

**AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
HERITAGE CREEK**



THIS AMENDED AND RESTATED DECLARATION of Covenants, Conditions, and Restrictions is made this 19th day of January, 2011, by **D. R. HORTON, INC., a Delaware corporation** (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, on June 19, 2008, Heritage Creek, L.L.C. (the "Original Developer") executed that certain Declaration of Covenants and Restrictions for Heritage Creek, which was recorded as Instrument No. 2008100196 of the Public Records of Sarasota County, Florida, as amended (the "Original Declaration"), submitting the property described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property") to the covenants and restrictions set forth therein; and

WHEREAS, the Property has been subdivided into a subdivision known as "Heritage Creek" by the Plat of Heritage Creek, which has been recorded at Plat Book 47, Pages 18 through 18C, inclusive, of the Public Records of Sarasota County, Florida; and

WHEREAS as permitted by Section 3.5B of the Original Declaration, the Original Developer assigned all of its rights under the Original Declaration to CRM Florida Properties, LLC ("CRM") by that certain Assignment of Developer Rights recorded as Instrument No. 2010112826 of the Public Records of Sarasota County, Florida (the "Assignment of Developer Rights"), including but not limited to, all rights, powers and privileges as "Developer" under the Declaration, and CRM assigned its rights under the Assignment of Developer Rights to Developer by that certain Assignment recorded as Instrument No. 2010112828 of the Public Records of Sarasota County, Florida; and

WHEREAS, the Original Developer caused the incorporation of HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association"), a Florida corporation not for profit, for the purposes as described in the Articles of Incorporation for said Association; and

WHEREAS, pursuant to Article VIII of the Original Declaration, the Developer may amend or modify the Original Declaration without the consent of any other party until the Developer has turned over control of the Heritage Creek Homeowners'

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Association, Inc. (the "Association") to the non-Developer Members (as defined in the Original Declaration); and

WHEREAS, the Developer has not turned over control of the Association; and

WHEREAS, the Developer desires to amend and restate the Original Declaration as applies to all Property made subject to the Original Declaration; and

WHEREAS, the Amended and Restated Declaration is such a substantial rewording of the Original Declaration that specifically identifying each change to the Original Declaration would hinder, rather than assist, an understanding of the amendments; and

NOW, THEREFORE, the Original Declaration is hereby amended, restated, replaced and superseded in its entirety and the following Amended and Restated Declaration is substituted in its place such that all Property subject to the Original Declaration shall hereafter be subject to this Amended and Restated Declaration, as it may be amended from time to time. The Property described in Exhibit "A" shall be owned, used, sold, conveyed, leased, encumbered, demised and occupied subject to the provisions of this Amended and Restated Declaration, which shall run with the Property or any part thereof and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each Owner thereof. Nothing herein contained, and no violation of these covenants and restrictions shall invalidate or impair the lien of any mortgage or deed of trust given in good faith and for value. Further, the express intent of Developer is that substantive contract rights created hereunder shall not be retroactively impaired by legislation enacted subsequent to the recording of this Amended and Restated Declaration.

PURPOSE

This Declaration provides for the overall, development, administration, maintenance and preservation of the Property and amenities thereon. The Property has been platted and developed to create a common scheme of development for Heritage Creek in order to ensure the desirability and attractiveness of the Property as a residential neighborhood. The Association has been formed to be comprised of owners of the Lots within the Property for the purposes of owning, operating and/or maintaining various common areas and administering and enforcing the Declaration, as amended. This Declaration does not and is not intended to create a condominium under Florida law.

ARTICLE I

DEFINITIONS

Section 1. **Annual Assessment** shall mean any Assessment levied against the Lots pursuant to the budget adopted annually by the Association.

Section 2. **Architectural Review Board (ARB)** means a committee appointed by the Board of Directors to exercise the functions delegated to it in connection with review and approval of architectural plans and landscaping plans for improvements on the Property and as herein provided.

Section 3. **Articles** shall mean the Articles of Incorporation of Heritage Creek Homeowners' Association, Inc., which is attached hereto as Exhibit "B", as amended by the Articles of Amendment to Articles of Incorporation of Heritage Creek Homeowners' Association, Inc. attached hereto as Exhibit "B-1".

Section 4. **Assessment** shall mean a share of the funds required for the payment of the expenses of the Association which from time-to-time is assessed against the individual Members and their Lots, including without limitation Annual Assessments, Special Assessments, and Individual Assessments, as authorized by this Declaration and does not mean non-ad valorem special assessment (by any name) which may be levied and imposed on the Property by a general purpose or special purpose local government.

Section 5. **Association** shall mean and refer to Heritage Creek Homeowners' Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

Section 6. **Association Property** shall be the lands, leaseholds, and tangible and intangible personal property owned by or dedicated to the Association, including but not limited to the Common Areas, and any easements granted to the Association.

Section 7. **Board or Board of Directors** means the Board of Directors of the Association.

Section 8. **Bylaws** shall refer to the Bylaws of the Association, which are attached hereto as Exhibit "C" and as they may be amended from time to time.

Section 9. **Common Area** shall mean all real and personal property now or hereafter owned by or dedicated to the Association for the common use and enjoyment of the Owners and may include, without limitation or obligation, conservation areas, drainage easements, the Surface Water Management System, signs and signage easements, landscape easements and buffers, preservation areas, wetlands and upland buffers required by the Southwest Florida Water Management District and by Sarasota County, walkways and public utility easements. Tracts A, B, C, D, E, F, G and H as shown on the Plat are Common Areas. Tract I has been dedicated on the Plat to Sarasota County as a public right-of-way and public utility easement and is not a Common Area.

Section 10. **Common Expenses** shall mean and include the actual and estimated expenses of operating the Association, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws, and

the Articles of Incorporation of the Association. Common Expenses shall include reserves for capital expenditures and/or deferred maintenance if such reserves are initially established by the Developer, or if the majority of the total voting interests have approved funding of reserves, unless the majority of voting interests decide to waive or reduce such reserves.

Section 11. **Developer** shall mean D. R. HORTON, INC., a Delaware corporation, its successors, transferees and assigns, provided such successors or assigns acquire more than one undeveloped Lot from Developer for the purposes of development and are assigned all or a portion of the Developer's rights by a duly executed and recorded instrument.

Section 12. **Declaration or Amended and Restated Declaration** shall mean and refer to this Amended and Restated Declaration of Covenants and Restrictions for Heritage Creek, as it may be amended from time to time.

Section 13. **Living Unit or Unit** means any improved property intended for use as a single family dwelling located within the Property. For purposes of this Declaration, any such Unit shall not be deemed to be improved until a Certificate of Occupancy has been issued by the appropriate governmental authorities for the single family dwelling constructed on such portion of the Property. The use of the term "Living Unit" or "Unit" shall be interpreted as if the term was followed immediately by the words, "and the Lot on which it is located."

Section 14. **Lot** shall mean any one of the platted portions of land into which the Property has been subdivided, upon each of which a single Living Unit has been or is intended to be constructed. Unless the context clearly requires a different interpretation, the term, "Lot" shall be interpreted as if it were followed immediately by the words "and the Living Unit constructed thereon."

Section 15. **Majority** means those eligible votes totaling more than fifty percent (50%) of the total eligible number.

Section 16. **Member** shall mean every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject to this Declaration, but excluding persons or entities holding title merely as security for performance of an obligation, and every such person or entity shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 17. **Owner or Lot Owner** shall mean and refer to the record Owner of fee simple title, whether one or more persons or entities, of any Lot which is part of the Property, but excluding any party holding fee simple title merely as security for the performance of an obligation, unless and until such holder has acquired title pursuant to foreclosure proceedings or deed in lieu of foreclosure, nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

Section 18. **Permit** the Environmental Resource Permit and conditions approved by the Southwest Florida Water Management District Under Permit No. 24604.001, Application No. 50193, as amended or modified with approval of the Southwest Florida Water Management District .

Section 19. **Person** shall mean and include an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

Section 20. **Plat** shall mean the plat of Heritage Creek as recorded at Plat Book 47, Pages 18 through 18C, inclusive, of the Public Records of Sarasota County, Florida.

Section 21. **Property** shall mean and refer to the real property subject to this Declaration as described in Exhibit "A" of this Declaration, as the same may be amended from time to time.

Section 22. **Resident** shall mean and refer to the legal occupant of any Lot.

Section 23. **Residential** shall mean and refer to the intended use of the Property as a single-family Living Unit.

Section 24. **Rules and Regulations** means those certain rules and regulations that may be promulgated by the Board from time to time pertaining to use of the Property.

Section 25. **SWFWMD** shall mean the Southwest Florida Water Management District.

Section 26. **Special Assessment** shall mean any Assessment levied against an Owner other than the Assessment required by the budget adopted annually by the Association.

Section 27. **Surface Water Management System** shall mean any portion of the surface water or stormwater management system which is designed, constructed or implemented pursuant to the Permit to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse the water to prevent or reduce flooding, over drainage, environmental degradation, or water pollution otherwise affecting the quantity discharge of the water, as more particularly defined in Article X hereof.

Section 28. **Street** shall mean and refer to any street, highway or other thoroughfare constructed within the Property whether the same is designated as a street, avenue, boulevard, drive, driveway, place, court, road, terrace, way, circle, lane, walk or other similar designation.

Section 29. **Tract** shall mean any or all of the Common Area tracts designated as Tract A, Tract B, Tract C, Tract D, Tract E, Tract F, Tract G and Tract H upon the Plat.

Section 30. **Turnover or turnover meeting** shall mean the first meeting at which the Lot Owners elect a majority of the Board of Directors and the Developer turns over control of the Board of Directors in accordance with the Articles.

Section 31. **Undeveloped Lot** shall mean a Lot upon which no Living Unit has been constructed, or, a Lot upon which a Living Unit has been constructed, but no certificate of occupancy has been issued by the local governmental authority.

ARTICLE II

PROPERTY RIGHTS

Section 1. **Association Property and Surface Water Management System.** Subject to the provisions of Article IV, Section 1(a), the Association Property shall be owned by or dedicated to the Association for the benefit of its Members. The Surface Water Management System shall be maintained by the Association and shall be considered Association Property. The drainage easements reserved on the Plat and any other drainage easements dedicated to the Association by the Developer shall be considered Common Areas. A perpetual non-exclusive easement over, across, under and through the Common Areas is dedicated on the Plat and hereby reserved to the Association for its operation, maintenance and repair obligations as set forth herein.

Section 2. **Developer's Reserved Easement.** Notwithstanding any provisions contained in the Declaration to the contrary, Developer hereby expressly reserves unto itself and its heirs, successors, transferees and assigns a non-exclusive, perpetual right, privilege, and easement for the benefit of Developer over, under, in, and/or on the Property, without obligation and without charge to Developer, for the purposes of construction, installation or relocation of utilities, development, sale, signage, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Property, provided that this right, privilege and easement shall not substantially interfere with the use of a Lot by an Owner. The reserved easement shall constitute a burden on the title to the Property, shall not be removed from its intended use by the Association or its successors and assigns, and shall specifically include, but not be limited to:

(a) The right of access, ingress and egress for vehicular and pedestrian traffic over, under, on, or in the Property; and the right to tie into any portion of the Common Areas or Lots owned by Developer with roads, driveways, parking areas, and walkways, provided that such action by Developer will not prevent or unreasonably interfere with the Residential use of a Unit; and the right to install, tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas,

water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Property.

(b) The right to access, ingress and egress for operation and maintenance of the equipment and pipes used to draw water to irrigate the Common Areas, if the Developer decides to use water for such purposes.

(c) The right, but not the obligation, to enter into cross easement agreements with owners of adjoining properties.

(d) The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Developer, may be required, convenient, or incidental to the construction and sale by Developer of residences on the Property.

(e) No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Property, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit claim deed from Developer releasing such right, privilege, or easement by express reference thereto.

(f) The right to construct, install, replace, relocate, maintain, repair, and use equipment, lines and pipes necessary for irrigation of Association Property. It shall be expressly permissible for the Developer to install, repair, replace and maintain such equipment, lines and pipes when and where the Developer deems appropriate.

(g) The right, prior to and after Turnover, to access, ingress and egress over, in and to the Property for completion of all Developer's obligations required by any and all applicable permits related to the Property.

This Section shall not be amended without the written consent of Developer so long as Developer owns and holds for sale or lease at least one Lot in the Property.

Section 3. Grant of Drainage and Utility Easements. The Property is subject to non-exclusive drainage and/or utility easements as shown and dedicated on the Plat. These drainage and utility easements shall be for the construction, installation, replacement, relocation, maintenance, repair and operation of all drainage, utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, irrigation lines and facilities, and drainage lines and facilities, constructed or installed in, on, under and/or over the drainage and utility easements, and may not be removed from their intended use by the Association, its successors and assigns. The utilities easements are dedicated on the Plat to duly licensed public and private utilities for use in performing and discharging their respective official duties and obligations to provide utility and other governmental services.

Section 4. Use of Lots. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for construction of a single-family Living Unit.

Except as herein otherwise specifically provided, no structure shall be erected or permitted to remain on any Lot other than one single family residence, one private attached garage, and other outbuildings of like architectural character incidental to residential use of the premises conforming to the restrictions of this Declaration if approved by the ARB. No trade or commercial activity and no religious, charitable or other enterprise of any kind shall be carried on or upon any residential Lots. However, this restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping personal, business or professional records within their Living Unit, or from handling personal, business or professional telephone calls or written correspondence in and from the Unit. Such uses are expressly declared customarily incidental to Residential use. This restriction shall not prohibit Developer from conducting activities necessary on Lots and in Common Areas to complete development and sales of Lots and/or Living Units, including, without limitation, the right to construct sale offices, model homes, or both, and the right to conduct commercial real estate sales and brokerage activities upon Lots. Lease or rental of a Lot for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with the laws, regulations and ordinances of Sarasota County, Florida, this Declaration and all such reasonable rules and regulations as the Board of Directors may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the rules and regulations adopted hereunder. No Unit or part thereof shall be rented separately from the rental of the entire Lot.

Section 5. Owner's Easements. Each Owner of the Association and each tenant, agent, family member, guest, lessee, licensee, and invitee of such Owner shall have a permanent and perpetual non-exclusive easement for ingress and egress for pedestrian and vehicular traffic over and across the common roadways and walkways from time to time laid out on the Common Areas, for use in common with all such Owners, their tenants, agents and invitees. The portion of the Common Areas not used, from time to time, for common roadways and walkways shall be for the common use and enjoyment for its intended purpose of the Owners, and each Owner shall have a non-exclusive easement for use of such portions of such Common Areas and for the use of same in such manner as may be regulated by the Association. The foregoing easements are subject to the following:

(a) The right of the Association to grant such additional utility, maintenance and other easements, or relocate any existing easements, for the proper operation and maintenance of the Properties, subject, however, to the prior written consent thereto by the Developer, so long as the Developer has any ownership interest in the Property.

(b) The right and duty of the Association to levy Assessments against each Unit for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with all restrictions on the various plats of the Properties and any other instruments from time to time recorded in the Public Records.

(c) The right of the Association upon fourteen (14) days' prior written notice and an opportunity for a hearing, to suspend voting rights and/or the right to use the Common Areas and facilities by an Owner or his family for any period during which any Assessment against his Unit remains unpaid, and for a reasonable period to be determined by the Board for any infraction of this Declaration or any of the Rules and Regulations, it being understood that any suspension for either non-payment of any Assessment or breach of any Rules and Regulations shall not constitute a waiver or discharge of the Member's obligation to pay the Assessment; provided, however, that the Association shall not suspend the right to use any roads belonging to the Association, subject to the Rules and Regulations for such use, and provided further that the Association may not suspend any rights and easements reserved herein to the Developer.

(d) The right of the Association to (i) adopt and enforce Rules and Regulations governing the use of the Common Areas and all facilities at any time situated thereon and (ii) conduct such activities as may be required by the Association. The Rules and Regulations may include, but not be limited to, the right to restrict the maximum and minimum speed limits of using Association roads, maximum weight restrictions, maximum noise levels, and all other necessary traffic and parking regulations, all of which may be more restrictive than the laws of the State or any local government having jurisdiction.

(e) The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him or her, subject to regulations from time to time adopted by the Association.

Section 6. **Easements Appurtenant.** The easements provided in Section 5 above shall be appurtenant to and shall pass with the title to each Lot.

Section 7. **Utility Easements.** The Developer reserves to itself, its successors or assigns, and the Association a perpetual easement upon, over, under and across the Property for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, wires, siphons, valves, gates, pipelines, cable telephone service, electronic security systems and cable television and broadband communications and all machinery and apparatus appurtenant to all of the foregoing as may be necessary or desirable for the installation and maintenance of utilities servicing all Owners of any of the Property and servicing the Common Area, all such easements to be of a size, width and location as the Developer, in its discretion, deems best but selected at a location so as to not unreasonably interfere with the use of any improvements which are now, or will be, located upon the Property. As set forth in the Original Declaration, Developer has reserved for itself, its successors or assigns, a utility easement around the perimeter of the boundary lines of each Lot, excluding Lot lines bordering dedicated Streets, such easement having a width of eight feet (8') along each rear Lot line and five feet (5') along each side Lot line measured at right angles to

and within the boundary lines of each such Lot. Each such easement area may be entered upon, improved, used, and occupied for purposes of installing and maintaining such public utility lines and systems as Developer or public utility companies approved by or succeeding to Developer deem necessary for servicing the Property and Lots contained therein. Any permitted wall, fences, paving, planting or other improvements placed on such easement by the Owner of the Lot on which the easement lies shall be moved, if required, by the Developer, or the public utility company, their successors and assigns, at the expense of such Owner.

Section 8. **Service Easement.** The Developer hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television, and other utilities authorized by the Developer, its successors or assigns, to service the Property, and to such other persons as the Developer from time to time may designate, the nonexclusive, perpetual right of ingress and egress over and across the Common Area, roadways, and other rights of way for the purposes of performing their authorized services and investigations. The provisions of this section shall be limited to the roadways and other rights of way, both public and private, shown on the Plat and subject to this Declaration.

Section 9. **Signage and Landscape Easements.** The Developer hereby reserves for itself and for the Association, a perpetual easement, privilege and right in, over, under, on and across Tract A, Tract B, Tract C and Tract D as shown on the Plat for the purposes of installing, maintaining and replacing landscaping and lighting as may be required by the Association and/or any applicable governmental permits or requirements.

Section 10. **Easements for Repair.** To the extent necessary, each Owner shall have an easement over the adjacent Lot and over the Common Area to maintain such Owner's Unit and to make necessary repairs to the Owner's Unit. Such easement shall not exceed an area extending five (5) feet over the Lot or Common Area. Any such right of access shall be exercised in a reasonable manner only and, except for emergency repairs, any Owner shall give at least twenty-four (24) hours prior notice to the other party over whose Lot the easement is being exercised and shall, to the extent practical, not interfere with, restrict, disturb or hinder the full enjoyment by such Owner of his or her Unit. Any Owner exercising the easement rights herein granted shall repair, at such Owner's sole cost and expense, any damage caused by such Owner as a result of such entry.

Section 11. **Buffer Wall Easement.** A non-exclusive easement having the width of six feet (6') along each rear Lot line and side Lot line of Lots 1, 2, 3, 28, 29 and 30 is hereby reserved for the benefit of the Association for access to and repair and maintenance of the buffer wall constructed in the rear of such Lots by the Developer.

Section 12. **Additional Easements.** The Developer, so long as it has any ownership interest in any portion of the Properties or upon Turnover, whichever is later, and the Association shall each have the right to grant such additional electric, sewer,

water, telephone, gas, sprinkler, irrigation, cable television, maintenance, stormwater management, drainage or other easements, and to relocate any existing easement in any portion of the Property and to grant access easements and to relocate any existing access easements in any portion of the Property as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Units for Residential purposes.

Section 13. Assumption of Risk and Indemnification. Each Owner hereby expressly assumes all risk and responsibility for noise, personal injury or property damage caused by maintenance, operation or use of Common Areas, including, without limitation: (a) noise from maintenance equipment, it being specifically understood that such maintenance may take place around sunrise or sunset (b) noise caused by users of the Common Areas, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by planting and maturation of trees, shrubbery and berms (whether planted or installed prior to the Owner's occupancy of a Unit or subsequently planted or installed), (e) reduction in privacy caused by constant traffic on the roadways or other Common Areas or the removal or pruning of shrubbery or trees on the Common Areas, (f) power lines and other utilities running through the Property and (g) design or modification of the Common Areas and agrees that neither Developer, the Association nor any of Developer's affiliates or agents nor any other entity owning or managing the Common Areas shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Common Areas, including, without limitation, any claim arising in whole or in part from the negligence of Developer, the Association or any other entity owning or managing the Common Property. Each Owner hereby agrees to indemnify and hold harmless Developer, Association and any other entity owning or managing the Common Area against any and all claims by such Owner's family, visitors, tenants and other invitees upon such Owner's Lot. Without limiting the foregoing, all persons using the Common Areas, including, without limitation, any pool area or area adjacent to a lake, do so at their own risk. By taking title to a Lot, each Owner further accepts and assumes all the risks and hazards of ownership and occupancy attendant to the ownership of such Lot, including, but not limited to, its proximity to any recreational facility within the Common Area.

BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS, BUT NOT LIMITED TO, ALLIGATORS, DEER AND SNAKES. DEVELOPER AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE.

The Association agrees to indemnify and hold harmless Developer, its 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 the Common Areas, including, without limitation, use of the lakes and other water bodies within the Property by Owners and their guests, family members, invitees or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Developer or of any of the Indemnified Parties. Should any Owner bring suit against Developer or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including legal fees.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership.** Every person or entity who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to be a Member in this Association, and shall be governed and controlled by the Articles of Incorporation and the Bylaws thereof. By taking title to a Lot, each Owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, any amendments thereto, the Articles, Bylaws, and Rules and Regulations of the Association. Memberships shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's Membership.

Section 2. **Initial Control.** The affairs of the Association shall be managed initially by a Board of Directors consisting of at least three (3) Directors. The number of Directors shall be the number of Directors elected from time to time in accordance with the Bylaws but shall never be less than three (3). The Developer shall have the right to designate the full membership of the Board of Directors until transfer of control of the Association occurs in accordance with Section 6 of this Article. Other than Directors selected by the Developer, each Director shall be a Member of the Association.

Section 3. **Membership Types and Voting.** As set forth in the Articles, and subject to the provisions of this Declaration, each Member shall be entitled to one vote for each Lot in which such Member holds fee simple ownership. The ownership of a Lot, and the ownership of a single family Living Unit constructed thereon, may not be separated or separately conveyed, nor may any person who does not own record legal title to at least one Lot, hold membership in the Association.

Section 4. **Impact on Developer.** Any other provision of this Declaration to the contrary notwithstanding, any action proposed to be taken by the Association

which has a material adverse impact upon the Developer's construction and/or sales activities within the Property shall require approval by the Developer while the Developer or its successor or assigns still owns any portion of the Property. The Developer, in its reasonable discretion, shall determine whether any proposed action by the Association will have a material adverse impact.

Section 5. Transfer of Control of the Association.

(a) Three (3) months after 90 percent of the Lots have been conveyed to Owners other than Developer, Members other than the Developer shall be entitled to elect at least a majority of the members of the Board of Directors (the "Turnover"). For purposes of this section, the term "Members other than the Developer" shall not include builders, contractors, or others who purchase a Lot for the purpose of construction improvements thereon for resale.

(b) The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least 5 percent of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned voting interests in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

(c) At the time the Members other than Developer are entitled to elect at least a majority of the Board of Directors, the Developer shall, at the Developer's expense, within no more than 90 days, deliver the following documents to the Board of Directors:

- (i) All deeds to common property owned by the Association.
- (ii) The original of this Declaration and any amendments thereto.
- (iii) A certified copy of the Articles.
- (iv) A copy of the Bylaws
- (v) The minute books, including all minutes.
- (vi) The books and records of the Association.
- (vii) Policies, rules, and regulation, if any, which have been adopted.
- (viii) Resignations of Directors who are required to resign because the Developer is required to relinquish control of the Association.
- (ix) The financial records of the Association from the date of incorporation through the date of Turnover.
- (x) All Association funds and control thereof.

- (xi) All tangible property of the Association.
- (xii) A copy of all contracts which may be in force with the Association as one of the parties.
- (xiii) A list of the names and addresses and telephone numbers of all contractors, subcontractors or others in the current employ of the Association.
- (xiv) Any and all insurance policies in effect.
- (xv) Any permits issued to the Association by governmental entities.
- (xvi) Any and all warranties in effect.
- (xvii) A roster of current Owners and their addresses and telephone numbers and section and Lot numbers.
- (xviii) Employment and service contracts in effect.
- (xix) All other contracts in effect to which the Association is a party.

(d) Developer's relinquishment of control of the Association shall not require Developer to relinquish any power or right which is reserved to Developer hereunder for a period which is longer than Developer's voting control or allow the Association to assume control over such power or right, except that the Developer shall not have the unilateral ability to make changes to this Declaration or the Articles or Bylaws of the Association after Turnover.

(e) So long as the Developer owns any Lot located within the Property for development or for sale in the ordinary course of business, the Association may not take any action that would be detrimental to the sales of Lots by the Developer as determined in the reasonable judgment of Developer. However, an increase in assessment for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of Lots.

(f) Provided that at least thirty (30) days notice of Developer's decision to relinquish control of the Association and cause its appointed Directors to resign is given to Lot Owners, neither the Developer or its appointed Directors shall be liable in any manner in connection with such resignation even if Lot Owners other than Developer fail or refuse to assume control of the Board of Directors.

ARTICLE IV

DEVELOPER'S RIGHTS AND POWERS

Section 1. **Developer's Ownership of Property.** So long as Developer owns land within the Property for development or for sale in the ordinary course of business:

(a) Developer may in its sole discretion, set aside, grant a license, grant an easement or grant other use rights to real property to the Association within or without the Property for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. The Association must accept from Developer any such easement, conveyance, dedication, lease, grant of license, or grant of use right. No such real property shall be considered to be the property of the Association until actually so conveyed, dedicated by platting, leased or a grant of license or other use right is created by a written instrument. The written instrument shall also provide the date that the area(s) of land are dedicated, conveyed, leased, licensed or a use right is granted to the Association.

(b) The Association shall not accept from any person other than Developer an easement, conveyance, dedication, lease, grant of license, or grant of use right except upon the prior written consent of the Developer, which consent will not be unreasonably withheld.

(c) Developer shall have the right, and the power, to regulate and control the external design and appearance of the Property in such a manner as Developer deems appropriate so as to promote a quality environment which will preserve the value of the Member's Lots and to foster the attractiveness and functional utility of the Property as a place to live.

(d) Any change in the type of use of any Association Property shall be subject to the prior written approval of Developer.

(e) Developer shall have the right, in its sole discretion, to grant easements, licenses, or use rights with respect to the Association Property to persons that are not Members of the Association.

(f) With regard to the Property, Developer shall have the right to grant easements within the respective Property to any public agency, authority, or utility for such purposes as benefits the Property, or portions thereof, and Owners of Lots contained therein.

(g) Prior to any grant of easement, conveyance, dedication, lease or grant of license or other use right by Developer to the Association of any property, Developer shall have the right to charge reasonable fees for the use of such property. Thereafter, the right to use such property shall be in favor of and for the benefit of the Association, subject to reasonable rents, fees and other charges payable to Developer pursuant to the leases, grants, licenses or contracts creating the use right.

(h) Any real property conveyed, leased or the use of which has been granted by Developer or any third party to the Association is not and shall not be deemed dedicated for use by the general public but is, and shall be deemed restricted for the common use and enjoyment of Members, their guests and tenants unless otherwise provided by the Developer.

(i) Developer shall have the right to construct a dividing wall on all or any of the Lots owned by Developer in the area where the Lot is contiguous to a public road.

Section 2. **Owners Not to Convey Easements.** No Owner, except for the Developer, so long as Developer owns any Lot for development or for sale in the ordinary course of business, shall grant any easement upon any portion of the Property to any person or entity, without the prior written consent of the Developer and thereafter without the prior written consent of the Association if the easement has not been granted prior to the recording of this Declaration.

Section 3. **Enforcement and Inaction.**

(a) So long as Developer owns land described on Exhibit "A" for development or for sale in the ordinary course of business, Developer shall have the right and power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any person violating or attempting to violate such provision, to restrain any violation or attempted violation of such provisions, to require performance of such provisions, to recover damages for violations of such provisions, to levy against the land to enforce any lien created by this Declaration, and to delegate or assign either exclusively or nonexclusively any or all of its rights, powers, duties or privileges hereunder to the Association, or to an Owner, or to any other person. In the event Developer expends any sum of money to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration, the Association shall immediately reimburse the Developer for such expenditure. Failure by Developer, or by the Association or any other Owner or any other person to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

(b) The costs and reasonable attorney's fees, including those resulting from any appellate proceedings, incurred by Developer or the Association in any action against an Owner to enforce any provisions of this Declaration shall be a personal obligation of such Owner which shall be paid by such Owner and any amount which remains due and unpaid shall be a continuing lien upon Owner's Lot collectible in the manner provided in Article VI.

ARTICLE V

ASSOCIATION MAINTENANCE OBLIGATIONS

Section 1. **Maintenance, Operation and Repair of the Association Property.** If Sarasota County, Florida has not accepted responsibility for the maintenance, operation and repair of the following items, then the Association, subject to the rights of the Owners and subject to the rights of the Developer set forth in this Declaration, shall be responsible for the exclusive management and control of the easements, conveyances, dedications, leases, grant of licenses, or grant of use right and all improvements thereon (including furnishings, irrigation devices and equipment

related thereto, if any), and shall keep it in good, clean attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws. The Association shall have non-exclusive easements over, through and under all of the Lots, Common Areas and public utility easements for purposes of fulfilling its purposes and obligations as set forth in this Declaration, and the Articles and Bylaws. Easements over, through and under Lots shall be exercised so as to not unreasonably interfere with the Residential use of the Unit.

(a) The Association shall be responsible for the cleanup, maintenance, operation, improvement, repair and replacement of the following items:

(1) Such security systems and facilities, and signage areas, if any, which shall be operated and maintained for the benefit of all of the Lots within the Property;

(2) All sidewalks, bike paths and crossovers within any portion of the Common Area which are not publicly dedicated;

(3) The Surface Water Management System;

(4) The areas in which entrance signs are placed identifying the Property and the entrance signs located in such areas, including lighting thereof and supplying electricity for this purpose;

(5) Any areas conveyed, dedicated, or leased to or used by the Association, including any improvements upon Association Property;

(6) All access easement areas, including, but not limited to, any roads, street signs, landscaping, street lighting and gatehouses contained within such areas, unless any such areas are operated or maintained by Sarasota County, Florida or the State of Florida. Tract I has been dedicated to and accepted by Sarasota County for maintenance as a public right-of-way;

(7) All Common Areas, the responsibility for which has not been assigned by this Declaration or a separate instrument recorded in the Official Records of Sarasota County to another entity; and

(8) The buffer wall located in the rear of Lots 1, 2, 3, 28, 29 and 30, as described in Article II, Section 11.

Section 2. Irrigation and Landscape Maintenance. The Association shall operate and maintain the irrigation system serving the Common Areas. The cost of providing irrigation to the Common Areas shall be a Common Expense for the benefit of the entire Property and such cost considered in the budget as part of grounds' maintenance. No later than thirty (30) days after a Living Unit is completed upon a Lot, the Lot Owner shall install, or cause to be installed, an irrigation system to serve the lawn and landscaping upon the Lot. The Lot Owner shall obtain necessary governmental and utility company approvals and shall connect to the common potable

drinking water system as provided by the Englewood Water District, its successors or assigns, or to the extent permitted by governmental agencies having jurisdiction and approved by the ARB, a Lot Owner may install a well and pump for irrigation purposes. The Lot Owner shall be responsible for continuously maintaining the irrigation system serving the Lot in proper working order.

Section 3. **Management of Association Property.** The Association's authority to manage the Association Property shall include:

(a) The right to establish rules and regulations governing the use of the Association Property, facilities located thereon, and the individual Lots. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the rules' effective date. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, canceled, or modified by the Board of Directors or by the Association in a regular or special meeting by the vote of Members holding a majority of the total votes in the Association and by the approval of the Developer prior to Turnover. The Board of Directors shall have the authority to impose reasonable monetary fines not to exceed \$100 per violation, or the maximum amount allowed by law, and other sanctions, including suspension of the right to vote and the suspension of the right to use Association Property. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the Court;

(b) The right to charge reasonable admission and other fees or Assessments for the use of Association Property;

(c) The right to suspend a Member's right to vote, and a Member's right to use Association Property, for any period during which any Assessments against the Member's Lot or any obligation of the Member to the Association remains unpaid or unfulfilled for more than ninety (90) days, and for a reasonable period during or after any infraction of the Association's rules and regulations, provided that suspension of Common Area use rights shall not impair the right of an Owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park;

(d) The right to dedicate or transfer all or any part of Association Property to any governmental agency, public authority, or utility;

(e) The right to borrow money for the purpose of improving Association Property or property which is to be publicly dedicated but required to be upgraded or

maintained by any local, state or federal government agency, and in aid thereof to mortgage the same, and the right to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its obligations under the Declaration, Articles and Bylaws;

(f) The right to take such steps as are reasonably necessary to protect Association Property against foreclosure;

(g) Subject to the limitations described in Article IV, the right to grant easements to all or any part of Association Property to any person.

(h) The right and obligation to establish a budget for its fiscal operations and to establish the Assessments needed for such fiscal year.

(i) The right to enforce the provisions of this Declaration, or any other applicable recorded instrument adopted by the Association, including the Articles of Incorporation and Bylaws of the Association, and any rules and regulations governing use and enjoyments of the Association Property and adopted by the Association;

(j) The right to conduct business of the Association, including but not limited to, administrative services such as legal, accounting and financial, and communication services informing Members of activities, notices of meetings and other important events;

(k) The obligation to conduct and maintain all maintenance and landscaping at the standard initially installed by Developer or better.

Section 4. Insurance. The Association shall maintain insurance on the Association Property of such types, in such amounts and with such companies as the Board of Directors deems appropriate. Prior to Turnover, all liability and hazard insurance policies of the Association shall name the Developer as an additional insured.

Section 5. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, cable service, and other common services to each Lot. Upon Turnover, the Board of Directors shall have the power to terminate any management agreement entered into by the Association prior to Turnover upon ninety (90) days written notice to the management firm, and the provisions of this sentence shall be deemed an implied term in any management agreement of the Association prior to such Turnover.

Section 6. **Personal Property and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board of Directors, acting on behalf of the Association, shall accept any real property or personal property, leasehold, or other property interests conveyed to it by the Developer which are located within the Property described in Exhibit "A".

Section 7. **Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 8. **Enforcement.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot to abate or remove, using such force as may be reasonably necessary, any installation, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. An easement is hereby reserved for the Association and its authorized agents for such purpose. Unless an emergency situation exists, the Board of Directors shall give the violating Lot Owner thirty (30) days written notice of its intent to take such actions. All costs of such abatement or removal including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected from Lot Owner as provided for herein for the collection of Assessments.

Section 9. **Right of Entry.** The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter onto Lots for emergency, security, or safety purposes, which right may be exercised by the Associations' Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties and, except in an emergency situation, entry shall only be during reasonable hours and after reasonable notice to the Owner or occupant.

ARTICLE VI

ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** Except as hereinafter more fully provided, the Developer hereby covenants for each Lot within the Property and each Owner of a Lot shall be deemed to covenant by acceptance of a deed or other conveyance of title for such Lot, whether or not it shall be so expressed in the deed or other conveyance of title, to pay (1) the Association Annual Assessments, which may be payable in monthly or quarterly installments as determined by the Board of Directors from time to time, (2) working capital contributions in the amount established (if any) pursuant to Article VI, Section 14, to be paid at the time of closing or transfer of a Lot, (3) Special Assessments, and (4) Individual Assessments, as applicable, such Assessments to be fixed, established, and collected from time to time as hereinafter provided. No Assessments will be levied

against a Lot until the Commencement Date as defined below. Thereafter, the Annual, Special and Individual Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge and continuing lien against the Lot and shall be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due, as well as any subsequent Owners subject to Section 10 of this Article VII. Each Member expressly covenants by acceptance of such deed or other conveyance of title that certificates of lien may be recorded against the Owner's Lot for nonpayment of Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Area or by the abandonment of the property against which the Assessment was made. In the case of co-ownership of any Lot subject to an Assessment, all of such co-Owners shall be jointly and severally liable for the entire amount of the Assessment.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members of the Association and for the improvement and maintenance of Property, services and facilities devoted to this purpose, and to provide services the Association is authorized or required to provide, which may include but are not limited to performance of the following duties and the payment of:

- (a) Improvements, maintenance, and repair of Association Property;
- (b) Water, electrical, lighting, and other necessary utility services, if any, for Association Property;
- (c) Fire and other hazard insurance covering the full insurable replacement value of Association Property with extended coverage;
- (d) Liability and property damage insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, or tenants of any Owner arising out of their occupation and/or use of Association Property. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association;
- (e) Workman's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board of Directors of the Association;
- (f) Acquisition of equipment for Association Property as may be determined by the Association, including without limitation, all equipment and personnel necessary or proper for use of Association Property;
- (g) Operation, repair, maintenance and irrigation and landscaping of the Association Property owned by the Association, including but not limited to, the Surface Water Management System;
- (h) Operation, repair, and maintenance of common facilities within Association Property, including utility, maintenance and drainage easements;

- (i) Operation, repair, and maintenance of the entranceway and signs;
- (j) Maintenance of the buffer wall described in Article II, Section 11;

(k) Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or Bylaws, or which shall be necessary or proper in the opinion of the Board of Directors of the Association or the operation of the Property, for the benefit of the Owners or for the enforcement of these restrictions;

(l) The Developer or the Association may establish reserve funds for capital expenditures and deferred maintenance for which the Association is responsible pursuant to the provisions of Section 720.303(6), Florida Statutes.

Section 3. **Special Assessments Prior to Turnover.** There shall be no Special Assessments prior to Turnover unless a majority of the Owners other than Developer approve such Special Assessments by a majority vote at a duly called special meeting of the membership at which a quorum is present. The Developer shall be excused from paying any such approved Special Assessments levied against Lots owned by Developer at the time the Special Assessment is levied if the Developer is funding deficits in accordance with sub-section 6(b) of this Article VI at the time such Special Assessment is levied.

Section 4. **Annual Budget of General Expenses.** The Association shall prepare an annual budget not less than thirty (30) days in advance of the commencement of each fiscal year which shall project the estimated total expenditures for the services set forth in Section 2 above for the forthcoming year, and shall deliver a copy of the proposed budget and notice of the meeting in which the budget will be considered by the Board to each Owner not less than fourteen (14) days prior to that meeting in accordance with the Bylaws. The Association shall, at the same time as it prepares the annual budget, prepare a schedule which sets forth the amount of the Annual Assessment for each Owner. In the event the Association fails to prepare an annual budget, the annual budget for the proceeding year shall be the budget for the Association until a new annual budget is prepared by the Association. Additionally, if the Association determines that the then existing annual budget does not correctly incorporate the expenditures for services set forth in Section 2, then the Association shall have the right to prepare a new annual budget together with a schedule setting forth the amount of Annual Assessments for each Owner.

Section 5. **Date of Commencement of "Annual Assessments"; Due Date; Assessment period.** The Annual Assessments provided for herein shall commence as to a Lot on a date (hereinafter called the "Commencement Date") which shall be the first day of the month following the earliest of the following events to occur: (a) a Certificate of Occupancy being issued for a Unit constructed on the Lot; or (b) the occupancy by an Owner of a Unit on a Lot. The Annual Assessments shall be paid monthly, in full and in advance, except that the Assessment installment period may be

changed from time to time at the discretion of the Board of Directors, provided, however, that upon default in the payment of any one or more installments by an Owner, the entire balance of said Assessments attributable to that Owner's Lot for that year may be accelerated at the option of the Board of Directors and be declared due and payable in full. Developer shall have the prerogative and right to collect in advance, at closing, Annual Assessments for a length of time consisting of the prorated period from the Commencement Date to the first day of the ensuing year, plus the next ensuing year. However, Developer may collect in advance at closing, Assessments for a lesser period if Developer so chooses.

Section 6. Basis and Maximum Amount of Annual Assessments.

(a) From the recording of the Declaration until the Turnover Meeting, the annual budget and the initial Annual Assessments shall be established by the Developer. Each Lot for which the Commencement Date has occurred shall be assessed in equal shares, subject to proration based on the date of the Commencement Date as to that Lot.

(b) Notwithstanding any provision that may be contained to the contrary in this Declaration, for as long as Developer is the Owner of any Lot and Turnover has not occurred, the Developer shall not be liable for any Assessment levied against such Lot, provided that the Developer funds any difference between the amount of Assessments levied on all other Lots subject to Assessment together with interest earned thereon and any other Association income from whatever source derived and the amount of actual expenditures by the Association incurred during the fiscal year, exclusive of any resident usage charges for services provided to particular Owners (such as cable, phone, and waste collection, if any such charges are Association expenses), the cost of capital improvements and non-budgeted repairs or replacements, management fees (if the Developer is entitled to management fees), book entry depreciation expenses, and any amounts budgeted for reserves for capital expenditures, deferred maintenance or contingencies. For purposes hereof, a deficit shall be computed by the subtraction from said actual expenses (exclusive of the items described in the foregoing sentence) all Assessments levied, contributions and other sums received or receivable by the Association. As with all Owners, the Developer shall not be required to pay Assessments on any Lot it owns until the Commencement Date as to that Lot. The Developer may at any time commence paying Assessments on improved Lots it owns and thereby automatically terminate its obligations to fund a deficit as provided in this sub-section. When all Lots within the Property are sold and conveyed to Members other than Developer, the Developer shall have no further liability of any kind to the Association for the payment of Assessments or deficits other than those that arose prior to such time.

Section 7. Special Assessment. In addition to the Annual Assessments authorized by Section 3 hereof, the Board of Directors:

(a) May levy in any fiscal year a Special Assessment, applicable to that year and not more than the next two (2) succeeding years, for the purpose of defraying,

in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Association Property, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such Assessment. With respect to any Special Assessments, only those Lots for which the Commencement Date has occurred as of the date on which the Board of Directors levies the Special Assessment shall be liable for such Special Assessment, and such Special Assessment shall not be charged to nor be a lien against any Lot for which its Commencement Date occurred subsequent to the date on which the Board of Directors levied the Special Assessment. The Developer shall not be obligated to pay Special Assessments levied on any Undeveloped Lot.

(b) The total amount of Special Assessments, in any one year, may not exceed a sum equal to the amount of Annual Assessment for such year, except in the case of emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss.

Section 8. Individual Assessments. Each Owner of a Unit is required to maintain his property, whether improved or unimproved, in a state of good repair at all times, which shall include, but shall not be limited to, periodic painting (or other appropriate refinishing) of all structures requiring same, and if unimproved, in an orderly and uncluttered condition. Such Owners are further required to maintain their property in accordance with any other covenants, conditions and restrictions and Supplemental Declarations to which their deeds or other instruments of conveyance make reference. In the event of the failure of such Owner(s) to maintain their property as required herein, the Association, after first given thirty (30) days notice to such Owners may take such steps as are necessary to remedy any defective and/or unsightly conditions or comply with requirements imposed herein, and such Owner(s) of said property shall be assessed for the expense of same. Entry upon such Owner's property for such purpose shall not constitute trespass. Individual Assessments may also be levied against such Owners for any damage to Common Area, or other Association Property which may be caused by such Owners, their families, lessees, guests or invitees.

Section 9. Financial Reporting. The Association shall prepare an annual financial report ("Financial Report") as required by the Bylaws.

Section 10. Duties of the Board of Directors.

(a) The Developer, prior to Turnover, or, following Turnover, the Board of Directors of the Association shall prepare an annual budget and fix the amount of Assessments against each Lot as provided herein and shall prepare a roster of each Lot and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment for each fiscal year shall thereupon be sent to every Owner subject thereto at least fourteen (14) days prior to the commencement of the fiscal year.

(b) The Association shall, upon demand at any time, furnish to any Owner liable for said Assessment a certificate in writing signed by an officer of the Association setting forth whether an Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. The Association may charge a reasonable fee for this certificate.

Section 11. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association; Late Fees; Resale Certificate.

(a) The Association has a continuing lien on each Lot to secure the payment of Assessments, together with interest, late fees, and the cost of collection and attorneys' fees incident to collection thereof, which lien is effective from and shall relate back to the date of recording of this Declaration. However, subject to the provisions for first mortgagee liability for Assessments provided in Section 12 of this Article VI, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of Sarasota County, Florida. If the Assessments are not paid on the date when due, then such Assessment shall become delinquent and the Association may record a claim of lien satisfying the requirements in Section 720.3085, Florida Statutes (2010), to secure all unpaid Assessments that are due and may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, together with such interest and late charges thereon and cost of collection and attorney's fees incident to collection thereof as hereinafter provided. Such lien shall bind such Lot in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. Provided, however, that no voluntary sale of any Lot 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, attesting to the fact that the Seller has paid all Assessments to date. An Owner, regardless of how his or her title to the Lot has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all Assessments that come due while he or she is an Owner and each Owner is jointly and severally liable with the previous Owner of the Lot for all unpaid Assessments that came due up to the time of transfer of title to the Lot. If an Assessment is not paid within ten (10) days after the due date, the Assessment shall bear interest from the due date at the rate established by the Board of Directors not to exceed the maximum legal rate of interest, and the Association may bring an action at law against the Owner(s) personally obligated to pay the outstanding Assessments and/or bring an action to foreclose the lien against the Property in the manner in which mortgages on real property are foreclosed; and there shall be added to the amount of such Assessment all costs of collection, including, but not limited to, the cost of preparing the filing and complaint in such action, the cost of any and all attorney's fees incident to collection whether or not suit is brought, including attorney's fees on appeal. In the event a judgment is obtained, such judgment shall include interest on the Assessments as provided above and a reasonable attorney's fee to be fixed by the court, together with costs incident to the action.

(b) In addition to the foregoing remedies, the Board of Directors may charge a "Late Fee" for late payment at the highest amount permitted by law, when the

payment is more than ten (10) days delinquent, for the purposes of helping defray collection costs. A Late Fee may be charged on each Assessment installment that is delinquent.

(c) In the event the lien herein created is extinguished by the sale or transfer of a Lot pursuant to a foreclosure of the first mortgage held by a first mortgagee or a deed given in lieu of foreclosure to a first mortgagee, such delinquent Assessments which were not collectable from the first mortgagee may be reallocated and assessed to all of the Lots within the Property, or the Association may pursue legal action to collect such delinquent Assessments from the Owner who owned the Lot when such delinquent Assessments became due. Any such sale or transfer pursuant to a foreclosure or a deed given to a first mortgagee in lieu of foreclosure, shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of, any Assessments arising thereafter.

(d) In addition to all other remedies available to the Association at law or in equity for enforcing this Declaration, if a Living Unit is occupied by a tenant and the Owner is delinquent in paying any monetary obligation due to the Association, to include, but not be limited to Assessments, fines and any other charges provided for in this Declaration, the Articles, Bylaws or by law, the Association may demand that the tenant pay to the Association the tenant's future monetary obligations related to the Living Unit to the Association. The demand is continuing in nature and, upon demand, the tenant must continue to pay the monetary obligations until the Association releases the tenant or the tenant discontinues tenancy in the Living Unit. A tenant who acts in good faith in response to a written demand from the Association is immune from any claim from the Owner. If the tenant prepaid rent to the Owner before receiving the demand from the Association and provides written evidence of paying the rent to the Association within fourteen (14) days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period and must make any subsequent rental payments to the Association to be credited against the monetary obligations of the Owner to the Association. The Association shall, upon request, provide the tenant with written receipts for payments made. The Association shall mail written notice to the Owner of the Association's demand that the tenant pay monetary obligations to the Association. The tenant is not liable for increases in the amount of the monetary obligations due to the Association unless the tenant was notified in writing of the increase at least 10 days before the date on which the rent is due. The tenant shall be given a credit against rents due to the Owner in the amount of Assessments paid to the Association. The Association may issue notices under Section 83.56, Florida Statutes, and may sue for eviction under Sections 83.59-83.625, Florida Statutes, as if the Association were a landlord as defined in Part II of Chapter 83, Florida Statutes, if the tenant fails to pay a monetary obligation to the Association. However, the Association is not otherwise considered a landlord under chapter 83, Florida Statutes, and specifically has no duties under Section 83.51, Florida Statutes. The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a Owner to vote in any election or to examine the books and records of the Association. A court may supersede the effect of this subsection by appointing a receiver

Section 12. Subordination of Assessment Lien. The lien for Assessments provided for in the Declaration is effective from and shall relate back to the date on which the Declaration was recorded in the Public Records of Sarasota County in which the Property is located. The lien is in effect until all sums secured by it have been fully paid or the lien has been extinguished by foreclosure or released by the Association. Upon payment in full or as limited to first mortgagees as described below, the lien shall be released. The lien shall be subordinate to real property taxes and assessment liens and the lien of any first mortgage; provided, however, that any such mortgage lender when in possession, or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender and its affiliate acquiring a deed in lieu of foreclosure, and all persons claiming, by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure) and any unpaid Assessments owed by the previous Owner, subject to the limitations provided herein. Notwithstanding anything to the contrary contained in this Article VI, a first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure is liable for unpaid Assessments, including interest, late fees, costs of collection and attorneys' fees incident to collection, that became due before the first mortgagee's acquisition of title in the amount equaling the lesser of: (1) the Lot's unpaid Common Expenses and Assessments including interest, late fees, costs of collection and attorneys' fees incident to collection thereof, that accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (2) One Percent (1%) of the original mortgage debt. The limitations on first mortgagee liability provided by this paragraph apply only if the first mortgagee filed suit against the Owner and initially joined the Association as a defendant in the mortgagee foreclosure action. Joinder of the Association is not required if, on the date the Complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the mortgagee.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein; (a) all Property to the extent any easement or other interest therein is dedicated and accepted by the local public authority and devoted to the public use; (b) the Common Areas; (c) and any easements granted to a company or entity providing utility service to the Property.

Section 14. Working Capital Contribution. Upon acquisition of record title to a Lot by the first Owner thereof who purchased from Developer and upon each subsequent transfer or conveyance of title of any type thereafter, the Developer, or the Association after Turnover, may require a working capital contribution to be made by or on behalf of the purchaser or grantee to the Association in an amount established by resolution of the Developer or Board of Directors in its sole discretion. Until such time as the Board of Directors adopts a resolution to change the amount, the initial working capital contribution shall be one fourth (1/4) of the Annual Assessments due for that fiscal year in which the Lot was sold by the Developer to an Owner who is a retail

purchaser other than Developer. The working capital contribution shall be in addition to the Annual Assessments and shall not be considered an advance payment of any Assessment. The amount shall be paid to the Association upon the closing or other settlement of the transfer or conveyance of a Lot. Any unpaid working capital contribution shall constitute an Assessment against the Lot secured by a lien in favor of the Association as further provided in this Article. The working capital contribution shall be deemed ordinary Association income and need not be separated from or held or applied differently than Assessments. Developer is at all times exempt from paying any working capital contribution to the Association.

Notwithstanding the foregoing, a working capital contribution shall not be levied in the following instances:

(a) Conveyance of a Lot by an Owner to a trust, partnership, corporation or other entity so long as such entity is and remains wholly owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Lot was exempted from payment of the working capital contribution pursuant to this subsection, then this subsection shall not apply and the Lot shall be subject to the working capital contribution;

(b) Conveyance of a Lot by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Lot was exempted from payment of the working capital contribution pursuant to this subsection, then this subsection shall not apply and the Lot shall be subject to the working capital contribution; and

(c) Conveyance of an undivided interest in a Lot by the Owner thereof to any then existing co-Owner(s) of such Lot.

ARTICLE VII

UNIT OWNER MAINTENANCE

Section 1. Maintenance of Units. Unless otherwise provided in an appropriate amendment or supplemental Declaration, the Owner of a Lot shall maintain all portions of the Unit, including but not limited to, exterior surfaces and roofs, fascias and soffits of the structures (including the Living Unit) and other improvements located on the Lot including but not limited to driveway and sidewalk surfaces, fences and mailboxes in a neat, orderly and attractive manner. The aforesaid maintenance shall include maintaining screens (including screen enclosures), windows and doors (including the wood and hardware of garage doors and sliding glass doors) and the irrigation system serving the Lot in continuous proper working order. The minimum (though not the sole) standard for the foregoing shall be consistency with the general appearance of the Property as initially constructed and otherwise improved (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness). The Owner shall clean, repaint or restain, as appropriate, the exterior portions of each Unit, with the same colors and materials as initially used on the Unit, or as approved by the ARB, subject to the Design & Construction Guidelines provided in

Article VII thereof, including exterior surfaces of garage doors, as often as is necessary to comply with the foregoing standards. The Board of Directors may adopt rules as to specific frequencies of required cleaning, repainting/restaining and the like for the Units.

In the event that the Board of Directors of the Association, by two thirds vote, determines that (1) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair or replacement of items for which he or she is responsible hereunder; or (2) that the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful, or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity, the maintenance, repair or replacement deemed necessary. The Owner shall have thirty (30) days within which to complete the maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within the fifteen day period, to commence such work which shall be completed within the reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at Owner's sole cost and expense and the cost shall be added to and become part of the Assessment to which such Owner is subject and shall become a lien against the Lot.

Section 2. Lawn Maintenance. Unless otherwise provided in an appropriate amendment to the Declaration, each Lot Owner shall be responsible for maintaining the landscaping and grass, including irrigation and cutting the grass located on such Lot Owner's Lot at his or her sole expense. Each Lot Owner shall maintain the lawn, trees, shrubbery, grass and other landscaping on his or her Lot in a neat, orderly and attractive manner and consistent with the general appearance of the Property as a whole. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of the Property, and no refuse pile or unsightly objects shall be allowed to be placed or permitted to remain on any Lots. The minimum (though not sole) standard for the foregoing shall be the general appearance of the Property as initially landscaped (such standard being subject to being raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained). No Owner shall plant any trees, shrubs or plants on his Lot without first obtaining the prior written consent of the ARB. The ARB may require any Owner who receives approval to add additional plantings to maintain such plantings at their sole cost. The irrigation system serving the Lot shall be continuously maintained by the Lot Owner in proper working order.

ARTICLE VIII

ARCHITECTURAL REVIEW BOARD

Section 1. Authority and Members of Committee.

(a) The Architectural Review Board, sometimes referred to in this Declaration as the ARB, shall consist of not less than three (3) nor more than five (5) members, except that the Developer reserves the right to fulfill the duties of the ARB until such time as the Lot Owners have elected the majority of the Board of Directors or such earlier time as Developer may designate. Thereafter, each new member of the ARB shall be appointed by the Board of Directors and shall hold office until such time as he/she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the ARB may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the ARB.

(b) The Board of Directors shall have the authority and standing, on behalf of the Association to enforce in courts of competent jurisdiction decisions of the Architectural Review Board.

(c) This Article may not be amended without the Developer's consent, so long as the Developer owns any portion of the Property subject to this Declaration.

(d) No construction, which term shall include within its definition staking, clearing, excavating, grading, and other site work or other exterior improvements or exterior painting may be commenced, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the ARB has been obtained.

(e) In accordance with this Article VIII, and consistent with the provisions of Article IX herein, the Developer or the ARB shall promulgate design review guidelines and application and review procedures which shall be known as the "Design and Construction Guidelines".

Section 2. Review of Proposed Construction. No new structure or building or site construction, and no modifications, additions, or alterations to existing structures, or installation of landscaping, signs, outside lighting, fence, wall, walk, dock, site furniture, statuary, ornaments or other items or structures upon a Lot, shall commence or be erected, installed or removed until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and location of the same shall have been submitted and approved in writing by the ARB. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not violate any provisions in this Declaration or the Design and Construction Guidelines or be detrimental to the appearance of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The ARB may condition its approval of proposals and plans and specifications or other information prior to approving or disapproving the application submitted. The ARB shall review each application for consistency with the requirements of this Declaration and the Design and Construction Guidelines as well as any future regulations or construction guidelines

generated by the Board of Directors or the Developer. The ARB shall also issue rules or guidelines setting forth procedures for the submission of plans for approval, including the establishment of a reasonable application fee. The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples or exterior materials and colors. Until receipt by the ARB of all required plans and specifications, the ARB may postpone review of any plans submitted for approval. Final written approval of the ARB must be obtained prior to making application for a building permit. The ARB shall have forty-five (45) days after delivery of all required materials to approve or reject any such plans. If the ARB does not approve the plans within the forty-five (45) day period, such plans shall be deemed disapproved. No Owner can commence work until written approval from the ARB is obtained. No building or other structure shall be erected or allowed to remain if built in violation of this Declaration or which violates any zoning or building ordinance or regulation. In the event the information submitted to the ARB is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information, in which case, the forty-five (45) day approval period will not commence until the ARB receives such requested information. All construction, changes and alterations shall also be subject to all applicable permit requirements and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. Any decision of the ARB may be appealed to the Board of Directors within fifteen (15) days from the date of rendition of the decision of the ARB pursuant to procedure established by the Board of Directors.

Section 3. **Meeting of the ARB.** The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate an ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of a Majority of the total members of the ARB shall constitute an act of the ARB.

Section 4. **No waiver of Future Approvals.** The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever, subsequently or additionally submitted for approval or consent.

Section 5. **Compensation of Members.** The members of the ARB shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. The ARB, however, shall have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. All expenditures of the ARB are subject to the prior written approval of the Board of Directors.

Section 6. **Noncompliance.** In the event any work for which approved plans are required under this Article VIII is not completed in substantial compliance with said approved plans or the Design and Construction Guidelines, the ARB or its duly authorized representatives shall notify the Owner conducting such work (the "Applicant") in writing of such noncompliance specifying the particulars of noncompliance and requiring the Applicant to remedy the same within thirty (30) days. If, upon the expiration of thirty (30) days from the date of such notification, the Applicant shall have failed to remedy such noncompliance, the ARB shall notify the Board of Directors in writing of such failure. The Board of Directors shall then determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board of Directors ruling. If the applicant does not comply with the Board of Directors ruling within such period, the Board of Directors, at its option, may either remove the non-complying improvements or remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Association, the Board of Directors shall levy a Special Assessment for noncompliance against such Applicant's Lot for reimbursement.

Section 7. **Non-Liability of ARB Members.** Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance or non-performance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall be liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Property. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 8. **Variance.** The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstruction, hardship, aesthetic or environmental considerations require. Such variance must be evidenced in writing which must be signed by a majority of the members of the ARB. If such variances are granted, no violation of the covenants, condition and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 9. **Construction Completion.** Upon obtaining title to an unimproved Lot, an Owner must obtain ARB approval and commence construction of a single family residence within twelve (12) months of recording of the deed to the Lot conveying title to such Owner. For purposes of this Section, the date of commencement of construction shall be the date on which the building permit is issued by Sarasota County. Developer is not subject to this section, and Developer may approve variances from the requirements of this Section at its sole discretion. Unless specifically exempted by the ARB, all improvements for which approval of the ARB is required under this Declaration shall be completed within a reasonable time from the date of commencement of said improvements or within the time set by the ARB in the event that the approval is so conditioned. Prior to the building, alteration, improvement, remodeling or rebuilding of any improvement upon a Lot by an Owner for any reason, including, but not limited to a casualty loss, such alteration, improvement, remodeling or rebuilding of such improvement shall be approved by the ARB. Once construction of such approved improvement commences, substantial work toward the completion of the construction will be pursued diligently and continuously until completion, which shall occur in a reasonable period of time after commencement. If, for any reason, no substantial progress is made toward the completion of the approved improvement for any thirty (30) day period after construction has commenced ("No Substantial Progress Period"), then an Owner shall be deemed in violation of this sub-section, whether the violation was caused by the Owner or his/her contractor(s). An Owner violating this sub-section shall first be given a written warning by the Association. The failure of such Owner to recommence construction within ten (10) days after such written warning is delivered to the Owner shall be deemed a second violation, which shall result in a fine of fifty dollars (\$50.00) per day for each day that the violation continues. After the second violation, any additional violations shall result in a fine of one-hundred dollars (\$100.00) per day for each day that the violation continues. The provisions of Section 720.305(2), Florida Statutes, shall apply to fines levied pursuant to this Section.

In the event the fines levied by the Association should equal the maximum amount set forth in Section 720.305(2), Florida Statutes and the Owner has not cured the No Substantial Progress Period violation, then, should the Association have to file a legal action ("Action") to enforce the provisions of this Section, each Owner (i) waives, releases, and remises any and all legal, equitable and/or factual defenses he/she may have to such Action, and (ii) agrees to pay to the Association the sum of Five Hundred and No/100 Dollars (\$500.00) per day as liquidated damages for each day beyond the No Substantial Progress Period that substantial progress is not achieved toward the completion of a building or other improvement. Owner shall pay all the Neighborhood Association's costs and attorney's fees related to filing such an Action. This sub-section shall not apply to Developer and shall not be amended to apply to Developer without Developer's written consent.

Section 10. **ARB Right of Entry.** There is specifically reserved unto the ARB, the right of entry and inspection upon any of the Property for the purpose of determination by the ARB whether there exists any construction of any improvements which violates the terms of any approval by the ARB or the terms of this Declaration, of any Supplemental Declaration, or of any other covenants, conditions and restrictions to

which its deed or other instrument of conveyance makes reference. Such inspection shall be preceded by reasonable notice to the Owner of the property to be inspected, except for inspections of exterior of improvements and of unenclosed land. The ARB is specifically empowered, acting in the name of the Association, to enforce the provisions of this Declaration by an legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the property of any constructed improvement, or to remove any unapproved improvements, the Association shall be entitled to recovery of all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the ARB and each of its members from all costs, expenses and liabilities including attorneys' fees incurred by virtue of any member of the ARB's service as a member of the ARB. All costs, expenses, and attorneys' fees of the ARB, including those incurred in connection with its enforcement or powers as provided herein, shall be borne by the Association; provided, however, that nothing provided herein shall be deemed to negate the Association's right to an award of its and the ARB's reasonable attorneys' fees and costs if it is the prevailing party in any administration or judicial proceeding.

Section 11. **Developer's Exemption.** The Developer shall be exempt from the provisions of this Article with respect to alterations and additions desired to be effected by Developer and shall not be obligated to obtain ARB approval for any construction or changes in construction which the Developer may elect to make at any time.

Section 12. **Attorney's Fees.** In any litigation, including breach, enforcement or interpretation, arising out of this Article, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees, court costs and other expenses.

ARTICLE IX

RESTRICTIONS

Section 1. **Use Restrictions.** In order to maintain the standards of community design and environmental protection which Developer has set for the Property and to ensure a degree of uniformity and compatibility for the mutual benefit of the Property Owners therein, the following use restrictions are hereby adopted for the achievement of the stated goals. In particular, the philosophy of development includes the ability to maintain an aesthetically pleasing atmosphere throughout the community and the preservation of the aesthetic qualities alone shall be sufficient to trigger the enforcement provisions set forth herein. Therefore, specific provisions and requirements are included herein to promote the development plan to the benefit of the entire community.

Section 2. **ARB and Association Exculpation.** The ARB and the Developer may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without liability of any nature to

Owner or any other person for any reason whatsoever, and any permission or approval granted shall be binding upon all persons.

Section 3. **Air Conditioning and Heating Equipment.** All air conditioning and heating units shall be shielded and hidden so that they shall not be readily visible from any adjacent Streets or properties. Wall air conditioning units and window air conditioning units shall not be permitted.

Section 4. **Antennas and Flagpoles.** No antennas or satellite reception devices shall be installed outside the Unit without prior written approval by the ARB, except that a "dish" antenna one meter (39.37 inches) or less in diameter designed to receive direct broadcast satellite service or to receive and transmit fixed wireless signals via satellite, or an antenna one meter or less in diameter designed to receive wireless cable or wireless signals other than by satellite, or commercially-available analog and digital television antennas or any other satellite dishes or antennas otherwise permitted by the FCC pursuant to the Telecommunications Act of 1996 shall be permitted to be installed without prior approval by the ARB or the Board. A flagpole for display of the American flag or any other flag shall be permitted if first approved in writing by the ARB. Both its design and location must be first approved in writing by the ARB. An approved flagpole shall not be used as an antenna. Notwithstanding anything foregoing to the contrary, any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful manner portable, removable official flags, not larger than 4 ½ feet by 6 feet, which represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any Association rules or requirements dealing with flags or decorations.

Section 5. **Artificial Vegetation.** No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot.

Section 6. **Clothes Drying Area.** No outdoor clothes drying area or clothes line shall be allowed and no garments, rugs or any other materials may be hung exposed or dusted from the windows or form the front façade of a Living Unit.

Section 7. **Colors.** No exterior colors on any structure shall be permitted that, in the sole judgment of the Developer or ARB, would be inharmonious or incongruous with the Property. Any future exterior color changes desired by Owner must be first approved in writing by the Developer or ARB in accordance with Section VII.

Section 8. **Factory-Built Structures.** No structure of any kind that is commonly known as "factory-built", "modular," or "mobile home" type of construction, nor shall metal sheds be erected.

Section 9. **Lampposts, Building Designation and Mailboxes.** The form, size, character and placement of all lampposts, and mailboxes and the method of designating buildings must be first approved by the Developer or ARB. Developer

and/or the ARB shall have the right to remove any unapproved lamppost, building designation and/or mailbox and/or building designation.

Section 10. **Landscaping.** All portions of the Lots not covered by structures, walkways, or paved parking facilities, or which are not enclosed by walls or fences, shall be maintained as lawn or landscape areas to the pavement edge of any abutting Streets and to the waterline of any abutting canal or water management areas. No stone, gravel, or paving of any types shall be used as a lawn unless approved as part of the final landscape plan. All landscaping shall be accomplished in accordance with the plan approved by the Developer or ARB. All required lawns and landscaping shall be completed not later than thirty (30) days after construction of a Living Unit has been completed, as evidenced by the issuance of a certificate of occupancy by the appropriate governmental agency.

Section 11. **Trees.** No Australian Pines or Brazilian Pepper or Punk (Melaleuca) trees are to be planted, cultivated, or maintained except as may be required by the Notice of Stipulations and Limitations Encumbering Real Property pursuant to the Sarasota County Zoning Code.

Section 12. **Leasing Restrictions.**

(a) Leasing of Units shall be subject to the prior written approval of the Association. Only entire Living Units may be leased. Any and all lease agreements between an Owner and a lessee of such Owner shall be in writing, shall provide for a term of not less than six (6) months, shall be approved by the Association, and must provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration and that any failure by the lessee under such lease agreement to comply with the terms and conditions of this Declaration, the Articles, Bylaws and applicable Rules and Regulations, if any, shall be a material default and breach of the lease agreement and that upon such default and breach, the Association shall have the right, but not the obligation, to terminate the lease in the name of and as agent for the Owner/lessor. Should the Association determine it is necessary to terminate a lease, the Association may proceed against the Owner and/or the tenant for damages, termination, and eviction, and such Owner and/or tenant shall be responsible for the Association's costs and expenses, including attorney's fees and costs, secured by a lien against the Lot. The lease agreement shall also state the party to whom bills shall be sent for the Assessments against the Lot which are levied in accordance with this Declaration and the Bylaws of the Association. However, the Owner shall continue to be liable for all Assessments against the Lot. The Owner shall also be jointly and severally liable with the tenant to the Association for any sum which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the Owner's tenant. The Board of Directors may by a majority vote establish a requirement that a sum of money not to exceed One Thousand Dollars (\$1,000.00) or one month's rent, whichever is greater, be deposited in escrow with the Association to repay any damage to the Common Area or other portions of the Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association).

(b) An Owner intending to lease his Living Unit shall give the Board of Directors, or its designee, written notice of such intention at least twenty (20) days prior to the date of the proposed lease, together with the purchase and sale agreement or lease, and the name and address of the proposed tenant, along with any other information as the Board may reasonably require. The Board may establish a form lease request to be completed by the Owner in accordance with this paragraph. The Association may also require an interview of the prospective tenant. The Owner or lessee requesting the approval shall pay to the Association a reasonable administrative fee to cover the costs of reviewing the lease, examining records, and interviewing the tenant. If no notice is given, the Association, in its sole discretion, may approve or disapprove the lease without prior notice. If the Association disapproves, it shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

(c) Within twenty (20) days of receipt of the required notice and all information requested by the Association, but not later than sixty (60) days after receipt of the original notice, whichever occurs first, the Board shall approve or disapprove of the lease. If a lease is approved, the approval shall be provided in writing to the Owner. If the Board neither approves, disapproves, or requests additional information within twenty (20) days, such failure to act shall be deemed an approval, and on demand the Board shall provide the written approval to the Owner.

(d) The Board may disapprove a proposed lease only if a majority of the whole Board votes to disapprove the lease. Appropriate grounds for disapproval shall include, but not be limited to, the following:

(1) the Owner is delinquent in the payment of Assessments, fines or other charges at the time the application is considered;

(2) the Owner has a history of leasing his Unit without obtaining approval, or leasing to troublesome tenants and/or refusing to control or accept responsibility for the occupancy of his Unit;

(3) the application on its face indicates that the person seeking approval or any of the proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;

(4) the prospective tenant or any of the proposed occupants have been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;

(5) the prospective tenant has a history of conduct which evidences disregard for the rights and property of others;

(6) the prospective tenant evidences a strong possibility of financial irresponsibility, including but not limited to prior bankruptcies, foreclosures or bad debts;

(7) the tenant or any of the proposed occupants, during previous occupancy, has evidenced an attitude of disregard for the Association rules or property;

(8) the prospective tenant or any of the proposed occupants give false or incomplete information to the Board as part of the application procedure, or the required administrative lease fee or deposit is not paid; or

(9) the Owner fails to give proper notice to the Association of his intention the lease his home.

THE DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING LIVING UNITS OR THE INCOME TO BE DERIVED THEREFROM, IF ANY. ANY OWNER WHO DESIRES OR INTENTS TO RENT A LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

Section 13. It shall be the obligation of all Owners to supply the Board of Directors with a copy of said written agreement at least ten (10) days prior to the date of possession by the lessee.

Section 14. **Lighting.** All exterior lighting of a Lot shall be accomplished in accordance with a lighting plan first approved in writing by the Developer or ARB.

Section 15. **Maintenance of Premises.** No refuse or unsightly objects shall be placed or allowed to remain upon any Lot. All personal property, structures, improvements and appurtenances shall be kept in a safe, clean, orderly and attractive condition, free of debris and trash, and all structures shall be maintained in a finished, painted and attractive condition. In the event the Owner fails to maintain the Owner's Lot and Unit in accordance with the requirements of this Section, then after providing notice as provided in this Declaration, the Association can, but shall have no obligation to, maintain the Lot and charge the cost of such maintenance, together with a fee of ten (10%) percent of such cost, to Owner as a Special Assessment.

Section 16. **No Time Share.** No Living Unit may be sold or used on a "time share" basis.

Section 17. **Nuisances.** Nothing shall be done which may be or may become an annoyance or nuisance to any person. No obnoxious, unpleasant or offensive activity shall be carried on, nor shall anything be done, which can be reasonably construed to constitute a nuisance, public or private in nature. Any question with regard to the interpretation of this Section shall be decided by the Developer as long as it owns any Lot within the Property for development or for sale in the ordinary course of business and thereafter the Association whose decision shall be final. Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept in or upon any Lot or on Association Property or any part thereof to increase the rate of insurance on the Property or any part thereof over what the Association, but for

such activity, would pay. Noxious, destructive, or offensive activity or any activity constituting an unreasonable source of annoyance, shall not be conducted in or upon any Lot or on Association Property or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision. No work or activity on a Lot which creates excessive noises, including noises from lawnmowers or other equipment may occur before 8:00 a.m. on any day.

Section 18. Outdoor Equipment. All garbage and trash containers, bottled gas tanks, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be placed underground, walled-in or placed in sight-screened or fenced-in areas so that they shall not be readily visible from any adjacent Streets or Lots or adequate landscaping shall be installed around these facilities and maintained by the Owner. In no event shall gasoline or other hazardous materials, as defined by any state or federal regulation or judicial interpretation thereof, excluding home heating fuels other than heating oil, and excluding gasoline cans for lawn mowers, be stored on any of the Lots.

Section 19. Owner and Member Compliances.

(a) The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to Owners, and persons to whom an Owner has delegated the Owner's right to use of any Association Property, but also to any other person occupying an Owner's Lot under lease from the Owner or by permission or invitation of the Owner or the Owner's tenants, licensees, invitees or guests.

(b) Failure of an Owner to notify any person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right of Developer or the Association to enforce the provisions of this Declaration. The Owner shall be responsible for any and all violations of these provisions by the Owner's tenants, licensees, invitees or guests, and by guests, licensees and invitees of the Owner's tenants.

Section 20. Residential Use. No Lot shall be used except for single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than a Living Unit or accessory structure if approved by the ARB. This restriction shall not apply to prohibit Developer from conducting any activities upon Lots it owns for the purposes of sales, construction and development of the Property.

Section 21. Setback Requirements. No part of any building may be closer than twenty feet (20') from any front Lot line, closer than six feet (6') from any side Lot line, nor closer than ten feet (10') from any rear Lot line, except that screened pool cages and pool decks may extend to within six feet (6') of the rear Lot line.

Section 22. **Signs.** During the time period Developer owns any Lot within the Property, no sign of any kind shall be displayed to the public view on any Lot, except one sign not larger than 3" x 5" and placed in one ground floor window or one, second story window advertising that property is for sale or rent and except signs of any size used by the Developer to advertise the Property during the construction and sale of Living Units. Once the Developer has conveyed all Lots its owns within the Property, then the size of the signs can be increased to not more than 18" x 24" to advertise the property is for sale or rent which sign is to be placed on one floor window or one second story window.

Section 23. **Solar Collectors.** Solar Collectors shall be permitted, but Developer or ARB shall approve the location of, color and materials used in the construction of solar collectors prior to installation.

Section 24. **Storage of Personal Property.**

Personal property of Owners, including bicycles, motorcycles, mopeds, golf carts, and the like shall be kept within the Unit except when in use. Placement of playground equipment, including, but not limited to, swing sets, wading pools and barbecue grills may be kept in the backyard of the Lot as long as it is kept in compliance with the applicable setbacks.

Section 25. **Subdivision and Regulation of Land.**

(a) No Lot shall be divided or subdivided without the express written consent of Developer as long as Developer holds for sale at least one Lot in the subdivision, and thereafter shall be approved by the Association, and no such division or subdivision shall be permitted unless it complies with the provisions of the applicable Sarasota County zoning ordinances and regulations as well as all other governmental laws, ordinances and regulations.

(b) An Owner shall not inaugurate or implement any variation from, modification to, or amendment of any governmental plans, land development regulations, development orders or development permits applicable to the Property, or to any Lot, without the prior written approval of Developer, which approval may be denied at the sole discretion of Developer prior to transfer of control of the Board, and thereafter, without prior written approval of the Association.

Section 26. **Temporary and Accessory Structures.** No tents, shacks, trailers, barns, sheds, mobile homes, other detached storage structures, or temporary structures shall be permitted on any Lot at any time, either temporary or permanent, except temporary structures or outbuildings used in connection with the construction of Living Units as permitted by the Developer or the Association after Turnover.

Section 27. **Underground Utility Lines.** All electric, telephone, gas and other utility lines, wires, pipes and conduits of any type must be installed underground.

Section 28. **Use of Association Property.** No planting or gardening shall be done, and no fences, hedges, or walls shall be erected or maintained upon Association Property, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the Property outside the boundaries of their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 29. **Walls, Fences, Hedges and Shutters.** Except as originally installed by the Developer, walls, fences or hedges may be permitted only if determined by the ARB to be in accordance with the Design Review and Construction Guidelines, and such approval is provided by the ARB in writing. Hurricane or storm shutters may be used on a temporary basis, but shall not be stored on the exterior of any structure unless approved by Developer or ARB. The Board may promulgate reasonable rules regarding the duration of use, design and storage of hurricane shutters.

Section 30. **Water Supply.** No individual water supply system shall be permitted. Each Lot shall connect to the common potable drinking water system as provided by the Englewood Water District, its successors and assigns.

Section 31. **Sewage.** Lot Owners of Heritage Creek must use the Englewood Water District System as the sole means of sewage disposal and pay all charges as promulgated by the Englewood Water District, its successors and assigns.

Section 32. **Septic Tanks.** No septic tanks shall be permitted on any Lot.

Section 33. **Intentionally Omitted**

Section 34. **Lot Grading.** Floor level shall be set sufficiently above street grade to provide property drainage of the respective Living Units, and no filling or grading shall be done which shall adversely affect the proper drainage of or cause excess drainage upon adjacent portions of the Property. Protective slopes around all buildings shall be provided and maintained on every Lot by the respective Owners, and side line swales shall be planned and maintained to prevent standing water. All proposed plans or grading of Lots shall first be submitted to and approved by the Developer or the ARB in accordance with Article VIII hereof.

Section 35. **Elevation.** No change in the elevation or drainage characteristics of the land from that originally approved with the building permit for a Living Unit shall be made on any Lot without the prior written approval of the Developer, the Sarasota County Engineer, and the SWFWMD, nor shall any fill be used to extend the Property beyond the lot line of any waterfront Property.

Section 36. **Roof Materials.** No roof may be constructed with any materials other than as provided in the Design and Construction Review Guidelines. All roof materials must be approved in writing by the ARB.

Section 37. **Driveways.** No parking strips are to be constructed off the Street that do not form a part of the driveway serving a Living Unit. All driveways shall be paved with concrete or brick material within thirty (30) days after completion of the Living Unit.

Section 38. **Wells.** As more fully described in Article V herein, a Lot Owner may install a well and pump for irrigation of the Lot Owners Lot only to the extent permitted by governmental agencies having jurisdiction and with the prior written consent of the ARB, which consent may be withheld if the proposed well and pump do not conform to the Design Review and Construction Guidelines.

Section 39. **Animals.** No livestock or poultry shall be kept, maintained, or bred in any Unit or elsewhere within the Property, except for fish in an aquarium and birds in cages maintained in the interior of the Unit and not more than a total of two (2) domestic dogs (other than pit bull dogs or other dogs which in the reasonable determination of the Board of Directors are determined to be a threat to the safety of the occupants of the Project which shall not be allowed under any circumstances in the Property) and two (2) domestic cats shall be permitted to be maintained within a Unit provided such animals are not kept, bred or raised for commercial purposes. Notwithstanding the foregoing, the Board of Directors shall specifically have the power to either permit additional domestic dogs or cats to be kept as pets by an Owner if in the determination of the Board such pets shall not cause or be deemed by the Board of Directors to constitute a nuisance to any other Owner in the determination of the Board of Directors. Each person bringing or keeping a pet within any portion of the Property shall be absolutely liable to other Owners and their invitees for any damage to persons or property caused by any pet brought upon or kept upon the Property by such person or by members of his or her family, his or her guests or invitees and it shall be the duty and responsibility of each such Owner to clean up after such animals which have deposited droppings or otherwise used any portion of the Property or public Street abutting or visible from the Property, and to prevent the Owner's animal(s) from becoming a nuisance to other Owners, residents, tenants, or guests by barking, running loose, or otherwise. Animals belonging to Owners or invitees of any Owner must be kept within an enclosure or, on a leash held by a person capable of controlling the animal. The Association shall have the right to promulgate Rules and Regulations relating to animals, and the right to restrict, under such Rules and Regulations any animals determined by the Board to constitute a nuisance.

Section 40. **Parking.** All vehicles must have a current license tag. No vehicles may be placed on blocks for the purpose of repairing said vehicles. The Board of Directors of the Association is authorized to order the towing of any vehicle (at said vehicle owner's expense) for a violation of this Section. Parking of any vehicle is:

(1) prohibited on public or private Streets, thoroughfares, sidewalks or grass within the Property except for: (a) law enforcement or emergency vehicles, (b) construction and service vehicles which may be parked in the public or private Streets or thoroughfares during normal daytime working hours, but not on Sundays and holidays, and (c) passenger vehicles of an Owner, renter, or guest which may be parked on the Street directly in front of that Owner's or renter's own Unit for a period of 4 consecutive hours in any contiguous 24 hour period between 8:00 a.m. and 12:00 midnight. Any on Street parking, other than that expressly permitted in this Section 31, requires approval in advance by the Board or its authorized agent.

(2) parking of commercial vehicles or equipment, mobile homes, recreational vehicles, pickup trucks, golf carts, boats and other watercraft, trailers, campers, go-carts, stored vehicles or inoperable vehicles anywhere within the Property other than in enclosed garages is prohibited; provided, construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, and recreational vehicles and boats may be parked in driveways for not more than 24 hours while loading and unloading, which shall not occur more than twice per month.

Section 41. **Garage.** Each improved Unit shall include an enclosed garage with space for parking at least two (2) but not more than three (3) vehicles. No garage may be improved for purposes of making same a living area, nor shall garage doors be removed except for replacement (in which case the Owner must obtain approval of any replacement door from the ARB).

Section 42. **Front Sidewalks.** Within thirty (30) days of completion of construction of a Living Unit as evidenced by a Certificate of Occupancy, the Owners of such Living Unit shall construct a front sidewalk pursuant to plans and specifications approved by the Developer in writing.

Section 43. **Waste Containers.** The Owners of Living Units shall provide waste disposal containers for all garbage and rubbish. Such containers shall be fully enclosed in a concrete or fenced area attached to and in architect conformity with the Living Unit, as approved by the Developer or the ARB.

Section 44. **Window Coverings.** No external window covering, reflective or other covering may be placed or permitted to remain on any window of any building (either interior or exterior) without the prior written approval of the Board of Directors of the Association.

ARTICLE X

PROVISIONS CONCERNING SURFACE WATER MANAGEMENT SYSTEM AND REGULATORY JURISDICTIONAL AND BUFFER AREAS

Section 1. **Definition of Surface Water Management System.** The term "Surface Water Management System" shall mean that portion of the Property consisting

of swales, inlets, culverts, lakes, or wetlands determined to be within the jurisdiction of the Southwest Florida Water Management District, the Southwest Florida Water Management District thirty-five feet (35') on the southwest side of Forked Creek and fifteen feet (15') on the northeast side of the Creek vegetated buffer upland of the Southwest Florida Water Management District jurisdictional wetlands, outfalls, storm drains, and the like, and all connecting pipes and easements, used in connection with the retention, drainage and control of surface water conveyed from the platted streets and roads and approved and permitted by the Southwest Florida Water Management District and Sarasota County, Florida.

Section 2. Lot Owner's Responsibilities Regarding Surface Water Management System. It shall be the obligation and responsibility of each Lot Owner at the time of construction or reconstruction of a dwelling, building, or other structure on a Lot to comply with the construction plans for the Surface Water Management System as approved in the Environmental Resource Permit issued by and on file with the Southwest Florida Water Management District and such permits that may have been issued by the U.S. Army Corps of Engineers as related to the Property.

Section 3 Definition of Regulatory Jurisdictional and Buffer Areas. The term "Regulatory Jurisdictional and Buffer Areas" shall mean wetlands, wetland buffers, and all other environmentally sensitive areas designated by Developer as Regulatory Jurisdictional, private greenbelt and water quality buffer easement, private preserve area easement, and buffer areas on the Plat, or as otherwise described and made apart of the Public Records of Sarasota County, Florida, and/or wetlands, wetland buffers, and other environmentally sensitive and governmentally regulated areas within the Property.

The Regulatory Jurisdictional and Buffer Areas are composed of: (A) wetlands determined to be within the jurisdiction of the Southwest Florida Water Management District (SWFWMD) of Sarasota County, Florida, and the U.S. Army Corps of Engineers (COE); (B) The Southwest Florida Water Management District thirty-five feet (35') on the southwest side of Forked Creek and fifteen feet (15') on the northeast side of the Creek perpetual non-disturbance buffer upland of Southwest Florida Water Management District jurisdictional wetlands; (C) the Sarasota County, Florida twenty-five foot (25') perpetual non-disturbance buffer upland of the Southwest Florida Water Management District jurisdictional wetlands (inclusive of the Southwest Florida Water Management District's fifteen foot (15') non-disturbance buffer on the northeast side of Forked Creek.

Section 4. Lot Owner's Responsibilities Regarding Regulatory Jurisdiction and Buffer Areas. It shall be the obligation and responsibility of each Lot Owner at the time of construction or reconstruction of a dwelling, building, or other structure on a Lot, not to disturb or otherwise alter Regulatory Jurisdictional and Buffer Areas designated by the Developer on the Plat or by deed restriction, or by recorded instrument in the Public Records of Sarasota County, Florida, and the U.S. Army Corps of Engineers as relates to the Property. Further, after construction or reconstruction, no Lot Owner, his agent, guest, or invitee, may disturb or otherwise alter Regulatory

Jurisdictional and Buffer Areas without first obtaining written Jurisdictional and Buffer Areas without first obtaining written consent of the Developer and all necessary governmental approvals.

Section 5 Prohibition. No Lot Owner within the Property may construct or reconstruct or maintain any dwelling or structure, or undertake to perform any activity in the wetlands, wetland buffer areas, hammock areas, and jurisdictional areas described in the approved permits for the Property and recorded Plat or Deed Restrictions, unless all necessary prior written approval is received from the Developer and all applicable governmental agencies. No portion of the Surface Water Management System shall be altered without the prior written approval of the Sarasota County Engineer or his authorized designee.

Section 6 Obligations Concerning Detention Ponds. It is the responsibility of each Lot Owner not to remove native vegetation (including cattails) that become established with any wet detention ponds (as such ponds are designated by the Southwest Florida Water Management District) abutting such Lot Owner's Homesite. Removal includes dredging the application of herbicides, the introduction of grass carp and cutting. Should any Lot Owner have any questions as to whether the provisions of this section have been or may be violated, or whether contemplated activities are authorized, such inquiries should be addressed to the Southwest Florida Water Management District (941) 377-3722, and to Sarasota County's Resource Protection Office (941) 861-6113.

Section 7 Association's Responsibility Regarding Surface Water Management System. The Association shall be responsible for implementing and carrying out the environmental preservation guidelines established by the Developer or by the applicable governmental authorities. Such guidelines shall include, inter alia, provisions for the maintenance, upkeep, and preservation of the Surface Water Management System. The cost thereof shall be a Common Expense allocated among all Members and it is understood that the environmental preservation guidelines may be supplemented and amended from time to time by the Developer or the Association based upon changing governmental requirements.

Section 8 Assignment of Permits. Upon tender thereof by the Developer, the Association shall accept an assignment of and assume all obligations pursuant to, any permit relative to the Property granted by Sarasota County, Florida, the Southwest Florida Water Management District, the U.S. Army Corps of Engineers, or any other governmental agency having jurisdiction.

Section 9 Rights of Enforcement. The Association, through the Board of Directors, by contact or other agreement, shall have the right to enforce all applicable federal, state, and local laws, ordinances, and regulations to permit Sarasota County, Florida, the Southwest Florida Water Management District, the U.S. Army Corps of Engineers, or any other governmental agency having jurisdiction to enforce such parties' rules and ordinances on the Property for the benefit of the Association and its Members.

Section 10. **Rights of Sarasota County.** In the event the Association, or any successor organization, shall fail to adequately maintain the Surface Water Management System in accordance with Sarasota County Standard, Sarasota County shall have the right, but not the obligation, to enter the Subdivision for the purpose of maintaining the Surface Water Management System. All expenses incurred by Sarasota County in maintaining the Surface Water Management System shall be assessed pro rata against the Lots and shall be payable by the Owners of the Lots within sixty (60) days after receipt of a statement therefore. If any Owner fails to pay such assessment within such sixty-day period, the assessment shall become a lien on such owner's Lot which may be foreclosed by Sarasota County. The rights of Sarasota County contained in this restriction shall be in addition to any other rights Sarasota County may have in regulating the operation and development of the Subdivision.

ARTICLE XI

GENERAL PROVISIONS

Section 1. **Nonliability of Developer.** Developer shall not in any way or manner be held liable or responsible for any violation of these covenants, conditions, restrictions or other provision by any person other than itself or for failure to enforce these covenants, conditions, and restrictions, in whole or in part.

Section 2. **Amendment.** Until the Developer no longer controls the Association and the Class B Membership ceases to exist, the Developer reserves the right, without consent of any other person, to amend the Declaration for the purpose of correcting a clerical or scrivener's error, or to comply with any applicable governmental law, codes, or regulations, provided that no such corrective amendment shall materially or adversely affect the property rights of any Owner without such Owner's joinder and consent. Such corrective amendment shall be effective upon the Developer's recording of an executed Amendment to the Declaration in the public records of Sarasota County, Florida. In addition to any other right of amendment or modification provided for in this Declaration, in which case those provisions shall apply, Developer may, in its sole discretion, by an instrument filed of record, modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration, provided that the instrument does not materially, adversely affect any Owner of a Lot, and provided that Developer receives the prior written consent of all mortgagees that Developer has given a mortgage on all or any part of the Property. Notwithstanding any provision to the contrary, the prior consent of any mortgagee who has only a mortgage on any Lot(s) sold to a third party is not required in order to amend this Declaration. In addition to any other rights of amendment or modification provided for in this Declaration, in which case those provisions shall apply, this Declaration may be amended by an affirmative vote of sixty-seven percent (67%) of the Members at a meeting duly called for such purpose pursuant to the Bylaws of the Association; provided, however, that no amendment shall be made which shall in any manner impair the security of any mortgagee having a mortgage or other lien against any one or more of the Lots, or which would eliminate, modify, prejudice, abridge or materially adversely affect any rights, benefits, privileges or priorities granted to the mortgagee without the prior written consent of the

mortgagees, or any other record Owners of liens thereon; save and except if such amendment is for the purpose to correct any error or omission in this Declaration or in other documentations required by law. Notwithstanding the foregoing, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer without the written consent of such Developer to any such amendment. Any amendment that will affect the Stormwater Management System must have the prior written approval of the Sarasota County Engineer or his authorized designee. Any amendment to this Declaration which would affect the private Streets or other access easements within the Property must have the prior written approval from the Sarasota County Engineer or his authorized designee, and the Owners of the Lots on which the easement is located and the Owner or Owners of the Lots for whose benefit said easements have been established. No amendment shall become effective prior to the time a duly executed and acknowledged copy is recorded in the Public Records of Sarasota County, Florida. Notwithstanding anything herein to the contrary, any amendment to this Declaration which would affect the Surface Water Management System, including the water management portion of the Common Areas, must have the written approval of the applicable federal, state and local regulatory agencies with jurisdiction.

Section 3. Consent by Mortgagees. The approval of fifty-one percent (51%) of the mortgagees holding mortgages of record on Lots in the neighborhood shall be required to add to or amend any material provisions of this Declaration or the Articles of Incorporation or the Bylaws of the Association which establish, provide for, govern or regulate any of the following:

- (a) the method of determining voting rights for each Lot Owner;
- (b) method of apportioning assessments, assessment liens or subordination of assessment liens among Lot Owners;
- (c) Termination of the Declaration after substantial destruction or condemnation occurs.

An addition or amendment shall not be considered material if it is for the purpose of correcting technical or scrivener's errors, or for clarification only. A mortgagee who receives a written request from the Association to approve material additions or amendments to the above items who does not deliver or post a negative response to the Association within thirty (30) days shall be deemed to have approved such addition or amendment.

Section 4. Notice to Mortgagees. Upon written request to the Association, mortgagees will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the neighborhood or the Lot securing its mortgage.

(b) Any 60-day delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage.

(c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

Section 5. **Additional Rights of Mortgagees.** Mortgagees shall have the following rights:

(a) Upon written request of a mortgagee to the Association any mortgagee is entitled to a copy of the Financial Reports of the Association for the immediately preceding fiscal year as soon as such Financial Reports are available.

(b) The Association shall make available for inspection upon the mortgagee's request, during normal business hours of the Association, current copies of the Declaration, Bylaws, other rules concerning the Property and the books, records and Financial Statements of the Association.

Section 6. **Duration.** The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of twenty-five (25) years from the date hereof. Thereafter they shall be automatically extended for additional periods of twenty-five (25) years unless an instrument in writing, signed by a majority of then Owners, has been recorded within the year preceding the beginning of each successive period of twenty-five (25) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 7. **Covenants Run with the Land.** All restrictions, reservations, covenants, conditions, and easements contained in this Declaration shall constitute covenants running with the land; and all Associations, devisees, or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions of (a) this Declaration of Covenants, and Restrictions and (b) the Articles of Incorporation and Bylaws of the Association which will be the entity responsible for the operation and maintenance of Common Areas.

Section 8. **Disputes.** In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, such dispute shall be referred to the Board of Directors, and the determination rendered by the Board of Directors with respect to such dispute shall be final and binding on all parties thereto.

Section 9. **Enforcement.**

(a) Developer, the Association, or any Owner, their heirs, representatives or assigns, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including any provisions regarding the Surface Water Management System, and shall be entitled to recover all expenses, costs and attorney's fees related thereto. Failure by the Developer, 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.

(b) The SWFWMD shall have the right to enforce, by a proceeding at law or equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the Surface Water Management System as well as any and all other provisions contained in this Declaration that in any way relate to the Permit issued by the SWFWMD. The SWFWMD's right to enforce this Declaration by proceedings at law or in equity shall survive any dissolution of the Association and may be enforced by SWFWMD against the Association and/or the Owner(s). Should the SWFWMD bring an action at law or in equity to enforce any provision of this Declaration and should it be determined in any such proceedings that the Association or any Owner(s) breached any of the provisions of this Declaration or failed to completely and timely comply with any of this Declaration, the SWFWMD shall be entitled to an award of any attorney's fees and costs incurred in any administrative and appellate proceedings. The SWFWMD shall have the right to file a lien in the public records of Sarasota County, Florida for any such attorneys' fees and costs awarded to the SWFWMD by any court or administrative body.

Section 10. Rights of Sarasota County. Sarasota County shall have the right, but not the obligation, to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now, or hereafter imposed, by the provisions of the Declaration, or any amendment thereto, including the right to prevent the violation as to any such provisions, the right to recover damages for any such violations, and including the right to impose and enforce assessments on behalf of the Association. No amendment to this Declaration shall impair, restrict, or prove detrimental to the rights of Sarasota County as provided within this Declaration, and as subsequently amended without the joinder and consent of an authorized officer, representative, or agent of Sarasota County.

Section 11. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions. All other provisions shall remain in full force and effect.

Section 12. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance,

malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and the director free and harmless against any and all liability to the others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 13. **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 14. **Conflict.** In the event of any conflict among the provisions of this Declaration, the Developer reserves the right and the power to resolve any such conflict, and its decision shall be final.

Section 15. **Dissolution.** In the event of dissolution of the Association, in accordance with the terms of its Articles of Incorporation, each Lot shall continue to be subject to the regular Assessments specified in Article VI and each Owner shall continue to be personally obligated to Developer or the successor or assigns of the Association as the case may be, for such Assessments to the extent that such Assessments are required to enable Developer or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate and preserve it. The provisions of this Section shall only apply with regard to the maintenance, operation and preservation of Property which has been Association Property and continues to be so used, for the common use, enjoyment and benefit of the Owners.

Section 16. **Notices.**

(a) **To Developer.** Notice to Developer as may be required herein shall be in writing and delivered or mailed to Developer at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by Developer.

(b) **To Association.** Notice to the Association as may be required herein or the Bylaws of the Association shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by the Association.

(c) **To Owner.** Notice to any Owner of a violation of any of these restrictions, notice of assessments or any other notice as may be required herein shall be in writing and shall be delivered or mailed to the Owner at the address shown on the

tax rolls of Sarasota County, Florida, or if not shown thereon, to the address of the Owner, as shown on the deed recorded in the Public Records of Sarasota County, Florida.

IN WITNESS WHEREOF, the undersigned Developer has executed this Declaration this 19th day of January 2011.

WITNESSES:

Teresa M Hart

Teresa M Hart
Printed Name

Kay Plein

Kay Plein
Printed Name

**D. R. Horton, Inc.,
a Delaware corporation**

By: [Signature]

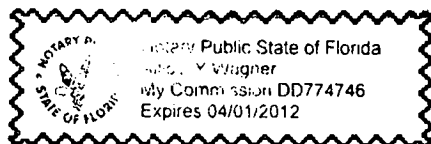
Print: JONATHAN PENTECOST

Its: ASSISTANT SECRETARY

STATE OF Florida

COUNTY OF Lee

The foregoing instrument was executed before me, Jonathon Pentecost, an officer duly authorized in the State and County named above to take acknowledgments, this 19th day of January, 2011, by Jonathon Pentecost, as Asst. Secretary of D. R. Horton, Inc., a Delaware corporation, on behalf of the corporation, who is personally known by me to be or who produced _____, as identification.



#1826251

Alicia Y. Wagner
Notary Public, State of Florida

Alicia Y. Wagner
Printed Name
My Commission Expires:

EXHIBIT "A"

Description

Lots 4, 5 and 6, Block "C", Gulf Coast Groves, as per plat recorded in Plat Book 1, Page 6, of the Public Records of Sarasota County, Florida, less a portion of Lots 4 and 5, deeded to the State of Florida in Official Record Book 2740, Page 1751 and less Right-of-Way for State Road 776 (Englewood Road) as per deed recorded in Official Record Book 2700, Page 1827, Public Records of Sarasota County, Florida. Subject to a Boundary Line Agreement recorded as Official Records Instrument Number 2007142054. All of which being more particularly described as follows :

Begin at the Southwest corner of said Lot 6, Block "C" of the aforesaid plat; thence run along the Western boundary of said Lots 6 and 5, N 18°31'53" W, a distance of 387.25 ft.; thence S 89°44'13" E, a distance of 34.60 ft.; thence S 00°03'55" E, a distance of 67.60 ft.; thence S 89°11'05" E, a distance of 70.00 ft.; thence N 00°03'55" W, a distance of 100.00 ft. to a point in the Northern boundary of said Lot 5; thence along said Northern boundary, S 89°11'05" E, a distance of 353.88 ft.; thence N 00°41'30" E, a distance of 198.97 ft.; thence S 89°15'27" E, a distance of 379.18 ft. to the Southwestern Right-of-Way of State Road 776; thence along said Right-of-Way the following two courses; S 27°41'24" E, a distance of 522.83 ft. to a curve concave to the Northeast with a radius of 11523.16'; thence along the arc of said curve through a central angle of 00°43'25", a distance of 145.53 ft.; thence N 89°54'38" W, a distance of 155.36 ft.; distance of 51.78 ft.; thence N 89°34'11" W, a distance of 821.20 ft. to the Point of Beginning.

Containing 469,902 square feet or 10.79 acres of land more or less.

EXHIBIT "A"

**ARTICLES OF INCORPORATION
OF
HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC.
a Florida Corporation Not-For-Profit**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
DEC 26 PM 3:18

HERITAGE CREEK, L.L.C., a Florida limited liability company ("Declarant") is the owner of certain property in Sarasota County, Florida (the "Subject Property"), and a Declaration of Covenants and Restrictions for Heritage Creek (the "Declaration"), which will affect the Subject Property, is expected to be recorded or has been recorded. 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 Sarasota County, Florida, with these Articles of Incorporation attached as an Exhibit. All of the definitions contained in the Declaration shall apply to these Articles and to the Bylaws of the Association.

**ARTICLE I
NAME AND ADDRESS OF CORPORATION**

The name of this corporation shall be:

HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC., hereinafter in these Articles referred to as the "Association."

The address of the principal office of the corporation is 779 Commerce Drive, Venice, Florida 34292, and the corporation's mailing address is the same.

The Association is a Homeowners' Association under Chapter 720, Florida Statutes.

**ARTICLE II
PURPOSES**

The general nature, objects, and purposes of the Association are:

A. To promote the health, safety and social welfare of the owners of all Lots located within Heritage Creek that are or hereafter may be subject to the terms of the "Declaration of Covenants and Restrictions for Heritage Creek" (referred to herein as the "Declaration") to be recorded in the Public Records of Sarasota County, Florida.

B. To operate, manage, maintain and control the usage of all land and improvements intended for the common usage of all Lot owners in Heritage Creek including, without limitation, the common entranceway and signs, the landscape buffer and such private roads, sidewalks, pedestrian, bicycle and other pathways, lakes, ponds, water detention areas, wells and equipment, irrigation lines and other components of the irrigation system, landscaping, conservation areas, easement areas, and other similar common areas (and the improvements thereon) as may be set aside by the Declarant of Heritage Creek and transferred or assigned from

time to time to the Association for the common use or benefits of the Lot owners in Heritage Creek, and/or for the purpose of operation and maintenance by the Association.

C. To furnish or otherwise provide for private security, fire protection, street lighting, and such other services as may be deemed necessary or desirable by the Board of Directors of the Association and to acquire such capital improvements and equipment as may be related thereto.

D. To provide, purchase, acquire, replace, improve, maintain and repair such improvements to the neighborhood common areas, including, without limitation, the common entranceway, signs, structures, streets, sidewalks, street lights, wells and equipment, irrigation lines and other components of the irrigation system, landscaping, equipment, furniture and furnishings, both real and personal, as the Board of Directors of the Association, in its discretion, determines to be necessary or desirable for the promotion of the health, safety, and social welfare of the members of the Association.

E. To carry out all of the duties and obligations assigned to it as a neighborhood property owners association under the terms of the Declaration for Lots in Heritage Creek.

F. To operate without profit and for the sole and exclusive benefit of its members.

ARTICLE III

GENERAL POWERS

The general powers that the Association shall have are as follows:

A. To purchase, accept, lease, or otherwise acquire title to, and to hold, mortgage rent, sell or otherwise dispose of, any and all real or personal property or easements related to the purposes or activities of the Association; to make, enter into, perform, and carry out contracts of every kind and nature with any person, firm, corporation, or association; and to do any and all other acts necessary or expedient for carrying on any and all of the objects and purposes set forth in these Articles of Incorporation and not forbidden by the laws of the State of Florida.

B. To establish a budget and to fix assessments to be levied against all Lots which are subject to assessment pursuant to the aforesaid Declaration for the purposes of defraying the expenses and costs of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenditures, including a reasonable contingency fund for the ensuing year and a reasonable annual reserve for anticipated major capital repairs, maintenance, improvements, and replacements.

C. To place liens against any Lot subject to assessment for delinquent and unpaid assessments or charges and to bring suit for the foreclosure of such liens or to otherwise enforce the collection of such assessments and charges for the purpose of obtaining revenue in order to carry out the purposes and objectives of the Association.

D. To hold funds solely and exclusively for the benefit of the members of the Association for the purposes set forth in these Articles of Incorporation.

E. To adopt, promulgate, and enforce rules, regulations, bylaws, covenants, restrictions, and agreements in order to effectuate the purposes for which the Association is organized.

F. To delegate such of the powers of the Association as may be deemed to be in the Association's best interest by the Board of Directors.

G. To charge recipients of services rendered by the Association and users of property of the Association where such is deemed appropriate by the Board of Directors.

H. To pay all taxes and other charges or assessments, if any, levied against property owned, leased, or used by the Association.

I. To enforce by any and all lawful means the provisions of these Articles of Incorporation, the Bylaws of the Association which may be hereafter adopted, and the terms and provisions of the aforesaid Declaration.

J. In general, to have all powers which may be conferred upon a corporation not for profit by the laws of the State of Florida, except as prohibited herein.

K. To employ personnel; to retain independent contractors and professional personnel; and to enter into service contracts to provide for the maintenance, operation and management of Association property, including drainage and sewer and water systems; and to enter into any other agreement consistent with the purposes of the Association, including but not limited to agreements for professional management and to delegate to such professional management certain powers and duties of the Association.

ARTICLE IV MEMBERS

The members of this Association shall consist of all owners of Lots that are made subject to the provisions of said Declaration. Owners of such Lots shall automatically become members upon acquisition of the fee simple title to their respective Lots.

The membership of any member in the Association shall automatically terminate upon conveyance or other divestment of title to such member's Lot, except that nothing herein contained shall be construed as terminating the membership of any member who may own two or more Lots so long as such member owns at least one Lot.

The interest of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to the Lot which is the basis of his membership in the Association.

The Secretary of the Association shall maintain a list of the members of the Association. Whenever any person or entity becomes entitled to membership in the Association, it shall become such party's duty and obligation to so inform the Secretary in writing, giving his name, address and Lot number; provided, however, that any notice given to or vote accepted from the prior owner of such Lot before receipt of written notification of change of ownership shall be

deemed to be properly given or received. The Secretary may, but shall not be required to, search the Public Records of Sarasota County or make other inquiry to determine the status and correctness of the list of members of the Association maintained by him and shall be entitled to rely upon the Association's records until notified in writing of any change in ownership.

ARTICLE V VOTING

Subject to the restrictions and limitations hereinafter set forth, each member shall be entitled to one vote for each Lot in which he holds a fee simple ownership. When more than one person holds such interest in any open Lot, all such persons shall be members and the vote attributable to such Lot may be cast by any of such joint owners. In the event more than one of the joint owners attempts to cast the vote to which their Lot is entitled, said vote shall be apportioned equally among such of the joint owners as cast the vote. Except where otherwise required by law or by the provisions of said Declaration, or these Articles, the affirmative vote of a majority of members represented at any meeting of the members duly called and at which a quorum is present shall be binding upon the members.

ARTICLE VI BOARD OF DIRECTORS

A. The affairs of the Association shall be managed by a Board of Directors consisting initially of three (3) Directors. The number of Directors comprising succeeding Boards of Directors shall be provided from time to time in the Bylaws of the Association, but in no event shall there be less than three (3) or more than nine (9) Directors. Except for Directors appointed by Declarant, the Directors must be members of the Association (or in the case of a Lot owned by an entity, the person designated on behalf of such entity), but need not be residents of the State of Florida.

B. All Directors shall be appointed by and shall serve at the pleasure of HERITAGE CREEK, L.L.C., a Florida limited liability company (hereinafter referred to as "Declarant"), its successors or assigns, until the annual meeting of members in the year 2007, or such earlier date as Declarant shall determine in its sole discretion. Commencing with said annual meeting and continuing thereafter until the Declarant shall turn over the right to appoint a majority of the Board of Directors to the owners of Lots within the subdivision, the Declarant shall have the right to appoint a majority of the Board of Directors. After the Declarant has turned over control of the Association at the first annual meeting of members following the year in which members other than the Declarant for the first time own fifty-one percent (51%) of the Lots that will ultimately be subject to said Declaration, or at such meeting prior thereto as Declarant elects in its sole discretion, if Declarant voluntarily turns over control of the Board of Directors prior to such date.

C. All Directors who are not subject to appointment by Declarant shall be elected by the members. Elections shall be by plurality vote.

D. All Directors, whether appointed or elected, shall serve for terms of one (1) year or until their successors are elected and qualify in accordance with the provisions of the Bylaws. Any elected Director may be removed from office with or without cause by majority vote of the

members, but not otherwise. Any appointed Director may be removed and replaced with or without cause by Declarant, in Declarant's sole discretion.

E. The names and addresses of the persons constituting the first Board of Directors who shall hold office until the first annual meeting of members to be held in the year 2007 and until their successors are elected or appointed and have qualified, are as follows:

MICHAEL K. GREIG
779 Commerce Drive
Venice, FL 34292

JEFFREY O. GATES
779 Commerce Drive
Venice, FL 34292

DONALD C. FEE
2212 6th Street
Sarasota, FL 34237

ARTICLE VII **OFFICERS**

A. The officers of the Association, to be elected by the Board of Directors, shall be a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board shall deem appropriate from time to time. The President shall be elected from among the membership of the Board of Directors, but no other officer need be a Director. The same person may hold two or more offices, provided, however, that the office of President and Secretary shall not be held by the same person. The affairs of the Association shall be administered by such officers under the direction of the Board of Directors. Officers shall be elected for a term of one (1) year or until their successors are elected and qualify in accordance with the procedure set forth in the Bylaws.

B. The names of the officers who are to manage the affairs of the Association until the first annual meeting of the Board of Directors to be held in the year 2007 and until their successors are duly elected and qualified, are as follows:

MICHAEL K. GREIG	President and Treasurer
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JEFFREY O. GATES	Vice President and Secretary
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ARTICLE VIII
CORPORATE EXISTENCE

The Association shall have perpetual existence.

ARTICLE IX
BYLAWS

The first Board of Directors of the Association shall adopt Bylaws consistent with these Articles. Thereafter, the Bylaws may be altered, amended or rescinded by a majority vote of the Directors in the manner provided by Such Bylaws.

ARTICLE X
AMENDMENTS TO ARTICLES OF INCORPORATION

These Articles may be altered, amended or repealed by unanimous resolution of the Board of Directors or by a two-thirds (2/3) majority of all of the owners of Lots within Heritage Creek. 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 by the Declarant, no amendment shall make any changes which would in any way affect the rights, privileges, powers, or options herein provided in favor of, or reserved to, the Declarant, unless the Declarant shall join in the execution of the amendment, including, but not limited to, any right of the Declarant to appoint Directors pursuant to Article VI.

ARTICLE XI
REGISTERED OFFICE AND REGISTERED AGENT

The registered office of the corporation shall be at 779 Commerce Drive, Venice, Florida 34292, and the registered agent at such address shall be Michael K. Greig. The corporation may, however, maintain offices and transact business in such other places within or without the State of Florida as may from time to time be designated by the Board of Directors.

ARTICLE XII
BUDGET AND EXPENDITURES

The Association shall obtain funds with which to operate by annual assessment of its members in accordance with the provisions of said Declaration, as the same may be supplemented by the provisions of the Association's Articles and Bylaws. Accordingly, the Board of Directors shall annually adopt a budget for the operation of the Association for the ensuing year and for the purpose of levying assessments against all Lots subject to assessment, which budget shall be conclusive and binding upon all persons; provided, however, that the Board of Directors may thereafter at any time approve or ratify variations from such budget.

ARTICLE XIII
SUBSCRIBER

The name and street address of the subscriber of these Articles is as follows:

MICHAEL K. GREIG
779 Commerce Drive
Venice, Florida 34292

ARTICLE XIV
INDEMNIFICATION OF OFFICERS AND DIRECTORS

All officers and Directors shall be indemnified by the Association for and against all expenses and liabilities, including counsel fees, reasonably incurred in connection with any proceeding (including appellate proceedings) or settlement thereof in which they may become involved by reason of holding such office. In no event, however, shall any officer or Director be indemnified for his own willful misconduct or, with respect to any criminal proceeding, his own knowing violation of provisions of law. The Association may purchase and maintain insurance on behalf of all officers and Directors for any liability asserted against them or incurred by them in their capacity as officers and Directors or arising out of their status as such.

ARTICLE XV
DISSOLUTION OF THE ASSOCIATION

A. Upon expiration of the term of the aforementioned Declaration, the Association may be dissolved upon resolution to that effect being approved by two-thirds (2/3) of the members of the Board of Directors.

B. Upon dissolution of the Association, all of its assets remaining after provision for payment of creditors and all costs and expenses of such dissolution shall be distributed in the following manner:

(1) Any property determined by the Board of Directors of the Association to be appropriate for dedication to any applicable municipal or other governmental authority may be dedicated to such authority provided the authority is willing to accept the dedication.

(2) All remaining assets, or the proceeds from the sale of such assets, shall be apportioned among the Lots subject to assessment in equal shares, and the share of each shall be distributed to the then owners thereof.

ARTICLES XIV
RESTATEMENT OF ARTICLES

A. All provisions contained within these Articles plus any amendments thereto may at any time be integrated into a single instrument as "Restated Articles" and adopted by the Board of Directors. Such Restated Articles shall be specifically designated as such and shall

state, either in the heading or in the introductory paragraph, the Association's name and, if it has been changed, the name under which it was originally incorporated and the date of filing of the original Articles or any restatements thereof in the Office of the Secretary of State of Florida. Such Restated Articles shall also state that they were duly adopted by the Board of Directors and that such Restated Articles only restated and integrate and do not further amend the provisions of these Articles as theretofore amended, or that any amendment included therein has been adopted pursuant to Article X hereof and that there is no discrepancy between these Articles as theretofore amended and provisions of the Restated Articles other than the inclusion of the properly adopted amendments.

B. Upon the filing of Restated Articles by the Secretary of State of Florida, the original Articles, as theretofore amended, shall be superseded, and thenceforth the Restated Articles shall be these Articles of Incorporation of the Association.

C. Amendments may be made simultaneously with restatement of these Articles if the requirements of Article X are complied with. In such event, the Articles of Incorporation shall be specifically designated as such.


IN WITNESS WHEREOF, the aforesaid subscriber has hereunto set his hand and seal this 4th day of DECEMBER, 2006.


MICHAEL K. GREIG

STATE OF FLORIDA
COUNTY OF SARASOTA

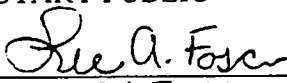
I HEREBY CERTIFY that on this 4th day of DECEMBER, 2006, before me, the undersigned authority, personally appeared MICHAEL K. GREIG, to me known to be the person described as the Incorporator of HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC., and who executed the foregoing Articles of Incorporation, and acknowledged the execution of such instrument for the uses and purposes therein expressed.

WITNESS my hand and official seal at Venice, Sarasota County, Florida on the date aforesaid.

NOTARY PUBLIC-STATE OF FLORIDA
 Lee A. Fosco
Commission #DD375604
Expires: NOV. 29, 2008
Bonded Thru Atlantic Bonding Co., Inc.

(SEAL)

NOTARY PUBLIC


Print LEE A. FOSCO

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
05 DEC 26 PM 3:18

The undersigned hereby accepts the designation of Registered Agent of HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC., as set forth in Article XI.




MICHAEL K. GREIG

STATE OF FLORIDA
COUNTY OF SARASOTA

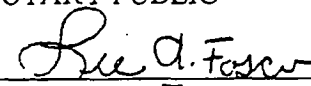
I HEREBY CERTIFY that on this 4th day of December, 2006, before me, the undersigned authority, personally appeared MICHAEL K. GREIG, to me known to be the person described as the Registered Agent of HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC., and who executed the foregoing Articles of Incorporation, and acknowledged the execution of such instrument for the uses and purposes therein expressed.

WITNESS my hand and official seal at Venice, Sarasota County, Florida on the date aforesaid.

NOTARY PUBLIC-STATE OF FLORIDA
 Lee A. Fosco
Commission #DE375604
Expires: NOV 29, 2008
Bonded Thru Atlantic Bonding Co., Inc.

(SEAL)

NOTARY PUBLIC



Print LEE A. FOSCO

Exhibit "B-1"

ARTICLES OF AMENDMENT TO
ARTICLES OF INCORPORATION OF
HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC.

Pursuant to the provisions of Section 617.1006, Florida Statutes, this corporation adopts the following Articles of Amendment to its Articles of Incorporation. Language shown as ~~stricken~~ shall be deleted, and language shown as underlined shall be added.

FILED
08 JUL -3 PM 1:16
CLERK OF DISTRICT COURT
TALLAHASSEE, FLORIDA

AMENDMENTS

ARTICLE VI, Section B, shall be amended to read as follows:

B. All Directors shall be appointed by and shall serve at the pleasure of HERITAGE CREEK, L.L.C., a Florida limited liability company (hereinafter referred to as "Declarant"), its successors or assigns, until the first annual meeting of members ~~in the year 2007~~, after the members other than the Declarant for the first time own more than ninety percent (90%) of the lots which will ultimately be subject to said Declaration (hereinafter referred to as the "Turnover", or such earlier date as Declarant shall determine in its sole discretion. Until Turnover, Commencing with said annual meeting and continuing thereafter until the Declarant shall turn over the right to appoint a majority of the Board of Directors to the owners of Lots within the subdivision, the Declarant shall have the right to appoint a majority of the Board of Directors. After the Declarant has turned over control of the Association at the first annual meeting of members following the year in which members other than the Declarant for the first time own fifty one percent (51%) of the Lots that will ultimately be subject to said Declaration, or at such meeting prior thereto as Declarant elects in its sole discretion, if Declarant voluntarily turns over control of the Board of Directors prior to such date. The Declarant shall be entitled to elect at least one member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the lots which will ultimately be subject to said Declaration.

The first clause of ARTICLE VI, Section E, shall be amended to read as follows:

E. The names and addresses of the persons constituting the first Board of Directors who shall hold office until Turnover ~~the first annual meeting of members to be held in the year 2007~~ and until their successors are elected or appointed and have qualified, are as follows:

The first clause of ARTICLE VII, Section B, shall be amended to read as follows:

B. The names of the officers who are to manage the affairs of the Association until the first annual meeting of the Board of Directors to be held after Turnover ~~in the year 2007~~ and until their successors are duly elected and qualified, are as follows:

In all other respects, the Articles of Incorporation shall remain as they were prior to this Amendment being adopted.

There are no members or members entitled to vote on these amendments. The amendments were adopted by a unanimous vote of the Board of Directors.

Signed this 23 day of June, 2008.

HERITAGE CREEK HOMEOWNERS'
ASSOCIATION, INC., a Florida not-for-profit
corporation

By 
Michael K. Greig, as President

Exhibit "C"

**BYLAWS
OF
HERITAGE CREEK HOMEOWNERS' ASSOCIATION, INC.**

Heritage Creek Homeowners' Association, Inc., a corporation not for profit under the laws of the State of Florida, hereinafter referred to as the "Association," does hereby adopt the following as its Bylaws:

**ARTICLE I
IDENTITY AND DEFINITIONS**

The Association has been organized for the purpose of the operation, improvement and management of certain of the common areas of the development known as Heritage Creek (referred to herein as "Heritage Creek"), to enforce the covenants described below, and to promote the health, safety and welfare of the owners of all lots located within Heritage Creek that are, or hereafter may be, subject to the terms of the Declaration. The terms and provisions of these Bylaws are expressly subject to the Articles of Incorporation of the Association and to the terms, provisions, conditions and authorization set forth in the Declaration of Covenants and Restrictions for Heritage Creek executed by Heritage Creek, L.L.C., a Florida limited liability company, as Declarant (referred to herein as "Declarant"), which have been or will be recorded in the Public Records of Sarasota County, Florida.

All terms used herein which are defined in the Declaration shall be used herein with the same meanings as defined in the Declaration.

**ARTICLES II
LOCATION OF PRINCIPAL OFFICE**

The principal office of the Association shall be located at 779 Commerce Drive, Venice, Florida 34292, or at such other place as may be established by resolution of the Board of Directors of the Association.

**ARTICLE III
MEMBERSHIP, VOTING, QUORUM AND PROXIES**

A. Qualification, Admission, and Termination. The qualification of members, the manner of their admission to membership and termination of such membership, and voting by the members, shall be as set forth in Chapter 720, Florida Statutes, and in Article IV and Article V of the Association's Articles of Incorporation.

B. Quorum. The percentage of voting interests required to constitute a quorum at a meeting of the members shall be thirty percent (30%) of the total voting interests. Unless otherwise provided in Chapter 720, Florida Statutes, or in the Articles of Incorporation, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained. Unless otherwise provided in the Articles of these Bylaws or required by law, and other than those matters set forth in this paragraph, any governing document of the Association may be amended by the affirmative vote of two-thirds (2/3) of the voting interest of the Association. An

amendment may not materially and adversely alter the proportionate voting percentage by which a parcel shares in the common expenses of the Association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this paragraph, a change in quorum requirements is not an alteration of voting interests.

C. Proxy Voting. The members have the right, unless otherwise provided in this paragraph or in the Articles, to vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

D. Number of Votes. The number of votes to which any member is entitled at any meeting of members shall be determined as of the date fixed by the Board of Directors as the record date for such meeting, provided that such record date shall not be more than sixty (60) days or less than thirty (30) days prior to the date of such meeting. In the event the Board of Directors does not set a record date for any meeting of members, the record date for such meeting shall be the date which is forty-five (45) days prior to such meeting. The determination of the number of votes to which any member is entitled as of the record date shall be final, and no conveyance or acquisition of any lot arising after such record date shall be taken into consideration in determining the number of votes to which such member is entitled at such meeting.

E. Total Votes. Except where otherwise required by the provisions of the Articles of Incorporation, these Bylaws, or the aforesaid Declaration, or where the same may otherwise be required by law, the affirmative vote of the holders of more than one-half (1/2) of the total votes of the Association represented at any duly called members' meeting at which a quorum is present shall be necessary for approval of any matter and shall be binding upon all members.

F. Mailing of Notices. The Association shall be entitled to give all notices required to be given to the members of the Association by these Bylaws, the Articles of Incorporation, and said Declaration to the person or entity shown by the Association's records to be entitled to receive such notices at the last known address shown by the records of the Association, until the Association is notified in writing that such notices are to be given to another person or entity or at a different address.

ARTICLE IV ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

A. Annual Meeting. The Association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, these Bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the Articles or these Bylaws. However, so long as Declarant is entitled to appoint a majority of the Directors of the Association, no annual meeting shall be required.

B. Special Meetings. Special meetings must be held when called by the Board of Directors or, unless a different percentage is stated in the Articles or these Bylaws, by at least ten percent (10%) of the total voting interests of the Association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

C. Notice of Meetings. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called. The Association shall give all parcel owners and members actual notice of all membership meetings which shall be mailed, delivered, or electronically transmitted to the members not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen-day notice shall be made by an Affidavit executed by the person providing the notice and filed upon execution among the official records of the Association. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, The Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association, if any. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

D. Right to Speak. Members and parcel owners have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. Notwithstanding any provision to the contrary contained in the Articles or these Bylaws or in any rules adopted by the Board of Directors or by the membership, a member and a parcel owner have the right to speak for at least three (3) minutes on any item, provided that the member or parcel owner submits a written request to speak prior to the meeting. The Association may adopt written reasonable rules governing the frequency, duration, and other manner of member and parcel owner statements, which rules must be consistent with this paragraph.

E. Adjournment. Adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Florida Statute 720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting.

F. Chairman. At meetings of the membership, the President or, in his absence, the Vice President, shall preside, or in the absence of both, the Board of Directors shall select a chairman.

G. Elections. Elections of Directors must be conducted in accordance with the procedures set forth in the Articles and these Bylaws. All members of the Association shall be eligible to serve on the Board of Directors, and a member may nominate himself or herself as a candidate for the Board at a meeting where the election is to be held. Except as otherwise provided in the Articles or these Bylaws, Boards of Directors must be elected by a plurality of the votes cast by eligible voters. Any election dispute between a member and an Association must be submitted to mandatory binding arbitration with the Division of Florida Land Sales (the

"Division"). Such proceedings shall be conducted in the manner provided by Florida Statute 718.1255 and the procedural rules adopted by the Division.

H. Recording. Any parcel owner may tape record or videotape meetings of the Board of Directors and meetings of the members. The Board of Directors of the Association may adopt reasonable rules governing the taping of meetings of the Board and the membership.

ARTICLE V BOARD OF DIRECTORS

A. The affairs of the Association shall be managed by a Board of Directors (the "Board") consisting of three (3) Directors. A majority of the Board of Directors shall constitute a quorum to transact business at any meeting of the Board, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the Board of Directors.

B. Any vacancy occurring on the Board of Directors because of death, resignation, removal or other termination of services of any Director shall be filled by the Board of Directors, except that Declarant, to the exclusion of other members and the Board itself, shall fill any vacancy created by the death, resignation, removal or other termination of services of any Director appointed by the Declarant. A Director appointed to fill a vacancy, whether by the Board or the Declarant, shall be appointed for the unexpired term of his predecessor in office and shall continue to serve until his successor shall have been elected or appointed and qualified.

ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS

A. The Board of Directors shall have power:

1. To call meetings of the members.
2. To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any member, officer, or Director of the Association in any capacity whatsoever.
3. To establish, levy and assess, and collect the assessments necessary to operate the Association and carry on its activities, and to create such reserves for extraordinary expenditures as may be deemed appropriate by the Board of Directors.
4. To adopt and publish rules and regulations governing the use of any limited private roads and any neighborhood common areas, or any portion thereof, which the Association is obligated to maintain and, also, governing the personal conduct of the members and their guests thereon, including reasonable admission charges if deemed appropriate.
5. To authorize and cause the Association to enter into contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations.

6. To appoint such committees as the Board of Directors may desire and to grant to such committees such duties and responsibilities as the Board of Directors may deem advisable.

7. To exercise for the Association all powers, duties, and authority vested in or delegated to the Association, except those reserved to the members in said Declaration or in the Articles of Incorporation of the Association.

B. It shall be the duty of the Board of Directors:

1. To cause to be kept a complete record of all its acts and corporate affairs.

2. To supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed.

3. With reference to assessments of the Association:

a. To fix the amount of the assessment against each lot for each fiscal year in accordance with the provisions of said Declaration, the Articles of Incorporation, and these Bylaws; and

b. To prepare a roster of the members and assessments thereto which shall be kept in the office of the Association and shall be open to inspection by any member; and,

c. To send written notice of each assessment to every member subject thereto.

d. To issue or to cause an appropriate officer to issue, upon demand by an authorized person, a certificate in recordable form setting forth whether any assessment has been paid; and, if not, the amount then due and owing. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

e. To make payment of all ad valorem taxes assessed against Association property, real or personal.

f. To pay all expenses incurred by the Association for repairs, maintenance, services, insurance, and other operating expenses.

g. To enforce by appropriate legal means the provisions of said Declaration, the Articles of Incorporation and these Bylaws.

ARTICLE VII MEETINGS OF DIRECTORS

A. A meeting of the Board of Directors of the Association occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members except for meetings between the Board and its attorney with respect to

proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.

B. Members have the right to attend all meetings of the Board and to speak on any matter placed on the agenda by petition of the voting interests for at least three (3) minutes. The Association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other provision of the Articles of these Bylaws, the requirement that Board meetings and committee meetings be open to the members is inapplicable to meetings between the Board or a committee and the Association's attorney, with respect to meetings of the Board held for the purpose of discussing personnel matter.

C. Notices of all Board meeting must be posted in a conspicuous place in the community at least forty-eight (48) hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, these Bylaws may provide for a reasonable alternative to posting or mailing of notice for each Board meeting, including publication of notice, provision of a schedule of Board meetings, or the conspicuous cable television system serving the Association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. These Bylaws may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the Board of Directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

D. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than fourteen (14) days before the meeting.

E. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. This paragraph also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of Association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

F. If twenty percent (20%) of the total voting interests petition the Board to address an item of business, the Board shall at its next regular Board meeting or at a special meeting of

the Board, but not later than sixty (60) days after the receipt of the petition, take the petitioned item up on the agenda. The Board shall give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the fourteen-day notice requirement pursuant to Article VII.D., above. Each member shall have the right to speak for at least three (3) minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the Board is not obligated to take any other action required by the petition.

G. Minutes of all meetings of the members of an Association and of the Board must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.

H. The Association shall maintain each of the following items, when applicable, which constitute the official records of the Association:

1. Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace;

2. A copy of the Bylaws of the Association and of each amendment to these Bylaws;

3. A copy of the Articles of Incorporation of the Association and of each amendment thereto;

4. A copy of the Declaration of Covenants and Restrictions and a copy of each amendment thereto;

5. A copy of the current rules of the Homeowners' Association;

6. The minutes of all meetings of the Board of Directors and of the members, which minutes must be retained for at least seven (7) years;

7. A current roster of all members and their mailing addresses and parcel identifications. The Association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices;

8. All of the Association's insurance policies or a copy thereof, which policies must be retained for at least seven (7) years;

9. A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of one (1) year;

10. The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:

a. Accurate, itemized, and detailed records of all receipts and expenditures;

b. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due;

c. All tax returns, financial statements, and financial reports of the Association; and

d. Any other records that identify, measure, record, or communicate financial information.

11. A copy of the disclosure summary described in Florida Statutes 720.401(1); and

12. All other written records of the Association not specifically included in the foregoing which are related to the operation of the Association.

I. The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt of a written request for access. This paragraph may be complied with by having a copy of the official records available for inspection or copying in the community. If the Association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than twenty-five (25) pages. The failure of an Association to provide access to records within ten (10) business days after receipt of a written request creates a rebuttable presumption that the Association willfully failed to comply with this paragraph. A member who is denied access to the official records is entitled to the actual damages or minimum damages for the Association's willful failure to comply with this paragraph. The minimum damages are to be \$50.00 per calendar day up to ten (10) days, the calculation to begin on the 11th business day after receipt of the written request. The Association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one eight-hour business day per month. The Association may impose fees to cover the costs of providing copies of the official records,

including, without limitation, the costs of copying. The Association may charge up to fifty cents per page for copies made on the Association's photocopier. If the Association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed twenty-five (25) pages in length, the Association may have copies made by an outside vendor and may charge the actual cost of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in Florida Statute 90.502 and any record protected by the work-product privilege, including, but not limited to, any record prepared by an Association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association and was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

2. Information obtained by an Association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Disciplinary, health, insurance, and personnel records of the Association's employees.

4. Medical records of parcel owners or community residents.

J. Regardless of any provision to the contrary contained in the governing documents, subject to the provisions of Florida Statute 720.307 regarding transition of Association control, any member of the Board of Directors may be recalled and removed from office with or without cause by a majority of the total voting interests. When the governing documents, including the Declaration, Articles of Incorporation, or these Bylaws, provide that only a specific class of members is entitled to elect a Director or Directors, only that class of members may vote to recall those Directors so elected. Board Directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the Association by certified mail or by personal service in the manner authorized by Chapter 48 and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a meeting of the Board within five (5) full business days after receipt of the agreement in writing or written ballots. At the meeting, the Board shall either certify the written ballots or written agreement to recall a Director or Directors of the Board, in which case such Director or Directors shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession, or proceed as described below. When it is determined by the Florida Department of Professional Regulation pursuant to binding arbitration proceedings that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than one hundred and twenty (120) days after it has been signed by the member. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be

effective, must be delivered to the Association before the Association is served with the written recall agreements or ballots. The agreement in writing or ballot shall list at least as many possible replacement Directors as there are directors subject to the recall, when at least a majority of the Board is sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are Directors subject to the recall. If the Declaration, Articles of Incorporation, or these Bylaws specifically provide, the members may also recall and remove a Board Director or Directors by a vote taken at a meeting. If so provided in the governing documents, a special meeting of the members to recall a Director or Directors of the Board of Directors may be called by ten percent (10%) of the voting interests giving notice of the meeting as required for a meeting of members, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose. The Board shall duly notice and hold a Board meeting within five (5) full business days after the adjournment of the member meeting to recall one or more Directors. At the meeting, the Board shall certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the Board within five (5) full business days any and all records and property of the Association in their possession, or shall proceed as set forth herein. If the Board determines not to certify the written agreement or written ballots to recall a Director or Directors of the Board or does not certify the recall by a vote at a meeting, the Board shall, within five (5) full business days after the meeting, file with the Department a petition for binding arbitration pursuant to the applicable procedures in Florida Statutes 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this paragraph, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any Director or Directors of the Board, the recall will be effective upon mailing of the final order of arbitration to the Association. The Director or Directors so recalled shall deliver to the Board any and all records of the Association in their possession within five (5) full business days after the effective date of the recall. If a vacancy occurs on the Board as a result of a recall and less than a majority of the Board Directors are removed, the vacancy may be filled by the members at the meeting. If the recall occurred by agreement in writing or by written ballot, members may vote for replacement Directors in the same Division, which rules need not be consistent with this paragraph. If the Board fails to duly notice and hold a Board meeting within five (5) full business days after service of an agreement in writing or within five (5) full business days after the adjournment of the member recall meeting, the recall shall be deemed effective and the Board Directors so recalled shall immediately turn over to the Board all records and property of the Association. If a Director who is removed fails to relinquish his or her office or turn over records as required under this paragraph, the Circuit Court in the county where the Association maintains its principal office may, upon the petition of the Association, summarily order the Director to relinquish his or her office and turn over all minutes of the Board meeting at which the Board decides where to certify the recall as an official Association record. The minutes must record the date and time of the meeting, the decision of the Board, and the vote count taken on each Board member subject to the recall, as to each vote rejected, the minutes must identify the parcel number and the specific reason for each such rejection. When the recall of more than one Board Director is sought, the written agreement, ballot, or vote at a meeting shall provide for a separate vote for each Board Director sought to be recalled.

ARTICLE VIII
OFFICERS

A. The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, and such other officers as may be elected in accordance with the Articles of Incorporation. The President shall be a member of the Board of Directors.

B. All of the officers of the Association shall be elected by the Board of Directors at the annual meeting of the Board of Directors. If the election of such officers is not held at such meeting, such election shall be held as soon thereafter as may be convenient. New officers may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and qualified, or until his earlier death, resignation, or removal.

C. A vacancy in any office because of death, resignation, or other termination of service may be filled by the Board of Directors for the unexpired portion of the term.

D. All officers shall hold office at the pleasure of the Board of Directors; except that if an officer is removed by the Board, such removal shall be in accordance with the contract rights, if any, of the officer so removed.

E. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out, and shall sign all notes, leases, mortgages, deeds, and all other written instruments.

F. The Vice President, or the Vice President so designated by the Board of Directors if there is more than one Vice President, shall perform all the duties of the President in his absence. The Vice President(s) shall perform such other acts and duties as may be assigned by the Board of Directors.

G. The Secretary shall be ex officio the Secretary of the Board of Directors and shall record the votes and keep the minute of all proceedings in a book to be kept for the purpose. He shall keep the records of the Association. He shall record in a book kept for that purpose the names of all of the members of the Association together with their addresses as registered by such members.

H. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as may be directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer, or his appointed agent, shall keep proper books of account and shall prepare an annual budget, a statement of receipts and disbursements, and a balance sheet, and the same shall be available for inspection upon reasonable request of a member.

I. The salaries, if any, of the officers of the Association shall be set by the Board of Directors.

ARTICLE IX
FISCAL MANAGEMENT

The provisions for fiscal management of the Association, as set forth in said Declaration and Articles of Incorporation, shall be supplemented by the following provisions:

- A. The fiscal year of the Association shall be the calendar year.
- B. The Association shall prepare an annual budget. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another person. The Association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member.
- C. The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The Association shall, within the time limits set forth herein, provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:
 - 1. The Association shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements shall be based upon the Association's total annual revenues, as follows:
 - a. If the Association's total annual revenues are in the amount of \$100,000.00 or more, but less than \$200,000.00, it shall prepare compiled financial statements.
 - b. If the Association's total annual revenues are in the amount of at least \$200,000.00, but less than \$400,000.00, it shall prepare reviewed financial statements.
 - c. If the Association's total annual revenues are in the amount of \$400,000.00 or more, it shall prepare audited financial statements.
 - 2.
 - a. If the Association's total annual revenues are less than \$100,000.00, it shall prepare a report of cash receipts and expenditures.
 - b. If the Association is for management of a community of fewer than fifty (50) homesites, regardless of the Association's annual revenues, it may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph IX.C.1., above, unless the governing documents provide otherwise.
 - c. Reports of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for

building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the Association.

3. If twenty percent (20%) of the parcel owners petition the Board for a level of financial reporting higher than that required by this section, the Association shall duly notice and hold a meeting of members within thirty (30) days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the Association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regarding less of any provision to the contrary in the governing documents, and shall provide within ninety (90) days of the meeting or the end of the fiscal year, whichever occurs later:

a. Compiled, reviewed, or audited financial statement, if the Association is otherwise required to prepare a report of cash receipts and expenditures;

b. Reviewed or audited financial statements, if the Association is otherwise required to prepare compiled financial statements; or

c. Audited financial statements if the Association is otherwise required to prepare reviewed financial statements.

4. If approved by majority of the voting interests present at a properly called meeting of the Association, an Association may prepare or cause to be prepared:

a. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

b. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

c. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

D. All Association funds held by a Developer shall be maintained separately in the Association's name. Reserve and operating funds of the Association shall not be commingled prior to turnover except the Association may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately. No Developer in control of a Homeowners' Association shall commingle any Association funds with his or her funds or with the funds of any other Homeowners' Association or Community Association. Association funds may not be used by a Developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the Developer or Directors appointed to the Association Board by the Developer, even when the subject of the action or proceeding concerns the operation of the Developer-controlled Association.

ARTICLE X
OFFICIAL SEAL

The Association shall have an official seal, which shall be in circular form bearing the name of the Association, the word "Florida," the words "Corporation Not For Profit," and the year of incorporation:

An impression of such official seal is set forth to the right hereof:

ARTICLE XI
AMENDMENTS

Unless otherwise provided in the Articles or these Bylaws or required by law, any governing document of the Association may be amended by the affirmative vote of two-thirds (2/3) of the voting interests of the Association. An amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the Association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this paragraph, a change in quorum requirements is not an alteration of voting interests.

The foregoing were adopted as the Bylaws of the Heritage Creek Homeowners' Association, Inc., a Corporation Not For Profit under the laws of the State of Florida, on the 26th day of December, 2006.



MICHAEL K. GREIG, President



JEFFREY O. GATES, Secretary