

This Instrument prepared by:
Christopher J. Shields, Esq.
PAVESE LAW FIRM
1833 Hendry Street
Fort Myers, Florida 33901
(239) 334-2195

**CERTIFICATE OF AMENDMENT
TO THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

THIS AMENDMENT is made this 18th day of April, 2012 by LENNAR HOMES, LLC, a Florida limited liability company, hereinafter called the "Declarant" to the Amended & Restated Declaration of Covenants, Conditions, and Restrictions for Heritage Bay Golf & Country Club.

WHEREAS, the Amended & Restated Declaration was recorded at O.R. Book 4355, Page 1839, Public Records of Collier County, Florida. The Declaration was originally recorded at O.R. Book 3989, Page 2218, Public Records of Collier County, Florida; and

WHEREAS, pursuant to Section 15.10 of this Amended & Restated Declaration, the Declarant may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to the covenants, conditions, and restrictions; and

WHEREAS, Declarant is desirous of amending the following Sections of this Amended & Restated Declaration, pursuant to its reserved right to amend;

NOW, THEREFORE, the following Sections shall be amended as follows:

(NOTE: Underlined language is added and ~~cross-through~~-language is deleted).

3.8 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Club Documents, the Board of Directors shall be required to obtain the prior approval of at least ~~two-thirds (2/3rds)~~ a majority of the voting interests entire membership of the Club prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Club for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) collection of assessments;
- (B) collection of other charges which members are obligated to pay;
- (C) enforcement of the Club Documents;

- (D) enforcement of the rules and regulations of the Club;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Club or its members; or
- (F) filing a compulsory counterclaim.

3.15 Acquisition of Property. The Club has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval ~~by at least a majority of the voting interests of a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained.~~

3.16 Disposition of Property. Any property owned by the Club, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 3.165 above.

4.3 Association Rights and Easements. Members in good standing ~~has~~ have the non-exclusive right to use the Common Areas subject to:

- (A) The right of the Club, by and through its Board of Directors, to adopt the annual budget and to determine the annual assessments to be paid by members;
- (B) The right of the Club, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-owners than for owners;
- (C) The right of the Club, by and through its Board of Directors, to suspend a member's right to use Common Areas for the period during which any assessment or charge against the member's Lot or Living Unit remains unpaid and past due, and for a reasonable period during or after any infraction of the Club's rules and regulations;
- (D) The right of the Club, by and through its Board of Directors, to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility;
- (E) The right of the Club, by and through its Board of Directors, to grant easements over, across or through the Common Areas;
- (F) The right of the Club, by and through its Board of Directors, to open the Common Areas, including the golf course, for use by non-members of the Club, or non-owners.
- (G) The right of the Club, by and through its Board of Directors, ~~with the prior assent of a majority of the voting interests,~~ to borrow money funds and to pledge the assets of the Club for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas as security for said loan. Notwithstanding the foregoing, the Board of Directors

must obtain approval of a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained in order to borrow funds equal to or greater than two percent (2%) of the Club's annual operating budget excluding reserves;

(H) The right of the Club, by and through its Board of Directors, to take such steps as are reasonably necessary to protect the Golf Common Areas;

(I) The right of the Club, by and through its Board of Directors, to close or restrict access to the golf course or other Common Areas for limited periods of time to conduct special events, including those intended primarily to benefit the Developer or its sales efforts;

(J) The right of the Club, by and through its Board of Directors, to regulate parking and traffic on the private roads within the Community, including without limitation the use of access gates or speed bumps;

(K) The provisions of this Declaration, the Articles of Incorporation and Bylaws of the Club; and any rules and regulations governing use and enjoyment of the Common Areas adopted by the Club;

(L) The right of a CDD, if created, to exercise and enforce any and all powers authorized by Chapter 190, Florida Statutes; and

(M) The right of the Club to dedicate or transfer ownership or control of all or any part of the Common Areas to a CDD or any other governmental agency, public authority, or utility.

So long as there is a Declarant member, any and all rights of members, and any and all restrictions, limitations, conditions and rules and regulations that a member shall be subject to, shall not be amended without the consent of the Declarant.

~~6.5 **Declarant's Rights.** Notwithstanding the foregoing, the Declarant shall have the right, but not the obligation, so long as any Developer is offering any property in Heritage Bay Golf & Country Club for sale in the ordinary course of business, to appoint all of the members of the ARCHITECTURAL REVIEW COMMITTEE, or such lesser number as it may choose. During this time, the Declarant shall also have the power, in its sole discretion, to establish, amend, or revoke any and all Design Review Guidelines. So long as any Developer is offering any property in Heritage Bay Golf & Country Club for sale in the ordinary course of business, the Declarant shall not be required to apply for nor receive any architectural approval from the Club and the Declarant shall be entirely exempt of all the Club's Architectural Design Review Guidelines. This exemption in favor of the Declarant shall be constructed broadly and is provided in exchange for Declarant relinquishing its reserved right to appoint and control the members of the Architectural Review Committee as originally set forth herein.~~

8.4 Maintenance and Alteration. The Club is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition,

and in good working order at all times. After control of the Club has been turned over to the members, there shall be no material alterations of or substantial additions to the Club Community Common Areas costing more than \$1300,000, in the aggregate during any fiscal year unless first approved by a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained; ~~the voting interests of the Golf members of the Club;~~ and there shall be no material alteration of or substantial additions to the Golf Common Areas costing more than \$1300,000 in the aggregate during any fiscal year unless first approved by a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained; ~~the voting interests of the Golf members.~~ However, if work that is reasonably necessary to meet the Club's obligations under the first sentence of this Section 8.4 also constitutes a material alteration or substantial addition, no prior membership approval is required.

9.13 Resale Capital Contribution. In addition to the Initial Capital Assessments, the Club may levy a Resale Capital Contribution upon the transferee in any conveyance of a Lot or Living Unit by a Golf member. The amount of the Resale Capital Assessment and the manner of payment shall be as determined by resolution of the Board from time to time; provided, however, all Lots or Living Units similarly situated shall be assessed at a uniform rate. Unless subsequently adjusted by the Board, the amount of the resale capital contribution that shall be initially set as \$1,250 ~~charged~~ is an amount equal to forty percent (40%) of a Member's total annual Assessment. The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Contribution shall be the legal obligation of the transferee. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot or Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or the death of the transferee, nor to a transfer of title to a Director or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. Resale capital assessments shall be considered an assessment and can be collected as such in accordance with the provisions under Article 9.

9.16 Leased Living Units. If a Living Unit is occupied by a tenant and the Living Unit is delinquent in paying any Assessment or monetary obligation to the Club, the Club may, to the extent authorized by law, demand that the tenant pay to the Club the subsequent rental payments and continue to make such payments until all of the Assessments and monetary obligations related to the Living Unit have been paid in full to the Club and the Club releases the tenant or until the tenant discontinues tenancy in the Living Unit.

10.5 Fines.

(A) In addition to the means of enforcement provided elsewhere herein, the Club shall have the right to assess fines against a unit, a unit owner, or his guests, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, these Bylaws, and Rules and Regulations of the Club regarding the use of units, common elements, or Club property. Each such violator and the unit owner shall be given written notice of the alleged

violation and the opportunity for a hearing before the Board of Directors with at least fourteen (14) days notice. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws or Rules which have been allegedly violated; and a short and plain statement of the matters asserted by the Club. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Club. The amount of such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence, or the maximum permissible by law, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing, such not to exceed the maximum permissible by law. So long as the violation has been abated or otherwise ceased, the maximum account the Club may fine shall not exceed \$2,500.00 per violation. The payment of fines shall be the ultimate responsibility of the unit owner, even when the violations for which fines have been levied arise out of the conduct of family members, guests or tenants. Any action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees.

(B) **Collection of fines.** A fine shall be treated as a special charge due to the Club ten (10) days after written notice from the Club to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may itself be the subject of a late payment fee.

(C) **Application.** All monies received from fines shall become part of the common surplus.

(D) **Nonexclusive remedy.** Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Club may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Club may otherwise be entitled to recover at law from such owner.

14.2 Mortgage Foreclosure. Except as otherwise provided by Florida law as amended from time to time, if an Institutional Mortgagee acquires title to a Lot, Living Unit, Tract or Parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, ~~such mortgagee shall not be liable for the Club assessments or charges attributable to the Lot, Living Unit, Tract or Parcel, or chargeable to the former owner, which came due prior to the mortgagee's acquisition of title. Any unpaid assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a Lot, Living Unit, Tract or Parcel by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.~~ in which the Club has been named as a defendant in the initial complaint, shall be liable for assessments levied against such Lot or Living Unit, Tract, or Parcel unless the mortgagee is entitled to limited liability for delinquent assessments as provided in Chapter 720, Fla. Stat., which currently requires the lender to pay the Club the lesser of 1% of the original mortgage indebtedness, or the sum of the regular and special assessments that accrued or became due during the 12 months immediately preceding acquisition of title by the

lender, and as Chapter 720, Fla Stat., may be amended by time to time. The foregoing sentence pertaining to entitlement to limited liability shall not be construed to negate the authority of a court to order a mortgagee to pay a surcharge pursuant to 11 USC Section 506(c), or grant other relief that may be found to be applicable under federal or state law. Any unpaid assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all Owners, including such acquirer and his successors and assigns. No Owner or acquirer of title to a Lot or Living Unit by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.

15.5 **Vote Required.** Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least two-thirds (2/3rds) of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained, the voting interests of each class of members present and voting, provided that notice of the text of each proposed amendment was sent to the members with notice of the meeting.

IN WITNESS WHEREOF, we have hereunto affixed our hands and the seal of said corporation, this 18th day of April, 2012.

LENNAR HOMES, LLC,
a Florida Limited Liability Company

Witnesses:

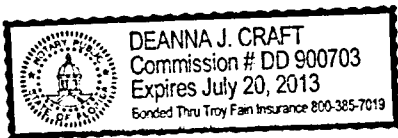
[Signature]
Print name: Tom Burdett

[Signature]
Print name: Maria Talluto

By: _____
Printed: DARIN McMURRAY
Title: VICE PRESIDENT

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was executed before me this 18 day of APRIL, 2012, by DARIN McMURRAY, Vice Pres. (title) of LENNAR HOMES, LLC, a Florida Limited Liability Company, on behalf of the company. He/She is personally known to me or did produce _____ as identification.



[Signature]
Signature of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public (Affix Notarial Seal)

_____ Print name