

**BY-LAWS
OF
BAYWINDS COMMUNITY ASSOCIATION, INC.**

Baywinds By-Laws
February 15, 2000

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**BY-LAWS
OF
BAYWINDS COMMUNITY ASSOCIATION, INC.**

1. Name and Location. The name of the corporation is BAYWINDS COMMUNITY ASSOCIATION, INC. ("Association"). The principal office of the corporation shall be located at 8190 State Road 84, Davie, Florida 33324, or at such other location determined by the Board of Directors (the "Board") from time to time.

2. Definitions. The definitions contained in the Declaration of Restrictions and Covenants for the Baywinds Community (the "Declaration") relating to the residential community known as Baywinds, recorded, or to be recorded, in the Public Records of Palm Beach County, Florida, are incorporated herein by reference and made a part hereof. In addition to the terms defined in the Declaration, the following terms shall have the meanings set forth below:

"Annual Members Meeting" shall have the meaning assigned to such term in Section 3.2 of these By-Laws.

"Articles" shall mean the Articles of Incorporation for Association, as amended from time to time.

"By-Laws" shall mean these By-Laws as amended from time to time.

"Declaration" shall mean the Declaration as modified from time to time.

"Developer" shall mean Lennar Land Partners and any of its designees, successors and assigns who receive a written assignment of all or some of the rights of Developer hereunder. Such assignment need not be recorded in the Public Records in order to be effective. In the event of such a partial assignment, the assignee shall not be deemed Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

"Member" shall mean each Owner and Developer.

"Minutes" shall mean the minutes of all Member and Board meetings, which shall be in the form required by the Florida Statutes. In the absence of governing Florida Statutes, the Board shall determine the form of the minutes.

"Official Records" shall mean all records required to be maintained by Association pursuant to Section 617.303(4) of the Florida Statutes, as amended from time to time.

"Special Members Meeting" shall have the meaning assigned to such term in Section 3 of these By-Laws.

"Turnover Date" shall have the meaning set forth in the Declaration.

"Voting Interests" shall mean the voting rights held by the Members.

3. Members.

3.1. Voting Interests. Each Owner and Developer shall be a Member of Association. No person who holds an interest in a Home only as security for the performance of an obligation shall be a Member of Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Home. There shall be one vote appurtenant to each Home. For the purposes of determining who may exercise the Voting Interest associated with each Home, the following rules shall govern:

3.1.1. Home Owned By Husband and Wife. Either the husband or wife (but not both) may exercise the Voting Interest with respect to a Home. In the event the husband and wife cannot agree, neither may exercise the Voting Interest.

3.1.2. Trusts. In the event that any trust owns a home, Association shall have no obligation to review the trust agreement with respect to such trust. If the Home is owned by Robert Smith, as Trustee, Robert Smith shall be deemed the Owner of the Home for all Association purposes. If the Home is owned by Robert Smith as Trustee for the Laura Jones Trust, then Robert Smith shall be deemed the Member with respect to the Home for all Association purposes. If the Home is owned by the Laura Jones Trust, and the deed does not reference a trustee, then Laura Jones shall be deemed the Member with respect to the Home for all Association purposes. If the Home is owned by the Jones Family Trust, the Jones Family Trust may not exercise its Voting Interest unless it presents to Association, in the form of an attorney opinion letter or affidavit reasonably acceptable to Association, the identification of the person who should be treated as the Member with respect to the Home for all Association purposes. If Robert Smith and Laura Jones, as Trustees, hold title to a Home, either trustee may exercise the Voting Interest associated with such Home. In the event of a conflict between trustees, the Voting Interest for the Home in question cannot be exercised. In the event that any other form of trust ownership is presented to Association, the decision of the Board as to who may exercise the Voting Interest with respect to any Home shall be final. Association shall have no obligation to obtain an attorney opinion letter in making its decision, which may be made on any reasonable basis whatsoever.

3.1.3. Corporations. If a Home is owned by a corporation, the corporation shall designate a person, an officer, employee, or agent who shall be treated as the Member who can exercise the Voting Interest associated with such Home.

3.1.4. Partnerships. If a Home is owned by a limited partnership, any one of the general partners may exercise the Voting Interest associated with such Home. By way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such limited partnership. If a Home is owned by a general partnership, any one of the general

partners may exercise the Voting Interest associated with such Home. In the event of a conflict among general partners entitled to exercise a Voting Interest, the Voting Interest for such Home cannot be exercised.

3.1.5. Multiple Individuals. If a Home is owned by more than one individual, any one of such individuals may exercise the Voting Interest with respect to such Home. In the event that there is a conflict among such individuals, the Voting Interest for such Home cannot be exercised.

3.1.6. Liability of Association. Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which Association, in good faith, believes to be genuine; may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as Association acts in good faith, Association shall have no liability or obligation with respect to the exercise of Voting Interests, and no election shall be invalidated (in the absence of fraud) on the basis that Association permitted or denied any person the right to exercise a Voting Interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

3.2. Annual Meetings. The annual meeting of the Members (the "Annual Members Meeting") shall be held at least once each calendar year on a date, at a time, and at a place to be determined by the Board.

3.3. Special Meetings of the Members. Special meetings of the Members (a "Special Members Meeting") may be called by the President, a majority of the Board, or upon written request of ten percent (10%) of the Voting Interests of the Members. The business to be conducted at a Special Members Meeting shall be limited to the extent required by Florida Statutes.

3.4. Notice of Members Meetings. Written notice of each Members meeting shall be given by, or at the direction of, any officer of the Board or any management company retained by Association. A copy of the notice shall be mailed to each Member entitled to vote, postage prepaid, not less than ten (10) days before the meeting (provided, however, in the case of an emergency, two (2) days' notice will be deemed sufficient). The notice shall be addressed to the member's address last appearing on the books of Association. The notice shall specify the place, day, and hour of the meeting and, in the case of a Special Members Meeting, the purpose of the meeting. Alternatively, and to the extent not prohibited by the Florida Statutes, the Board may adopt from time to time, other procedures for giving notice to the Members of the Annual Members Meeting or a Special Members Meeting. By way of example, and not of limitation, such notice may be included in a newsletter sent to each Member by the Club.

3.5. Quorum of Members. Until the Community Completion Date, a quorum shall be established by Developer's presence at any meeting. From and after the Community Completion Date, a quorum shall be established by the presence, in person or by proxy, of the Members entitled

to cast twenty percent (20%) of the Voting Interests, except as otherwise provided in the Articles, the Declaration, or these By-Laws. Notwithstanding any provision herein to the contrary, in the event that technology permits Members to participate in Members Meetings and vote on matters electronically, then the Board shall have authority, without the joinder of any other party, to revise this provision to establish appropriate quorum requirements.

3.6. Adjournment of Members Meetings. If, however, a quorum shall not be present at any Members meeting, the meeting may be adjourned as provided in the Florida Statutes. In the absence of a provision in the Florida Statutes, the Members present shall have power to adjourn the meeting and reschedule it on another date.

3.7. Action of Members. Decisions that require a vote of the Members must be made by a concurrence of a majority of the Voting Interests present in person or by proxy, represented at a meeting at which a quorum has been obtained unless provided otherwise in the Declaration, the Articles, or these By-Laws.

3.8. Proxies. At all meetings, Members may vote their Voting Interests in person or by proxy. All proxies shall comply with the provisions of Section 617.306(6) of the Florida Statutes, as amended from time to time, be in writing, and be filed with the Secretary at, or prior to, the meeting. Every proxy shall be revocable prior to the meeting for which it is given.

4. Board of Directors.

4.1. Number. The affairs of Association shall be managed by a Board consisting of three (3) nor more than nine (9) persons. Board members appointed by Developer need not be Members of Association. Board members elected by the other Members must be Members of Association.

4.2. Term of Office. The election of Directors shall take place after Developer no longer has the authority to appoint the Board and shall take place at the Annual Members Meeting or on the Turnover Date. Directors shall be elected for a term ending upon the election of new Directors at the following Annual Members Meeting (except that the term of the Board appointed by the Developer shall extend until the date designated by Developer, or until the Turnover Date).

4.3. Removal. Any vacancy created by the resignation or removal of a Board member appointed by Developer may be replaced by Developer. Developer may replace or remove any Board member appointed by Developer in Developer's sole and absolute discretion. In the event of death or resignation of a Director elected by the Members, the remaining Directors may fill such vacancy. Directors may be removed with or without cause by the vote or agreement in writing of Members holding a majority of the Voting Interests.

4.4. Compensation. No Director shall receive compensation for any service rendered as a Director to Association; provided, however, any Director may be reimbursed for actual expenses incurred as a Director.

4.5. Action Taken Without a Meeting. Except to the extent prohibited by law, the Board shall have the right to take any action without a meeting by obtaining the written approval of the required number of Directors. Any action so approved shall have the same effect as though taken at a meeting of Directors.

4.6. Appointment and Election of Directors. Until the Turnover Date, the Developer shall have the unrestricted power to appoint all Directors of Association. From and after the Turnover Date, or such earlier date determined by Developer in its sole and absolute discretion, the Members shall elect all Directors of Association at or in conjunction with the Annual Members Meeting of the Members.

4.7. Election. Election to the Board shall be by secret written ballot, unless unanimously waived by all Members present. The persons receiving the largest numbers of votes shall be elected. Cumulative voting is not permitted.

5. Meeting of Directors.

5.1. Regular Meetings. Regular meetings of the Board shall be held on a schedule adopted by the Board from time to time. Meetings shall be held at such place and hour as may be fixed, from time to time, by resolution of the Board.

5.2. Special Meetings. Special meetings of the Board shall be held when called by the President, or by any two (2) Directors. Each Director shall be given not less than two (2) days' notice except in the event of an emergency. Notice may be waived. Attendance shall be a waiver of notice. Telephone conference meetings are permitted.

5.3. Emergencies. In the event of an emergency involving immediate danger of injury or death to any person or damage to property, if a meeting of the Board cannot be immediately convened to determine a course of action, the President or, in his absence, any other officer or director, shall be authorized to take such action on behalf of Association as shall be reasonably required to appropriately respond to the emergency situation, including the expenditure of Association funds in the minimum amount as may be reasonably required under the circumstances. The authority of officers to act in accordance herewith shall remain in effect until the first to occur of the resolution of the emergency situation or a meeting of the Board convened to act in response thereto.

5.4. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting, at which a quorum is present, or in writing in lieu thereof, shall be action of the Board.

5.5. Open Meetings. Meetings of the Board shall be open to all Members.

5.6. Voting. Board Members shall cast votes in the manner provided in the Florida Statutes. In the absence of a statutory provision, the Board shall establish the manner in which votes shall be cast.

5.7. Notice of Board Meetings. Notices of meetings of the Board shall be posted in a conspicuous place on the Common Areas and/or in the Club at least 48 hours in advance, except in an event of an emergency. Alternatively, notice may be given to Members in any other manner provided by Florida Statute. By way of example, and not of limitation, notice may be given in any Club newsletter distributed to the Members. For the purposes of giving notice, the area for notices to be posted within the Club shall be deemed a conspicuous place. Notices of any meetings of the Board at which Assessments against Homes are to be established shall specifically contain a statement that Assessments shall be considered and a statement of the nature of such Assessments.

6. Powers and Duties of the Board.

6.1. Powers. The Board shall, subject to the limitations and reservations set forth in the Declaration and Articles, have the powers reasonably necessary to manage, operate, maintain and discharge the duties of Association, including, but not limited to, the power to cause Association to do the following:

6.1.1. General. Exercise all powers, duties and authority vested in or delegated to Association by law and in these By-Laws, the Articles, the Declaration and the Club Covenants, including, without limitation, adopt budgets, levy Assessments, enter into contracts with Service Providers for Telecommunication Services, collect and remit the Club Charges and, by majority vote of the Board, without the consent of any Owner or any other party, exercise the Association's option to acquire the Club.

6.1.2. Rules and Regulations. Adopt, publish, promulgate and enforce rules and regulations governing the use of Baywinds by the Members, tenants and their guests and invitees, and to establish penalties and/or fines for the infraction thereof subject only to the requirements of the Florida Statutes, if any.

6.1.3. Enforcement. Suspend the right of use of the Common Areas (other than for vehicular and pedestrian ingress and egress and for utilities) of a Member during any period in which such Member shall be in default in the payment of any Assessment or charge levied, or collected, by Association.

6.1.4. Declare Vacancies. Declare the office of a member of the Board to be vacant in the event such Member shall be absent from three (3) consecutive regular Board meetings.

6.1.5. Hire Employees. Employ, on behalf of Association, managers, independent contractors, or such other employees as it deems necessary, to prescribe their duties and delegate to such manager, contractor, etc., any or all of the duties and functions of Association and/or its officers.

6.1.6. Common Areas. Acquire, sell, operate, lease, manage and otherwise trade and deal with property, real and personal, including the Common Areas, as provided in the Declaration, and with any other matters involving Association or its Members, on behalf of Association or the discharge of its duties, as may be necessary or convenient for the operation and management of Association and in accomplishing the purposes set forth in the Declaration and the Club Covenants.

6.1.7. Granting of Interest. Grant licenses, easements, permits, leases, or privileges to any individual or entity, which affect Common Areas and to alter, add to, relocate or improve the Common Areas as provided in the Declaration.

6.1.8. Financial Reports. Prepare all financial reports required by the Florida Statutes.

6.2. Vote. The Board shall exercise all powers so granted except where the Declaration, Articles or these By-Laws specifically require a vote of the Members.

6.3. Limitations. Until the Turnover Date, Developer shall have and is hereby granted a right to disapprove or veto any such action, policy, or program proposed or authorized by Association, the Board, the ACC, any committee of Association, or the vote of the Members. This right may be exercised by Developer at any time within ten (10) days following a meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to veto proposed actions but shall not extend to the requiring of any action or counteraction on behalf of Association, the Board, the ACC or any committee of the Association.

7. Obligations of Association. Association, subject to the provisions of the Declaration, Articles, these By-Laws and the Club Covenants, shall discharge such duties as necessary to operate Association pursuant to the Declaration, including, but not limited to, the following:

7.1. Official Records. Maintain and make available all Official Records.

7.2. Supervision. Supervise all officers, agents and employees of Association, and to see that their duties are properly performed.

7.3. Assessments and Fines. Fix and collect the amount of the Assessments and fines; take all necessary legal action; and pay, or cause to be paid, all obligations of Association or where Association has agreed to do so, of the Members.

7.4. Enforcement. Enforce the provisions of the Declaration, Articles, these By-Laws, Rules and Regulations and, when appropriate, the Club Covenants.

8. Officers and Their Duties.

8.1. Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer.

8.2. **Election of Officers.** Except as set forth below, the election of officers shall be by the Board and shall take place at the first meeting of the Board following each Annual Members Meeting.

8.3. **Term.** The officers named in the Articles shall serve until their replacement by the Board. The officers of Association shall hold office until their successors are appointed or elected unless such officer shall sooner resign, be removed, or otherwise disqualified to serve.

8.4. **Special Appointment.** The Board may elect such other officers as the affairs of Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5. **Resignation and Removal.** Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

8.6. **Vacancies.** A vacancy in any office shall be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the replaced officer. Section 7.

8.7. **Multiple Offices.** The office of President and Vice-President shall not be held by the same person. All other offices may be held by the same person.

8.8. **Duties.** The duties of the officers are as follows:

8.8.1. **President.** The President shall preside at all meetings of Association and Board, sign all leases, mortgages, deeds and other written instruments and perform such other duties as may be required by the Board. The President shall be a member of the Board.

8.8.2. **Vice President.** The Vice President shall act in the place and stead of the President in the event of the absence, inability or refusal to act of the President, and perform such other duties as may be required by the Board.

8.8.3. **Secretary.** The Secretary shall record the votes and keep the Minutes of all meetings and proceedings of Association and the Board; keep the corporate seal of Association and affix it on all papers required to be sealed; serve notice of meetings of the Board and of Association; keep appropriate current records showing the names of the Members of Association together with their addresses; and perform such other duties as required by the Board.

8.8.4. **Treasurer.** The Treasurer shall cause to be received and deposited in appropriate bank accounts all monies of Association and shall disburse such funds as directed by the Board; sign, or cause to be signed, all checks, and promissory notes of Association; cause to be kept proper books of account and accounting records required pursuant to the provisions of Section

617.303 of the Florida Statutes cause to be prepared in accordance with generally accepted accounting principles all financial reports required by the Florida Statutes; and perform such other duties as required by the Board.

9. Committees.

9.1. General. The Board may appoint such committees as deemed appropriate. The Board may fill any vacancies on all committees.

9.2. ACC. Developer shall have the sole right to appoint the members of the ACC until the Turnover Date. Upon expiration of the right of Developer to appoint members of the ACC, the Board shall appoint the members of the ACC. As provided under the Declaration, Association shall have the authority and standing to seek enforcement in courts of competent jurisdiction any decisions of the ACC.

10. Records. The official records of Association shall be available for inspection by any Member at the principal office of Association. Copies may be purchased, by a Member, at a reasonable cost.

11. Corporate Seal. Association shall have an impression seal in circular form.

12. Amendments.

12.1. General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to these By-Laws shall affect the rights of Developer or Club Owner unless such amendment receives the prior written consent of Developer or Club Owner, as applicable, which may be withheld for any reason whatsoever. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to these By-Laws, then the prior written consent of such entity or agency must also be obtained. No amendment shall be effective until it is recorded in the Public Records.

12.2. Amendments Prior to the Turnover Date. Prior to the Turnover Date, Developer shall have the right to amend these By-Laws as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Developer's right to amend under this provision is to be construed as broadly as possible. In the event that Association shall desire to amend these By-Laws prior to the Turnover Date, Association must first obtain Developer's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Developer may be adopted by Association pursuant to the requirements for amendments from and after the Turnover Date. Thereafter, Developer shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

12.3. Amendments From and After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, these By-Laws may be amended

with the approval of (i) two-thirds (66 2/3%) of the Board; and (ii) seventy-five percent (75%) of all of the votes in Association. Notwithstanding the foregoing, these By-Laws may be amended after the Turnover Date by two-thirds percent (66 2/3%) of the Board acting alone to change the number of directors on the Board. Such change shall not require the approval of the Members. Any change in the number of directors shall not take effect until the next Annual Members Meeting.

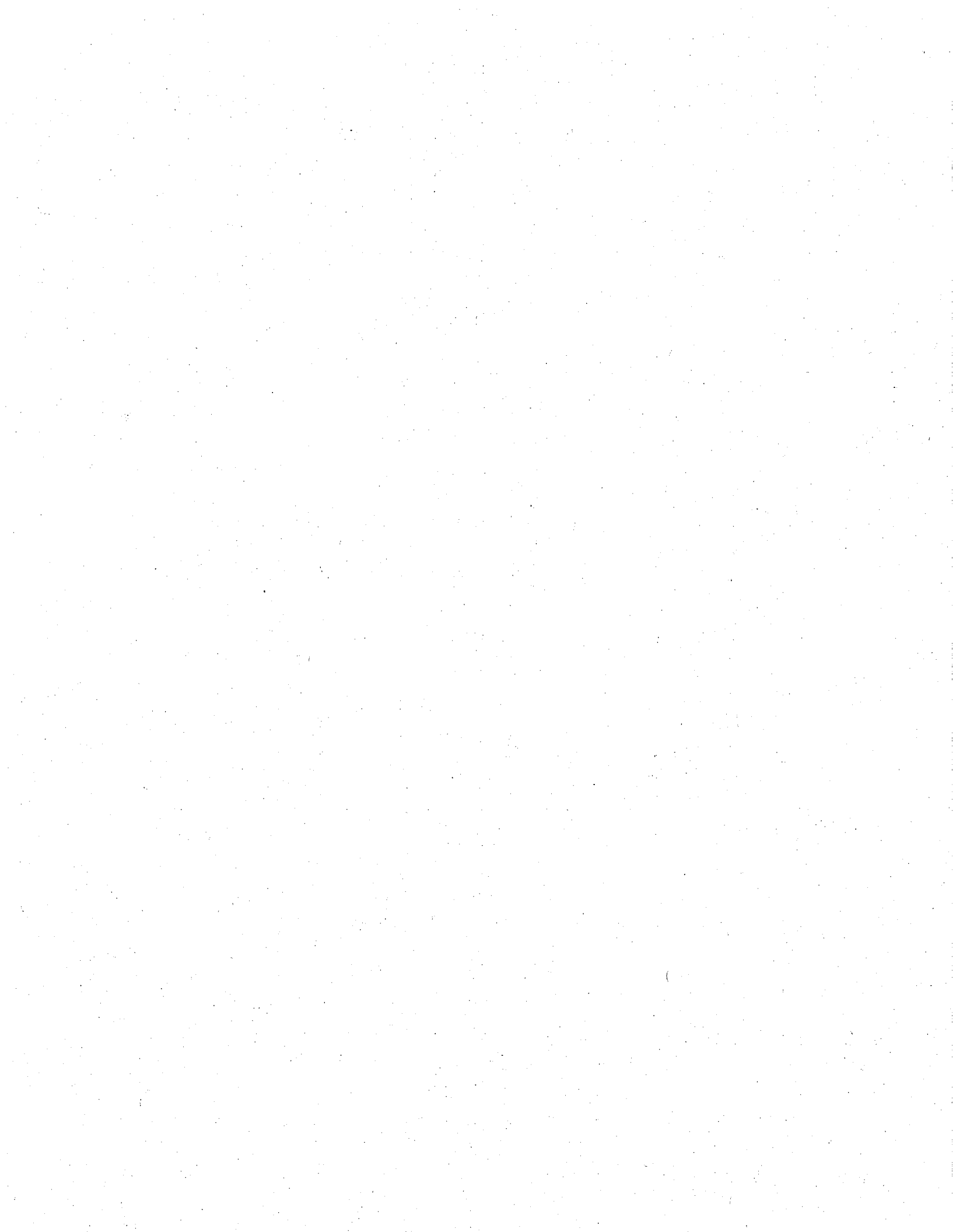
13. **Conflict.** In the case of any conflict between the Articles and these By-Laws, the Articles shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

14. **Fiscal Year.** The first fiscal year shall begin on the date of incorporation and end on December 31 of that year. Thereafter, the fiscal year of Association shall begin on the first day of January and end on the 31st day of December of every year.

15. **Miscellaneous.**

15.1. **Florida Statutes.** Whenever these By-Laws refers to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date these By-Laws are recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

15.2. **Severability.** Invalidation of any of the provisions of these By-Laws by judgment or court order shall in no way affect any other provision, and the remainder of these By-Laws shall remain in full force and effect.



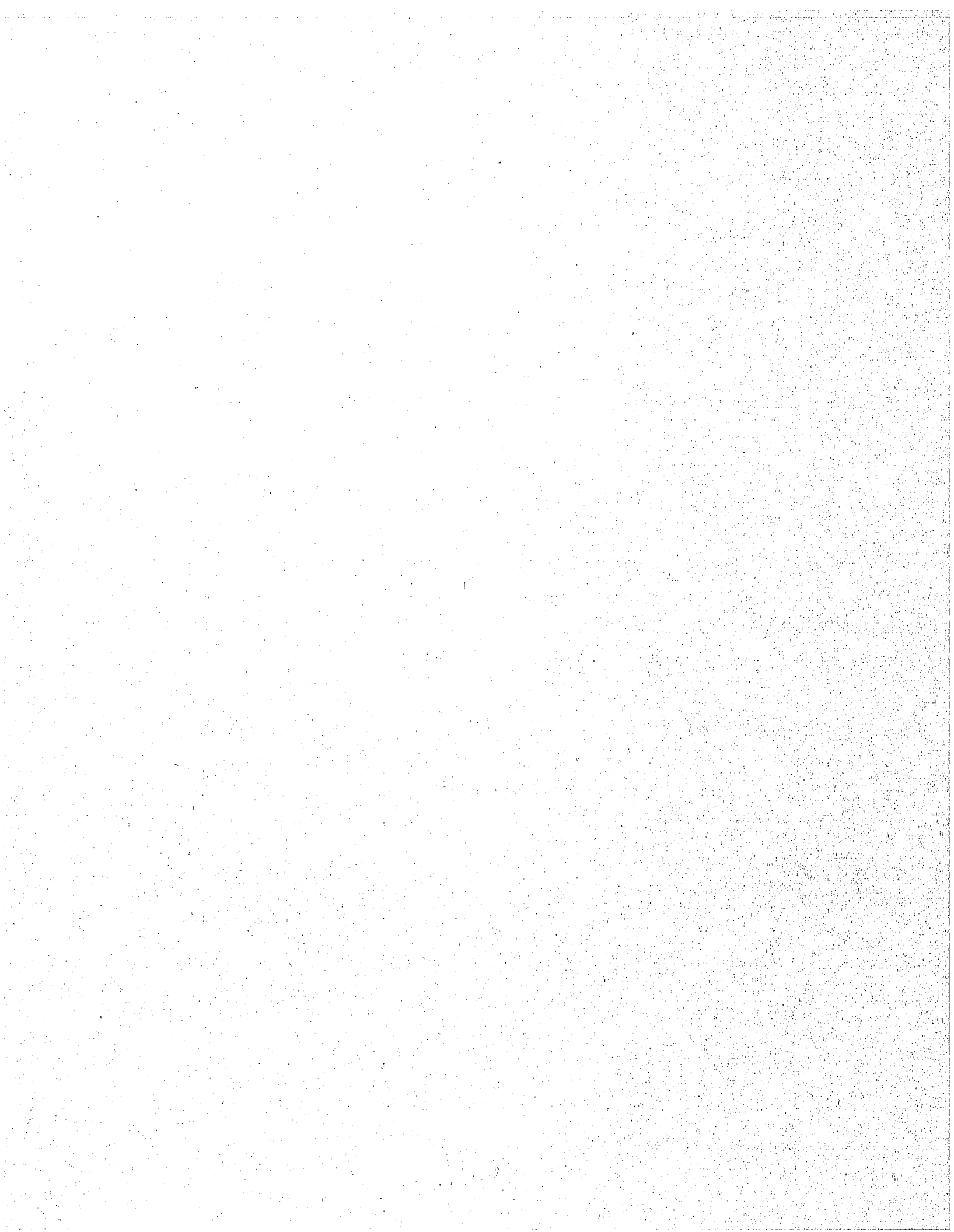


EXHIBIT 4

CLUB COVENANTS

THIS INSTRUMENT PREPARED BY:

PATRICIA KIMBALL FLETCHER, ESQ.
Zack Kosnitzky, P.A.
NationsBank Tower, Suite 2800
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BAYWINDS CLUB COVENANTS
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BAYWINDS CLUB COVENANTS

LENNAR LAND PARTNERS, a Florida general partnership ("Lennar"), and Lennar Homes, Inc., a Florida corporation ("LHI") are presently the owners of the real property described on Exhibit A attached hereto and made a part hereof ("Baywinds"). Lennar and LHI hereby declare that the real property comprising Baywinds shall be subject to the following restrictions, covenants, terms and conditions set forth in these Club Covenants so that the residents of Baywinds shall have access and the use of certain club facilities:

1. **Definitions.** In addition to the terms defined elsewhere herein, the following terms shall have the meanings specified below:

"Applicable Rate" shall mean two percent (2%) above the Prime Rate.

"Assessments" shall have the meaning set forth in the Declaration.

"Association" shall mean the Baywinds Community Association, Inc., its successors and assigns.

"Baywinds" shall have the meaning set forth in the Declaration. Baywinds presently includes the real property described on Exhibit A; however, Developer has reserved the right to withdraw property from, or add property to, Baywinds, so Baywinds may include less or more Homes than originally anticipated.

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

"Budget" shall have the meaning set forth in Section 8 hereof.

"Builder" shall mean any person or entity that purchases a Parcel from Developer for the purpose of constructing one or more Homes.

"Club" shall mean the Baywinds Club and all facilities constructed thereon subject to additions and deletions made by Club Owner from time to time.

"Club Charges" shall mean the charges related to the Club to be paid by the Owners pursuant to the provisions of these Club Covenants and the Declaration, including, without limitation, the Club Fee and each Owner's pro rata share of Club Operating Costs.

"Club Covenants" shall mean these Baywinds Club Covenants, together with all amendments and modifications hereto.

"Club Facilities" shall mean the actual facilities, improvements and personal property which Club Owner shall actually have constructed and/or made available to Owners pursuant to these Club Covenants. The Club Facilities are contemplated to consist of a health/fitness facility, a swimming pool and related amenities together with such equipment and personalty as Club Owner determines in its sole discretion. THE CLUB FACILITIES ARE SUBJECT TO CHANGE AT ANY TIME.

"Club Fee" shall mean the fee to be paid to Club Owner by each Owner pursuant to the provisions of Section 6.2 hereof.

"Club Manager" shall mean the entity operating and managing the Club, at any time. Club Owner and/or Association may be Club Manager as provided in these Club Covenants.

"Club Operating Costs" shall mean all costs (as such term is used in its broadest sense) of owning (including Club Owner's debt service), operating, managing, maintaining, insuring the Club, whether direct or indirect including, but not limited to, trash collection, utility charges, maintenance, legal fees of Club Owner relative to Club

business, operations, and/or governing documents, cost of supervision, management fees, reserves, repairs, replacement, refurbishments, payroll and payroll costs, insurance, working capital, ad valorem or other taxes (excluding income taxes of Club Owner), assessments, costs, expenses, levies and charges of any nature which may be levied, imposed or assessed against, or in connection with, the Club. By way of example, and not as a limitation, the following expenses shall be included within Club Operating Costs: liability, casualty and business interruption insurance (with such deductibles as Club Owner deems appropriate; real property taxes, personal property taxes and taxing and community development district assessments; roof repair and replacement; and all other costs associated with changing or enhancing Club Facilities after initial construction. Club Operating Costs shall not include replacement of the basic building shell (other than roof repair and replacement) and the initial cost of construction of the Club Facilities.

"Club Owner" shall mean the owner of the real property comprising the Club and any of its designees, successors and assigns who receive a written assignment of all or some of the rights of Club Owner hereunder. Such assignment need not be recorded in the Public Records in order to be effective. In the event of such a partial assignment, the assignee shall not be deemed Club Owner but may exercise such rights of Club Owner specifically assigned to it. Any such assignment may be made on a non-exclusive basis. At this time, Lennar is Club Owner. Club Owner may change from time to time (e.g., Lennar may sell the Club or transfer ownership to another affiliate). Notwithstanding that the Club Owner and the Developer may be the same party, affiliates or related parties from time to time, each Owner acknowledges that Club Owner and Developer shall not be considered being one and the same party, and neither of them shall be considered the agent or partner of the other. At all times, Club Owner and Developer shall be considered separate and viewed in their separate capacities. No act or failure to act by Developer shall at any time be considered an act of Club Owner and shall not serve as the basis for any excuse, justification, waiver or indulgence to the Owners with regard to their prompt, full, complete and continuous performance of their obligations and covenants hereunder.

"Club Property" shall mean the real property described as Exhibit B attached hereto or such other real property identified as Club Property by Club Owner from time to time by written amendment to these Club Covenants.

"Club Purchase Price" shall mean the sum of the following: (i) the amount resulting from the application of the capitalization rate of ten percent (10%) applied to the total Club Fees payable by all Owners to Club Owner on the latter of the Option Date or the date upon which Association obtains title to the Club Property pursuant to the exercise of the Purchase Option; plus (ii) all of the costs to effect the transfer, including, without limitation, the cost of the owner's title insurance policy, all documentary stamp taxes and surtaxes, and the costs of preparing all of the closing documents.

"Common Areas" shall have the meaning set forth in the Declaration.

"Community Completion Date" shall have the meaning set forth in the Declaration.

"Declaration" shall mean that certain Declaration of Restrictions and Covenants for the Baywinds Community, as such Declaration shall be amended or modified from time to time, which has or will be recorded in the Public Records.

"Deed" shall mean any deed conveying any portion of Baywinds or any interest therein and any other instrument conveying or transferring or assigning the interest of an Owner to another including, without limitation, a deed to a Home, but excluding a mortgage on a Home.

"Default Rate" shall mean the lesser of eighteen percent (18%) or the highest rate permitted by law.

"Developer" shall have the meaning set forth in the Declaration. At this time Developer is Lennar.

"Home" shall have the meaning set forth in the Declaration. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty, destruction or remodeling)

shall not affect the status of a Home, or the obligation of Owner to pay Club Charges with respect to such Home. The term "Home" includes any interest in land, improvements, or other property appurtenant to the Home.

"Lender" shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Home or (ii) Developer and its affiliates, to the extent Developer or its affiliates finances the purchase of a Home initially or by assignment of an existing mortgage.

"Lennar" shall mean Lennar Land Partners, a Florida general partnership and its successors or assigns. Although not obligated to do so, Lennar may identify its successors or assigns by an amendment to these Club Covenants.

"Maturity Date" shall mean 26 years from the date the Note is executed.

"Member" shall mean every Owner who resides in the Home (other than an Owner who has leased his or her Home to Tenant) and Tenant; provided, however, for the purposes of Membership, there shall be a maximum of two (2) residents (Owner or Tenant) per Home who can be a Member. A person shall continue to be a Member until he or she ceases to be an Owner, or ceases to be a Tenant legally entitled to possession of a rental Home. Each Member shall be obligated to provide Club Owner with proof of residency upon Club Owner's request for the same.

"Note" shall have the meaning set forth in Section 5.3.2.1 hereof.

"Option Notice" shall have the meaning set forth in Section 5.3 hereof.

"Owner" shall mean the record owner (whether one or more persons or entities) of fee simple title to any Home. The term "Owner" shall not include Developer, Club Owner, a Builder or a Lender. Once an Owner leases the Home, only the Tenant shall be entitled to exercise the privileges of a Member with respect to such Home; however, Club Owner and Tenant shall be jointly and severally liable for all Club Charges.

"Parcel" shall mean a platted or unplatted lot, tract, unit or other subdivision of real property upon which a Home has been, or will be, constructed. Once improved, the term Parcel shall include all improvements thereon and appurtenances thereto. The term Parcel, as used herein, may include more than one Home.

"Parking Areas" shall mean all areas designated for parking within the Club Facilities.

"Prime Rate" shall mean the prime rate (or base rate) reported in the "Money Rates" column or section of The Wall Street Journal published on the second Business Day of the month preceding the month in which a payment of interest and/or principal is due under the Note, as having been the rate in effect for corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank) as of the first calendar day of such month for which such rate is published. In the event The Wall Street Journal ceases publication of the prime rate, then "Prime Rate" shall mean the prime rate (or base rate) announced by Citibank, N.A., New York, New York (whether or not such rate has actually been charged by such bank) in effect on the first calendar day of such month. In the event such bank discontinues the practice of announcing the "prime rate", the term "Prime Rate" shall mean the highest rate charged by such bank as on the first calendar day of such month on short-term, unsecured loans to its most creditworthy large corporate borrowers. In the event The Wall Street Journal (1) publishes more than one "Prime Rate", the higher or highest of such rates shall apply, or (2) publishes a retraction or correction of such rate, the rate reported in such retraction or correction shall apply.

"Public Records" shall mean the Public Records of Palm Beach County, Florida.

"Purchase Option" shall have the meaning set forth in Section 5.3. hereof.

"Rules and Regulations" shall have the meaning set forth in Section 14.8 hereof.

"Special Use Fees" shall have the meaning set forth in Section 6.9 hereof.

"Tenant" shall mean the lessee named in any written lease respecting a Home who is legally entitled to possession of any rental Home within Baywinds. If a lease names more than one person as Tenant, such Tenants shall designate to Club Owner in writing themselves as a Tenant for membership purposes (a maximum of two (2) persons can be Members). An Owner and Tenant shall be jointly and severally liable for all Club Charges.

"Title Documents" shall have the meaning set forth in the Declaration.

All other initially capitalized terms not defined herein, shall have the meanings set forth in the Declaration.

2. Benefits of Club. Association and each Owner, by acceptance of title to a Home, ratify and confirm these Club Covenants and agree as follows:

2.1. Term. The terms of these Club Covenants shall be covenants running with Baywinds in perpetuity.

2.2. Covenant Running with the Land. Every portion of Baywinds which can be improved with a Home shall be burdened with the payment of Club Charges. These Club Covenants including, without limitation, the obligation to pay Club Charges, shall run with the land. Every Owner, by acceptance of a Deed to any Home, shall automatically assume and agree to pay all Club Charges which shall be due and payable as of the date of such Deed and which shall become due and payable thereafter on account of the membership in the Club pertaining to the property belonging to such Owner.

2.3. Obligation to Reference in Deeds. The grantor of any portion of Baywinds hereby agrees to include in any Deed a statement that such Deed is subject to the terms of these Club Covenants.

2.4. Value. By acceptance of a Deed, each grantee of any portion of Baywinds upon which a Home may be (or has been) constructed hereby joins in the execution of these Club Covenants for the purpose of binding himself/herself, his/her successors in title and assigns to the provisions hereof and expressly acknowledges that the automatic membership in the Club granted to Owners and Tenants renders ownership of Baywinds and any part thereof more valuable than it would be otherwise.

2.5. Material Consideration. All persons who shall become Owners of any portion of Baywinds acknowledge that the provisions and enforceability of these Club Covenants were a material consideration in the initial conveyance by Developer of such real property to the Owner (or his/her predecessor in title) and that Developer would not have made such conveyance had these Club Covenants not been included and enforceable as provided for herein. Each Owner acknowledges that Club Owner is initially investing substantial sums of money and time in developing the Club Facilities. No Owner shall object to Club Owner receiving a pecuniary benefit from the Club so long as each Owner does not pay Club Fees in excess of the amounts provided herein.

2.6. Best Interests. It is in the best interest of each Owner, for Baywinds as a whole, and for property values therein, to provide for the Club to be located within Baywinds.

2.7. Product Purchased. There were significant other housing opportunities available to each Owner in the general location of Baywinds. The Home, and rights to utilize the Club, were material in each Owner's decision to purchase a Home in Baywinds and were, for the purposes of these Club Covenants, a "single product." Each Owner understands that the Club is an integral part of Baywinds.

2.8. Disclosure. Full disclosure of the nature of the Club and obligations associated therewith was made to each Owner prior to that Owner executing a contract to purchase a Home and each Owner has, or was afforded the opportunity to, consult with an attorney.

2.9. Non-Exclusive License. The provisions of these Club Covenants do not grant any ownership rights in the Club in favor of Association or Members but, rather, grant a non-exclusive license to use the Club subject to full compliance with all obligations imposed by these Club Covenants.

3. Club Facilities.

3.1. Club Property. Club Owner presently owns all of the real property comprising Baywinds, including the Club Property. The Club Property may be expanded to include additional property in Club Owner's sole and absolute discretion. Likewise, Club Owner may elect to remove portions of real property from the definition of Club Property by amendment to these Club Covenants; provided, however, the Club Property shall always include a swimming pool and related facilities. Such additions and deletions, while not causing an increase or decrease in the Club Fees payable with respect to each Home, may cause an increase or decrease in Club Operating Costs.

3.2. Club Facilities. Club Owner intends to construct the Club Facilities on the Club Property which will be and shall remain the property of Club Owner, subject only to the provisions hereof. Club Owner has the right to unilaterally, and without the joinder of any party whatsoever, add to, alter, modify and amend the Club Facilities at any time. Such alterations, modifications and amendments may cause an increase or decrease in Club Operating Costs.

3.3. Construction of the Club. Club Owner will construct the Club Facilities at its sole cost and expense. Club Owner shall be the sole judge as to the plans, size, design, location, completion, schedule, materials, equipment, size, and contents of the Club Facilities. Club Owner shall have the unequivocal right to:

3.3.1. develop, construct and reconstruct, in whole or in part, the Club and related improvements within Baywinds, and make any additions, alterations, improvements, or changes thereto;

3.3.2. without the payment of rent and without payment of utilities or any other part of the Club Operating Costs, maintain leasing and/or sales offices (for sales and resales of Homes), general offices, management office(s), and construction operations on the Club Property including, without limitation, displays, counters, meeting rooms, and facilities for the sales and re-sales of Homes;

3.3.3. place, erect, and/or construct portable, temporary, or accessory buildings or structures upon the Club Property for sales, management, construction storage, or other purposes;

3.3.4. temporarily deposit, dump or accumulate materials, trash, refuse and rubbish on the Club Property in connection with the development or construction of any of the Club or any improvements located within Baywinds;

3.3.5. post, display, inscribe or affix to the exterior of the Club and the Club Property, signs and other materials used in developing, constructing, selling, or promoting the sale of portions of Baywinds, including, without limitation, the sale of Parcels and Homes subject only to the Title Documents;

3.3.6. conduct whatever commercial activities within the Club deemed necessary, profitable and/or appropriate by Club Owner;

3.3.7. develop, operate and maintain the Club as deemed necessary, in its sole and absolute discretion;

3.3.8. excavate fill from any lakes or waterways within and/or contiguous to the Club by dredge or dragline, store fill within the Club Property, and remove and/or sell excess fill; and grow or store plants and trees within, or contiguous to, the Club Property and use and/or sell excess plants and trees; and

3.3.9. all activities which, in the sole opinion of Club Owner, are necessary for the development and sale of the Club or any lands or improvements therein.

3.4. **Changes.** Club Owner reserves the absolute right to, from time to time, alter or change the Club, including construction of additional Club Facilities and/or the removal or modification thereof, at any time.

3.5. **Commercial Space.** Club Owner anticipates that portions of the Club Facilities may include a sales office, management office, retail space and/or other commercial space as Club Owner may deem appropriate in Club Owner's sole and absolute discretion. Club Owner may permit Members to access to any commercial facilities at Club Owner's sole and absolute discretion. Club Owner may grant leases, franchises, licenses or concessions to commercial concerns on all or part of the Club. If a lease, franchise, license or concession agreement permits continuing use of the Club Facilities by any one other than Club Owner or Members, then Club Owner shall require such other user(s) to pay a fair and reasonable share of the Club Operating Costs as determined by Club Owner in its sole and absolute discretion. Club Owner shall have no duty to account for any rents, fees or payments from third parties for the right to occupy and/or lease such commercial space; all of such rents, fees and payments, if any, shall be the sole property of Club Owner and shall not offset or reduce the Club Charges payable by Owners.

4. **Persons Entitled to Use the Club.**

4.1. **Rights of Members.** Each Member and his or her guest shall have such non-exclusive rights and privileges as shall from time to time be granted by Club Owner but these rights and privileges shall always include the following:

a. Use of any room or facility within the Club (which is not being used as an office, management office, or sales area) upon the payment of the established fees and costs thereof, subject to available capacity;

b. Use of the fitness center and swimming pool;

c. The right to participate in and attend all social events for Members (unless an event is limited to a specific interest group or organization authorized by Club Owner) upon the payment of the established fees and costs thereof, if any, and subject to the available capacity of the event.

If a Home is owned by a corporation, trust or other legal entity, or is owned by more than one family, then the Owner(s) collectively shall designate the person who will be the Member of the Club with respect to such Home. Members shall have no right to access the commercial space comprising part of the Club Facilities, or portions of the Club Property leased or licensed to third parties or Members, except as and when permitted by Club Owner.

4.2. **Use by Persons Other than Owners and Tenants.** Club Owner has the right at any and all times, and from time to time, to make the Club available to individuals, persons, firms or corporations other than Members, as it deems appropriate. Club Owner shall establish the fees to be paid by any person using the Club who is not a Member. The granting of such rights shall not invalidate these Club Covenants, reduce or abate any Owner's obligations to pay Club Charges pursuant to these Club Covenants, or give any Owner the right to avoid any of the provisions of these Club Covenants.

4.3. **Subordination.** These Club Covenants and the rights of Members to use the Club are and shall be subject and subordinate to: (a) any ground lease, mortgage, deed of trust, or other encumbrance and any renewals, modifications and extensions thereof, now or hereafter placed on the Club by Club Owner; and (b) easements, restrictions, limitations, conditions of record, the Title Documents and other conditions of governmental authorities. This provision shall be self-operative. Association, in its own name and, as agent for all Owners, shall sign any documents confirming the subordination provided herein promptly upon request of Club Owner.

5. **Ownership of the Club.**

5.1. **Transfer of Club.** Club Owner may sell, encumber or convey the Club to any person or entity in its sole and absolute discretion at any time.

5.2. Option of Club Owner. In Club Owner's sole discretion, Club Owner shall have the option at any time to transfer the Club to Association so that it will be under the complete ownership of the Owners.

5.3. Association's Option to Purchase the Club. Five (5) years from the Community Completion Date (the "Option Date"), Association shall have the option to purchase the Club from Club Owner (the "Purchase Option") for the Club Purchase Price. This Purchase Option may be exercised by a decision of the majority of the Board of Association, without the joinder or approval of any Owner or any other person. Such Purchase Option shall be exercised by written notice (the "Option Notice") to Club Owner signed by a majority of the Board, which Option Notice shall be delivered by professional overnight courier to Club Owner at the following address (or such other address as may be designated by Club Owner from time to time by amendment to these Club Covenants):

Lennar Land Partners
c/o Lennar Homes, Inc.
8190 State Road 84
Davie, Florida 33324
Attention: Regional President--
South Florida Region

with copy to:

Lennar Land Partners
c/o Lennar Homes, Inc.
12230 Forest Hill Boulevard, #150
Wellington, Florida 33414
Attention: Division President

The Option Notice shall be irrevocable once signed by a majority of the Board. Club Owner shall convey the Club to Association within sixty (60) days' of Club Owner's receipt of the Option Notice.

5.3.1. Documentation of Transfer. At the time that the Club is transferred to Association, Club Owner shall be obligated to deliver the following: a special warranty deed for the real property comprising the Club, a special bill of sale respecting the personal property comprising the Club, an owner's title insurance policy respecting the Club, and all affidavits and other documents required by the title insurance company to effect the transfer of the Club. At the time of the transfer of the Club to Association as a result of the exercise of the Purchase Option, the Owners will no longer be obligated to pay the Club Fees, however, Association shall either (i) be pay the Club Purchase Price in cash or by Federal wire out of its own funds; or (ii) obtain financing with a third party lender, the costs thereof shall be Operating Costs of the Association; or (iii) if Association is unable to obtain third party financing, execute and deliver to Club Owner a purchase money note in the amount of the Club Purchase Price (the "Note"), a purchase money mortgage (the "Mortgage"), and a Security Agreement and UCC Financing Statements (state and local) and each Owner shall be obligated to pay his or her pro rata share of the Club Purchase Price and, if applicable, principal, interest and other amounts due in connection with such Note and Mortgage. The Club Purchase Price and, if applicable, the payments due pursuant to the Note and Mortgage, or payment due to a third party lender, shall be deemed part of the Operating Costs of Association, and part of the Assessments payable by the Owners.

5.3.2. Payment. If Association is unable to pay the Club Purchase Price in cash or by wire transfer out of its own funds or with a third party loan, Association shall notify Club Owner. If Club Owner determines that Association does not have adequate funds to pay the Purchase Price and no third party financing is available, then Association shall comply with the following prior to or upon transfer of the Club to Association:

5.3.2.1. Note.

5.3.2.1.1. Form. Association shall execute the Note. The Note shall be in the form used for commercial transactions of comparable size as determined by Club Owner in its sole and absolute discretion.

5.3.2.1.2. **Amount.** The amount of the Note shall be the Club Purchase Price.

5.3.2.1.3. **Terms.** From and after the date of the Note, Association shall pay to Club Owner monthly in arrears on the first day of each and every calendar month interest on the principal sum outstanding under the Note at the Applicable Rate, unless the Default Rate shall be applicable. In addition, Association shall pay a portion of the principal sum secured by the Note that will amortize the entire principal sum over the term of the loan, with the final payment of principal, and all accrued and unpaid interest, due on the Maturity Date. Association shall pay Club Owner a late charge of five percent (5%) of any periodic interest payment not received by Club Owner within ten (10) days after the installment is due. This late charge is to cover Club Owner's administrative costs in processing each late payment. During the period of any default under the terms of the Note, the Mortgage, or any other document securing the Note, the Default Rate shall be applicable to the entire indebtedness then outstanding under the Note. The Note may be prepaid in full or in part at any time without notice, premium, or penalty. All payments received by Club Owner, including any partial payments permitted hereunder, shall be applied as follows: first, to the payment of fees and other charges then due or payable hereunder or under the Mortgage or other documents securing the Note; second, to any late payment charges which remain unpaid; third, to the payment of interest; fourth, to accrued and unpaid interest; and fifth, to the reduction of the outstanding principal balance.

5.3.2.2. **Mortgage.** Association shall execute the Mortgage. The Mortgage shall be in the form used for commercial transactions of comparable size as determined by Club Owner in its sole and absolute discretion. It shall require that Association (i) escrow tax and insurance payments on a monthly basis with Club Owner in a non-interest bearing account; (ii) provide Club Owner with monthly and annual operating statements, annual financial statements, and other financial information (e.g., the Budget); (iii) maintain the Club in a first class condition; and (iv) insure the Club for full replacement value; and (v) provide rental insurance and liability insurance in such amounts necessary to fully protect the mortgagee under the Mortgage.

5.3.3. **Nature of Transfer.** The conveyance shall be subject to easements, restrictions, reservations, conditions, limitations and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, operation, maintenance and administration of the Club. Association shall, and does hereby, indemnify and hold Club Owner harmless on account thereof. Association shall be obligated to accept such conveyance without setoff, condition, or qualification of any nature. The Club, personal property and equipment thereon and appurtenances thereto shall be conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF BEING CONVEYED.

5.3.4. **Early Offer to Purchase by Association.** If Association wishes to exercise the Purchase Option prior to the Option Date, based upon a decision of the majority of the Board of the Association, the Board shall give notice to Club Owner in the manner specified in Section 5.3 above without the joinder or approval of any Owner or any other person, and within thirty (30) days of receipt thereof, Club Owner will inform the Board of the price which is acceptable to Club Owner as of the date of such notice, which price shall be set in Club Owner's sole discretion and may be different from the Club Purchase Price. If such price is acceptable to the Board, or if Club Owner and the Board negotiate a mutually acceptable price which a majority of the Board of the Association agrees to, the transfer of the Club and payment therefor shall proceed as otherwise provided in this Section 5 without the joinder or approval of any Owner or any other person. The agreed upon price shall be deemed the Club Purchase Price with respect to this Section 5. Club Owner shall have the right to refuse the early offer in its sole discretion.

5.4. Once Association becomes Club Owner pursuant to Sections 5.2 or 5.3 hereof, then such section shall be of no further force and effect.

6. **Club Charges.** In consideration of the construction and providing for use of the Club by the Owners, each Owner by acceptance of a deed to a Home shall be deemed to have specifically covenanted and agreed to pay all Club Charges which are set forth herein. Club Owner presently intends to collect Club Charges on a monthly basis but

reserves the right to change the payment period from time to time (e.g., to require payment on a quarterly basis). Notwithstanding the foregoing, Club Owner may require an Owner or all Owners to pay Club Charges on an annual or other basis, in advance, based on prior payment history or other financial concerns, in Club Owner's sole discretion.

6.1. **Club Operating Costs.** Each Owner agrees to pay and discharge, in a timely fashion when due, its pro rata portion (as hereinafter set forth) of the Club Operating Costs. The Owners shall collectively bear all expenses associated with the Club so that Club Owner shall receive the Club Fees without deduction of expenses or charges in respect of the Club. Commencing on the first day of the period covered by the annual budget, and until the adoption of the next annual budget, the Club Operating Costs shall be allocated so that each Owner shall pay his or her pro rata portion of Club Operating Costs based upon a fraction, the numerator of which is one (1) and the denominator of which is (i) the total number of Homes in Baywinds conveyed to Owners or (ii) any greater number determined by Club Owner from time to time. Club Owner, in its sole and absolute discretion, may change the denominator from time to time. Under no circumstances will the denominator be less than the number of Homes owned by Owners other than Developer as of September 30 of the prior fiscal year.

6.2. **Club Fee.** Each Owner of any Home within Baywinds shall pay in advance on the first day of each month (or other payment period designated by Club Owner), without setoff or deduction, to Club Owner, or its designee, the Club Fee (the "Club Fee") of:

\$24 Dollars per month until December 31, 2000;
\$24 Dollars per month from January 1, 2001 until December 31, 2001;
\$26 Dollars per month from January 1, 2002 until December 31, 2002;
\$28 Dollars per month from January 1, 2003 until December 31, 2003;
\$30 Dollars per month from January 1, 2004 until December 31, 2004;
\$32 Dollars per month from January 1, 2005 until December 31, 2005;
\$34 Dollars per month from January 1, 2006 until December 31, 2006;
\$36 Dollars per month from January 1, 2007 until December 31, 2007;
\$40 Dollars per month from January 1, 2008 until December 31, 2008;
\$44 Dollars per month from January 1, 2009 until December 31, 2009;
\$48 Dollars per month from January 1, 2010 until December 31, 2010;
\$52 Dollars per month from January 1, 2011 until December 31, 2011;
\$56 Dollars per month from January 1, 2012 until December 31, 2012.

Each year thereafter the monthly Club Fee shall increase by Four Dollars (\$4.00) per year. No Club Fee shall be payable at such time, if ever, as Association becomes Club Owner.

6.3. **Taxes.** In addition to the Club Fee, the Owner's prorata share of Club Operating Costs, Special Use Fees (if any) and additional Club Charges (if any), each Owner shall pay all applicable sales, use or similar taxes now or thereafter imposed on the Club Fee, Club Operating Costs, Special Use Fees (if any) and Club Charges (if any).

6.4. **Builders.** Builders shall have no membership rights relative to the Club. Upon conveyance of a Home from a Builder to an Owner, the Owner shall pay Club Charges on the Home owned by such Owner.

6.5. **Perpetual.** Each Owner's obligation to pay Club Charges shall be perpetual regardless of whether such Home is occupied, destroyed renovated, replaced, rebuilt or leased.

6.6. **Individual Homes (Single Family Residences).** Owners of individual Homes (whether attached or detached Homes) shall pay Club Charges for one membership per month per Home. If an Owner owns more than one Home, Club Charges are payable for each and every Home owned by such Owner.

6.7. **Excuse or Postponement.** Club Owner may excuse or postpone Club Charges in its sole and absolute discretion.

6.8. Club Owner's Obligation. Under no circumstances shall Club Owner or Developer be required to pay Club Charges. To the extent that Club Owner elects, in Club Owner's sole and absolute discretion, to base the annual budget on a number of Homes greater than those actually in existence within Baywinds, Club Owner agrees to pay the difference, if any, between actual Club Operating Costs and Club Charges paid by Owners, if any.

6.9. Special Use Fees. Club Owner shall have the right to establish from time to time, by resolution, rule or regulation, or by delegation to the Club Manager, specific charges, ticket, service and/or use fees and charges ("Special Use Fees"), for which one or more Owners (but less than all Owners) are subject, such as, costs of special services or facilities provided to a Owner relating to the special use of the Club or tickets for shows, special events, or performances held in the Club Facilities, which are paid initially by Club Owner. Special Use Fees shall be payable at such time or time(s) as determined by Club Owner.

6.10. Additional Club Charges. If an Owner, his or her guests, invitees, licensees, agents, servants or employees do anything which increases the cost of maintaining or operating the Club, or cause damage to any part of the Club, Club Owner may levy additional Club Charges against such Owner in the amount necessary to pay such increased cost or repair such damage.

6.11. Commencement of First Charges. The obligation to pay Club Charges, including, without limitation, the Club Fee, shall commence as to each Owner on the day of the conveyance of title of a Home to a Owner from Developer or a Builder. Notwithstanding the foregoing, no Owner shall be obligated to pay Club Charges until the first day of the calendar month upon which any portion of the Club Facilities can be used by Owners (e.g., upon issuance of a temporary Certificate of Occupancy for any structure forming part of the Club Facilities or completion of a swimming pool).

6.12. Time Is of Essence. Faithful payment of the sums due, and performance of the other obligations hereunder, at the times stated, shall be of the essence.

6.13. Obligation to Pay Real Estate Taxes and Other Expenses on Homes. Each Owner shall pay all taxes and obligations relating to his or her Home which if not paid, could become a lien against the Home which is superior to the lien for Club Charges created by these Club Covenants. Although a lien for Assessments payable to Association is inferior to the lien of Club Owner (regardless of when the lien for Assessments is filed in the Public Records), each Owner agrees to pay all Assessments when due. Upon failure of an Owner to pay the taxes, obligations and Assessments under/by required this Section, Club Owner may (but is not obligated to) pay the same and add the amount advanced to the Club Charges payable by such Owner.

6.14. Initial Budget. The initial budget prepared by Club Owner is not based on historical operating figures and is not a contractual statement or guaranty of actual Club Charges. It is not intended that any third party rely on any budget in electing to purchase a Home. The figures shown in the initial budget are based on good faith analysis; therefore, it is likely that the actual budget for the Club may be different once historical figures are known. Projections in budgets are an effort to provide some information regarding future Club Operating Costs. Budgets may not take inflation into account.

6.15. Change in Terms of Offer. Club Owner may provide that some Owners pay Club Fees on a different basis than other Owners by recording a supplement or amendment to these Club Covenants with respect to one or more Homes. No Owner shall have the right to object to any other Owner paying greater or lesser Club Fees so long as the Club Fee applicable to any particular Home is in accordance with the Club Covenants.

7. Working Capital Fund. There shall be collected from each Owner purchasing a Home from Developer or a Builder at the time of closing a working capital contribution ("Club Working Capital Fund") in the amount equal to two (2) months of Club Charges (as projected by Club Owner if unknown) or otherwise by Club Owner. Each Owner's contribution to the Club Working Capital Fund shall be transferred to Club Owner at that time. Club Owner shall be entitled to keep such funds, and shall not be required to account for the same. Contributions may be used and applied by Club Owner as it deems necessary in its sole and absolute discretion including, without limitation, to reduce Club

Operating Costs. Notwithstanding anything herein to the contrary, Club Owner shall have the option to waive contributions to the Club Working Capital Fund in its sole and absolute discretion.

8. Determination of Club Operating Costs.

8.1. Fiscal Year. The fiscal year for the Club shall be the calendar year.

8.2. Adoption of Budget. Club Charges shall be established by the adoption of a projected operating budget (the "Budget"). Written notice of the amount and date of commencement thereof shall be given to each Owner in advance of the due date of the first installment thereof.

8.3. Adjustments If Budget Estimates Incorrect. In the event the estimate of Club Operating Costs for the year is, after the actual Club Operating Costs for that period is known, more or less than the actual Club Operating Costs, then the difference shall, at the election of Club Owner: (i) be added or subtracted, as the case may be, to the calculation for the next ensuing year; (ii) be immediately collected from the Owners by virtue of a special bill which shall be payable by each Owner within ten (10) days of mailing, or (iii) the remaining monthly Club Charges shall be adjusted to reflect such deficit or surplus.

8.4. No Right to Withhold Payment. Each Owner agrees that so long as such Owner does not pay more than the required amount of Club Charges, such Owner shall have no grounds upon which to object to either the method of payment or non-payment by other Owners of any sums due.

8.5. Reserves. The Budget may, at the election of Club Owner, include one or more reserve funds for the periodic maintenance, repair and replacement of improvements to the Club Facilities.

8.6. Statement of Account Status. Upon demand, there shall be furnished to an Owner a certificate in writing setting forth whether their Club Charges have been paid and/or the amount which is due as of any date. As to parties (other than Owners) who, without knowledge of error, rely on the certificate, the certificate shall be conclusive evidence of the amount of any charges therein stated.

8.7. Collection.

8.7.1. Association's Collection Responsibilities. If directed in writing by Club Owner, Association or a Neighborhood Association, shall collect the Club Charges, Special Use Fees, and any other amounts due to Club Owner at the same time it collects Assessments from the Owners. Upon the due date, Association or a Neighborhood Association shall be deemed to hold the same in trust for Club Owner and for the payments required hereby, and shall immediately forward all amounts due for Homes closed to Club Owner, together with a record of which Owners did, and did not pay.

8.7.2. Record Keeping. If directed in writing by Club Owner, Association shall use special computer software or accounting practices in connection with Association's record keeping responsibilities respecting Club Charges, Special Use Fees, and other amounts due to Club Owner. By way of example, Club Owner may require information on computer disk prepared using a specific type of software.

8.7.3. Diligence. If Club Owner directs Association to collect Club Charges, Association shall diligently and at Association's expense (to the extent not otherwise payable by a delinquent Owner) enforce collection of all delinquencies including enforcement of all liens in the name of Club Owner.

8.7.4. Application of Funds. Notwithstanding anything to the contrary contained in the Declaration, by its joinder in these Club Covenants, Association agrees that in the event that Club Owner directs Association to collect Club Charges, and Association collects Club Charges and Assessments from a particular Owner for any month (whether or not those funds are designated as payment of Club Charges or Assessments), those funds shall be first allocated to the payment of Club Fees, then to the payment of Club Operating Costs, then to the payment of Special Use

Fees and other amounts due to Club Owner, and then to the payment of Assessments for Association purposes. Notwithstanding the foregoing, if such Owner thereafter makes additional payment to Association, such additional payments shall be applied to bring all Club Charges and Assessments for the first month of delinquency current before funds are applied to the next month's Club Charges.

8.7.5. Association Also Acting As Club Manager. During any period that Association is operating the Club as Club Manager at the direction of Club Owner pursuant to these Club Covenants, then Association is granted the conditional license to retain those portions of the Club Charges other than the Club Fee for the strict purpose of paying the Club Operating Costs.

9. Creation of the Lien and Personal Obligation.

9.1. Claim of Lien. Each Owner, by acceptance of a Deed or instrument of conveyance for the acquisition of title to a Home, shall be deemed to have covenanted and agreed that the Club Charges, Special Use Fees, and other amounts Club Owner permits an Owner to put on a charge account, if any, including, without limitation, the Club Fee, together with interest, late fees, costs and reasonable attorneys' and paraprofessional fees at all levels of proceedings including appeals, collection and bankruptcy, shall be a charge and continuing first lien in favor of Club Owner encumbering each Home and all personal property located thereon owned by the Owner. The lien is effective from and after recording a Claim of Lien in the Public Records stating the description of the Home, name of the Owner, and the amounts due as of that date, but shall relate back to the date these Club Covenants are recorded. The Claim of Lien shall also cover any additional amounts which accrue thereafter until satisfied. All unpaid Club Charges, Special Use Fees, and other amounts Club Owner permits an Owner to put on a charge account, if any, together with interest, late fees, costs and reasonable attorneys' and paraprofessional fees at all levels including appeals, collections and bankruptcy, and other costs and expenses provided for herein, shall be the personal obligation of the person who was the Owner as of the Home at the time when the charge or fee became due, as well as the Owner's heirs, devisees, personal representatives, successors or assigns. If a Home is leased, the Owner shall be liable hereunder notwithstanding any provision in his lease to the contrary. Such lien may be enforced by Association at Association's expense or at Club Owner's written discretion enforced by Club Owner, however, the claim of Club Owner for Club Charges is paramount to all claims of Association. Further, the lien created by this Section is superior to the lien of Association for Assessments.

9.2. Right to Designate Collection Agent. If Club Owner has requested at any time that Association act as Club Owner's collection agent, Club Owner may thereafter notify Association at any time in writing that it no longer wishes to have Association collect the Club Operating Costs, Special Use Fees, and/or the Club Fees. In such event, Club Owner shall collect the Club Operating Costs, Special Use Fees, and/or Club Fees. At any time thereafter, Club Owner may direct Association in writing to again collect such Club Operating Costs, Special Use Fees, and/or Club Fees. Club Owner's right to designate who shall collect Club Operating Costs, Special Use Fees, and/or Club Fees shall be perpetual.

9.3. Subordination of the Lien to Mortgages. The lien for Club Charges, Special Use Fees, and related fees and expenses shall be subordinate to a bona fide first mortgage held by a Lender on any Home, if the mortgage is recorded in the Public Records prior to the Claim of Lien. The Club Claim of Lien shall not be affected by any sale or transfer of a Home, except in the event of a sale or transfer of a Home pursuant to a foreclosure (or deed in lieu of foreclosure) of a bona fide first mortgage held by a Lender, in which event, the acquirer of title, its successors and assigns, shall not be liable for such sums secured by a Claim of Lien encumbering the Home or chargeable to the former Owner of the Home which became due prior to such sale or transfer. However, any such unpaid fees or charges for which such acquirer of title is not liable may be reallocated and assessed to all Owners (including such acquirer of title) as a part of the Club Operating Costs. Any sale or transfer pursuant to a foreclosure shall not relieve the Owner from liability for, nor the Home from the lien of any fees or charges made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent fees or charges from the payment thereof, or the enforcement of collection by means other than foreclosure. A Lender shall give written notice to Club Owner if the mortgage held by such Lender is in default. Club Owner shall have the right, but not the obligation, to cure such default within the time periods applicable to Owner. In the event Club Owner makes such payment on behalf of an Owner, Club Owner

shall, in addition to all other rights reserved herein, be subrogated to all of the rights of the Lender. All amounts advanced on behalf of an Owner pursuant to this Section shall be added to Club Charges payable by such Owner with appropriate interest.

9.4. **Acceleration.** In the event of a default in the payment of any Club Charges and related fees and expenses, Club Owner may accelerate the Club Charges for the next ensuing twelve (12) month period, and for twelve (12) months from each subsequent delinquency.

9.5. **Non-payment.** If any Club Charges are not paid within ten (10) days after the due date, a late fee (to compensate Club Owner for administrative expenses due to late payment) of \$25.00 per month, or such greater amount established by Club Owner, together with interest on all amounts payable to Club Owner in an amount equal to the maximum rate allowable by law, per annum, beginning from the due date until paid in full, may be levied. Club Owner may, at any time thereafter, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Home, or both. In the event of foreclosure, the defaulting Owner shall be required to pay a reasonable rental for the Home to Club Owner, and Club Owner shall be entitled, as a matter of right, to the appointment of a receiver to collect the same. No notice of default shall be required prior to foreclosure or institution of a suit to collect sums due hereunder. Club Owner shall not be required to bring such an action if it believes that the best interests of the Club would not be served by doing so. There shall be added to the Claim of Lien all costs expended in preserving the priority of the lien and all costs and expenses of collection, including attorneys' fees and paraprofessional fees, at all levels of proceedings, including appeals, collection and bankruptcy. Club Owner shall have all of the remedies provided herein and any others provided by law and such remedies shall be collective. The bringing of action shall not constitute an election or exclude the bringing of any other action. Liens for Club Charges under these Club Covenants shall be prior to the liens of Association.

9.6. **Non-Use.** No Owner may waive or otherwise escape liability for fees and charges provided for herein by non-use of, or the waiver of the right to use, Club or abandonment of a Home.

9.7. **Suspension.** Should a Owner not pay sums required hereunder, or otherwise default, for a period of thirty (30) days, Club Owner may, without reducing or terminating Owner's obligations hereunder, suspend Owner's (or in the event the Home is leased, the Tenant's) rights to use the Club until all fees and charges are paid current and/or the default is cured.

10. **Control.**

10.1. **Control Prior to Transfer.** The Club shall be under the complete supervision and control of Club Owner until Club Owner, in its sole and absolute discretion, delegates all or part of the right and duty to operate, manage and maintain the Club to a third party or Association as Club Manager, if ever, as hereinafter provided.

10.2. **Club Manager.** At any time, Club Owner may appoint a Club Manager to act as its agent. The Club Manager shall have whatever rights hereunder as are assigned in writing to it by Club Owner. Without limiting the foregoing, the Club Manager, if so agreed by Club Owner, may file liens for unpaid Club Charges against Homes, may enforce the Rules and Regulations of the Club, and prepare the Budget for the Club.

10.3. **Designation of Manager.** Club Owner shall have the right, but not the obligation, in its sole discretion, to: (i) appoint Association as the Club Manager; and (ii) relinquish and/or assign to Association some or all of the rights reserved to Club Owner herein. Association shall be obligated to accept such designation and/or assignment and fulfill the obligations relating thereto without any compensation whatsoever.

10.4. **Management by Association.** At any time, and from time to time, Club Owner may notify Association in writing that Association shall act as the Club Manager or assume some of the responsibilities of Club Owner (e.g., landscape maintenance). In such event, Club Owner shall provide Association with a specific written list of all of Association's obligations as Club Manager. Thereafter, Association shall have the right and obligation to operate, manage, insure and maintain the Club strictly in accordance with the provisions of these Club Covenants and the

specific written directions of Club Owner. Association shall be obligated to accept such appointment without conditions or claim. During the time that Association acts as the Club Manager pursuant to Club Owner's written direction, Association shall have all powers and duties of Club Owner assigned by Club Owner in such written direction. No surrender of operation and management of the Club by Association shall be valid unless accepted by Club Owner in writing.

10.5. Association's Duties Upon Request by Club Owner. Association covenants throughout the term of these Club Covenants, and any renewals or extensions hereof, at the sole cost and expense of the Owners, to operate, manage, insure, maintain and take good care of the real property comprising the Club and landscaping and buildings and improvements now or at any time erected thereon and all apparatus, fixtures and building service equipment used or procured for use in connection with the operation of the Club, and to repair and maintain them in a first class condition, reasonable wear and tear excepted, to the extent that it is requested to do so in writing by Club Owner. At the written request of Club Owner, Association also covenants to keep the same in good order and condition, excepting reasonable wear and tear, and promptly make all necessary repairs, both to the interior and exterior thereto, including replacements or renewals when necessary, and all such repairs, replacements and renewals shall be at least equal in quality and class to the original work. In connection therewith, as and when requested by Club Owner, Association shall have, by way of illustration and not limitation, the following powers, obligations, and duties:

10.5.1. Reports. At the written direction of Club Owner, Association shall prepare monthly and annual reports detailing costs and expenses of the Club in the accounting format reasonably requested by Club Owner. Such reports shall be accompanied by any back-up invoices and documentation required by Club Owner, and shall include year to date totals if and to the extent required by Club Owner.

10.5.2. Hiring and Supervision. At the written direction of Club Owner, Association shall cause to be hired, paid and supervised, and/or discharged, all necessary persons, firms or corporations. Association shall maintain all required worker's compensation insurance.

10.5.3. Contracts. At the written direction of Club Owner, Association shall enter into contracts for all services necessary for the operation, maintenance, insurance, upkeep, repair, refurbishment, replacement and preservation of the Club. Each such contract shall not be binding on Club Owner and shall contain a provision that such contract can be terminated by Club Owner on thirty (30) days notice without cause.

10.5.4. Purchases. At the written direction of Club Owner, Association shall purchase equipment, tools, vehicles, appliances, goods, supplies and materials as may be necessary and/or appropriate.

10.5.5. Club Covenants Compliance. At the written direction of Club Owner, Association shall cause to be placed and kept in force and perform all obligations relating to all insurance required by the terms of these Club Covenants.

10.5.6. Compliance with Laws. At any time Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall operate, maintain, and repair the Club so as to comply with, and suffer no default under, all applicable laws, statutes, ordinances, rules and regulations of all applicable governmental and quasi-governmental authorities, the Title Documents, insurance policies and/or guidelines, mortgages and/or encumbrances, relating to the Club or the use thereof now or hereafter in effect.

10.5.7. Hazardous Materials. Association: (a) shall not permit any activity to be conducted in, on or about the Club which would have the effect of polluting or in any way cause the Club to be detrimentally affected by pollutants (including elevated radon levels), toxic materials, petroleum oil and/or waste oil, or any "hazardous substance or waste." The Club shall not be used for the handling, storage, treatment, generation, transportation or disposal of pollutants, toxic materials, petroleum oil and/or waste oil, any hazardous substance or any hazardous waste, including, but not limited to, solid, liquid, gaseous or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals (except for chemicals used for the pool and cleaning) or waste (including materials to be recycled, reconditioned or reclaimed); (b) shall not install, use or dispose of, on or incorporate into, the Club any

asbestos or asbestos containing material; (c) except for tanks installed by Club Owner, shall not locate, replace or remove or fill any underground storage tanks on the Club; (d) shall at all times be in compliance with all applicable federal, state, county and local statutes, laws and regulations concerning or related to environmental protection and regulation.

10.5.8. **Liens.** Association shall not subject the Club to, or permit the Club to be subject to, any lien, charge, cost or expense including, but not limited to, a construction lien as contemplated by the law of the State of Florida. Should any lien or claim of lien be filed, or should any suit or other judicial or quasi-judicial proceeding be instituted for which Club Owner or the Club may be encumbered, liable or accountable, then in that event Association shall be in default of these Club Covenants, unless within ten (10) days thereafter, Association shall furnish a bond, transferring the lien to bond, in compliance with law.

10.5.9. **Alterations.** In the event that Association is acting as Club Manager pursuant to Club Owner's written direction, Association will not make any alterations or changes in the Club without the prior written consent of Club Owner, which may be withheld or denied in Club Owner's sole discretion for any reason whatsoever.

10.5.10. **Financial Responsibilities.** At any time Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall maintain financial record books, accounts and other records as concerns the Club, issue certificates of account to Owners, their mortgagees and lienors, as required.

10.5.11. **Maintenance of Records.** Association shall maintain books and records sufficient to describe its services hereunder in accordance with prevailing accounting standards to identify the source of all funds collected by it, and the disbursement thereof.

10.5.12. **Budget.** If Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall adopt a budget which provides for funds needed for all expenses and reserves, including the Club Fees, within the fiscal year of the Club.

10.5.13. **Collection.** If Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall collect all Club Charges and enforce, with all due diligence, the provisions of these Club Covenants relating thereto. The Club Charges due from each Owner may, at Association's discretion, be payable to such firm or entity as it shall direct. All sums due to Club Owner under the terms of these Club Covenants, if collected by Association, shall immediately be delivered, to Club Owner.

10.5.14. **Special Use Fees.** If Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall make and collect Special Use Fees against Owners subject to the provisions of these Club Covenants.

10.5.15. **Rules and Regulations.** If Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall promulgate, adopt and amend rules and regulations as it deems advisable, subject to the prior approval of Club Owner. Association shall also enforce such rules and regulations.

10.5.16. **Insurance.** If Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall obtain all insurance required in connection with the Club in the form required by Club Owner, all of which shall name Club Owner as "Additional Insured." Club Owner shall have the right to approve every aspect of such insurance policies including, without limitation the underwriters.

10.5.17. **Professionals.** If Association is acting as Club Manager pursuant to Club Owner's written direction, Association shall retain and employ such professionals and other experts whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder and to employ same on such basis as it deems most beneficial.

11. **Paramount Right of Association.** Association shall have the right to post all notices of its Board and member meetings and all notices required by the Florida Statutes at a designated location within the Club Facilities visible to all Club Members without charge.
12. **Attorney's Fees.** If at any time Club Owner must enforce any provision hereof, Club Owner shall be entitled to recover all of its reasonable costs and attorney's and paraprofessional fees at all levels, including appeals, collections and bankruptcy.
13. **Rights to Pay and Receive Reimbursement.** Club Owner and/or Association shall have the right, but not the obligation to pay any Club Charges, or Special Use Fees which are in default and which may or have become a lien or charge against any Home. If so paid, the party paying the same shall be subrogated to the enforcement rights with regard to the amounts due. Further, Club Owner and/or Association shall have the right, but not the obligation, to loan funds and pay insurance premiums, taxes or other items of costs on behalf of an Owner to protect its lien. The party advancing such funds shall be entitled to immediate reimbursement, on demand, from the Owner for such amounts so paid, plus interest thereon at the Applicable Rate, plus any costs of collection including, but not limited to, reasonable attorneys' and paraprofessional fees at all levels including appeals, collections and bankruptcy.
14. **General Restrictions.** Club Owner has adopted the following general restrictions governing the use of the Club. Each Member, guest and other person entitled to use the Club shall comply with following general restrictions:
 - 14.1. **Responsibility for Personal Property and Persons.** Each Member assumes sole responsibility for the health, safety and welfare of such Member, his or her guests, and the personal property of all of the foregoing, and each Member shall not allow any of the foregoing to damage the Club or interfere with the rights of other Members hereunder.
 - 14.2. **Cars and Personal Property.** The Club is not responsible for any loss or damage to any private property used, placed or stored on the Club Facilities. Without limiting the foregoing, any person parking a car within the Parking Areas assumes all risk of loss with respect to his or her car in the Parking Areas. Further, any person entering the Club Facilities assumes all risk of loss with respect to his or her equipment, jewelry or other possessions stored in the fitness center lockers, on bicycles, or within cars and wallets, books and clothing left in the pool areas.
 - 14.3. **Activities.** Any Member, guest or other person who, in any manner, makes use of, or accepts the use of, any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Club, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Club, either on or off the Club Facilities, shall do so at their own risk. Every Member shall be liable for any property damage and/or personal injury at the Club, or at any activity or function operated, organized, arranged or sponsored by the Club, caused by any Member or guest. No Member may use the Club Facilities for any club, society, party, religious, political, charitable, fraternal, civil, fund-raising or other purposes without the prior written consent of Club Owner, which consent may be withheld for any reason.
 - 14.4. **Property Belonging to the Club.** Property or furniture belonging to the Club shall not be removed from the room in which it is placed or from the Club Facilities.
 - 14.5. **Indemnification of Club Owner.** In addition, each Member and guest agrees to indemnify and hold harmless Club Owner and Club Manager, their officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to such Member's membership, including, without limitation, use of the Club Facilities by Members and their guests, or the interpretation of these Club Covenants, and/or the Rules and Regulations and/or from any act or omission of the Club or of any of the Indemnified Parties. Losses shall include the deductible payable under any of the Club's insurance policies.

14.6. Attorneys' Fees. Should any Member and/or guest bring suit against Club Owner or Club Manager or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, the Member and/or guest shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorney's fees and paraprofessional fees at trial and upon appeal.

14.7. Unrecorded Rules. Club Owner may adopt rules and regulations ("Rules and Regulations") from time to time. Such Rules and Regulations may not be recorded; therefore, each Owner and Tenant should request a copy of unrecorded Rules and Regulations from the Club and become familiar with the same. Such Rules and Regulations are in addition to the general restrictions set forth in this Section.

14.8. Waiver of Rules and Regulations. Club Owner may waive the application of any Rules and Regulations to one or more Owners, Tenants, guests, invitees, employees or agents in Club Owner's sole and absolute discretion. A waiver may be revoked at any time upon notice to affected Tenants and Owners.

15. Violation of the Rules and Regulations.

15.1. Basis For Suspension. The membership rights of a Member may be suspended by Club Owner if, in the sole judgment of Club Owner:

15.1.1. such person is not an Owner or a Tenant;

15.1.2. the Member violates one or more of these Rules and Regulations;

15.1.3. a guest or other person for whom a Member is responsible violates one or more of these Rules and Regulations;

15.1.4. an Owner fails to pay Club Charges in a proper and timely manner; or

15.1.5. a Member and/or guest has injured, harmed or threatened to injure or harm any person within the Club Facilities, or harmed, destroyed or stolen any personal property within the Club Facilities, whether belonging to a third party or to Club Owner.

15.2. Types of Suspension. Club Owner may restrict or suspend, for cause or causes described in the preceding Section, any Member's privileges to use any or all of the Club Facilities. By way of example, and not as a limitation, Club Owner may suspend the membership of a Tenant if such Tenant's Owner fails to pay Club Charges due in connection with a leased Home. In addition, Club Manager may suspend some membership rights while allowing a Member to continue to exercise other membership rights. For example, Club Manager may suspend the rights of a particular guest or Club Manager may prohibit a Member and his or her guest from using a portion of the Club Facilities. No Member whose membership privileges have been fully or partially suspended shall, on account of any such restriction or suspension, be entitled to any refund or abatement of Club Charges or any other fees. During the restriction or suspension, Club Charges shall continue to accrue and be payable each month. Under no circumstance will a Member be reinstated until all Club Charges and other amounts due to the Club are paid in full.

16. Destruction. In the event of the damage by partial or total destruction by fire, windstorm, or any other casualty for which insurance shall be payable, any insurance proceeds shall be paid to Club Owner. If Club Owner elects, in Club Owner's sole and absolute discretion, to reconstruct the Club Facilities, the insurance proceeds shall be available for the purpose of reconstruction or repair of the Club; provided, however, Club Owner shall have the right to change the design or facilities comprising the Club in its sole and absolute discretion. There shall be no abatement in payments of Club Charges, including the Club Fee, during casualty or reconstruction. The reconstruction or repair, when completed, shall, to the extent legally possible, restore the Club Facilities substantially to the condition in which they existed before the damage or destruction took place. After all reconstruction or repairs have been made, if there are any insurance proceeds left over, then and in that event, the excess shall be the sole property of Club Owner. If Club Owner

elects not to reconstruct the Club Facilities. Club Owner shall terminate these Club Covenants and the provisions of the Declaration relating to the Club by document recorded in the Public Records.

17. **Risk of Loss.** Club Owner shall not be liable for, and the Members assume all risks that may occur by reason of, any condition or occurrence, including, but not limited to, damage to the Club on account of casualty, water or the bursting or leaking of any pipes or waste water about the Club, or from any act of negligence of any other person, or fire, or hurricane, or other act of God, or from any cause whatsoever, occurring after the date of the recording of these Club Covenants. Neither Association nor any Owner shall be entitled to cancel these Club Covenants or any abatement in Club Charges on account of any such occurrence.

18. **Eminent Domain.** If, during the operation of these Club Covenants, an eminent domain proceeding is commenced affecting the Club, then in that event, the following conditions shall apply:

18.1. **Complete Taking.** If the whole or any material part of the Club is taken under the power of eminent domain, Club Owner may terminate these Club Covenants and the provisions of the Declaration relating to the Club by written notice given to Association, which notice shall be recorded in the Public Records. Should such notice be given, these Club Covenants and the provisions in the Declaration relating to the Club shall terminate. All damages awarded in relation to the taking shall be the sole property of Club Owner.

18.2. **Partial Taking.** Should a portion of the Club be taken in an eminent domain proceeding which requires the partial demolition of any of the improvements located on the Club so that Club Owner determines the taking is not a complete taking, then, in such event, Club Owner shall have the option, to the extent legally possible, utilize a portion of the proceeds of such taking for the restoration, repair, or remodeling of the remaining improvements to the Club, or to terminate these Club Covenants as provided in Section 18.1 hereof. All damages awarded in relation to the taking shall be the sole property of Club Owner, and Club Owner shall determine what portion of such damages, if any, shall be applied to restoration, repair, or remodeling.

19. **Additional Indemnification of Club Owner.** Association and each Owner covenant and agree jointly and severally to indemnify, defend and hold harmless Developer and Club Owner, their respective officers, directors, shareholders, and any related persons or corporations and their employees, attorneys, agents, officers and directors from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Areas, Club Property, or other property serving Association, and improvements thereon, or resulting from or arising out of activities or operations of Association or Owners, and from and against all costs, expenses, court costs, counsel fees, paraprofessional fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders judgments or decrees which may be entered relating thereto. In addition Association shall, and does hereby, indemnify and save harmless Club Owner from and against any and all claims, suits, actions, damages and/or causes of action arising for any personal injury, loss of life and/or damage to property sustained in or about the Club, by reason of or as a result of Association's operation, management, or occupancy of the Club as Club Manager, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, counsel fees, paraprofessional fee, expenses and liabilities incurred in and about the defense of any such claim and the investigation thereof. Association shall immediately give Club Owner notice in writing that the same are about to be incurred and Club Owner shall have the option to make the necessary investigation and employ, at the expense of Association, counsel of Club Owner's own selection for the defense of any such claims and expenses, etc. The indemnifications provided in this Section shall survive termination of these Club Covenants. The costs and expense of fulfilling this covenant of indemnification shall be Operating Costs to the extent such matters are not covered by insurance maintained by Association.

20. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of these Club Covenants by Association:

20.1. **Abandonment.** The vacation or abandonment of the Club by Association or Owners.

20.2. Failure to Pay. The failure by Association to make any payment required to be made hereunder to Club Owner within ten (10) days after the same is due.

20.3. Compliance with Declaration and these Club Covenants. The failure of Association to observe or perform any other covenant, condition or provision of the Declaration relating to the Club or these Club Covenants to be observed or performed by Association, unless the same is cured by Association within twenty (20) days after notice, provided; however, that notice shall not be required if the failure of Association shall be of such a nature as to expose Club Owner or the Club to irreparable injury or material and adverse risk.

20.4. Insolvency. The making by Association of any general assignment for the benefit of creditors, the filing by or against Association of a petition to have Association adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in case of a petition filed against Association, the same is dismissed within thirty (30) days), the appointment of a trustee or receiver to take possession of substantially all of Association's assets, or the attachment, execution or other judicial seizure of substantially all or any material part of Association's assets.

21. Remedies. In the event of any such default or breach by Association, Club Owner may at any time thereafter, with or without notice or demand, and without limiting Club Owner in the exercise of any other right or remedy which Club Owner may have, at law or equity, exercise any one or more of the following additional remedies:

21.1. Terminate Association's Responsibilities. Club Owner may immediately terminate Association's ability to operate and manage the Club as Club Manager and may re-assume the sole right to operate and manage the Club. Upon receipt of such notice the license granted to Association to occupy the Club as Club Manager shall forthwith terminate, provided, however Association shall remain liable to Club Owner as hereinafter provided. Thereafter, all payments of Club Charges shall be made directly by the Owners, to Club Owner, or its designee.

21.2. Charge the Association Interest. In the case of any such default by Association all sums then due hereunder shall bear interest thereon at the Default Rate until paid.

21.3. Right to Add Costs to Club Operating Costs. All damages, costs, expenses, losses, liabilities and other amounts suffered by Club Owner due to a default by Association shall be, at the direction of Club Owner, be considered part of the Club Operating Costs. Club Owner may, but is not obligated to, cure any breach hereof by Association, the expense of which, together with interest at the Default Rate, shall be paid by Owners as part of the Club Charges, upon demand.

21.4. Right to Notify Owners. Club Owner may notify Owners that Club Charges are to be paid directly to Club Owner.

21.5. Remedies Cumulative. The specific remedies of Club Owner under the terms of these Club Covenants are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by Association of any provisions of these Club Covenants. In addition to the other remedies provided in these Club Covenants, Club Owner shall be entitled to enjoin, without bond, the violation or attempted or threatened violation of any of the provisions of these Club Covenants or obtain specific performance of any such provisions. Association hereby stipulates that such violation or attempts or threatened violation constitutes irreparable injury to Club Owner.

22. Security for Association's Agreements. To further secure payment and performance of all of Association's obligations hereunder, Association gives, grants, pledges with and assigns to Club Owner a first lien and charge upon all furniture and fixtures, goods and chattels of Association, which may be brought or put on the Club. Association agrees that such lien for the payment of the charges may be enforced by distress, foreclosure or otherwise, at the option of Club Owner.