

Declaration of Covenants, Conditions and Restrictions for Herons Glen
Restated May 17, 2007

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RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERONS GLEN

This restated declaration of covenants, conditions and restrictions ("Declaration") is made this _____ day of _____, 2007, by Herons Glen Homeowners' Association, Inc., a Florida not-for profit corporation ("Association").

STATEMENT OF BACKGROUND INFORMATION

- A. Del Vera Limited Partnership ("Del Vera") filed a Declaration of Covenants, Conditions and Restrictions as recorded in Official Record Book 2197, Page 3502 et seq., of the Public Records of Lee County, Florida, as amended ("Prior Declaration").
- B. Developer acquired from Del Vera all of Del Vera's right, title and interest in the Prior Declaration pursuant to Quit Claim Deed, Bill of Sale and Assignment recorded in Official Record Book 2794, Page 2705 et seq., of the Public Records of Lee County, Florida.
- C. Developer, with the consent of the Association and, to the extent required, the approval of the voting members of the Association filed a Restated Declaration of Covenants, Conditions and Restrictions as recorded in Official Record Book 3142, Page 3327 et seq., of the Public Records of Lee County, Florida ("Prior Declaration") which was subsequently further amended.
- D. The Association desires to restate the terms and conditions contained in the Prior Declaration, as it was subsequently amended.
- E. This Restated Declaration of Covenants, Conditions and Restrictions For Herons Glen Country Club (this "Declaration") has received the necessary sixty-seven percent (67%) affirmative vote or written consent of the members other than the Class "C" Member, which was required to amend the Prior Declaration.
- F. This Restated Declaration of Covenants, Conditions and Restrictions for Herons Glen Country Club supersedes and replaces the Prior Declaration, as amended.

STATEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

The properties shall be held, transferred, sold, and conveyed subject to the following covenants, conditions, restrictions and easements, reservations, assessments, closing, liens, charges and other provisions set forth in this Declaration and which shall run with such property, be binding on all parties having any right, title, or interest in any part of such property, their heirs, successors in title, and assigns, and inure to the benefit of each owner thereof. The Recreational Facilities shall be held, transferred, sold and conveyed subject to the covenants, restrictions, easements, reservations and other provisions set forth in the Declaration which specifically apply to the Recreational Facilities, which shall run with the Recreational Facilities and be binding on the District and its successors in title subject to the Bylaws of the Herons Glen Country Club Homeowners Association.

ARTICLE I DEFINITIONS

Section 1. Access Easement means that certain easement in favor of the District dated June 1, 1999, recorded in Official Records Book 3126, Page 3962, Public Records of Lee County, Florida.

Section 2. Articles of Incorporation shall mean and refer to the Restated Articles of Incorporation of Herons Glen Homeowners' Association, Inc., as filed with the Secretary of State of Florida, and attached hereto, as the same may be amended from time to time.

Section 3. Assessment shall mean and refer to Base Assessments, Special Assessments and User Assessments, collectively.

Section 4. Association shall mean and refer to Herons Glen Homeowners' Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

Section 5. Base Assessment shall mean and refer to assessments levied in accordance with Article XI, Section 2 of this Declaration.

Section 6. Board of Directors shall mean and refer to the Board of Directors of the Association.

Section 7. Board of Supervisors shall mean and refer to the governing body of the District as elected in accordance with the provisions of Chapter 418, Florida Statutes.

Section 8. Bonds shall refer to the tax exempt bonds issued by the Herons Glen Recreation District pursuant to authority granted in Chapter 418, Florida Statutes to fund the acquisition of the Recreational Facilities.

Section 9. Bylaws shall mean and refer to the Amended and Restated Bylaws of the Association, as they may be amended from time to time.

Section 10. CLIS Irrigation System shall mean all pumps, pipes, sprinkler heads, check valves and other equipment used to irrigate all Lots, the Common Property and portions of the Recreational Facilities. The CLIS Irrigation System shall include all replacements to any of the above outlined items and the "CLIS Irrigation System Owner" shall mean the owner of the CLIS Irrigation System.

Section 11. CLIS System Irrigation Easement shall mean that certain easement granted by the District to the Developer dated June 1, 1999 and recorded in Official Records Book 3126, Page 4087, Public Records of Lee County, Florida, and transferred to the Herons Glen Recreation District by the Developer on August 16, 2006.

Section 12. Common Expenses shall mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Members, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

Section 13. Common Property shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Members or which is dedicated by the Developer as Common Property and any easement rights in favor of the Association.

Section 14. Common Property Irrigation Agreement shall refer to the agreement executed by the Association and the Developer pursuant to which the Developer or an assignee of the Developer will provide irrigation services to the Common Property.

Section 15. Community-Wide Standard shall mean the standard of conduct, maintenance, architectural control or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors.

Section 16. Developer shall mean and refer to Coolidge-Ft. Myers Realty Limited Partnership, a Florida limited partnership, (as assignee of and successor in title to Del Vera Limited Partnership) or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibits "A" or "B" for the purpose of development, lease, sale and/or resale and are designated as the Developer hereunder in a recorded instrument executed by the immediately preceding Developer.

Section 17. District shall mean the Herons Glen Recreation District, a Lee County, Florida public recreation district.

Section 18. District Assessments means those taxes and assessments levied and imposed against Lots and undeveloped properties within the District's boundaries to service the Bonds and meet the costs and expenses of operation, maintenance, use of and improvements to the Recreational Facilities.

Section 19. District Rules and Regulations means those ordinances, rules and regulations promulgated by the District to govern the use of the Recreational Facilities.

Section 20. Drainage Easement means that certain easement granted by Developer in favor of the Association, dated June 1, 1999 and recorded in Official Records Book 3127, Page 0001, Public Records of Lee County, Florida.

Section 21. Effluent Water Agreement means that certain agreement regarding the provision of effluent water to the Recreational Facilities between the District and the Developer dated June 1, 1999 and recorded June 4, 1999 in Official Records Book 3126, Page 4051, Public Records of Lee County, Florida and any subsequent agreements between the CLIS Irrigation System Owner and any effluent water provider.

Section 22. Governing Documents. Governing Documents shall mean this Declaration; the Articles of Incorporation and Bylaws of the Association, approved or adopted from time; and the Rules and Regulations of the Association adopted by the Board of Directors.

Section 23. Herons Glen shall mean the real property which is coterminous with the boundaries of the Herons Glen Recreation District as such boundaries may be amended from time to time.

Section 24. Initial Property shall mean and refer to the real property legally described on Exhibit "A" attached to this Declaration.

Section 25. Lot shall mean and refer to any lot, not exceeding 1,300 in total, on the various, present or future plats of portions of the Properties, which plat(s) is designated by Developer or by any other recorded instruments to be subject to this Declaration, any Lot shown upon any resubdivision of any such plat, and any other property hereafter declared as a Lot by the Developer and thereby made subject to this Declaration. To the extent the Developer is not the Owner thereof, then such declaration shall be made by the Developer joined by the Owner thereof.

Section 26. Lot Irrigation Agreement shall refer to the agreement to be executed by the CLIS Irrigation System Owner and each initial Owner and joined in by the Association pursuant to which the Developer or an assignee of the Developer will provide irrigation service to the Lot referred to in such agreement.

Section 27. Maintenance and Access Easement means that certain easement in favor of the Association, dated June 1, 1999 and recorded in Official Records Book 3126, Page 4116, Public Records of Lee County, Florida.

Section 28. Member shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 29. Mortgage shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 30. Mortgagee shall mean and refer to a beneficiary or holder of a Mortgage.

Section 31. Mortgagor shall mean and refer to any Person who gives a Mortgage.

Section 32. Owner shall mean and refer to one (1) or more Persons who hold the record title to any Lot which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

Section 33. Person means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 34. Plans shall mean and include the Development Order referenced as State DRI#6-8687-77 and County Case #88-3-18-DRI(d) as adopted by the Board of County Commissioners of Lee County, Florida on May 3, 1993, as certified by Clerk of the Circuit Court, Lee County, Florida, and the Revised Red Cockaded Woodpecker Monitoring and Management Plan, the Lake Management Plan contained in or referenced in the Development Order, surface water management permits applicable to Herons Glen and other governmental permits, approvals, requirements and restrictions upon the development, use, maintenance and monitoring of portions of the Properties and Recreational Facilities, as amended from time to time.

Section 35. Project Mortgage shall mean the mortgage or mortgages utilized to finance the development and construction of Herons Glen, Section 36.

Section 36. Project Mortgagee shall mean the holder of the Project Mortgage.

Section 37. Properties shall mean and refer to the real property currently subject to the Declaration as described on Exhibit "A" attached hereto, together with such additional property as is hereafter subjected to this Declaration by Supplemental Declaration, specifically excluding the Recreation Facilities.

Section 38. Recreational Facilities shall collectively refer to the real property described on Exhibit "C" and any and all buildings and other improvements, including, without limitation, the clubhouse, mini-recreational area, maintenance areas and buildings, outbuildings, supports, foundations, structures, golf courses, practice facilities, ranges, pitching and putting greens, tennis courts, shuffleboard courts, swimming pools, landscaping, signs, paths, sidewalks, curbs, driveways, parking lots, bridges, lighting, water systems, drainage systems, machinery, fixtures and equipment, the CLIS Irrigation System and substitutions for and replacements of and additions thereto, and all fixtures and equipment at any time placed upon or used in connection with the Recreational Facilities, owned by the District.

Section 39. Rules and Regulations shall mean and refer to the standards, rules and regulations adopted by the Board of Directors, as the same may be amended from time to time.

Section 40. Special Assessment shall mean and refer to assessments levied in accordance with Article XI, Section 3 of this Declaration.

Section 41. Storm Water Easement means that easement for storm water retention and drainage granted by the District in favor of the Association dated June 1, 1999 and recorded in Official Records Book 3127, Page 0029, Public Records of Lee County, Florida.

Section 42. Storm Water Management System shall mean the portion of the Properties and the Recreational Facilities, including improvements thereon, which are designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from such system as permitted pursuant to Chapters 40C, 40C-40, or 40C-42, F.A.C., including, but not limited to, all lakes, retention areas, culverts and related appurtenances.

Section 43. Supplemental Declaration shall mean an amendment or supplement to this Declaration executed by or consented to by Developer which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to the instrument recorded by the Association pursuant to Article IX, Section 2 of this Declaration to subject "additional property to this Declaration."

Section 44. Turnover shall mean the relinquishment of Developer's control of the Association (defined herein) to the Class "A" members.

Section 45. Unit shall mean the individual residential structure constructed on any Lot.

Section 46. User Assessment shall mean and refer to assessments levied in accordance with Article XI, Section 4 of this Declaration.

ARTICLE II PROPERTY RIGHTS

Every Owner shall have the right, and an easement, to enjoy and use the Common Property for its intended purpose, subject to this Declaration as may be amended from time to time and the right to ingress and egress to his or her Unit. Any Owner may delegate his or her right of enjoyment of the Common Property to the members of his or her family, lessees and social invitees, as applicable subject to the Rules and Regulations. Owners who lease their Units shall be deemed to have delegated their rights to use the Common Property to the lessee of the Unit as more particularly described in and subject to the Rules and Regulations.

The easement provided for herein shall be appurtenant to and shall pass with ownership of a Lot, but shall not be deemed to grant any other interest in the Common Property.

Nothing herein shall be construed as to grant easement, ownership or use rights to the Recreational Facilities to any Owner or the Association.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have either a Class "A" or Class "B" membership in the Association, as provided in Section 2 below.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot owned. For purposes of voting, the Owner, and not the lessee of a Lot, shall be deemed the Owner with respect to each Lot. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided hereinafter. The rights and privileges of membership may be exercised by an Owner or the Owner's spouse, subject to the provisions of the Governing Documents. The membership rights of a Lot owned by a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of the Governing Documents.

Section 2. Voting. The Association shall have two (2) classes of membership. Class "A", and Class "B" as follows:

(a) Class "A". Class "A" Members shall be all Owners of fee title to Lots. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold fee title. In the event a Lot is owned by a company, partnership or other form of multiple ownership, the voting rights shall be issued in the name of the Owner and the Owner shall notify the Secretary of the Association in writing of the one person authorized to cast votes for that membership.

(b) Class "B". Class "B" Members shall be all lessees of Lots from the Developer or its designated successors and assigns. Class "B" Members shall not be entitled to vote.

(c) As of Turnover, January 1, 2005, the previously designated Class "C" membership was terminated and converted to a Class "A" membership.

**ARTICLE IV
HERONS GLEN RECREATION DISTRICT**

Section 1. Construction and Ownership of Recreational Facilities. The Developer has constructed, furnished and equipped at its sole cost and expense the following:

- (a) an 18-hole golf course with associated practice facilities;
- (b) six (6) tennis courts, shuffleboard courts, pool;
- (c) a full service clubhouse.

The Recreational Facilities have been acquired by the District from the Developer. Each Owner acknowledges that the District is the owner of the Recreational Facilities and the Recreational Facilities are not Common Property.

Section 2. District Assessments. The district imposes assessments on the properties within Herons Glen through a special taxing district. Subject to all requirements of law, the district may impose taxes in the future. These taxes and assessments pay for the cost of acquisition, operation and maintenance of the recreational facilities, and are set annually by the board of supervisors. These taxes and assessments are in addition to county and all other taxes and assessments provided for by law. Each owner, by acceptance of a deed is deemed to covenant and agree to pay district assessments.

All District Assessments, together with interest at a rate not to exceed the highest rate allowed by the civil usury laws of the state of Florida, computed from the date that the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the Lot and Unit and shall be an automatic and continuing lien upon the Lot and Unit against which each assessment is made. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot.

Section 3. District's Maintenance Responsibility. The District shall use and maintain the Recreational Facilities in a manner which complies with and does not violate the Plans, provided the District is not required to assume any maintenance, repair, replacement or monitoring obligations of Developer or the Association as set forth in the Plans. All lakes, ponds, and other bodies of water, within the Recreational Facilities which are part of the Storm Water Management System, and all wetlands and preserves dedicated as the maintenance responsibility of the Association which are within the boundaries of the Recreational Facilities, shall be maintained by the Association, in accordance with this Declaration and the Plans. The District shall take no action or fail to take action which would interfere with the Association's or the Developer's obligations under the Plans or which would materially increase the expenses incurred by the Association for maintenance. The Association and District may enter into a contract pursuant to which the District, at its expense, may maintain the Storm Water Management System on behalf of the Association.

Section 4. Open Space. The District covenants the land upon which the Recreational Facilities are constructed shall be used for golf, tennis and other recreational uses and uses reasonably related thereto or uses related to the development and operation of Herons Glen, or as open space. No residential or commercial uses of such land shall be authorized unless the same is approved by the Association. The District acknowledges portions of the Recreational Facilities are deemed open space as required by the Plans and applicable zoning and development codes. The District shall take no action which would violate the Plans or zoning and development codes or reduce the open space below the amounts required by the Plans and any applicable zoning and development codes.

12-2014 Amendment Added Section 5.

ARTICLE V MAINTENANCE

This Declaration provides that the responsibility for maintenance of the Properties is divided between the Association and the Owners. Open space owned by the Association within the Properties shall, unless the same is located on a Lot, be maintained by the Association.

Section 1. Association's Responsibility. The Association shall operate, maintain and keep in good repair the Common Properties, such maintenance to be funded as hereinafter provided. Operation of the Common Properties shall include, without limitation, all utilities, taxes, and assessments. This operation and maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all lakes, ponds and other bodies of water, and the bulk heads forming the boundaries of such bodies of water, within the Properties which serve as part of the drainage system for the Properties; all wetlands within the Properties which are Common Property; all structures, and improvements, including entry features, perimeter wall, private streets, sidewalks, bike paths and street lighting fixtures, situated upon the Common Properties (except as otherwise specifically provided in Section 2); and landscape maintenance and fertilizing.

All costs associated with the acquisition, operation, maintenance, repair and replacement of the Common Properties shall be a Common Expense to be allocated among all Lots as part of the Base Assessment.

The Association may maintain additional property related to the purposes of the Association as provided in any maintenance agreement entered into by the Association and another Person. The Association may maintain, at its expense, other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide

Standard and is related to the purpose of the Association. The costs of such maintenance shall be allocated among the Lots as part of the Base Assessment.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements thereon. Owners of Lots which are adjacent to any portion of the Common Properties or Recreational Facilities on which walls have been constructed shall maintain that portion of the Common Properties and Recreational Facilities which lies between the wall and the Lot boundary. Owners of Lots fronting on any roadway within the Properties shall maintain driveways serving their respective Units and shall maintain landscaping on that portion of the Common Properties, if any, or right-of-way between the Lot boundary and the nearest street curb. Owners of Lots fronting on the water's edge or upon greenbelt buffer fronting the water's edge of any lake or other body of water within the Properties or the Recreational Facilities shall maintain and irrigate all landscaping between the Lot boundary and such water's edge; provided, the Owners shall have no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to the Governing Documents. Owners of Lots on which privacy walls have been built and Owner's of Lots which are adjacent to privacy walls shall maintain the portion of the privacy wall located on or adjacent to their Lots; provided, however, the Association shall maintain all privacy walls designated as Common Property. The Association may perform the Owner's landscape maintenance responsibilities as provided in Section 3 hereof.

Section 3. Landscape Maintenance. The Board of Directors of the Association shall adopt Community-Wide Standards regarding landscape maintenance and irrigation, including, but not limited to, frequency and quantity of maintenance and frequency, quantity and time of day of irrigation. All such Community-Wide Standards shall be adopted in accordance with good agronomical practices.

The Association may, but shall not be required to, provide landscape maintenance services to Lots which shall either be mandatory or provided on a voluntary contract basis. In the event the Association provides lawn mowing for all Lots, this service shall be provided to all Lots on a mandatory basis. The cost of lawn mowing shall be allocated among the Lots being maintained as an Assessment.

All maintenance required by this Section shall be performed in a manner consistent with the Community-Wide Standard. If any Owner fails to perform his or her maintenance responsibility in accordance with the Community-Wide Standard, the Association may perform it and assess all costs incurred by the Association against the Lot and the Owner thereof as a User Assessment. Prior to entry the Association shall afford the Owner reasonable notice and an opportunity to remedy a condition inconsistent with the Community-Wide Standard, except when entry is required due to an emergency.

Section 4. Party Walls and Party Fences. Each wall or fence built as part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 5. Storm Water Management System.

(a) All Owners acknowledge that the Properties and Recreational Facilities are located within the boundaries of the South Florida Water Management District. Due to ground water elevations underneath the Properties and the Recreational Facilities, priorities established by governmental authorities and other causes outside of the reasonable control of the Developer, the Association or the District, lake waters levels may fluctuate at certain times during the year and such fluctuations may be material. The Developer, the Association and the District shall not incur any liability for aesthetic conditions, damage to littoral plantings or direct or consequential damages of any nature caused by the fluctuation of water levels.

(b) The Storm Water Management System is a portion of the Common Property. Portions of the Storm Water Management System are located on or under the Recreational Facilities and are subject to the Drainage Easement, Storm Water Easement and Maintenance and Access Easement. The foregoing easements grant rights to access, use, maintain, repair and replace portions of Storm Water Management System located within the Recreational Facilities. The Storm Water Management System shall be maintained by the Association in compliance with the Plans applicable thereto. Maintenance of the Storm Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the South Florida Water Management District and shall specifically include, but not be limited to, maintenance of aquatic vegetation, lake beds, lake banks, littoral planting and lake maintenance easements which pursuant to the terms of this Declaration or Plat are not the responsibility of others, as well as water quality and wetland monitoring or testing. Any repair or reconstruction of the Storm Water Management System shall be as permitted, or if modified, as approved by the South Florida Water Management District.

(c) The Association, the District, and any Owner shall not take any action which modifies the Storm Water Management System in a manner which changes the flow of drainage of surface water, except to the extent the same is approved by the requisite governmental or quasi-governmental authorities.

(d) The Properties and the Recreational Facilities shall be burdened with easements for drainage and flow of surface water in a manner consistent with the approved and constructed Storm Water Management System.

(e) The Association and the South Florida Water Management District shall have a non-exclusive easement for use of Storm Water Management System, and an easement for ingress, egress and access to enter upon any portion of the Properties and the Recreational Facilities in order to construct, maintain or repair, as necessary, any portion of the Storm Water Management System provided such easement rights shall be exercised in a manner which does not unreasonably disturb use or condition of the Properties or the Recreational Facilities.

(f) Any amendment of this Declaration which would affect the Storm Water Management System or the responsibility of the Association to maintain or cause to be maintained the Storm Water Management System must be approved by South Florida Water Management District.

(g) The South Florida Water Management District and any beneficiaries of the Storm Water Management System shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, monitoring, repair and replacement of the Storm Water Management System.

ARTICLE VI INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Property. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Property, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have a combined single limit in an amount to be determined by the Board of Directors from time to time.

Premiums for all insurance on the Common Property shall be Common Expenses of the Association and shall be included in the Base Assessment.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefitted parties, as further identified in subsection (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in Florida which holds a Best's rating of A.

(b) All policies on the Common Property shall be for the benefit of the Association and its Members and as otherwise provided by any lease or any document applicable to Herons Glen.

(c) Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Board of Directors; provided, however, no Mortgagee having an interest in such losses and no Mortgagee holding a Mortgage which encumbers the Common Property may be prohibited from participating in the settlement negotiations or consenting to any settlement agreements, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, their Mortgagees or the Developer.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available and an agreed amount endorsement with an annual review by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in Lee County, Florida.

(f) The Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board of Directors, the Association's manager, Owners, and their respective tenants, servants, agents, and guests and the Developer;

(ii) A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) A statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal based on any one or more individual Members;

(iv) A statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal based on the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Member, or Mortgagee;

(v) That any "other insurance" clause in any policy exclude individual Members' policies from consideration; and

(vi) That the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be as provided in the Bylaws. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other casualty to all or any part of the Common Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes

(b) Any damage or destruction to the Common Property shall be repaired or reconstructed by the Association.

(c) By virtue of becoming an Owner, each Owner covenants and agrees with all other Owners and with the Association that in the event of a partial loss or damage resulting in less than total destruction of structures on the Lot, the Owner shall remove all debris within a reasonable time and complete repair or reconstruction of the damaged structure within one (1) year in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XII of this Declaration. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

Section 3. Disbursement of Proceeds. The proceeds of insurance held by the Association shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Property shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and/or Lot and may be enforced by such Mortgagee.

Section 4. Repair and Reconstruction. If the insurance proceeds are not sufficient to defray the cost of repair or reconstruction of Common Property, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment on the same basis as provided for Base Assessments. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**ARTICLE VII
NO PARTITION**

Except as is permitted in this Declaration or any amendments hereto, there shall be no judicial partition of the Common Property, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

ARTICLE VIII CONDEMNATION

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board of Directors acting on the written direction of Members representing at least sixty-seven percent (67%) of the total votes cast by the Members) by any authority having the power of condemnation or eminent domain, each Member shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Members to be disbursed as follows:

(a) If the taking involves a portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefore, in accordance with plans approved by the Board of Directors. Upon reconstruction or replacement of such improvements, the above provisions in Article VI regarding the disbursement of funds with respect to casualty damage or destruction which is to be repaired shall apply.

(b) If the taking does not involve any improvements on the Common Property, or if there are net funds remaining after any restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE IX ANNEXATION OF ADDITIONAL PROPERTY

Section. 1. Annexation with Approval of Membership. The Association may annex real property other than that described on Exhibit "B," to the provisions of this Declaration and the jurisdiction of the Association, subject to the consent of a majority of the votes eligible to be cast by the Members. All Lots on real property annexed to this Declaration shall pay the same Assessments and shall have the same voting privileges as those provided for Lots within the Initial Property.

Annexation shall be accomplished by filing of record in the Public Records of Lee County, Florida, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein.

Section 2. Acquisition of Additional Common Property. Developer may convey to the Association additional real estate, improved or unimproved, located within the Properties described in Exhibits "A" or "B" which upon conveyance or dedication to, and acceptance by, the Association shall thereafter be maintained by the Association at its expense for the benefit of all its Members, subject to the consent of the Mortgagee holding a Mortgage encumbering the Common Property. The addition of Common Property other than that which is located within the property described on Exhibits "A" or "B" shall be subject to the approval of a majority vote of the Members and the consent of the Mortgagee holding a Mortgage encumbering the Common Property. No future conveyance of Common Property shall be subject to any mortgages, liens or other encumbrances or obligation to pay for the additional Common Property.

Section 3. Assignment of Property. Developer shall have the right to collaterally assign all of its interest in the Properties to any Mortgagee holding a Mortgage encumbering the Common Property.

**ARTICLE X
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 1. Common Property. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Property and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard. Any portion of the Common Property which is platted as open space or which pursuant to the Plans is considered open space shall be use restricted to uses authorized by applicable governmental laws, resolutions and regulations.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, may accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Developer, provided such property shall not be subject to a mortgage or obligation to pay for the acquisition of such property other than lease payments for personal property.

Sections 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce Rules and Regulations. Sanctions under the Rules and Regulations may include reasonable monetary fines and, for any contractor, subcontractor, agent or other invitee who fails to comply with the provisions of the Rules and Regulations, exclusion from the Properties. The Board shall, in addition, have the power to seek relief in any court for violations of the Rules and Regulations or to abate nuisances. Imposition of sanctions shall be as provided in the Governing Documents. The Association, through its Board of Directors, shall have no authority to adopt rules and regulations regulating ownership, use, operation or maintenance of the Recreational Facilities.

The Association, through its Board of Directors, by contract or other agreement, shall have the right to enforce county ordinances and rules of other governmental bodies and to permit Lee County or the District to enforce ordinances and rules on the Properties for the benefit of the Association and its Members.

All Members must abide by the Rules and Regulations adopted by the Association's Board of Directors.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Hurricane Education. The Association shall periodically provide an educational program on hurricane preparation, risks and hazards. In addition, the Association may distribute annually hurricane awareness information concerning the need for evacuation and description of the evacuation routes.

Section 6. Telecommunications. The Association may enter into a Telecommunications Agreement to provide telecommunication services to all Units within the Properties.

**ARTICLE XI
ASSESSMENTS**

Section 1. Creation of Assessments. There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article. There shall be three (3) types of Assessments: (i) Base Assessments to fund Common Expenses;

(ii) Special Assessments as described in Section 3 below; and (iii) User Assessments as described in Section 4 below.

Base Assessments shall be levied equally on all Lots. Each Owner, by acceptance of a deed or lease is deemed to covenant and agree to pay Assessments. The Developer shall guarantee the payment of the Assessments on Lots/Units which are leased to Class "B" Members, which payments shall be made in the same time period and in the same manner as those made by all Class "A" Members.

All Assessments, together with interest (at a rate not to exceed the highest rate allowed by the civil usury laws of the state of Florida) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the Lot and Unit and shall be an automatic and continuing lien upon the Lot and Unit against which each assessment is made. Each such Assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. Notwithstanding the above, no first Mortgagee (or the designee of such Mortgagee) who obtains fee or leasehold title to a Lot pursuant to the remedies provided in the Mortgage or by the acceptance of a deed in lieu of foreclosure shall be liable for unpaid Assessments which accrued prior to such acquisition of title and further, a Person who acquires title at a foreclosure sale shall not be liable for unpaid Assessments accrued prior to its acquisition of the Lot.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an officer of the Association setting forth whether such Assessment has been paid as to any particular Lot. Such certificate, absent fraud on the part of the Owner, shall be conclusive evidence of payment to the Association of such Assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Ten Dollars (\$10.00) for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of Base Assessments for the balance of the fiscal year for delinquents. Unless the Board of Directors otherwise determines, the Base Assessment shall be paid in equal quarterly installments.

No Owner may waive or otherwise exempt himself from liability for Assessments, including, by way of illustration and not limitation, by non-use of Common Property or abandonment of the Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or the Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Developer shall pay Assessments on Lots of which it is the Owner and, in addition, upon the number of lots anticipated to be platted ("Anticipated Lots"), which number shall be calculated by subtracting the actual number of platted lots from 1300.

Section 2. Computation of Base Assessment. It shall be the duty of the Board annually to prepare a budget covering the estimated Common Expenses of the Association during the coming year. Such budget shall include expenses incurred in operating, maintenance and insuring for the Common Property, including, but not limited to, all amounts due for the following:

- (a) Repair and maintenance expenses for the Common Property, including, but not limited to, costs and expenses of maintenance and operation of the Storm Water Management System;
- (b) Real estate taxes levied on the Common Property, if any;
- (c) Payments due the CLIS Irrigation System Owner under the CLIS Irrigation Agreement, if assessed as a Common Expense; and
- (d) Other expenses incurred by the Association for the benefit of the Members.

The budget may include a capital contribution establishing a reserve fund which fund may be deemed a Common Expense for purposes of determining the budget. The Base Assessment to be levied for any year against each Lot subject to Assessment shall be computed by dividing the Common Expenses by 1300. The Developer shall pay Assessments on Lots of which it is the owner during a fiscal year and upon Anticipated Lots until such time as those Lots are sold. The Board shall cause a notice of the amount of the Base Assessment to be levied against each Lot for the following year to be delivered to each Owner prior to the beginning of the fiscal year.

In the event the Base Assessments collected do not cover the Common Expenses, the Board of Directors may levy an additional Base Assessment to cover such deficiency. The Base Assessments shall be payable in the manner fixed by the Board of Directors from time to time.

In the event Base Assessments in excess of Common Expenses are collected in any fiscal year, the Board of Directors, in its discretion, may refund such excess to the Members who paid such Assessments or credit the excess Assessments to the Members for the next fiscal year. If the Board determines to issue credits to Members, the excess funds shall be allocated to the budget for the next fiscal year.

Section 3. Special Assessments. The Board of Directors may levy Special Assessments from time to time; provided, any such Assessment which exceeds twenty percent (20%) of the Base Assessments for the fiscal year shall require the affirmative vote or written consent of two-thirds (2/3) of the Members required to pay such Assessment. Special Assessments pursuant to this paragraph shall be payable by Owners in such manner and at such times as determined by the Board of Directors, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines. Special Assessments shall be segregated into a separate account and may only be used for the purpose collected.

Section 4. User Assessments. The Association may levy a User Assessment against any Owner individually and against such Owner's Lot to reimburse the Association for costs incurred in providing landscape maintenance, pest control or telecommunications service for the Lot. Additionally, a User Assessment may be levied against the Owner and his Lot to reimburse the Association for bringing an Owner and his Lot into compliance with the provisions of the Governing Documents, or for failure to pay the cost of irrigation service to the Lot, which User Assessment may be levied upon the vote of the Board after Notice to the Owner and an opportunity for a hearing.

Section 5. Lien for Assessments. Upon recording of a notice of lien on any Lot and/or Unit, there shall exist a perfected lien for unpaid Assessments prior and superior to all other liens, except (i) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (ii) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure after fifteen (15) days prior written notice has been given to the Member.

The Association, acting on behalf of its Members, shall have the power to bid for the Lot and/or Unit, as applicable, at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot and/or Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no Assessments shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual Assessments, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 6. Reserve Budget and Capital Contribution. The Board of Directors may annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board may set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Capital Reserve Assessments over the period of the budget. The capital contribution required, if any, may be fixed by the Board, included within, and distributed with the budget and Base Assessment, as provided in Section 2 of this Article. Capital Reserves shall be segregated and restricted for the replacement, repair and addition to the capital assets of the Association.

Section 7. Subordination of the Lien to First Mortgages. The lien of Assessments, including interest, late charges (subject to the limitations of Florida law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure or transfer of title by deed in lieu of foreclosure to any Mortgagee (or designee thereof) shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer.

Section 8. Contributions to Working Capital. Upon each transfer of record fee or leasehold title to each Lot after the date of recording of this Declaration a contribution shall be made by the purchaser or lessee of such Lot to the working capital of the Association in an amount to be determined from time to time by resolution of the Board of Directors, but not less than the sum of one-third (1/3) of the then current quarterly Base Assessment and two months of the User Assessments for that year. This contribution shall be paid to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws. Upon the conveyance of such fee or leasehold interest in the Lot to a subsequent purchaser or transferee and the purchaser's or transferee's payment of the contribution to the working capital fund, the previous owner shall be repaid the actual working capital contribution paid without any interest earned thereon. The Developer, its subsidiaries, affiliates and assigns shall be exempt from payment of the contribution required by this Section. The capital contribution required by this Section shall constitute an Assessment against the Lot and shall be subject to the same lien rights and other rights of collection applicable to other Assessments under this Article.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Assessments:

- (a) All Common Property; and
- (b) All property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, public parks, if any, and the Recreational Facilities.

ARTICLE XII ARCHITECTURAL STANDARDS

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Association and its Committees.

No construction, which term shall include within its definition re-construction staking, clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the Association and its Committees has been obtained in accordance with the Governing Documents. The Board of Directors may establish reasonable fees to be charged on behalf of the Association for review of an application for approval hereunder, which fees, if established, shall be paid in full prior to review of any application hereunder.

This Article shall not apply to the original construction on a Lot by the Developer or its designees, or to construction on or improvements or modifications to the Common Property made by or on behalf of the Association.

Section 1. Architectural Review. The Association shall have exclusive jurisdiction over construction modifications, additions, or alterations made on or to existing Lots and or structures appurtenant thereto, if any.

Section 2. Architectural Guidelines. The Association shall promulgate design and development guidelines, community standards and application review procedures. The Association shall have sole and full authority to make, impose and to amend them. It shall make the guidelines, standards, and procedures available to Owners and contractors who seek to engage in construction, reconstruction, modification, alteration, addition or improvement to any Lot or Unit and such Owners and contractors shall conduct their operations and activities strictly in accordance therewith. Notwithstanding anything contained in these Covenants, or the Bylaws of the Association, neither the Board of Directors of the Association, nor any of its Committees, shall have the power to grant or permit a variance to these Covenants.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired; provided, modification or alterations to the interior of screened porches, patios and similar portions of a Unit visible from outside the Unit shall be subject to approval hereunder.

Section 3. Variance. The Association may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (i) be effective unless in writing, (ii) be contrary to the restrictions set forth in the body of this Declaration, or (iii) stop the Association from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the denial of any permit, or disapproval of the terms of any financing shall not necessarily be considered a hardship warranting a variance.

Section 4. Compliance. Any contractor, subcontractor, agent employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the Association may be excluded by the Board from the Properties without liability to any Person, subject to the notice and hearing procedures contained in the Governing Documents.

Section 5. District. To the extent permissible by law, the Recreational Facilities and the District shall be subject to the provisions of this Article; however, the District shall not be obligated to pay any fees in connection with review, and approval shall not be unreasonably withheld.

**ARTICLE XIII
RESIDENTIAL USE RESTRICTIONS**

The Properties shall be used only for residential and related purposes and other uses approved by the Association's Board of Directors from time to time. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties. Such standards shall be binding upon all Owners and occupants.

Section 1. Signs. No sign, billboard or advertisement of any kind, including, without limitation, those of realtors, contractors and subcontractors, shall be erected within the Properties without the written consent of the Board of Directors, except in connection with the sale or resale of Units or Lots by the Developer or as may be required by legal proceedings. Signs within the Properties may be restricted as to the size, color, lettering, and location of such sign. The Board of Directors or Developer shall have the right to erect signs as they, in their discretion, deem appropriate. Under no circumstances shall signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties be permitted within the Properties. No sign shall be nailed or otherwise attached to trees.

Section 2. Parking and Prohibited Vehicles.

(a) Parking. Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or in appropriate spaces or designated areas in which parking may or may not be assigned and then subject to the Rules and Regulations. Notwithstanding the above, no more than two vehicles shall be parked in the driveway serving any Unit on a regular basis. For purposes of this Section, a car shall be deemed parked on a "regular basis" if parked in such driveway more than seventy-two hours in any seven day period without prior approval of the Board of Directors. Garage doors and/or roll down screens shall remain closed at all times except during ingress, egress, occupancy of the garage or during Lot maintenance by the Owner.

Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, motor homes, recreational vehicles, ATVs, boats and other water craft, and boat trailers shall be parked only in enclosed garages. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on any Lot except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is covered with a tarpaulin and remains so covered for fourteen consecutive days without the prior approval of the Board of Directors. This Section shall not apply to any commercial vehicles providing service or making deliveries to or in behalf of the Association, the District, the Developer or their designees.

Notwithstanding any other provision of this Section, the Board may adopt Rules and Regulations which permit any vehicle to be parked, temporarily, on Common Areas, including streets.

(b) Delivery and Service Vehicles. Any vehicle which is parked in violation of this Section 2 or parking rules promulgated by the Board may be towed in accordance with the Bylaws. Notwithstanding the foregoing, service and delivery vehicles may be parked in the driveway of a Unit during daylight hours for such period of time as is reasonably necessary to provide service or make a delivery to the Unit. This Section shall not apply to any commercial vehicles providing service or making deliveries to or on behalf of the Association, the District, the Developer or their designees.

Section 3. Occupants Bound. All provisions of the Governing Documents or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to

comply with the Governing Documents and shall be responsible for all violations and losses to the Common Property or the Association caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Governing Documents.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of three (3) such pets may be permitted in a Unit. No pets are permitted to roam free. If the owner fails to honor such rule, the pet may be removed or a fine or other penalty may be imposed by the Board of Directors. No pets shall be kept, bred, or maintained for any commercial purpose. Household pets shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person. Persons walking pets shall be responsible for removing solid pet waste and properly disposing of the waste.

Section 5. Annoyances. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 6. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

Section 7. Antennas. Except for equipment utilized by the Association, or as permitted by applicable law, no visible antennas, aerials, satellite or cable dishes of more than one meter in diameter, or other apparatus for the reception or transmission of television, radio or other signals shall be placed on any Lot or Common Property without approval in accordance with the Governing Documents.

Section 8. Clotheslines, Garbage Cans, Tanks, Etc. All clotheslines, garbage cans, storage tanks, mechanical equipment and other similar items shall be located, or screened by landscaping, so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be stored in appropriate containers with lids and regularly removed from the Properties and shall not be allowed to accumulate thereon.

Section 9. Subdivision of Unit and Timesharing. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association.

No Unit shall be made subject to any type of time share program, interval ownership or similar program whereby the right to exclusive use of the Unit rotates among multiple owners or members of the program on a fixed or floating time schedule over a period of years, except that the Developer hereby reserves the right for itself and its assigns to operate such a program with respect to Units which it owns.

Section 10. Firearms. The discharge of firearms within the Properties and the Properties of the Herons Glen Recreation District is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 11. Pools. No above-ground pools shall be erected, constructed or installed on any Lot. Stand-alone spas and hot tubs are permitted inside screened lanais. In-ground spas and pools will be permitted upon approval pursuant to the Governing Documents.

Section 12. Irrigation. No sprinkler or irrigation systems of any type shall be installed, constructed or operated within the Lots or Common Property by any Person, other than the CLIS Irrigation System Owner or its affiliates or assigns.

Section 13. Tents, Trailers and Temporary Structures. No tent, utility shed, shack, trailer or other detached structure shall be placed upon any Lot or Unit.

Section 14. Wells and Drainage. No private water system shall be constructed on any Lot. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than the Association may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. The Association hereby reserves for itself a perpetual easement across the Properties for the purpose of altering drainage and water flow.

Section 15. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with the Governing Documents.

Section 16. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 17. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 18. Air Conditioning Units. Except as may be permitted by the Board of Directors, no window or wall air conditioning units may be installed in any Unit.

Section 19. Lighting. Except seasonal Christmas decorative lights, which may be displayed between the day after Thanksgiving and January 10th only, all exterior lights must be approved in accordance with the Governing Documents.

Section 20. Artificial Vegetation, Exterior Decorations and Similar Items. Artificial vegetation, with the exception of such as door wreaths, shall not be permitted on the exterior of any part of the properties. Exterior decorations, including, without limitation, sculptures, fountains, flags, flagpoles and similar items must be approved in accordance with the Governing Documents.

Section 21. Energy Conservation Equipment. The construction, installation and maintenance of Solar energy collector panels or attendant hardware or other energy conservation equipment shall be allowed on any Lot or Unit, provided that the size, color, and location of such equipment shall be subject to approval, pursuant to the Governing Documents. Any installation and maintenance of such equipment made without such approval shall subject the Unit Owner to fines and penalties.

Section 22. Wetlands, Lakes and Water Bodies. All wetlands within the Properties shall be left in their natural state and no alteration thereof or construction thereon shall be permitted. All lakes, ponds, and streams within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, swimming, playing, or use of personal flotation devices, shall be permitted. Notwithstanding the above, the Board of Directors may permit fishing from the shore by Owners, occupants of Units, and their accompanied guests subject to the Rules and Regulations. The Association shall not be responsible for any loss, damage, or injury to any Person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties.

Section 23. Fences. No dog runs, animal pens or visible fences of any kind shall be permitted on any Lot, except for a community boundary fence if approved by the Association.

Section 24. Business Use. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as:

(a) The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit;

(b) The business activity conforms to all zoning requirements for the Properties;

(c) The business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and

(d) The business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board of Directors.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: such activity is engaged in full or part time; such activity is intended to or does generate a profit; or a license is required therefore. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section.

Section 25. Yard and Garage Sales. Garage, Yard Sales or sales of like nature are prohibited.

Section 26. On-Site Fuel Storage. No on-site storage of gasoline or other fuels shall be permitted on any part of any Lot except:

(a) Five gallons or less of gasoline may be stored within the garage of any unit in containers authorized by the Statutes of the State of Florida pertaining thereto for emergency purposes and for the operation of gasoline powered tools or equipment.

(b) Underground storage of fuel such as propane required for the operation of electric generators will be permitted upon approval pursuant to the Governing Documents, provided proof is provided that such installation has received all necessary governmental permits and approvals.

(c) The Association shall be permitted to store fuel on Common Property. The District shall be permitted to store fuel on District property.

(d) Propane can be stored in containers supplied with portable or permanently installed cooking grills.

Section 27. Leasing of Units.

(a) Definition. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Member for which the Member receives any consideration or benefit, including, but not limited to a fee, service, gratuity, or emolument.

(b) Leasing Provisions.

(i) General. Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the management. All leases shall be in writing and shall be for a minimum term of thirty days. The Member must make available to the lessee copies of the Declaration, Bylaws, and the Rules and Regulations.

(ii) Compliance with Governing Documents. Every Owner shall cause all occupants of his or her Unit to comply with the Governing Documents, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Property caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Governing Documents, and rules and regulations adopted pursuant thereto.

Section 28. Storm Precautions. Hurricane or storm shutters may be temporarily installed on a Unit so long as the threat of a hurricane or similar storm is imminent. Hurricane or storm shutters may be permanently installed upon approval pursuant to the Governing Documents, and such approved shutters may remain closed for extended periods of time.

Section 29. Play Equipment. All play equipment and similar items shall be stored so as not to be visible from streets or property adjacent to the Unit. No such items shall be allowed to remain on the Common Property or on Units so as to be visible from adjacent property when not in use.

Section 30. Window Coverings. All windows on any structure which are visible from the street or dwellings on other Units shall have window coverings which have a white or off-white backing or blend with the exterior color of the dwelling, as determined in the sole discretion of the Board of Directors after application pursuant to the Governing Documents. Reflective window coverings are prohibited.

Section 31. Roadways, Sidewalks, Driveways. All utilities within the Properties shall be installed underground. Utility lines, including, without limitation, cable television and gas, may only be installed, repaired or replaced under existing roadways, sidewalks and driveways by a method which will not disturb the paved surface of such roadway, driveway or sidewalk. This restriction is intended to preserve the aesthetic nature of the paved surfaces.

Section 32. Mailboxes. Mailboxes will have a uniform and attractive appearance in keeping with the Community-Wide Standards for mailboxes and other Rules and Regulations, established by the Board of Directors from time to time.

**ARTICLE XIV
DISTRICT USE RESTRICTIONS**

The Recreational Facilities shall be used only for recreational and related purposes or other purposes determined by the Board of Supervisors of the District in compliance with the Plans.

As provided by law, the District, acting through its Board of Supervisors, shall have authority to make and to enforce standards and regulations governing the use of the Recreational Facilities.

Section 1. Signs. The Association may restrict signs located on the Recreational Facilities as to the size, color, lettering, and location of signs, but only to the extent such signs are visible from Lots or Common Property.

Section 2. Parties Bound. All applicable provisions of the Declaration or use restrictions promulgated pursuant hereto which govern the Recreational Facilities or the use of the Common Property shall apply to all invitees, employees and agents of the District. The District is responsible for any loss incurred by the Association caused by employees and agents of District.

Section 3. Annoyances. No portion of the Recreational Facilities shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Recreational Facilities that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the Recreational Facilities, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Recreational Facilities. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the surrounding properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Recreational Facilities.

Section 4. Unsightly or Unkempt Conditions. The District shall prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on the Recreational Facilities.

Section 5. Wells and Drainage. No private water system shall be constructed on the Recreational Facilities; provided, however, that in the event that the existing effluent irrigation is inadequate or unavailable to irrigate the Recreational Facilities, the District shall have the right to install such wells, pumps and other facilities irrigation as may be necessary to supplement effluent irrigation water available to the District; provided no such right shall limit any obligation of the District under the Effluent Water Agreement. The District shall be responsible for all approvals required to install, maintain and use any supplemental irrigation facilities and all such facilities must comply with the Plans. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No person other than the Association may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

Section 6. Energy Conservation Equipment. The construction, installation and maintenance of Solar energy collector panels or attendant hardware or other energy conservation equipment shall be allowed on the Recreational Facilities, provided that the size, color, and location of such equipment shall be subject to approval in accordance with the Governing Documents.

Section 7. Wetlands, Lakes and Water Bodies. The Board of Supervisors may permit use of wetlands, lakes, ponds and streams within the Recreational Facilities for recreational use. Neither the Developer nor the Association shall be responsible for any loss, damage, or injury to any Person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Recreational Facilities.

**ARTICLE XV
ACQUISITION OF COMMON PROPERTY BY ASSOCIATION**

Streets and Roads. Notwithstanding any other provision of the Declaration to the contrary, Developer was, at Turnover, obligated to convey ownership of all platted streets and roads located within Herons Glen to the Association free and clear of all debt and other encumbrance and such obligation continues.

**ARTICLE XVI
GENERAL PROVISIONS**

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties and the Recreational Facilities, and shall inure to the benefit of and shall be enforceable by the District, Association or any Member subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the District and a majority of the then Owners and Mortgagees holding Mortgages on a majority of the Units and Lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. In the event of a permanent dissolution of the Association, the Members shall immediately thereupon hold title to the Common Property as tenants in common and shall collectively provide for the continued maintenance and upkeep thereof.

Section 2. Amendment. This Declaration may be amended by the Members only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes eligible to be cast by Members. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Public Records of Lee County, Florida.

No amendment which affects the Storm Water Management System within the Properties and/or Recreational Facilities or maintenance thereof shall be effective without the prior written consent of the appropriate governmental or quasi governmental agencies or bodies.

If a Member consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

Notwithstanding anything to the contrary herein, no amendment of this Declaration shall materially adversely affect any right or privilege of the District, or impose additional restrictions or obligations on the District without the written consent of the District.

Section 3. Easements for Utilities, etc. There is hereby reserved unto Developer, so long as the Developer owns any portion of the Properties, the Association, the CLIS Irrigation System Owner, and the designees of each (which may include, without limitation, Lee County, Florida), easements upon, over, across, and under the Properties for ingress and egress; dispensing pesticides; installation, replacing, repairing, relocating and maintaining roads, walkways, bicycles pathways, lakes, ponds, wetlands, drainage systems, street lights and signage; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Member or occupant thereof. The CLIS Irrigation System Owner shall also have an easement over the Properties for the installation and maintenance of the CLIS Irrigation System and to draw water from any lake or other body of water for use in connection with the CLIS Irrigation System. The CLIS Irrigation System Owner's right to draw water shall be without payment to the

Association or the District. The appropriate water and sewer authority, electric utility company, telephone company, Developer and its affiliates, and their successors and assigns shall have easements as shown on the plats of the Properties for the installation and maintenance, all underground, of all water lines, sanitary sewers, storm drains, gas lines and electric, telephone and cable television and master antenna and security systems provided, however, no person shall have the right to utilize the utility easements as shown on the plats of the Properties for installation of gas distribution lines without the consent of the Association. This section shall limit the use of the utility easements described on the plats of the Properties.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Developer.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Property to Lee County, Florida, or to any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in this Declaration.

Section 4. Development Easements. The Association and District agree that it may be necessary or desirable for the development of the Properties to grant, modify, or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way, to modify the boundary lines and to plat or re-plat portions of the Common Property and Recreational Facilities, and to take such other action as the Developer, Association and District may agree is necessary and appropriate, all in a manner which does not materially affect the use of the Common Property and Recreational Facilities for their intended purpose. In such cases the Association, the Developer and District agree to execute and deliver any and all documents and instruments necessary or desirable to accomplish the same. Notwithstanding the foregoing, Developer agrees that any such easement, site plan, plat or permit shall not modify any portion of the Recreational Facilities without prior written consent of the District, such consent not to be unreasonably withheld or delayed.

Section 5. Public Easements. Fire, police, health and sanitation, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Property.

Section 6. Easement for Golf Balls. Every Lot is burdened with an easement permitting golf balls unintentionally to come upon the Lot and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of the Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's or occupant's permission before entry. All Owners, by acceptance of delivery of a deed to a Unit, assume all risks associated with errant golf balls, and all Owners agree and covenant not to make any claim or institute any action whatsoever against Developer, the Association or District, the golf course designer or the builder of the Unit arising or resulting from any errant golf balls, any damages that may be caused thereby, or for negligent design of the golf course or sitting of the Unit. Nothing in this paragraph shall in any way relieve golfers from liability for damages resulting from errant golf balls.

Section 7. Ingress and Egress Easements. Each Owner, their families, guests and invitees shall have a right to use the Common Property for purposes of ingress and egress, maintenance and use of the Properties. The Developer, with the joinder of the Association, has granted to the District and its employees and invitees, an easement for ingress and egress in accordance with the Access Easement.

Section 8. Assumption of Risk and Indemnification. Each Owner in the vicinity of the Recreational Facilities hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of the Recreational Facilities, including, without limitation: (a) noise from maintenance equipment and it being specifically understood that such maintenance typically takes place around sunrise or sunset, (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by planting and maturation of trees, shrubbery and golf course features, such as berms (whether planted or installed prior to the Owner's occupancy of a Lot or subsequently planted or installed), (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the Recreational Facilities, (f) errant golf balls and golf clubs, and (g) the design of the Recreational Facilities and agrees that neither the Developer, District or Association nor any of Developer's affiliates or agents shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Recreational Facilities, including, without limitation, any claim arising in whole or in part from the negligence of Developer, District or Association. The Owner hereby agrees to indemnify and hold harmless the Developer, District and Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

Section 9. 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 10. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot and enter any Unit for emergency and safety reasons, to abate nuisances (including, without limitation, false burglar alarms), to maintain the Lot and/or for access to the Common Property, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include, but not be limited to, the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard, and to force the provisions of the Governing Documents in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 11. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 12. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of fifty-one percent of the votes cast by the Members. This Section shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) the imposition and collection of Assessments as provided in Article XI hereof, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. In the event any claim is made against the Developer by the Association or any litigation is instituted against the Developer by the Association, the Association shall assess all Members for the costs of prosecuting such claim or litigation, including, without limitation, attorney's fees incurred.

Section 13. Use of the Words "Herons Glen". No Person shall use the words "Herons Glen" or any derivative thereof in any printed or promotional material without the prior written consent of the Association. However, Members may use the term "Herons Glen" in printed or promotional matter where such term is used solely to specify

that particular property is located within Herons Glen. The Association and the District shall be entitled to use the word "Herons Glen" in their name and as may be provided in a separate license agreement with the Association.

Section 14. Disciplinary Action. Every Owner, Member and occupant of any Unit, their guests and invitees, and all persons using the Recreational Facilities pursuant to the District Rules and Regulations, shall comply with all lawful provisions of the Governing Documents and the District Rules and Regulations. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available as provided in such documents or at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Owner.

Section 15. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, Developer or District, nor any successor of Developer shall in any way be considered insurers or guarantors of security within the Properties, however, and neither the Association, Developer or District, nor any successor of Developer shall be held liable for any loss or damage by reason or failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and occupants of any Unit, tenants, guests and invitees of any Owner, as applicable, acknowledge that the Association and its Board of Directors, Developer or District, or any successor of Developer and the Association do not represent or warrant that any fire protection system, burglar alarm system or other security system designated by or installed according to guidelines established by the Developer or District or the Association may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, nor that fire protection or burglar alarm systems or other security systems will in all cases provide the detection or protection for which the system is designed or intended. Each Member, and occupant of any Unit, and each tenant, guest and invitee of a Member, as applicable, acknowledges and understands that the Association, its Board of Directors and committees, Developer or District, or any successor of Developer are not insurers and that each Member and occupant of any Unit and each tenant, guest and invitee of any Member assumes all risks for loss or damage to Persons, to Units and to the contents of Units and further acknowledges that the Association, its Board of Directors and committees, Developer or District, or any successor of Developer have made no representations or warranties nor has any Member, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems or other security systems recommended or installed or any security measures undertaken within the Properties.

Section 16. Notice of Transfer or Lease of Unit. In the event that any Owner desires to sell, lease or otherwise transfer title of his or her Unit, such Owner shall give the Association at least fourteen (14) days' prior written notice of the name and address of the purchaser, lessee or transferee, the date on which such transfer of title is to take place, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Association, in the case of a sale or transfer, and any overdue Assessments are paid in full, the transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner of the Unit, including payment of all Assessments, notwithstanding the transfer of title to the Unit.

Section 17. Non-Condominium/Non-Cooperative. The Association created pursuant to this Declaration and the Articles of Incorporation of the Association does not and is not intended to constitute a condominium association or a cooperative association. The Properties are not intended to be condominium property or cooperative property under applicable law. This Declaration is not part of the common elements of any condominium or cooperative unless subjected to a Declaration of Condominium or Cooperative encumbering any such property.

Section 18. Restriction on Mortgaging Common Property. The Board of Directors shall not mortgage the Common Property without the vote of a majority of the Members.

Section 19. Enforcement. The Association shall have the right to enforce compliance of the terms of this Declaration and the other Governing Documents by each Owner, his family, lessees, invitees and guests. Each Owner, the District, Lee County, Florida and the South Florida Water Management District shall have the right to enforce this Declaration to the extent an Owner or the Association fails to maintain the Storm Water Management System, private rights-of-way and any easements approved to the Storm Water Management System or private rights-of-way.

ARTICLE XVII IRRIGATION SYSTEMS

Section 1. Installation. The CLIS Irrigation System Owner will provide irrigation to all Lots and the Common Property pursuant to the Lot Irrigation Agreement, the Common Property Irrigation Agreement, or to this Declaration. No sprinkler or irrigation systems of any type shall be installed constructed or operated within the Lots or Common Property by any Person, other than the Developer or its affiliates or assigns. Limited portions of the Recreational Facilities are irrigated by the CLIS Irrigation System. A majority of the Recreational Facilities are irrigated with effluent as described in Section 5 below.

Section 2. Maintenance of Irrigation System. A blanket easement is granted to the CLIS Irrigation System Owner, or assigns, over the Properties for the purpose of ingress and egress and for designing, studying, mapping, engineering, constructing, maintaining, operating and servicing the CLIS Irrigation System.

Section 3. Irrigation Service. For irrigation service provided to Lots, the Association may collect and pay to the CLIS Irrigation System Owner amounts due under the Lot Irrigation Agreement. The Association shall be obligated to pay such amounts to the CLIS Irrigation System Owner regardless of collections from Members. All amounts which remain unpaid after the customary billing and collection procedures agreed to by the Association and the CLIS Irrigation System Owner may be collected by the Association through User Assessments against Lots being provided irrigation service. Charges for irrigation service to the Common Property shall be a Common Expense. The Association shall not be responsible for the collection for irrigation services provided to the District.

Section 4. Costs for CLIS Irrigation System. Charges payable by Lot Owners and the Association for the CLIS Irrigation System shall be based on an annual budget for the CLIS Irrigation System. The annual budget shall be prepared by the CLIS Irrigation System Owner and shall contain all operating expenses, maintenance expenses and actual and estimated costs of construction of the CLIS Irrigation System irrigation facilities. The budget shall be prepared in accordance with the requirements set forth in this Declaration, and in the Common Property Irrigation Agreement and the Lot Irrigation Agreement, hereinafter referred to as the "existing agreements".

In the annual budget, all actual and estimated costs of construction may be capitalized at an interest rate equivalent to the Prime Rate, as published by the Wall Street Journal, in effect on the date on which the budget is prepared, plus one percent (1%).

In calculating the charges payable by each Lot Owner and the Association for the CLIS Irrigation System, the following principles shall apply:

- (a) the actual cost incurred for construction of the Irrigation System prior to January 1 of the year of the budget capitalized at a rate equal to the Prime Rate published in the Wall Street Journal in effect on the date on which the Budget is prepared plus one percent (Prime plus 1%). As of January 1 of each year during the term of this Agreement, the construction cost for prior years shall be increased by the percentage increase in the Consumer Price Index;

- (b) the estimated costs to be incurred for the construction of the Irrigation System for the year of the budget capitalized at a rate equal to the Prime Rate published in the Wall Street Journal in effect on the date on which the Budget is prepared, plus one percent (Prime plus 1%);
- (c) the estimated cost of operating and maintaining the Irrigation System for the year of the Budget;
- (d) Reserves for capital repairs and replacements to the Irrigation System; and
- (e) The difference between the actual amount collected for irrigation service for the previous Budget year, and the amount of item (a) above for the previous year, (ii) the actual construction costs for the previous Budget year appropriately capitalized, (iii) the actual expenses incurred for operating and maintenance of the Irrigation system for the previous Budget year, and (iv) budgeted reserves for the previous Budget year.

Section 5. Use of Effluent on Golf Course. The North Fort Myers Utilities, Inc. currently operates a sewage treatment plant which services the Properties. This plant produces effluent as a by-product of sewage treatment. State governmental agencies have required this effluent be combined with other water sources and sprayed on the golf course at Herons Glen Country Club as irrigation water. The District acknowledges the foregoing requirement, and has granted the Developer necessary easements, which easements have been transferred to North Fort Myers Utilities, Inc., pursuant to the Effluent Water Agreement in order to ensure compliance with applicable regulations. This notice is provided in accordance with regulations of the State of Florida. The District's ownership of the effluent water irrigation system located on or under the Recreational Facilities is as provided in the Effluent Water Agreement.

Section 6. Owners Obligations and Direct Billing by CLIS Irrigation System Owner. In the manner set forth in the existing agreements and pursuant to the principles set forth herein, the CLIS Irrigation System Owner shall be obligated to provide irrigation services to the Association and to each Owner, and the Association and each Owner shall be obligated to pay the CLIS Irrigation System Owner for such services in the manner described herein. In its full and absolute discretion the CLIS Irrigation System Owner may bill the Association and each Owner directly for such service, if such direct billing commences at the beginning of the Association's fiscal year.

ARTICLE XVIII DEVELOPER'S RIGHTS

Any or all of the special rights and obligations of the Developer may be transferred to other persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Developer and duly recorded in the Public Records of Lee County, Florida. Nothing in this Declaration shall be construed to require Developer or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Notwithstanding any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Developer to maintain and carry on upon any property or Units owned or leased by Developer such facilities and activities as reasonably required, convenient, or incidental to the construction, sale or resale of Lots and Units, including, but not limited to, construction and use of business offices, signs, model units, and sales and resale offices, and the Developer shall have an easement for access to such facilities for its employees, agents, invitees and guests.

Restated
Declaration of Covenants, Conditions and Restrictions
Herons Glen Country Club
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IN WITNESS WHEREOF, the undersigned Herons Glen Country Club Homeowners' Association, Inc. has executed this Restated Declaration this _____ day of _____, 2007.

Witnesses:

Herons Glen Homeowners' Association, Inc.,
a Florida not-for-profit Corporation

Signature of 1st Witness

By: _____
_____, Its President

Printed Name of 1st Witness

Signature of 2nd Witness

Printed Name of 2nd Witness

Restated
Declaration of Covenants, Conditions and Restrictions
Herons Glen Country Club
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STATE OF FLORIDA)
)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by _____ as President of Herons Glen Homeowners' Association, Inc., a Florida not-for-profit corporation, on behalf of said corporation.

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

Notary Public
Printed Name: _____

My Commission Expires: _____