoint a member of the Board pursuant to Section 5.4 above, the number of members may be increased from time to time to a maximum of nine (9) members;

provided, however, the established number of Board members shall always be an odd number. In the event that the number of members of the Board of Directors is changed, such changes in number shall be implemented in such a manner as to have as nearly equal in number as possible the number of Directors whose terms expire in any given year. All directorships shall expire during any given three (3) year period.

5.7 Term of Office. Except for the initial Board of Directors which may serve until such time allowed hereunder, the term of office of each Director shall be for staggered terms of three (3) years each. Each Director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified or until his earlier resignation, removal from office or death.

5.8 Removal. Any Director may be removed from the Board, with or without cause, by vote or agreement in writing by a majority of all votes of the membership. In the event of the death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

5.9 Director's Fees. Directors shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Association.

5.10 Election. Elections of the Directors must be conducted in accordance with these Bylaws. All members of the Association shall be eligible to serve on the board. Election to the Board of Directors shall be by written ballot as hereinafter provided. At such election, the Members or their proxies may cast, in respect of each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles. The names receiving the largest number of votes cast by eligible voters for each vacancy shall be elected.

5.11 Nominations. Nominations for election to the Board of Directors shall be made by a Nominating Committee which shall be one of the standing committees of the Association. Notwithstanding the foregoing, a Member may nominate himself as a candidate for the Board at a meeting where the election is to be held.

5.12 Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

5.13 Duties of Nominating Committee. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such

nominations may be made from among Members or officers, Directors or agents of the Developer, as the Committee in its discretion shall determine. Separate nominations shall be made for each vacancy to be filled. Nominations shall be placed on a written ballot as provided in Section 5.14 and shall be made in advance of the time fixed in Section 5.14 for the mailing of such ballots to Members.

5.14 Ballots. All elections to the Board of Directors shall be made on written ballot which shall:

- (a) describe the vacancies to be filled;
- (b) set forth the names of those nominated by the Nominating Committee for each such vacancy; and
- (c) contain a space for a write-in vote by the Members for each vacancy. Such ballots shall be prepared and mailed by the Secretary to the Members at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the day before the meeting at which the vote is to be taken).

5.15 Number of Ballots.

(a) Class A. Each Class A Member, if applicable, shall receive as many ballots as it has votes. Notwithstanding that a Member may be entitled to several votes, it shall exercise on any one ballot only one vote for each vacancy shown thereon. The completed ballots shall be returned as follows:

- (1) Each ballot shall be placed in a sealed envelope marked "Ballot" but not marked in any other way;
- (2) Each such "Ballot" envelope shall contain only one ballot;
- (3) The Members shall be advised that, because of the verification procedures of Section 5.16 the inclusion of more than one ballot in any one "Ballot" envelope shall disqualify the return; and
- (4) Such "Ballot" envelope, or envelopes (if the Member or his proxy is exercising more than one vote), shall be placed in another sealed envelope which shall bear on its face the name and signature of the Member or his proxy, the number of ballots being returned, and such other information as the Board of Directors may determine will serve to establish his

right to cast the vote or votes presented in the "Ballot" or "Ballots" contained therein. The ballots shall be returned to the Secretary at the address of the Association.

(b) Class B. Each Class B Member, if applicable, shall receive one ballot upon which all votes held by each Class B Member may be exercised. If there are no separate classes of Members, each Member shall receive one ballot upon which all votes held by that Member may be exercised.

5.16 Election Committee: Counting of Ballots. Upon receipt of each return, the Secretary shall immediately place it in a safe or other locked place until the day set for the meeting at which the elections are to be held. On that day, the unopened external envelopes containing the "Ballot" envelopes shall be turned over to an Election Committee which shall consist of three (3) members appointed by the Board of Directors. The Election Committee shall then:

(a) establish that external envelopes were not previously opened or tampered with in any way;

(b) open the external envelopes to establish that the number of envelopes therein marked "Ballot" corresponds to the number of votes allowed to the Member or his proxy identified on the external envelope;

(c) confirm that the signature of the Member or his proxy on the outside envelope appears genuine; and

(d) if, the vote is by proxy, determine that a proxy has been filed with the Secretary.

Such procedure shall be taken in such manner that the vote of any Member or his proxy shall not be disclosed to anyone, even the Election Committee. The opened external envelopes shall thereupon be placed in a safe or other locked place and the Election Committee shall proceed to the opening of the "Ballot" envelopes and the counting of the votes. If any "Ballot" envelope is found to contain more than one ballot, all such ballots shall be disqualified and shall not be counted. Ballots shall be retained for such period of time after the election as shall be deemed prudent by the Board of Directors.

5.17 Recording. Any Member may tape record or videotape meetings of the Board of Directors and meetings of the Members; provided, however, that the Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

6. Meetings of Directors.

6.1 Meetings. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. Regular and special meetings of the Board are open to all Members except meetings between the Board and its attorney to discuss proposed or pending litigation where the contents of the discussion are governed by the attorney-client privilege.

6.2 Regular Meetings. Regular meetings of the Board of Directors shall be held as may be determined by the Board and upon giving notice to the Members as set forth in Section 6.4 hereof, at such place and hour as may be fixed from time to time by resolution of the Board. If the day for such regular meeting is a legal holiday, then the meeting shall be held at the same time on the next day that is not a legal holiday.

6.3 Special Meetings. Special meetings of the Directors may be called by the Chairman of the Board, by the President of the Association, or by any two (2) Directors upon giving notice to the Members as set forth in Section 6.4. Additionally, not less than two (2) days' notice of the special meeting shall be given to each Director personally or by first-class mail, telegram, or cablegram, which notice shall state the time, place and purpose of the meeting.

6.4. Notice to Members. Notices of all regular or special Board meetings may be posted in a conspicuous place on the Property at least seventy-two (72) hours in advance of any such meeting, except in an emergency. In the alternative, notice may be mailed or delivered to each Member at least seven (7) days prior to the meeting, except in an emergency. Notwithstanding the foregoing, in the event the Association has 100 or more Members, the notice requirement for Board meetings may be satisfied by either publishing said notice in a newspaper widely circulated in the community where the Property is located or by providing each Member with a schedule of Board meetings on an annual basis. The notice for any Board meeting at which an assessment will be levied must include a statement that an assessment will be considered and the nature of the assessment. The notice requirements set forth in this section also apply to meetings of any committee or similar body, including any body vested with the power to approve or disapprove architectural decisions with respect to any Lot.

6.5. Manner of Voting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election of officers.

6.6. Waiver of Notice of Directors. The transaction of any business at any meeting of the Board of Directors, however called and noticed to the Directors, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present, if it was properly noticed to the Members, and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holdings of such meeting, or an approval of the minutes thereof.

All such waivers, consents or approval shall be filed with the Associations' records and made a part of the minutes of the meeting. Other than as set forth in Section 6.4 above with regard to assessments, neither the business to be transacted nor the purpose of any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

6.7 Defects in Notice to Director or Members, etc. Waived by Attendance. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a Director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. Likewise, attendance of a Member at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a Member states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. Members of the Board of Directors may participate in a meeting of such Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting, including any Members, can hear each other at the same time. Participating by such means shall constitute presence in persons at a meeting

6.8 Quorum. A quorum at Directors' meetings shall consist of a majority of all votes of the entire Board of Directors. The acts approved by a majority of those votes represented at a meeting at which a quorum is present shall constitute the act of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration, the Articles, or these Bylaws.

6.9 Adjourned Meetings. A majority of the Directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the Directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other Directors and to the Members as required by Section 6.4.

6.10 Action by Directors Without a Meeting. Any action required to be taken at a meeting of the Directors or a committee thereof, may be taken without a meeting, if such action is noticed to the Members as required by Section 6.4 and if a consent in writing setting forth the action so to be taken signed by all of the Directors or all of the members of the committee, as the case may be, is filed in the minutes of the proceedings of the Board or of the committee. Such consent shall have the same effect as a unanimous vote.

6.11 Presiding Officer. The presiding officer of Directors' meetings shall

be the President. In the absence of the President, the Vice President shall preside, and in the absence of both, the Directors present shall designate one of their number to preside.

6.12 Powers and Duties of Board of Directors. All of the powers and duties of the Association existing under Chapter 617, Florida Statutes, the Declaration, the Articles, and these Bylaws, shall be exercised by the Board of Directors, subject only to approval by Members when such is specifically required.

7. Officers.

7.1 Officers and Election. The executive officers of the Association shall be a President, who shall be selected from the Board of Directors, a Vice-President, who also shall be selected from the Board of Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find necessary or convenient to manage properly the affairs of the Association.

7.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an Association, including but not limited to the power to appoint committees from among the Members from time to time as he may in his discretion determine appropriate to assist in the conduct of the affairs of the Association. He shall serve as chairman of all Board and Members' meetings.

7.3 Vice President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

7.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an Association and as may be required by the Directors or the President. The duties of the Secretary may be fulfilled by a manager employed by the Association.

7.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the books of the Association in accordance with good accounting practices and provide for collection of assessments; and he shall perform all other duties incident to the office of

Treasurer. The duties of the Treasurer may be fulfilled by a manager employed by the Association.

7.6 Compensation. The compensation, if any, of the officers shall be fixed by the Board of Directors.

8. Books and Records.

8.1 Official Records. The Association shall maintain within the State of Florida each of the following, which shall constitute the official records of the Association:

- (a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair or replace;
- (b) A copy of the Bylaws of the Association and of each amendment to the Bylaws;
- (c) A copy of the Articles of Incorporation of the Association and of each amendment thereto;
- (d) A copy of the Declaration of Covenants and a copy of each amendment thereto;
- (e) A copy of the current rules of the Association;
- (f) The minutes of all meetings of the Board of Directors and of the Members, which minutes must be retained for at least seven (7) years;
- (g) A current roster of all Members and their mailing addresses and Lot identification;
- (h) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least seven (7) years;
- (i) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease or other contract under which the Association has any obligation or responsibility. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of one (1) year; and
- (j) The financial and accounting records of the Association, kept

according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and account records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures;
2. A current account and a periodic statement of the account for each Member, designating the name and current address of each Member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the Member, the date and the amount of each payment on the account, and the balance due;
3. All tax returns, financial statements, and financial reports of the Association; and
4. Any other records that identify, measure, record or communicate financial information.

8.2. Inspection and Copying. The official records shall be open to inspection and available for photocopying by Members or their authorized agents during reasonable business hours, at the principal office of the Association, or on the Property, within ten (10) business days after receipt of a written request for access. Such inspection must take place within the presence of an agent of the Association. The Association shall provide copies of any of the official records to any Member or its authorized agent, within ten (10) business days after receipt of a written request for such copies, and may charge a fee for providing such copies, which shall include the costs of copying.

8.3. Copies. The Association shall maintain an adequate number of copies of the Declaration, the Articles and the Bylaws, to ensure their availability to Members and prospective Members, and may charge the cost of reproducing and furnishing these documents to those persons entitled to receive them.

9. Fiscal Management. The provisions for fiscal management of the Association are governed by the following provisions:

9.1 Accounts. The receipts and expenditures of the Association shall be credited and charged to accounts under the following classifications and any other classifications as shall be appropriate, when authorized and approved by the Board of Directors. The receipts shall be entered by the amounts of receipts by accounts and receipt classifications, and expenses by the amounts of expenses by accounts and expense classifications.

(a) Current Expense. The current expense account shall include all receipts and expenditures to be made within the year for which the expenses are budgeted and may include a reasonable allowance for contingencies and working funds. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year or to fund reserves. This may include but not be limited to:

- (1) Professional, administration and management fees and expenses;
- (2) Taxes on Common Property;
- (3) Expense for utility services and maintenance expense relating to the Common Property;
- (4) Insurance costs;
- (5) Administrative and salary expenses;
- (6) Operating capital; and
- (7) Other expenses.

(b) Reserve for Deferred Maintenance. If required by the Board of Directors, there shall be established a reserve account for deferred maintenance which shall include funds for major maintenance items which are the obligation of the Association and which occur less frequently than annually.

(c) Reserve for Replacement. If required by the Board of Directors, there shall be established a reserve account for replacement which shall include funds for repairs for replacements which the Association is obligated to make resulting from damage, depreciation or obsolescence.

9.2 Budget. The Board of Directors shall adopt an operating budget for the Property in advance for each calendar year. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, if any, whether owned by the Association, the Developer or another person. The budget shall be prepared utilizing the categories for current expenses and reserves set forth in Section 9.1 above. The Association shall provide each Member with a copy of the annual budget or a notice that a copy of the budget is available upon request at no charge. The copy must be provided within ten (10) business days after receipt of a written

request for such copy.

9.3 Assessments. The manner in which expenses of the Association are shared, and the Members proportionate share thereof, are set forth in the Declaration. Assessments levied pursuant to the annual budget or special assessments must be in the Members proportional share of expenses as described in the Declaration, which share may be different among classes of Members, based upon relevant factors which may include the state of development thereof or level of services received by a class of Members. The Board of Directors shall establish the amount of the assessments based upon the annual budget each year; the Board also shall establish and notify the Members of the frequency and/or due dates of the assessments established under the annual budget. If an annual assessment is not levied as required, an assessment shall be presumed to have been levied in the amount of the last prior assessment, and such assessments shall be due at the same time(s) in the year as the prior year. In the event the annual assessments prove to be insufficient, the budget and assessments may be amended at any time by the Board of Directors.

9.4 Acceleration of Assessment Installments Upon Default. Installments of assessments are due upon receipt by each Owner of the bill therefor. If an Owner shall fall more than fifteen (15) days in arrears in the payment of an installment of the annual assessment, the Board of Directors may provide written demand to the said Owner specifying that, if the overdue installment or installments are not paid within twenty (20) days from the receipt for the said written demand, then the Board of Directors shall be deemed to have declared the sums to be delinquent and to have accelerated the remaining installments of the annual assessment as of the said twentieth (20th) day, without further notice or demand. The unpaid balance of the delinquent installment, and upon acceleration of the unpaid balance of the annual installment, the entire unpaid balance of the annual assessment, shall bear interest from the date due until paid at the highest rate allowed by law, or at such lesser rate as may be adopted and uniformly applied by the Board. In addition, any payment of assessments not made within thirty-five (35) days after the due date thereof shall become a lien upon the Lot upon the recordation by the Association or its agent of a Claim of Lien setting forth the amount due and the description of the Lot intended to be encumbered. The said lien shall also secure all costs of collection including, without limitation, costs of legal action and the Association's reasonable attorneys' fees, including said costs and fees upon appeal, as well as subsequent installments which are thereafter unpaid when due and while the lien remains unsatisfied. The lien may be foreclosed in the same manner as a mortgage upon real estate, or the Association, without waiving the right of foreclosure, may pursue collection directly against the affected Owner.

9.5 Depository. The depository of the Association will be such banks as shall be designated from time to time by the Directors and the withdrawal of monies from such accounts shall be only by checks signed by such persons as authorized by the Directors; provided, however, that the provisions of a management agreement between the Association and a manager relative to the subject matter of this section shall supersede

the provisions hereof.

9.6 Financial Reporting. The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The Association shall provide each Member a copy of the annual financial report or a written notice that a copy of such report is available upon request at no charge. Such copy shall be furnished within ten (10) business days after receipt of a written request for the financial report. The financial report shall consist of either:

- (a) Financial statements presented in conformity with generally accepted accounting principals; or
- (b) A financial report of actual receipts and expenditures, cash basis, which report must show:
 - (1) The amount of receipts and expenditures by classification; and
 - (2) The beginning and ending cash balances of the Association.

10. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings, when not in conflict with these Bylaws.

11. Amendment. Amendments to these Bylaws shall be proposed and adopted in the following manner:

11.1 Resolution. The Board of Directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote by the Board of Directors at a meeting of the Directors.

11.2 Notice. Within the time and in the manner provided in these Bylaws for the giving of notice of meetings of the Board, written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member of record.

11.3 Vote. At such meeting of the Board, a vote of the Directors shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the Directors.

11.4 Multiple Amendments. Any number of amendments may be submitted and voted upon by the Board at one meeting.

11.5 Proviso. No amendment shall make any changes in the qualifications

for membership nor the voting rights of Members without approval by at least a two-thirds (2/3) majority of the votes of the Members. No amendment shall be made that is in conflict with chapter 617, Florida Statutes, or with the Declaration or Articles of Incorporation.

F:\3\HOA\Fells Cove-Bylaws.wpd