

BRAE BURN HOMEOWNERS' ASSOCIATION

**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS**

BY LAWS

ARTICLES OF INCORPORATION

**NOTICE OF CORRECTION TO AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND TO ARTICLES OF INCORPORATION
AND BYLAWS OF
BRAE BURN HOMEOWNERS' ASSOCIATION, INC.**

Comes now the BRAE BURN HOMEOWNERS ASSOCIATION, INC., by its President, and hereby gives notice of a correction to the Notice of Amendment to Declaration recorded in Official Records Book 4410, Page 2542, Public Records of Volusia County, Florida. Due to inadvertence, the annual meeting date set forth in the Bylaws, Article III, Section 1, entitled "Annual Meetings," failed to reflect the month of the annual meeting. The month of February should have been inserted in said section and by virtue of this Notice said Section shall henceforth be read as referencing the month of February.

IN WITNESS WHEREOF, the BRAE BURN HOMEOWNERS' ASSOCIATION, INC., has caused this Notice to be executed in its corporate name by its President this 8th day of October, 1999.

Barbara Y. Lovelace
Witness
Printed Name **BARBARA Y. LOVELACE**

BRAE BURN HOMEOWNERS' ASSOCIATION, INC., A Florida Non-Profit Corporation

Donna J. Austin
Witness
Printed Name **DONNA J. AUSTIN**

By: John C. Davidson
JOHN C. DAVIDSON - President

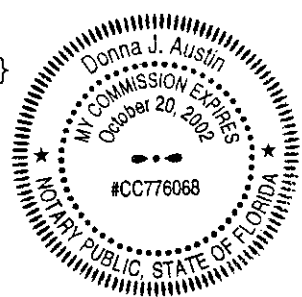
STATE OF FLORIDA
COUNTY OF VOLUSIA

I hereby certify that on this day before me, an officer duly qualified to take acknowledgments, personally appeared JOHN C. DAVIDSON as President of BRAE BURN HOMEOWNERS' ASSOCIATION, INC., A Florida Non-Profit Corporation, to me personally known to be the person described in, and who executed the foregoing instrument and acknowledged before me the execution of same.

Witness my hand and official seal in the County and State last aforesaid this 8th day of October, 1999.

Donna J. Austin
Notary Public
Printed Name: **DONNA J. AUSTIN**

{affix notary seal}



NOTICE OF AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND TO ARTICLES OF INCORPORATION
AND BYLAWS OF
BRAE BURN HOMEOWNERS' ASSOCIATION, INC.

Comes now the BRAE BURN HOMEOWNERS ASSOCIATION, INC., by its President, and gives notice of the adoption of the Amended Declaration of Covenants, Conditions and Restrictions of Brae Burn, and the Amended Bylaws and Amended Articles of Incorporation for BRAE BURN HOMEOWNERS ASSOCIATION, INC., copies of which are attached hereto.

IN WITNESS WHEREOF, the BRAE BURN HOMEOWNERS' ASSOCIATION, INC., has caused this Notice to be executed in its corporate name by its President this 5th day of March, 1999.

Barbara Y. Lovelace _____
Witness BRAE BURN HOMEOWNERS' ASSOCIATION,
Printed Name BARBARA Y. LOVELACE INC., A Florida Non-Profit Corporation

Donna J. Austin _____
Witness By: John C. Davidson
Printed Name DONNA J. AUSTIN JOHN C. DAVIDSON - President

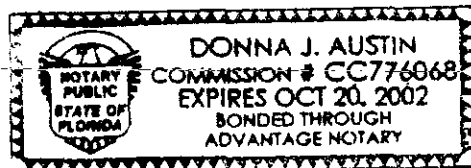
STATE OF FLORIDA
COUNTY OF VOLUSIA

I hereby certify that on this day before me, an officer duly qualified to take acknowledgments, personally appeared JOHN C. DAVIDSON, as President of BRAE BURN HOMEOWNERS' ASSOCIATION, INC., A Florida Non-Profit Corporation, to me personally known to be the person described in, and who executed the foregoing instrument and acknowledged before me the execution of same.

Witness my hand and official seal in the County and State last aforesaid this 5th day of March, 1999.

Donna J. Austin _____
Notary Public/Commission # 776068
Printed Name: DONNA J. AUSTIN
My commission expires: 10-20-02

{affix notary seal}



BRAE BURN
AMENDED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, Made this 1st day of March, 1999, by the Lot and Living Unit Owners of the properties, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Volusia County, State of Florida, described as follows:

Lots 1 through 42, and Tracts A through F, both inclusive, of BRAE BURN - UNIT 1, according to the plat thereof recorded at Map Book 35, Pages 5 through 7, Public Records of Volusia County, Florida, including the access/utility easements designated as Oakmont Lane and Turnberry Circle.

Lots 1 through 46, and Tracts A through C, both inclusive, of BRAE BURN - UNIT 2, according to the plat thereof recorded at Map Book 35, Pages 132 through 133, Public Records of Volusia County, Florida, including the access/utility easements designated as Carnoustie Lane and Canterbury Circle;

Lots 1 through 43, Tracts A and B, BRAE BURN - UNIT 3, according to the plat thereof recorded at Map Book 36, Pages 1 and 2, Public Records of Volusia County, Florida, including the access/utility easements designated as Glen Eagles Drive and Troon Court; and

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

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Brae Burn Homeowners' Association, Inc., its successors and assigns.

Section 2. "Board of Directors" or "Board" shall mean the Board of Directors of Brae Burn Homeowners' Association, Inc.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Living Unit which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation, unless and until such interest has been acquired pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 4. "Properties" shall mean and refer to that certain real property described in the first "whereas" clause set forth above.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision of the Properties with the exception of the Common Area.

Section 7. "Living Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

Section 8. "Declarant" shall mean and refer to the Lot and Living Unit Owners.

Section 9. "Member" shall mean and refer to all those Owners who are members of Brae Burn Association as provided in Article III herein.

Section 10. "Access/Utility Easements" shall mean the easements designated on the plats of the Properties. Such easements shall be for the purpose of providing ingress and egress to each lot, and for the purpose of providing utility services to each lot, including (but not limited to) water, sewer, electric power, natural gas and drainage. Maintenance of access/utility easements shall be provided by the Association.

Section 11. "Structure" shall mean and refer to:

(1) any thing or object (other than trees, shrubbery and landscaping) the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered patio, swimming pool, fence, curbing, paving, wall, signboard or any temporary or permanent living quarters (including any house trailer or mobile home) or any other temporary or permanent improvements to such Lot; and

(2) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot.

ARTICLE II PROPERTY RIGHTS

~~Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:~~

(a) the right of the Association to suspend the voting rights and right to use any recreational facilities by an Owner or those who possess the Owner lot for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for each infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3 of the members has been recorded in the Public Records of Volusia County, Florida;

~~Section 2. Delegation of Use. Any owner may delegate, in accordance with the Association's Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.~~

ARTICLE III MEMBERSHIP RIGHTS

Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**ARTICLE IV
THE SUGAR MILL COMMUNITY**

The land and improvements herein are also subject to the Sugar Mill Declaration of Covenants, Conditions and Restrictions recorded at Book 1745, Page 110 of the Public Records of Volusia County, Florida, and any amendments thereto. All owners of Lots will be members of The Sugar Mill Association, Inc., a not for profit corporation organized and existing under the laws of the State of Florida. The development of the Properties is subject to the Declaration of Covenants, Conditions and Restrictions described above. The owners of Lots will be entitled to the benefit of all easements and the use of all common properties described in said Declaration, and will be subject to all covenants, conditions and restrictions, including the annual assessments and special assessments, described therein.

**ARTICLE V
SUGAR MILL COUNTRY CLUB**

Sugar Mill Country Club, Inc. is the operator of the golf course and certain other recreational facilities contiguous to the Properties. Owners of Lots within the Properties are not automatically members of Sugar Mill Country Club. Admission to the Sugar Mill Country Club is governed by the Sugar Mill Country Club, Inc.

**ARTICLE VI
COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for maintenance, repairs and capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, late payment penalties and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and of the Living Units situated upon the Properties, for the acquisition, improvement, and maintenance of the Common Area, and for the maintenance of the Lots and Living Units.

Section 3. Annual Assessments. As of January 1, 1998, the annual assessment for each Lot containing a living unit is \$1,850.00 and 50 percent thereof for a lot without a living unit. The annual assessment shall be due in advance on January 1st of the calendar year or such other time as may be fixed by the Board of Directors. The Board of Directors may fix the annual assessment at an amount determined by the Board of Directors at the time the assessment is imposed, provided, however, the annual assessment may not be increased by the Board of Directors in excess of 15 percent above the previous year's assessment without the consent of two-thirds of the members. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon request furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Living Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 4. Special and Emergency Assessments.

A. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition of Common Area, and construction, reconstruction, maintenance, repair or replacement of the Common Area, or any improvements located thereon, and including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

B. In addition to the annual and special assessment authorized above, the Association may levy an emergency special assessment for the purpose of defraying, in whole or in part, the cost of repair, maintenance, clean-up or reconstruction necessitated by an emergency, provided that such assessment shall not exceed ten percent of the annual assessment and shall have the consent of two-thirds of the Board of Directors who are voting in person or by proxy at a meeting duly called for its purpose.

Section 5. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of an meeting called for the purpose of increasing an annual assessment in excess of 15 percent above the previous year's assessment or imposing a special assessment shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. The

presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum.

Section 6. Effect of Nonpayment of Assessments: Remedies of Brae Burn Association. Any assessment not paid when due shall bear interest from the due date at the highest rate allowed by law. There shall also be a late payment penalty of \$50.00 for each month of delinquency. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or file, record and foreclose a lien against the property. A lien shall be signed by the President or Vice-President and shall be enforceable in the manner provided under Florida law for foreclosure of mortgage liens. The lien shall secure all assessments, interest, costs, attorney's fees, and late payment penalties incurred by the Association subsequent to filing of the lien. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot or Living Unit. No voluntary sale of any Lot or Living Unit shall be effective, nor shall any marketable title be conveyed unless and until the seller has obtained from the proper officers of the Association a certificate, in recordable form, attesting to the fact that the seller has paid all assessments to date. If no such certificate is obtained and recorded, the purchaser shall be conclusively presumed to have assumed such past due assessments and shall become forthwith liable therefor.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any purchase money first mortgage recorded prior to the lien of the Association. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 8. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Areas as defined herein; (c) all properties exempted from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment hereunder as follows: periodically paint, stain, or otherwise provide finishing to exterior surfaces of Living Units (not including glass); periodically clean, and paint

gutters and downspouts; mow, trim, edge and clip grass, trees and shrubbery in front of Units only as needed; replace dead or dying vegetation with similar plants as may be necessary in front of Units only; water, fertilize, and apply insecticides and fungicides to vegetation as needed in front of Units only; maintain and make minor repairs to pathways, and other elements of exterior landscaping. In addition to the foregoing, the Association shall provide maintenance on the access/ utility easements contiguous to each Lot, as shown on the plats, including (but not limited to) maintenance and repair of the road surface, and drainage ways. The Association, its employees and agents, shall have access to the Lots and Living Units at reasonable times and upon reasonable notice to perform the foregoing maintenance. No other exterior maintenance shall be performed by the Association. It is the intent of this Article VII that the Association shall be responsible for the above matters which directly affect the exterior appearance of the Lots and Living Units, and the access/utility easements, and Lot and Living Unit Owners shall be responsible for all other matters. In the event that the need for maintenance or repair of a Lot or Living Unit or the improvements thereon is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

Section 2. Limitation of Liability. Notwithstanding the duty of the Association to maintain the exterior of the Lots and Living Units, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired, or caused by the elements or other owners or persons. In no event shall the Association be responsible for loss or destruction of the Living Units, or any portion thereof, which may be caused by fire, wind, water or vandalism and such other damages, commonly referred to as casualty losses, which are normally insured against under homeowners' insurance policies.

ARTICLE-VIII ARCHITECTURAL CONTROL

A. In order to have a harmonious scheme of architecture and landscaping, it is the intent of this Amended Declaration that the style, materials and configuration of the original construction and landscaping of Brae Burn be maintained in its original appearance. No Owner may make any alteration of any structure or landscaping which alters the original appearance of his Lot or Living Unit. Nothing in this Article shall be construed to prevent the restoration or rebuilding of an Owner's Living Unit if it has been damaged or destroyed. In such event, however, the restoration or rebuilding of a Living Unit must be in harmony with the architectural appearance of Brae Burn, and all plans and specifications for such restoration or rebuilding must be approved by the Board of Directors of the Brae Burn Association, or by a committee appointed by the Board of Directors for such purpose.

B. No building, fence, wall or other structure shall be commenced, or erected upon any Brae Burn property, nor shall any exterior addition to or change or alteration be made to any Living Unit until the plans and specifications showing the nature, shape, height, materials and location of same shall have been submitted to the Board of Directors of the Association, or by a committee appointed by the Board of Directors for such purpose. Plans and specifications, having been approved, will be forwarded to the Design and Review Board of the Sugar Mill Association for final approval.

C. If any structure or landscaping shall be changed, modified or altered without prior approval of the Board of Directors of the Association of such change, modification or alteration, and the plans and specifications therefor, if any, then Owner shall, upon demand, cause the structure or landscaping to be restored to comply with the original plans and specifications, or the plans and specifications originally approved by the Board of Directors of the Association, and shall bear all costs and expenses of such restoration, including costs and reasonable attorneys' fees of the Board of Directors of the Association.

D. In addition, any Owner making or causing to be made any structure or landscaping or change, modification or alterations thereof agrees and shall be deemed to have agreed, for such Owner and his heirs, personal representatives, successors and assigns to hold the Association and all other Owners harmless from any liability, damage to the Owner's Lot or proposed implements, and from expenses arising therefrom and such Owner shall be solely responsible for the maintenance, repair and insurance thereof and for assuring that the work meets with all applicable governmental approvals, rules and regulations.

ARTICLE IX GENERAL PROVISIONS

Section 1. Pedestrian and Vehicular Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, lanes and other portions of the Common Area as may be from time to time intended and designated for such purpose and use; and for the vehicular traffic over, through and across such portions of the Common Area as may be from time to time paved and intended for such purposes; and such easements shall be for the use and benefit of the Lot and Living Unit owners and those claiming by, through or under them to the end that reasonable access to public roadways is assured. Provided, that nothing herein shall be construed to give or create in any person the right to park upon any portion of the Common Area except to the extent that space may be specifically designated and assigned for parking purposes.

Section 2. Encroachments. In the event that Any Living Unit shall encroach upon any of the Common Area or upon any other Lot for any reason other than the intentional or negligent act of the Owner, or in the event any Common Area shall encroach upon any Lot, then an

easement shall exist to the extent of that encroachment for so long as the encroachment shall exist.

Section 3. Golf Course Easement. On each lot bordering the Sugar Mill Country Club golf course there shall exist a golf course easement, 25 feet in depth, measured from the property line adjacent to the golf course and extending the entire width of the lot, which shall be left as a natural greenbelt and buffer.

Section 4. Mergers. The Association may merge or consolidate with another association for purposes generally the same as contained in this Declaration upon the affirmative vote of 2/3 of the members and as provided in the Brae Burn Association's Amended Articles of Incorporation and Bylaws. Upon such merger or, consolidation, the Association's properties, rights and obligations shall, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association shall, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Amended Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Properties except as herein provided.

Section 5. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended Declaration. Failure by the Brae Burn Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

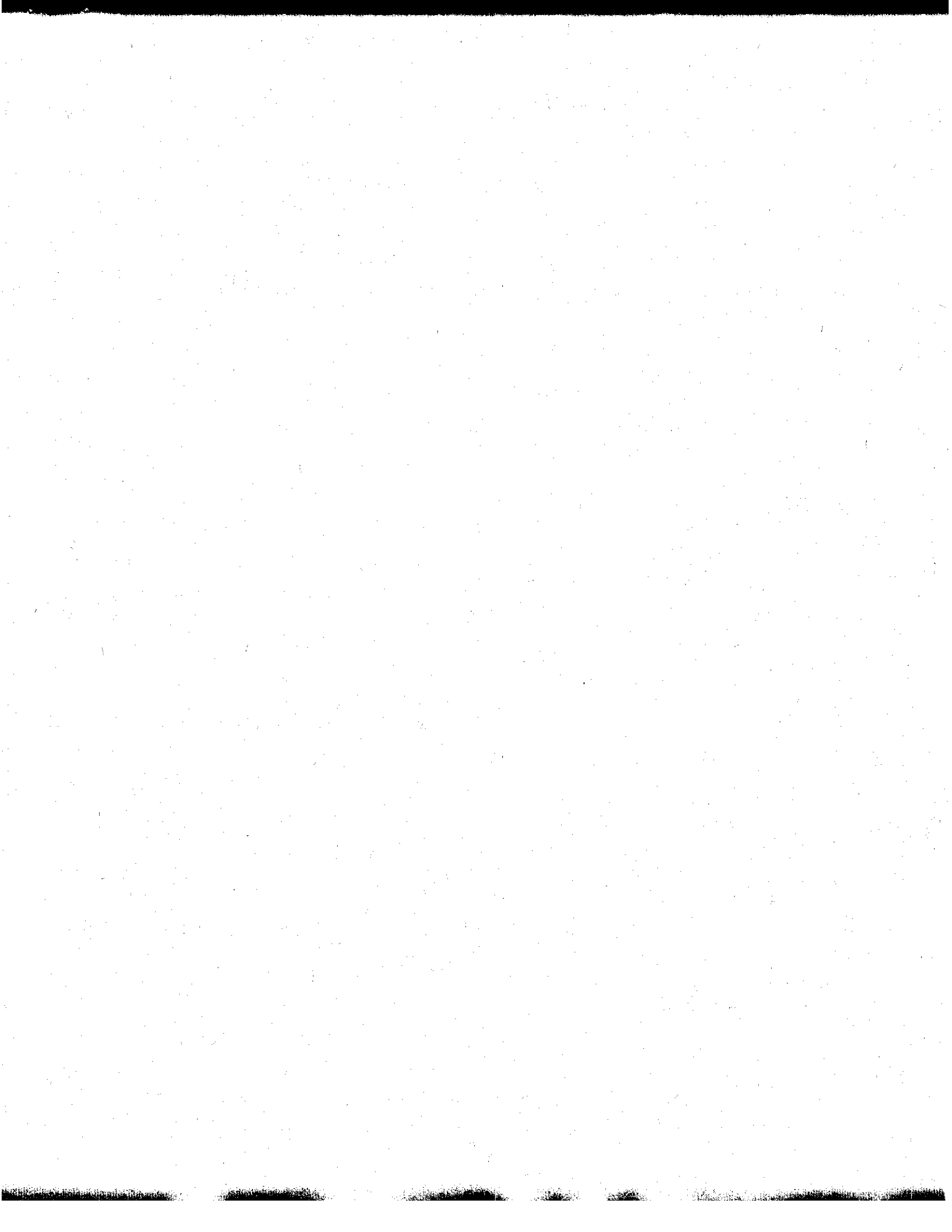
Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 7. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of 20 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Amended Declaration may be amended by an instrument signed by not less than two-thirds of the Lot Owners. Any amendment must be recorded in the Public Records of Volusia County, Florida.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, represented by the President of the Association, has hereunto set his hand and seal this 1st day of March, 1999.

BRAE BURN HOMEOWNERS' ASSOCIATION, INC.

By: John C. Davidson
JOHN C. DAVIDSON - President



AMENDED BYLAWS

OF

BRAE BURN HOMEOWNERS' ASSOCIATION, INC.

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is BRAE BURN HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association." The principal office of the corporation shall be located at 100 Clubhouse Circle, New Smyrna Beach, Florida, but meetings of members and directors may be held at such places as may be designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

Section 1. "Association" shall mean and refer to Brae Burn Homeowners' Association, Inc., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property described in the Amended Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declaration" shall mean and refer to the Amended Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded concurrent with these Amended Bylaws.

Section 7. "Member" shall mean **and** refer to those persons entitled to membership as provided in the Declaration.

ARTICLE III MEETING OF MEMBERS

Section 1. Annual Meetings. Regular annual meetings of the members shall be held during the month of FEBRUARY of each year, as determined by the Board of Directors.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of one-fourth (1/4) of all of the members.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 15 days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association. Owners shall be responsible for notifying the Association in writing of their current mailing address. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-fourth (1/4) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. No proxy shall be valid for more than 90 days.

ARTICLE IV
BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) directors, who must be members of the Association.

Section 2. Term of Office. At each annual meeting the members shall elect directors for a term of two-years each, to replace those directors whose terms expire.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, a successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

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

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE V
NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and one member from each of Units I, II, and III of the subdivision. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve until the close of such annual meeting. Such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members.

Section 2. Election. Election to the Board of Directors shall be by written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be rescheduled.

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

Section 3. Quorum. A majority of the 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 shall be regarded as the act of the Board.

Section 4. Waivers. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and, if either before or after the meeting, each of the directors present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

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

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and bearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

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

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;

(b) super^hvis^e all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon receipt of a legitimate request by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained;

(h) cause timely notice to be given to each lot owner and to the holders of first mortgages whose substantial interests are affected by any action of the Association or by third parties.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or other disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

- President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall be empowered to sign all legal written instruments.

Vice-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; maintain appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members. All checks and promissory notes of the Association shall be signed by two persons, one being a director and the other being either a director or the treasurer.

**ARTICLE IX
COMMITTEES**

The Board of Directors shall appoint committees as deemed appropriate in carrying out its purposes.

**ARTICLE X
BOOKS AND RECORDS**

The books, records and papers of the Association shall at reasonable times and places, be subject to inspection by any member, or by holders of first mortgages on any portion of the properties.

ARTICLE XI ASSESSMENTS

As more fully provided in the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. In addition, if payment of any assessment is more than 15 days late, the Association may charge a late charge not exceeding \$50.00 for such late payment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Brae Burn Homeowners' Association, Inc., A Corporation Not For Profit.

ARTICLE XIII AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

Section 2. Any management agreement for the properties may be terminable by the Association upon thirty (30) days written notice, and the terms of any such agreement may not exceed one year, renewable by agreement of the parties for successive one year periods.

IN WITNESS WHEREOF, we, being all of the Directors of the Brae Burn Homeowners' Association, Inc., have hereunto set our hands this 1st day of March, 1999.

John C. Davidson
Peter Sawicki
Erin A. Johnson
Stephanie Katis
Tom Plunkett

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the Brae Burn Homeowners' Association, Inc., a Florida corporation not for profit, and

THAT the foregoing Amended Bylaws constitute the original Bylaws of said Association.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 1st day of March, 1999.

Erin A. Johnson
Secretary

AMENDED ARTICLES OF INCORPORATION
OF
BRAE BURN HOMEOWNERS' ASSOCIATION, INC.

In compliance with the requirements of Chapter 617, Florida Statutes, the undersigned do hereby certify:

ARTICLE I
NAME

The name of the corporation is BRAE BURN HOMEOWNERS' ASSOCIATION, INC., hereafter called the "Association."

ARTICLE II
PRINCIPAL OFFICE

The principal office of the Association is located at 100 Clubhouse Circle, New Smyrna Beach, Florida 32168.

ARTICLE III
RESIDENT AGENT

John C. Davidson, is the current Resident Agent of this Association.

ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residence Lots and Common Area within that certain property described as follows:

Lots 1 through 42, and Tracts A through F, both inclusive, of BRAE BURN - UNIT 1, according to the plat thereof recorded at Map Book 35, Pages 5 through 7, Public Records of Volusia County, Florida, including the access/utility easements designated as Oakmont Lane and Turnberry Circle; and

Lots 1 through 46, and Tracts A through C, both inclusive, of BRAE BURN - UNIT 2, according to the plat thereof recorded at Map Book 35, Pages 132 through 133, Public Records of Volusia County, Florida, including the access/utility easements designated as Carnoustie Lane and Canterbury Circle; and

Lots 1 through 43, Tracts A and B, BRAE BURN - UNIT 3, according to the plat thereof recorded at Map Book 36, Pages 1 and 2, Public Records of Volusia County, Florida, including the access/utility easements designated as Gleneagles Drive and Troon Court; and

Such other property as may be brought within the jurisdiction of the Association pursuant to the Declaration of Covenants, Conditions and Restrictions for BRAE BURN recorded at Official Records Book 1977, Page 552, Public Records of Volusia County, Florida, as amended;

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

- (a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration," applicable to the property and recorded at Official Records Book 1977, Page 552, as amended at Official Records Book 1978, Page 100, Public Records of Volusia County, Florida, and as the same may be amended from time to time as therein provided and as may be made applicable to additional property as therein provided, said Declaration being incorporated herein as if set forth at length;
- (b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
- (c) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) borrow money, and with the assent of two-thirds (2/3) of each class of members mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the members, agreeing to such dedication, sale or transfer;

(f) participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Common Area, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of the members;

(g) have and to exercise any and all powers, rights and privileges which a corporation organized under the Corporations Not for Profit Law of the State of Florida (Chapter 617, Florida Statutes) by law may now or hereafter have or exercise.

ARTICLE V MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by-covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE VI VOTING RIGHTS

Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE VII BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of five (5) Directors, who must be members of the Association. The number of directors may be changed by

amendment of the Bylaws of the Association. At each annual meeting the members shall elect directors for a term of two years each, to replace those directors whose terms expire.

ARTICLE VIII OFFICERS

The affairs of the Association shall be administered by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board of Directors.

ARTICLE IX DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association may be distributed as may be deemed appropriate to the members of the Association or may be dedicated to an appropriate public agency, in either event to be used for purposes similar to those for which this Association was created. In the event that any such dedication is refused acceptance, such assets may be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE X DURATION

The corporation shall exist perpetually.

ARTICLE XI BYLAWS

The Bylaws of the Association were adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided by the Bylaws.

**ARTICLE XII
AMENDMENTS**

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered. A resolution for the adoption of a proposed amendment may be proposed either (a) by the Board of Directors or (b) by two-thirds (2/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting to consider the amendment may express their approval or disapproval in writing, provided such approval or disapproval is delivered to the Secretary prior to such meeting. A resolution adopting a proposed amendment must bear the approval of not less than a majority of the Board of Directors and not less than two-thirds (2/3) of the entire membership of the Association. In the alternative, an amendment may be made by an agreement signed and acknowledged by all the record owners of units (members of the Association) in the manner required for the execution of a deed.

**ARTICLE XIII
INDEMNIFICATION**

Every officer and director of the Association shall be indemnified by the Association against all expenses and liabilities, including reasonable attorney's fees incurred and imposed in connection with any proceedings to which he may be a party, or in which he may become involved by reason of his being or having been an officer or director of the Association, whether or not he is an officer or directors at the time the expenses are incurred. The officer or director shall not be indemnified if he is adjudged guilty of gross negligence or willful misconduct or shall have breached his fiduciary duty to the members of the Association. The Association shall not be liable, however, for payment of a voluntary settlement unless it is first approved by the Board of Directors. The foregoing rights shall be in addition to and not exclusive of all other rights to which the director or officer may be entitled.

IN WITNESS WHEREOF, the undersigned, constituting the President of this Association has executed these Amended Articles of Incorporation this 1st day of March, 1999.

The members of the corporation adopted these Amended Articles of Incorporation on March 1, 1999. The members' votes cast for this Amendment were sufficient for approval.

BRAE BURN HOMEOWNERS' ASSOCIATION, INC.

BY:

John C. Davidson
JOHN C. DAVIDSON

President