

ARTICLES OF INCORPORATION

OF

FAIRWAY BEND VILLAGE HOMEOWNER'S ASSOCIATION, INC.

a Florida corporation not-for-profit

FILED  
1993 NOV -6 PM 12:13  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned incorporator, for the purpose of forming a corporation not-for-profit, pursuant to the laws of the State of Florida, Florida Statutes, Chapter 617, hereby adopts the following Articles of Incorporation.:

PREAMBLE

PHH HOMEQUITY CORPORATION, a Delaware corporation d/b/a PHH ASSET MANAGEMENT ("Declarant") owns certain property in Lee County, Florida ("Subject Property") and intends to execute and record a Declaration of Covenants and Restrictions of Fairway Bend Village at The Vines (the "Declaration") which will affect the Subject Property. This Association is being formed as the association to administer the Declaration and to perform the duties and exercise the powers pursuant to the Declaration, as and when the Declaration is recorded in the Public Records of Lee County, Florida, with these Articles of Incorporation attached as an Exhibit. All of the definitions contained in the Declaration shall apply to these Articles of Incorporation, and to the By-Laws of the Association.

ARTICLE I - NAME

The name of the corporation is Fairway Bend Village Homeowner's Association, Inc., a Florida corporation not-for-profit, hereinafter referred to as the "Association".

ARTICLE II - PURPOSE

The purposes for which the Association is organized are as follows:

1. To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
2. To enforce and exercise the duties of the Association as provided in the Declaration.
3. To promote the health, safety, welfare, comfort, and social and economic welfare of the members of the Association.

ARTICLE III - POWERS AND DUTIES

The Association shall have the following powers and duties:

1. All of the common law and statutory powers of a corporation not-for-profit under the laws of Florida.

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2. To enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the Declaration, including, but not limited to the following:

(a) To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property, including the Common Areas and specifically the Surface Water Management System, as permitted by the South Florida Water Management District.

(b) To make, collect and enforce assessments against Owners of Lots containing Units to defray the costs, expenses, and losses incurred or to be incurred by the Association and to use the proceeds thereof in the exercise of the Association's powers and duties, including the operation and maintenance of the Common Areas and specifically the Surface Water Management System.

(c) To enforce the provisions of the Declaration, these Articles and the By-Laws.

(d) To make, establish and enforce reasonable rules and regulations governing the use of Common Areas, Lots, Units and other property under the jurisdiction of the Association.

(e) To grant and modify easements, and to dedicate property owned by the Association to any public or quasi-public agency, authority or utility company for public, utility, drainage and cable television purposes.

(f) To borrow money for the purposes of carrying out the powers and duties of the Association.

(g) To exercise control over exterior alterations, additions, improvements, or changes in accordance with the terms of the Declaration.

(h) To obtain insurance as provided by the Declaration.

(i) To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the Association and for proper operation of the properties for which the Association is responsible or to contract with others for the performance of such obligations, services and/or duties.

#### ARTICLE IV - MEMBERS

1. The members of the Association shall consist of all of the record owners of Lots. Membership shall be established as to each Lot upon the recording of the Declaration. Upon the transfer of ownership of fee title to, or fee interest in, a Lot, whether by conveyance, devise, judicial decree, foreclosure, or otherwise,

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and upon the recordation amongst the public records in the county in which the Subject Property is located of the deed or other instrument establishing the acquisition and designating the Lot affected thereby, the new Owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior owner as to the Lot designated shall be terminated, provided, however, that the Association shall not have the responsibility or obligation of recognizing any such change in membership until it has been delivered a true copy of the applicable deed or other instrument, or is otherwise informed of the transfer of ownership of the Lot. Prior to the recording of the Declaration, the incorporator shall be the sole member of the Association.

2. The share of each member in the funds and assets of the Association, and the Common Surplus, and any membership in this Association, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot for which that membership is established.

3. On all matters upon which the Membership shall be entitled to vote, there shall be only one vote for each Lot. In the event any Lot is owned by more than one person and/or by an entity, the vote for such Lot shall be cast in the manner provided by the By-Laws. Any person or entity owning more than one Lot shall be entitled to one vote for each Lot owned.

4. The By-Laws shall provide for an annual meeting of the members of the Association and shall make provision for special meetings.

ARTICLE V - TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE VI - INCORPORATOR

The name and street address of the incorporator is:

<u>Name</u>	<u>Address</u>
Karen P. Kondell	9100 South Dadeland Boulevard Penthouse I - One Datran Center Miami, Florida 33156

ARTICLE VII - DIRECTORS

1. The property, business and affairs of the Association shall be managed by a Board which shall consist of not less than three (3) directors, and which shall always be an odd number. The By-Laws may provide for a method of determining the number of directors from time to time. In the absence of a determination as

to the number of directors, the Board shall consist of three (3) directors. Directors are not required to be members of the Association.

2. All of the duties and powers of the Association existing under the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the members only when specifically required.

3. The Declarant shall have the right to appoint all of the directors so long as the Declarant owns at least one of the Lots within the Subject Property. The Declarant may waive its right to appoint one or more directors by written notice to the Association, and thereafter such directors shall be elected by the members. When the Declarant no longer owns any Lot within the Property, all of the directors shall be elected by the members in the manner provided in the By-Laws.

4. After the members other than the Declarant are entitled to elect directors, the Association shall call in accordance with the By-Laws, a meeting of the members to elect the directors which the members are then entitled to elect. The meeting may be called and the notice given by any Owner if the Association fails to do so. Thereafter, the directors which the members are entitled to elect shall be elected at the annual meeting of the members.

5. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the By-Laws. However, any director appointed by the Declarant may only be removed by the Declarant, and any vacancy on the Board shall be appointed by the Declarant if, at the time such vacancy is to be filled, the Declarant is entitled to appoint the directors.

6. The names and addresses of the initial directors, who shall hold office until their successors are appointed or elected are as follows:

Joseph A. Heffernan  
19195 Vintage Trace Circle  
Fort Myers, FL 33912

Barton K. Wickstrum  
249 Danbury Road  
Wilton, CT 06897

Hans J. Fischer  
249 Danbury Road  
Wilton, CT 06897

#### ARTICLE VIII - OFFICERS

The officers of the Association shall be a president, vice-president, secretary, treasurer and such other officers as the Board may from time to time by resolution, create. The officers shall serve at the pleasure of the Board, and the By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the Board are as follows:

President - Joseph A. Heffernan  
Vice President - Barton K. Wickstrum  
Secretary - Julie Welter  
Treasurer - Hans J. Fischer

ARTICLE IX - INDEMNIFICATION

1. The Association shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

2. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

3. Any indemnification under Paragraph 1 above (unless ordered by a court) shall be made by the Association only as

authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Paragraph 1 above. Such indemnification shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs by independent legal counsel in written opinion, or (c) by a majority of the members.

4. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized herein.

5. The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise; and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent shall inure to the benefit of the heirs, executors and administrators of such a person.

6. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

#### ARTICLE X - BY-LAWS

The first By-Laws shall be adopted by the Board and may be altered, amended or rescinded by Declarant, the directors and/or members in the manner provided by the By-Laws.

#### ARTICLE XI - AMENDMENTS

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

1. A majority of the Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to

a vote at a meeting of the members, which may be the annual or a special meeting.

2. Written notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the By-Laws for the giving of notice of meeting of members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

3. At such meeting a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the Association.

4. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

5. If all of the directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these Articles be adopted, then the amendment shall thereby be adopted as though the above requirements have been satisfied.

6. No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all Institutional Lenders holding mortgages upon the Lots. No amendment shall be made that is in conflict with the Declaration. Prior to the closing of the sale of all Lots within the Property, no amendment shall make any changes which would in any way affect any of the rights, privileges, power or options herein provided in favor of, or reserved to, Declarant, unless Declarant joins in the execution of the amendment, including, but not limited to, any right of the Declarant to appoint directors pursuant to Article VII.

7. No amendment to these Articles shall be made which discriminates against any Owner(s), or affects less than all of the Owners within the Property, without the written approval of all of the Owners so discriminated against or affected.

8. Upon the approval of an amendment to these Articles, the Articles of Amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the Public Records of the County in which the Property is located.

9. Notwithstanding the provisions of this Article XI, the Declarant reserves the right to alter and amend these Articles of Incorporation, as it deems necessary and/or appropriate for the

protection and enhancement of the Subject Property, and the Declarant shall not require or need the joinder of any member prior to such time as the Declarant conveys the last Lot within the Subject Property or elects to terminate its control over the Association, whichever shall first occur.


10. Notwithstanding the foregoing provisions of this Article XI, until the Declarant shall have relinquished control of the Association, no amendment of these Articles shall be adopted or become effective without the prior written consent of the Declarant, its successors or assigns.

ARTICLE XII

INITIAL REGISTERED OFFICE ADDRESS AND  
NAME OF INITIAL REGISTERED AGENT

The street address of the initial registered office of the Association is 9100 South Dadeland Boulevard, One Datan Center, Penthouse I, Miami, Florida 33156. The initial registered agent of the Association at that address is Datan Corporate Agents, Inc.

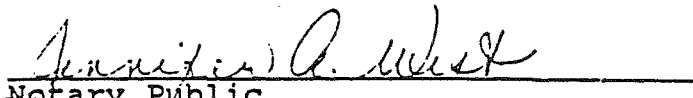
IN WITNESS WHEREOF, the incorporator has executed these Articles this 5th day of November, 1990.

  
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Karen P. Kondell

STATE OF FLORIDA  
COUNTY OF DADE

BEFORE ME, the undersigned officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared KAREN P. KONDELL, known to me and known to be the person who executed the foregoing Articles of Incorporation, and she acknowledged before me that she executed those Articles of Incorporation for the purposes therein expressed.

WITNESS, my hand and official seal this 5<sup>th</sup> day of November, 1990.

  
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Notary Public

My Commission Expires:  
NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. MAR. 14, 1992  
~~BONDED THRU GENERAL INS. CO.~~

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ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT

Having been named as registered agent for FAIRWAY BEND VILLAGE HOMEOWNER'S ASSOCIATION, INC., in the foregoing Articles of Incorporation I, on behalf of Datran Corporate Agents, Inc., a Florida corporation, hereby agree to accept service of process for said corporation not-for-profit and to comply with all statutes relative to the complete and proper performance of the duties of a registered agent. I am familiar with and accept the obligations of this position.

DATRAN CORPORATE AGENTS, INC.

By:



RICHARD N. BERNSTEIN, Secretary

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