

**DECLARATION
OF RESTRICTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS
FOR HERITAGE HEIGHTS**

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**DECLARATION
OF RESTRICTIVE COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS FOR
HERITAGE HEIGHTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR HERITAGE HEIGHTS is made this 20th day of may, 2020, by Habitat Harlem Heights, LLC, a Florida Limited Liability Company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property located in Lee County, Florida, and described on Exhibit "A" attached hereto;

WHEREAS, Declarant desires to ensure that a general plan of development is adhered to and to establish certain continuing relationships in the form of mutual rights and obligations among Declarant and the persons who acquire ownership of Homes (hereafter defined) developed in Heritage Heights, and their respective successors, with respect to use, enjoyment, and maintenance of certain Common Area (hereafter described) and to protect, preserve, and enhance the value of Heritage Heights and the Homes constructed in it. Declarant has determined that this Declaration, establishing certain easements, servitudes, restrictions, and conditions in the form of covenants running with the land, shall be binding upon, enforceable against and inure to the benefit of all such present and future owners of property developed within Heritage Heights and shall run with the land hereby and hereafter subjected to it in accordance with the terms of this Declaration and the Resolution of the Board of County Commissioners of Lee County, Florida Resolution No. Z-18-004; and

WHEREAS, Heritage Heights is located next to a reclaimed Lee County landfill that was closed, tested and monitored in accordance with applicable regulations; and

WHEREAS, Declarant desires to hereby subject the Property to the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that all the Property described in Exhibit "A", and any additional land as may by subsequent amendment to this Declaration be added to and subjected to this Declaration, shall be held, sold, conveyed, encumbered, used, and occupied subject to the terms and conditions of this Declaration as covenants running with the land enforceable as aforesaid.

ARTICLE I - DEFINITIONS

The following terms when used in this Declaration shall have the following meanings:

- a. "Articles" means the Articles of Incorporation of the Association.
- b. "Assessment" or "Assessments" mean and refers to a charge against Owners in accordance with this Declaration, and includes without limitation annual assessments, special assessments, special assessments against one or more Owners and the Attached Home Reserve Assessments. Except for Attached Home Reserve Assessments and landscape maintenance, each Owner of an Improved Lot or Combined Lot shall be liable for the Common Area and expenses of the Association as defined in this Declaration on an equal basis.
- c. "Association" means and refers to Heritage Heights Property Owners Association, Inc., a Florida not-for-profit corporation, its successors and assigns.
- d. "Attached Home" means a home that shares infrastructure supporting one or more homes, a party wall, or roof with another home.
- e. "Attached Home Reserve Assessment" means that assessment described in Article V Section 5.
- f. "Board" means the Board of Directors of the Association.
- g. "Bylaws" means the Bylaws of the Association.
- h. "Common Area" means all real property now or hereafter owned by the Association for the common use and enjoyment of the Owners including, without limitation or obligation, ingress/egress easements, roads and streets, all open spaces, stormwater management and drainage areas, buffer areas, and utility easements including those for sewer and water.
- i. "Declarant" means Habitat Harlem Heights, LLC
- j. "Declaration" means this Amended and Restated Declaration of Restrictive Covenants, Conditions, Restrictions and Easements for Heritage Heights.
- k. "Deed" means the document conveying legal title of a Lot (to include improvements) to an Owner and such Deed shall specifically refer to the recording information attendant to this Declaration.
- l. "Home" or "Residence" means a multi-family or detached single family residences intended for residential use constructed on a Lot.
- m. "Lot" means and refers to each of the areas identified as such on the parcel of land lying being all of the East one-half (E1/2) of the Southeast Quarter (SE

1/4) of the Southwest Quarter (SW 1/4) of Section 32, Township 45 South, Range 24 East and a portion of those lands described in Official Record Book 2212 at page 3525, Public Records of Lee County, Florida and further described in Exhibit "A" herein. Use of the term the Lot means the improved Lot.

- n. "Improved Lot" means a Lot with a residence constructed upon it that has received its Certificate of Occupancy and that has been conveyed to a third party purchaser.
- o. "Members" means and refers to those persons who are entitled to membership in the Association as provided herein.
- p. "Mortgagee" means and refers to Habitat for Humanity of Lee and Hendry Counties, Inc., a commercial or savings bank, savings and loan association, mortgage company, life insurance company, pension fund, business trust or governmental agency or corporation, including, but not limited to, a real estate investment trust, or any assignee of a loan made by any such lender, or any private or governmental agency, corporation or institution which has insured or acquired the loan of the lender or any combination of the foregoing entities.
- q. "Owner" means and refers to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Improved Lot within any portion of the Property, but shall not mean or refer to any holder of a mortgage encumbering a Lot unless and until such holder has acquired title thereto pursuant to foreclosure or any proceedings or conveyance in lieu of foreclosure.
- r. "Property" or "Properties" shall mean and refer to the land legally described on Exhibit "A" attached hereto.
- s. "Resolution Z-18-004" means that certain Resolution of the County Commissioners of Lee County, Florida adopted on May 2, 2018, as amended, if any.
- t. "Stormwater Management System" means that portion of the property consisting of swales, inlets, culverts, lakes, outfalls, storm drains, and the like, and all connecting pipes and easements, used in connection with the retention, drainage, and control of storm and surface water.
- u. "Turnover" means the point at which the Owners are entitled to elect a majority of the Board of Directors of the Association.

ARTICLE II - ASSOCIATION/COMMON AREA PROPERTY

SECTION 1. The Common Area shall include that property indicated in Paragraph (g), Article I and those easements as described in Article XII, and such other easements which shall hereafter be conveyed to the Association by Declarant and any such other parties as may have an

ownership interest in any property which shall hereafter become subject to this Declaration by amendment.

SECTION 2. The Common Area shall further include the Stormwater Management System and fixed improvements such as weirs, culverts and any other fixed improvements as constructed by the Association or conveyed to the Association by Declarants and other parties, all conservation and buffer areas as required by Resolution Z-18-004.

SECTION 3. The Common Area Property shall include such personal property as may hereafter be conveyed to or purchased by the Association for Association use.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

SECTION 1: Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association, and shall be governed and controlled by the Articles of Incorporation and the Bylaws thereof. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

SECTION 2: Initial Control. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) Directors, all of whom shall be appointed by the Declarant.

After the Declarant relinquishes control (the "Turnover"), the Board shall consist of five (5) Directors to be elected in accordance with the Bylaws.

SECTION 3: Turnover. Members other than the Developer are entitled to elect at least a majority of the Members of the Board of Directors of the Association when the earlier of the following events occurs:

- (a) Three months after ninety (90%) percent of the lots in subdivision which will ultimately be operated by the Association have been conveyed to Members; or
- (b) The date which the Declarant voluntarily transfers majority of control of the Board as provided in the Bylaws.
- (c) Notwithstanding anything to the contrary contained in this Section 3, the Developer is entitled to elect at least one member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5% of the Lots in the Subdivision.
- (d) Members other than the Developer are entitled to elect at least one member of the Board of Directors after 50 percent of the Lots have been conveyed to Members.
- (e) So long as the Developer owns five percent of the available Lots, the Developer is entitled to retain one seat on the Board of Directors.

SECTION 4: Voting. The Association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be all Lot Owners. Lot Owners shall be entitled to one vote for each Lot owned. Class A members shall be entitled to vote only after relinquishment of control by Declarant as provided in Section 3 above. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such members may determine among themselves, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. Class B shall be the sole Class entitled to vote until Declarant relinquishes control as provided in Section 3 above. Upon relinquishment of control by the Declarant, the Class B membership shall cease.

ARTICLE IV - PROPERTY RIGHTS

SECTION 1: Owner's Easement of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights:

- a. The right of the Association to establish rules and regulations regarding the use of the Common Areas.
- b. The right of the Association to suspend the voting rights of any Owner for: (i) any period during which any monetary obligation owed to the Association remains unpaid for more than ninety (90) days after notice, and (ii) for a period not exceeding ninety (90) days for each single violation of any rules and regulations of the Association.
- c. The right of the Association (or Declarant prior to Turnover) to dedicate or transfer all or any part of the Common Areas to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3rds) of the Members agreeing to such dedication, or transfer, has been duly recorded.
- d. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof to mortgage said property; the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.
- e. The right of the Declarant, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area contained within the respective Properties to any public agency, authority, or utility for such purposes as benefits only the Properties or portions thereof and Owners of Lots contained therein.

SECTION 2: Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

ARTICLE V - ASSESSMENTS

SECTION 1: Creation of Lien and Personal Obligation for Assessments. Subject to the provisions of this Declaration, the Declarant hereby covenants, and each Owner of a Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association the following:

- a. Annual Assessments for common expenses;
- b. Special Assessments for capital improvements and other assessments, Annual or Special Lot Assessments or Charges.
- c. Attached Home Reserve Assessments assessed against an Attached Home.

The Association is responsible for assessing and collecting fees for the operation, maintenance, and if necessary, replacement of the Stormwater Management System, as well as any wetland mitigation, maintenance, and monitoring required by the South Florida Water Management District's Environmental Resource Permit for the Association's Stormwater Management System.

Such assessments to be established and collected as herein provided, but Lots owned by Declarant shall be exempt therefrom. All such assessments, together with interest thereon and costs of collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, when delinquent, shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment fell due.

SECTION 2: Annual Assessments.

- a. Purpose of Assessment. The Annual Assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and, in particular, for the maintenance, operation, and replacement of the Common Properties, for maintenance, operation, and replacement of any portions of each Lot for which the Association is responsible for maintenance and care, and the payment of Common Expenses.
- b. Basis for Assessment.
 - (i) Owner Parcels. Except as provided otherwise, each Lot which has been conveyed to an Owner shall be assessed in accordance with the terms of this Declaration. For the purpose of all assessments, the term "Owner" shall exclude the Declarant.

- (ii) Lots owned by Declarant. The Declarant is not funding the deficit, but rather is paying assessments on each of the Lots owned by the Declarant.
- c. Method of Assessment. By a vote of a majority of the Board of Directors of the Association, said Board shall fix the annual and Attached Home Reserve Assessments upon the basis provided above, provided however, that all such assessments shall be sufficient to meet the obligations imposed by this Declaration. The Board may set the date or dates such assessments shall become due. The Board may provide for collection of assessments on a quarterly basis, provided however, that upon default in the payment of any one (1) or more installments, the entire balance of said assessments for the year may be accelerated at the option of the Board and be declared due and payable in full.

SECTION 3: Special Assessments. In addition to the annual and Attached Home assessments authorized above, the Association through its Board of Directors may levy in any assessment year a special assessment applicable to the year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements upon the Common Properties, or which serve all Lots whether or not located on the Common Properties, including fixtures and personal property related thereto. In addition, the Association through the Board of Directors may levy a special assessment in the same manner as hereinabove described for the purpose of defraying, in whole or in part, the cost of any unusual or emergency matters that affect the Members of the Association.

SECTION 4: Special Improved Lot Assessments. In addition to the assessments authorized above, the Association through its Board of Directors may levy in any assessment year a special assessment against a particular Improved Lot for the purpose of defraying, in whole or in part, the cost of any repair or replacement of a capital improvement upon such Improved Lot, including fixtures and personal property related thereto.

SECTION 5: Attached Home Reserve Assessment/ Insurance Assessment.

- A. In addition to any other assessments that may be levied against Improved Lot Owners, Attached Home Lot Owners shall be assessed an additional amount in addition to the annual assessments for common expenses for the specific purpose of establishing two reserve accounts: 1) periodic exterior painting of the Attached Homes; 2) repair or replacement of shared infrastructure serving more than one Home; and 3) roof maintenance, repair and replacement. This Attached Home Reserve Assessment shall be determined annually and shall be paid on a quarterly basis along with the Annual Assessment.
- B. In addition to any other assessments that may be levied against Improved Lot Owners, Attached Home Lot Owners shall be assessed an additional amount to cover the cost of casualty insurance to protect the exterior of the Attached Homes and flood insurance. Each Attached Home Owner is responsible for purchasing his or her own insurance to cover the interior of the Attached Home Owner's home and any contents contained therein.

SECTION 6: Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence with respect to the assessable Lots on the day of conveyance of the first Lot to an Owner who is not the Declarant. The initial assessment for any fractional month on any assessable Lot shall be collected at the time of closing when title to said Lot is conveyed to the Owner.

SECTION 7: Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date will bear interest from the due date at a percentage rate equal to eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot, and interest, costs, and reasonable attorney's fees of any such action will be added to the amount of such assessment and lien. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association. The Association, acting on behalf of the Owners, shall have the power to bid for an interest foreclosed at such foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non use of the Common Properties or abandonment of his Lot.

SECTION 8: Annual Budget. By a majority vote of the Board of Directors of the Association, the Board shall adopt an annual budget for the subsequent fiscal year, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. Each Lot subject to assessments will be liable for a share of the total Common Expenses based upon the square footage of each Lot Owner's Lot which means that the percentage paid by the Lot Owners with single family homes will be different than the percentage paid by the Lot Owners with an Attached Home. In addition to the annual assessments, each Attached Home Lot Owner shall be responsible for the Attached Home Reserve Assessment. Additionally, each Lot Owner shall also be responsible for its share of the annual landscaping budget as determined by the Board of Directors on an annual basis. Each annual budget shall include line items for reserve accounts for capital expenditures and deferred maintenance.

SECTION 9: Certificate of Payment. The Treasurer or any other officer of the Association, upon demand of any Owner liable for an assessment, shall furnish to said Owner a certificate in writing signed by the President or Vice-President, setting forth whether such assessment has been paid. Such certificate, when co-signed by the Secretary of the Association, shall be conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 10: Real Estate Taxes. In the event the Common Area is taxed separately from Lots, the Association shall include such taxes as part of the Annual Assessments. In the event the Common Area is taxed as a component of the value of the Lot owned by each Owner, it shall be the obligation of each Owner to promptly pay such taxes prior to their becoming a lien on the Lot.

SECTION 11: Special Assessments for Negligent Actions. The Association may, subject to the provisions of Section 4 of this Article, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests, or agents or due to actions taken by the Association to correct a violation by said Owners, their guests, or agents, of the terms and conditions of this Declaration.

SECTION 12: Dissemination of the Budget to Members. The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause a copy of each such statement to be distributed to each Member, and to each First Mortgagee which has filed a written request for copies of the same with the Board of Directors, in the manner provided by the Bylaws of the Association. At least fourteen (14) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the membership the approved itemized budget of the expenses to be incurred by the Association during such year in performing its functions under this Declaration, which may include reasonable provisions for contingencies and deposits into a reserve fund for maintenance of the Common Area.

SECTION 13: Exempt Property. Common Expenses and assessments, special assessments for capital improvements, other special assessments, and annual or special Lot assessments or charges, shall only be assessed against Lots which are subject to assessment under the provisions hereof. All other portions of Heritage Heights, including without limitation Lots owned by the Declarant, are exempt from such assessments.

SECTION 14: Claim of Lien. If any assessment is not paid within thirty (30) days following the due date, the Association may institute collection proceedings in accordance with Section 720.3085, Florida Statutes, which includes the right to record a claim of lien. The Claim of Lien shall include a description of the property encumbered, the Owner's name, the amount then due, and the date when due, and shall be signed and acknowledged by an officer or authorized agent of the Association. The Lien shall continue until fully paid or otherwise satisfied.

SECTION 15: Foreclosure Sale. The assessment lien set forth herein may be foreclosed upon in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Lot at a foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

SECTION 16: Cumulative Remedies. The assessment liens and the right to foreclose and sale hereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit against an Owner to recover a money judgment for unpaid assessments, as above provided.

SECTION 17: Subordination of the Lien to Mortgage. The lien securing the assessments provided for herein shall be subordinate to the lien of any Mortgage held by a Mortgagee made in good faith and for value and recorded prior to the date the Claim of Lien is recorded. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or conveyance by deed in lieu thereof to a Mortgage, shall extinguish the lien of such assessment as to installments which became due prior

to such sale or transfer, except to the extent a Claim of Lien therefore was filed prior to the recording of such mortgage.

ARTICLE VI - MAINTENANCE AND REPAIR OBLIGATIONS

Responsibility for maintenance, repairs, and replacement of the improvements within the Property and upon the Lots of Owners shall be as follows:

SECTION 1: Obligation of Association. The Association shall be responsible for, and shall assess against and collect from the Owners of all Improved Lots within the Property (except Lots owned by Declarant which are exempt), the costs of maintaining, repairing, replacing, and keeping in a clean and orderly condition: (i) all of the Common Area, including the Stormwater Management System and all roads; (ii) utility and lake maintenance easements located on Lots; (iii) the landscaped and/or sodded areas within the Common Area and within any Lot; (iv) all sidewalks, irrigation wells, Attached Home roof replacement, maintenance and repair and painting of the Attached Homes and subdivision lighting. The Association may, but is not obligated to, maintain, repair, and replace: (i) fences on Common Area property, to the extent any are later installed by the Declarant; (ii) open, green space located on Common Area Property and any improvements thereon, to the extent any are later installed by the Declarant; (iii) recreational amenities on Common Area property, to the extent any are later installed by the Declarant; and (iv) a cluster mailbox to serve the community located on Common Area property, to the extent one is later installed by the Declarant.

SECTION 2: Obligation of Owners. Except for those obligations specifically allocated to of the Association above, each Home, and the fixtures, equipment, and appliances comprising a part thereof, located therein, or exclusively serving the same, including, but not limited to, screens, screen doors, glass windows, window caulking, driveways, fences that are exclusively located on individual Lots, all mechanical and electrical systems, heating and air conditioning systems, air-conditioning units, mailboxes exclusively serving individual Homes, and porches serving individual Homes, shall be maintained, kept in good repair, and replaced by and at the expense of the respective Owners thereof. All maintenance, repairs, or replacements for which Owners are responsible and obligated to perform, which, if not performed or omitted, would affect other Homes or the appearance of the Owner's Home, shall be performed promptly as the need arises, and if the Owner fails to promptly perform these, the Association shall have the right to perform these obligations and to assess the Owner for the charges therefor which charges shall include administrative and financial expenses related to the Association's performance and enforcement of such obligations and such assessments, as well as any penalty which the Association may impose. The cost of any such work performed by the Association shall be secured by a lien upon the Lot on which the work was performed.

No Owner shall be permitted to add or alter landscaping without the consent of the Association. No Owner shall be permitted to paint any portion of the exterior of any individual Home, or repair or replace a roof or any portions thereof without the consent of the Association. Any painting or repainting necessitated by the act of any Owner which the Owner refuses to correct after reasonable written notice from the Association may be performed by the Association at the expense of such Owner.

ARTICLE VII - ARCHITECTURAL CONTROL

SECTION 1: The Architectural Review Board. An Architectural Review Board shall be appointed by the Board of Directors of the Association, and the members of the Architectural Review Board shall serve as such for a period of time to be determined by the Board of Directors or until such time as any member of such Architectural Review Board shall resign there from or fail or refuse to serve thereon. Should the Board of Directors fail to appoint an Architectural Review Board, the Board of Directors shall be the Architectural Review Board.

SECTION 2: Purpose. The Architectural Review Board shall regulate the external design, construction materials, appearance, use, location, and maintenance of the Property and any improvements thereon in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

SECTION 3: Conditions. No improvements, alterations, repairs, painting of the exterior of any Home or improvements, regardless of whether such painting involves the change of paint colors, excavation, changes in grade, or other work, structure, or improvement which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner, shall be made, erected, or done by the Owner without the prior written approval of the Architectural Review Board. The Architectural Review Board shall maintain and periodically provide to Owners approved paint colors and roof colors as well as brand names of existing paint and roof material. No building, fence, wall, landscaping, planting, swimming pool, garage, residence, or other structure or improvement of any kind shall be commenced, erected, maintained, or improved, altered, made, or done by the Owner without the prior written approval of the Architectural Review Board.

SECTION 4: Procedures. In the event the Architectural Review Board fails to approve, modify, or disapprove in writing an application within ninety (90) days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted, but notwithstanding, all other conditions and restrictions herein contained or contained in the Bylaws or Resolutions of the Association or other declarations or restrictions applicable to the Property shall remain in full force and effect.

ARTICLE VIII - USE RESTRICTIONS

SECTION 1: Use Restrictions. In order to maintain the Property as a desirable place to live for all Owners, the initial Use Restrictions as set forth on Exhibit "D" are made a part of this Declaration. The initial Use Restrictions may be amended, supplemented or repealed by a majority of the Board from time to time.

SECTION 2: Enforcement.

- a. **Compliance.** It shall be the responsibility of each Owner, family members of Owners, and their authorized guests, agents, and tenants, to conform and abide by these Use Restrictions in regard to the use of the Property, as well as those additional Rules and Regulations which may be adopted in writing from time to time by the Board of Directors of the Association and the Architectural Review

Board, and to see that all persons using Owner's Home by, through, and under him do likewise.

- b. **Violation.** Upon violation of any of the Restrictions, adopted as herein provided, or upon violations of any of the provisions of this Declaration by an Owner, or his family, tenants, agents, or guests, the Association, or any Owner, may bring an action for breach of contract, quantum meruit, declaratory decree, injunction, or any other applicable cause of action. The successful party may recover costs and attorney's fees in such suit. The Association shall also have the right to enter upon any Lot and correct any violation of the Restrictions and to assess the Owner for any charges incurred by the Association. In addition, the Association, after providing written notice and an opportunity for a hearing before the Board, may impose a reasonable fine against an offending Owner for a Rule violation, and may enforce said fine by lien and foreclosure in the same manner as for unpaid assessments as set forth herein. The Association may, in addition, after reasonable notice and opportunity for hearing, suspend an offending Owner's voting rights in the Association or may suspend an offending Owner's right to use the Common Properties for up to ninety (90) days for a single infraction of Association Rules and Regulations.

SECTION 3: Additional Rules and Regulations. The Declarant, until it conveys the Common Properties, and thereafter (or earlier at the option of the Declarant exercised on one or more occasions) the Board of Directors of the Association, may establish such additional Use Restrictions as may be deemed to be in the best interests of the Association and its Members.

ARTICLE IX - PARTY ROOFS, WALLS, AND EXTERIOR PAINTING - ATTACHED HOMES

SECTION 1: Party Walls, Shared Infrastructure, and Roofs/General Rules. Shared infrastructure and each roof serving an Attached Home shall constitute a party roof and party wall respectively, and, to the extent not inconsistent with the provisions of this Declaration (specifically the repair obligations provided in Article VI), the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

SECTION 2: Cost of Maintenance. The cost of reasonable repair and maintenance of the structural components of the party roof and party wall shall be shared equally by the Owners who make use of the common roof and wall. The Association shall be responsible for establishing a reserve account to cover the cost of maintenance, repair and replacement of the party roofs serving the Attached Homes and the cost shall be borne equally by Lot Owners of the Attached Homes.

SECTION 3: Damage or Destruction. In the event of damage or destruction of the structural component of the party roof or party wall from any cause whatsoever, other than the negligence or willful misconduct of an Owner, the Owners shall, at their joint expense, repair and rebuild the structural component of the party roof or party wall and each Owner shall have

the right to full use as herein contained of said party roof and party wall repaired or rebuilt. Whenever any such roof or wall, or any part thereof, shall be rebuilt, it shall be erected in the same manner and at the same location where it shall initially be constructed, and shall be of the same size and of the same or similar materials and of like quality. Provided, that if such maintenance, repair or reconstruction is brought about solely by the neglect or the willful misconduct of one Owner, any expense incidental thereto shall be borne solely by such wrongdoer. If an Owner shall refuse to pay his share of all or part of such cost in the case of negligence or willful misconduct, any other Owner may have such roof or wall repaired or reconstructed and shall be entitled to a lien upon the Lot of the Owner so failing to pay for the amount of such Owner's share of the repair or replacement. If an Owner shall give or have given, a mortgage or mortgages upon his Residence, then the Mortgagee shall have the full right, at its option, to exercise the right of its mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage, any amounts paid by the Mortgagee for repairs hereunder and not reimbursed to said mortgagee by the Owner. In the event repairs or reconstruction shall be necessary, all necessary entries on a Lot and Residence shall not be deemed a trespass so long as the repairs and reconstructions shall be done in a reasonable manner, and consent is hereby given by each Owner to enter on their Lot and Residence, where necessary to effect necessary repairs and reconstruction.

SECTION 4: No Right of Modification/Alteration. The Owner of any Residence sharing a party roof or wall with the adjoining Residence shall not have the right to cut windows or other openings in the party wall, nor make any alterations, additions or structural changes in the party roof or wall.

SECTION 5: Owner's Right of Use. The Owner of any such Residence shall have the right to the full use of said party roof and wall for whatever purposes he chooses to employ subject to the limitation that such use shall not infringe on the rights of the Owner of an adjoining Residence or his enjoyment of said roof or wall or in any manner impair the value of said wall.

SECTION 6: Perpetual Use of Party Roof and Wall. Each party roof and wall to be constructed on a Lot is to be and remain a party roof and wall for the perpetual use and benefit of the respective Owners thereof, their heirs, assigns, successors and grantees, said Lots being conveyed subject to this condition, and this condition shall be constructed to be a covenant running with the land.

SECTION 7: Owner's Negligent Use of. Notwithstanding any other provision of this instrument, any Owner who by his negligent or willful act causes the party roof or wall to be damaged or exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 8: Right of Contribution From Other Owner's as to Repair. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 9: Attached Homes Exterior Painting. The Association shall be responsible for establishing a painting reserve to cover the costs of repainting the Attached Homes and the cost thereof shall be borne by the Owners of the Attached Homes.

ARTICLE X - INSURANCE

SECTION 1: Insurance. The Board of Directors of the Association shall have the right by majority vote to elect to assess Members and to purchase and continue in effect hazards and liability insurance as may be available in such amount as the Board in its sole discretion may determine to protect against loss by insurable hazards for the fixed improvements and other property of the Association. In addition, the Board shall assess the Members and purchase such Directors and Officers insurance in such amounts as the Board may determine from time to time. Such insurance if authorized shall be purchased by the Association for the benefit of the Association.

SECTION 2: Destruction of or Damage to Property. In the event of any damage to or destruction to any improvements or any part thereof owned by the Association pursuant to this Declaration, such improvements shall be promptly repaired and restored by the Association using the proceeds of any insurance purchased by the Association, if any. If there is no insurance, or the proceeds of such insurance are inadequate to cover the cost of such repair or restoration, Owners shall be assessed on an equitable basis according to the provisions for special assessment for the expense of such repair and restoration.

SECTION 3: Insurance Maintained by Owners. Each Owner of a single family home shall be responsible for the procurement of property insurance (flood and casualty) insuring the exterior of the owner's home and its contents and such policy shall include liability insurance in the amount required by the Association in respect to his Lot and Home. The Association shall use its best efforts to procure and maintain casualty and flood insurance to protect the exterior of the Attached Homes. The cost of such insurance will be borne by the owners of the Attached Homes and shared equally between them. The Attached Home Owners proportionate share of the insurance cost constitutes an assessment. In addition, each Owner shall obtain insurance coverage for personal property located within his Home or on his Lot including, but not limited to, floor coverings, wall coverings, air-conditioning compressor, ceiling coverings, electrical fixtures, and systems, mechanical fixtures and systems, appliances, air-conditioning and heating equipment, water heater, furnishings, cabinetry, and all other personal property located within the interior of his or her Home.

ARTICLE XI - MORTGAGEE PROTECTION CLAUSE

The following provisions are for the benefit of First Mortgagees and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control:

- a. Each holder of a First Mortgage encumbering any Lot, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or Bylaws of the Association,

which default is not cured within thirty (30) days after the Association learns of such default.

- b. Any holder of a First Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage or by deed in lieu of foreclosure, shall take title to such Lot free and clear of any claims of unpaid assessments or charges due to the Association against such Lot which accrued prior to the acquisition of title to such Lot by the Mortgagee, except to the extent a Claim of Lien therefore was filed prior to recording of said Mortgage.
- c. Unless at least seventy-five percent (75%) of First Mortgagees (based upon one (1) vote for each Mortgage owned), and seventy-five percent (75%) of the Owners (other than Declarant, whose approval must in all events be obtained) have given their prior written approval, neither the Association nor the Owners shall:
 - (i) By act or omission seek to sell or transfer the Common Properties and the improvements thereon which are owned by the Declarant or Association. Transfers expressly provided for or allowed herein, and the granting of easements for public utilities or for other purposes consistent with the intended use of such property by the Association or the Declarant, or the transfer of the Common Properties to an unincorporated association of the Owners (including the Association), in accordance with this Declaration or the Articles of Incorporation of the Association, shall not be deemed a transfer within the meaning of this clause.
 - (ii) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Lot.
 - (iii) Fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost), less such reasonable deductions as the Board may deem appropriate.
 - (iv) Use hazard insurance proceeds for losses to the Common Properties for other than the repair, replacement, or reconstruction of such improvements.
 - (v) Except as otherwise provided herein by reservation to the Declarant, amend this Declaration or the Articles of Incorporation or Bylaws of the Association in such a manner that the rights of any First Mortgagee will be adversely affected or the value of Lots reduced.
- d. First Mortgagees shall have the right, upon reasonable prior notice to the Association, to examine the books and records of the Association during normal business hours.

- e. All First Mortgagees who have registered their names with the Association shall be given: (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association; and (ii) immediate notice following any damage to the Common Properties whenever the cost of reconstruction exceeds ten thousand dollars (\$10,000.00); and (iii) immediate notice as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common Properties.
- f. First Mortgagees may, jointly and singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Properties and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property.

ARTICLE XII - EASEMENTS

SECTION 1: Declarant's Reserved Easements. Notwithstanding any provisions contained in the Declaration to the contrary, Declarant hereby expressly reserve unto themselves and their successors and assigns a nonexclusive, perpetual right, privilege, and easement with respect to the Properties and Additional Land for the benefit of Declarant, their successors, and assigns, over, under, in, and/or on the Properties, without obligation and without charge to Declarant, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Properties. The reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to:

- a. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Properties; and the right to tie into any portion of the Properties with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Properties.
- b. The right, but not the obligation, to enter into cross easement agreements with owners of adjoining properties.
- c. The right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, or incidental to the development of the Property by Declarant.
- d. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Properties and the Additional Land, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until

and except by delivery of a Quit Claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

SECTION 2: Easements for Utilities. There are hereby reserved to the Association blanket easements upon, across, above, and under all property within the Properties for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Properties or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the Properties. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Association shall have the right to grant such easement.

No trees may be planted or maintained in such a way as to interfere with public utility poles, wiring or drainage, or that may change the direction of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

In addition to any other remedies herein provided, the Declarant, their successors and assigns, or any utility company maintaining such utilities, shall have the right without prior notice to the Lot Owner, to enter the Lot and trim or remove the said trees or shrubbery so interfering. Additional drainage and utility easements, which are likewise so reserved with the Declarant, its assigns or successors, may be set forth in any recorded plat or plats of the Properties.

SECTION 3: Easements of Encroachment. There is hereby reserved reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3') feet, as measured from any point on the common boundary along the line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner or the Association.

SECTION 4: Easements for Cross Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water run-off from other portions of the Properties; provided, no Owner shall alter the natural drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner of the affected property and, also, the consent of the Association.

SECTION 5: Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance as may be required herein and to inspect for the purpose of ensuring compliance with this Declaration and the rules and regulations, which right may be exercised by any Member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any residence or building without the permission of the Owner, except by emergency personnel acting in their official capacities.

ARTICLE XIII - NO PARTITION

There shall be no judicial partition of the Common Area; nor shall Declarant or any Owner or any other person acquiring any interest in the development or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

ARTICLE XIV - STORMWATER MANAGEMENT SYSTEM

The Property is located within the boundaries of the South Florida Water Management District. The Surface Water Management System shall constitute a portion of Common Area and shall be maintained by the Association as such. The Surface Water Management System shall be maintained in accordance with governmental regulations and the recorded Environmental Resource Permit referenced in this section.

The Association and the South Florida Water Management District shall have a non-exclusive easement over, upon and for use of Stormwater Management System, and an easement for ingress, egress and access to enter upon any portion of the Property in order to construct, maintain or repair, as necessary, any portion of the Stormwater Management System.

Any amendment of this Declaration which would affect the Stormwater Management System must be approved by South Florida Water Management District.

The Association exists in perpetuity; however, if the Association is dissolved, the property consisting of the Stormwater Management System will be conveyed to an appropriate agency of local government. If this is not accepted, then the Stormwater Management System will be dedicated to a similar non-profit corporation.

The beneficiaries of the Storm Water Management System, including but not limited to all Owners, shall have the legal right to enforce the assurances that the drainage system, easements and rights-of-way will be continuously maintained.

If wetland mitigation or monitoring is required as part of the South Florida Water Management District Environmental Resource Permit for the Association's Stormwater Management System, the Association shall be responsible to carry out this obligation

successfully, including meeting all permit conditions associated with wetland mitigation, maintenance, and monitoring.

A Notice of Environmental Resource Permit is recorded in the Public Records of Lee County, Florida at Instrument No. 2020000108930. Copies of the Environmental Resource Permit and any other future SFWMD permit actions shall be maintained by the Association's Registered Agent for the Association's benefit.

The South Florida Water Management District has the right to take enforcement action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the Stormwater Management System facilities or in mitigation or conservation area under the responsibility or control of the Association.

ARTICLE XV - CONSERVATION AND WETLAND PRESERVATION AREAS

SECTION 1: Proximity. Lots within the Heritage Heights Development may contain or abut conservation or wetland preservation areas and upland buffers which may be protected under conservation easements.

SECTION 2: Maintenance of Areas. ALL CONSERVATION AND WETLAND PRESERVATION AREAS SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL OR PERMITTED STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AND WETLAND PRESERVATION 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 WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; 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.

ARTICLE XVI - GENERAL PROVISIONS

SECTION 1: Enforcement. This Declaration, the Articles of Incorporation, and the Bylaws of the Association may be enforced as follows:

- a. Breach of any of the covenants contained in the Declaration or the Bylaws, and the continuation of any such breach, may be enjoined, abated, or remedied by appropriate legal proceedings brought by any Owner, the Declarant, or the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection, and court costs.

- b. The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.
- c. The failure of the Association to enforce any of the covenants contained in this Declaration or in its Bylaws shall not constitute a waiver of the right to enforce the same thereafter.
- d. A breach of the covenants, conditions, or restrictions contained in this Declaration or in the Bylaws, shall not affect or impair the lien or charge of any Mortgage made in good faith and for value on any Lot, provided, however, that any subsequent Owner of such Lot shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.
- e. The Association shall also have the right to enter upon any Lot and correct any violation of the Rules and Regulations and to assess the Owner for any expenses incurred by the Association.

SECTION 2: Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 3: Term. The covenants and restrictions of this Declaration shall run with the land and bind the property hereby encumbered, and shall inure to the benefit of and be enforceable by the Association, the Declarant, and the Owners of Lots subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time these provisions shall automatically be extended for successive periods of ten (10) years. At any time after the initial thirty (30) year period provided for in this section, these provisions may be terminated by the recordation of a written instrument executed by the then Owners of eighty percent (80%) of the Lots, agreeing to the termination.

SECTION 4: Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of the Property as a residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine, and neuter shall each include the masculine, feminine, and neuter.

SECTION 5: Amendments. Prior to Turnover, the Declarant may, in its sole discretion, and without the consent of the Association or any Owner, by an instrument filed of record, modify, enlarge, amend, waive, or add to the covenants, conditions, restrictions, and other provisions of this Declaration.

After Turnover, the Declaration may be amended only upon the written approval of not less than sixty-seven percent (67%) of the votes of the entire membership of the Association.

In order to be effective, any amendment to this Declaration must be recorded in the Lee County Public Records and, except for amendments by the Declarant, any amendment shall contain a certification by the President and Secretary of the Association that the amendment was duly adopted.

Any amendment which would affect the surface water management system, including the water management portions of the common elements, must have the prior approval of the South Florida Water Management District.

SECTION 6: No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

SECTION 7: Constructive Notice and Acceptance. Every person who owns, occupies, or acquires any right, title, estate, or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

SECTION 8: No Personal Use of Association Employees. Employees of the Association, and employees, agents, and workmen of the Declarant shall not be required to attend to any personal matters or business of Owners, nor shall they be permitted to leave the Property on any private business of Owners. The uses and functions of the Association's employees shall be governed by the Board of Directors. In the event services are provided to Owners by any of the employees, agents, or workmen of the Declarant or the Association, neither the Declarant nor the Association will assume any responsibility or be liable for, in any manner, the quality of such services or work provided, nor do they warrant such services or work. In addition, neither the Declarant nor the Association shall be liable for any injury to persons or damage to property resulting from any act or omission by those performing such work or services for Owners.

SECTION 9: Withdrawal and Modification. Anything herein to the contrary notwithstanding, the Declarant reserves the absolute 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 Property from the provisions of this Declaration. Provided, however, the right shall not permit the removal of any land containing improvements, facilities, and amenities which are needed by or were available for use by any Lot Owners at the time of acquiring their Homes.

SECTION 10: Conflicting Provisions. In the event of a conflict between the provisions of this Declaration and the provisions of the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control.

Declarant has executed this Amended and Restated Declaration on this 20th day of may, 2020.

DECLARANT:
Habitat Harlem Heights, LLC

Ana L. Lopez
Witness #1
Ana L. Lopez
Printed Name

By: [Signature]
Habitat for Humanity of Lee and Hendry Counties, Inc.
Its: Manager

[Signature]
Witness #2

Habitat for Humanity of Lee and Hendry Counties, Inc.

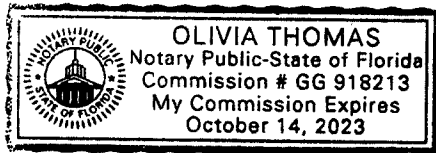
Dominic Tazzo
Printed Name

By: [Signature]
Rick Mercer
Its: President

STATE OF FLORIDA :
:
COUNTY OF LEE :

The foregoing instrument was acknowledged before me this 20th day of may, 2020, by Rick Mercer, as [Signature] of Habitat for Humanity, who is personally known to me or has produced [Signature] as identification.

(Seal)



[Signature]
Notary Public
Printed Name: Olivia Thomas
My Commission Expires: 10.14.23

EXHIBIT "A" - LEGAL DESCRIPTION

Description of a Parcel of Land Lying in
Section 32, Township 45 South, Range 24 East
Lee County, Florida

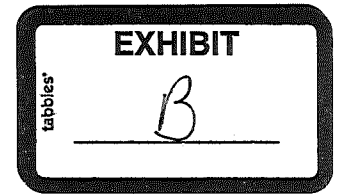
A parcel of land lying being all of the East one-half (E1/2) of the Southeast Quarter (SE 1/4) of the Southwest Quarter (SW 1/4) of Section 32, Township 45 South, Range 24 East and a portion of those lands described in Official Record Book 2212 at page 3525, Public Records of Lee County, Florida and further described as follows:

Beginning at the South quarter (S 1/4) corner of said Section 32, Township 45 South, Range 24 East; thence S89°03'52"W along the south line of the Southwest quarter (SW 1/4) of said Section 32 for 662.69 feet to the southwest corner of the East one-half (E 1/2) of the Southeast Quarter (SE 1/4) of said Southwest Quarter (SW 1/4); thence N01°08'35"W along the west line of said fraction for 1323.59 feet to the northwest corner of said fraction; thence N88°59'48"E along the north line of said fraction for 664.64 feet to the northeast corner of said fraction; thence 801°03'31"E along the east line of the southwest quarter of said section for 355.63 feet to the northwest corner of Lot 20, Block "J", Harlem Heights, a subdivision as recorded in Plat Book 8 at Page 76; thence N88°55'45"E along the north line of said Lot 20 for 485.00 feet to the northwest corner of a parcel of land as described in Instrument number 2010000308709; thence S01°03'31"E along the west line of said parcel for 100.00 feet to the southwest corner of said parcel; thence N88°55'45"E along the south line of said parcel for 90.00 feet to the southeast corner of said parcel lying on the westerly right-of-way line of Hagie Drive as described in Official Record Book 2653 at page 505; thence S01°03'31"E along the west line of said Hagie Drive right-of-way for 40.00 feet to the southwest corner of said Hagie Drive right-of-way; thence N88°55'45"E along the south line of said Hagie Drive right-of-way for 130.00 feet to the southeast corner of said Hagie Drive right-of-way, said point lying on the westerly line of a parcel of land as described in Official Record Book 4341 at page 292; thence S01°03'31"E along the westerly line of said parcel for 10.00 feet to the southwest corner of said parcel, said point lying on the northerly line of a parcel as described in Official Record Book 4325 at page 2472; thence S88°55'45"W along the northerly line of said parcel as described in Official Record Book 4325 at page 2472 for 555.00 feet to the northwest corner of said parcel; thence S01°03'31"E along the westerly line of said parcel for 518.77 feet, more or less, to an intersection with a line lying 300.00 feet north of the south line of the Southeast Quarter (SE 1/4) of said Section 32; thence S88°56'23"W, parallel with and 300.00 feet north of the south line of said Southeast Quarter (SE 1/4), for 150.00 feet to the east line of the Southwest Quarter

(SW 1/4) of said Section 32; thence S01°03'31"E along said east line for 300.00 feet to the Point of Beginning.

Containing 23.76 acres, more or less.

Bearings are State Plane Grid for the Florida West Zone (North American Datum of 1983/2011 Adjustment) with the east line of the southwest one-quarter (SW 1/4) of Section 32 as bearing S01°03'31"E.



February 5, 2020

FLORIDA DEPARTMENT OF STATE

Division of Corporations

HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC.
1288 N. TAMiami TRAIL
FORT MYERS, FL 33903

Re: Document Number N19000010519

The Articles of Amendment to the Articles of Incorporation of CHICO'S HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC. which changed its name to HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC., a Florida corporation, were filed on February 4, 2020.

This document was electronically received and filed under FAX audit number H20000039382.

Should you have any questions regarding this matter, please telephone (850) 245-6050, the Amendment Filing Section.

Terri J Schroeder
Regulatory Specialist III
Division of Corporations

Letter Number: 620A00002618

**ARTICLES OF INCORPORATION
FOR
CHICO'S HERITAGE HEIGHTS
HOMEOWNERS' ASSOCIATION, INC.**

FILED
2019 OCT -4 AM 11:52
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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**CHICO’S HERITAGE HEIGHTS HOMEOWNERS’ ASSOCIATION, INC.
ARTICLES OF INCORPORATION**

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**CHICO'S HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC.
ARTICLES OF INCORPORATION**

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA
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**ARTICLES OF INCORPORATION
FOR
CHICO'S HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC.**

The undersigned, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, does hereby adopt the following Articles of Incorporation (these "**Articles**").

1. **Name.** The name of the corporation shall be Chico's Heritage Heights Homeowners' Association, Inc. (the "**Association**").
2. **Principal Office.** The principal office of the Association is 1288 N. Tamiami Trail, Fort Myers, Florida 33903.
3. **Registered Office - Registered Agent.** The street address of the Registered Office of the Association is 1288 N. Tamiami Trail, Fort Myers, Florida 33903. The name of the Registered Agent of the Association is:

Tanya Soholt

4. **Definitions.** A declaration of covenants entitled Declaration of Covenants for Chico's Heritage Heights (the "**Declaration**") will be been recorded in the Public Records of Lee County, Florida, and shall govern all of the operations of the homeowners association to be known as the Chico's Heritage Heights Homeowners' Association, Inc. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.
5. **Purpose.** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Homeowners Act (the "**Act**") for the operation of the Community to be developed on property located in Lee County, Florida. The Association is organized to provide a means of administering the Community. The Lot Owners of the Lots shall automatically be members ("**Members**") of the Association. Until such time as Lots are conveyed to third party purchasers, the Members shall be the Directors.
6. **Powers and Duties.** The powers of the Association shall include and be governed by the following:
 - 6.1. **General.** The Association shall have all of the common law and statutory powers of a corporation not for profit under the laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the Bylaws or the Act.
 - 6.2. **Enumeration.** Without limiting the foregoing, the Association shall have all of the powers and duties reasonably necessary to operate the Community pursuant to the Declaration and as more particularly described in the Bylaws including, but not limited to, the following:
 - 6.2.1. **Assessments and Special Assessments.** To make and collect Assessments, Special Assessments and other charges from Lot Owners as provided in the Declaration, and to use the proceeds thereof in the exercise of its powers and duties.

6.2.2. Real and Personal Property. To buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Community, and to maintain, repair, replace, reconstruct, add to and operate any Community Property, and other property acquired or leased by the Association for use by Lot Owners in the Community.

6.2.3. Insurance. To purchase insurance upon any Community Property and insurance for the protection of the Association, its officers, directors and Lot Owners of the Community. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of Article 12.

6.2.4. Rules and Regulations. To make and amend reasonable rules and regulations (the "Rules and Regulations") for the maintenance, conservation and use of any Community Property and for the health, comfort and welfare of the Lot Owners in the Community.

6.2.5. Enforcement. To enforce by legal means the provisions of the Act, the Declaration, these Articles, the Bylaws, and the Rules and Regulations.

6.2.6. Management and Employees. To employ personnel, retain independent contractors, managers, and professional personnel; enter into any supply or service contracts; and contract for the management of the Community and, in connection therewith, to delegate powers and duties of the Association to the extent and in the manner permitted by the Declaration, the Bylaws, and the Act.

6.2.7. Approval of Transfers. Approve or disapprove the leasing, transfer, ownership, and possession of Lots as may be provided by the Declaration.

7. Lot Owners and Membership.

7.1. Membership. The Members of the Association shall consist of all of the record owners of Lots in the Community from time to time.

7.2. Assignment. The share of a Lot Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot for which that share is held. The funds and assets of the Association shall be expended, held or used only for the benefit of the Lot Owners and for the purposes authorized herein, in the Declaration, and in the Bylaws.

7.3. Voting. On all matters upon which the Lot Owners shall be entitled to vote, there shall be only one (1) vote for each Lot, which vote shall be exercised or cast in the manner provided by the Bylaws. Any person or entity owning more than one (1) Lot shall be entitled to one (1) vote for each Lot owned.

7.4. Prior to Recordation of Declaration. Until such time as the real property comprising the Subdivision, and the improvements now and/or to be constructed thereon, are submitted to the Declaration in the Public Record of Lee County, Florida, the membership of the Association (the "Membership") shall be comprised of the Directors of the Association, each of whom shall be entitled to cast a vote on all matters upon which the Membership would be entitled to vote.

8. Term of Existence. The Association shall have perpetual existence.

9. Directors.

9.1. Number and Qualification. The property, business and affairs of the Association shall be managed by a Board of Directors (the "Board") consisting initially of three (3) directors, but subject to change as provided by the Bylaws. Directors appointed or designated by the Developer need not be Lot Owners of the Association or residents of Lots in the Community. All other directors must be Lot Owners.

9.2. Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles, and the Bylaws shall be exercised exclusively by the Board, its agents, contractors and/or employees, subject only to approval by Lot Owners when such approval is specifically required by the Declaration or the Act.

9.3. Election; Removal. Directors shall be appointed, elected, and removed as provided in the Bylaws.

9.4. Current Directors. The names and addresses of the members of the current Board who shall hold office until their successors are appointed and/or elected, are as follows:

Tanya Soholt
1288 N. Tamiami Trail
Fort Myers, FL 33903

Rick Mercer
1288 N. Tamiami Trail
Fort Myers, FL 33903

Lynne Pietrzyk
1288 N. Tamiami Trail
Fort Myers, FL 33903

10. Officers. The affairs of the Association shall be administered by the officers holding the offices designated in the Bylaws. The officers shall be elected by the Board and shall serve at the pleasure of the Board. The names and addresses of the current officers who shall serve until their successors are designated by the Board are as follows:

PRESIDENT: Tanya Soholt
1288 N. Tamiami Trail
Fort Myers, FL 33903

**CHICO'S HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC.
ARTICLES OF INCORPORATION**

VICE PRESIDENT: Rick Mercer
1288 N. Tamiami Trail
Fort Myers, FL 33903

SECRETARY/
TREASURER: Lynne Pietrzyk
1288 N. Tamiami Trail
Fort Myers, FL 33903

11. Incorporator. The name and address of the Incorporator is as follows:

Christina Harris Schwinn
1833 Hendry Street
Fort Myers, FL 33901

12. Indemnification.

12.1. Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, employee, officer, or agent of the Association, against expenses (including reasonable attorneys' fees and paraprofessional fees at trial and upon appeal), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceedings, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, has no reasonable cause to believe his conduct was unlawful.

12.2. Limitations on Indemnification. Notwithstanding the foregoing, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have adjudged to be liable for gross negligence or intentional misconduct in the performance of his duties to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

12.3. Effect of Termination of Action. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

12.4. Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 12.1 above, or in defense of any claim, issue or matter therein,

he shall be indemnified against expenses (including attorneys' fees and paraprofessional fees at trial and upon appeal) actually and reasonably incurred by him in connection therewith.

12.5. Approval. Any indemnification under Section 12.1 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 12.1 above. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the voting interests of the Lot Owners.

12.6. Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in any specific case upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount until such time it shall ultimately be determined that he was not entitled to be indemnified by the Association as authorized in this Article 12.

12.7. Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Bylaws, agreement, vote of Lot Owners or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

13. Bylaws. The first Bylaws of the Association shall be adopted by the Board and may be altered, amended or rescinded by the Board, Lot Owners, and/or the Developer as provided in the Bylaws.

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

14.1. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

14.2. Proposal. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or Lot Owners holding one-third (1/3) of the voting interests in the Association.

14.3. Approval. An amendment shall be approved once it is approved:

14.3.1. by Lot Owners holding a majority of the voting interests in the Association present in person or by proxy at a Members meeting at which a quorum thereof has been attained and by not less than sixty-six and two thirds percent (66-2/3%) of the entire Board; or

14.3.2. by Lot Owners holding eighty percent (80%) of the voting interests in the Association present in person or by proxy at a Members meeting at which a quorum has been attained; or

14.3.3. prior to the date upon which Lot Owners other than Developer control the Board, by not less than one hundred percent (100%) of the entire Board.

14.4. Attendance Required. Directors not present in person at the meeting considering the amendment may express their agreement or disagreement in writing. Such agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.

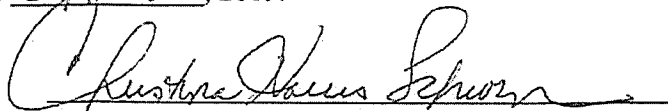
14.5. Limitation. Notwithstanding the foregoing, no amendment shall be made that is in conflict with the Act, the Declaration, or the Bylaws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers, or options herein provided in favor of or reserved to the Developer herein or in the Declaration unless the Developer shall join in the execution of the amendment.

14.6. Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Lee County, Florida.

14.7. Developer. The Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone. This paragraph may not be amended.

14.8. Dissolution. If this corporation is dissolved, then all of its obligations, rights, title and interest in and under the Declaration shall be conveyed or dedicated to a similar not-for-profit organization to assure continued maintenance and operation.

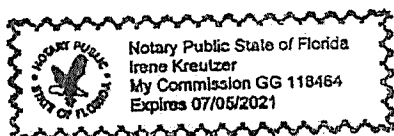
For the purpose of forming this Association under the Laws of the State of Florida, the undersigned, being the Incorporator of this Association, has executed these Articles of Incorporation as of the 27th day of September, 2019.

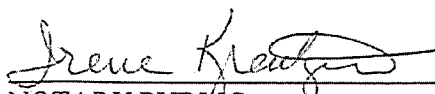

CHRISTINA HARRIS SCHWINN

STATE OF FLORIDA)

COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 27th day of September, 2019, by Christina Harris Schwinn, who is personally known to me.




NOTARY PUBLIC

CHICO'S HERITAGE HEIGHTS HOMEOWNERS' ASSOCIATION, INC.
ARTICLES OF INCORPORATION

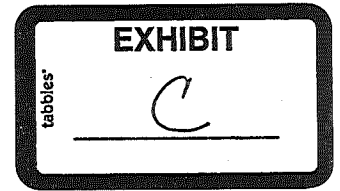
ACCEPTANCE BY REGISTERED AGENT

The undersigned, having been named to accept service of process for the above-stated corporation at the place designated in this certificate, hereby agrees to act in this capacity, is familiar with, and accepts, the obligations of this position and further agrees to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

Dated this 1 day of October, 2019.



TANYA SOHOLT



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

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

1.1 Principal Office. The current principal office of this corporation is Heritage Heights Homeowners' Association, Inc., 1288 North Tamiami Trail, North Fort Myers, FL 33903, or at such other place as may be established by the Board of Directors, from time to time.

1.2 Definitions. All terms defined in the Declaration of Restrictive Covenants, Conditions and Restrictions for Heritage Heights (the "Declaration") relating to the residential community known as Heritage Heights ("Heritage Heights"), recorded in the Public Records of Lee County, Florida, are incorporated herein by reference and made a part hereof.

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 Section 5.1 of the Declaration.

2.1 Classes of Membership.

2.1.a Class "A" members constitute the Owners of Lots as defined in Article III of the Declaration.

2.1.b The sole Class "B" member is the Declarant as set forth in Section 1 of the Declaration.

2.2 Voting Rights; Voting Interests. Each Owner shall be a Class "A" member of Association. No person who holds an interest in a Lot only as security for the performance of an obligation shall be a member of Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. There shall be one vote appurtenant to each Lot. For the purposes of determining who may exercise the Voting Interest associated with each Lot, the following rules shall govern:

2.2.1 Lot Owned By Husband and Wife. Either the husband or wife (but not both) may exercise the Voting Interest with respect to a Lot. In the event

the husband and wife cannot agree, neither may exercise the Voting Interest.

- 2.2.2 Trusts.** In the event that any trust owns a Lot, Association shall have no obligation to review the trust agreement with respect to such trust. For example, if the Lot is owned by Robert Smith, as Trustee, Robert Smith shall be deemed the Owner of the Lot for all Association purposes. If the Lot is owned by Robert Smith as Trustee for the Laura Jones Trust, then Robert Smith shall be deemed the member with respect to the Lot for all Association purposes. If the Lot is owned by the Laura Jones Trust, and the deed does not reference a trustee, then Laura Jones shall be deemed the member with respect to the Lot for all Association purposes. If the Lot is owned by the Jones Family Trust, the Jones Family Trust may not exercise its Voting Interest unless it presents to Association, in the form of an attorney opinion letter or affidavit reasonably acceptable to Association, the identification of the person who should be treated as the member with respect to the Lot for all Association purposes. If Robert Smith and Laura Jones, as Trustees, hold title to a Lot, either trustee may exercise the Voting Interest associated with such Lot. In the event of a conflict between trustees, the Voting Interest for the Lot in question cannot be exercised. In the event that any other form of trust ownership is presented to Association, the decision of the Board as to who may exercise the Voting Interest with respect to any Lot shall be final. Association shall have no obligation to obtain an attorney opinion letter in making its decision, which may be made on any reasonable basis whatsoever.
- 2.2.3 Corporations and Limited Liability Companies.** If a Lot is owned by a corporation or limited liability company, the corporation or limited liability company shall designate a person, an officer, employee, or agent who shall be treated as the member who can exercise the Voting Interest associated with such Lot.
- 2.2.4 Partnerships.** If a Lot is owned by a limited partnership, any one of the general partners may exercise the Voting Interest associated with such Lot. By way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such limited partnership. If a Lot is owned by a general partnership, any one of the general partners may exercise the Voting Interest associated with such Lot. In the event of a conflict among general partners entitled to exercise a Voting Interest, the Voting Interest for such Lot cannot be exercised.
- 2.2.5 Multiple Individuals.** If a Lot is owned by more than one individual, any one of such individuals may exercise the Voting Interest with respect to such Lot. In the event that there is a conflict among such individuals, the Voting Interest for such Lot cannot be exercised.

2.2.6 Liability of Association. The Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which Association, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as Association acts in good faith, Association shall have no liability or obligation with respect to the exercise of Voting Interests, and no election shall be invalidated (in the absence of fraud) on the basis that Association permitted or denied any person the right to exercise a Voting Interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

2.3 Method of Voting. All votes of the members pertaining to the Association, including the election of Directors, shall be cast by the individual members who shall have one (1) indivisible vote in all matters which members are entitled to vote.

2.4 Membership Records. Records shall be maintained by the Association showing the names of the members, their addresses, the number of Lots owned by each member and such other information as the Board shall require. Members may be issued a certificate or other evidence of membership, which may be wallet-size. The certificate of membership may set forth the number of Lots owned by the member and such other information as determined by the Board. Admission to any Common Area, facility, meeting or affair of the Association may be conditioned upon production of a current certificate of membership by the member.

2.5 Transfer of membership. Except as provided in Section 2.7 below, no member may transfer his Association membership, except as an appurtenance to his Lot. The Association shall be entitled to charge an administrative transfer fee equal to the greater of 1) the amount permitted by law or 2) \$100.00 for each transfer. When a member ceases to be an owner, his membership shall cease. The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former member arising out of or in any way connected with such membership and the covenants and obligations incident thereto.

2.6 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 (Voting Representative means the person designated

to cast the vote for Lots owned by more than one person or the person authorized to vote on behalf of a Lot owned by an entity.);

- (2) Serve on the Board if elected;
- (3) Serve on committees; and
- (4) Attend board and 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, subject to the rules of the Association.

(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.

2.7 Delegation of Rights to Use Common Areas.

(A) In accordance with the Declaration, a member may delegate his privilege to use the Common Areas to a reasonable number of guests if accompanied by the member.

(B) 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.

(C) 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.

3. MEMBERS' MEETINGS.

3.1 Annual Meeting. The annual meeting of the members shall be held at least once each calendar year on a date, at a time, and at a place to be determined by the Board. A meeting of the Members must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has the right to attend a meeting.

3.2 Special Members' Meetings. Special meetings of the members may be called by the President, a majority of the Board, or upon written request of ten percent (10%) of the Voting Interests of the members. The business to be conducted at a special members meeting shall be limited to the extent required by Florida Statutes. A meeting of the Members must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has the right to attend a meeting.

- 3.3 Quorum.** A quorum shall be established by the presence, in person or by proxy, of the members entitled to cast thirty percent (30%) of the Voting Interests, except as otherwise provided in the Articles, the Declaration, or these Bylaws. Notwithstanding any provision herein to the contrary, in the event that technology permits members to participate in members meetings and vote on matters electronically, then the Board shall have authority, without the joinder of any other party, to revise this provision to establish appropriate quorum requirements.
- 3.4 Vote Required to Transact Business.** Decisions that require a vote of the members must be made by a concurrence of a majority of the Voting Interests present in person or by proxy, represented at a meeting at which a quorum has been obtained unless provided otherwise in the Declaration, the Articles, or these Bylaws.
- 3.5 Notice of Meetings.** Written notice of each members meeting shall be given by, or at the direction of, any officer of the Board or any management company retained by Association. A copy of the notice shall be mailed to each member entitled to vote, not less than fourteen (14) days before the meeting (provided, however, in the case of an emergency, two (2) days' notice will be deemed sufficient). The notice shall be addressed to the member's address last appearing on the books of Association. The notice shall specify the place, day, and hour of the meeting and, in the case of a special members meeting, the purpose of the meeting. Alternatively, and to the extent not prohibited by the Florida Statutes, the Board may adopt from time to time, other procedures for giving notice to the members of any member meeting.
- 3.6 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 720.303(2), *Florida Statutes* (2014) 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* (2014), 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.
- 3.7 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

- 3.8 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.
- 3.9 Proxies.** At all meetings, members may vote their Voting Interests in person or by proxy. All proxies shall comply with the provisions of Section 720.306(6) of the Florida Statutes, as amended from time to time, be in writing, and be filed with the Secretary at, or prior to, the meeting. Every proxy shall be revocable prior to the meeting for which it is given.
- 3.10 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, 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, subject to the limitations and reservations set forth in the Declaration and Articles, have the powers reasonably necessary to manage, operate, maintain and discharge the duties of Association, including, but not limited to, the power to cause Association to do the following:
- (A) **General.** Exercise all powers, duties and authority vested in or delegated to Association by law and in these Bylaws, the Articles, and the Declaration, including, without limitation: adopt budgets; levy assessments; levy fines against Lots for violations of the governing documents, including the Rules & Regulations; enforce obligations of the

Owners; allocate profits and expenses and do anything and everything necessary and proper for the sound management of the Association; make repairs to or alteration of the Association Property and restore Association Property after damage or destruction by fire or other casualty event; obtain and review insurance for Association Property and other insurance required by the Declaration; impose a fee in connection with the approval of the transfer or sale or rental of Lot; exercise use of the pool court for private parties and gatherings and to impose reasonable charges for such uses in accordance with Lee County Health Standards; and enter into contracts with Telecommunications Providers for Telecommunications Services.

- (B) **Rules and Regulations.** Adopt, publish, promulgate and enforce rules and regulations governing the use of Heritage Heights by the members, tenants and their guests and invitees, and to establish penalties and/or fines for the infraction thereof subject only to the requirements of the Florida Statutes, if any.
- (C) **Enforcement.** Suspend the right of use of the Common Areas (other than for vehicular and pedestrian ingress and egress and for utilities) of a member during any period in which such member shall be in default in the payment of any assessment or charge levied, or collected, by Association.
- (D) **Hire Employees.** Employ, on behalf of Association, managers, independent contractors, or such other employees as it deems necessary, to prescribe their duties and delegate to such manager, contractor, etc., any or all of the duties and functions of Association and/or its officers.
- (E) **Common Areas.** Acquire, sell, operate, lease, manage and otherwise trade and deal with property, real and personal, including the Common Areas, as provided in the Declaration, and with any other matters involving Association or its members, on behalf of Association or the discharge of its duties, as may be necessary or convenient for the operation and management of Association and in accomplishing the purposes set forth in the Declaration.
- (F) **Granting of Interest.** Grant licenses, easements, permits, leases, or privileges to any individual or entity, which affect Common Areas and to alter, add to, relocate or improve the Common Areas as provided in the Declaration.
- (G) **Financial Reports.** Prepare all financial reports required by the Florida Statutes.
- (H) **Budget.** The Board of Directors, at a duly noticed Board of Directors meeting each year for which 14 days written mailed notice is given, shall

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 at the end of the current year. The Association shall provide each member with a copy of the annual budget or 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 show the amounts budgeted by accounts and expense classifications.

- (I) The Board of Directors may appoint neighborhood liaisons whose function shall be to serve as fact finding committees or teams. Fact finding committees or teams have no power to bind the Association and may be removed by the Board for any reason.
- (J) Perform all other acts not inconsistent with law or the governing documents and necessary for the proper functioning of the Association.

4.2 Number and Eligibility. Prior to turnover of control of the Association to the members, the affairs of Association shall be managed by a Board consisting of three (3) persons. Prior to turnover the Declarant appointed Board members do not have to be owners. The Declarant may remove Declarant approved Board members for any reason and reappoint replacements at any time without notice. After turnover, in order to be eligible for Board service, one must be a record title holder of a Lot or a spouse of a record title holder of a Lot or someone appointed by an entity that has title to a Lot and in good standing with the Association. The number of director seats shall be increased to five (5) immediately following turnover of control from the Declarant to the members. The Class "A" members of the Association are entitled to elect a majority of the Board when the Declarant has sold 90% of the Lots within Heritage Heights.

4.3 Term of Office. Director terms shall be for one year.

4.4 Nominations and Elections. The members shall elect all directors of Association at or in conjunction with the Annual Meeting of the members.

- (A) **Candidates.** The Board shall adopt and utilize procedures whereby the Association shall send a first notice of the annual meeting at least forty-five (45) days prior to the annual meeting whereupon any person eligible to serve as a director may qualify as a candidate and have his or her name on the ballot, by notifying the Association in writing, at least thirty (30) days in advance of the election, of his or her desire to be a candidate for any vacancy which he or she is eligible to fill. All eligible persons giving timely written notice of desire to be a candidate shall be listed alphabetically by surname on any ballots distributed or used by the Association. At least fourteen (14) days before the annual meeting the Association shall mail a second notice of annual meeting that will contain a list of candidates, candidate information sheets, instructions, a proxy and a ballot.

No additional nominations after the thirty (30) day cut-off period are permitted. No nominations from the floor are permitted.

- (B) **Election and Voting Materials.** Candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes at their own expense, including providing a candidate information sheet about themselves not less than twenty-five (25) days prior to the meeting at which the election will be held. Any written materials distributed to the members by the Association regarding an election shall be non-partisan, and Association funds shall not be used in any way to promote the election of any candidate over another. No ballot or other election materials used by the Association shall endorse, disparage, or comment on any candidate or indicate whether a candidate is an incumbent, however the Association shall duplicate and distribute without editing brief resumes of background and qualifications provided by any candidates who would like it distributed. The second notice of the annual meeting including the ballots and all other election and voting materials shall be distributed by the Association with the notice of the annual meeting described in Section 3.5 above.
- (C) **Balloting.** Elections shall be by written ballot. The candidate(s) who receives a plurality of the votes cast shall be elected. Each member may cast as many votes as there are directors to be elected, but not more than one vote for any candidate. Each member may also cast one vote for each director to be elected, it being the intent hereof that cumulative voting is prohibited. Election ballots shall be cast by the Class "A" members directly with the Association. Any ballots received after the polls are closed will be discarded and not counted. The polls are closed when "last call" for ballots is announced at the opening of the annual meeting.
- (D) **Vote Counting.** On the day of the annual meeting, before the meeting begins, at a place and time which was stated in the notice of the meeting, the Board (or its designees) shall open the sealed envelopes and count the votes in such manner as it (or they) deem advisable. Any unrelated member to a candidate running for the board shall be entitled to attend and observe the opening and counting. The results of the election shall be announced at the beginning of the Annual Meeting, and the new directors shall take office at the final adjournment of the meeting. A tie vote shall be broken by agreement between the tied candidates, or, in the absence of an agreement, in a run off election. Any dispute as to the validity of any ballots shall be resolved by the incumbent Board.
- (E) **Certification.** Within 90 days after being elected or appointed to the Board, each director shall certify in writing to the secretary of the Association that he or she has read the Association's declaration of

covenants, articles of incorporation, bylaws and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the Association's members. In lieu of the written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the director on the Board. A director who does not timely file the written certification or educational certificate is suspended from the Board until he or she complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension. The Association shall retain each director's written certification or educational certificate for five (5) years after the director's election; however, the failure to retain the certificate does not affect the validity of any Board action.

- 4.5 Vacancies on the Board.** If the office of any director or directors becomes vacant for any reason, a majority of the remaining directors, though less than a quorum, shall promptly choose a successor or successors, who shall hold office for the entire remaining term. If for any reason there should arise circumstances in which no directors are serving and the entire Board is vacant, the members shall elect successors at a special meeting by the same method for regular elections called and noticed by 10% of the members or by exercising a member's right to have a receiver appointed pursuant to Section 720.3053, *Florida Statutes*.
- 4.6 Removal.** A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property is removed from office. The Board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director or officer shall be reinstated for any remainder of his or her term of office. Any director may be removed from the Board with or without cause by vote of a majority of the Voting Interests or as provided in Section 4.22.
- 4.7 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.
- 4.8 Regular Meetings.** Regular meetings of the Board shall be held on a schedule adopted by the Board from time to time. Meetings shall be held at such place and hour as may be fixed, from time to time, by resolution of the Board.

- 4.9 Special Meetings.** Special meetings of the Board shall be held when called by the President, or by any two (2) directors. Each director shall be given not less than two (2) days' notice except in the event of an emergency. Notice may be waived. Attendance shall be a waiver of notice. Telephone conference meetings are permitted.
- 4.10 All Meetings.** All meetings of the Board shall be held in accordance with Roberts Rules of Order. A meeting of the Members must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has the right to attend a meeting.
- 4.11 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.
- 4.12 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.
- 4.13 Quorum of Directors.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting, at which a quorum is present, or in writing in lieu thereof, shall be action of the Board. 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.
- 4.14 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.
- 4.15 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.

- 4.16 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 any further notice.
- 4.17 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 are present, the presiding officer shall be selected by majority vote of those present.
- 4.18 Compensation of Directors and Officers.** Unless otherwise provided under Florida law, or approved in advance by a majority of the members of the Association, neither directors nor officers shall receive compensation for their services as such. Directors and officers may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the Association. 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.
- 4.19 Emergencies.** In the event of an emergency involving immediate danger of injury or death to any person or damage to property, if a meeting of the Board cannot be immediately convened to determine a course of action, the President or, in his or her absence, any other officer or director, shall be authorized to take such action on behalf of Association as shall be reasonably required to appropriately respond to the emergency situation, including the expenditure of Association funds in the minimum amount as may be reasonably required under the circumstances. The authority of officers to act in accordance herewith shall remain in effect until the first to occur of the resolution of the emergency situation or a meeting of the Board convened to act in response thereto.
- 4.20 Association Emergency Powers.**
- 4.20.1** To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with § 617.0830, the Board of Directors, in response to damage caused by an event for which a state of emergency is declared pursuant to § 252.36 in the area encompassed by the association, may exercise the following powers:

- (A) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.
- (B) Cancel and reschedule an association meeting.
- (C) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.
- (D) Relocate the association's principal office or designate an alternative principal office.
- (E) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.
- (F) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditions for association buildings.
- (G) Based upon the advice of emergency management officials or upon the advice of licensed professional retained by the Board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.
- (H) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination or habitability pursuant to the declaration.
- (I) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.
- (J) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the

declaration or other recorded governing documents, levy special assessments without a vote of the owners.

- (K) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

4.20.2 The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

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 any committee or other similar body when a final decision will be made regarding the expenditure of Association funds, and meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel.

4.22 Recall. Any Board member elected by the membership may be recalled by the membership if a majority of the entire membership votes to recall a member-elected director at a special meeting for such purpose or by written ballot. Director recalls are governed by Section 720.303(10), *Florida Statutes* (2012).

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. The officers may delegate their duties and responsibilities.

5.2 President. The President shall preside at all meetings of membership and Board, sign all leases, mortgages, deeds and other written instruments and perform such other duties as may be required by the Board. The President shall be a member of the Board.

- 5.3 **Vice President.** The Vice President shall act in the place and stead of the President in the event of the absence, inability or refusal to act of the President, and perform such other duties as may be required by the Board.
- 5.4 **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of membership and the Board; keep the corporate seal of Association and affix it on all papers required to be sealed; serve notice of meetings of the Board and of membership; keep appropriate current records showing the names of the members of Association together with their addresses; and perform such other duties as required by the Board.
- 5.5 **Treasurer.** The Treasurer shall cause to be received and deposited in appropriate bank accounts all monies of Association and shall disburse such funds as directed by the Board; sign, or cause to be signed, all checks, and promissory notes of Association; cause to be kept proper books of account and accounting records required pursuant to the provisions of Section 720.303 of the Florida Statutes; cause to be prepared in accordance with generally accepted accounting principles all financial reports required by the Florida Statutes; and perform such other duties as required by the Board.

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

- 6.1 **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.
- 6.2 **Budget.** The Board of Directors shall, at a meeting in November or December of 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. 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 budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.
- 6.3 **Reserves.** The Board may establish in the budget 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 a majority of the Voting Interests voting in

person or by proxy at a duly noticed meeting of the membership. The Board of Directors may vote to pool the reserves.

6.4 Fidelity Bonds. The Treasurer, and all other officers who are authorized to sign checks, and all directors, agents and employees of the Association handling or responsible for Association funds, shall be bonded in an amount to cover the maximum funds that will be in custody of the Association or its management agent at any given time unless this requirement is waived by a majority of the Voting Interests present at a properly called meeting of the Association. The premiums on such bonds shall be paid by the Association.

6.5 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.

6.6 Financial Reporting. The Association shall prepare an annual financial report within ninety (90) days after the close of the fiscal year. The Association shall, within thirty (30) 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.

- 6.7 Audits.** A formal certified audit of the accounts of the Association, if required by law, or by a majority of the Voting Interests, or by a majority of the Board of Directors, shall be made by an independent certified public accountant, and a copy of the audit report shall be available on request to each member.
- 6.8 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.
- 6.9 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.
- 6.10 Payment of Assessments.** Annual assessments based on the adopted budget shall be payable and received by the Association's management company on the first (1st) day of each quarter, but not later than the tenth (10th) day of each quarter. Assessments may be paid electronically, if so coordinated with the management company. Written notice of the annual assessment shall be sent to all Owners at least fourteen (14) 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.
- 6.11 Special Assessments.** Special assessments may be imposed by the Board of Directors whenever necessary to meet unbudgeted, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration 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.
- 7. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:
- 7.1 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.

7.2 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.

7.3 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 was originally recorded. Within thirty (30) days after recording an amendment to the Bylaws, the Association shall provide copies of the amendment to the members.

8. MISCELLANEOUS.

8.1 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.

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

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

8.4 Florida Statutes. Whenever these Bylaws refer to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date these Bylaws are recorded except that amendments to Chapter 720 that are purely procedural in nature shall apply.

EXHIBIT "D" - Use Restrictions

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, or repealed, in whole or in part, by a majority of the board of the association from time to time.

1. General. The Properties shall be used only for residential, recreational and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant and/or a Builder to assist in the sale of Lots within the Property described on Exhibit "A", offices for any property manager retained by the Association, and business offices and construction areas for the Declarant, builder, or the Association consistent with this Declaration and any Supplemental Declaration.

2. Restricted Activities. The following activities are prohibited within the Properties unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors.

- (a) Other than driveways or garages conveyed with the home to an Owner regardless of whether a Single Family or Attached Home, the use of other and/or additional parking spaces by an Owner or any occupant of an Owner's Home is prohibited. Parking on lawns or other non-paved areas is prohibited. The Board may, but it is not required, designate certain areas for guest parking; however, if parking is in fact allocated by the Board it shall be intended only for the occasional non-repetitive guests of the various Owners from time to time. No visible parking of ATVs, boat trailers, work trailers, travel trailers, recreational vehicles, commercial work trucks weighing more than one ton.
- (b) The raising, breeding or keeping of wild animals, livestock, or poultry of any kind is prohibited.
- (c) Any activity which emits foul or obnoxious odors outside the residence or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other residences.
- (d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation.
- (e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the residence.
- (f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other residences.
- (g) Outside burning of trash, leaves, debris, or other materials, except by the Declarant or a Builder.
- (h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable annoyance or nuisance to occupants of other residences

in the board's judgment, except alarm devices used exclusively for security purposes.

- (i) Posting or maintaining any sign, banner or advertisement, unless approved by the Board and maintained in a manner consistent with the ARB and any applicable governmental regulations.
- (j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on residences provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site.
- (k) Accumulation of rubbish, trash, or garbage except between regular garbage pickups, and then only in approved containers. Containers may be placed at the curb for collection no sooner than 6pm the day before collection and must be removed no later than 9pm the day of collection and stored along the side of the home.
- (l) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and filed in the Public Records, except that the Declarant shall be permitted to subdivide or replat Lots which it owns.
- (m) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams or other bodies of water within the Properties, except that the Declarant may draw water from takes, ponds and streams within the Properties for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Properties.
- (n) Use of any residence for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the residence rotates among participants in the program on a fixed or floating time schedule over a period of years.
- (o) Use and discharge of firecrackers and other fireworks; provided, the Board shall have no obligation to take action to prevent or stop such discharge.
- (p) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each residence for emergency purposes and operation of lawn mowers and similar tools or equipment, and the association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.
- (q) Any business, trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a residence may conduct business activities within the residence so long as: (i) the existence or operation of the

business activity is not apparent or detectable by sight, sound or smell from outside the residence; (ii) the business activity conforms to all zoning requirements for the Properties; (iii) the business activity does not involve regular visitation of the residence by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time, (ii) such activity is engaged in full or part time (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

- (r) Capturing, trapping, or killing of wildlife within the Properties, unless authorized by the Declarant or the Association.
- (s) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.
- (t) Operation of unlicensed motorized vehicles, golf carts, scooters, or other items on public or private roads, streets, pathways, bike trails, or trails maintained by the Association.
- (u) Any construction, erection, or placement of anything, permanently or temporarily, on the outside portions of the residence, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article VII of the Declaration without the prior approval of the Board. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment, clotheslines; woodpiles; above ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, unapproved storage sheds, or fences of any kind.
- (v) Unless otherwise provided by law, placement of antennas, satellite dishes, or other apparatus for the transmission, reception, or communication of television, radio, satellite, or other signals except for one small receiver which may be located in the side or rear yard, installed adjacent to the residence, and integrated with the residential structure and landscaping. Unless otherwise provided by law, dishes shall not exceed 40 inches in diameter. Any such devices shall be screened or landscaped from view from the street and adjacent residences.
- (w) Changing altering, impeding, dumping, or otherwise interfering with the flow and volume of water in any portion of the Surface Water Management System; and

- (x) Holiday lighting and decorations on the exterior of residences except for lighting and decorations that are displayed in commemoration or celebration of publicly observed holidays. Such lighting and decorations may not be displayed more than six weeks in advance of the holiday and must be removed within thirty (30) days after the holiday has ended.
3. Prohibited Conditions. The following shall be prohibited within the Properties:
- (a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.
 - (b) Structures, equipment, or other items on the exterior portions of a residence which have become rusty, dilapidated, or otherwise fallen into disrepair.
 - (c) Driving or parking of motorized vehicles and automobiles on lawns.
 - (d) Storage of items outside of the dwelling unit except in approved storage containers.
 - (e) Installation and/or use of hurricane shutters except when an official storm warning has been issued. Shutters must be removed within 7 days of the storm's passing and properly stored indoors or in an approved storage container at all other times.
 - (f) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that Declarant and its designees shall have the exclusive right to draw water from such sources and to reduce the level of such bodies of water, if and to the extent of such permits granted by the south Florida Water Management District.
 - (g) No Owner of a lakefront residence may construct or install a fence in the rear yard of his/her Unit without prior approval from the Developer or the Association following turnover of control. No fence will be permitted that interferes with or that protrudes into any lake maintenance easement. The Board may adopt additional restrictions with regard to the improvement of lakefront lots.
4. Leasing of Residences. The leasing of any residence or any portion thereof within the Subdivision is prohibited. This prohibition on leasing extends to each portion of the home to include bedrooms. Registering with websites like Airbnb to rent rooms or couches to travelers or others is also strictly prohibited.
5. Pets: One pet may be kept by an Owner in accordance with this Section. If the Board shall determine that any such pet is a nuisance to Owners, the pet shall be removed from the premises. A pet shall be kept leashed when outside of a unit. No dangerous or aggressive breeds shall be permitted in any residence or on a lot or anywhere within any common area property. All pets must be registered with the Association and unit owners shall be required to maintain all current pet licenses and to insure that their pets' vaccinations are kept current each year and to provide all of the information contained in the pet registry section below. Owners will be required to provide the Association with certification from a veterinarian certifying that their pet weighs thirty (30) pounds

or less and that the pet's vaccinations are current. Dangerous or aggressive breeds include: Pit Bull Terriers, Staffordshire Terriers, Rottweilers, German Shepherds, Presa Canarios; Chow Chows, Doberman Pinschers, Akitas, Wolf-hybrids, Mastiffs, Cane Corsos, Great Danes, Alaskan Malamutes and Siberian Huskies. If, in the sole judgment of the Board, it is determined that a pet is causing excessive disturbance and annoyance to others, the owner will be asked to permanently remove the pet. The owner's pet shall be on a leash at all times when outside of the owner's home.

Pet Registry: Owners are required to register their pet with the Association by providing the following information:

- (1) The pet's(s') date of birth;
- (2) Breed of the pet(s);
- (3) Weight of the pet(s);
- (4) Name of the pet(s); and
- (5) A picture of the pet(s).