

The following pages are the covenants, conditions, restrictions, etc. for:

Heather Hill in Davenport, FL

These documents have been provided to us by the homeowner, the Homeowner's Association (HOA), and/or we have located them in Polk County Public Records.

This may not be all relevant documents in their entirety. In addition, these documents may be amended at any time without notice.

This information is being provided as a courtesy. However it is your responsibility as the tenant to contact the Homeowner's Association for any additional documents, information, and/or updates that may not be included here.

INSTR # 2002173650

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RICHARD H WEISS, CLERK OF COURT
POLK COUNTY
RECORDING FEES 231.00
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RETURN TO:
The Closing Agent
33 N. Summerlin Ave.
Orlando, FL 32801
407-425-2400


Prepared by/Return to:
Joseph E. Seagle, Esq.
Barry L. Miller, P.A.
33 N. Summerlin Ave.
Orlando, FL 32801
(No Title Examination Performed)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEATHER HILL

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEATHER HILL (hereinafter referred to as the "Declaration"), is made and entered into this 19th day of September, 2002, by Nicholson USA Properties, Ltd., a Colorado Limited Partnership, whose principal mailing address is 111 W. Robinson Street, Orlando, Florida 32801 (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the sole record owner in fee simple of certain real property located in Polk County, Florida, which is more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter referred to as the "Property"); and

WHEREAS, Declarant desires to develop the Property; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities within the Property and for the maintenance of the open spaces, buffer areas, and other common facilities, and to this end desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each subsequent Owner of all or part thereof; and

WHEREAS, it is the intention of the Declarant to develop the Property and build residential housing units thereon and/or convey to builders fully developed lots, as hereinafter defined, which builders shall construct varying improvements on said lots or, alternatively, to independently construct varying improvements on said lots; and

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and amenities within the Property to create a homeowners' association which shall be delegated and assigned the powers of maintaining and administering certain designated Common Areas and other facilities within the Property, which areas, where applicable, shall be specifically designated on the plat or plats of the Property; administering and enforcing this Declaration; and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Florida, a non-profit corporation to be known as **HEATHER HILL HOMEOWNERS ASSOCIATION, INC.** (hereinafter referred to as the "Association"), for the purpose of exercising the functions aforesaid:

NOW THEREFORE, the Declarant declares that all Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1. The following words and terms when used in this Declaration (unless contents hereof clearly indicate to the contrary) shall have the following meanings:

Section 1.1. "Architectural Review Committee" or "ARC" shall mean an architectural review committee appointed in accordance with Article VIII hereof, whose duties shall be as set forth in Article VIII hereof.

Section 1.2. "Articles of Incorporation" shall mean the articles of incorporation of the Association, a copy of which is attached hereto as Exhibit "B" and by this reference incorporated herein. During such time as there exists Class B Membership (as hereinafter defined) the Articles of Incorporation may not be amended without the prior written approval of the Secretaries of the Federal Housing Administration ("FHA") and Veterans Administration ("VA").

Section 1.3. "Association" shall mean and refer to HEATHER HILL HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit corporation, its successors and assigns.

Section 1.4. "Board of Directors" shall mean the board of directors of the Association.

Section 1.5. "Builder" shall mean and refer to the purchasers of developed Lots from Declarant for the purpose of constructing Dwelling Units thereon.

Section 1.6. "Bylaws" shall mean the bylaws of the Association, a copy of which is attached hereto as Exhibit "C" and by this reference incorporated herein.

Section 1.7. "County" shall mean Polk County, a political subdivision of the State of Florida.

Section 1.8. "Declarant" shall mean Nicholson USA Properties Ltd., a Colorado limited partnership, and its express successors and assigns. All rights, powers and privileges granted to the Declarant by this Declaration or by the Articles of Incorporation and Bylaws of the Association shall be exercised by the Declarant in such a manner as it may determine, together with all future amendments, modifications, supplements and restatements thereof as may from time to time hereafter be recorded among the Public Records of the County.

Section 1.9. "Dedicated Areas" shall mean all real property, including the improvements thereon, owned by a governmental entity or dedicated to the public for public use.

Section 1.10. "Dwelling Unit" shall mean and refer to any building or portion thereof constructed on a Lot and intended for use and occupancy as a residence by a single family and susceptible to ownership in fee simple as to which Dwelling Unit a certificate of occupancy has been issued by the applicable governmental authorities.

Section 1.11. "Common Area" shall mean all real property, including the improvements thereon, owned or which may subsequently be owned by the Association for the common use and enjoyment of the Members of the Association, whether acquired by purchase or conveyance from the Declarant, its successors or assigns, by dedication on a plat or plats of the Property, or otherwise. The Common Area shall be identified by tract on the plat or plats of the Property, and shall be subject to the dedications set forth on each plat. The term "Common Area" shall also include: (i) any tangible or intangible personal

property acquired by the Association, (ii) any screening wall and landscape buffer area, (iii) any other property or other areas which might require maintenance or care by the Association. All Common Area is to be maintained by Association and devoted to and intended for the common use and enjoyment of the Members of the Association, their families, invitees, guests, and persons occupying Dwelling Units (as hereinafter defined) on a guest or tenant basis, to the extent designated on recorded plats or authorized by the Board of Directors of the Association.

Section 1.12. "Common Property" shall mean and be defined as all real property and interests in real property, including easements, and all fixtures, personal property and equipment from time to time owned by the Association for the common use, enjoyment and benefit of all Owners and/or for the conduct of the business and affairs of the Association in furtherance of the objects and purposes of the Association as set forth in this Declaration and in the Articles of Incorporation and Bylaws of the Association, including, without limitation, all common walls, entry features, signs, landscaping, landscape irrigation systems, lighting systems, open spaces, parks, recreational facilities and such other portions of the Subject Property, if any, as are conveyed to the Association by Developer pursuant to this Declaration.

Section 1.13. "Common Streets and Roads" shall mean and be defined as the rights of-way of and for all streets, roads, drives, courts, ways and cul de sacs within Heather Hill as the same are described in and depicted on the Plats, together with all paving, curbing, gutters, sidewalks and other improvements, facilities and appurtenances from time to time located therein, including street lights and utility lines, conveyed by the Developer to Polk County pursuant to the provisions of this Declaration; but, specifically excluding such utility lines, facilities and appurtenances as are located within such rights-of-way as may be owned by private or public utility companies or governmental agencies from time to time providing utility services to Heather Hill, including, without limitation, water lines of the County, electric power lines of the electrical power utility provider, telephone lines, natural gas lines and cable television lines.

Section 1.14. "Neighborhood Common Area" shall mean and be defined as all real property and interests in real property, including easements, and all fixtures and personal property, if any, from time to time owned by the Association as Common Property but which, because of its location, or other characteristics, attributes or features is owned, held, administered, managed and operated by the Association exclusively or primarily for the particular, special or limited use, enjoyment and benefit of only the Owners of those Lots located in a particular Neighborhood or Neighborhoods, including, without limitation, entry features, parks, recreational facilities, fountains, and other portions of the Subject Property which are unique to a particular Neighborhood or Neighborhoods; provided, however, that no portions of the Common Streets and Roads or the Stormwater/Surface Water Management System shall ever be deemed to be or become regarded as Neighborhood Common Area.

Section 1.15. "Lot" shall mean and refer to any plat or parcel of land shown upon a recorded subdivision plat of all or a portion of the Property which Lot is intended to have a Dwelling Unit construction thereon provided, however, that there shall be excluded from the definition of Lot, the Common Area, Dedicated Areas, streets, and all lands owned by the Association.

Section 1.16. "Member" shall mean and refer to any Owner who is a member of the Association.

Section 1.17. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.18. "Property" shall mean and refer to the real property described in Exhibit "A" attached hereto and any additional land which Declarant may from time to time subject to the terms and conditions of this Declaration.

Section 1.19. "Stormwater/Surface Water Management System" means a system which is designated 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 quality and quantity of discharges. Such System includes, but is not limited to all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas and wetland mitigation areas.

ARTICLE II ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation by Declarant. Portions of land (either for residential use or common area) may be annexed to the Property at the sole discretion of Declarant. Except for applicable governmental approvals, no consent from any other party shall be required, including Class A Members and holders of mortgages encumbering any portion of the Property. Such annexed lands shall be brought within the terms and conditions of this Declaration by the recording of a document executed by Declarant and recorded in the Public Records of Polk County, Florida (the "Notice of Declaration"). The Notice of Declaration shall refer to this Declaration and shall, unless specifically provided otherwise, incorporate by reference all of the terms, covenants and conditions of this Declaration, thereby subjecting all annexed lands to such terms, covenants and conditions as fully as though said annexed lands were described herein as a portion of the Property. The Notice of Declaration may contain such additions or modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed land, and as are not inconsistent with the overall scheme of this Declaration. Except for additions or modifications that are specifically intended to modify this Declaration, no Notice of Declaration shall revoke, modify or amend the covenants and restrictions established by this Declaration.

Section 2. Annexation by Members. At such time as Class B membership has ceased pursuant to the provisions of this Declaration, additional residential property and common area may be annexed to the Property with the consent of two-thirds (2/3) of the then-existing Members. Any land so annexed shall be subject to the general plan theretofore approved by FHA or VA.

ARTICLE III EASEMENTS RESERVED TO DECLARANT AND OTHERS; PROPERTY RIGHTS

Section 1. Easements for Construction and Sales. There is reserved to the Declarant, and granted to the Builders, and their respective designees, successors and assigns, (including, without limitation, their agents, sales agents, and representatives, and prospective purchasers of Lots), nonexclusive easements over the Common Area, for construction, utility lines, display, maintenance and exhibit purposes in connection with the erecting of improvements and sale of Lot and Dwellings Units within the Property and for ingress and egress to and from construction sites at reasonable time provided, however, that such use shall terminate upon the later of (i) the sale of all Lots by the Declarant or (ii) the sale of all Dwelling Units by the Builders and their express successors and assigns; and provided, further that no such use by the Declarant and/or the Builders and others shall otherwise restrict the Owners in the reasonable use and enjoyment of the Common Area.

Section 2. Easements Over Common Areas. To the extent that easements over, upon or under the Common Area are necessary so as to provide utility services to the Property, the Association and each Owner, and his heirs, successors and assigns, do hereby designate and appoint the Declarant as agent and attorney-in-fact, which is coupled with an interest, with full power in his name, place and stead, to

execute instruments creating such easements; provided, however, that such easements shall not unreasonably interfere with the use by the Owners of the Common Area. For this purpose, the Declarant shall have the right to grant easements in perpetuity over, under and across all Common Areas shown on any recorded subdivision plats of all or portions of the Property, together with the right to grant easements to others and such easements shall include, but shall not be limited to, the right to use the said Common Area to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, cable television, water or other public convenience or utilities and drainage and the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any similar action reasonably necessary to provide economical an safe public convenience or utility installation or to provide for drainage and to maintain reasonable standards of health, safety and appearance and the right to locate wells, pumping stations and tanks. The rights granted to the Declarant pursuant to this section shall terminate upon the later of (i) the sale of all Lots by the Declarant, or (ii) the sale of all Dwelling Units by the Builders and their express successors and assigns.

Section 3. Easement over Lots. For so long as Declarant is the owner of any Lot, the Declarant hereby reserves unto itself the right to grant easements to itself or any other entity over each such Lot owned for purposes of ingress and egress, to include driveways common to two (2) or more Lots, drainage, utility, gas, telephone, cable TV and electrical services. With respect to easements thus granted the Declarant shall have and does hereby retain and reserve the right to release the Lot from the encumbrance of such easements; provided, however, that Declarant shall not have the power to release any portion of a utility easement on a Lot without the consent of the utilities served thereby.

Section 4. Easements as Shown on Plat. Easements for access, installation and maintenance of utilities, drainage facilities, screening walls, and landscape buffer areas and reserved to the Association as shown on the recorded plat or plats of the Property. Within such easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of drainage channels in such easements, or which may obstruct or retard the flow of water through the drainage channels or which may be inconsistent with such plans for sidewalks, landscape buffer areas and screening walls as may now or hereafter be approved by the County. The platted easement areas of each Lot, any drainage swales on a Lot and all improvements therein shall be maintained continuously by the Owner of such Lot, except for: a.) those improvements for which a public authority or utility company is responsible, and b.) those improvements for which the Association shall have expressly assumed responsibility.

Section 5. Owner's Easement of Enjoyment of Common Area. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. Subject to the provisions of Articles IX and X below, every Owner shall have a right to use any of the common facilities owned by the Association.
- b. The right of the Association to suspend the voting rights and right to the use of any Common Area by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days from any infraction of its published rules and regulations.
- c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is approved by a two-thirds (2/3) vote of each class of the Members.

Section 6. Delegation of Use of Common Areas. Any Owner may delegate, in accordance with the Bylaws, his right or enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property whether on a permanent or transient basis.

Section 7. Stormwater/Surface Water Management System. The Association, its successors, agents, and employees shall have a perpetual non-exclusive easement over all areas of the Surface Water or Stormwater Management System for access to operate, maintain or 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 or stormwater management system, at a reasonable time and in a reasonable manner to operate, maintain or repair the surface water or stormwater management system as required by the Southwest Florida Water Management District permit. Additionally, the Association shall have a perpetual nonexclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the Southwest Florida Water Management District and Polk County, Florida. The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) 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 Southwest Florida Water Management District. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted or, if modified, as approved by the Southwest Florida Water Management District and Polk County, Florida. No vegetation in any wet detention ponds nor in any wetland mitigation areas shall be cut, removed, trimmed or sprayed with herbicide without specific written approval of the District.

Section 8. Establishment of Easements. All easements as provided for in this Article, shall be established by one or more of the following methods, to wit:

- a. By a specific designation of an easement on the recorded plat of all or a portion of the Property.
- b. By a reservation or specific statement providing for an easement in the deed of conveyance of a given Lot or Dwelling Unit, or other portion of the Property.
- c. By a separate instrument referencing this Article III: or
- d. By virtue of the reservation of rights set forth in this Article.

ARTICLE IV COMMON PROPERTY

Section 1. Administration and Care. The administration, management, operation, care, maintenance, repair, restoration, replacement, preservation, protection and regulation of the Common Property shall be the responsibility of the Association as in this Declaration and in the Articles of Incorporation of the Association. In the conduct of its duties and responsibilities as regards the Common Property, the Association shall, with respect to the Common Streets and Roads and the Stormwater/Surface Water Management System, take such actions from time to time as are necessary to comply with and abide by the requirements of the Board of County Commissioners. In furtherance thereof, the Association shall comply with the provisions of this Declaration.

Section 2. Rules and Regulations. In addition to the foregoing restrictions on the use of Common Property, the Association shall have the right, power and authority to promulgate and impose reasonable Rules and Regulations governing and/or restricting the use of Common Property and to thereafter change,

modify, alter, amend, rescind and augment any of the same; provided, however, that no Rules or Regulations so promulgated shall conflict with the provisions of this Declaration. Any such Rules and Regulations so promulgated by the Association shall be applicable to and binding upon all Common Property and all Owners and residents of the Subject Property and all members of their families, their tenants, guests and other invitees and upon all other parties claiming by, through or under such Owners and residents.

Section 3. Assessments Not Substitute or Basis For Discount on Taxes. The payment of assessments from time to time established, made, levied, imposed and collected by the Association pursuant to this Declaration, including, without limitation, those assessments for the maintenance of the common property, including the common streets and roads and the Stormwater/Surface Water Management System, shall not be deemed to be a substitute for or otherwise relieve any owner from paying, or establish the basis for any discount on, any other taxes, fees, charges or assessments imposed by the State, County or any other governmental authority.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association, and agrees to be bound by the terms and conditions stated herein regarding said Association, including the payment of annual Assessments of the Association; provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting Membership:

Class A. The Class A Members shall be all Owners, with the exception of the Declarant and the Builders and shall be entitled to One (1) vote for each Lot owned. When more than one 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 (1) vote be cast with respect to any Lot.

Class B. The Class B Members shall be the Declarant and the Builders, and they shall be entitled to six (6) votes for each Lot owned by them. The Class B Membership shall cease and be converted to Class A Membership when Seventy-Five percent (75%) of the Lots have been sold by the Declarant. From and after the happening of this event, the Class B Members shall be deemed Class A Members entitled to one (1) vote for each Lot in which they hold the interest required for Membership under Article V, Section 1 hereof.

ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Types of Assessments. The Association is hereby authorized and empowered to establish, make, levy, impose, enforce and collect the Initiation Assessment, Regular or Annual Assessments, Assessments for Common Expenses and Maintenance, Capital Assessments, Special Assessments, and Individual Lot Assessments for which provision is hereinafter made in this Declaration.

Section 2. Assessments for Common Expenses. In order to provide for and assure the availability of the funds necessary to pay common expenses associated with the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, preservation and protection of the Common Property, and such additional Common Expenses as may be associated with and otherwise

necessary for the Association to perform its duties and obligations pursuant to and in accordance with this Declaration, its Articles of Incorporation and its Bylaws and to otherwise carry out and accomplish the objects and purposes for which the Association has been created and established, each Lot and each Owner of such Lot shall, by the acceptance of a deed or other conveyance, and whether or not it shall be expressly stated, or reference to this Declaration shall be made in such deed or conveyance, be obligated for and be deemed to have covenanted and agreed to pay the Association.

Section 3 Initiation Assessment. In order to provide the funds necessary for the commencement of its operations, including -- without limitation -- the establishment of its initial book records and other systems, the purchase and acquisition of its initial equipment and supplies and the employment of its initial personnel, and in order to otherwise commence to perform its duties and obligations pursuant to this Declaration, its Articles of Incorporation and Bylaws (collectively, "Start-Up Expenses"), the Association shall levy and impose on each Lot and collect from the initial Owner/occupant thereof (other than Developer or the Builder thereof) at the time of the closing of the initial sale, transfer and conveyance of each Lot from Developer to the initial Owner/occupant of such Lot (other than Developer or the Builder thereof) an Initiation Assessment. The amount of the Initiation Assessment shall be and is hereby initially established to be Two Hundred and Fifty Dollars and No/100's (\$250.00). However, the amount of the Initiation Assessment may be increased or decreased from time to time by the Board of Directors of the Association, in its sole but reasonable discretion, taking into account the amount of funds required for the initial capitalization of the Association, including, the nature and amount of the Start-Up Expenses actually incurred or anticipated to be incurred by the Association. The Association may use the Initiation Assessment for any purposes reasonably related to its duties and obligations pursuant to this Declaration and/or may hold the same as a reserve against unanticipated future expenses.

Section 4. Regular Assessments. The Association shall be and is hereby authorized, empowered and directed to establish, levy, make, impose, enforce and collect during each calendar year a Regular Assessment in order to provide funds required for the payment of Common Expenses to be incurred by the Association during such calendar year in the performance of its duties and obligations pursuant to this Declaration. Monthly assessments are \$30.00/month (Thirty dollars and no cents), \$360.00/year. First year's payment plus initiation for a total of \$610.00 (Six hundred ten dollars and no cents) to be collected at closing. Such Regular Assessments shall be established, made, levied, imposed, enforced, collected and otherwise governed by the following provisions, to wit:

- 4.1 Initial Regular Assessments. The initial or first Regular Assessment shall be in such amount as shall be determined by the Board of Directors of the Association in its reasonable discretion, taking into account its estimate of the amount of Common Expenses to be incurred by the Association during the portion of the calendar year remaining following the recordation of this Declaration.
- 4.2 Rate of Regular Assessments. The amount of the Regular Assessment for each calendar year subsequent to calendar year in which this Declaration is recorded shall be established and determined by the Board of Directors of the Association not later than thirty (30) days prior to the beginning of the next succeeding calendar year. The Board shall establish the Regular Assessment for each calendar year based upon a pro forma operating statement or estimated budget for such calendar year which, in turn, shall be based, among other things, upon an estimate of the total Common Expenses likely to be incurred by the Association during such calendar year, taking into account the previous operating history of and any surplus funds, not including reserves, held by the Association, and the establishment of reasonable reserves for the maintenance, repair and replacement of the Common Property, including the Common Streets and Roads and the Surface Water/Stormwater Management

System. The Association shall, not less than thirty (30) days prior to the establishment of a Regular Assessment, provide to each Owner a copy of the pro forma operating statement or estimated budget to be used by the Association in the establishment of such Regular Assessment. The total amount of the Common Expenses so estimated shall be divided by the total number of platted Lots within the Subject Property which are then subject to and encumbered by this Declaration in order to determine the amount of the Regular Assessment for each Lot for such calendar year.

- 4.3 Notice of Regular Assessments. Not later than fifteen (15) days prior to the beginning of each calendar year the Association shall provide written notice to each Owner of the amount of the Regular Assessment established, made, levied and imposed for the next succeeding calendar year and the date(s) upon which such Regular Assessment or installments for the same shall become due and payable.
- 4.4 Commencement of Regular Assessments. Regular Assessments shall commence as to all Lots which become a part of the Subject Property from time to time at such time as shall be determined by the Board of Directors of the Association.
- 4.5 Insufficient Regular Assessments. In the event that the Association shall determine during any calendar year that the Regular Assessment established for such calendar year is or will become inadequate or insufficient to meet all anticipated Common Expenses for such calendar year, for whatever reason, the Board of Directors of the Association shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular Assessment for such calendar year, issue a supplemental estimate of Common Expenses to all members of the Association and within thirty (30) days thereafter levy and collect a supplemental or revised Regular Assessment for such calendar year.
- 4.6 Limitation on Increases. After the Association's first full calendar year of operation the Association shall not establish, make, levy, impose, enforce and collect any Regular Assessment which is increased over the amount of the Regular Assessment for the immediately preceding calendar year at a rate greater than twenty-five (25%) percent per year, cumulatively, since the initial establishment of or latest increase in the Regular Assessment without the prior approval of a majority of the members of the Association voting in person or by proxy at a meeting of the Association duly called for such purpose and of which written notice specifying the amount of a proposed increase in the Regular Assessment over the Regular Assessment for the prior calendar year is sent to each member of the Association at least thirty (30) days in advance of such meeting.
- 4.7 Payment of Assessments. Regular Assessments shall be due and payable in advance in monthly or quarterly installments as determined by the Board of Directors of the Association, in its reasonable discretion. Such installments shall be due and payable without any further notice other than that notice specified herein.
- 4.8 Developer Option. Notwithstanding anything to the contrary set forth in this Declaration, until such time as Class B membership in the Association is terminated as provided in this Declaration, Developer may either: (a) pay the Regular Assessment with respect to each Lot owned by Developer from time to time, or (b) pay the difference between (i) the aggregate amount of all Common Expenses (including budgeted reserves) actually incurred by the Association during a particular calendar year and (ii) the aggregate amount of Regular Assessments levied against and collected by the Association (and paid by Owners other than

Developer) from and with respect to all Lots not owned by Developer during such calendar year.

- 4.9 Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board of Directors of the Association, to be collected and held as reserves against and for the future periodic maintenance, repair or replacement of all or any portion or portions of the Common Property, common area landscaping, or for such other purpose or purposes as shall be determined by the Board of Directors of the Association, in its reasonable discretion. Such portion of Regular Assessments representing amounts collected as reserves, whether established pursuant to this Section or otherwise, shall be deposited by the Association in one or more separate interest bearing account(s), certificate(s) of deposit or in United States Treasury Bonds of appropriate maturity, to be held in trust by the Association until used for the purpose or purposes for which the same are established and shall be segregated from and not commingled with the general funds or any other funds of the Association. The Association shall submit to the County annually a statement or other financial report (in form and detail acceptable to the County Comptroller) confirming the existence and disclosing the amount of reserve funds held by the Association for such purposes.
- 4.10 Capital Expenditure Assessments. The Association shall be and is hereby authorized and empowered to establish, make, levy, impose, enforce and collect from time to time Capital Expenditure Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or the unexpected repair or replacement of any capital improvement to or upon the Common Property, or the cost of the initial purchase or any subsequent unexpected repair or replacement of any fixtures, equipment or personal property purchased, repaired or replaced by the Association in furtherance of the discharge of its duties and obligations pursuant to this Declaration; provided, however, that any such Capital Expenditure Assessment shall have the prior approval of two-thirds (2/3) of the members of the Association voting in person or by proxy at a meeting of the Association of which written notice specifying the nature of the proposed capital expenditure and the amount of the proposed Capital Expenditure Assessment is sent to all members of the Association at least thirty (30) days in advance of such meeting. All sums collected as Capital Expenditure Assessments shall be used by the Association only for the capital improvements or purchases or other capital expenditures for or with respect to which such Capital Expenditure Assessment has been approved and such sums shall be deposited by the Association in a separate interest bearing bank account, certificate(s) of deposit or in United States Treasury Bonds of appropriate maturity, not commingled with any other funds of the Association, to be held in trust by the Association until used for such purposes.
- 4.11 Special Assessments. The Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect from time to time Special Assessments for any purpose directly related to the discharge of its duties and obligations pursuant to this Declaration; provided, however, that any such Special Assessment shall have the prior approval of two-thirds (2/3) of the members of the Association voting in person or by proxy at a meeting of the Association of which written notice specifying the nature and amount of the proposed Special Assessment is sent to all members of the Association at least thirty (30) days in advance of such meeting. All sums collected as Special Assessments shall be used only for the purpose for which such Special Assessment is established, made, levied, imposed, enforced and collected and shall be deposited in a separate interest bearing bank account, certificate(s) of deposit or in United States Treasury Bonds of appropriate

maturities, not commingled with any other funds of the Association, and held in trust by the Association until used for such purpose.

Section 5. Individual Lot Assessments. The Association shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce and collect against and from a particular Lot and the Owner of such Lot an Individual Lot Assessment for:

5.1 costs and expenses incurred by the Association in bringing a particular Lot or the Owner of such Lot into compliance with the provisions of this Declaration, including any action taken or cost or expense incurred by the Association to cure and eliminate any violation of or noncompliance with the provisions of this Declaration, following the failure of such Owner, within thirty (30) days following written notice from the Association of the nature of the violation of or non-compliance with this Declaration, to cure or remedy such violation or non-compliance;

5.2 costs and expenses, including reasonable attorneys' fees, whether suit be brought or not, incurred by the Association in the enforcement of the provisions of this Declaration against a particular Lot or the Owner of such Lot;

5.3 fines imposed upon or levied by the Association against any Owner or resident of such Lot and/or member of his family and/or any tenant, guest or invitee of such Owner or resident, or such Owner's Lot, for any violation of this Declaration and/or any Rules or Regulations adopted by the Association, including, without limitation, those fines imposed or levied for exceeding posted speed limits on the Common Streets and Roads, and all costs and expenses incurred by the Association in connection with the collection of such fines;

5.4 costs and expenses incurred by the Association in furnishing or providing labor, services and materials which benefit a particular Lot or the Owner of a particular Lot, provided, however, that such labor, services or materials have been authorized by such Owner in advance of the Association's furnishing or providing the same; and

5.5 reasonable overhead expenses of the Association associated with any Individual Lot Assessment in an amount not to exceed twenty-five percent (25%) of the actual costs and expenses incurred by the Association for any Individual Lot Assessment.

Section 6. Purpose of Assessments. The assessments levied by the Association shall specifically include, without limitation, the following uses:

- a. to promote the recreation, health, safety and welfare of the residents in the Property.
- b. for the improvement, maintenance and operation of Common Property and Area, including, but not limited to entry features, including the construction and maintenance of open spaces, buffer areas, walls and landscaping (including irrigation thereof), and the Surface Water/Stormwater Management System;
- c. for the improvement, maintenance and operation of any public property which shall be subject to any use agreement with Polk County or any other governmental authorities;
- d. for the payment of the operating expenses of the Association;
- e. for the payment of taxes, insurance labor and equipment;

- f. for the maintenance, repair or restoration of a Lot and the exterior of buildings and any other improvements erected thereon, but only to the extent provided for in this Declaration.
- g. for the repayment of funds and interest thereon that have been or may be borrowed by the Association for any of the purposes set forth herein;
- h. to establish and fund reserve accounts which the Association may choose to establish with respect to the maintenance, operation and improvement of the Common Areas and Property, and all improvements and equipment located thereon;
- i. to provide for the future ownership, operation, management, administration, improvement, maintenance, care, repair, replacement, use, regulation, preservation and protection of all Common Property within Heather Hill, and to assure the availability of and to provide the source of funds required therefor.
- j. to provide, or contract with an independent contractor for, such equipment, facilities and personnel, as may be reasonably necessary to provide a cable television distribution system within Heather Hill. In furtherance thereof, the Association, in its reasonable discretion, may enter into a contract with a cable television service company or other provider of cable television services to be the exclusive provider of cable television services within Heather Hill. If such an agreement is entered into by the Association, it may provide that the fee(s) charged for such cable television services by the provider thereof shall be a Common Expense paid by the Association and included as such in the annual budget of the Association for which the Regular Assessment is established, made, levied and collected each year, in which event, no Owner, member of the Association or Lot shall avoid or escape liability for the portion of the Regular Assessment attributable to the cost of cable television service by virtue of an election not to utilize the cable television services provided to or within Heather Hill or otherwise;
- k. to employ such persons or to contract with such independent contractors or managing agents as shall be reasonably required to carry out, perform and discharge all or any part of its duties, obligations and responsibilities pursuant to this Declaration and its Articles of Incorporation; provided, however, that any such employment contract or contract with any independent contractor or managing agent for a term of more than one (1) year shall, by its express terms, be terminable (i) for cause at any time upon not more than thirty (30) days prior written notice by the Association and (ii) without cause at any time after one (1) year upon not more than sixty (60) days prior written notice by either party; and, provided further, that any such contract shall otherwise be subject to the provisions of this Declaration and of the Articles of Incorporation of the Association;
- l. to provide such equipment, facilities and personnel, or to contract with an independent contractor therefor, as may be reasonably necessary to provide internal security services for and within the Subject Property;
- m. to accomplish, meet, satisfy and fulfill certain Governmental Regulations, specifically including, without limitation, those of the Southwest Florida Water Management District and the County, including -- without limitation -- those Conditions to Approval imposed by the County and the Water Management District as conditions to its approval of the zoning classification and land use plan for Heather Hill;
- n. to take such steps as may be necessary to enforce the provisions of this Declaration and in connection therewith to engage or employ legal counsel and institute and prosecute litigation to enforce the provisions of this Declaration, to make, adopt, promulgate, publish and enforce, such rules and regulations for the protection of and governing the use of the Common

Property as the Board of Directors deems to be in the best interest of the Association and its members;

- o. the Association may suspend, for a reasonable period of time, the right of an Owner and the members of such Owner's family and/or such Owner's tenants, guests and invitees, or any one or more or all of them, to use common Property and may also levy reasonable fines not to exceed \$150.00 per violation, against any Owner and/or members of his family and/or tenant, guest or invitee of such Owner;
- p. to make payment of all ad valorem taxes assessed against any of the access ways and tracts as shown on said plat and to make payment of all ad valorem taxes assessed against any properties, real or personal, or any interest therein, owned by or leased to said Association, and to make payment of any other taxes, specifically including, without limitation, income taxes, payable by said Association;
- q. doing any other things necessary or desirable in the judgment of the Association to keep the community neat and attractive or to preserve or enhance the value of the Property, or to eliminate fire, health or safety hazards;

Section 7. Quorum for Action. The quorum required at any meeting of the Association for any action authorized pursuant to this Declaration shall be (i) at the first meeting called for the purpose of taking any such action, the presence, in person or by proxy, of members of the Association entitled to cast fifty percent (50%) of the votes of all members of the Association, regardless of the membership class, shall constitute a quorum and (ii) if the required quorum is not forthcoming at such first meeting, the required quorum at any subsequent meeting shall be one-half (1/2) of the quorum required at the first meeting.

Section 8. Uniformity of Assessments. All Assessments (by type of Assessment) shall be uniformly fixed at an equal amount per Lot, and shall be collected on a uniform basis from the Owner of each Lot.

Section 9. Subordination of Assessment Lien. The lien of and for all Assessments provided for in this Declaration shall be and is hereby made junior, inferior, subordinate and subject in all respects to the lien of any bona fide first mortgage held by an Institutional Lender upon a particular Lot. The sale, transfer or conveyance of title to a particular Lot shall not affect the effectiveness, viability or priority of any Assessment lien or the personal liability of the Owner of such Lot for the payment of any Assessment; provided, however, that the sale, transfer or conveyance of title to a Lot pursuant to judicial proceedings in foreclosure of a bona fide first mortgage on such Lot held by an Institutional Lender shall extinguish the lien of such Assessments (but not the personal liability of the Owner of such Lot) as to payments on account thereof which became due and payable prior to such foreclosure sale, transfer or conveyance.

Section 10. Certificate of Assessments Due. The Association shall, upon the request of any Owner or any other interested party, furnish a certificate executed by its President, Secretary, Treasurer or any other officer or agent thereunto duly authorized, setting forth whether Assessments payable with respect to a particular Lot have been paid, the amount of the delinquency, if any, and the amounts of any outstanding and unpaid interest, late charges, transfer fees, penalties, costs of collection, including attorneys' fees and court costs, if any, associated with any such delinquent Assessments. Such certificate shall be binding upon the Association as conclusive evidence of the status of the payment of any Assessment therein stated to have been paid or to be delinquent as of the date of the issuance of such certificate. The Association shall be entitled to charge and collect a reasonable fee for and as a condition precedent to the issuance of any such certificate.

Section 11. No Defenses or Offsets. All Assessments shall be payable in the amounts and at the times specified in any Notice of Assessment and no defenses or offsets against the payment of such amount shall be permitted for any reason whatsoever, including, without limitation, any claim by an Owner that (i) the Association is not properly exercising its rights and powers or performing or discharging its duties and obligations under or as provided in this Declaration or in its Articles of Incorporation or Bylaws; (ii) an Owner and his family has made or elected to make no use of the Common Property; (iii) the Owner and his family have otherwise waived or elected to waive their membership in the Association; or (iv) the Association has suspended the right, privilege, license and easement of such Owner and his family to use the Common Property as provided in of this Declaration.

Section 12. Waiver of Homestead and other Exemptions. Each Owner, on behalf of himself and the members of his family, by the acceptance of a deed or other conveyance to his Lot, shall, to the extent permitted by applicable law, be deemed to have waived, to the extent of any lien for Assessments at any time made, levied or imposed upon such Lot pursuant to this Declaration, the benefit of any homestead or similar exemption laws of the State of Florida or the United States of America now in effect or hereafter enacted.

Section 13. Waiver of Use. No Owner of a Lot may exempt himself from personal liability for, or exempt his Lot from, any Assessments duly levied by the Association, or release the Lot owned by him from the liens, charges, encumbrances and other provisions of this Declaration or the Rules and Regulations of the Association by (a) the voluntary waiver of the right, privilege, license and easement for the use and enjoyment of the Common Property, (b) the abandonment of his Lot or (c) conduct which results in the Association's suspension of such right, privilege, license and easement as provided in this Declaration.

Section 14. Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment by the Association shall be \$500.00 per Lot.

- a. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.
- b. From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) of the maximum assessment for the previous year by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c. The Board of Directors may, at its option, levy the annual assessment at an amount less than but not in excess of the maximum annual assessment, or may levy the annual assessment in the amount of the maximum.

Section 15. Notice and Quorum for an Action Authorized. Written notice of any meeting called for the purpose of taking any action under the above sections shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast a majority of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 16. Uniform Rate of Assessment.

- a. Annual and Special Assessments. Both annual and special assessments must be fixed at a uniform rate for all Lots, except that as long as there is Class "B" membership, the Declarant and Builders will have the following options with respect to the annual assessment:
1. Option (1). The Declarant and builders may pay the annual assessment at the rate of ten percent (10%) of the rate fixed for Class "A" membership on all unoccupied Lots owned by the Declarant and/or Builders and in addition, pay the difference, if any, between the total annual operating expenses of the Association and the amount of the annual assessments required to be paid pursuant to this Article; or
 2. Option (2). The Declarant and Builders may pay the full rate of annual assessment at which time the obligation to pay the difference between expenses and annual assessment will cease.
- b. Single Lot Special Assessments. In addition to the annual and special assessments authorized herein, the Association may levy in the manner hereinafter set forth a Single Lot Special Assessment applicable only to a specific Lot that has failed to meet its maintenance obligations set forth in Article IX hereof. In the event an Owner of any Lot in the Property shall fail to maintain his lot and the exterior improvements situated thereon in accordance with the maintenance obligations set forth in Article IX hereof, then the Association, after approval by two-thirds (2/3) vote of the Board of Directors and thirty (30) days' written notice to the Owner, shall have the right, through its agent and employees to enter upon said Lot and to repair, clear, trim, maintain and restore the Lot and the exterior of the buildings and any other exterior improvements erected thereon. The cost of such Lot clearing and exterior maintenance shall be added to and become part of the assessment to which such Lot is subject, and which shall be due and payable thirty (30) days from the date said assessment is made. Such Single Lot Special Assessment shall be treated as a Special Assessment, and the Association shall have all rights and powers of collection as provided in this Article. The provisions of this Article shall not be applicable to any Single Lot Special Assessment.

Section 17. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance or dedication of the Common Area to the Association; provided, however, that Declarant may elect to defer the commencement of the annual assessments in which case the Declarant and the Builders shall be obligated to pay all expenses incurred by the Association during the period of deferment. Association expenses during any such deferment period shall be paid monthly by the Declarant and the Builders on a pro rata basis based on the total number of Lots owned by them during each such monthly deferment period. The first annual assessment shall be adjusted according to the number of months remaining the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period in an amount not in excess of the maximum annual assessment set forth above. Written notice of the annual assessment shall be sent to every Owner subject thereto. An invoice from the Association shall constitute satisfactory written notice. The Board of Directors shall establish the due dates. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed Certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**ARTICLE VII
NON-PAYMENT OF ASSESSMENTS**

Section 1. Delinquency. Any Assessment, which is not paid on its due date, shall be delinquent. With reasonable promptness after any Assessment becomes delinquent, the Association shall provide written notice of such delinquency to the Owner of the Lot with respect to which such delinquent Assessment has been made, levied and imposed. If the delinquent Assessment is not paid within ten (10) days following the delivery of such notice of delinquency, the Association, in its discretion, shall be entitled to immediately impose a reasonable late charge associated with the administration of such delinquent Assessment. Additionally, any such delinquent Assessment shall bear interest from the date of delinquency at the highest rate then allowed by the laws of the State of Florida or such lesser rate as shall be determined by the Board of Directors of the Association, in its discretion, until it is paid .

Section 2. Notice of Lien. The Association shall, at any time after ten (10) days from delivery of the notice of delinquency, be entitled to cause a claim of lien for such delinquent Assessment to be filed among the Public Records of the County. Any such claim of lien shall, among other things, state and identify, by legal description, the Lot against or with respect to which the lien is claimed, the name of the record Owner of such Lot as determined from the records of the Association, and the amount of the lien claimed, including interest, late charges, and costs and expenses associated with collection, including attorneys' fees, if any, accrued to the date of the execution of such claim of lien. The President, Secretary, Treasurer or other officer or agent of the Association thereunto duly authorized by the Association, or the attorney for the Association shall execute such claim of lien. Within ten (10) days of the recordation of the same, as aforesaid, a copy of such Claim of Lien (which may be an unrecorded copy) shall be sent to the Owner of the Lot against or with respect to which such lien is claimed by either: (a) United States certified or registered mail, postage prepaid and with return receipt requested or (b) hand delivery to the residential dwelling, if any, situate on such Lot.

Section 3. Foreclosure of Assessment Lien. The Association shall, at any time subsequent to the filing of the aforesaid claim of lien, be entitled to bring an action in the Circuit Court of the Judicial Circuit in and for County to foreclose the lien evidenced by such claim of lien in the same manner as mortgage liens are foreclosed. Any judicial sale pursuant to such foreclosure action shall be conducted as ordered by the Court or in accordance with the provisions of Section 45.031 Florida Statutes, as amended or replaced from time to time. The Association shall have the right and power to bid at any foreclosure sale with respect to any lien foreclosed by it, and if the successful bidder at such foreclosure sale, to acquire, own, hold, lease, sell, mortgage and convey any Lot upon or with respect to which it has foreclosed its lien for delinquent Assessments.

Section 4. Collection from Owner. The Association shall, at any time following the delivery of the aforesaid notice of delinquency, also be entitled to bring an action at law for the recovery and collection of such delinquent Assessment in the Circuit Court of the County (or any other court of competent jurisdiction, taking into account, among other relevant factors, the amount in controversy) against the Owner of the Lot personally obligated for the payment of such delinquent Assessment. Each Owner of a Lot, by the acceptance of a deed or other conveyance of the Lot owned by him shall be deemed to have agreed and consented to the jurisdiction of such Court over the person of such Owner for such purposes.

Section 5. Judgment Amount. Whether in an action at equity to foreclose the lien of the Association for delinquent Assessments or in an action at law for the recovery and collection of any such delinquent Assessment from the Owner of the Lot personally obligated for the payment of the same, the Association shall be entitled to recover in such proceedings the amount of such delinquent Assessment, together with late charges and interest thereon, if any, and such costs and expenses, including reasonable attorneys' fees (including any fees incurred in any appeals), associated with the enforcement, recovery and collection thereof as may be awarded by the Court.

Section 6. Remedies Cumulative. The remedies herein provided shall be cumulative and not alternative; it being expressly provided that any suits brought for the collection of Assessments against the Owner personally obligated and liable for the payment of the same and for the foreclosure of the lien herein provided against the Lot involved may be brought simultaneously as separate counts in the same action.

Section 7. Exempt Property. The following property subject to this Declaration shall be exempt from assessments, charges and liens created herein: (i) all property to the extent of any easement or other interest therein dedicated and accepted by local public authority and devoted to public use; (ii) all Common Areas, Conservation Areas and Dedicated Areas; (iii) all property exempt from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemptions, and (iv) all property owned by the Association. Notwithstanding any provision herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VIII ARCHITECTURAL CONTROL

Section 1. Architectural Review Committee. No building or modification or addition thereto, fence, wall, pool, landscaping or other structure shall be commenced, constructed, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made to the Lot or Dwelling Unit unless it is in compliance with the applicable governmental regulations and unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee ("ARC").

Section 2 Procedure for Review. Any Owner needing the approval of the ARC shall deliver an application or request for action to the ARC by certified mail with return receipt requested or by hand delivery with signed certified receipt, together with a floor plan, landscaping plan, site plan and abbreviated specifications, including exterior material and colors. As soon as reasonably possible, but not later than thirty (30) days after receipt, the ARC shall indicate its approval or disapproval of the matters required to be acted upon by them by a written instrument, and served personally or by certified mail upon the Owner and all interested parties, identifying the proposed building or structure and either stating approval or giving and making recommendations for changes to gain approval. In the event the ARC takes no action the application or request within the thirty (30) day period, then the application or request shall be deemed to be approved.

Section 3. Composition of Architectural Review Committee.

- a. The ARC shall have three (3) members who shall initially be appointed by the Declarant. The members appointed to the ARC need not be Owners. So long as the Declarant and/or the Builders maintain a controlling vote of the Membership of the Association, the Declarant shall be entitled to appoint all members of the ARC and any successor members; provided, however, the Declarant shall at any time have the right to waive its right to appoint the members of the ARC. The members of the ARC shall be appointed for staggered three (3) year terms; provided, however, the initial members of the ARC appointed by the Declarant shall serve so long as Declarant has the right to appoint all members of the ARC. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the ARC, the Declarant shall promptly appoint a successor member of the ARC who shall serve at the pleasure of the Declarant.
- b. After the end of the term during which the Declarant may appoint all the members of the ARC, a majority of the Owners of Lots on the Property shall have the right to appoint the members of the ARC. The owners shall so appoint the members of the ARC by ballot after ten (10) days written

notice given by the then-existing ARC that the Owners have the right to appoint a member. Failure by any Owner to vote on membership of the ARC shall not in any way affect the validity of the appointment of a member to the ARC. The first ARC appointed by the Owners shall have three (3) members, one with a term of One (1) year, one with a term of two (2) years and one with a term of three (3) years. Each year thereafter the ARC shall provide a ten (10) day written notice to the Owners of the Lots on the Property of the need to elect a new ARC member upon expiration of the term of a then-existing ARC member. No meeting shall be required for the initial appointment of members to the ARC by the Owners or for any subsequent election; and the person receiving the largest number of votes shall be elected to serve for a three (3) year term. The written notice from the ARC to the Owners shall include a ballot and shall set forth a deadline for voting no sooner than fifteen (15) days from the date the notice is mailed to the Owners. There shall be only one (1) vote cast per Lot, regardless of the number of Owners of a particular Lot, and the Owners of a Lot shall designate among themselves who shall cast their vote. Failure to so select, or the casting of more than one (1) vote in a particular election for any given Lot shall eliminate the right of the Owners of a given Lot to vote in that election. All votes cast by Owners shall be kept for a minimum of three (3) years and shall be available for inspection upon demand made by any Owner.

Section 4. Powers. The Architectural Review Committee shall have the following duties and powers.

- a. To review and approve or disapprove all building, fences, walls, pools or other structures which shall be commenced, erected or maintained upon the Property, to approve any exterior additions to or changes or alterations therein. For any of the above, the Committee shall be furnished plans and specifications showing the nature, kind, shape, height, materials and location in relation to surrounding structures and topography;
- b. To review and approve or disapprove any such building plans and specifications, lot grading plans, landscaping plans, and other materials submitted. The Committee may disapprove the proposed improvement if in its sole discretion, the Committee determines that the proposed improvement is inconsistent with the development plan formulated by the Declarant for the Property or lands contiguous thereto. Such decision of the Committee may be made upon purely aesthetic reasons;
- c. To require to be submitted to it for approval any samples of building materials proposed to be used, or any other data or information necessary to reach its decision.

Section 5. Exemption for Declarant and Builder. Notwithstanding anything contained herein, for as long as Declarant or Builder own fee title to any Lot, this Article shall not apply to or bind either Declarant or Builder.

ARTICLE IX GENERAL RESTRICTIONS

Section 1. General Restrictive Covenants. The general restrictive covenants contained in this Article shall apply uniformly to all Lots and Dwelling Units on the Property. All references in this Article to the Owner shall be deemed to include the invitees, guests, lessees, tenants and renters of the Owner unless the context clearly indicates otherwise.

Section 2. Residential Use Only. No Lot shall be used for any purpose except residential. The term "residential" is intended to prohibit any commercial use, including professional office use of any portion of any Lot or Dwelling Unit, but shall not prohibit use for rental purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than Dwelling Units designed for residential use and private garages. The foregoing shall not prohibit the Declarant and/or the Builders from using

Dwelling Units as models or offices, provided such use as models or offices is in furtherance of the construction and sale or lease of Lots and Dwelling Units on the Property.

Section 3. Dwelling Unit Size. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) single family Dwelling Unit not to exceed thirty-five (35) feet in height, a private garage (required space for a double standard automobile exclusive of oversized trucks, vans or sport utility vehicles) and not more than one (1) utility building. Dwelling Units shall have a minimum square footage of 1,000 square feet of enclosed living area, exclusive of garages and patios.

Section 4. Dwelling Unit Setbacks. All buildings and other structures shall comply with all front, rear and side setback requirements established by governmental authorities or as shown on the Recorded Plat.

Section 5. No Temporary Structures. No structure of a temporary nature or character, including, but not limited to, a trailer, house trailer, mobile home, campers tent, shack, shed, boat, barn or other similar structure or vehicle, shall be used or permitted to remain on any Lots as a storage facility or residence, or other living quarters whether temporary or permanent, unless approved by the ARC; provided, however that this prohibition shall not apply to shelters used by the Declarant and/or the Builders during the development of the Property and the construction of any Dwelling Unit.

Section 6. Parking and Storage Restrictions. Each Owner has the right to exclusive use of the paved parking areas that are located within that Owner's property lines. No vehicles (including boats) may be parked on any grassed area of the Lots. Permission must be obtained in writing from the ARC for the parking of any commercial or recreational vehicles, trailers, boats, trucks, boat trailer, campers or other similar vehicles on any Lot or in any driveway, except in a closed garage attached to a Dwelling Unit. Parking in the Common Areas or common parking spaces, if any, shall be regulated by the rules of the Association. The provisions of this Section shall not apply to the parking or storage of any vehicles used by the contractor, Declarant and/or Builders during the construction of any Dwelling Unit or development of the Property.

Section 7. Livestock and Animal Restrictions. No livestock, poultry, reptiles or animals of any kind or size shall be raised, bred or kept in any Lot or in any Dwelling Unit; provided, however, that dogs, cats and other common domesticated household pets may be raised and kept, provided such pets are not kept, bred or maintained for any commercial purposes. Such permitted pets shall be kept on the Owner's Lot and shall not be allowed off the premises of Owner's Lot except on a leash. No permitted pet shall be allowed to make noise in a manner or of such volume as to annoy or disturb other Owners. Any Owner who keeps a pet thereby agrees to indemnify the Association and hold it harmless against any loss or liabilities of any kind or character whatsoever arising from or growing out of the keeping of such pet. The keeping of pets by an owner shall be subject to all governmental animal ordinances and any rules or regulations promulgated by the Association of the Board of Directors in regard thereto. The keeping of pets by an Owner shall be subject to all governmental animal ordinances and any rules or regulations promulgated by the Association or the Board of Directors in regard thereto.

Section 8. Restrictions on Activity. No noxious or offensive activity shall be conducted or permitted to exist upon any Lot, or in any Dwelling Unit, nor shall anything be done or permitted to exist on any Lot or in any Dwelling Unit that may be or may become an annoyance or private or public nuisance. No Lot, driveway or Common Area shall be used for the purpose of vehicle repair or maintenance. No unregistered, non-licensed, expired license or inoperable vehicles of any kind shall be permitted to remain on any Lot (unless parked inside the garage of a Dwelling Unit) or Common Area.

Section 9. Restrictions on Fixed Game and Plat Structures. If permitted by the ARC, all basketball backboards and other fixed game and plat structures shall be located at the side or rear of the Dwelling Unit or on the inside portion of the corner lots within the setback lines. Tree houses or platforms of a like kind or nature shall not be constructed on any part of any lot.

Section 10. Restrictions on Walls, Fences and Hedges. No boundary wall, fence or hedge shall be constructed or grown with a height of more than six (6) feet above the ground level of adjoining property. No wall of any height shall be placed or constructed on any Lot until after the Architectural Review Committee shall have approved in writing the height, type, design and location. The heights or elevations of any wall shall be measured from the existing property elevations. The ARC shall conclusively determine any questions as to such heights. No boundary wall, fence or hedge or part thereof may be placed any closer to a street than a dwelling could be placed on the same Lot, except as may be required by governmental regulation. Notwithstanding anything contained herein to the contrary, on Lots which abut or are adjacent to the screening wall constructed in the Screen Wall and Landscape Buffer Area, as described herein, no other wall or fence structure shall be built parallel to said screening wall regardless of the distance between the screening wall and fence. Moreover, on said Lots, the last eight (8) foot section of a wall or fence structure which is constructed by the Owner perpendicular to or in any way adjacent to or leading to the screening wall shall be tapered down in such a manner so that the top of said wall or fence is no higher than the top of the screening wall as measured at the point of contact between said wall or fence and the screen wall. No chain link fencing shall be permitted on any Lot at any time.

Section 11. Swimming Pools and Screening. Plans and specifications for any swimming pool, including screening, to be constructed on any Lot shall be subject to the prior approval of the ARC.

Section 12. Garbage and Litter. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept conditions on any Lot or Dwelling Unit located on any Lot that tend to substantially decrease the beauty of the community as a whole or the specific area. This restriction shall apply before, during and after construction. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. All trash, garbage and other waste shall be kept in sanitary containers and, unless required to be placed at the curb for scheduled pick-ups, all containers shall be kept at the rear of all Dwelling Units or out of sight from the street. No burning of trash or other waste materials shall be permitted, except by the Declarant and/or the Builders, who after securing all applicable permits, shall during the development have the right to burn trash or other waste materials on the Property. All oil tanks and bottled gas containers shall be placed underground, or shall be situated so as not be visible from the street or objectionable to adjacent residences.

Section 13. Alteration of Lots. No Owner, without the express prior written consent of the ARC, shall construct any improvements or make any changes to a Lot which shall have the result of changing, altering or affecting the natural or artificial water courses, canals, ditches, swales, ponds or drainage of the Property. All construction, grading and landscaping shall conform to the drainage swale requirements set forth on the plan of the Property.

Section 14. Storage of Materials. Except for the Declarant and/or the Builders, no Owner may store construction materials on a Lot for a period exceeding thirty (30) days without commencing construction, and if construction does not commence within said thirty (30) day period, the Association may remove such stored materials. Costs incurred in such removal by the Association will become a lien on said Lot, accruing interest at the highest rate permitted by law. Construction, once commenced, shall be diligently pursued to completion. No building material or refuse shall be placed or stored on any Lot within twenty (20) feet of any park or edge of any open water or drainage course except that clean fill may be stored on or near any park such that the water or drainage course is not altered or blocked by such fill.

Section 15. Destruction by Fire or Other Casualty. No building or improvement, which has been partially or totally destroyed by fire or other casualty, shall be allowed to remain in such condition for more than six (6) months from the time of destruction. If reconstruction or repair of any such Dwelling

Unit is not commenced within said six (6) month period, the Owner thereof shall raze or remove the same promptly from the Owner's Lot.

Section 16. Completion of Development and Dwelling Units. Nothing contained in this Declaration shall be interpreted or construed to prevent Declarant, its express successors or assigns, or the Declarant's contractors or subcontractors, from doing or performing on all or any part of the Property owned or controlled by the Declarant whatsoever the Declarant deems reasonably necessary in connection with completion of the development, including without limitation: (a) erecting, constructing and maintaining such structures as may be reasonably necessary for the conduct of the Declarant's business of completing the development and establishing the Property as a residential community and disposing of the same in lots and Dwelling Units by sale, lease or otherwise; or (b) conducting thereon its or their business.

Section 17. Waiver of Violations of Covenants and Restrictions. When a building or other structure has been erected, its construction commenced and the building is located on any Lot in a manner so as to constitute a violation or violations of this Declaration, the Association shall have the right, but not the obligation, at any time to release the Lot, or portions of it, from any part of the covenants and restrictions as may be violated, so long as the violation or violations do not conflict with applicable governmental ordinances or regulations.

Section 18. Window Air Conditioners and Mailboxes. Window air conditioning units are prohibited. Individual mailboxes at each Lot are prohibited so long as a cluster of mailboxes provided for use by all Lot Owners is present on the Property. If no such cluster of mailboxes is present, then individual mailboxes are permitted at each lot, and the appearance of the mailboxes shall be subject to the approval of the ARC, which may prescribe uniform appearance standards for individual mailboxes.

Section 19. Installation of Fences by Declarant. The Declarant and/or the Builders may place, build, erect and/or install such walls or fences upon such easements as may exist or which may be established along the Lot lines, and adjacent to water retention and/or detention areas located on the Property, which the Declarant and/or the Builders deem necessary or desirable, including chain link. No Owner, without the express written consent of the Association, shall paint, deface, change or renovate such walls or fences in any manner whatsoever, nor shall any attachment be made thereto.

Section 20. Garages. Each home shall have an attached garage of sufficient size to permit the storage therein of at least one (1) standard sized automobile. No garage shall be enclosed permanently or converted to any use without the substitution of another attached enclosed garage of the same kind of or matching material as and conform architecturally to the construction of the Dwelling Unit. All garages must have overhead garage doors, which shall be maintained in a useful condition and shall be kept closed when not in use. Carports are not permitted.

Section 21. Signs. No commercial signs or other signs shall be erected or maintained on any Lot or Dwelling Unit except with the written permission of the Association or except as may be required by legal proceedings, it being understood that the Association will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardship to the property Owner. Such prohibition shall not apply to common commercial real estate signs advertising that a particular Lot and/or Dwelling Unit is for sale provided that such signs are not illuminated and do not exceed four (4) square feet. If permission is granted for any other signage, the Association shall have the right to restrict size, color and content of such signs. Property identification and like signs exceeding a combined total of more than two (2) square feet may not be erected without the written permission of the Association. These restrictions shall not apply to restrict the Declarant the Builders or the Declarant's or the Builder's agents from erecting such signs as the Declarant or the Builders deem in their sole discretion to be necessary to assist Declarant or the Builders in selling, leasing or renting any Lot or Dwelling Unit or other portion of the Property.

Section 22. Allowable Trim. No Owner or tenants of a Dwelling Unit shall install shutters, awnings or other decorative exterior trim, except small exterior decorations such as address plates and name plates, without the prior approval of the ARC.

Section 23. Window Coverings. No reflective foil, tinted glass, sheets of newspapers or any other similar material shall be permitted on any windows except for tinted bronze glass and any such installation shall require approval of the ARC.

Section 24. Access at Reasonable Hours. For the sole purpose of performing any maintenance or repairs authorized agents contractors or employees shall have a license that shall be exercisable after reasonable notice to the Owner to enter upon any Lot or exterior of any Dwelling Unit.

Section 25. Tree Removal Restrictions. Trees situated on any Lot between building set back lines and the property lines having a diameter of eight inches (8") or more (measured four feet (4') from ground level) may not be removed without prior approval of the ARC. All requests for approval of tree removal shall be submitted to the ARC along with a plan showing generally the location of such tree(s).

Section 26. Replacement of Trees. Anyone violating the provisions of Section 25 will be required to replace such trees with trees of like kind, size and condition within thirty (30) days after demand by the ARC. If the Owner fails or refuses to replace the trees as demanded, the ARC shall cause suitable replacement to be planted and the cost thereof shall be a lien against the property of the Owner. The Owner grants to the ARC, its agents and employees an easement of ingress and egress over and across said Lot to enable it to comply with Section 25 above and this Section 26.

Section 27. Antenna Restrictions. Subject to 47 C.F.R. § 1.4000, no one shall be permitted to install or maintain on any Lot, Dwelling Unit or structure, any outside television or radio antenna, dish, mast aerial or other tower for the purpose of audio or visual reception unless the same's location (for safety purposes) is approved by the ARC. This restriction shall not serve to prohibit Declarant or the Association from installing an antenna or satellite antenna dish, or contracting with a third party to install such antenna, for the purpose of providing master or cable television, radio or other electronic service to the Owners. Such dishes should be located so as not to be visible from the outside of the front of the Dwelling Unit if possible.

Section 28. Clotheslines. No clotheslines shall be erected or installed on any Lot without prior approval by the ARC.

Section 29. Exterior Paint. All exterior paint colors shall be subject to prior approval of ARC.

Section 30. Additional Rules and Regulations. The Association and Board of Directors may, from time to time, adopt rules and regulations relating to any one or all of the restrictive covenants contained in this Declaration. No Owner, its successors or assigns, tenants, lessees, renters, guests or invitees shall violate the rules and regulations adopted from time to time by the Association or the Board of Directors, whether relating to the use of the Lots, the use of the Common Area, or otherwise.

ARTICLE X COVENANTS AGAINST PARTITION AND SEPARATE TRANSFER OF MEMBERSHIP RIGHTS

Recognizing that the full use and enjoyment of any Lot is dependent upon the right to the use and enjoyment of the Common Area and the improvements made thereto, and that it is in the interest of all of the Owners that the right to the use and enjoyment Common Area is retained by the Owners of Lots, it is therefore declared that the right to the use and enjoyment of any Owner in the Common Area shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of

such right to the use and enjoyment of the Common Area. In addition, there shall exist no right to transfer the right to the use and enjoyment of the Common Area in any manner other than as an appurtenance to and in the same transaction with, a transfer of title to a Lot. Any conveyance or transfer of a Lot shall include the right to use and enjoyment of the Common Area appurtenant to such Lot subject to reasonable rules and regulations promulgated by the Declarant or the Association for such use and enjoyment, whether or not such rights shall have been described or referred to in the deed by which said Lot is conveyed

ARTICLE XI LENDER'S RIGHTS

Section 1. Information. Upon written request, the Association shall make available for inspection during normal business hours by each Owner and each lender, holder, insurer or guarantor of any first mortgage on a Lot, a current copy of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the records, books and financial statements of the Association.

Section 2. Financial Statement. Upon written request, each holder of a first mortgage on a Lot shall be entitled to receive a financial statement of the Association for the immediately preceding fiscal year.

Section 3. Lender's Notices. Upon written request to the Association, identifying the name of the holder, insurer or guarantor and the Lot and address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- (a) any condemnation or casualty loss that affects either a material portion of the Property of the Lots securing the mortgage.
- (b) any delinquency notice in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage.
- (c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (d) any proposed action that requires the consent of a specific percentage of mortgage holders.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant or each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Declarant or by any Owner to enforce any covenant or restriction herein contained shall be in no event deemed a waiver of the right to do so thereafter. If the Declarant or Association shall seek to enforce the provisions of this Declaration, then the Declarant or the Association, as the case may be, shall be entitled to collect its fees and costs, including reasonable attorney's fees, whether incurred before trial, at trial or upon appeal. This Declaration shall be governed by, and construed in accordance with the laws of the State of Florida. All parties submit to the jurisdiction of the State and federal courts in the State of Florida, and agree that the venue of any such action or proceeding shall lie in Polk County, Florida and waive any claim that the same is an inconvenient forum.

The Southwest Florida Water Management district shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Binding Effect. Amendment by Owners.

- (a) The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and after which time they shall be automatically extended for successive periods of ten (10) years.
- (b) Subject to the provisions of this Declaration, this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Class A Lot Owners, and thereafter by not less than seventy-five (75%) of the Class A Lot Owners. However, the Declarant reserves the right to amend this Declaration for any reason whatsoever until Class B Membership terminates; and further, provided that the Declarant must approve in writing any modification or amendment (approved by Class A Members) of this Declaration, until Class B Membership terminates. Notwithstanding the foregoing, any amendment to this Declaration which adversely affects any lender, holder, insurer or guarantor of any first mortgage on the Property as of the date of recording of this Declaration, shall not become effective unless joined in and consented to by such lender, holder, insurer or guarantor if such first mortgage affects the Property on the effective date of any such amendment.
- (c) Any amendment to this Declaration which alters any provision relating to the Surface water or Stormwater Management System portions of the common areas, must have the prior approval of the Southwest Florida Water Management District and Polk County Florida.
- (d) All amendments hereto shall be recorded in the Public Records of Polk County, Florida, and shall not be valid until recorded.

Section 4. Encroachments. In the event that any Lot shall encroach upon any Common Area, Conservation Area or Dedicated Area or upon any other Lot for any reason other than the intentional or negligent act of the Owner, or in the event any Common Area, conservation Area or Dedicated area shall encroach upon any Lot, then an easement shall exist to the extent of that encroachment for as long as the encroachment shall exist.

Section 5. Notices. Any notice required to be sent to any owner or the Association, under the provisions of this Declaration shall be deemed to have been sent when hand delivered or mailed, postage prepaid, to the last known address of the person or persons who appear as the Owner of the Lot in the records of the Association at the time of such mailing.

Section 6. Assignment of Declarant's Rights and Obligations. Any and all rights, powers and reservations of the declarant may be assigned, in whole or in part, to any person, corporation or association which will assume the duties of the Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignee evidencing its consent in writing to accept such assignment and assuming such duties, the assignee shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by the Declarant herein. Further, the Declarant may from time to time delegate any and all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate. The Declarant may designate as a Class B member of the Association an express successor or assignee who acquires a Lot or Lots, provided that such designation shall be only as to those Lots acquired by such express successor assignee.

Section 7. Contracts. Prior to the termination or conversion of Class B membership, the Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) unless the contract or lease contains a right of termination without cause, which is exercisable without penalty at any time upon not more than ninety (90) days notice to the other party.

Section 8. FHA/VA Approval. Notwithstanding any provision contained herein to the contrary, as long as there is a Class B Membership, the following actions will require the prior approval of the Secretaries of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"), as applicable: Annexation of additional properties; mortgaging of Common Area; merger or consolidation; dissolution; amendment of this Declaration; and amendments of the Articles of Incorporation and Bylaws of the Association.

Section 9. Waiver of Violations. Declarant, its express successor or assigns, reserves the right to waive any violations of the covenants contained in this Declaration, in the event Declarant shall determine, in its sole discretion, that such violations are minor or dictated by the peculiarities of a particular lot configuration or topography.

Section 10. Liability of Lot Owners for Damages. Nothing in this Declaration shall be construed to impose absolute liability on the Owner of any Lot for damage or injury to the Common Areas or Lots and such Owners shall only be responsible for damage or injury caused by the negligent or intentional acts of the Owner.

Section 11. Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way defined, limited or describe the scope and Intent of the particular paragraph to which they refer.

Section 12. Effective Date. This Declaration will become effective upon recordation of the same in the Public Records of Polk County, Florida.

Section 13. Constructive Notice and Acceptance. Every person or entity that owns or acquires any right, title or interest in or to any portion of the Property, or any portion thereof, is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquires such right, title or interest.

Section 14. Right of Association to Merge. The Association retains the right to merge with any other homeowners association, provided such homeowners association is for an FHA or VA approved subdivision and provided FHA or VA approves such merger. This right shall be exercised by recordation of an Amendment to this Declaration recorded among the Public Records of Polk County, Florida, which Amendment shall set forth a legal description of the property to which this Declaration, as amended, shall apply. The Amendment shall further have attached to it a resolution of this Association and the homeowners association with which a merger is to take place, and such resolution shall be certified by the Corporate Secretary thereof and shall state:

- (a) That a meeting of the homeowner association was held in accordance with its Bylaws.
- (b) That a two-thirds (2/3) vote of each class of the Members approved the merger.

The foregoing certificates when attached to the Amendment shall be deemed sufficient to establish that the appropriate procedure was followed in conjunction with the merger. Upon a merger or consolidation of the Association with another association, its properties rights and obligations shall, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights, and obligations of another association shall, by operation of law be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration

within the Property together with the covenants and restrictions established upon any other properties as the overall plan or scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration within the Property.

Section 15. Insurance.

- (a) The Association shall keep (i) any buildings in the Common Area insured against loss by fire and the risks covered by a Standard All Risk of Loss Perils insurance policy under an extended coverage casualty policy in the amount of the maximum insurance replacement value thereof, and (ii) all personal property owned by the Association insured with coverage in the maximum insurable fair market value of such personal property as determined annually by an insurance carrier selected by the Association. Insurance proceeds for any improvements in the Common Area and any personal property owned by the Association shall be payable to the Association. In the event of loss, damage or destruction, the Association shall cause the same to be replaced, repaired or rebuilt if it occurred in the Common Area. In the event the cost of such replacement repair or rebuilding of any improvements on the Common Area (i) exceeds the insurance proceeds available therefor, or (ii) no insurance proceeds are available therefor, the deficiency or full cost thereof shall be assessed to the Owners as a Special Assessment.
- (b) The Association shall procure and keep in force public liability insurance in the name of the Association and the Owners against any liability for personal injury or property damage resulting from any one occurrence in or about the Common Area, in an amount not less than one million dollars (\$1,000,000.00) for damage to one (1) or more persons in one (1) accident or event and not less than one million dollars (\$1,000,000.00) for damage to property in one (1) accident or event.
- (c) Copies of all such insurance policies (or certificates thereof showing premiums thereon to have been paid) shall be retained by the Association and open for inspection by the Owners at any reasonable time. All such insurance policies shall (i) provide that they shall not be cancelable by the insurer without first giving at least ten (10) days prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners.
- (d) Notwithstanding any provision contained herein to the contrary, the Association shall maintain such insurance coverage as may be required by the Veterans Administration ("VA") so long as VA, FHA, or FNMA holds a mortgage on or owns any Lot.

Section 16. Mortgaging of Common Areas. The Common Area shall not be mortgaged or conveyed by the Association without the consent of at least two-thirds (2/3) of each class of Members; provided, however, that if there has ceased to be any Class B Members, then the consent of at least two-thirds (2/3) of the Class A Members excluding the Declarant shall be required.

**ARTICLE XIII
DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE**

Section 1. Notification and Resolution Procedure. Any disputes between the Association (or any owners) and the Declarant or any director, officer partner, employer, subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Property, and/or construction and installation of any Improvements located thereon shall be subject to the following provisions.

- (a) **Notice** Any person with a claim against the Declarant or any director, officer, partner, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this article) shall notify the Declarant in writing of the claim which shall describe the nature of the claim and the purposed remedy (the Claim Notice).
- (b) **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and Claimant shall meet at a mutually acceptable place within the Development to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and Declarant's representative shall have full access to the Property that is the subject of the claim for the purpose of inspecting the property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, the Declarant and Declarant's representative and agent shall be provided full access to the Development to take and complete corrective action.
- (c) **Litigation.** If the Association and/or Owner has complied with the requirements of subparagraphs (a) and (b) above and the Declarant denies any responsibility for the claim, accepts only partial responsibility, or accepts responsibility, but parties cannot in good faith agree on an appropriate remedy, or the Association and/or owner may bring an action in any court of competent jurisdiction to resolve the dispute. The Association and each Owner covenants that each shall forbear from commencing any litigation against the Declarant without complying with the procedures described in subparagraphs (a) and (b) above. If the Association or any Owner breaches the foregoing covenant, the Declarant may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described herein. The procedures set forth herein shall not apply to any action taken by the Association against Declarant for delinquent assessments, or in any action involving any common area completion bonds. Furthermore, nothing herein shall prevent the Association or any Owner from commencing any legal action which in the good faith determination of the Board or Owner is necessary to preserve any Association's or Owner's rights under any applicable statute of limitations, provided that the Association or Owner shall take no further steps in prosecuting the action until it has complied with the procedures described herein.
- (d) **Miscellaneous.** Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or Owner and the Declarant, each party shall bear its own attorney's fees.

Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representative in an effort to settle the matter shall be considered communications undertaken in the course of effecting a settlement or compromise as such shall not be admissible as an admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding. Nothing herein shall be considered to reduce or extend any applicable statute of limitations.

Section 2. **Notice of Significant Legal Proceedings.** Notwithstanding anything herein to the contrary, the Board shall not institute any significant legal proceeding, including any arbitration or judicial reference proceeding, against any person without providing the Members of the Association with at least thirty (30) days prior written notice of the Association's intention to institute legal proceedings. The notice shall describe the purpose of the proceeding the parties to the proceeding, the anticipated cost to the Association (including attorneys' fees) in processing the proceeding, the source of funds to process the proceeding (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. For purposes herein, "significant legal proceeding" shall mean any legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (i) the levy of a special assessment to fund all or any portion of the costs of the proceeding;
- (ii) the expenditure of funds from the Association's reserves in connection with the proceeding in an amount in excess of 5% of the then current reserves,
- (iii) the amount of the claim is in excess of \$25,000.00; or
- (iv) the action could have a material adverse effect on the ability to sell and/or refinance the individual homes within the Development during the period the proceeding is being prosecuted.

Notwithstanding the foregoing, the notice shall not be required to commence and pursue any action to collect delinquent assessments as described in Article V or to enforce any Common Area completion bond, if any, Furthermore, if the Board in good faith determines that there is insufficient time to provide prior notice to the Members as required herein prior to the expiration of any applicable statute of limitations or prior to the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required herein.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed by its duly authorized general partner on the day and year first above written.

Signed, sealed and delivered
in the presence of

Sandra J. Elrod
Witness 1
Print Name: Sandra J. Elrod

Jessica Muller
Witness 2
Print Name: Jessica Muller

Nicholson USA Properties Ltd.,
a Colorado limited partnership,
By: **Nicholson Properties USA, Inc.**
Its General Partner

By: Derek Sutton COO
Derek Sutton, Chief Operating Officer

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 24 day of Sept., 2002 by Derek Sutton, Chief Operating Officer, on behalf of Nicholson USA Properties, Inc., as General Partner of Nicholson USA Properties, Ltd., a Colorado Limited Partnership, on behalf of said limited partnership, who is personally known to me, or has produced a _____ as identification.

Sandra J. Elrod
NOTARY PUBLIC
Printed Name: Sandra J. Elrod
Commission Expires: 10/07/07
Commission Serial Number: 00140519

 Sandra J Elrod
My Commission DD140519
Expires October 07 2006

**JOINDER AND CONSENT FOR
HEATHER HILL**

The undersigned hereby certifies that it is the owner of legal title of certain lots located in Heather Hill as described in Exhibit A attached hereto, and the undersigned, for and in consideration of valuable consideration, hereby joins in and consents to the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEATHER HILL described herein and shall be subordinated to the afore described Declaration.

NICHOLSON-PEGASUS, INC.

By: Derek Sutton COO
Derek Sutton
Chief Operating Officer

NICHOLSON USA PROPERTIES, INC.

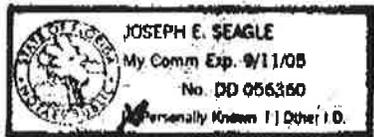
By: Derek Sutton COO
Derek Sutton
Chief Operating Officer

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 19th day of Sept., 2002 by Derek Sutton, Chief Operating Officer, on behalf of Nicholson USA Properties, Inc. and Nicholson-Pegasus, Inc., Florida Corporations, on behalf of said corporations, who is personally known to me, or has produced a _____ as identification.



NOTARY PUBLIC
Printed Name: Joseph E. Seagle
Commission Expires: 9/11/2005
Commission Serial Number: _____



**JOINDER AND CONSENT FOR
HEATHER HILL**

The undersigned hereby certifies that it is the owner of legal title of certain lots located in Heather Hill as described in Exhibit A attached hereto, and the undersigned, for and in consideration of valuable consideration, hereby joins in and consents to the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HEATHER HILL described herein and shall be subordinated to the afore described Declaration.

HOLIDAY BUILDERS, INC.

By: *Scott Clark*
Printed Name: SCOTT CLARK
Title: Acquisitions Manager

STATE OF FLORIDA

COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 19 day of September, 2002 by Scott Clark (name), Acquisitions Manager (title) of Holiday Builders, Inc., a Florida Corporation, on behalf of said corporation, who is personally known to me, or has produced a personally known as identification.

Maureen M. Wiggins
NOTARY PUBLIC
Printed Name: _____
Commission Expires: _____
Commission Serial Number: _____



Exhibit A
Property Description

BEING all of Lots 1 through 118, inclusive, HEATHER HILL PHASE ONE, together with all private roads, drainage and retention areas, entryways, and common areas (including, but not limited to Tracts A, B, C and D) as shown on that Plat recorded in Plat Book 119, pages 34 and 35, Polk County, Florida, Public Registry.

Exhibit B
Articles of Incorporation
(Coversheet. Articles begin on next page)

**ARTICLES OF INCORPORATION
OF
HEATHER HILL HOMEOWNERS ASSOCIATION, INC.
*A Florida Not-For-Profit Corporation***

In compliance with the requirements of Florida Statutes Chapter 617, the undersigned, a resident of the State of Florida who is of full age, does hereby certify:

**ARTICLE I
Corporate Name**

The name of the Corporation is HEATHER HILL HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, hereinafter called the "Association."

**ARTICLE II
Address**

The initial mailing address of the Association shall be 111 W. Robinson Street, Orlando, Florida 32801. The principal office of the Association shall be located at the mailing address or at such other place as may be subsequently designated by the Board of Directors of the Association.

**ARTICLE III
Registered Agent**

DEREK SUTTON, whose address is 111 W. Robinson Street, Orlando, FL, 32801 (Orange County), is hereby appointed the initial registered agent of this Association.

**ARTICLE IV
Purpose and Powers of the Association**

This Association does not contemplate pecuniary gain or profit to the members thereof and shall make no distributions of income to its members, directors, or officers. The specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residential lots, common areas and improvements (as defined in the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS and amendments thereto, referred to hereinafter as the "Declaration") according to the provisions of the Declaration, within that certain plat of all phases now existing or hereafter formed, recorded among the public records of Polk County, Florida, to wit:

HEATHER HILL, a residential planned unit development subdivision, according to the plat thereof as recorded in the Public Records of Polk County, Florida.

and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose.

(a) To exercise all of the common law and statutory powers of a corporation not for profit organized under the laws of the State of Florida that are not in conflict with the terms of the Declaration, these Articles or the Bylaws of the Association, including bringing legal actions to sue for demands in courts of law, and to be sued in courts of law;

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association (including promulgating rules and regulations) as set forth in that certain Declaration applicable to the property and recorded in the Public Records of Polk County, Florida, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth in its entirety;

(c) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including but not limited to: all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(d) To maintain, repair and operate the property of the Association, including, but not limited to, all county, district or municipal properties of and to the extent permitted by any governmental authority which are located within or in a reasonable proximity to the Property to the extent that their deterioration would adversely affect the appearance of the Property; to maintain any easement benefitting the Property;

(e) To purchase insurance upon the property of the Association and insurance for the protection of the Association and its members as Lot Owners;

(f) To reconstruct improvements after casualty and make further improvements upon the property;

(g) To enforce by legal means the provisions of the Declaration, and the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant thereto;

(h) To employ personnel to perform the services required for proper operation of the Association;

(i) To acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(j) To borrow money, and with the assent of two-thirds (2/3) of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(k) To dedicate, sell, convey or transfer all or any part of the common areas, if any, to any public agency, authority, or utility for such purposes and subject to such conditions as may be provided in the Declaration. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(l) To participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and common areas, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members unless the annexation involves land the Developer has reserved the right to annex in the Declaration, in which case the Declaration shall control the annexation;

(m) To operate and maintain the Common Area and Common Property, specifically – but not limited to -- the Surface Water Management System as permitted by the Southwest Florida Water Management District, including all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands, and any associated buffer areas, wetland mitigation areas, and related appurtenances, including, but not limited to, contracting for services to the same by a maintenance company.

(n) The Association shall levy and collect adequate assessments against indebtedness of the Association for the costs of maintenance and operation of the Common Areas and the Surface Water or Stormwater Management System. The assessments shall be used for the maintenance and repair of the Common Areas and the Surface Water or Stormwater Management Systems, including, but not limited to, work within retention areas, drainage structures and drainage easements.

(o) To carry out any and all other responsibilities which in its determination are desirable or necessary to carry out the intent of the Declaration, these Articles, the Bylaws, or any rules and regulations promulgated by the Association.

ARTICLE V Membership

Section 1. Membership Generally: No person except an Owner or a Developer, as such terms are defined in the Declaration, is entitled to membership in the Association; and all Owners and Developers, regardless of whether a Developer is also an Owner, shall be either Class A or Class B members of the Association, as provided in this Article.

Section 2. Class A Membership: Until termination of Class B membership, as provided in Section 3 of this Article, every Owner who holds legal title to a residential lot that is subject to assessment under the Declaration, except a Developer, shall be a Class A member of the

Association. Each Class A membership shall be appurtenant to the residential lot and shall be transferred automatically by a conveyance of legal title to such lot. An Owner of more than one lot is entitled to one Class A membership for each residential lot to which such Owner holds legal title. If more than one person holds an interest in any residential lot, all such persons shall be members; provided however, that only one vote shall be cast with respect to any one residential lot. No person other than an Owner may be a Class A member of the Association, and a Class A membership may not be transferred except by transfer of legal title to the residential lot to which it is appurtenant.

Section 3. Class B Membership: The Developer and Builders, as defined in the Declaration, shall be Class B members of the Association. The Class B membership shall terminate and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a) When seventy-five (75%) percent of the Lots have been sold by Declarant, or
- b) On December 31, 2010.

Provided however, that the Class B membership shall be reinstated upon commitment or annexation to the properties of any additional residential property and/or common area, but subject to further cessation in accordance with the limitations set forth in the preceding paragraphs (a) and (b) and of this Article V, whichever occurs first.

Upon termination of Class B Membership, all provisions of the Declaration, Articles, or Bylaws referring to Class B Membership shall be without further force or effect.

ARTICLE VI Voting Rights

Section 1. Class A Voting. All Class A members shall be entitled to one (1) vote for each residential lot owned. If more than one (1) person holds record title to a residential lot, there shall be only one (1) vote cast with respect to such lot, exercised as Owners determine among themselves.

Section 2. Class B Voting. The Class B members shall be entitled to six (6) votes for each residential lot owned. In addition, until such time as the Class B membership terminates, Class B members shall have a right of veto on all questions coming before the membership for a vote thereon.

ARTICLE VII Board of Directors

The affairs of the Association shall be managed and governed by a Board of Directors consisting of at least three (3) Directors, who need not be members of the Association, and who shall be elected or appointed as set forth in the Bylaws of the Association. The number of Directors may be changed by amendment of the Bylaws of the Association. The names and

addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

Anthony J. Nicholson	111 W. Robinson St., Orlando, FL 32801
Sonja Nicholson	111 W. Robinson St., Orlando, FL 32801
Derek Sutton	111 W. Robinson St., Orlando, FL 32801

ARTICLE VIII Officers

The affairs of the Association shall be administered by a President, a Vice-President, a Secretary and a Treasurer, and such other Officers as may be designated from time to time by the Directors. The Officers shall be elected or designated by the Board of Directors at its first meeting following the annual meeting of the members of the Association. The names and addresses of the Officers who shall serve until their successors are elected or designated by the Board of Directors are as follows:

President	Derek Sutton	111 W. Robinson St., Orlando, FL 32801
Vice President	Anthony Nicholson	111 W. Robinson St., Orlando, FL 32801
Secretary	Sonja Nicholson	111 W. Robinson St., Orlando, FL 32801
Treasurer	Sonja Nicholson	111 W. Robinson St., Orlando, FL 32801

ARTICLE IX Indemnification

Every Director and every Officer of the Association, and every member of the Association serving the Association at its request, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement of any 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 by reason of his having been a Director or Officer of the Association, or by reason of his having served the Association at its request, whether or not he is a Director or Officer or member serving the Association at the time such expenses or liabilities are incurred, except when the Director, Officer or member serving the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement before entry of judgment, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in 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, Officer or member serving the Association may be entitled.

**ARTICLE X
Bylaws**

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded, at a duly called regular or special meeting of the members, by an affirmative vote as set forth in the Bylaws.

**ARTICLE XI
Dissolution**

The Association may be dissolved upon written assent signed by members holding not less than ninety (90%) percent of each class of membership. Upon dissolution of the Association, other than incident to a merger or consolidation of the Association with another such association, the assets of the Association, including Common Areas and the Surface Water and Stormwater Management System, shall be dedicated or conveyed to an appropriate public agency, public utility, or governmental unit to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or organization to be devoted to such similar purposes.

**ARTICLE XII
Existence and Duration**

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Florida Department of State, Division of Corporations. The Association shall exist in perpetuity.

**ARTICLE XIII
Amendments**

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

Section 1. Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

Section 2. Vote: A resolution for the adoption of an amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such resolutions must be adopted by not less than seventy-five (75%) percent of the votes of the entire membership of the Association. No amendment shall make any changes in the qualifications for membership, nor in the voting

rights of members, without approval in writing by all members. A copy of each amendment shall be certified by the Secretary of State or his successor.

Section 3. Developer Amendment Rights. Notwithstanding the foregoing, Developer reserves the right to make amendments to these Articles for any reason whatsoever until Class B Membership terminates.

**ARTICLE XIV
Incorporators**

The name and address of the incorporator of these Articles of Incorporation are as follows:

DEREK SUTTON

111 W. Robinson Street
Orlando, FL 32801

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, I, the undersigned, as the incorporator of this Association, have executed these Articles of Incorporation this 24 day of Sept, 2002.

Derek Sutton
DEREK SUTTON, Incorporator

STATE OF FLORIDA
COUNTY OF ORANGE

Before me, the undersigned authority, personally appeared DEREK SUTTON, who after being duly sworn, acknowledged that he executed the foregoing Articles of Incorporation for the purposes therein expressed this 24 day of Sept, 2002.



Sandra J Elrod
My Commission DD140519
Expires October 07 2006

Sandra J. Elrod
Printed Name: Sandra J. Elrod
NOTARY PUBLIC, State of Florida
My Commission Expires: 10/7/06

Personally Known or
Type of Identification Produced: _____

**CERTIFICATION OF DESIGNATION OF
REGISTERED AGENT AND REGISTERED OFFICE**

PURSUANT TO THE PROVISIONS OF SECTION 607.0501 OF 617.0501, FLORIDA STATUTES, THE UNDERSIGNED CORPORATION, ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA, SUBMITS THE FOLLOWING STATEMENT IN DESIGNATING THE REGISTERED OFFICE/REGISTERED AGENT, IN THE STATE OF FLORIDA.

1. The name of the corporation is:
HEATHER HILL HOMEOWNERS ASSOCIATION, INC.
2. The name and address of the registered agent and office is:
DEREK SUTTON, 111 W. Robinson Street, Orlando, FL, 32901.

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT OF 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 AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

Signature: *Derek Sutton* *COO*

Printed Name: Derek Sutton

Exhibit C
Bylaws

(Coversheet. Bylaws begin on next page)

**BYLAWS
OF
HEATHER HILL HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is HEATHER HILL HOMEOWNERS ASSOCIATION, INC., The principal office of the Association shall be located at 111 W. Robinson Street, Orlando, Florida 32801, but meetings of members or directors may be held at such places within Florida designated by the board of directors.

**ARTICLE II
DEFINITIONS**

- Section 1. "Articles" shall mean the Articles of Incorporation of Heather Hill Homeowners Association, Inc.
- Section 2. "Association" shall mean the Heather Hill Homeowners Association, Inc., its successors and assigns.
- Section 3. "Board" shall mean the board of directors of the Association.
- Section 4. "Common Area" shall mean all real property owned by the Association.
- Section 5. "Declarant" shall mean Nicholson USA Properties, LTD, a Colorado Limited Partnership, and its successors and assigns. Declarant may assign all or a portion of its rights hereunder. In the event of a partial assignment, the assignee shall be deemed Declarant and may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.
- Section 6. "Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions of Heather Hill recorded or to be recorded in the Public Records of Polk County, Florida.
- Section 7. "Governing Documents" shall mean these Bylaws, the Articles, and the Declaration.
- Section 8. "Lot" shall mean any plot of land shown as a lot upon any recorded subdivision map or plat of the Property (as hereinafter defined) with the exception of the Common Area.
- Section 9. "Member" shall mean those persons entitled to membership as provided in the Declaration.

Section 10. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for performance of an obligation.

Section 11. "Property" shall mean that certain real property described in the Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE III MEMBERS

Section 1. Qualifications. The qualification of Members, the manner of their Admission to membership, changes in membership and the termination of such membership, shall be as set forth in the Declaration and the Articles.

Section 2. Member Roster. The Secretary of the Association shall maintain in the office of the Association a roster showing the names and addresses of the Members. Each Member shall at all times advise the Secretary of any change of address of the Member or any change of ownership of the Member's Lot. The Association shall not be responsible for reflecting any changes until notified of such change in writing.

ARTICLE IV MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held within thirteen (13) months of the previous annual meeting, at 7:00 p.m., unless a different time is established by the Board. The Board shall not hold the annual meeting on a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board, or upon written request of one-fourth (1/4) of the Class A Members who are entitled to vote.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

- Section 4. Attendance at Meetings. Any person entitled to cast the vote of a Member, and in the event a Lot is owned by more than one (1) person, all co-Owners of such Lot, may attend any meeting of the Members. Any person not expressly authorized to attend a meeting of the Members as set forth above may be excluded from any meeting of the Members by the presiding officer of such meeting.
- Section 5. Organization. At each meeting of the Members, the President, or in his absence, the Vice President, or their designee, shall act as Chairman of the Meeting. The Secretary or, in his absence, any person appointed by the Chairman of the Meeting shall act as Secretary of the meeting.
- Section 6. Minutes. The minutes of all meetings of the Members shall be kept in a book available for inspection by the Members, their authorized representatives, and the Board, at any reasonable time.
- Section 7. Quorum. At meetings of Members, the presence of Members, in person or by proxy, entitled to cast one-tenth (1/10) of the votes of each class of Membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting of the time, date, and place that the meeting will be reconvened, provided that a quorum is obtained.
- Section 8. Proxies. At all meetings of Members, each Member may vote in person or by proxy duly appointed in writing which bears a date not more than three months prior to such meeting. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.
- Section 9. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the meetings of Members when not in conflict with the Governing Documents.

ARTICLE V

BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE

- Section 1. Number. The affairs of this Association shall be managed by a board of a minimum of three (3) and a maximum of seven (7) directors, who need not be Members of the Association. The number of directors shall always consist of an odd number.
- Section 2. Term of Office. At the annual meetings of the Members, the Members, when entitled, shall elect directors for a term of one year or until the next annual

meeting of the Members whichever is later. The term of each director's services shall extend until the next annual Members meeting and until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by the vote or agreement in writing of a majority of the Members of the Association. In the event of 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.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, a director may be reimbursed for expenses incurred in the performance of his duties.

Section 5. Nomination. Nomination for election to the Board shall be made from the floor at the annual meeting.

Section 6. Election. Election to the Board shall be by written ballot (unless dispensed with by majority consent of the Lots represented at the meeting). At the election, Members may cast, in respect to each position to be filled on the Board, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Meetings of the directors shall be open to all Members and notices of such meetings shall be posted in a conspicuous place on the Association property at least 48 hours in advance of a meeting, except in an emergency. Notice of any meeting in which assessments against Lots are to be established shall specifically contain a statement that assessments shall be considered and a statement of the nature of such assessments.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting, at which a quorum is present, shall be regarded as the act of the Board.

Section 4. Minutes of Meetings. The minutes of all meetings of the Board shall be kept in a book available for inspection by the Members or the directors, at any reasonable time.

**ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers. The Board shall have power to:

- A. Adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for any infraction thereof.
- B. Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing for infraction of published rules and regulations.
- C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of the Governing Documents.
- D. Employ a manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.
- E. Appoint by resolution, committees as from time to time may be deemed necessary which may exercise such powers, duties and functions as may be determined by the Board, which may include any powers which may be exercised by the Board.

Section 2. Duties. It shall be the duty of the Board to:

- A. Cause to be kept minutes of all meetings of the Members and Board.
- B. Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
- C. As more fully provided in the Declaration, to:
 - (1) Fix the amount of the annual assessment against each Lot.
 - (2) Send written notice of each assessment to every Owner in advance of each annual assessment period.

- (3) Foreclose the lien against any property for which assessments are not paid or to bring an action at law against the owner personally obligated to pay the same.
- D. Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- E. Procure and maintain adequate liability and hazard insurance on property owned by the Association.
- F. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
- G. Cause the Common Area to be maintained.
- H. Supervise and ensure the making of necessary repairs, additions and improvements to, or alterations of the Property.
- I. Maintain bank accounts on behalf of the Association and designate signatories required therefor.
- J. Enter into and upon any portion of the Property, including any Lot(s), when necessary to maintain, care and preserve any real or personal property in the event the respective Owner fails to do so.
- K. Perform all duties and obligations of the Association as set forth in the Governing documents and as otherwise provided by statute or law, and all powers incidental thereto or implied therefrom.

ARTICLE VIII OFFICERS AND THEIR DUTIES

- Section 1. Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be Members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.
- Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.
- Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless the officer shall sooner resign, or shall be removed, or otherwise disqualified to serve.

- Section 4. Special Appointments. The Board may elect such other officers as the affairs of the association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.
- Section 5. Resignation and Removal. Any Officer may be removed from office, with or without cause, by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice, or at any later time as specified, and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.
- Section 6. Vacancies. A vacancy in any office shall be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.
- Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special appointments created pursuant to Section 4 of this Article.
- Section 8. Duties. The duties of the officers are as follows:
- A. President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.
 - B. Vice-President. The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
 - C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.
 - D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures and deliver a copy of each to each of the Members.

**ARTICLE IX
INDEMNIFICATION**

The directors and officers of the Association shall be indemnified by the Association to the fullest extent now or hereinafter permitted by law and shall not be personally liable for any act, debt, liability or other obligation of the Association. Similarly, Members are not personally liable for any act, debt, liability or obligation of the Association. A Member may become liable to the Association for dues, assessments or fee as provided by law.

**ARTICLE X
COMMITTEES**

The Board may appoint a committee or committees as deemed appropriate in carrying out its purpose.

**ARTICLE XI
BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times be subject to inspection by any Member. The Declaration, Articles and Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

**ARTICLE XII
CORPORATE SEAL**

The Association shall have a seal in circular form having within its circumference the words: Heather Hill Homeowners Association, Inc., the year "2002" and the words "Corporation Not-For-Profit." The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the Association.

**ARTICLE XIII
AMENDMENTS**

These Bylaws may be amended at a regular or special meeting of the Members by a vote of a majority of the Owners. Notwithstanding the foregoing, the Declarant specifically reserves the right to amend these Bylaws in order to comply with the requirements of the St. Johns River Water Management District, the South Florida Water Management District, or any other governmental agency.

**ARTICLE XIV
MISCELLANEOUS**

- Section 1. **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.
- Section 2. **Partial Invalidity.** If any of the provisions of these Bylaws shall be or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.
- Section 3. **Conflicts.** In the event of any conflict among any of the governing documents, any applicable Florida statute, the Articles, the Declaration, the Bylaws and the rules and regulations of the Association shall govern, in that order.
- Section 4. **Captions.** Captions are utilized only as a matter of convenience and for reference, and in no way are intended to or shall define, limit or describe the scope of these Bylaws or the intent of any provision.

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting President of the Heather Hill Homeowners Association, Inc., a Florida corporation not for profit; and

THAT the foregoing Bylaws constitute the original Bylaws of the Association, as duly adopted by consent of the Board.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Association this 19th day of September, 2002.



Derek Sutton, President