

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

TABLE OF CONTENTS

1. DEFINITIONS	2
1.1 " <u>Architectural Review Committee</u> " ("ARC")	2
1.2 " <u>Assessment</u> " or " <u>Assessments</u> "	2
1.3 " <u>Association</u> " or " <u>Master Association</u> "	2
1.4 " <u>Board</u> "	2
1.5 " <u>Builder</u> "	2
1.6 " <u>CDD</u> "	2
1.7 " <u>CDD Property</u> "	3
1.8 " <u>DRI</u> "	3
1.9 " <u>Common Areas</u> "	3
1.10 " <u>Community</u> "	4
1.11 " <u>Conservation Area or Conservation Easement Area</u> "	4
1.12 " <u>County</u> " or " <u>The County</u> "	4
1.13 " <u>Declarant</u> "	4
1.14 " <u>Developer</u> "	4
1.15 " <u>Governing Documents</u> "	4
1.16 " <u>Institutional Mortgagee</u> "	5
1.17 " <u>Lands</u> "	5
1.18 " <u>Living Unit</u> " or " <u>Unit</u> "	5
1.19 " <u>Lot</u> "	5
1.20 " <u>Member</u> "	6
1.21 " <u>Heritage Harbour</u> "	6
1.22 " <u>Neighborhood</u> "	6
1.23 " <u>Neighborhood Committee</u> "	6
1.24 " <u>Neighborhood Covenants</u> "	6
1.25 " <u>Owner</u> "	6
1.26 " <u>Parcel</u> "	6
1.27 " <u>Rules and Regulations</u> "	6
1.28 " <u>SWFWMD</u> "	6
1.29 " <u>Service Assessment</u> "	6
1.30 " <u>Structure</u> "	7
1.31 " <u>Tract</u> "	7
1.32 " <u>Voting Interests</u> "	7
2. GENERAL DEVELOPMENT PLAN.....	7
2.1 <u>Community Development District(s)</u>	9
2.2 <u>LONG TERM DEVELOPMENT</u>	12
3. THE ASSOCIATION'S PURPOSES AND POWERS.....	12
3.1 <u>General Common Areas</u>	13
3.2 <u>Manager</u>	13
3.3 <u>Personal Property</u>	13

3.4	<u>Insurance</u>	13
3.5	<u>Express and Implied Powers</u>	13
3.6	<u>Acts of the Association</u>	13
3.7	<u>Articles of Incorporation</u>	13
3.8	<u>Bylaws</u>	14
3.9	<u>Official Records</u>	14
3.10	<u>Polling Places</u>	14
3.11	<u>Treated Effluent</u>	14
3.12	<u>Hurricane Preparedness</u>	14
3.13	<u>High Voltage Wires</u>	15
4.	MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.	15
4.1	<u>Association Rights and Easements</u>	16
4.2	<u>Maintenance of Common Areas</u>	18
4.3	<u>Delegation of Use Rights In Common Areas</u>	18
4.4	<u>Separation of Ownership</u>	19
5.	GENERAL COVENANTS AND USE RESTRICTIONS	19
5.1	<u>Subdivision and Regulation of Land</u>	19
5.2	<u>Surface Water Management Systems, Lakes, and Wet Retention Ponds</u>	19
5.3	<u>Conservation Area or Conservation Easement Area</u>	21
5.4	<u>Open Space</u>	22
5.5	<u>Lawns, Landscaping; Irrigation Systems</u>	22
5.6	<u>Maintenance of Premises</u>	23
5.7	<u>Litter</u>	23
5.8	<u>Driveways and Parking Areas</u>	23
5.9	<u>Underground Utilities</u>	23
5.10	<u>Water Supply; Wells; Water Rights</u>	23
5.11	<u>Temporary Factory-Built or Existing Structures</u>	24
5.12	<u>Antennas and Flagpoles</u>	24
5.13	<u>Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile Homes, Boats, Campers, Trailers and Other Vehicles</u>	24
5.14	<u>Architectural Control</u>	26
5.15	<u>Clothes Drying Area</u>	27
5.16	<u>Signs</u>	27
5.17	<u>Living Units; Residential Use</u>	27
5.18	<u>Pets and Animals</u>	28
5.19	<u>Nuisances</u>	28
5.20	<u>Waterfront Property</u>	29
5.21	<u>Lakes</u>	29
5.22	<u>Correction of Health and Safety Hazards</u>	29
5.23	<u>Assignment of Approval Rights</u>	30
5.24	<u>Hurricane Shutters</u>	30
	<u>Exculation</u>	30

6. ARCHITECTURAL AND AESTHETIC CONTROL	30
6.1 <u>General</u>	30
6.2 <u>Architectural Review Committee</u>	30
6.3 <u>Powers</u>	31
6.4 <u>Enforcement</u>	32
6.5 <u>Declarant's Rights</u>	32
7. EASEMENTS	32
7.1 <u>Utilities, Services and Support</u>	32
7.2 <u>Cable T.V. and Broadband Telecommunications and Utilities Services System</u>	33
7.3 <u>Right to Contract with Service Providers</u>	34
7.4 <u>Collection of "System" Assessments by Association</u>	34
7.5 <u>Construction and Maintenance</u>	34
7.6 <u>All Preservation Areas Within The Community Are Hereby Dedicated As</u> <u>General Common Areas</u>	35
8. COMMON AREAS; CONVEYANCE, USE AND MAINTENANCE	35
8.1 <u>Designation</u>	35
8.2 EXCEPT AS OTHERWISE PROVIDED IN THE CONSERVATION EASEMENT, AND UNLESS JURISDICTION, TITLE OR RESPONSIBILITY HAS BEEN ASSIGNED TO A CDD, GENERAL COMMON AREAS SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE.....	35
8.3 <u>Conveyance and Use</u>	36
8.4 <u>Maintenance and Alteration</u>	37
8.5 <u>Partition, Subdivision and Encumbrance</u>	37
8.6 <u>Association's Rights and Powers</u>	37
8.7 <u>Expansion or Modification of Common Areas</u>	37
9. PROVISOS AS TO BUILDERS	38
9.1 <u>Preamble</u>	38
9.2 <u>Voting and Assessments</u>	38
9.3 <u>Architectural Control</u>	39
9.4 <u>Use Restrictions</u>	39
10. COVENANT FOR MAINTENANCE ASSESSMENTS	39
10.1 <u>Creation of the Lien and Personal Obligation for Assessments</u>	39
10.2 <u>Types of Assessments</u>	40
10.3 <u>Establishment of Budgets and Assessments</u>	41
10.4 <u>Purpose of Assessments</u>	41
10.5 <u>Date of Commencement of Annual Assessments; Due Dates</u>	41
10.6 <u>Effect of Non-Payment of Assessment; the Personal Obligation; the Lien;</u> <u>Remedies of the Association</u>	42
10.7 <u>Subordination of the Lien</u>	43

10.8 <u>Initial Capital Contribution</u>	43
10.9 <u>Resale Capital Assessment</u>	43
10.10 <u>Declarant's Assessments</u>	44
11. COVENANT AND RULE ENFORCEMENT: DISPUTE RESOLUTION	44
11.1 <u>Dispute Resolution</u>	45
11.2 <u>Owner and Member Compliance</u>	49
11.3 <u>Litigation</u>	49
11.4 <u>Damages and Attorney's Fees</u>	50
11.5 <u>Non-Liability of Declarant</u>	50
11.6 <u>Fines</u>	50
11.7 <u>Suspension of Use Rights</u>	51
11.8 <u>Stormwater Management System</u>	51
12. NEIGHBORHOOD ASSOCIATIONS	51
12.1 <u>Enforcement of Covenants by Declarant</u>	51
12.2 <u>Entry Rights</u>	52
12.3 <u>Maintenance of Neighborhood Common Areas</u>	52
12.4 <u>Neighborhood Covenants</u>	52
12.5 <u>Priority of Neighborhood Covenants</u>	52
13. INSURANCE: RECONSTRUCTION AFTER CASUALTY	52
13.1 <u>Duty to Insure, and to Reconstruct or Clean Up</u>	52
13.2 <u>Failure to Comply</u>	53
13.3 <u>Flood Insurance</u>	53
13.4 <u>Property Insurance</u>	53
13.5 <u>Liability Insurance</u>	53
13.6 <u>Bonding</u>	53
13.7 <u>Association's Right of Entry</u>	53
14. SPECIAL COVENANTS	53
14.1 <u>Preamble</u>	54
14.2 <u>Condominiums, Cooperatives, and Multi-Family Communities</u>	54
14.3 <u>Rental Apartments and/or Assisted Living Facilities</u>	55
15. RIGHTS OF DECLARANT AND DEVELOPERS	55
15.1 <u>Sales Activity</u>	55
15.2 <u>Assignment of Rights to Successor Developer</u>	56
15.3 <u>Non-Liability of Declarant and Association</u>	56
15.4 <u>Miscellaneous</u>	56
15.5 <u>Additions or Withdrawals of Property</u>	57
15.6 <u>Management Contract</u>	57
15.7 <u>Declarant's Inaction</u>	57
16. RIGHTS OF MORTGAGEES	58

**MASTER
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
HERITAGE HARBOUR**

THIS DECLARATION is made this ____ day of _____, _____,
by Harbourvest, L.L.C., a Florida Limited Liability Company, hereinafter called the
"Declarant," for itself and its successors, grantees, and assigns.

PREMISES:

WHEREAS Declarant owns certain real property located in Manatee County, Florida, and intends to create thereon a Planned Development Mixed Use of residential and commercial uses, including single-family homes, multi-family structures, apartments, assisted living facilities, and related recreational and other common facilities and amenities, to be known as Heritage Harbour.

WHEREAS the real property which is intended to be developed as Heritage Harbour (the "Lands") is described in **Exhibit "A"** to this Declaration, as it may be amended from time to time; and

WHEREAS to preserve, protect and enhance the values of the property and amenities in the Community, and the general health, safety and welfare of the Members, Declarant deems it desirable to subject the Community to certain protective covenants, conditions, and restrictions; and

WHEREAS to provide a means for meeting the purposes and intents herein set forth, Heritage Harbour, a Florida corporation not for profit (hereinafter the "Association") has been incorporated; and

WHEREAS pursuant to Chapter 190, Florida Statutes, Heritage Harbour South Community Development District, (the "CDD"), has been established and other CDD's, may be created by law and/or may be established on the property by county ordinance or state rule, to own, operate, administer and maintain certain parts of the infrastructure of the Community as further described in Article 2 of this Declaration; and

WHEREAS Declarant shall, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within or without the Community by deed, easement, or otherwise to the Association, or a CDD, or both, (which must accept the same) for the purpose of maintenance, landscaping, drainage, recreation or other purposes for the use and benefit of the Members, their permittees, tenants and guests;

NOW THEREFORE the Declarant, and any other person, owning an interest in the subject property who consents to or joins in the making of this Declaration, hereby declares that the Lands described in **Exhibit "A"** hereto, as it may be amended from time to time, are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Declaration, which shall run with the Lands and be binding on all parties having any right, title or interest in the Lands or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. Additional real property may be added to the Lands by an amendment to **Exhibit "A"**, consented to or joined in by the Declarant and all persons having a record ownership interest in the property being added. Nothing herein contained, and no violation of these covenants, conditions 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 Declarant is that substantive contract rights created hereunder shall not be retroactively offered by legislation enacted subsequent to the recording of this Declaration.

1. DEFINITIONS. The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, or if not defined below unless the context clearly requires another meaning.

1.1 "Architectural Review Committee" ("ARC") means the Architectural Review Committee as established and empowered in Section 6 of this Declaration.

1.2 "Assessment" or "Assessments" means a share of the funds required for the payment of the expenses of the Association which from time to time is assessed against the Members, including without limitation annual assessments and special assessments, as authorized by Section 10 of this Declaration, and does not mean a non-ad valorem special assessment (by any name) which may be levied and imposed on property by a general purpose or special purpose local government.

1.3 "Association" or "Master Association" means Heritage Harbour Master Association, Inc., a Florida corporation not for profit, which has its principal place of business in Manatee County, Florida, and its successors and assigns.

1.4 "Board" means the Board of Directors of Heritage Harbour Master Association, Inc.

1.5 "Builder" shall mean and refer to any party, other than the Declarant, a Developer or Owner, constructing a residential or commercial Unit on a Lot or Tract owned by such party.

1.6 "CDD" means and refers to any Community Development District, as created and defined in Chapter 190, Florida Statutes, established by county ordinance or state rule for the purpose of administrating, maintaining and operating systems, facilities and services for the property in the Community.

1.7 "CDD Property" means any and all real property and improvements which the CDD now or hereafter either owns, contracts, operates, administers or has jurisdiction over or any combination of the foregoing or otherwise administers pursuant to its responsibilities under Chapter 190, Florida Statutes, and the documents establishing the CDD. The term "CDD Property" shall include systems, facilities and services which the CDD may acquire, construct, maintain and finance over the years (which constitute projects or infrastructure improvements) which may or may not be owned by the CDD.

1.8 "DRI" Heritage Harbour is a Development of Regional Impact (DRI), as defined under §380, Florida Statutes, State DRI #240, County DRI #24, adopted by the Board of Manatee County Commissioners on March 21, 2000, County Ordinance No. 00-19 (FKA Ordinance 99-43) as amended from time to time.

1.9 "Common Areas" shall mean and refer to the real and personal property maintained by the Association (other than Lots, if any are so maintained), whether or not owned by or dedicated to it, for the general benefit of the Members and The Lands, the initial Common Areas are described within **Exhibit "A"** attached hereto and made a part hereof. The Common Areas consist of the portions of The Lands within the following categories:

"Exclusive Common Areas" - being those Common Areas which are for the exclusive use and/or benefit of one or more, but not all, Owners within a Neighborhood, whether or not owned by the Association.

"General Common Areas" - being those Common Areas owned by the Association which are for the general use and/or benefit of all of the Members.

"Maintenance Common Areas" - being property within or without The Lands which is not owned by the Association but is nevertheless to be maintained or administered by it pursuant to an easement, license or agreement with a Neighborhood Association, the CDD, the County or any other person or entity, which maintenance/administration affords benefits to the Members.

"Neighborhood Common Areas" - being property primarily for the use and/or benefit of Members within a particular Neighborhood(s), whether or not owned by the Association.

By way of example, Tracts 500-511, being lake and drainage easement areas and Tracts 600-608 being wetland areas, as depicted on the Plat for Stoneybrook at Heritage Harbour Subphase A, Unit 1, are Tracts which may be either owned, operated, administered or merely under the jurisdiction of a CDD, but which will be maintained by the Heritage Harbour Master Association, Inc. as Maintenance Common Areas as would Tracts 800-802 as depicted on the Plat for Stoneybrook at Heritage Harbour, Subphase A, Unit 1 which are intended to be dedicated as future public roads when conveyed to Manatee County, Florida, but which shall be initially maintained by the Heritage Harbour Master Association, Inc. Stoneybrook at Heritage Harbour

is a planned residential neighborhood and community within the overall master development known as Heritage Harbour.

A specific property may be classified as more than one type of Common Area. For example, a Maintenance Common Area may also be a Neighborhood Common Area if it is not owned by the Association but is to be maintained by it per a separate agreement and primarily serves or benefits a Neighborhood(s) to the exclusion of others.

As used herein, the term "Common Areas" shall include all of the foregoing types thereof unless specifically provided to the contrary or if the context clearly indicates otherwise.

By way of clarification, property owned by the CDD, the County or any other governmental or quasi-governmental entity shall not be deemed a Common Area, notwithstanding any common usage thereof by the Members, unless and only to the extent any portion thereof is a Maintenance Common Area, as defined above.

1.10 "Community" means all real property comprising Heritage Harbour, and the improvements thereon.

1.11 "Conservation Area or Conservation Easement Area" means an on-site wetland preserve areas, the upland buffers around each wetland, the upland preservation areas and the wetland mitigation areas within the Community as described in the subdivision plats for Heritage Harbour, as recorded in the Public Records of Manatee County, Florida.

1.12 "County" or "the County" means Manatee County, Florida.

1.13 "Declarant" means Harbourvest, L.L.C., a Florida Limited Liability Company, its successors or assigns.

1.14 "Developer" means Harbourvest, L.L.C., a Florida Limited Liability Company which is authorized to do business in the State of Florida, its successors or assigns, or any other developer to which the Declarant specifically assigns all rights it may have under this Declaration to develop part or all of Heritage Harbour Master Association, Inc. The Declarant may also be a Developer.

1.15 "Governing Documents" means this Declaration, and the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association if any are so promulgated. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority as listed herein.

1.16 "**Institutional Mortgagee**" means:

(A) a lending institution having a first mortgage lien upon a Lot, Parcel or Tract, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loan (including without limitation the Federal National Mortgage Association), Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and which holds, guarantees or insures a first mortgage upon a Lot or Living Unit; or

(C) the Developer, and any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Developer to acquire, develop, or construct improvements upon a Parcel, Tract or Lot, the Community and who have a mortgage lien on all or a portion of the Community securing such loan. An Institutional Mortgage is a mortgage held by an Institutional Mortgagee encumbering a Lot or Living Unit.

1.17 "**Land**" means the land described in **Exhibit "A"** to this Declaration, as it may be amended from time to time.

1.18 "**Living Unit**" or "**Unit**" means any residential structure, including a single family detached or attached dwelling unit(s), condominium unit(s) or apartment unit(s), located within the Community and intended for occupancy by one family or household. If a Living Unit is a free-standing or attached single family home or villa located on a Lot, 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."

1.19 "**Lot**" shall mean and refer to any Lot on any plat of all or a portion of The Lands, which plat is designated by Declarant hereby or by any other recorded instrument to be subject to these covenants and restrictions; any Lot shown upon any resubdivision of any such plat; any individual Unit in a condominium or cooperative regime; for purposes of voting and assessment, an allocation thereof to a Tract; and any other property hereafter declared as a Lot by Declarant and thereby made subject to this Declaration; provided, however, that no portion of any Community System shall be deemed to be part of a Lot. Notwithstanding the foregoing, the portions of the Common Elements of a condominium or cooperative which are outside of its

building(s) may be deemed a Lot for purposes of maintenance duties, the granting and use of easements and in the case of any other provision of this Declaration which effects a Lot in the physical sense of rights of entry and the like.

1.20 "**Member**" means any or all of those persons who are entitled to membership in the Association, as provided in the Governing Documents.

1.21 "**Heritage Harbour**" is the name of the Community.

1.22 "**Neighborhood**" shall mean and refer to a portion of The Lands designated as such herein or in a Supplemental Declaration (as hereinafter defined), the purpose of such designation being to address such portion as such for voting, assessment, regulation, level of service and other purposes as provided herein or in the Association's Bylaws or Rules and Regulations.

1.23 "**Neighborhood Committee**" shall mean and refer to a Committee of Owners in a specific Neighborhood elected the participating Owners in such Neighborhood in accordance with the provisions of the Association's Articles of Incorporation and Bylaws. Except as otherwise provided herein, or in the Articles or Bylaws, such Committee shall not exercise any corporate authority on behalf of the Association.

1.24 "**Neighborhood Covenants**" means any and all covenants, conditions, restrictions, and other provisions imposed by recorded declaration or other instrument, applicable to one or more specific Neighborhoods, including the recorded Articles of Incorporation and Bylaws of the Neighborhood Association.

1.25 "**Owner**" means the record Owner of legal title to any Lot situated upon The Lands, including Builders and the Declarant.

1.26 "**Parcel**" means any and all portions of the Community which are currently unplatted.

1.27 "**Rules and Regulations**" means the administrative regulations governing use of the Common Areas and procedures for administering the Association, as adopted, and amended from time to time by resolution of the Board of Directors.

1.28 "**SWFWMD**" means Southwest Florida Water Management District.

1.29 "**Service Assessment**" means a charge by the Association against one or more Lots or Living Units for any service, material or combination thereof which may be provided by the Association for the use and benefit of the Owner(s) on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the Owners accepting or receiving such material or service shall be a

service assessment against the Lots or Living Units so benefited. An Owner is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service. As a condition precedent to the Owner subscribing to, requesting, or accepting the material or service, the Association must have agreed to perform these service(s). The Owner may not unilaterally subscribe or request the material or service.

1.30 "Structure" means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words "or part thereof." The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, storage sheds, guard house(s) and entry monuments.

1.31 "Tract" means a portion of The Lands which may contain Lots and which is under development by a Builder.

1.32 "Voting Interests" means the arrangement established in Section 2 of the Bylaws of the Association by which certain classes of Members are entitled to vote in the affairs of the Association.

2. GENERAL DEVELOPMENT PLAN. The Community is a Planned Development Mixed Use Development, comprising initially of 380.1590 acres of land which includes certain common recreation facilities open to the public as described in Section 2.1 below. Under the current site plan, the Developer anticipates the construction and development of several residential and commercial communities, including apartment sites, single and multi-family Units.

Although some of the roads, streets and road right-of-ways within the Community may be dedicated to the County, the Master Association may be responsible for providing landscape maintenance and for providing all landscape enhancements and betterments to any landscape areas within the road right-of-ways.

The Declarant and/or its assigns may establish a separate subsidiary utility corporation which will own all the water in the lakes, well sites and flow lines and the Declarant or its assigns may provide irrigation water to the Lots and Tracts.

The Declarant has the right, but not the obligation in its sole and unbridled discretion, to further expand the Community by adding additional land, or Units, or Lots, or Recreational Amenities or memberships that are compatible with the overall Community.

Access for vehicular and pedestrian traffic through Stoneybrook at Heritage Harbour shall be provided over the roads, streets, and road right-of-ways for school traffic during normal school hours, primarily between the hours of 7:00 a.m. and 5:30 p.m. In addition, similar means of access for school traffic may be provided over other neighboring communities within the Heritage Harbour Master Community.

The Master Association shall retain an easement by reservation in perpetuity over, through and across any community parks to provide landscape maintenance, repair and replacements, including providing landscape enhancements to any community parks as deemed reasonably desirable by the Association.

(A) Legal Description. The Real property which, initially is and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County and is more particularly described in **Exhibit "A"** attached hereto and made a part hereof, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Lands." Said **Exhibit "A"** may not necessarily describe all Common Areas to the extent any of same are maintenance Common Areas.

(B) Supplements. In accordance with Declarant's current intention (but not obligation) to increase the land constituting The Lands from time to time by adding additional Lots, Tracts and/or Common Areas, Declarant may from time to time subject other land to the provisions hereof by recorded Supplemental Declarations (which shall not require the consent of then existing Owners, the Association or any mortgagee other than that, if any, of the land intended to be added to The Lands) and thereby add to The Lands. To the extent that such additional real property shall be made a party of The Lands, reference herein to The Lands shall be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate Declarant to add to the initial portion of The Lands, to develop any such future portions under a common scheme, nor to prohibit Declarant (or the applicable Declarant-affiliated Owner) from rezoning and changing plans with respect to such future portions. All Owners, by acceptance of a Deed to or other conveyance of their Lots, shall be deemed to have automatically consented to any such rezoning, change, addition or deletion thereafter made by Declarant (or the applicable Declarant-affiliated Owner) and shall evidence such consent in writing if requested to do so by Declarant at any time (provided, however, that the refusal to give such written consent shall not obviate the general and automatic effect of this provision).

In furtherance of the plan of development of The Lands as a Community of distinct Neighborhoods, a Supplemental Declaration may vary the terms of this Declaration by addition, deletion or modification so as to reflect any unique

characteristics of the Neighborhood identified therein; provided, however, that no such variance shall be directly contrary to the overall uniform scheme of development of The Lands.

(C) Withdrawal. Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of The Lands then owned by Declarant or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for The Lands desired to be effected by Declarant; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for The Lands. Any withdrawal of land not owned by Declarant shall require the written consent or joinder of the then-Owner(s) and mortgagee(s) of such land, but not of any others.

2.1 Community Development District(s).

(A) Creation, Establishment and Powers. Declarant reserves the right to petition to establish, on the property set forth in the petition, one or more community development districts, as created by and defined in Chapter 190, Fla. Stat. (or "CDD"), which may include all or a portion of Heritage Harbour, and may also include property in this Community. A CDD has, pursuant to its state charter, general powers related to the implementation of special powers to provide (through such functions as acquisitions, finance, construction, planning, implementation, maintenance and management) basic community development systems, facilities and services which constitute projects or infrastructure improvements. A CDD has the power under its charter to levy and collect lienable ad-valorem taxes under certain limitations, lienable non-ad valorem taxes under certain limitations, lienable non-ad valorem special assessments by a variety of names and non-lienable user-based service charges or fees. These revenue sources can also be use to amortize various types of bonds if and as deemed appropriate for the financing of the management functions of the CDD government. The term "assessments" as used in section 2.1 refers to governmental non-ad valorem special assessments as provided for in Chapter 190, Fla. Stats. (2001), not as defined in Chapter 720, Fla. Stat. or in this Declaration. A CDD is empowered to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities, including without limitations, roads , water and sewer, irrigation, water management; street lighting; and related systems, facilities and services. The state charter also grants the CDD additional special powers for such projects or improvements such as parks and facilities for indoor and outdoor recreational, cultural and educational uses, security, mosquito control and other such special powers; however, this set of special powers granted by the charter to the CDD may not be exercised without consent of the exercise from the applicable county or city where the CDD is located. There may be plat dedication of such systems, facilities and services to entities other than a CDD which were offered prior to the establishment of a CDD on this particular property and have not been accepted such systems,

facilities and services may be conveyed instead to a CDD. The Declarant reserves the right to amend the Governing Documents in any way convenient or necessary to petition to establish by ordinance or rule the state-chartered and state-created community development district under Section 190, Fla. Stat.

(B) Taxes and Assessments. A CDD IS A SINGLE AND SPECIAL PURPOSE LOCAL GOVERNMENT WITH AUTHORITY TO MANAGE AND FUND ITS OPERATIONS BY LEVYING TAXES OR NON-AD VALOREM SPECIAL ASSESSMENTS, OR BOTH, ON THE PROPERTIES WITHIN A CDD. THE TAXES AND ASSESSMENTS PAY FOR THE CONSTRUCTION, OPERATIONS, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES OF A CDD, AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF SUPERVISORS OF A CDD. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW. THESE TAXES AND ASSESSMENTS WOULD APPEAR ON THE ANNUAL REAL ESTATE TAX BILL FOR EACH OWNER AS A SEPARATE TAX OR ASSESSMENT AND WOULD BE PAYABLE DIRECTLY TO THE MANATEE COUNTY TAX COLLECTOR. THEY ARE NOT PART OF THE COMMON EXPENSES OF THE ASSOCIATION. THE TAXES AND ASSESSMENTS OF A CDD MAY CONSTITUTE A LIEN UPON THOSE PORTIONS OF THE PROPERTIES THAT ARE WITHIN A CDD.

(C) Issuance of Bonds. A CDD will have the power to issue general obligation bonds, revenue bonds, refunding bonds, and any other type of bond permitted by Chapter 190, Florida Statutes. Repayment of any such bonds will be funded by ad valorem taxes on all taxable property within a CDD, or by the imposition of rates, user fees, special assessments, or other charges. A CDD is empowered to pledge its full faith and credit for the purpose of securing the repayment of bonds it issues. In addition, a CDD may secure reserve bonds by pledging the rates, fees or charges collected or to be collected by any revenue-producing project. Bonds may be issued for the purpose of financing or refinancing capital improvements, to pay off existing bonds, or any other permitted use.

(D) CDD Property Becoming Community Common Areas. If Declarant determines that it is in the best interests of the Association for any of a CDD Property to become Community Common Areas, and if the Board of Supervisors of the CDD determine that a transfer of CDD Property title, jurisdiction, or responsibilities to the Association was appropriate, the CDD may convey to the Association fee simple title, easements, use rights and/or maintenance obligations to those portions of a CDD Property which are to become Community Common Areas. If the CDD desires to convey CDD Property to the Association, the Association and the members are obligated to accept title to a CDD Property, subject to taxes for the year of conveyance, and to restrictions, limitations, conditions, obligations, reservations, duties and easements of record.

(E) Community Common Areas Becoming CDD Property. If Declarant determines, subject to any governmental requirements, that it is in the best interests of the Association and its members for any portions(s) of the Community Common Areas to be owned and/or administered by a CDD rather than by the Association, such portion(s) of the Community Common Areas shall cease to be Community Common Areas, even if they have already been conveyed to the Association, and shall thereafter be considered CDD Property, even if legal title has not been deeded to a CDD. Community Commons Areas becoming either owned by or merely administered by a CDD is expressly conditioned upon the CDD's Board of Supervisors agreeing to accept conveyance of title, or merely accepting the jurisdiction to administer, operate or maintain these Community Common Areas under the CDD. When a part of the Community becomes CDD Property, the expenses of administration and maintenance shall cease to be Common Expenses, *unless an Agreement is entered into by the Association and a CDD, making the Association responsible for the administration and maintenance of any CDD Property.* If required by law, or if deemed by Declarant to be in the best interests of the Association, the Association shall convey to a CDD the legal title to any Community Common Area which becomes CDD Property, and a CDD would be obligated to accept title to the Community Common Area, subject to taxes for the year of conveyance, and restrictions, limitations, conditions and obligations, reservations, duties and easements of record. The surface water management system of the Association may be an area of common responsibility.

(F) Maintenance Agreement. A CDD, may enter into an Agreement with the Association requiring the Association to perform some, if not all, of a CDD duties related to maintaining certain CDD Property which the CDD operates or administers regardless of whether or not the CDD owns title to the Property.

(G) Board of Supervisors. The functions and powers of a CDD shall be managed and exercised by a Board of Supervisors consisting of at least five (5) supervisors.

A Community Development Districts "CDD" may be established to manage and finance construction of other improvements and to provide other services as delineated in this section, depicted on the Subdivision Plat as roadways and streets, and road right-of-ways to provide access to and from the Community onto State Road 64, as well as to provide everything permitted or allowed under Chapter 190, Florida Statutes.

The Declarant shall have the right, in its sole discretion, to convey property it owns to a CDD with the joinder of no other person being required, subject to the approval of a CDD and any applicable governmental regulations.

The special assessment bond(s) will be an obligation of the local government called the CDD. Each owner has a duty to pay any lienable revenue levied by the CDD government on the Property and users of the facilities shall have an obligation to pay non-lienable service charges to the CDD.

The CDD may enter into an Agreement with Heritage Harbour Master Association, Inc. ("Master Association") which requires the Master Association to operate and perform some, if not all, of the CDD duties relating to maintaining the lakes and the general aesthetic conditions of the lakes within the Community.

A CDD may assume responsibility for maintenance and monitoring of on-site wetland preserve areas pursuant to the Conservation Easement(s) recorded in the Public Records of Manatee County, Florida.

A CDD may be established and then may exercise its state-chartered powers to levy non-ad valorem special assessments for the purposes of road widening and other road improvements as related to SR 64 and may enter into a contract with the Manatee County Tax Collector to have these non-ad valorem special assessments collected as first liens on the property for these purposes or for the purposes of amortizing any bonds which may have been issued by the CDD to finance this road work.

A CDD may be established to facilitate the construction of public school sites adjacent to or located within the vicinity of this Community.

A CDD may own the submerged or lake bottoms for each lake in the Community. Additionally, a CDD may construct, install, maintain and own all irrigation lines, well sites and flow lines.

A CDD may construct a Community Park within the development which, upon completion or construction, may be dedicated to the County.

2.2 LONG TERM DEVELOPMENT. SOME AREAS OF HERITAGE HARBOUR MAY BE UNDER DEVELOPMENT FOR AN EXTENDED TIME. INCIDENT TO THE DEVELOPMENT PROCESS, THE QUIET ENJOYMENT OF THE COMMUNITY MAY BE UNAVOIDABLY INTERFERED WITH TO SOME EXTENT BY THE CONSTRUCTION OPERATIONS. FROM TIME TO TIME, DECLARANT, BUILDERS AND OTHERS MAY PRESENT TO THE PUBLIC, CERTAIN RENDERINGS, PLANS AND MODELS SHOWING POSSIBLE FUTURE DEVELOPMENT OF HERITAGE HARBOUR. DECLARANT DOES NOT WARRANT IN ANY WAY THE SCHEMES IN THESE RENDERINGS, PLANS OR MODELS OR HOW THE FUTURE IMPROVEMENTS IN HERITAGE HARBOUR WILL ACTUALLY BE DEVELOPED. ANY SUCH RENDERINGS, PLANS OR MODELS ARE PRIMARILY THEMATIC AND IN NO WAY REPRESENT A GUARANTEED FINAL DEVELOPMENT PLAN FOR HERITAGE HARBOUR.

3. THE ASSOCIATION'S PURPOSES AND POWERS. The primary purposes of the Association are to hold title to, operate and maintain the Common Areas of Heritage Harbour; to enforce restrictive covenants applicable to the Community; to provide architectural and aesthetic control; and to take such other action as the Association is authorized or required to take with

regard to the Community pursuant to the Governing Documents. The Association shall operate, insure, maintain and repair all property and related improvements designated by Declarant as Common Areas, regardless of whether legal right to that property has been formally conveyed to the Association.

3.1 General Common Areas. The Association may operate, maintain and, when deeded by the Developer, hold record title to General Common Areas, as defined under Section 1.9. The Board of Directors may promulgate reasonable rules and regulations regarding use of the Common Areas consistent with the Governing Documents. General Common Areas shall include, but not be limited to, the Association's landscape easement and jurisdiction over roadway medians, buffer zones and walking trails. Use of General Common Areas shall be available to all Members and their invitees, guests, family members and tenants, subject to the rules and the Governing Documents. The costs of operating, maintaining, repairing, insuring and protecting the General Common Areas and the facilities located thereon or connected therewith shall be assessed equally against all Lots and Living Units, subject to the provisions of Section 10.2.

3.2 Manager. The Association may contract, employ and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Association shall determine to be necessary or desirable.

3.3 Personal Property. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.4 Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as required in Section 13 below. The Association additionally shall cause all persons with access to Association funds to be insured or bonded with adequate fidelity insurance or bonds.

3.5 Express and Implied Powers. The Association may exercise any rights, power or privilege given to it expressly by the Governing Documents or by the law in effect at the time this Declaration is recorded, and every other right, power or privilege reasonably inferable therefrom.

3.6 Acts of the Association. Unless the approval or affirmative vote of the Members is specifically made necessary by some provision of applicable law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Members. The officers and Directors of the Association have a fiduciary relationship to the Members. A Member does not have the authority to act for the Association by reason of being a Member.

3.7 Articles of Incorporation. The Articles of Incorporation of the Association are attached as Exhibit "B."

3.8 Bylaws. The Bylaws of the Association shall be the Bylaws attached as **Exhibit "C"** as they may be amended from time to time.

3.9 Official Records. The official records of the Association shall be maintained within the State of Florida 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 by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the Community. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs 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, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.10 Polling Places. Accommodation may be made for the future use of building space within the Common Areas for the purposes of accommodating the function of an electoral polling place.

3.11 Treated Effluent. The Declarant or its assignee subsidiary corporation may negotiate an agreement with any effluent supplier for the use of treated sewage of effluent within the project for irrigation purposes throughout the subdivision, including all Common Areas, Neighborhoods, Lots, Tracts, Units and condominium Common Element Properties. An entity which may be formed by the Declarant may be responsible for providing on-site piping and pumping facilities from the point of delivery to the project. Notwithstanding, the Declarant or its assigns may negotiate with the effluent supplier to provide full or partial on-site storage facilities, as required by the Florida Department of Environmental Protection consistent with the volume of treated wastewater to be utilized. All Owners within Heritage Harbour, by the act of purchasing a lot, are deemed to have irrevocably consented to the irrigation of the Common Areas and Lots with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction. The cost of such treated effluent and all administrative, operational, maintenance and support costs related to it, may be expenses of the CDD, the Heritage Harbour Master Association, Inc. or some other entity so designated by the Declarant.

3.12 Hurricane Preparedness. It shall be the responsibility of the Association to establish and maintain an educational program for hurricane preparedness plan. The plan must at a minimum promote awareness of hurricane/flooding hazard, preparedness and hazard mitigation. The plan and any changes to the plan will be made available at community amenities, which may include the sales center, the community clubhouse and the marina..

3.13 High Voltage Wires. High tension electrical power lines operated by Florida Power & Light "FP&L" are located within the boundaries of Heritage Harbour. The high tension electric wires may discharge or emit Electromagnetic Fields ("EMF"s") which may or may not present a health risk to Heritage Harbour residents.

4. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

(A) Membership. Every person or entity who is a record Owner of a fee interest in any Lot or Tract shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Article, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

(B) Voting Rights. The Association shall have three (3) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Article 4(A) above, with the exception of Builders and the Declarant (as to Declarant, as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership as defined in Article 4(A) above, which vote shall be cast by a Voting Member on their behalf in accordance with the procedures set forth in the Association's Articles and Bylaws.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus ten (10) votes for each vote entitled to be cast in the aggregate at any time and from time to time on behalf of the Class A and C Members. The Class B Membership shall cease and terminate when all of the Lots ultimately to be included within The Lands have been sold and conveyed by Declarant (or its affiliates) or any Builder to the purchasers of the Units (i.e., Class A Members) located thereon or sooner at the sole election of Declarant, or as required by law, (whereupon the Class A Members, through their Voting Members, shall be obligated to elect the Association's Board of Directors and assume control of the Association).

Class C. Class C Members shall be all Builders, each of which shall have one (1) vote for each Lot owned thereby or which has been allocated to a Tract owned thereby, subject to increase for Lots (actual or allocated) acquired by the Builder and to decrease for those conveyed to Class A Members or others. Class C

Members owning Lots in a Neighborhood in which there are also Class A Members shall participate in Neighborhood Committee elections in the same manner as such Class A Members.

(C) Lender's Membership Voting Rights. In the event that Mortgagee or other party acquires title to a Lot or Tract through foreclosure or deed in lieu of foreclosure, such party shall have the class of membership last held by the Owner of Lot or Tract to which title was so acquired.

(D) General Matters. When reference is made herein, or in the Articles, Bylaws, Rules and Regulations, Management Contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members represented at a duly constituted meeting of their Voting Members voting for them (i.e., one for which proper notice has been given at which a quorum exists) and not of the Members themselves or of their Lots, except where specifically provided to the contrary.

(E) Effect of Dissolution. In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Stormwater Management System must be transferred to and accepted by an entity which is approved by the Southwest Florida Water Management District and Manatee County prior to such termination, dissolution or liquidation.

4.1 Association Rights and Easements. Except for Exclusive Common Areas, Maintenance Common Areas and Neighborhood Common Areas which are, by their definitions, restricted or limited in some fashion, as herein specified, Members in good standing and each Member's Permittee, have the non-exclusive right to use all other Common Areas (i.e., General) subject to:

(A) The right of the Association, by and through its Board of Directors, to adopt the annual budget and to determine the annual assessments to be paid by Members;

(B) The right of the Association, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for Non-Owners than for Owners;

(C) The right of the Association, by and through its Board of Directors, to suspend a Member's right to use Common Areas for the period during which any assessment or charge against the Member's Lot or Living Unit remains unpaid and

past due, and for a reasonable period during or after any infraction of the Association's rules and regulations;

(D) The right of the Association, by and through its Board of Directors, to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility.

(E) The right of the Association, by and through its Board of Directors, to grant modify or vacate easements over, across or through the Common Areas, tracts, lots, or other property contained within Exhibit "A" as it is now or may be amended hereinafter;

(F) The right of the Association, by and through its Board of Directors, to open the Common Areas for use by Non-Members of the Association, or Non-Owners.

(G) The right of the Association, by and through its Board of Directors, with the prior assent of a two-thirds (2/3rds) of the voting interests, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas;

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

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

(J) The right of the Association, by and through its Board of Directors, to regulate parking and traffic on the roads and streets, and road right-of-ways within the Community, including without limitation the use of access gates or speed bumps to the extent permissible by law;

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

(L) The right of a CDD to exercise and enforce any and all powers granted by its general law charter created by the Legislature in Chapter 190, Florida Statutes; and

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

(N) The right of Declarant and the Association to have, grant and use general ("blanket") and specific easements over, under and through Common Areas, which right is hereby reserved to Declarant and granted to the Association, the former to control the latter in the event of conflict.

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

4.2 Maintenance of Common Areas. The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas, and to the extent not otherwise provided for, the paving, drainage structures, landscaping, improvements and other structures (except public utilities and community systems, to the extent same have not been made Common Areas and except those Exclusive Common Areas to be maintained by Owners) situated on the Common Areas, if any, all such work to be done is ordered by the Board of Directors of the Association. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's and its affiliates' responsibilities to the County and its governmental and quasi-governmental subdivisions and similar entities (including the Southwest Florida Water Management District (hereinafter referred to as "SWFWMD") and the Tampa Bay Regional Planning Council) of any kind with respect to the Common Areas, except to the extent performed by the SWFWMD, and shall indemnify and hold Declarant and its affiliates harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.

It is specifically contemplated (but not guaranteed) that the Association may enter into one (1) or more Agreements with the SWFWMD, County or both whereby the Association performs some or all of the maintenance of landscaping or other features within property owned by or dedicated to the SWFWMD or County. Accordingly, to the extent that such Agreement (which may be in the form of a Contract, Easement or other instrument) provides for such maintenance, then the areas to be so maintained shall be deemed Maintenance Common Areas hereunder so as to authorize such Agreement, the performance of maintenance duties pursuant thereto, and the imposition and expenditure of assessments necessary to fund such activities.

All work pursuant to this Section and all expenses incurred or allocated to the Association pursuant to this Declaration shall be paid for by the Association through assessments imposed in accordance herewith.

No Owner may waive or otherwise escape liability for assessments by non-use (whether voluntary or involuntary) of the Common Areas or abandonment of the right to use the Common Areas.

4.3 Delegation of Use Rights In Common Areas. Members, Permittees or Guests accompanied by a Member shall have the right to use the General Common Areas, but only to the extent provided in Section 2.6 of the Bylaws, or in the Association's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated herein and therein. If the

Association permits a Member to delegate his/her use rights in General Common Areas to his/her guests, then a fee may be imposed, which fee may be charged in an amount which is not necessarily limited by or related to the cost of processing the delegation. Each Member shall be financially and legally responsible to the Association for the actions and debts to the Association of any person to whom the Member has delegated his right to use the Common Areas. The Member may not delegate the obligation to pay Association assessments. Upon the lease of a Lot or Living Unit to which a membership is appurtenant, the lessor may retain the right to use the membership, in which case the tenant shall have no such rights. If a Member delegates his privileges to a tenant residing in his Living Unit, the Member shall not be entitled to use of the facilities, except as a guest of another Member, during the period of the delegation.

4.4 Separation of Ownership. The ownership of a Lot, and the ownership of the 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, Living Unit, Tract or Parcel hold membership in the Association.

5. GENERAL COVENANTS AND USE RESTRICTIONS. The Community may be used for those purposes provided in the Development Order. Declarant reserves the right and the power to assign and reassign various land uses within the Community, or any amendments thereto, and where reasonably necessary and advisable, to inaugurate and implement variations from, modifications to, or amendments of the development and any other governmental plans, land development regulations, development orders and development permits applicable to the Community, so long as Declarant maintains and preserves the overall general scheme of the Community. The provisions of this Article shall be applicable to all The Lands, but shall not be applicable to Declarant or any of its designees or Lots or other property owned by Declarant or its designees. This Article is also subject to Article 9 hereof with respect to "Builders." It is understood that certain Lots have been or may be designated for approved commercial uses.

5.1 Subdivision and Regulation of Land. No Lot or Living Unit may be divided or subdivided without the express written consent of the Association. No Owner or Neighborhood Association shall initiate, undertake or attempt to inaugurate or implement any variation from, modification to, or amendment of the governmental plans, land development regulation, development orders or development permits applicable to the Community, or to any Lot, Tract or Parcel, without the prior written approval of Declarant, which approval may be denied at the sole discretion of Declarant. Nothing herein is intended to prohibit judicial partition of a Lot or Living Unit owned by two or more persons.

5.2 Surface Water Management Systems, Lakes, and Wet Retention Ponds. The Association shall be responsible for maintenance of all surface water management systems, lakes, and water retention ponds in the Community. Adequate drainage rights-of-way or easements which are necessary to construct, operate and maintain all facilities which constitute the Community's permitted surface water management system, shall be shown on the

Community's several final Subdivision Plats, or else incorporated therein by reference, as these Plats are gradually recorded in the Public Records of Manatee County for different portions of the Community.

(A) The development of the Lands is subject to the requirements of Environmental Resource Permits, issued by SWFWMD. No Owner or Neighborhood Association may construct or maintain any building, residence or structure (including docks), or undertake any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas or drainage easements described on the recorded Plats of the Community and in the Environmental Resource Permit from SWFWMD for the Community, unless prior written approval is received from both the Board of Trustees and the Regulation Department of SWFWMD. Each Owner within the Community, at the time of construction of a building, residence or structure, shall ensure that those structures' construction plans comply with the plans for the Community's surface water management system as approved by and on file with SWFWMD. No Owner or Neighborhood Association shall in any way change, alter, impede, revise or otherwise interfere with the flow or volume of water in any portion of the Community's surface water management system (including but not limited to lakes, ponds, swales, drainage ways and wet retention ponds or other areas intended for the accumulation of stormwater runoff) without the prior written approval of the Board and of SWFWMD. **NO PERSON SHALL REMOVE LITTORAL ZONE VEGETATION FROM ANY STORMWATER MANAGEMENT SYSTEM. REMOVAL OF VEGETATION INCLUDES DREDGING, PULLING, CUTTING, APPLICATION OF HERBICIDES OR INTRODUCTION OF GRASS CARP.**

(B) No Owner, Neighborhood Association or other person shall unreasonably deny or prevent the Association, SWFWMD or a CDD access to water management areas for maintenance, repair, or landscaping purposes by Declarant, the Association or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefor are hereby specifically reserved and created.

(C) No Lot, Tract, Parcel or Neighborhood Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the Board and SWFWMD. No person other than the Declarant or the Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, kayaking, canoeing, swimming, or wading in such areas allowed.

(D) All stormwater management systems, excluding those areas (if any) maintained by the County, will be the ultimate responsibility of the Association. The Association may enter any Lot, Tract, Parcel or Neighborhood Common Area and make whatever alterations, improvements or repairs that are deemed necessary to provide, maintain or restore proper surface water management. The Developer shall be responsible for the

management and maintenance of those portions of the stormwater system which lie outside the platted Lands. If the Developer should fail to exercise these responsibilities, the Association shall undertake the appropriate management and maintenance of these portions of its stormwater system which lie outside the platted Lands. All of the stormwater management costs of these Association responsibilities shall be an expense of the Association.

5.3 Conservation Area or Conservation Easement Area. The Master Association shall be responsible for the maintenance and regulatory compliance of all common areas placed under the Master Association's jurisdiction, regardless of where located, in accordance with Rules, Regulations and Permit requirements set forth by the County and other permitting agencies, including SWFWMD and the US Army Corps of Engineers. Areas shall include any area dedicated on the Plat as a wetland. All on-site wetlands, upland buffers around each wetland, wetland mitigation areas, and all upland conservation areas shall be maintained as conservation areas and shall be labeled as such on all plans for the Community. "Conservation" as used herein means the perpetual maintenance of habitats in their existing (or restored) condition. All conservation areas, where practical, shall be recorded as separate tracts on the Community's Subdivision Plats, unless otherwise approved by the Manatee County Environmental Management Department. Unless permitted by the Manatee County Land Development Code, the following acts and activities are expressly prohibited within the boundaries of Conservation Easement without the prior consent of Manatee County:

- Conservation or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground.
- Construction or placing of utilities on, below or above the ground without appropriate local, state and federal permits or other authorization.
- Dumping or placing of soil or other substances or material as landfill or dumping or placing trash, waste, unsightly or offensive materials.
- Removal, mowing, or trimming of trees, shrubs or other vegetation.
- Application of herbicides, pesticides or fertilizers.
- Excavation, dredging or removal of loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- Surface use except for purposes that permit the land or water areas to remain in its natural condition.

- Any activity detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.
- Acts or uses detrimental to such retention of land or water areas.

5.4 Open Space. Any land subjected to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Area or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the Owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Association or to a Neighborhood Association, the Association or Neighborhood Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment of the land for open space purposes.

5.5 Lawns, Landscaping; Irrigation Systems. Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their Owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas regardless of ownership of the underlying lands. Stone, gravel, or paving may not be used as a substitute for grass in a lawn. Certain areas as determined by the Developer or the Development Order shall remain in a natural or unimproved state. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall thereafter be kept in good condition by the Owner. Lawns must be regularly cut and mulched areas regularly re-mulched. Maintenance, repair and replacement of the main irrigation line may be the responsibility of the Association. The components of the irrigation system serving each individual Neighborhood Common Area, including but not limited to the tap into the main line, timers and switching devices shall be the responsibility of an entity so designated by the Declarant, whether public, private or otherwise. Each Owner of a Lot shall be required to tap into the irrigation system, and the cost of such tap will be at the expense of the Lot Owner, payable to the Declarant or its assigns. A CDD has the right, at its sole discretion to adopt a schedule of irrigation times and duration of irrigation, subject to intervention by the SWFWMD. A utility entity so designated by the Declarant may also be responsible for irrigation of certain highway medians not owned by it, and the cost may be a CDD expense if agreed to pursuant to its charter by the Board of Supervisors of the CDD in open public meeting. If irrigation services are available to a Lot or Tract within the Community, then, the utility entity so designated by the Declarant, its successors or assigns, shall be deemed the exclusive provider of irrigated waters within Heritage Harbour and, by active purchasing, all Owners within Heritage Harbour are deemed to have irrevocably consented to irrigation of Common Areas and Lots with treated effluent emanating from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection or such other agency with jurisdiction. The cost of treated effluent and all administrative, operational, maintenance and support costs related to it shall be expenses either borne by the CDD if determined and agreed to by the Board of Supervisors of the CDD at a noticed and open public meeting or billed separately and borne by the individual Owner as billed and assessed periodically by the utility company.

5.6 Maintenance of Premises. Except for Conservation Areas and other areas designated by the Developer or the Development Order to remain in a natural state, no high weeds, underbrush, high grass or other unsightly vegetation shall be permitted to grow or remain upon any Lot or Neighborhood Common Area, and no refuse or waste shall be allowed to be placed or suffered to remain upon any Lot or Neighborhood Common Area. If an Owner or Neighborhood Association permits such weeds, high grass, underbrush or other unsightly growths, and fails to correct same after five (5) days notice by the Association, the Association shall have the right to enter upon the premises and make such corrections and shall charge the Owner or Association for the cost of the corrections. Said charge, until paid, shall be a lien against the offending Lot or Neighborhood Common Area. All lawns, landscaping and sprinkler systems and all structures, improvements and appurtenances shall at all times be kept in safe, and attractive condition, and all structures shall be maintained in a finished, painted and attractive condition. Provisions under this Section are intended to obligate the Association to maintain all streets, roads and thoroughfares and other open areas within the subdivision.

5.7 Litter. In order to preserve the beauty of the Community, no garbage, trash, refuse or rubbish shall be deposited, dumped or kept within the Community except in closed containers, dumpsters or other garbage collection facilities deemed suitable by the Board, or in proper-sized, closed plastic bags for curbside pickup as required. All containers, dumpsters and other garbage collection facilities shall be screened from view, kept in a clean condition, and without noxious or offensive odors emanating. Curbside trash may be placed on curbside on the night before scheduled pickup.

5.8 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another surface area approved by Declarant. Driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

5.9 Underground Utilities. No lines or wires for communication or the transmission of current shall be constructed, or placed, or permitted to be placed within the Common Areas unless the same shall be protected cables; all such lines or wires which are not located in buildings shall be constructed or placed and maintained underground, unless otherwise approved in writing by Declarant. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

5.10 Water Supply; Wells; Water Rights. Declarant anticipates that all Lots or Tracts will be serviced and equipped by dual water lines. If dual water service is available to a Lot or Tract, the Lot or Tract must connect to the dual water lines. No Owner may install or operate a private well. The Declarant, its affiliates, successors, assigns or designees, shall have the exclusive right to develop and utilize the ground and surface water resources of the Lands for any legal purpose, including the transport and use of such waters beyond the Lands, and the conveyance of any Lot or Living Unit by Declarant does not include the right to develop or utilize any ground water or sub-surface water resources within such Lot or Living Unit. The Declarant, or an affiliate or

related company or member of the Declarant may establish a separate "for profit" utility company which will own all of the water in the lakes, well sites and flow lines, and that entity will be the exclusive provider of irrigation water to all Lots, Living Units, Tracts or Parcels.

5.11 Temporary Factory-Built or Existing Structures. No structure of any kind of what is commonly known as "factory-built", "Amodular", or "mobile home" type construction shall be erected without the prior written permission of Declarant. No tent, trailer or temporary structure other than those used by Declarant for construction and sales activities shall be permitted unless its size, appearance and temporary location on the Lot have first been approved by the Architectural Review Committee.

5.12 Antennas and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or Tract or upon any improvements thereon, unless expressly approved in writing by the Architectural Review Committee, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the Association. An approved flagpole shall not be used to mount an antenna. This provision is intended to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment. This Section 5.12 shall not apply to the Declarant.

5.13 Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile Homes, Boats, Campers, Trailers and Other Vehicles.

Motor Vehicles; Parking. No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the property except on an individual driveway or within a garage. No street parking shall be permitted for any time duration in excess of four (4) hours. No trucks or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on Community property, unless fully

enclosed within a garage. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept within the Community unless fully enclosed within a garage. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

(A) **"Commercial Vehicles"** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

(B) **"Trucks"** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. This shall specifically include "pickup trucks" and like vehicles but shall not include passenger "custom" and like vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers name plates: Dodge Caravan, Chrysler Town & Country, Chevrolet Astro, Ford Windstar and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" if same do not have a cabinet box, bed, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below) such as Ford Broncos, Chevrolet Blazers, Jeep Wagoneers, Jeep Cherokees, Suburbans, Explorers, Navigators and the like.

(C) **"Boats"** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons , or personal property.

(D) **"Campers"** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

(E) **"Trailers"** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

(F) **"Mobile Homes"** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

(G) “**Motorcycle**” means any motor vehicle on two or three wheels propelled by an engine of 2 horsepower or more and shall include “ATV’s”, motorscooters, motorcycles, and mopeds powered by engines of 2 horsepower or more.

(H) “**Motor Homes**” or “**Recreational Vehicle**” means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

(I) No vehicle shall remain on the premises for more than twenty-four (24) hours which is not currently licensed or cannot operate on its own power. As used in this Section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. A vehicle which has not been moved for seven (7) consecutive days shall be presumed to be unable to operate on its own power. Any Member of the Board, or any of the Board’s agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the Owner of the vehicle that it is considered to be in violation of the Association Rules and Regulations. The Owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and demonstrate that the vehicle can operate on its own power. If the Owner cannot so demonstrate or if the Owner does not contact the Board, the vehicle may be towed at the Owner’s expense.

(J) Vehicle maintenance is not permitted within the Community except in garages. For purposes of this Section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the exterior and interior of the vehicle, waxing and checking fluid levels is permissible. Emergency repairs to vehicles such as changing a flat tire is allowed.

5.14 Architectural Control. Except as to initial construction by Declarant or Builders subject to Article 9 hereof, no building or other structure or improvement or addition of any nature (including, but not limited to, fences, walls, swimming pools, screen enclosures, patios or patio extensions, hedges, exterior paint or finish, awnings, shutters, hurricane protection, basketball hoops, swing sets or play apperati, decorative plaques or accessories, statues, benches and other site furniture, planters, birdhouses, other pet houses, mail and/or newspaper boxes, exterior lighting, swales, asphaltting, sidewalk/driveway surfaces or treatments or other improvements or changes of any kind, even if not permanently affixed to the land or to other improvements) shall be erected, placed, altered or relocated on any Lot or removed therefrom, until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the Architectural Review Committee (which shall be a

committee appointed by the Board of Directors of the Association, absent such appointment the Board to serve in such capacity) have been approved, if at all, in writing by the Architectural Review Committee and all necessary governmental permits are obtained. Conversions of garages to living space or other uses are hereby prohibited, even though same are not readily apparent from the exteriors of applicable Units. Each building, wall, fence, or other structure or improvement of any nature, together with landscaping, shall be erected, placed, relocated, altered or removed only in accordance with the plans and specifications and plot plan so approved and applicable governmental permits and requirements. Refusal of approval of plans, specifying and location plans, or any of them, may be based on any grounds, including purely aesthetic ones, which in the sole discretion of said Architectural Review Committee are deemed sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of landscaping, shall be deemed an alteration requiring approval; provided, however, that lights, flags and other decorations customary for holidays shall not require approval hereunder (but may be regulated as to quantity, nature and how long they may remain in place). No exterior colors on any structure shall be permitted that, in the judgment of the Architectural Review Committee or Declarant, would be inharmonious, discordant or incongruous with the Community or a particular Neighborhood. The initial exterior color and design of structures shall be as approved by Declarant, and any later changes must be approved by the Architectural Review Committee.

5.15 Clothes Drying Area. No outdoor clothes drying area shall be allowed unless its location and design are approved in writing by the Association.

5.16 Signs. No signs, banners, billboards or advertisements of any kind, including without limitation, those of Realtors, politicians, contractors or subcontractors, shall be erected or displayed anywhere within the Community, including in windows and on motor vehicles. The Board of Directors and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Notwithstanding the foregoing, the Association may, but shall not be obligated to, permit a member to display one (1) "For Sale" sign inside the one (1) window within a dwelling unit. If any sign is erected in violation of this provision, the Declarant, the Association, a CDD, or any Neighborhood Association shall have the right to enter the property on which the sign is located and remove it, as well as levy a fine of \$100.00/day for each day's violation and suspend the violator's use privileges of the Community Common Areas. Said action to enter one's property and remove the sign, if necessary, shall be deemed expressly permitted by the property Owner. To the extent that the Association is unwilling or otherwise fails to enforce this restriction on "signs", the Declarant retains the right to unilaterally enforce this sign restriction. The foregoing shall not apply to signs, banners, flags, billboards or advertisements used or erected by Declarant, nor to entry and directional signs installed by Declarant, and signs required by law.

5.17 Living Units; Residential Use. Each Living Unit shall be used as a single family residence and for no other purpose. No business or commercial activity shall be conducted in or from any Living Unit, nor may the address or location of the Unit be publicly advertised as the location of any business or commercial activity. Notwithstanding however, neither the listing on any occupational license or the listing within any telephone directory of the Living Unit serving as a

business address shall be dispositive of the property being used as for commercial or business purposes. Any Owner may use his/her residence for incidental commercial purposes, so long as (1) property is not used for manufacturing, construction or installation of materials sold or advertised to be sold, whether retail or wholesale customers; (2) the nature of the business activity does not invite or permit suppliers, customers or vendors to visit or frequent the Living Unit, even on isolated occasions; (3) the business activity within the Living Unit is limited to telephone calls and written correspondence in and from the Living Unit; and (4) no employees or contractors, other than those who regularly reside within the Living Unit may perform any work or other services to the business at the Living Unit. This restriction shall further not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping personal, business or professional records in his Living Unit, or from handling personal, business or professional telephone calls and written correspondence in and from his Living Unit. Such uses are expressly declared customarily incident to residential use.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING UNITS OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS 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.

5.18 Pets and Animals. Not more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds may be kept in a Living Unit, subject to other reasonable regulation by the Association or Neighborhood Association. All animals shall be leashed (if outdoors), or kept within the Living Unit and shall not be permitted to roam free. The Association may restrict the walking of pets to certain areas. Owners who walk their pets on Association or Neighborhood Common Areas must clean up after their pets. Commercial activities involving pets, including without limitation, boarding, breeding, grooming or training, are not allowed. The ability to keep a pet is a privilege, not a right. If in the opinion of the Board, any pet becomes the source of unreasonable annoyance to others, or the Owner of the pet fails or refuses to comply with these restrictions, the Owner, upon written notice, may be required to remove the pet from the Community. Pets may not be left unattended or leashed in yards or garages or on porches or lanais.

5.19 Nuisances. Nothing may or shall be done which is, or may become, a source of unreasonable annoyance or nuisance to residents of any Neighborhood. Any question with regard to the interpretation of this Section shall be decided by the Declarant so long as it owns any property in the Community and thereafter by the Association whose decision shall be final.

5.20 Waterfront Property. As to all portions of The Lands which have a boundary contiguous to any lake, canal, river or other body of water, the following additional restrictions and requirements shall be applicable:

(A) No boathouse, dock, wharf or other structure of any kind shall be erected, placed, altered or maintained on the shores of the lake unless erected by Declarant or its affiliates or a Builder.

(B) No boat, boat trailer or vehicular parking or use of lake slope or shore areas shall be permitted. No boats of any type shall be used on any body of water which is part of the Common Areas, except those used by the Association, the CDD or any contractor either for maintenance or other lawful purposes, or as restricted by Section 5.21 herein.

(C) No solid or liquid waste, litter or other materials may be discharged into/onto or thrown into/onto any lake or other body of water or the banks thereof.

(D) Each applicable Owner shall maintain his Lot to the line of the water in the adjacent lake or other water body, as such line may change from time to time by virtue of changes in water levels.

(E) No landscaping (other than that initially installed or approved by Declarant), fences, structures or other improvements (regardless of whether or not same are permanently attached to the land or to other improvements) shall be placed within any lake maintenance or similar easements around lakes or other bodies of water.

(F) Any boats kept on The Lands shall be subject to Section 5.13 hereof.

(G) Any boats operated on lakes or other water bodies owned by, or dedicated to, the CDD or any other public authority shall be subject to any regulations of the CDD or such authority and not to regulation by the Association (which will have no jurisdiction over such areas).

5.21 Lakes. Use of Lakes or other water bodies in the Community for fishing, swimming, boating and other recreational uses may be restricted or prohibited in the sole and absolute discretion of the Association.

5.22 Correction of Health and Safety Hazards. Any Conditions of the physical property which are reasonably deemed by the Board of Directors to be an immediate hazard to the public health or safety may be corrected as an emergency matter by the Association, and the cost thereof shall be charged to the responsible Owner or Association.

5.23 Assignment of Approval Rights. At such time as neither Declarant nor any subsequent developer hold any Lots or Living Units in the Community for sale in the ordinary course of business, or at such earlier time as Declarant may determine, all rights of Declarant to approve or disapprove any construction, alteration or other aspect of the appearance of the physical property in the Community shall automatically devolve upon and be deemed assigned to the ARC. At that same time all other approval powers of the Declarant shall automatically devolve upon and be assigned to the Board of Directors of the Association.

5.24 Hurricane Shutters. Any hurricane or other protective devices visible from the outside of a home or unit shall be of a type as approved by the ARC, and in accordance with the guidelines as promulgated by the ARC. No such devices shall be installed without the prior written approval of the ARC. Except as otherwise provided in this Section, an owner's accordion, roll-up, panel, or other style storm shutters must be left in an open position at all times. Whether they consist of accordion, roll-up, panel, or any other style shutter, the owner may only install, operate, or have in a closed or down position, storm shutters if and when the National Weather Service has issued a hurricane watch for the County or Municipality where the owner's dwelling is located. All storm shutters must be returned to the open or up position within seventy-two (72) hours after such hurricane watch expires or is otherwise no longer in effect. In no event shall an owner rely upon any other party to operate the owner's storm shutters, to either remove, close or open such shutters, and each owner is individually responsible for the full operation of their storm shutters. If any owner fails to comply with the terms of this Section, such owner shall be subject to the imposition of fines as detailed in this Declaration.

5.25 Declarant's Exculpation. The Declarant or any builder may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required, without any liability of any nature or kind to any Owner or Association or any other person for any reason whatsoever, and any permission or approval granted shall be binding upon all persons. The use restrictions of this Article 5 shall not apply to any property owned by a Developer prior to its conveyance to an Owner other than a Developer.

6. ARCHITECTURAL AND AESTHETIC CONTROL

6.1 General. Except for the initial construction by the Declarant, no building, structure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot, Living Unit, or Neighborhood Common Area be performed without the prior written approval of the ARC. In obtaining said written approval, an Owner or any other person applying shall comply with all applicable requirements and procedures.

6.2 Architectural Review Committee. The architectural and aesthetic review and control functions of the Association shall be administered and performed by the ARC. The ARC shall consist of not less than three (3) individuals, who need not be Members of the Association. The

term of office, composition, compensation (if any), qualifications and meeting procedures of the ARC shall be as provided in Section 6 of the Bylaws.

6.3 Powers. The ARC shall have the power, subject to and limited by the guidelines of the approved regulatory permits issued by the Southwest Florida Water Management District (Permit Nos. 4320580.000), the County, the U.S. Army Corps of Engineers and the Development Order and the DRI, to:

(A) Propose the adoption, modification or amendment by the Board of Directors, of written Design Review Guidelines which shall set forth such things as design requirements, landscape materials, construction standards and colors and materials which the ARC finds acceptable. Said Guidelines shall be consistent with provisions of this Declaration, and shall not be effective until adopted by at least a majority of the whole Board of Directors at a meeting duly called and noticed. Notice of any adoption, modification or amendment of Design Review Guidelines, including a verbatim copy of the proposed modification or amendment thereof, shall be mailed to each Neighborhood Association at least thirty (30) days prior to the Board meeting at which such action is to occur;

(B) Require submission of complete plans and specifications to the ARC for any building, structure, or other improvement proposed to be erected or altered, or any proposed grading, excavation, tree or other landscape material removal or installation, change of exterior color or other work which materially alters the exterior appearance of any structure, Lot or Neighborhood Common Area. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work;

(C) Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood Common Area. All decisions of the ARC shall be forwarded in writing to the Board. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the decision. The determination by the Board, upon prompt review of any such decision, shall, in all events, be final, and shall not be unreasonably delayed;

(D) Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fees, if any, shall be payable to the Association, in cash or check, at the time the request is submitted to the ARC; or

(E) Adopt procedures for inspecting approved changes during and after construction, to ensure conformity with approved plans.

6.4 Enforcement. Any decisions of the ARC shall be enforced by the Neighborhood Association involved, as well as by the Association.

6.5 Declarant's Rights. Notwithstanding the foregoing, the Declarant shall have the right, so long as any Developer is offering any property in Heritage Harbour for sale in the ordinary course of business, to appoint all of the Members of the Architectural Review Committee, or such lesser number as it may choose. During this time, the Declarant shall also have the power, in its sole discretion, to establish, amend, or revoke any and all Design Review Guidelines.

7. EASEMENTS. In addition to the easements created elsewhere herein, and those already of public record at the time this Declaration is recorded, easements are hereby provided for:

7.1 Utilities, Services and Support. Each Lot, Unit, Tract and Parcel and the Common Areas (except Conservation Areas) and Neighborhood Common Areas is and are hereby subjected to easements for public services, communications and telecommunications, and utilities purposes including, but not limited to, fire, police protection, and emergency services, garbage and trash removal, potable and non-potable water, sewage, telephone, natural gas, electric and irrigation, lake maintenance, and cable television, as well as for the purpose of the CDD in the provision of basic systems, facilities and services to the community development pursuant to its state created single-purpose general law charter. The utilities and governmental agencies having jurisdiction, and their employees and agents, shall have the right of access to any Lot, Unit, Tract, or Parcel or the Common Areas in furtherance of such easements. The easement areas on any Lot, whether or not shown on any plat, shall at all times be properly maintained by the Owner, whether or not the utility or service company property maintains the easement area. Declarant, for itself and its assigns, reserves the right to enter into contracts with any utility providers for these services to the Community. Declarant shall further have the right to have an ownership or financial interest in any company which is providing any of the utility services set out herein to the Community.

(A) There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Community, those easements described herein and those shown upon the recorded plat of the Community, and there are also reserved such easements and rights-of-way for any other purposes as Declarant in its sole discretion may in the future grant.

(B) Declarant hereby reserves the right, and the power, during a period of twenty-five (25) years from the date of recording this Declaration, to declare, grant, modify, vacate and record easements as Declarant deems necessary or desirable, in, through, over and under all Lots, Tracts, Parcels, Common Areas and

Neighborhood Common Areas to facilitate access for construction, renovation, remedial repairs and reconstruction and replacements of any and all improvements or structures within the community, and further for drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, telephone and other telecommunication lines, cable television lines, and such other service facilities as Declarant may deem necessary or desirable, along the various utility service routes, through, in, over and under all Lots, Tracts, Parcels and Common Areas, and Neighborhood Common Areas. The purpose, duration and scope of any such easement shall be set forth in an instrument of public record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the Lot, Parcel, Tract or Common Area, or materially change the rights of the Owners. If any agreement is entered into by the Association for the exclusive provision of System services or other services to the Community, as described in either Section 7.2, 7.3 or both below, it shall be the affirmative obligation of the Association to grant all appropriate and reasonably necessary easements for the furnishing of those services; and upon the expiration or termination of such agreement, to provide subsequent or alternate easements so as to insure the continuous accessibility and availability to the Community, of those services.

7.2 Cable T.V. and Broadband Telecommunications and Utilities Services System. The Declarant hereby reserves for itself and its successors, assignees and licensees, the right, without obligation, to construct or install over, through, under, across and upon any portion of the Community for the use and benefit of the Owner and that committed or authorized guests, invitees, tenants and family Members, one (1) or more cable and/or internet access telecommunications receiving and distribution systems and electronic surveillance systems, internet access, emergency, medical and surveillance monitoring, or alarm systems; (2) utility services for supplying irrigation, lake maintenance, natural gas, potable and non-potable water and sewage (all or any part of which shall be referred herein collectively as the "System"), the exact description, location and nature of which may have not yet been fixed or determined. Declarant shall have and hereby reserves to itself and its designees, successors, assignees and licensees, a perpetual and exclusive right, privilege, easement and right-of-way for the installation, construction and maintenance of the System (the scope, extent, size and location of which over, across, upon and through the Community shall be determined solely by Declarant, its successors, designees and assigns) together with a perpetual and exclusive right and privilege of:

(A) Unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute services of the System including, without

limitation, television and radio signals, electronic banking, surveillance, fire, police and emergency medical protection.

(B) Transmitting the facilities and equipment of which, shall be owned and exclusively controlled by Declarant, its successors and assigns or its designees.

7.3 Right to Contract with Service Providers. The Master Association shall have the right, but not the obligation, to enter into one or more contracts for the provision of one or more System Services for all or any part of Heritage Harbour . Prior to the turnover, all contracts between a System Provider and the Master Association shall be subject to the prior written approval of Declarant. Declarant and/or its nominees, successors, assigns, affiliates, and licensees may contract with the Master Association and act as a Service System Provider for one or more System Services, subject only to the requirements of all applicable laws, statutes, and regulations.

If Declarant is not the Service Systems Provider for any particular System Service, Declarant shall have the right to receive, on a perpetual basis, all or a portion of access fees and/or revenues derived from such System Service within Heritage Harbour , as agreed, from time to time, between the System Service Provider and Declarant.

Any such contract for cable television or other similar services shall provide, and if it does not, shall be deemed to provide, that during any period of occupancy of a Living Unit by a hearing impaired or legally blind Unit Owner who does not occupy the Living Unit with a non-hearing impaired or sighted person, said Owner may refuse or discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such Living Units, the Owners shall not be required to pay any charge related to such service.

7.4 Collection of "System" Assessments by Association. Every Lot or Living Unit to which the service System is available for many contractual designee(s) shall be subject to a System service assessment, payable per Lot or Living Unit for System services, including, without limitation, cable television services and utility services. The Association shall bill the appropriate System service assessment to each Lot or Living Unit along with other assessments for common expenses, which may be due and payable at the same time, and shall collect same and remit payment to the contractual designee(s) providing the System services. System Assessments are levied by the Association and are not to be confused with or considered the same as a non-ad valorem assessment levied by a CDD.

7.5 Construction and Maintenance. Declarant (including its designees and contractors) shall have the right to enter any part of the Community and take any action reasonably necessary or convenient for the purpose of completing the construction or sales thereof, and for maintenance purposes and the completion of warranty work, provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the Living Units or Lots by Owners.

7.6 All Preservation Areas Within The Community Are Hereby Dedicated As General Common Areas.

It shall be the responsibility of the Master Association to maintain and protect these Preservation Areas in their natural (or restored) condition. As provided in Section 5.3 above, the Master Association is the entity responsible to operate, protect and maintain these common areas.

8. COMMON AREAS; CONVEYANCE, USE AND MAINTENANCE.

8.1 Designation. Except for the Stormwater Management System, Declarant shall have the right, and the power, in its sole discretion, to determine which parts of the Community shall be Common Areas, and to convey, lease or grant a license or other right to use real property within the Community, to Heritage Harbour, to a CDD or to the Association or any Neighborhood Association as Common Areas.

(A) Any such conveyance, lease or grant of license or use right to the Association may be exclusive or non-exclusive, so that persons or entities other than the Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted. The Association must accept from Declarant and/or the CDD, any such conveyance, lease, grant of license or grant of use right. The Association shall not accept, from any person other than Declarant and/or the CDD, a conveyance, lease, grant or license or grant of use right except upon the prior written approval of the Declarant.

(B) Prior to the conveyance of General Common Areas by Declarant to the Association, the Declarant shall have the right to charge reasonable fees, rents, or other charges for the use of the property; however, rents, fees and other charges required to be paid to Declarant under leases, grants, licenses or contracts creating use rights to third parties shall continue to be paid.

The foregoing notwithstanding, the Association or other entity shall own and maintain the surface water management system of Heritage Harbour which have been constructed by or accepted by the CDD, unless those duties and obligations are transferred to the CDD.

8.2 EXCEPT AS OTHERWISE PROVIDED IN THE CONSERVATION EASEMENT, AND UNLESS JURISDICTION, TITLE OR RESPONSIBILITY HAS BEEN ASSIGNED TO A CDD, GENERAL COMMON AREAS SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH;

REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION, EXCEPT REMOVAL OF EXOTIC/NUISANCE VEGETATION; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE, FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

8.3 Conveyance and Use. Declarant will initially hold the legal title to the General Common Areas, but agrees to convey the General Common Areas to the Association or CDD. Not later than sixty (60) days after the date when Members first elect a majority of the Board of Directors, the Declarant shall convey the General Common Areas to the Association by special warranty deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance (if any) and to mortgages, restrictions, limitation, conditions, reservation and easements of record. The Declarant may, however, convey title at any earlier time the Declarant chooses. Declarant shall have the right from time to time to enter upon the General Common Areas during periods of construction upon adjacent property and for the purpose of construction of any facilities on the General Common Areas that Declarant elects to build.

(A) Any real property conveyed, leased, or the use of which has been granted by Declarant or any third party to the CDD as Common Areas, 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 and their guests, tenants and invitees.

(B) Declarant or the CDD, if pursuant to action by its Board of Supervisors under its uniform state created charter, may convey property to the Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Association must accept such property. The Association shall not accept conveyance of real property from any third party other than the CDD, in either an improved or unimproved condition, without the prior written consent of Declarant, so long as Declarant owns any property in Heritage Harbour.

THE ASSOCIATION AND THE NON-DECLARANT MEMBERS ARE OBLIGATED TO ACCEPT THE GENERAL COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DECLARANT. THE DECLARANT AND ANY DEVELOPER MAKE NO REPRESENTATIONS, AND TO THE FULLEST EXTENT PERMITTED BY LAW DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE

MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE COMMON AREAS AND FACILITIES. AT THE TIME OF CONVEYANCE, DECLARANT SHALL TRANSFER OR ASSIGN TO THE ASSOCIATION, WITHOUT RECOURSE, ALL EXISTING WARRANTIES IT RECEIVED FROM MANUFACTURERS AND SUPPLIERS RELATING TO ANY OF THE FACILITIES WHICH ARE ASSIGNABLE.

8.4 Maintenance and Alteration. The Association is responsible for the maintenance, repair, replacement, insurance, protection and control of all General Common Areas except those a CDD has accepted jurisdiction, title or responsibility for, in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times. After control of the Association has been turned over to the Members, there shall be no material alterations of or substantial additions to the General Common Areas costing more than \$100,000, in the aggregate during any fiscal year unless first approved by a majority of the voting interests of the Members of the Association. However, if work that is reasonably necessary to meet the Association's obligations under the first sentence of this Section 8.4 also constitutes a material alteration or substantial addition, no prior membership approval is required.

8.5 Partition, Subdivision and Encumbrance. Except as hereinafter provided, after legal title to the General Common Areas, or any portion thereof, becomes vested in the CDD or the Association, the General Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered, without first obtaining the approval of not less than two-thirds (2/3rds) of the voting interests. The foregoing shall not be construed to limit the authority of the Declarant or the Association through its Board of Directors to grant such easements over, across and through the General Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the Members; nor is it intended to interfere with the transfer of title to the Common Areas to the CDD as contemplated in Section 8.7. Nothing herein shall be construed to prohibit judicial partition of any Lot, Unit, Tract or Parcel owned in cotenancy.

8.6 Association's Rights and Powers. No General Common Areas shall be used in violation of any rule or regulation or other requirement of the Association established pursuant to the provisions of this Declaration or the Bylaws.

8.7 Expansion or Modification of Common Areas. Additions or modifications to the Common Area may be made if not inconsistent with the Development Order and any amendments thereto. Neither the Declarant nor any Developer shall be obligated, however, to make any additions or modifications. The Declarant further reserves the right to change the configuration or legal description of the Common Areas due to changes in development plans. If the Declarant determines, subject to any governmental requirements, that it is in the best interest of the

development for any Common Areas to be owned by the CDD rather than the Association, and if the Board of Supervisors determine that a transfer of title, jurisdiction or responsibility of Common Areas is appropriate, then such Common Areas shall cease to be Common Areas, even if such Common Areas have been conveyed to the Association pursuant to Sections 8.1 and 8.2 hereof, and shall thereafter be CDD property and the Association shall make such conveyance to the CDD.

9. PROVISOS AS TO BUILDERS.

- 9.1 **Preamble.** In light of the benefits accruing to the Declarant, Owners and the Association by virtue of the orderly and efficient development of The Lands, not only by Declarant but also by Builders, this Section has been adopted to further such benefits as well as to cause this Declaration to accurately and reasonably reflect the operations and needs of Builders.
- 9.2 **Voting and Assessments.** All Builders owning Lots shall be Class C Members of the Association and shall have all rights, benefits, duties and obligations pertaining to such class of membership. A Builder shall have one (1) vote for each Lot owned by or allocated to it and shall pay the same rate of assessment on each such Lot as would any Class A Member/Owner; provided, however, that (i) in the event that a Builder owns a Tract, all or any portion of which has not been platted or otherwise subdivided into Lots, the unplatted property within the Tract shall, for purposes of this Declaration, be deemed to contain such number of Lots as are provided in the Supplemental Declaration subjecting the Builder's portion of The Lands to this Declaration (absent which the property to be deemed to contain the number of Lots permitted to be located thereon by applicable land use ordinances or approvals) and (ii) Declarant hereby reserves the right to vary the aforesaid rate of assessment payable by a Builder by so providing in a Supplemental Declaration, regardless of whether or not the Builder's portion of The Lands has been subdivided into Lots as aforesaid.

In the event that assessments and/or votes are allocated to a Tract at a time when neither the Tract nor any portion thereof has been subdivided into individual Lots by virtue of the recordation of the Plat, then upon the later recordation of a Plat (i) if the Plat is as to the entire Tract, then the number of Lots allocated to the Tract shall be deemed automatically adjusted to equal the number of Lots shown on the Plat or (ii) if the Plat pertains to less than the entire Tract then the number of Lots allocated to the Tract shall be reduced by the number of Lots shown on the Plat, with the remaining allocated to then be attributed solely to the unplatted portion of the Tract. In the event that there are any other changes in circumstances not contemplated hereby or if the application of the foregoing does not reflect any relevant circumstances pertaining to the Tract, then Declarant shall record a

Supplemental Declaration making any necessary adjustment in the number of Lots allocated to a Tract or portion thereof or reflecting a different method of an adjustment thereof based upon the recordation of a Plat(s). For purposes of this paragraph, the recordation of a Declaration of Condominium or documents establishing a cooperative shall have the same effect as a Plat for the purpose of determining allocated Lots.

- 9.3 Architectural Control.** For purposes of the exemption of Declarant and its designees as set forth in Article 6 hereof, a Builder shall be deemed a designee of Declarant and therefore exempt from architectural review/approval requirements if, but only if, the Builder is subject to Deed Restrictions imposed by the Declarant which govern matters such as plan approval and construction activities.

The foregoing exemption shall not, however, apply once the Builder has completed a Unit on a Lot and has received Declarant's final approval thereof, the purpose hereof being to require the Architectural Review Committee's approval of any alterations of such construction once same is completed.

- 9.4 Use Restrictions.** In addition to the architectural control exemptions set forth in the immediately preceding Section, no Builder shall be deemed to be in violation of any of the other restrictions or requirements of Article 6 of this Declaration, or of any Rules or Regulations of the Association, by virtue of any activities which are normally and customarily associated with the construction of Units (or the development of land therefor) of the number, nature and type being constructed/developed by the Builder. Notwithstanding the foregoing, no Builder may make any installations which, once installed, would constitute a violation of Article 6 of this Declaration. By way of example only, the privileges granted to Builders hereunder may not extend to permit the permanent installation of otherwise prohibited gas tanks, obstructions of visibility at intersections, window - mounted air conditioning units, exterior antennas or artificial vegetation.

10. COVENANT FOR MAINTENANCE ASSESSMENTS.

10.1 Creation of the Lien and Personal Obligation for Assessments. Except as provided elsewhere herein, Declarant (and each party joining in any Supplemental Declaration), for all Lots or Tracts now or hereafter located within The Lands, hereby covenants and agrees, and each Owner of any Lot or Tract by acceptance of a Deed or other conveyance thereof, whether or not it shall be so expressed in such Deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments and charges for the operation of the Association for the maintenance, management, operation and insurance of the Common Areas and any applicable Community Systems as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, and all other charges and assessments hereinafter referred to or lawfully imposed by or on the Association, all such assessments to be fixed, established and collected from time to time as herein provided.

Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge and continuing lien upon the Lot or Tract against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due and all subsequent Owners until paid, except as provided in Section 10.8 of this Article 10.

Reference herein to assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

10.2 Types of Assessments. Each assessment levied hereunder shall be one (1) of the following types (although two (2) more types of assessments may be payable by an Owner as a single sum):

(A) Common Assessments - shall be for those expenses which are incurred primarily for the benefit of all Owners, as such primary benefit is determined by the Board of Directors. By way of example only, Common Assessments shall be levied for expenses relating to General Common Areas. Common Assessments shall be levied upon all Lots at an equal rate.

(B) Neighborhood Assessments - shall be for those expenses which are incurred primarily for the benefit of all Owners within a Neighborhood(s), as such primary benefit is determined by the Board of Directors. By way of example only, Neighborhood Assessments shall be levied for expenses relating to Neighborhood Common Areas. Neighborhood Assessments shall be levied upon all Lots within the applicable Neighborhood(s) at an equal rate.

(C) Service Assessments - shall be for those expenses directly related to providing a service or maintenance to one (1) or more Lots, whether at the request of the Owner or as an exercise of an Association remedy hereunder, and shall also include fines levied per herein. If a Service Assessment is levied upon more than one (1) Lot, then it shall be allocated between or among the applicable Lots as the Board direct, absent which they shall be prorated equally. The fact that Service Assessments are authorized hereby shall not require the Association to provide any particular service (maintenance or otherwise) to a Lot(s).

(D) Special Assessments - shall be for those expenses which otherwise would be Common or Neighborhood Assessments but for the fact that they are of a non-recurring and/or unforeseen nature (i.e., are such that they cannot be paid by budgeting therefor as part of a Common or Neighborhood expenses), including (without limitation) the costs of capital additions or uninsured casualty losses. Special Assessments shall be levied against all applicable Lots subject thereto at an equal rate. Special Assessments as the term is described herein is not to be considered the same as a type of non-ad valorem Special Assessment levied by a

local government such as a CDD. Also, Special Assessments shall be subject to the special requirements set forth below in the same manner as increases in the maximum annual rate of assessments, except for those levied per Article 13 with respect to restoration after casualty losses.

10.3 Establishment of Budgets and Assessments. The Board of Directors shall, by appropriate resolution duly adopted, establish the first operating budget for the Association (including Common and Neighborhood Assessments, if applicable) and the rates of assessments thereunder in accordance with this Section. Each time a new Neighborhood is brought within The Lands by appropriate Supplemental Declaration, the Board of Directors shall adopt a budget and assessment rate for such Neighborhood.

After adopting the initial budget and assessments as provided above, the Board of Directors shall fix the amount of the assessment against the Lots subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least sixty (60) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots 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 shall thereupon be sent to every Owner subject thereto thirty (30) days prior to the date payment of the first installment thereof is due, except as to Benefited and Special Assessments. In the event no such notice of the assessments for a new assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of Declarant) for management services, including the administration of budgets and assessments as herein provided.

10.4 Purpose of Assessments. The assessments levied by the Association shall be used for the purposes expressed in this Article and for such other purposes as the Association shall have within its powers and from time to time elect to undertake.

10.5 Date of Commencement of Annual Assessments; Due Dates. The Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31st of that year. Each subsequent annual assessment shall be imposed for the year beginning January 1st and ending December 31st.

The Assessments shall be payable in advance in monthly installments, or in annual, semi-annual or quarter-annual installments if so determined by the Board of Directors (absent which determination they shall be payable quarterly).

The due date of any non-ad valorem special assessment by the name of Benefit or Special Assessment shall be fixed in the Board Resolution authorizing such assessment.

10.6 Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association. If the assessments (or installments) provided for herein are not paid on the date (s) when due (being the date(s) specified herein or pursuant hereto), then such assessments (or installments) shall be come delinquent and shall, together with the late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. Except as provided in Section 10.7 of this Article 10 to the contrary, the personal obligation of Owner to pay such assessment shall pass to his successors in title and recourse may be had against either or both.

If any installment of an assessment is not paid within fifteen (15) days after the due date, at the option of the Association, the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full. Further, all overdue sums (regardless of whether they are accelerated or not) shall bear interest from the dates when due until paid at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, may record a Claim of Lien (as evidence of its lien rights as hereinabove provided for) against the Lot or Tract on which the assessments and interest are unpaid, may foreclose the lien against the Lot or Tract on which the assessments and interest are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the Claim of Lien and the Complaint, if any, and prosecuting same, in such action shall be added to the amount of such assessments and interest secured by the lien, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred, together with the costs of the action, through all applicable appellate levels.

In the case of an acceleration of the next twelve (12) months of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot or Tract whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase and Special Assessments against such Lot or Tract shall be levied by the Association for such purpose.

If assessments are levied on a Tract in proportion to a number of Lots allocated thereto but which are not established per a plat or other instrument, then in the event of the non-payment of such assessments, the lien provided for in this Article shall attach to and be on all of said Tract.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot or Tract as to which the assessment is delinquent, including, without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the possession of such Lot or Tract or the enjoyment of the Common Areas until such time as all unpaid and delinquent assessments and other sums due and owing from the selling Owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 10.7 of this Article.

All assessments, interest, attorneys' fees and other sums provided for herein shall accrue to the benefit of the Association.

10.7 Subordination of the Lien. The lien of the assessments provided for in this Article 10 shall be subordinate to real property tax and assessment liens (including those in favor of the CDD) 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 or 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). Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lot(s) as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

10.8 Initial Capital Contribution. The first purchaser of each Lot, Living Unit, Tract or Parcel, at the time of closing of the conveyance from the Declarant to the purchaser, shall pay to the Developer an initial capital contribution. The funds derived from capital assessments shall be used at the discretion of the Developer for any purpose, including but not limited to, future and existing capital improvements, operating expenses, support costs and start-up costs. The Declarant may waive this requirement for some Lots and Living Units in the Declarant's sole and unbridled discretion.

10.9 Resale Capital Assessment. In addition to the Initial Capital Contributions, the Community Association may levy a Resale Capital Assessment upon the transferee in any conveyance of a Lot or Living Unit by a member. The amount of the Resale Capital Assessment and the manner of payment shall be as determined by resolution of the Board from time to time; provided, however, all Lots or Living Units similarly situated shall be assessed at a uniform rate.

The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Assessment shall be the legal obligation of the transferee. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot or Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title to a Director or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. Resale Capital Assessments shall be considered an assessment and can be collected as such in accordance with the provisions under Article 10.

10.10 Declarant's Assessments. The assessment and lien provisions of this Section 10 shall not apply to any Lot, Living Unit, Tract or Parcel owned by Declarant or by any Developer succeeding to all or a portion of Declarant's rights herein, whether by assignment, in reorganization, or by other arrangement. Should Declarant's lender, its successors or assignees, acquire title to any Lot, Living Unit, Tract or Parcel owned by Declarant, as a result of a foreclosure or deed in lieu of foreclosure, the assessment and lien provisions of this Section 10 shall not apply. Exception: the obligation and covenant to pay assessments as provided in this Section 10 shall apply to a Lot, Living Unit, Tract or Parcel owned by the Declarant or a Developer upon the occurrence of any one of the following events:

- (A) Conveyance of the Lot or Living Unit to an Owner other than a Developer; or
- (B) Construction of a Living Unit has been completed, a certificate of occupancy or the equivalent approval by an appropriate local governmental agency has been issued, and the Living Unit is occupied and used as a personal residence; or
- (C) Declarant executes and records a written instrument subjecting a Lot, Living Unit, Tract or Parcel to the assessment and lien provisions of this Section 10.

During the period that Declarant membership exists, the Declarant covenants to subsidize the general operating expenses of the Association, by contributing the difference, if any, between net operating expenses and all income of the Association including but not limited to assessment income from members other than the Declarant, interest income and income from any and all ancillary operations. Declarant, however, shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, capital improvement fund, or special assessment. Declarant's rights and obligations hereunder may be assigned to a developer. During the period of Declarant control, in return for subsidizing the general operating expenses of the Association, any net operating profit made by the Association, will revert back to the Declarant to offset existing and future capital improvements, operating expenses, support costs, and start-up costs. Net operating profit shall mean the amount by which income from all sources of the Association exceeds operating costs and expenses, but excluding depreciation expense and amortization expense.

11. COVENANT AND RULE ENFORCEMENT: DISPUTE RESOLUTION. The Association has the power to enforce all covenants, conditions, restrictions, rules and agreements

applicable to any real property within Heritage Harbour, and is further empowered to promulgate and enforce administrative rules and regulations governing the use of the Common Areas.

11.1 Dispute Resolution.

(1) Consensus for Association Action.

(a) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds of the Voting Members. A Voting Member representing Units owned by persons other than the Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds of the total number of Units represented by the Voting Member. This Section shall not apply, however, to (i) actions brought by the Association to enforce Governing Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

(2) Alternative Method for Resolving Disputes.

Declarant, its Officers, Directors, Employees or Agents; the Association, its Officers, Directors and Committee Members; all persons subject to this Declaration; any Builder, its Officers, Directors, Employees and Agents; and any person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 11.1(3) herein (collectively, "Claims") to the mandatory procedures set forth in Section 11.1(4) herein.

(3) Claims.

Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 11.1(4) herein.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.1(4) herein.

- (a) Any suit by the Association against any Bound Party to enforce the provisions of Article 10 (Assessments);
- (b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 5 (Use and Restrictions) or Article 6 (Architecture and Aesthetic Control);
- (c) Any suit between or among Owners, which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and
- (d) Any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 11.1(4) herein.

(4) Mandatory Procedures.

- (a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party", or collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (i) The nature of the Claim, including the persons involved and Respondent's role in the Claim;
- (ii) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) The proposed remedy; and
- (iv) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

- (i) The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.
- (iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.
- (iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 11.1(4) and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 11.1(4). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorney's fees and court costs.

(c) Binding Arbitration.

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three (3) arbitrators. Otherwise, unless mutual agreed to by the parties, there shall be one (1) arbitrator.

Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorney's fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

(5) **Amendment of Article.**

Without the express prior written consent of Declarant, this Article may not be amended for a period of thirty (30) years from the effective date of this Declaration.

11.2 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the rules promulgated by the Association, shall apply to all Owners, as well as to any other person occupying any Living Unit. Failure of an Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Declarant, a Developer, or the Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

11.3 Litigation. Each Member and the Member's tenants, guests, and invitees, and the Association, are governed by and must comply with Chapter 720, Florida Statutes, the Governing Documents and rules of the Association. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of the Governing Documents and Association rules may be brought by the Declarant, any Owner, or the Association against:

- (A) the Association;
- (B) a Member;
- (C) any occupant of a Living Unit;
- (D) any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and.
- (E) any tenants, guests, or invitees occupying a parcel or using the Common Areas.
- (F) any Neighborhood Association which fails to make a prompt and reasonable effort to enforce any restrictive covenants or affirmative obligations under provisions of this Declaration or the Neighborhood Covenants, where such failure has or threatens to have a material adverse impact on the appearance of the Community, or the operation of the Association. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section is not intended to deprive any person of any other available right or remedy. The enforcement of covenants, conditions, restrictions and agreements applicable to the various subdivisions and developments within the Community is primarily the function and duty of the respective Neighborhood Associations. It is

the intent of this provision that the Association exercise its covenant enforcement powers with respect to Neighborhood Covenants only after the Neighborhood Association primarily responsible for enforcement has notice of the violation and has, after a reasonable time, been unable or unwilling to resolve the problem in a satisfactory manner.

11.4 Damages and Attorney's Fees. Damages shall not be conclusively deemed adequate relief for any breach or violation of the Governing Documents or the rules. Any person or entity entitled to enforce any provision thereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity. The prevailing party in a proceeding to enforce any provision of the Governing Documents or rules, or to enjoin violation or breach of any provision hereof, or recover damages on account of such breach, against any person shall be entitled to recover reasonable attorney's fees and court costs (including those resulting from appellate proceedings).

11.5 Non-Liability of Declarant. The Declarant shall not be liable or responsible for any violation of the Governing Documents or rules by any person other than itself, and its officers, agents and employees.

11.6 Fines.

(A) In addition to the means of enforcement provided elsewhere herein, the Association shall have the right to assess fines against a Unit, a Unit Owner, or his guests, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, the Bylaws, and Rules and Regulations of the Association regarding the use of Units, Common Elements, or Association property. Each such violator and the Unit Owner shall be given written notice of the alleged violation and the opportunity for a hearing before the Board of Directors with at least fourteen (14) days notice. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws or Rules which have been allegedly violated; and a short and plain statement of the matters asserted by the Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. The amount of such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence, or the maximum permissible by law, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing, such not to exceed the maximum permissible by law. The payment of fines shall be the ultimate responsibility of the Unit Owner, even when the violations for which fines have been levied arise out of the conduct of family members, guests or tenants. Any action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees.

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

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

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

11.7 Suspension of Use Rights. To the extent lawful, the Board of Directors may suspend the right of any Unit Owner, or his guests, tenants, or family members, to use Common Areas during any period of time the Owner shall have failed to pay any fine levied, or for a reasonable time as punishment for one or more infractions of Association rules and regulations by the Owner, his family, guests or tenants. No such suspension shall affect the Unit Owner's right of access to his Unit.

(A) A suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be suspended and an opportunity for a hearing before a committee of at least three (3) 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, which may be by secret ballot, does not approve a proposed suspension, it may not be imposed.

(B) The requirements of the previous paragraph do not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay assessments or other charges when due if such action is authorized by the Governing Documents.

(C) Suspension of Common Area use rights shall not impair the right of an Owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

11.8 Stormwater Management System. The beneficiaries of the Stormwater Management System shall have the right to enforce the provisions of the Governing Documents that the drainage system, easements and rights-of-way will be continuously maintained.

12. NEIGHBORHOOD ASSOCIATIONS.

12.1 Enforcement of Covenants by Declarant. As long as there is a Declarant Member, if any

Neighborhood Association fails to enforce any provisions of its Neighborhood Covenants, or to perform any of its duties and responsibilities thereunder, Declarant may, in its sole discretion, enforce such Neighborhood Covenants, and perform such duties and responsibilities, including any and all maintenance provisions, and shall be entitled to recover the costs and expenses (including attorney's fees) of such enforcement or maintenance pursuant to the provisions of Sections 10 and 11.

12.2 Entry Rights. Each Neighborhood Association and each Owner shall permit Declarant, or any authorized agent or employee of Declarant, to enter upon a Neighborhood Common Area or the Owner's Lot at reasonable times, to carry out the provisions of this Declaration, and the entry shall not constitute a trespass. This provision shall not be construed as authorizing entry by Declarant into the interior of any Living Unit that is owned by a person other than Declarant, except in emergency.

12.3 Maintenance of Neighborhood Common Areas. The Association may contract with any Neighborhood Association to provide for the maintenance and management of its Neighborhood Common Areas.

12.4 Neighborhood Covenants. Declarant reserves the right, and the power, without the consent of any other person being required:

(A) To amend the specific provisions of this Declaration as they apply to one or more Neighborhoods, without amending those provisions with respect to all Neighborhoods; and

(B) To supplement this Declaration by recording separate covenants, conditions, restrictions and other provisions applying to any specific Neighborhood.

12.5 Priority of Neighborhood Covenants. The documents establishing or governing a Neighborhood Association shall not be inconsistent with this Declaration or its recorded exhibits, except they may establish restrictions on subjects related to the use and occupancy of the property within the Neighborhood, such as pets, parking, architectural controls, leasing and guest occupancy, that are more restrictive than those set forth in the Governing Documents.

13. INSURANCE: RECONSTRUCTION AFTER CASUALTY.

13.1 Duty to Insure, and to Reconstruct or Clean Up. Each Owner or Neighborhood Association shall at all times maintain adequate property insurance on the Living Units and structures containing Living Units, and all other insurable improvements, in amounts equal to the replacement cost thereof. If any Living Unit or other improvements located on any Lot, Neighborhood Common Area, Tract or Parcel are destroyed or damaged as a result of fire, windstorm, tornado, hurricane or other casualty, the Owner or Neighborhood Association shall:

(A) Cause repair or replacement to be commenced within six (6) months after the date such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must be approved in writing by the Architectural Review Committee. Unless changes are approved by the Architectural Review Committee, the Owner or Neighborhood Association must restore the damaged property to substantially the same configuration as existed before the casualty, and structurally and architecturally compatible with any adjoining improvements which share a party wall; or

(B) Promptly cause all debris, damaged improvements, and other unsightly materials to be removed from the site.

13.2 Failure to Comply. If any Owner or Neighborhood Association fails to comply with Section 12.1 above within the time periods provided, the Association shall be deemed to have been granted the right by the Owner or Neighborhood Association as his or its attorney-in-fact, to either commence and complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements; or to remove the damaged improvements completely. If the Association exercises the rights afforded to it by this Section, the Owner or Neighborhood Association shall be deemed to have assigned to the Association any right he or it may have to insurance proceeds that may be available because of the damage or destruction. The Association shall have the right to recover from the Owner or Neighborhood Association any costs not paid by insurance, and shall have a lien on the Lot or Living Unit to secure payment.

13.3 Flood Insurance. The Association may, in the discretion of the Board, maintain flood insurance to cover buildings and any other property in designated hazard areas, if any, up to the full insurable value or maximum coverage available.

13.4 Property Insurance. The Association shall maintain replacement cost property insurance coverage on all structures, improvements, and fixtures which are part of the Common Areas.

13.5 Liability Insurance. The Association shall maintain adequate public liability insurance coverage for all Common Areas.

13.6 Bonding. The Association shall maintain adequate fidelity bond coverage for all individuals having control of or access to Association funds.

13.7 Association's Right of Entry. For the purpose of performing the duties authorized by this Article 13, the Association, through its duly authorized agents and employees, shall have the right to enter upon any Living Unit or Lot at reasonable hours and perform such duties.

14. SPECIAL COVENANTS.

14.1 Preamble. In recognition of the fact that certain special types of platting and/or construction require special types of covenants to accurately reflect the maintenance and use of the affected Lots, Units and Tracts, the following provisions of this Article 14 shall apply in those cases where the below-described types of improvements are constructed within The Lands, subject to adjustment per Article 2, Section B of this Declaration. However, nothing herein shall necessarily suggest that Declarant or any Builder will or will not, in fact, construct such types of improvements nor shall anything herein contained be deemed an obligation to do so.

14.2 Condominiums, Cooperatives, and Multi-Family Communities. In the event that any portion of The Lands is submitted to the condominium or cooperative form of ownership or other form of ownership involving mandatory membership in an Association in addition to the Association hereunder (a "Multifamily Community"), then the following special provisions shall apply:

(A) The Multifamily Community, or any series of same within an area specified in a Supplemental Declaration, shall constitute a distinct Neighborhood.

(B) The Board of Directors of the Multifamily Community's Association (the "Multifamily Association") shall constitute the Neighborhood Committee for such Neighborhood.

(C) For the purposes of complying with and enforcing the standards of maintenance contained herein, the residential buildings and any appurtenant facilities shall be treated as a Unit and any other portion of the Multifamily Community shall be treated as an unimproved portion of the Lot, with the applicable Association to have the maintenance duties of an Owner as set forth herein. Such Association shall also be jointly and severally liable with it its Members for any violation of the use restrictions set forth in this Declaration or of the Rule and Regulations of the Association.

(D) As distinguished from maintenance duties, assessments hereunder shall be levied against, and shall be secured by lien upon, each individual Lot within the Multifamily Community and shall be the direct obligation of the Owner thereof; provided, however, that this provision shall not prevent the Association from entering into an agreement with a Multifamily Association pursuant to which either of the latter acts as a collection agent (although in no event shall assessments due under this Declaration be deemed a common expense of such Association).

(E) With respect to the Architectural Review Committee: (i) no Multifamily Association shall make any improvements or alterations on or to the property under its jurisdiction without first having secured the approval of the Architectural Review Committee as provided herein and (ii) in the event that an individual Owner of a Multifamily Community Unit desires to make alterations to the exterior thereof of his Unit, a request for the approval thereof shall be submitted to the Architectural Review Committee as required by this declaration, but such request shall be accompanied by evidence that the Multifamily Association having jurisdiction thereover has already approved same or has no authority to review same, absent which approval the Architectural Review Committee shall not consider the submission.

14.3 Rental Apartments and/or Assisted Living Facilities. In the event that rental apartments are constructed on any portion of The Lands, then the following special provisions shall apply:

(A) The overall apartment project shall be deemed one (1) Lot for purposes of the lien for assessments hereunder, as well as architectural approvals, use restrictions and maintenance requirements, as provided in this Declaration.

(B) Notwithstanding the foregoing, each individual apartment within an apartment project shall be deemed a Lot for purposes of assessments and voting hereunder (i.e., each apartment shall entitle the Owner of the apartment project to one (1) vote and shall be assessed as one (1) Lot); provided, however, that the Supplemental Declaration submitting the apartment project to this Declaration may provide for a reduced rate of assessment and/or allocated votes for each apartment Unit.

(C) While an apartment project shall not have a Neighborhood Committee, the Owner thereof shall designate a Voting Member to cast the votes attributable to the apartment project by written notice to the Association given before the meeting at which the votes are to be cast.

(D) The Owner of an apartment project shall be jointly and severally liable with its tenants for any violations of this Declaration or the Rules and Regulations of the Association.

15. RIGHTS OF DECLARANT AND DEVELOPERS. In addition to those provided elsewhere in the Governing Documents, the Declarant and each Developer shall have the following rights and privileges:

15.1 Sales Activity. While one or more Lots or Living Units are for sale in the ordinary course of business, the Declarant and each Developer shall have the right to use those Lots or Living Units,

all entry ways, roads and streets and rights of way within the Community, and the Common Areas or Neighborhood Common Areas (including, but not limited to, all recreational facilities) to establish, modify, maintain and utilize, as it and they deem appropriate, model Living Units, sales offices, or other offices for use in selling or providing warranty services to any part of the Community including temporary trailers or other structures used for sales marketing, or construction purposes. No Owner or Neighborhood Association may interfere with, or do anything detrimental to, the Declarant's sales efforts. Without limiting the generality of the foregoing, the Declarant and its designees may show model Living Units or the Common Areas to prospective purchasers or tenants, advertise, erect signs, anywhere within the Community, including on streets, roads and rights of way within the Community, conduct promotional activities and special events, and take all other action helpful for sales, leases and promotion of Heritage Harbour.

15.2 Assignment of Rights to Successor Developer. Except as otherwise specifically provided herein, Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, partially or completely, to any person or entity, any or all of its development rights, powers, duties, privileges created in or provided for by this Declaration. Such assignment shall not in any way lessen the Declarant's rights with respect to property not subject to such assignment.

15.3 Non-Liability of Declarant and Association.

ALL PERSONS USING OR OCCUPYING ANY PORTION OF THE COMMUNITY ARE RESPONSIBLE FOR THEIR OWN SECURITY AND THE SECURITY OF THEIR OWN PROPERTY.

NEITHER THE ASSOCIATION, THE DECLARANT, THE CDD OR ANY BUILDER ARE INSURERS OR GUARANTORS OF SECURITY FOR PERSONS OR PROPERTY WITHIN THE COMMUNITY.

NEITHER THE ASSOCIATION, THE DECLARANT, THE DEVELOPER, NOR THE CDD SHALL BE LIABLE IN ANY WAY ON ACCOUNT OF LOSS, DAMAGE OR INJURY RESULTING FROM LACK OF SECURITY, OR THE LACK OF EFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. THE DECLARANT AND DEVELOPER MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION SYSTEM AND/OR BURGLAR ALARM SYSTEMS, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

15.4 Miscellaneous.

(A) Declarant shall have the right and the power to regulate and control the external design and appearance of all Common Areas in such a manner as to:

(1) Promote a quality environment which will preserve the value of the Lots and Living Units; and

(2) Foster the attractiveness and functional utility of the Community as a place to live and play, including a harmonious relationship among structure, vegetation and topography.

(B) Any use of Common Areas other than the uses intended pursuant to this Declaration shall be subject to the prior written approval of the Declarant so long as it owns any land in Heritage Harbour which it holds for the purpose of development.

(C) The Declarant has the right to replat unsold portions of The Lands without the joinder or consent of any Owner.

(D) The Developer has the right to receive a refund of any and all deposits or other payments made to utility companies or governmental authorities which are refunded in the course of development, even if such refunds occur after the sale of the last Lot or Living Unit in Heritage Harbour to an Owner other than the Developer.

15.5 Additions or Withdrawals of Property. The Declarant has the right and the power, but neither the duty nor the obligation, to record instruments bringing additional lands within the Community and subjecting those lands to the protective covenants, conditions, restrictions or provisions provided for in this Declaration. The Declarant also reserves the right in its sole discretion to withdraw property from submission to this Declaration, except that the Declarant shall not be permitted to withdraw any property after it has been conveyed to an Owner other than the Declarant, without the joinder of the Owner.

15.6 Management Contract. Declarant shall have the right and the power to enter into professional management contracts on behalf of the Association before turnover of control of the Association as described in Section 8 of the Bylaws. The term of any Management Contract may extend past the turnover date.

15.7 Declarant's Inaction. Neither the execution and recordation of this Declaration, nor the creation of any Association or other entity, nor the recordation of any other instrument subjecting any land in Heritage Harbour to protective covenants, conditions or restrictions or other provisions, shall obligate or require:

(A) Declarant to grant any right, power, duty or privilege of any nature or kind to the Association or to any other entity; or

(B) Declarant, the Association or any other entity, to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant,

condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.

16. RIGHTS OF MORTGAGEES.

16.1 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of any significant portion of the Common Areas, the record holder of any first mortgage on the Common Areas who has requested such notice in writing, shall be entitled to written notice.

16.2 Mortgage Foreclosure. Except as otherwise provided by Florida law as amended from time to time, if an Institutional Mortgagee acquires title to a Lot, Living Unit or Tract as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such mortgagee shall not be liable for the Association assessments or charges attributable to the Lot, Living Unit or Tract, or chargeable to the former Owner, which came due prior to the mortgagee's acquisition of title. Any unpaid assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all Owners, including such acquirer and his successors and assigns. No Owner or acquirer of title to a Lot, Living Unit or Tract by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.

16.3 Right to Inspect Documents and Books. The Association shall make available to Institutional Mortgagees requesting same the current Governing Documents and Rules and Regulations of the Association and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be at the expense of the mortgagee requesting same.

16.4 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Association for the immediately preceding fiscal year.

16.5 Lender's Notices. Upon written request to the Association, any Institutional Mortgagee shall be entitled to timely written notice of:

(A) Any delinquency of more than sixty (60) days in the payment of assessments or charges owed by the Owner of any Lot, Living Unit, Tract or Parcel on which it holds a mortgage.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. An increase in coverage, or a change of insurer does not require notice under this Paragraph.

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

17. GOVERNMENTAL REQUIREMENTS.

17.1 Preamble. Because the development and use of The Lands is governed by the County, a CDD and the Southwest Florida Water Management District ("SWFWMD"), among other governmental and quasi-governmental entities, this Article has been adopted for the purpose of, including in this Declaration, certain provisions required by such entities. Accordingly, the heading of each Section set forth below refers to the entity having required the provisions contained in that Section.

17.2 Government. Every member shall be required to adhere to all federal, state and local government land development requirements and guidelines. The Manatee County Land Development Code, Ordinance 90-01, adopted on July 25, 1990 by the Board of County Commissioners of Manatee County, Florida and effective as of October 15, 1990, requires adequate ownership and management measures be provided in residential developments to protect and perpetually maintain all common improvements and open space. The following provisions are stipulated in Chapter Nine of the Land Development Code (Subdivision Procedures and Standards), Section 909., and are hereby incorporated as part of this Declaration.

(A) Right of Entry by County. The Manatee County law enforcement officers, health and pollution control personnel, emergency medical service personnel, and fire fighters, while in pursuit of their duties, are hereby granted authority to enter upon any and all portions of the Common Areas as may be necessary to perform those duties.

(B) Ownership of the Common Areas. Notwithstanding anything herein contained to the contrary, the Association shall not dispose of any Common Areas, by sale or otherwise, except to an organization conceived and organized to own and maintain such Common Areas, without first offering to dedicate the same to Manatee County or other appropriate governmental agency.

(C) Disturbance of Common Areas. No lands in the Common Areas constituting common open space shall be denuded, defaced or otherwise disturbed in any manner at any time, except for maintenance or repair, without the prior written approval of the Manatee County Planning Director.

(D) Maintenance and Care. In the event the Association or its successors fail to maintain the Common Areas in reasonable order and condition, the provisions of the Manatee County Land Development Code allow for Manatee County, upon notice and hearing, to enter said Common Areas for the purpose of maintaining

same. The cost of such maintenance by the County shall be assessed pro-ratedly and such charges will be made payable by Owners within sixty (60) days after receipt of a statement therefor, and shall become a lien on the property if unpaid at the end of such period.

(E) Additional Federal, State and Local Land Development Requirements.

Additional documentation as stipulated by Chapter Nine of the Manatee County Land Development Code (Subdivision Procedures and Standards) Section 905.5, Manatee County Zoning Ordinance PDMU-98-08(Z)(G) Heritage Sound adopted DRI #24, Ordinance Number 00-19, adopted 3/21/00, the Environmental Resource Permit General Conditions and the Limiting and Standard Conditions imposed by Southwest Florida Water Management District. The terms of the permits and ordinances herein referenced in no way alter, add to, or supersede the provisions of this Declaration of Covenants for Heritage Harbour.

17.3 SWFWMD. It shall be the responsibility of each Owner, at the time of construction of a building, residence or structure, to comply with the construction plans for the surface water management system serving The Lands pursuant to Chapter 40D-4, Florida Administrative Code, approved and on file with SWFWMD.

No Owner may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas or upland conservation areas described in the SWFWMD permit and/or recorded plat for the applicable portion of The Lands, unless prior approval is received from the SWFWMD, pursuant to Chapter 40D-4.14, Florida Administrative Code.

17.4 Rules of Construction and Amendment. Notwithstanding anything in this Declaration to the contrary, in the event of conflict between any provisions of this Declaration, the Articles of Incorporation, the Bylaws or any Rules and Regulations, or manual adopted by the Association, then the provisions of this Article shall supersede and control. Further, no Amendment to this Declaration shall be made which (i) amends any provision of this Article or (ii) has the effect of overriding or changing the application of a provision of this Article, in either case without the prior written consent of the entity as required by the applicable Section within this Article.

17.5 Notice as to On-Site and Off-Site Activities. DECLARANT AND OTHERS, WHETHER RELATED OR UNRELATED, MAY FROM TIME TO TIME CONDUCT DEVELOPMENT CONSTRUCTION, RANCHING, FARMING, AGRICULTURAL, MINING, BLASTING PLANT OPERATION AND OTHER ACTIVITIES NOT NORMALLY ASSOCIATED WITH A RESIDENTIAL NEIGHBORHOOD, EITHER WITHIN, NEARBY OR WITHIN SIGHT OR SOUND OF THE LANDS. SUCH ACTIVITIES MAY INCLUDE SITE CLEARING (INCLUDING THE REMOVAL OF LARGE AMOUNTS OF TREES), BLASTING, BURNING, KEEPING LIVESTOCK, SPRAYING, FERTILIZING, EARTH MOVING, TRAFFIC-GENERATING AND OTHER PRACTICES CREATING UNSIGHTLY CONDITIONS, NOISE (AT ALL HOURS) AND DISTURBING ODORS.

ALL OWNERS, OCCUPANTS AND USERS OF THE LANDS ARE HEREBY NOTIFIED OF THE FOREGOING ACTIVITIES AND, BY ACCEPTANCE OF TITLE TO THEIR RESPECTIVE PORTIONS OF THE PROPERTY OR MAKING ANY USE THEREOF, AUTOMATICALLY ACKNOWLEDGE, STIPULATE AND AGREE (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE AREAS WHERE SUCH ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DECLARANT AND ANY OTHER PARTY CONDUCTING OR PARTICIPATING IN SUCH ACTIVITIES SHALL NOT BE LIABLE FOR ANY LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE LANDS HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING AND (v) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE LANDS.

18. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE LANDS INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(A) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE LANDS HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE LANDS AND THE VALUE THEREOF.

(B) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES.

(C) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE LANDS (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING, ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF DECLARANT, WHICH SHALL BE FULLY PROTECTED HEREBY.

19. DURATION OF COVENANTS; AMENDMENT.

19.1 Duration of Covenants. The covenants, conditions, easements and restrictions in this Declaration shall run with and bind the property within the Community, and shall inure to the benefit of and be enforceable by the County, the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of recording this Declaration in the Public Records of Manatee County, Florida. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Declaration as it may be amended being automatically renewed and extended upon the

expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

19.2 Termination. This Declaration may be terminated at any time after the initial period if not less than eighty percent (80 %) of the voting interests of all classes of the Members of the Association vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

19.3 Amendments. This Declaration may be amended at any time. Except as otherwise specifically provided, amendments to this Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4th) of the voting interests.

19.4 Procedure. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.

19.5 Vote Required. Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least sixty-six and two-thirds (66-2/3rds) of the voting Members present, in person or by proxy and voting, provided that notice of the text of each proposed amendment was sent to the Members with notice of the meeting.

19.6 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The certificate must set forth the location in the public records of the County where this Declaration was originally recorded.

19.7 Proviso. Regardless of any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, can be effective to change the Association's responsibilities for the Stormwater Management System, the Conservation Areas, unless the amendment has been consented to in writing by the

SWFWMD and Manatee County Government. Any proposed amendment which would affect the Stormwater Management System, or the Conservation Areas, must be submitted to the SWFWMD and Manatee County Government for a determination of whether the amendment necessitates a modification of the surface water management permit. If the surface water management system is administered by the CDD, any such amendment shall likewise require the consent of the CDD.

19.8 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of two-thirds (2/3rds) or more of the voting interests of the Members is required to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action. This provision does not apply to amendments by the Declarant or a Developer.

19.9 Amendment of Provision Relating to Developer. As long as a Developer holds any Lot or Living Unit for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Declarant or a Developer without their written consent.

19.10 Amendment by Declarant. In addition to any other right of amendment or modification provided for in this Declaration, in which case those provisions shall apply, Declarant, may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration, and any recorded exhibit hereto. This right shall expire at such time as no Developer holds any property for sale in the ordinary course of business within the Community.

19.11 Limitations. No amendment to any of the Governing Documents shall be effective to change any Member's voting rights as set forth in Section 2.2 of the Bylaws, or the provisions of Sections 19.9 or 19.10 above, unless all Members affected first consent in writing to said amendment.

20. GENERAL AND PROCEDURAL PROVISIONS.

20.1 Other Documents. Declarant, the Association, and the Neighborhood Associations shall have such rights, powers, duties, and privileges as are set forth in the Governing Documents and Neighborhood Covenants; this Declaration and its provisions shall prevail in all events of conflict.

20.2 Severability. If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, the holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

20.3 Merger or Consolidation of Association. Upon a merger or consolidation of the Association with another corporation as provided by law, the Association's rights, obligations and property may, by operation of law, be transferred to another surviving or consolidated association or the CDD, alternatively, remain the rights, obligations and property of the Association as the surviving corporation. The surviving or consolidated corporation or CDD may administer this Declaration within the existing property together with the covenants and restrictions established upon any other property, as one common scheme. Notwithstanding the foregoing, merger or consolidation of the Association with any other party including a CDD shall have no effect on altering or changing any granted power in the charter of the CDD.

20.4 Dissolution. If the Association is dissolved other than by a merger or consolidation as provided for above, each Lot, Living Unit, Tract and Parcel shall continue to be subject to the assessments provided for in Article 10, and each Owner shall continue to be personally obligated to Declarant or the successor or assigns of the Association (as the case may be) for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate and preserve it.

20.5 Gender; Number. Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

20.6 Notices.

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

(B) To the Association. Notices to 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 the State of Florida, or at any other location designated by the Association.

(C) To Owners. Notices to any Owner as may be required herein shall be in writing and shall be delivered or mailed to the Owner at his last known address, or at the address shown on the deed recorded in the public records of the County.

(D) To CDD. Notices to the CDD as may be required herein, shall be in writing and shall be delivered or mailed to the CDD at its principal place of business as shown by the records of the State of Florida Department of Community Affairs.

20.7 Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan and the purposes set forth herein, including the premises.

20.8 Captions, Headings and Titles. Captions, headings, capitalization of certain words, and titles inserted throughout the Governing Documents are for convenience only, and in no way shall such captions, headings or titles define, limit, or in any way affect the subject matter, content or interpretation of the terms and provisions of the Governing Documents.

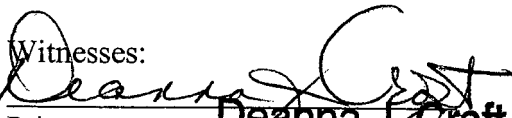
20.9 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions of the Governing Documents. Their interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the validity of such interpretation.

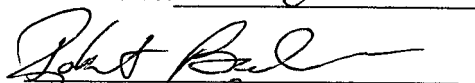
20.10 Applicable Statutes. The validity, application, and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, as they exist on the date of recording this Declaration.

Rights Limited to Express Terms of Governing Documents. Every Member of the Association acknowledges that his or her rights, duties or obligations are limited to the express terms of the Declaration, Articles of Incorporation, Bylaws and the Rules and Regulations (Governing Documents). Every prospective Member should make his decision to purchase within Heritage Harbour based upon these representations as set out in the Governing Documents which contain the entire understanding at the parties and no prior or present agreements or representation shall be binding upon the Declarant unless included in the Governing Documents.

Oral representations cannot be relied upon as correctly stating the representations of the Developer. For correct representations, reference should be made to Governing Documents.

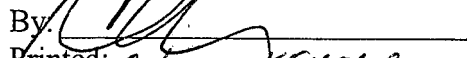
IN WITNESS WHEREOF, Harbourvest, L.L.C., a Florida Limited Liability Company, hereby executes this Declaration.

Witnesses:

 Print name: Deanna J. Craft


 Print name: Robert Barber

**Harbourvest, L.L.C.,
 a Florida Limited Liability Company**

By its Operating Member,
 USHHH, Inc., a Florida corporation

By: 
 Printed: CHRISTIE KELLON COLES
 Title: V.P. USHHH, Inc.

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was executed before me this 12 day of FEBRUARY, 2002, by CHRISTIE KELLER COLES, V. PRESIDENT of USHHH, Inc., a Florida corporation, its Operating Member of Harbourvest, L.L.C. on behalf of the limited liability company. He/She is personally known to me or did produce _____ as identification.



Deanna J. Craft
MY COMMISSION # DD018205 EXPIRES
July 20, 2005
BONDED THRU TROY FAIR INSURANCE, INC.

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

Deanna J. Craft
Signature of Notary Public

Deanna J. Craft
Print name

F:\WPDATA\CJS\USHOME\HERITAGE.HAR\DECLARAT.C15.wpd
"Clean Set" Draft #15 1/22/02

JOINDER

HERITAGE HARBOUR
MASTER ASSOCIATION, INC.

HERITAGE HARBOUR MASTER ASSOCIATION, INC. ("Association") does hereby join in the Master Declaration of Covenants, Conditions and Restrictions for Heritage Harbour ("Declaration"), to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title. Association agrees that this Joinder is for convenience only and not to the effectiveness of this Declaration as Association has no right to approve this Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 12 day of FEBRUARY, 2002

WITNESSES:

Christie Keller Coles
Print Name CHRISTIE KELLER COLES

Deanna J. Craft
Print Name DEANNA J. CRAFT

HERITAGE HARBOUR
MASTER ASSOCIATION, INC.

By: Robert T. Allegra
Robert T. Allegra, President

STATE OF FLORIDA)
)SS:
COUNTY OF SARASOTA)

The foregoing instrument was acknowledged before me this 12 day of FEBRUARY, 2002 by Robert T. Allegra as President of Heritage Harbour Master Association, Inc., a Florida not-for-profit corporation, who is personally known to me or who produced _____ as identification on behalf of the corporation.

My Commission Expires:



Deanna J. Craft
MY COMMISSION # DD018205 EXPIRES
July 20, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

Deanna J. Craft
Notary Public, State of Florida

Print Name DEANNA J. CRAFT

ARTICLES OF INCORPORATION
TABLE OF CONTENTS

ARTICLE I	2
ARTICLE II	2
ARTICLE III	3
ARTICLE IV	4
ARTICLE V	4
ARTICLE VI	4
ARTICLE VII	4
ARTICLE VIII	5
ARTICLE IX	5
ARTICLE X	5
ARTICLE XI	5
ARTICLE XII	5
ARTICLE XIII	6

BK 1753 PG 6592 73 of 105



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of HERITAGE HARBOUR MASTER ASSOCIATION, INC., a Florida corporation, filed on March 6, 2000, as shown by the records of this office.

The document number of this corporation is N00000001432.

BK 1753 PG 6593 74 of 105



CR2EO22 (1-99)

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Sixth day of March, 2000

Katherine Harris

Katherine Harris
Secretary of State

00 MAR -6 PM 3:10

**ARTICLES OF INCORPORATION
OF
HERITAGE HARBOUR
MASTER ASSOCIATION, INC.**

The undersigned, acting as the incorporator, under the laws of the State of Florida, Florida Statutes, Chapter 617, hereby sets forth and declares:

ARTICLE I

The name of this corporation is HERITAGE HARBOUR MASTER ASSOCIATION, INC., a not for profit corporation (the "Association").

ARTICLE II

The nature of the business to be transacted shall be to engage in any activity or business permitted under the laws of the United States and of this State, pursuant to Chapter 617 of the Florida Statutes. The Association is organized for the purpose of providing an entity for the operation of a mixed use residential and commercial planned development, located in Manatee County, Florida.

The Association is organized and shall exist upon a non-stock basis as a non-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer of the Association. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a Association not for profit under Florida law, except as limited or modified by these Articles, the Declaration of Covenants, Conditions and Restrictions or the By-Laws of this Association, and it shall have all of the powers and duties reasonably necessary to operate the Community pursuant to the Declaration as it may hereafter be amended including, but not limited to, the following:

(A) To levy and collect assessments against all Members of the Association to defray the costs, expenses and losses of the Association, and to use the proceeds of assessments in the exercise of its power and duties.

(B) To own, lease, maintain, repair, replace or operate the Common Areas

(C) To purchase insurance upon the Common Areas for the protection of the Association and its members.

(D) To reconstruct improvements after casualty and to make further improvements of the Common Areas.

(E) To make, amend and enforce reasonable rules and regulations governing the use of the Common Areas and the operation of the Association.

(F) To sue and be sued, and to enforce the provisions of the Declaration, these Articles and the By-Laws of the Association.

(G) To contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association.

(H) To employ accountants, attorneys, architects or other professional personnel to perform the services required for proper operation of the Properties.

(I) To acquire, own and convey real property and to enter into agreements or acquire leaseholds, easements, memberships and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Community, if they are intended to provide enjoyment, recreation or other use or benefit to the members.

(J) To borrow or raise money for any purposes of the Association; to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidence of indebtedness; and to secure the payment of any thereof, and of the interest therein, by mortgage pledge, conveyance or assignment in trust, of the whole or any part of the rights or property of the Corporation.

(K) To be responsible in perpetuity for maintenance of the Preservation areas (i.e., all preserved, restored or created wetlands areas and upland buffer zones); and to take action against Lot Owners or Neighborhood Associations, if necessary, to enforce the conditions of the permit issued by Southwest Florida Water Management District ("SWFWMD") for the Community.

(L) To be the responsible entity to operate and maintain the stormwater management system as permitted by SWFWMD, including but not limited to, all lakes, retention areas, culverts and related appurtenances.

Except as provided herein and in the Declaration, all funds and title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles of Incorporation, and the By-Laws.

ARTICLE III

The Association shall have perpetual existence.

ARTICLE IV

The qualifications required for membership, and the manner in which members shall be admitted to membership, shall be as stated in the Declaration and/or the By-Laws of the Association. Each and every owner of a lot or living unit in this subdivision shall be a member of this Association.

ARTICLE V

The street address of the initial principal office of this Association is 337 Interstate Blvd., Sarasota, Florida 34240. The name of the initial registered agent of this Association is Christopher J. Shields, and the address of the initial registered office is 1833 Hendry Street, Fort Myers, Florida 33901.

Having been named to accept service of process for Heritage Harbour Master Association, Inc., I hereby agree to act in this capacity and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

ACCEPTED By: 

ARTICLE VI

The number of Directors shall initially consist of three (3) but may be increased pursuant to the By-Laws, and in no event shall there be fewer than three (3) in number. Directors shall be elected, or appointed to fill a vacancy, in accordance with the By-Laws of the Association.

ARTICLE VII

The name and mailing address of the Directors, President, Vice President and Secretary/Treasurer, who, subject to the By-Laws of the Association shall hold office for the first year of existence of this Association or until his or her successor is elected and has qualified, are:

<u>NAME</u>	<u>ADDRESS</u>
Robert T. Allegra, President/Director	337 Interstate Blvd. Sarasota, Florida 34240
Carolyn Jeffries, Vice President/Director	337 Interstate Blvd. Sarasota, Florida 34240
W. David Key, Secretary/Treasurer/Director	337 Interstate Blvd. Sarasota, Florida 34240

FILED
CLERK OF STATE
DEPARTMENT OF CORPORATIONS
00 MAR -6 PM 3:10

ARTICLE VIII

The Association is empowered to do and perform all acts reasonably necessary to accomplish the purposes of the Association, which acts are not inconsistent with the powers provided for in Chapter 617, Florida Statutes.

ARTICLE IX

The name and address of the incorporator of this corporation is as follows:

NAME

ADDRESS

Christopher J. Shields

1833 Hendry Street
Fort Myers, Florida 33901

ARTICLE X

By-Laws of the Association may be adopted, made, altered or rescinded by the Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provision of these Articles.

ARTICLE XI

Amendment to the Articles of Incorporation may be proposed by any Director at any regular or special business meeting of the Board of Directors at which a majority is present and, if obtaining a two-thirds (2/3) vote of the Board of Directors present and voting at such meeting properly called and noticed as provided in the By-Laws, shall be submitted to a vote of the membership. If approved by a two-thirds (2/3) affirmative vote of the membership at a meeting of the members properly called and noticed as provided in the By-Laws, such Amendment shall be forwarded to the Secretary of State of the State of Florida and filed and shall become effective upon issuance, by said officer, of a certificate reflecting same.

ARTICLE XII

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

ARTICLE XIII

To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Corporation against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication established that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interest of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.


(B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the Director or officer derived an improper personal benefit.

(D) Wrongfully conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approved such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

IN WITNESS WHEREOF, I CHRISTOPHER J. SHIELDS, being the incorporator of the Corporation for the purpose of forming a corporation under the laws of the State of Florida do make, subscribe, acknowledge and file the foregoing Articles of Incorporation, hereby certifying that the facts therein stated are true, and accordingly set our hands and seals this 3rd day of MARCH, 2000.



CHRISTOPHER J. SHIELDS

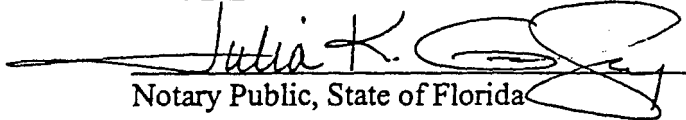
FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS

00 MAR -6 PM 3:10

STATE OF FLORIDA
COUNTY OF LEE

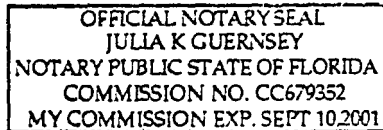
I HEREBY CERTIFY that before me the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared CHRISTOPHER J. SHIELDS, whois known to me to be the person who made and subscribed to the foregoing Articles of Incorporation, and certifies and acknowledges that he made and executed said certificate for the use and purposes therein expressed.

WITNESS my hand and official seal this 3rd day of MARCH, 2000.


Notary Public, State of Florida

(SEAL)

My Commission Expires:



FAWPDATA\CJS\USHOME\HERITAGE.HAR\ARTICLES.IN4
Draft #4 3/3/00

BK 1753 PG 6599 80 of 105

**BYLAWS
TABLE OF CONTENTS**

1. GENERAL	1
1.1 <u>Principal Office</u>	1
1.2 <u>Definitions</u>	1
1.3 <u>Seal</u>	1
2. MEMBERSHIP AND VOTING RIGHTS	1
2.1 <u>Membership</u>	1
2.2 <u>Voting Rights</u>	1
2.3 <u>Meetings of Voting Members</u>	2
2.4 <u>General Matters</u>	3
2.5 <u>Rights and Privileges of Members</u>	3
2.6 <u>Delegation of Rights to use Common Areas</u>	3
2.7 <u>Suspension of Membership</u>	4
3. MEMBERS' MEETINGS	5
3.1 <u>Annual Meeting</u>	5
3.2 <u>Special Members' Meetings</u>	5
3.3 <u>Quorum</u>	5
3.4 <u>Vote Required to Transact Business</u>	5
3.5 <u>Notice of Meetings</u>	5
3.6 <u>Voting Representatives</u>	5
3.7 <u>Adjourned Meetings</u>	6
3.8 <u>Order of Business</u>	6
3.9 <u>Minutes</u>	6
3.10 <u>Parliamentary Rules</u>	7
3.11 <u>Action by Members without a Meeting</u>	7
4. BOARD OF DIRECTORS	7
4.1 <u>Powers</u>	7
4.2 <u>Management by Directors</u>	8
4.3 <u>Election of Directors</u>	8
4.4 <u>Voting Groups</u>	9
4.5 <u>Vacancies</u>	9
4.6 <u>Term of Office</u>	9
4.7 <u>Vacancies and Removal</u>	10
4.8 <u>Term</u>	10
4.9 <u>Organizational Meeting</u>	10
4.10 <u>Regular Meetings</u>	11
4.11 <u>Special Meetings</u>	11
4.12 <u>Waiver of Notice by Directors</u>	11

BK 1753 PG 6600
81 of 105

4.13 <u>Board Meetings; Notice to Members</u>	11
4.14 <u>Quorum of Directors</u>	11
4.15 <u>Vote Required</u>	12
4.16 <u>Presumption of Assent</u>	12
4.17 <u>Adjourned Meetings</u>	12
4.18 <u>The Presiding Officer</u>	12
4.19 <u>Compensation of Directors and Officers</u>	12
4.20 <u>Emergency Powers</u>	12
4.21 <u>Committee Meetings</u>	13
4.22 <u>Neighborhood Committees</u>	13
 5. OFFICERS	15
5.1 <u>Officers and Elections</u>	15
5.2 <u>President</u>	15
5.3 <u>Vice-Presidents</u>	15
5.4 <u>Secretary</u>	15
5.5 <u>Treasurer</u>	15
 6. ARCHITECTURAL REVIEW COMMITTEE	16
6.1 <u>Members; Qualification</u>	16
6.2 <u>Selection; Terms</u>	16
6.3 <u>Compensation</u>	16
6.4 <u>Meetings</u>	16
6.5 <u>Procedures, Voting</u>	16
 7. FISCAL MATTERS	16
7.1 <u>Depository</u>	17
7.2 <u>Budget</u>	17
7.3 <u>Reserves</u>	17
7.4 <u>Fidelity Bonds</u>	17
7.5 <u>Accounts and Accounting Procedures</u>	17
7.6 <u>Financial Reporting</u>	18
7.7 <u>Audits</u>	18
7.8 <u>Application of Payments and Commingling of Funds</u>	18
7.9 <u>Fiscal Year</u>	18
7.10 <u>Payment of Assessments</u>	19
7.11 <u>Special Assessments</u>	19
7.12 <u>Proof of Payment</u>	19
7.13 <u>Suspension</u>	19
 8. TURNOVER OF CONTROL OF ASSOCIATION	19
8.1 <u>Time of Turnover</u>	19
8.2 <u>Procedure for Calling Turnover Meeting</u>	20
8.3 <u>Early Turnover</u>	20
8.4 <u>Developer Representative</u>	20

8.5 <u>Turnover - "As Is"</u>	20
9. AMENDMENT OF BYLAWS	20
9.1 <u>Proposal</u>	21
9.2 <u>Vote Required</u>	21
9.3 <u>Amendment by Board</u>	21
9.4 <u>Certificate; Recording</u>	21
10. MISCELLANEOUS	21
10.1. <u>Gender; Number</u>	21
10.2 <u>Severability</u>	21
10.3 <u>Conflict</u>	21

EXHIBIT "C"

**BYLAWS
OF
HERITAGE HARBOUR MASTER ASSOCIATION, INC.**

1. GENERAL These are the Bylaws of Heritage Harbour Master Association, Inc., (hereinafter the "Association"), a Florida corporation not for profit organized for the purposes set forth in the Articles of Incorporation.

1.1 Principal Office. The principal office of this corporation shall initially be located at 337 Interstate Blvd., Sarasota, Florida 34240, and subsequently at such other place as may be established by resolution of the Board of Directors.

1.2 Definitions. All terms defined in the Declaration of Covenants, Condition and Restrictions for Heritage Harbour (the "Declaration of Covenants") to which these Bylaws were attached as an exhibit when it was originally recorded, shall be used with the same meanings as defined therein.

1.3 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

2. MEMBERSHIP AND VOTING RIGHTS. The classes of membership shall be as more fully set forth in Article 4 of the Declaration of Covenants.

2.1 Membership. Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot or Tract which is subject to the Declaration shall be a member of the Association, provided that any such person or entity who merely holds record ownership merely as security for the performance of an obligation shall not be a Member of the Association.

2.2 Voting Rights. The votes of the classes of Members of the Association shall be cast by their respective classes of Voting Members as follows:

Class A. Class A Members shall be all those owners, as defined in Section 2.1, with the exception of Builders and the Declarant (as to Declarant, as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify).

Class A Members located in a specific Neighborhood shall be entitled to elect from among themselves a five (5) person Neighborhood Committee in accordance with the Bylaws, which shall then elect one (1) Voting Member to have and cast one (1) vote in all Association matters for each Lot in the Neighborhood from which the Voting Member is elected. The first election and subsequent elections of such Voting Member shall be conducted at the times and in the manner provided in the Association's Bylaws.

In the event that there is a mandatory Membership Association for a Neighborhood (e.g., a Condominium Association) its Board of Directors shall serve as its Neighborhood Committee and its size, election procedures, terms of office and the like shall be governed by its own Articles of Incorporation and Bylaws rather than hereby.

Class B. The Class B Voting Member shall be the Declarant, or a representative thereof designated by it in a written notice to the Association, who shall have and cast one (1) vote in all Association matters, plus ten (10) votes for each vote which may be cast by the Class A and Class C Voting Members. Such Class B Voting Member may be removed and replaced by the Developer in its sole discretion. The Class B Membership shall cease and terminate (and convert to a Class A Membership) as and when provided in the Declaration.

Class C. Class C Members shall be all Builders, each of which shall have one (1) vote for each Lot owned thereby or which as been allocated to a Tract owned thereby, subject to increase for Lots (actual or allocated) acquired by the Builder and to decrease for those conveyed to Class A Members. Class C Members owning Lots in a Neighborhood in which there are also Class A Members shall participate in Neighborhood Committee elections in the same manner as such Class A Members.

In the event that Mortgagee or other party acquires title to a Lot or Tract through foreclosure or deed in lieu of foreclosure, such party shall have the class of membership last held by the owner of the Lot or Tract to which title was so acquired.

2.3 Meetings of Voting Members. The Bylaws of the Association shall provide for an Annual Meeting of Voting Members, and may make provisions for regular and special meetings of Voting Members other than the Annual Meeting. A quorum for the transaction of business at any meeting of the Voting Members shall exist if the Voting Members having the power to cast a majority of the votes of the Members shall be present at the meeting.

2.4 General Matters. When reference is made herein, or in the Declaration, Bylaws, Rules and Regulations, Management Contracts, or otherwise, to a majority or specific percentage of the Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of the Members eligible to be cast by their respective Voting Members present at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the Members themselves (or their Lots) or the individual Voting Members themselves.

2.5 Rights and Privileges of Members.

(A) Every Member shall have the right to:

- (1) Have his vote cast by his voting representative at the meetings of the members;
- (2) Serve on the Board if elected;
- (3) Serve on committees; and
- (4) Attend membership meetings.

Each member is encouraged to take an active interest in Association affairs.

(B) Every member in good standing shall have the privilege of using and enjoying the Common Areas in accordance with the type of membership held by the member, subject to the rules of the Association and the right of the Association to charge admission and other fees for the use of any facilities.

(C) A member is in good standing if he is current in the payment of all assessments and other financial obligations to the Association, and his membership is not suspended.

2.6 Delegation of Rights to use Common Areas.

(A) In accordance with Section 4.3 of the Declaration of Covenants, a member may delegate his privilege to use the Common Areas to:

- (1) A reasonable number of guests if accompanied by the member; or
- (2) Residential tenants who reside in the member's Living Unit

(B) In the case of residential tenants of the member's Living Unit, the delegating member must give prior written notice to the Association of such delegation. The written notification shall state the name, age, permanent address, intended length of time the delegation will be effective, and such other information about each residential tenant as the Board shall require.

(C) A member who has delegated his use privileges and is not in residence in Heritage Harbour may not use Common Areas during the period of the delegation, except as a guest of another member. A member may not be the guest of his tenant.

(D) Members shall be responsible for keeping the Association informed as to the identity and relationship of any persons who normally reside with the member and intend to utilize the Association Common Areas.

(E) The Board of Directors may limit the number of guests or the frequency or duration of any member's delegation of use rights, and may impose fees for the delegation of such rights of use of the facilities by renters or guests, which fees may be different from fees charged to members for their use.

(F) The delegation of membership is subject to the one (1) family limitation described in Section 4.3 of the Declaration of Covenants.

2.7 Suspension of Membership. As further provided in Section 10 of the Declaration, the Board may suspend a member's membership in the Association:

(A) For the period of time during which an assessment against the member remains unpaid more than thirty (30) days after the date it was due and payable; or

(B) For a reasonable period during or after any infraction of the Association's rules and regulations by a member or by any person to whom he has expressly or impliedly delegated his use privileges; or

(C) For misuse, abuse, or intentional destruction of Association property, real or personal.

Membership shall not be suspended until the member has been sent reasonable notice of the intended suspension and been offered a reasonable opportunity to be heard. Suspension of any member's membership temporarily revokes the member's rights and privileges to use and enjoy Common Areas and facilities and to participate in Association affairs. A suspension shall

in no way impair the enforceability of any assessment or lien therefor, or the authority of the Association to assess and collect any future assessment and lien, nor shall it impair the member's right of access to, and use of, his own property in a manner consistent with the Governing Documents. The right of the member to vote may not be suspended.

3. MEMBERS' MEETINGS.

3.1 Annual Meeting. The annual meeting shall be held in either Sarasota or Manatee County during either March or April of each year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members. The annual meeting is a general meeting, and unless the law or the Governing Documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called for by the President or by a majority of the Directors, and must be promptly called by the Board upon receipt of a written request signed by voting representatives of members entitled to cast at least ten percent (10%) of the members. Such requests shall be in writing and shall state the purpose or purposes of the meeting. Business at any special meeting shall be limited to the item specified in the request or contained in the notice of meeting.

3.3 Quorum. A quorum shall be attained at a members meeting by the presence in person of voting representatives for at least thirty percent (30%) of the total voting interests of each class of voting members.

3.4 Vote Required to Transact Business. The acts or resolution approved by at least a majority of the votes cast at a duly called meeting at which a quorum has been attained shall be the act of the Members, unless a higher vote is specifically required by law or by the Governing Documents.

3.5 Notice of Meetings. Written notice of meetings shall be mailed or hand-delivered to the individual designated by each Neighborhood Association to receive Association notices, and to the Declarant Member, if any. Thereafter, it shall be the responsibility of the Neighborhood Association to notify the owners of all Lots and Living Units. The notices must be mailed or delivered by the Association not less than fourteen (14) days prior to the date of the meeting.

3.6 Voting Representatives. Each Neighborhood Association shall appoint and designate in writing to the Secretary of the Association, at least annually by January 1st of each year, the name and address of one person who will serve as its Voting Representative for that year. That person will:

- (A) Receive Association notices;
- (B) Represent the Members of that particular Neighborhood Association or Committee at Association meetings;
- (C) Cast the votes for the Units within the Neighborhood; and
- (D) Keep the Secretary of the Association informed of changes in the ownership of Units as they occur, and the names and addresses of the new Members.

An Alternate Voting Representative may be designated to serve in the absence or disability of the Voting Representative. The Voting Representative and the Alternate Voting Representative (if any) serve at the pleasure of the entity which appointed them.

3.7 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of 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 Section 617.303(2), Florida Statutes (2000) as amended. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Section 617.0707, Florida Statutes (2000), as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

3.8 Order of Business. The order of business at Members' meetings shall be substantially as follows:

- (A) Determination that a quorum has been attained.
- (B) Reading or waiver of reading of minutes of last Members' meeting.
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (when appropriate)
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.9 Minutes. Minutes of all meetings of the members must be maintained in written form, or in another form that can be converted into written form within a reasonable time.

3.10 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration of Covenants, or with these Bylaws. The presiding officer may appoint a Parliamentarian, but the decision of the presiding officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11 Action by Members without a Meeting. Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken by mail without a meeting if written instruments expressing approval of the action proposed to be taken are signed and returned by Members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved at a meeting of the Members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration of Covenants, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to the approval or consent of the members only when such is expressly required.

4.1 Powers. The Board shall have the authority to:

- (A) Manage and control the affairs of the Association.
- (B) Appoint and remove at its 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 in these Bylaws shall be construed to prohibit the employment of any member, officer or Director of the Association in any capacity whatsoever.
- (C) Establish, levy assess, and collect any assessment or charge provided for in the Governing Documents.
- (D) Designate one or more financial institution(s) as depository for Association funds, and the officer(s) authorized to make withdrawals therefrom.

(E) With the prior consent of at least a majority of the voting interests, borrow money for Association purposes, and assign, pledge, mortgage or encumber any Community or Association Common Areas or future revenues of the Association as security therefor;

(F) Adopt, amend or revoke rules and regulations relating to the use of Common Areas, and such sanctions for noncompliance therewith, as it may deem necessary for the best interest of the Association and its Members. The Board may also establish and levy fees for the use of Common Areas or Association property;

(G) Cause the Association to employ sufficient personnel to adequately perform the responsibilities of the Association;

(H) Negotiate and enter into contracts for the maintenance and operation of the Common Areas;

(I) Make improvements to the Common Areas.

(J) Establish committees of the Association and appoint the members thereof. It may assign to such committees responsibilities and duties not inconsistent with the provisions of these Bylaws as it may deem appropriate;

(K) Acquire property, real or personal, and enter into agreements with any persons, including Declarant, relating to the orderly transfer of property from said person to the Association and such other matters as the Board may deem appropriate.

(L) Perform all other acts not inconsistent with law or the Governing Documents and necessary for the proper functioning of the Association.

4.2 Management by Directors. The property, business and affairs of the Association shall be managed and conducted by a Board of Directors of no fewer than three (3) nor more than fifteen (15) members, as determined per Section 4.3 below.

4.3 Election of Directors. Except as otherwise provided herein and for the first Board of Directors and their Declarant-appointed replacements, Directors shall be elected by the Voting Members of the Association at the Annual Meeting of the Association as provided by the Bylaws of the Association, and the Bylaws may provide for the method of voting in the election and for removal from office of Directors. Notwithstanding the foregoing, until such time as the Class B Membership in the Association terminates, the Class B Voting Member shall have the right to appoint each and every member of the Directors of the Association by written notice to such effect or by an announcement reflected in the minutes of the Annual Meeting of the Association, without the necessity of a vote.

At the Annual Meeting next following the date upon which ninety percent (90%) of the Lots to ultimately be located within The Lands have been conveyed to Class A Members, the Class A Members, voting through their Voting Members shall elect the entire Board of Directors, which shall be of such a number as is determined per Section 4.4, below, absent which determination the number of Directors shall remain at five (5).

As used herein, the "total number of lots to ultimately be located within The Lands" shall be established by written notice from Declarant to the Association and shall be based upon a reasonable projection of same made by Declarant subject to change from time to time. The Association shall be entitled to rely upon the last notice to such effect received from Declarant when the Association conducts an election as aforesaid. Further, once the Class A Members have elected a Director(s), no change in the number of Lots to ultimately be located within The lands shall decrease the number of Directors that the Class A Members are entitled to elect.

4.4 Voting Groups. Prior to the Annual Meeting next following the ninety percent (90%) threshold described above, the Board of Directors shall place the various Voting members in at least five (5) and no more than fifteen (15) "Voting Groups." Such Voting Groups shall include those Voting Members who represent Neighborhoods having similar characteristics, as determined by the Board, based upon types of Units/Lots (e.g., "estate" vs. "zero lot line" vs. "townhomes") and/or such other factors as the Board may deem relevant to establish a balanced representation of all Owners and Neighborhoods such that no identifiable groups have disproportionate representation.

The Voting Members in each Voting Group so established shall each then elect one (1) Director by a plurality of the votes of the Voting Members in that Voting Group.

Once established, Voting Groups may not be changed without the affirmative vote of two-thirds (2/3rds) of the votes cast by all Voting Members.

Except with respect to the election of Directors, Voting Members shall vote on an independent basis and not in their respective Voting Groups.

4.5 Vacancies. If a Director shall for any reason cease to be a Director, the remaining Directors shall elect a successor to fill the vacancy for the balance of the unexpired term, provided that a vacancy in a seat previously filled by a Declarant appointee or a person elected by Class A Voting Members shall be filled with a similarly situated person.

4.6 Term of Office. Directors designated by the Class B Voting Member shall serve until same are removed by the Class B Voting Member or until same become legally incapacitated from serving in such position. Directors elected by Class A Voting Members shall serve commencing upon their election and continuing until the next Annual Meeting of the Association (but they may succeed themselves) or until their successors are duly elected and have qualified.

4.7 Vacancies and Removal.

(A) Except as to vacancies resulting from removal of Directors by Voting Members (as addressed in subsection (B) below), vacancies in the Board of Directors occurring between Annual Meetings of Members shall be filled by the remaining Directors at any Board meeting, provided that (i) all vacancies in directorships to which Directors were appointed by the Class B Member shall be filled by the Class B Member without the necessity of any meeting and (ii) a vacancy in a directorship elected by Class A Voting Members shall be filled with a Class A Member.

(B) Any Director elected by the Voting Members (other than the Class B Member) may be removed by concurrence of a majority of the votes of the Class A Voting Members at a special meeting called for that purpose or by written agreement signed by the Voting Members entitled to cast a majority of the Class A votes. The vacancy in the Board of Directors so created shall be filled by the Voting Members at a special meeting called for such purpose, or by the Board of Directors if such meeting does not occur within five (5) days of the removal.

(C) If a vacancy on the Board of Directors results in the inability to obtain a quorum of Directors in accordance with these Bylaws, any Owner may apply to the Circuit Court within whose jurisdiction The Lands are located for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Owner shall mail to the Association a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these Bylaws. If, during such time, the Association fails to fill the vacancy(ies), the Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these Bylaws.

4.8 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next Annual Meeting and subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided. Notwithstanding the foregoing, any Director designated by the Class B Voting Member shall serve at the pleasure of the Class B Voting Member.

4.9 Organizational Meeting. An organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed by the new Directors at the meeting when they were elected.

4.10 Regular Meetings. After turnover of control, regular meetings of the Board shall be held at such time and place in Sarasota or Manatee County, Florida, as shall be determined from time to time by the Directors. A regular meeting of the Board of Directors is any meeting held according to a regular weekly, monthly or other periodic schedule adopted from time to time by the Board. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least ten (10) days before the day named for such meeting. At regular meetings any business of the Association may be transacted. If any Director elected by the Members shall be absent for any reason from three (3) consecutive regular meetings of the Board, the Board may, by vote of at least a majority of the whole Board taken at the next meeting, declare the office of said Director to be vacant, and may appoint a successor.

4.11 Special Meetings. Special meetings of the Board are all meetings other than the annual organizational meeting and regular meetings. Special meetings may be called by the President, the Secretary, or by a majority of the Directors. Not less than two (2) days notice of a special meeting shall be given to each Director, personally or by mail, facsimile, telephone or telegram, which notice shall state the time, place, and purposes of the meeting. Business conducted at a special meeting shall be limited to the items specified in the notice of the meeting.

4.12 Waiver of Notice by Directors. Any Director may waive notice of a Board meeting before or after the meeting, and such waiver shall be deemed equivalent to the receipt of notice. Attendance at a meeting by any Director constitutes waiver of notice, unless that Director objects to the lack of notice at the beginning of the meeting.

4.13 Board Meetings; Notice to Members. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers and conducts Association business. All meetings of the Board shall be open to all members, except as otherwise provided by law. Notice of all Board meetings shall be posted in a conspicuous place on the Association Common Areas at least forty-eight (48) hours in advance of a meeting, except in an emergency. 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 such assessments. Any owner may tape-record or videotape meetings of the Board and meetings of the members. The Board may adopt reasonable rules governing the taping of meetings of the Board and the membership.

4.14 Quorum of Directors. A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may not vote by proxy or secret ballots at Board meetings, except that secret ballots may be used in electing officers. Any Director has a right to participate in any meeting of the Board, or meeting of an executive or other committee, by means

of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person.

4.15 Vote Required. Except as otherwise required by law or the Governing Documents, the acts approved by a majority of the Directors present and voting at a duly called Board meeting at which a quorum exists shall constitute the acts of the Board of Directors.

4.16 Presumption of Assent. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote of each Director on each matter considered, including abstention because of an asserted conflict of interest, must be recorded in the minutes of the meeting.

4.17 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum exists, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.18 The Presiding Officer. The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

4.19 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors may not also be employees of the Association. Directors and officers may be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.20 Emergency Powers. In the event of an "emergency" as defined in Paragraph 4.18(G) below, the Board of Directors of the Association may exercise the emergency powers as described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes (2000), as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers of whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practical manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any officer, Director or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) The provisions of these emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section, an "emergency" exists only during a period of time that the Neighborhood, or the immediate geographic area in which the Neighborhood is located, is subjected to:

- (1) a state of emergency declared by law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) designation by federal or state government as a "disaster area;" or
- (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Neighborhood, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

4.21 Committee Meetings. The provisions of this Section 4 governing the calling and holding of Board meetings shall also apply to the meetings of all committees or other similar bodies specified in the Governing Documents, and to any committee or similar body appointed by the Board or any member thereof, or elected by the members, to which the Board has delegated its decision-making powers. The meetings of any committee, including 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 Association, must be conducted with the same formalities as required for meetings of the Board.

4.22 Neighborhood Committees. In addition to the Modifications Committee (if created) and any general committee of the Association, the Board of Directors shall create Neighborhood Committees which shall be composed and operated as follows:

(A) As soon as practicable after seventy-five percent (75%) of the Lots in a Neighborhood have been conveyed to Class A Members, the President or Secretary of the Association shall call a meeting of all Owners in the Neighborhood by giving at least fourteen (14) days written notice of such meeting.

(B) The President of the Association or his designee shall preside over the meeting of the Owners in the Neighborhood, which meeting shall be conducted. The quorum for the meeting shall be Owners representing at least thirty percent (30%) of the Lots in the Neighborhood, in person or by proxy.

(C) The Owners shall elect a five (5) person Neighborhood Committee by casting votes (in person or by proxy, which may be a general proxy) for up to five (5) candidates. The persons receiving the five (5) highest number of votes shall be declared elected as the Neighborhood Committee until the next annual meeting of the Neighborhood.

(D) Within five (5) days of its election, the Neighborhood Committee shall hold an organizational meeting at which it shall, at a minimum (i) elect a Chair; (ii) elect the Voting Member for the Neighborhood and (iii) establish a date for the Annual Meeting of the Neighborhood, which shall be no later than the month of October in each year. The Chair shall then advise, in writing, the Secretary of the Association of the results of the foregoing actions.

(E) At each subsequent Annual Meeting, which shall be conducted as aforesaid and at which the Chair of the Neighborhood Committee shall preside, a new election of the Neighborhood Committee shall be held per (B) and (C) above, and the Neighborhood Committee shall then proceed per (D) above. A Neighborhood Committee Member may be re-elected as many times as he/she receives the requisite number of votes.

(F) The Neighborhood Committee need not meet more than annually but may meet as often as it deems appropriate (and shall meet within a reasonable time after the Board of Directors requests that it do so for the purpose of responding to any questions put to it by the Board), but other than as provided in (D) above, the function of the Neighborhood Committee shall be advisory only.

(G) In the event of a vacancy on a Neighborhood Committee, the remaining members thereof shall select an Owner from the Neighborhood to serve until the next Annual Meeting of such Neighborhood.

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President, and one or more Vice-Presidents, who must be Directors of the Association, as well as a Treasurer and a Secretary, all of whom shall be elected annually by majority vote of the Board of Directors. Any officer may be removed, with or without cause, by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors shall, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

5.2 President. The President shall be the chief executive officer of the Association; he shall preside at all meetings of the Members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts or documents requiring the seal of the Association, except where such are permitted by law to be otherwise executed, and the power to execute is delegated by the Board of Directors to another officer or agent of the Association.

5.3 Vice-Presidents. The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.

5.4 Secretary. The Secretary shall attend the meetings of the Board and meetings of the members, and shall record all votes and the minutes of all proceedings in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if any has been designated.

5.5 Treasurer. The Treasurer shall have responsibility for the collection, safe-keeping, and disbursement of funds and securities of the Association, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors, and prepare the budget for the Association. He

shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

6. ARCHITECTURAL REVIEW COMMITTEE. The ARC provided for in Section 6 of the Declaration of Covenants shall be selected, and conduct its affairs as provided in this Section.

6.1 Members; Qualification. The Architectural Review Committee, hereinafter the "ARC," shall initially be composed of three (3) persons, all appointed by the Declarant, who may also be Directors of the Association. After the Declarant no longer has a right to appoint the ARC, the size of the ARC shall be increased to five (5) persons. Except for those appointed by the Declarant, and as otherwise provided in Section 6.5 below, no member of the ARC shall be a Director. Whenever possible and practical, one of the committee members should be an architect, general contractor, or other person with professional expertise in building, landscaping, or architectural design.

6.2 Selection; Terms. The members of the ARC shall be appointed by the President of the Association to serve terms of one year beginning on January 1 of each year. If a mid-term vacancy occurs for any reason, the President shall appoint a successor to fill the unexpired term. Members of the ARC, once appointed, may be removed only by vote of a majority of all the voting interests, and not by the officers or Directors.

6.3 Compensation. If approved by the Board of Directors, any or all members of the ARC may be compensated for their services.

6.4 Meetings. The ARC shall meet as necessary, and otherwise at the call of the Chairman as necessary, to carry out its duties and functions. The ARC shall meet with the same formalities and notice requirements as required for Board meetings, unless otherwise permitted by law. Written notice of meetings shall be provided to each Neighborhood Association at least one week in advance, and any Owner wishing to appear before the ARC may do so. Special meetings may be called as needed by the Chairman. Notwithstanding anything herein to the contrary, during Developer control, the Developer may appoint one (1) person who shall be empowered to serve on behalf of and act for the Architectural Review Committee.

6.5 Procedures, Voting. A majority of the members of the ARC present in person at any duly called meeting shall constitute a quorum. All questions shall be decided by a majority of the entire committee. Where a question involves proposed changes to a Lot or Living Unit owned by a member of the ARC, that member shall be disqualified from participation in the proceedings, and his place shall be taken by the then President of the Association. If a proposed change is not approved, the reasons for disapproval shall be stated in writing. Minutes of all meetings of the

ARC shall be kept in a business-like manner, and shall be available at reasonable times for inspection or photocopying by any owner. Copies of the plans and specifications for all approved changes and construction shall be kept for at least five years.

7. FISCAL MATTERS. The provisions for assessments and fiscal management of the Association set forth in the Declaration of Covenants shall be supplemented by the following provisions:

7.1 Depository. The Association shall maintain its accounts in federally insured accounts at financial institutions doing business in the State of Florida as may be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, provided they are federally insured, or backed by the full faith and credit of the United States.

7.2 Budget. The Board of Directors shall, at a November meeting each year, adopt a budget of general expenses for the next fiscal year. 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. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

7.3 Reserves. The Board may establish in the budgets one or more reserve accounts for contingencies, operating expenses, repairs, improvements, capital expenditures or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budgets each year. These funds may be spent only for purposes for which they were reserved, unless another use is approved by unanimous consent of the entire Board.

7.4 Fidelity Bonds. The Treasurer, and all other officers who are authorized to sign checks, and all Directors and employees of the Association handling or responsible for Association funds, shall be bonded in such amounts as determined by the Board of Directors. The premiums on such bonds shall be paid by the Association.

7.5 Accounts and Accounting Procedures. The financial and accounting records of the Association, must be 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 period 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.

(D) Any other records that identify, measure, record or communicate financial information.

7.6 Financial Reporting. The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The Association shall, within ten (10) business days after the report is prepared, provide each member with a copy of the report, or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either:

(A) Financial statements presented in conformity with generally accepted accounting principles; or

(B) A financial report of actual receipts and expenditures, cash basis, which report must show:

(1) The amount of receipts and expenditures by classification; and

(2) The beginning and ending cash balances of the Association.

7.7 Audits. A formal certified audit of the accounts of the Association, only if required by law, or by a majority of the voting interests, or by a majority of the Board of Directors, may be made by an independent certified public accountant, and a copy of the audit report may be available on request to each member.

7.8 Application of Payments and Commingling of Funds. All monies collected by the Association may be commingled, for investment purposes only, in a single fund, or divided into two or more funds, as determined by the Board of Directors. The books and records of the Association shall be kept in conformity to generally accepted accounting principles, and the audit and accounting guide for Common Interest Realty Associations of the American Institute of Certified Public Accountants. All payments on account by an Owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and annual or special assessments, in such manner and amounts as the Board of Directors may determine, or as may be required by law.

7.9 Fiscal Year. The fiscal year for the Association shall begin on the first day of January each year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States.

7.10 Payment of Assessments. The Association shall make annual assessments based on the adopted budgets shall be payable annually (due on January 1 of each year or such other date as the Board of Directors may determine). Assessments and Special Assessments as the term is used in this Section 7.10 and 7.11 are assessments levied by the Association and shall not be confused with assessments which are levied by any local government (county, municipality or CDD). Written notice of the annual assessment shall be sent to all owners at least thirty (30) days prior to the due date. Failure to send or receive such notice shall not, however, excuse the obligation to pay. By resolution, the Board may establish the place for payment, the method of payment, and a late payment fee.

7.11 Special Assessments. Special assessments may be imposed by the Association's Board of Directors whenever necessary to meet unbudgeted, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration of Covenants or these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the Members in a manner consistent with law. The total of all special assessments payable by the Members generally shall not exceed \$200 per Lot or Living Unit in any fiscal year unless approved in advance by a majority of the voting interests.

7.12 Proof of Payment. Within fifteen (15) days after receipt of request from the Owner, mortgagee, or purchaser of a Lot or Living Unit, the Association shall furnish a written statement certifying that all assessments then due from any Lot or Living Unit have been paid, or indicating the amounts then due. Anyone other than the Owner who relies upon such statement shall be protected thereby.

7.13 Suspension. The Association shall not be required to transfer Memberships on its books or to allow the exercise of any rights or privileges of Membership on account thereof to any owner, or to any persons claiming under an owner, unless and until all assessments and charges to which said owner and his Lot or Living Unit is subject have been paid in full.

8. TURNOVER OF CONTROL OF ASSOCIATION.

8.1 Time of Turnover. Turnover of control of the Association occurs when the Class A and Class C members are first entitled to elect a majority of the Directors of the Association. Class A and Class C members shall be entitled to assume control of the Association by electing the entire Board of Directors not later than ninety (90) days after the conveyance of title, to owners other

than Developer, of at least ninety percent (90%) of the Lots within the Lands. At that time the Directors appointed by the Developer shall resign. The election shall occur at a meeting of the members (the Turnover Meeting).

8.2 Procedure for Calling Turnover Meeting. No less than sixty (60) days prior to the Turnover Meeting, the Association shall notify in writing all Neighborhood Associations of the date of the Turnover Meeting. It shall be the responsibility of the Neighborhood Associations to notify their Members. At the Turnover Meeting the Directors elected by the Members as further provided in Section 4.4 above, and all but one of the Directors previously appointed by the Declarant shall resign.

8.3 Early Turnover. The Declarant may turn over control of the Association to the Members prior to the time for turnover set forth above, by causing all but one of its appointed Directors to resign, whereupon it shall be the affirmative obligation of the Class A and Class C Members to elect the other Directors and assume control of the Association. If at least sixty (60) days notice of Declarant's decision to cause its appointees to resign is given as described in Section 8.2 above, neither the Declarant, nor such appointees shall be liable in any manner in connection with such resignations if the Members refuse or fail to assume control.

8.4 Developer Representative. The Developer is entitled to appoint 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 five percent (5%) of the Lots or units in the Community. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

8.5 Turnover - "As Is". When owners other than Developer assume control of the Association by electing the majority members on the Board of Directors, the Association will accept turnover of the common areas and facilities in their "as is" condition, without recourse. The Declarant, and any Developer, makes no representations, to the fullest extent permitted by law, and disclaims all warranties, expressed or implied, in law or in fact, with respect thereto, including without limitation representations or warranties or merchantability or fitness for any particular purpose, in representations or warranties regarding the construction, design, adequacy of size or capacity in relation to the utilization, date of completion, future economic performance, or operations of, or the materials, furniture, or equipment which have been used in the common areas and facilities at the time of turnover, the Association accepts the conditions of all common areas and common area facilities from the Declarant, and any Developer, without recourse against the Declarant or any Developer herein.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these Bylaws may be proposed either by a resolution approved by a majority of the whole Board of Directors, or by a petition to the Board signed by the voting representatives of at least twenty-five percent (25%) of the voting interests of the Association. Once so proposed, the amendments shall be submitted to a vote of the Members at a meeting no later than the next annual meeting for which notice can still properly be given.

9.2 Vote Required. Except as otherwise provided by law, or by specific provision of the Governing Documents, these Bylaws may be amended by concurrence of at least two-thirds (2/3) of the voting interests present and voting at any annual or special meeting, provided that the text of any proposed amendment has been given to the Members with notice of the meeting.

9.3 Amendment by Board. As long as Declarant Membership exists, the Board of Directors, by majority vote, may unilaterally amend these Bylaws in any manner which it deems advisable, including but not limited to amendments to correct errors or conform the Bylaws to any applicable statute or local ordinance. Such amendments shall not require consent of the Members.

9.4 Certificate; Recording. A copy of each approved amendment shall be attached to a certificate reciting that the amendment was duly adopted, which certificate shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of the County. The certificate must identify the book and page of the Public Records where the Declaration of Covenants was originally recorded.

10. MISCELLANEOUS.

10.1. Gender Number. Whenever the masculine or singular form of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

10.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

10.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Covenants or the Articles of Incorporation of the Association, the provisions of the Declaration of Covenants or Articles of Incorporation shall prevail over the provisions of these Bylaws.

BK 1753 PG 6624 FILED AND RECORDED 6/21/2002 10:38:59 AM 105 of 105
R.B. SHORE CLERK OF CIRCUIT COURT MANATEE COUNTY FL.

The foregoing constitute the first Bylaws of Heritage Harbour Master Association, Inc., and were duly adopted at the first meeting of the Board of Directors held on _____, 2001.

Date: _____, 2001.

Attest: _____

(CORPORATE SEAL)

F:\WPDATA\CJS\USHOME\HERITAGE.HAR\BYLAWS.C10
Clean Set Draft #10 8/1/01