

This Instrument prepared by:  
Charles Mann, Esq.  
PAVESE LAW FIRM  
1833 Hendry Street  
Fort Myers, Florida 33901  
(239) 334-2195

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
VISTA TOWNHOMES AT HERITAGE BAY**

**THIS DECLARATION** is made this 25<sup>th</sup> day of October, 2010 by Lennar Homes, LLC, a Florida limited liability Company, hereinafter referred to as the "Declarant".

**PREMISES:**

**WHEREAS**, Declarant is the owner of the real property described in Exhibit "A" to this Declaration, and desires to create thereon a residential community of townhomes.

**WHEREAS**, Declarant desires to provide for the preservation of the values and amenities in the Community, and to create a corporate entity to which will be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, maintaining the Common Areas and insuring the Properties, and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Declarant has created, under the laws of the State of Florida, a corporation not for profit known as Vista Townhomes at Heritage Bay Association, Inc., for the purpose of exercising the aforesaid functions;

**NOW, THEREFORE**, the Declarant declares that the real property described in Exhibit "A" to this Declaration, as it may be amended from time to time, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. All provisions of this Declaration shall be equitable servitudes which run with the land, and which bind and inure to the benefit of all present and future owners of Lots and Townhomes. The acquisition of any ownership interest in the Properties, or the lease, occupancy, or use of any portion of a Townhome, shall constitute an acceptance and ratification of all provisions of this Declaration as amended from time to time, and indicate agreement to be bound by its terms.

**1. DEFINITIONS.** Certain words and phrases used in this Declaration and its recorded exhibits shall have the definitions, the meanings stated below, unless the context clearly requires otherwise.

**1.1 "Architectural Control Committee" or "ACC"** means the committee described in Section 5 of this Declaration.

**1.2 "Association"** means Vista Townhomes at Heritage Bay Association, Inc., a Florida corporation not for profit.

**1.3 "Board"** means the Board of Directors of the Association.

**1.4 "Common Areas"** means all portions of the Properties exclusive of the Lots.

**1.5 "Commons Association"** means Vista at Heritage Bay Commons Association, Inc.

**1.6 "Community"** means the properties and all townhomes and other structures on the Properties, which collectively comprise the Vista Townhomes at Heritage Bay.

**1.7 "County"** A reference in any of the Governing Documents to "the County" or to any County other than Collier County, Florida, is unintentional and shall be construed as intended to mean and refer to Collier County.

**1.8 "Declarant" or "Developer"** means Lennar Homes, LLC, a Florida limited liability company, hereinafter referred to as the "Declarant". Wherever either term is used in this Declaration, or in the Articles or Bylaws of the Association, it shall always be deemed to include any successor in interest to the Declarant's development rights and obligations.

**1.9 "Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Vista at Heritage Bay, as amended from time to time.

**1.10 "Family" or "Single Family"** means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly and regularly reside together as a single housekeeping unit, each of whom is related by blood, marriage, or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them not more than one person who is not so related to some or all of the others.

**1.11 "Governing Documents"** means the Declaration of Covenants for Vista Townhomes at Heritage Bay, and the Articles of Incorporation and Bylaws of the Association, as well as the Declaration, Articles of Incorporation and Bylaws of the Commons Association. If there is conflict in the interpretation of the Governing Documents, the order of priority shall be the same as the order in which they appear in this Section 1.11.

**1.12 "Guest"** means a person who is physically present in, or occupies a Townhome on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

**1.13 "Institutional Mortgagee"** means the holder of a mortgage against a Lot or Townhome, which mortgagee or assignee is a bank, savings and loan association, mortgage company, real

estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Lot or Townhome which mortgage is guaranteed or insured (as evidenced by a recorded instrument) by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private agency engaged in the business of purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns. An "Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Townhome.

**1.14 "Lease"** means the grant by a Townhome Owner of a right to occupy the Owner's Townhome for valuable consideration.

**1.15 "Living Unit" or "Townhome" or "Unit"** means any or all of the Townhome residences which will be constructed on the Lots, each designed for use and occupancy as a single-family residence. Wherever either term is used, it shall be interpreted as though it were followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

**1.16 "Lot"** means one or more of the platted and numbered lots, into which the Properties have been subdivided by that certain plat of Heritage Bay Vistas recorded at Plat Book 50, Page 33, of the Public Records of Lee County, Florida, and upon each of which a Living Unit has been or is intended to be constructed. The term "Lot" shall be interpreted as though it were followed by the words "and the Living Unit constructed thereon," unless the context clearly requires another meaning.

**1.17 "Occupant"** when used in connection with a Townhome, means a person who is physically present in the Townhome on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

**1.18 "Owner" or "Member"** means a person who is the record Owner of legal title to a Lot.

**1.19 "Primary Occupant"** means the natural person approved for occupancy, together with that person's family, when legal title to a Townhome is held in the name of more than two persons, or by a Director or a corporation or other entity which is not a natural person, as further provided in Section 14.1 below.

**1.20 "Properties"** means all real property which is subject to this Declaration, and includes both Common Areas and Lots.

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

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

**1.23 "Temporary" or "Temporarily"** means not more than thirty (30) days in any period of six (6) consecutive months.

**1.24 "Townhomes Documents"** means this Declaration and all recorded exhibits hereto, as the same may be amended from time to time.

**1.25 "Vista Townhomes at Heritage Bay"** means, and is the name of, the Properties.

**2. CONTINUING DEVELOPMENT.** The Properties are being developed by the Declarant into Lots intended for multi-family cluster housing. This is not a Condominium. Rather, this is a townhome product intended to be fee simple. Other areas of Vista at Heritage Bay may contain other types of residential development, and may be under construction for an extended time. Incident to the development process, the quiet enjoyment of the properties may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Declarant and others may present to the public certain renderings, plans, and models showing possible future development of The Community. Declarant does not warrant in any way the accuracy of these renderings, plans or models. They are primarily schematic and do not represent a guaranteed final development plan of The Community.

**3. ASSOCIATION MEMBERSHIP VOTING RIGHTS.** Every Owner of record legal title to a Lot or Townhome Unit within the Property shall be a member of the Vista Townhomes at Heritage Bay Association, Inc. as further defined in Section 3.1 below. The Declarant shall hold Declarant membership as provided for in Section 3.1(B) below. Membership is appurtenant to, and may not be separated from, ownership of a Lot or Townhome Unit. The rights, powers, duties and privileges of members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Association.

**3.1 Classes of Membership and Voting Rights.** The Association will initially have two (2) classes of voting membership, as follows:

(A) **Class A.** Class A Members shall be all those Owners of Lots or Townhome Units as defined in Section 3 above, with the exception of the Declarant (as to Declarant, as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership as defined in Section 3 above.

(B) **Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus one hundred (100) votes for each vote entitled to be cast in the

aggregate at any time and from time to time on behalf of the Class A Members. The Class B Membership shall cease and terminate when all of the Lots ultimately to be included within The Properties have been sold and conveyed by Declarant (or its affiliates) to the purchasers of the Units (i.e., Class A Members) located thereon or sooner at the sole election of Declarant, or as required by law, (whereupon the Class A Members shall be obligated to elect the Association's Board of Directors and assume control of the Association).

**3.2 Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "B."

**3.3 Bylaws.** The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "C" to this Declaration, as they are amended from time to time.

**3.4 Delegation of Management.** The Association may contract for the management and maintenance of the Properties and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, preparation of records, enforcement of rules, and maintenance of the Common Areas, with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Governing Documents and Sections 720.301 through 720.402, inclusive, Florida Statutes (2009), as amended.

**3.5 Board of Directors.** Except as expressly otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members. An Owner does not have the authority to act for the Association by virtue of being an Owner.

**3.6 Association As Owner of Lots.** The Association has the power to purchase Lots and Living Units, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests.

**3.7 Members.** Every person or entity who is a record Owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

**3.8 Membership Roster.** The Association shall maintain a current roster of names and mailing addresses of Owners and primary occupants. A copy of the up-to-date roster shall be available to any Owner upon request.

**3.9 Limitation on Liability.** Notwithstanding the duty of the Association to maintain and repair the Common Areas, and certain parts of the Townhomes, the Association is not liable to Owners

for property damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the association, or caused by the elements or Owners or other persons.

**3.10 Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual Owner or class of Owners to bring any action which may otherwise be available.

**3.11 Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Governing Documents, the Association must obtain the prior approval of at least seventy-five (75%) percent of its voting interests before paying or obligating itself to pay legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;
- (C) the enforcement of the Governing Documents;
- (D) the enforcement of the rules and regulations of the Association;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) filing a compulsory counterclaim.

**3.12 Official Records.** The official records of the Association shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the development. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

**4. ASSESSMENTS.** The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Common Areas and association property, the expenses of

insurance for the Association and/or Directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as common expense by this Declaration or the Bylaws. If the Association enters into a contract for bulk service cable television, the cost of a duly franchised cable television service obtained pursuant to a bulk contract shall be a common expense.

**4.1 Covenants to Pay Assessments.** Declarant, for each Lot within the Property, hereby covenants, and each subsequent Owner of a Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(A) the Lot's share of annual assessments based on the annual budget of common expenses adopted by the Association;

(B) the Lot's share of special assessments for Association expenditures not provided for in the annual budget; and

(C) any special charge against one or more Lots specifically authorized in this Declaration or the Bylaws.

Assessments and charges shall be established and collected as provided herein and in the Bylaws. The obligation to pay the assessments provided for herein commences as to each Lot on the day of the first conveyance of the Lot to an Owner other than the Developer, except that no Lot shall be subject to assessment until a certificate of occupancy or like authorization has been issued by the county as to the Townhome located on the Lot. The annual assessments, special assessments and special charges, together with interest, late payment fees, costs, and reasonable attorney's fees, shall be the personal obligation of the Owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title to a Lot, voluntary or otherwise, the new Owner shall be jointly and severally liable with the previous Owner for all unpaid assessments and charges coming due prior to the time of such conveyance, without prejudice to the right of the new Owner to recover from the previous Owner any such amounts paid by the new Owner. Except as provided in Section 4.3 below as to the Developer, and in Section 4.6 below as to certain persons acquiring title through foreclosure, or deed in lieu of foreclosure, of a first mortgage, no Owner may be excused from the payment of assessments and charges unless all Owners are similarly excused.

**4.2 Share of Assessments.** Each Lot and its Owner(s) are liable for a share of all annual and special assessments levied by the Association, which share shall be a fraction of the whole, the numerator of which is the number "one" (1) and the denominator of which is the actual number of Lots in the Community.

**4.3 Developer's Obligation to Pay Assessments and Share for Lots Owned By It.** As provided under Florida Statute Section 720.308(1)(b), while the Developer is in control of the Association, it will be excused from payment of its share of the operating expenses and assessments. During this time the Developer shall instead be obligated to pay all Association expenses actually incurred which exceed assessments receivable from all other Owners and other

income of the Association. Such difference (if any), shall not include the cost of funding reserves for operating expenses, depreciation, capital expenditures or deferred maintenance. After this period, the Developer shall have the same responsibility to pay assessments on Lots with completed Townhomes for which a certificate of occupancy has been issued as any other Owner. Notwithstanding any term set out herein to the contrary, the Declarant, in its sole and unbridled discretion, expressly reserves the right to "opt-out" of its developer obligation, and upon submitting written notice to the Association of its decision to "opt-out", the Declarant agrees to pay assessments on all lots with completed Townhomes for which a Certificate of Occupancy has been issued and which are owned by Declarant as of the date the assessment accrues and which have been submitted to this Declaration. The decision as to whether the Declarant has or has not opted out of this developer obligation shall have no effect on the turnover date.

**4.4 Establishment of Liens to Secure Payment.** Any and all assessments and charges levied by the Association, together with interest at the highest rate allowed by law, and other costs and collection (including, but not limited to attorney's fees) are hereby declared to be a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made. The lien relates back to the date of recording this Declaration, and is superior to any Homestead rights any Owner may acquire. No Owner may exempt himself from personal liability, or release the Lot owned by him from the liens and charges hereof by waiving the use and enjoyment of the Common Areas, or by abandoning the Townhome. The lien is perfected by recording a Claim of Lien in the Public Records of the county, setting forth the amount and due date of each unpaid assessment or charge. To be valid the Claim of Lien must be signed by an officer or authorized agent of the Association, and must contain the legal description of the Lot. A recorded Claim of Lien secures payment of all assessments or charges due at the time of recording, as well as all assessments or charges coming due subsequently, including all interest, late payment fees, attorney's fees and costs incident to the collection process, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by the Claim of Lien, the party making payment is entitled to a satisfaction.

**4.5 Priority of Liens.** Unless otherwise provided by Florida law as amended from time to time, the Association's lien for unpaid assessments and charges shall have the priority provided under Section 720.3085, Florida Statute. The Association's lien shall be superior to, and take priority over all other mortgages regardless of when recorded. Any lease of a Living Unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

**4.6 Collection of Assessments.** If the Owner of any Townhome fails to pay any charge or assessment, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

(A) To charge interest on the unpaid amount, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment fee of up to five percent (5 %) of the delinquent amount. This fee shall not be considered a "fine" as provided for in Section



12.3 below, and the procedural requirements for levying fines shall not apply to the imposition of late payment fees.

**(B)** To accelerate the due date for any and all remaining unpaid installments of the annual assessment against the Owner's Townhome for the fiscal year.

**(C)** To file an action in equity to foreclose its lien. Unless otherwise required by law, the lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 720.3085 of the Florida Statutes, as it may be amended from time to time, for the foreclosure of liens upon a lot for unpaid assessments and charges.

**(D)** To bring an action at law for a money judgment against the Owner, without waiving any lien foreclosure rights. The Association may refuse to accept any tendered payment that bears a restrictive endorsement, and such will be the equivalent of no payment. Payment by check is not deemed received until the check has cleared.

**4.7 Mortgage Foreclosure.** Notwithstanding anything to the contrary herein, if any first mortgagee or other person, persons, or entity obtains title to a Lot as a result of a foreclosure of a first mortgage or a deed is given in lieu of foreclosure of a first mortgage or record, such acquirer of title shall be liable for the share of assessments pertaining to such Lot or chargeable to the former record owner of legal title, which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure of said first mortgage of record as provided in Section 720.3085, Florida Statutes (2009), as amended from time to time.

**4.8 Certificate as to Assessment, Mortgagee Questionnaires.** Within fifteen (15) days after request by a lot Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and monies owed to the Association by the lot Owner with respect to the lot have been paid. Any person other than the lot Owner who relies upon such certificate shall be protected thereby. The Association may charge up to \$150.00 to issue an estoppel certificate. The Association may but is not obligated to respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge up to \$150.00 (in addition to any charge for an estoppel letter) plus attorney's fees for doing so.

**4.9 Termination of the Association.** If the Association no longer exists for any reason, and if no other association has assumed its duties and functions, the Commons Association shall have the power to perform all functions of the Association and shall be authorized to assess all Owners for the cost of such services.

**5. ARCHITECTURAL AND AESTHETIC CONTROL.** The Developer is seeking to create a Community of architecturally harmonious homes. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Townhomes, after the initial construction of the Townhomes by the Developer, no Owner shall make any material change whatsoever in the exterior color of any portion of an Owner's Townhome or any appurtenant structure, nor in the color or style of roofing materials used on the

Townhome or appurtenant structure, without prior written approval of Architectural Control Committee of the Association (the "ACC"). Except for the initial construction of Townhomes and related improvements by the Developer, no building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area be performed without the prior written approval of the Board of Directors, as well as the ACC. In obtaining the written approval, Owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ACC shall be as provided in the Declaration and Bylaws of the Association.

## **6. APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

**6.1 Appurtenances to Each Lot.** The Owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

(A) Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.

(B) The non-exclusive right to use the Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.

(C) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the Owner's share of liability for the assessments levied by the Association as set forth in Section 4.2 above. The ownership of an undivided share of the common surplus does not entitle the Owner to a distribution of the common surplus.

(D) Membership and voting rights in the Commons Association, and the non-exclusive right to use Commons Association Common Areas, subject to the restrictions and limitations provided in the Governing Documents.

(E) Other appurtenances as may be provided in the Governing Documents. The appurtenances to a Lot and Townhome automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot and Townhome. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Townhomes.

**6.2 Use and Possession.** An Owner is entitled to exclusive use and possession of his Lot and Townhome except as otherwise provided herein. He is entitled to non-exclusive use of the Common Areas in accordance with the purposes for which they are intended, but no use of any Lot, Townhome or Common Area may unreasonably interfere with the rights of other Owners or residents. No Lot or Townhome may be sub-divided or any part separately sold, leased or otherwise transferred. Every Owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, to and over the walkways and private

roads laid out on the Commons Association Common Areas for use in common with all other Owners, their tenants, guests and invitees. The portions of the Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Owners and each Owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

(A) The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of the Common Areas and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of the Owners to use the Common Areas for the purposes intended.

(C) The right of an Owner to the non-exclusive use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

**6.3 Title to Common Areas.** On or before the date when Owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey the Common Areas to the Association by Quit Claim Deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record. From the date this Declaration is recorded, the Association shall be responsible for the maintenance and operation of the Common Areas, and any improvements and personal property thereon. The Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Common Areas that the Developer elects to build.

**THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO THE COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DEVELOPER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE COMMON AREAS AND FACILITIES.**

**6.4 Partition; Separation of Interests.** There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall the Developer, or any Owner or any other person acquiring any interest in the Community, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Townhome owned in co-tenancy. The ownership of any Lot and the ownership of the Townhome constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Townhome hold membership in the Association.

**6.5 Easements.** Each of the following easements and easement rights is reserved through the Properties and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Properties. Any lien encumbering these easements shall automatically be subordinate to the rights of the Owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Properties for the location of utilities, for the location of, and access for the operation, maintenance, repair and replacement of plumbing, electrical, mechanical and HVAC equipment (including but not limited to air conditioning compressors, conduits, lines, and other apparatus) which may be situated on certain Lots but serves neighboring Lots, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Properties.

(A) Utility and other Easements. The Association has the power, without the joinder of any Owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the Properties, and to relocate any existing easements in any portion of the Properties, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Properties. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments. If for any reason other than the intentional act of the Owner or the Association, any Townhome encroaches upon any of the Common Areas, upon any other Lot, or any Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) Ingress and Egress. A non-exclusive easement shall exist in favor of each Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**(D) Drainage.** A perpetual, non-exclusive easement shall exist in favor of Declarant, the Association, the Association, and their employees or other designees for the use of drainage areas established throughout the Community, and an easement for ingress, egress, and access to enter any portion of the Community in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Common Areas by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

**(E) Construction; Maintenance.** The Developer and its agents, employees and contractors shall have the right to enter the Properties and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Owners of their property.

**(F) Sales Activity.** The Developer and its agents, employees and contractors shall have an easement to use, without charge, any Townhomes owned or leased by the Developer, and the Common Areas (including, but not limited to, all recreational facilities), in order to establish modify, maintain and utilize, as it and they deem appropriate, model Townhomes and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model Townhomes or the Common Areas to prospective purchasers or tenants, erect signs On the Properties, and take all other action helpful for sales, leases and promotion of the Properties. Neither the Association nor its members shall interfere in any manner with the Declarant's right to develop, market, construct lots and Townhomes within this Community.

**(G)** The easements and rights described in (E) and (F) above shall terminate upon the sale of all Townhomes to purchasers other than a successor Developer.

**6.6 Assignment of Easements.** The easements and easement rights reserved hereunder to the Developer may be assigned by the Developer in whole or in part to the Association, the Commons Association, any town, county or state government or agency thereof, or duly licensed or franchised public or private utility, or any other designee of the Developer.

## **7. MAINTENANCE; IMPROVEMENTS.**

**7.1 Maintenance of Common Areas.** Except as otherwise provided herein, the Association shall maintain, repair and replace any and all improvements constructed on the Common Areas, including without limitation all landscaping, the components of the irrigation systems, including but not limited to the tap into the main line, timers, switching devices and heads, drainage structures, utility lines, walkways, light fixtures, and other structures. Additionally, where the Common Areas are contiguous to a road, the Association shall maintain all landscaping (if any) between the Common Areas and the pavement within such right-of-way. The Association shall

obtain the written approval of the ACC before making any material alterations or substantial additions to the Common Areas.

## **7.2 Maintenance of Lots and Townhomes.**

(A) Each Owner must maintain his or her Lot, including, without limitation, all structures, landscaping, and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the standards as determined by the ACC, and any, other applicable covenants, except to the extent that such maintenance responsibility is assigned to or assumed by the Association pursuant to this Declaration or any Amended Declaration or additional covenants applicable to such Lot. In addition, each Owner shall maintain the sidewalk and landscaping located between the boundary of such Owner's Lot and the back-of-curb of any roadway lying adjacent to the boundary of his or her Lot, unless the Association assumes all or part of such maintenance responsibility, and then only to the extent not assumed by the Association.

(B) The Association shall be responsible for:

(1) maintenance (including, mowing, fertilizing, watering, pruning, and replacing, and controlling disease and insects), of all lawns and landscaping installed in the Lot as part of the initial construction on the Lots, specifically excluding any enclosed courtyard, patio or other area not readily accessible from outside the dwelling;

(2) painting of all exterior painted portions of any dwelling, including any garage, garage door, exterior doors, shutters, fascia on the dwelling, and any fence or perimeter walls erected along the Lot boundaries as part of the original construction on the Lots or any replacement thereof ("Boundary Fences");

(3) caulking of the exterior portions of all windows and doors;

(4) clean, repair and/or replacement of the roofs (including shingles and roof decking, but no roof trusses) of dwellings and garages;

(5) pressure cleaning of front sidewalks, exterior front steps, roofs, and the exterior walls of all dwellings;

(6) repair and replacement of any Boundary Fences originally installed by Declarant;

(7) operation, maintenance, repair and replacement of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines and time clocks, wherever located) serving the Lots, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Lot;

(8) termite treatment of all exterior walls and foundations of dwellings and garages provided that the Association shall not be liable if such treatment proves to be ineffective;

(9) repair or replacement of any exterior door hardware, provided, however, the cost of such repair/replacement shall be assessed against the Owner of the Lot as a Special Charge Assessment;

(10) repair or replacement of any lamp post(s) and mail kiosk originally installed by Declarant, whether on Lot or in the common area; and

(11) repair and replacement of any fixtures or furnishings originally placed or installed by Declarant on any recreational amenity situated in the common area, if any;

The Association shall not be responsible for any maintenance or repairs to any glass surfaces, any screening, anything contained within any dwelling, or courtyard, or any landscaping, improvements, or modifications added or made to any Lot after the conveyance of the Lot by Declarant.

All other portions of the Lots (and the improvements located thereon) shall be the responsibility of the respective Owners, including, without limitation, maintenance, repair and replacement, as necessary, of all pipes, lines, wires, conduits, or other apparatus which serve only the Lot, whether located within or outside the Lot's boundaries (including all utility lines and courtyard drain and associated pipes serving only the Lot) and all landscaping located in the rear of the Lot.

Once a Certificate of Occupancy ("CO") or a temporary Certificate of Occupancy is issued for any Unit within a building, the Association shall then be responsible for obtaining and maintaining insurance on the entire building in accordance with the coverage set forth in Section 9.

(c) Declarant may have constructed or installed drainage swales, drainage lines, and/or other equipment on a Lot for the purpose of managing and/or containing the flow of surface water, if any, found upon such Lot from time to time. The Association shall be responsible for the maintenance, operation, and repair of such drainage swale(s), drainage lines, and other equipment on any Lot. Maintenance, operation, and repair shall mean and include, without limitation, the exercise of practices, such as mowing and erosion repair, which allow the drainage swales, drainage lines, and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities as permitted by the South Florida Water Management District. Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, and other equipment by Owners is prohibited. No alteration of a drainage swale, drainage lines, and other equipment shall be authorized and any damage to any drainage swale, drainage lines, and other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale, drainage lines and other equipment returned to its former condition as soon as possible by

the Owner(s) of the Lot upon which the drainage swale, drainage lines, and other equipment is located.

(d) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement. The maintenance, repair, replacement, and other obligations of the Association and Owner specified in this Declaration shall be performed as and when the Board determines it.

**7.3 Completion of Community.** The Developer shall undertake the work of developing all Lots and Townhomes within the Community. The completion of that work, or the sale, lease, or other disposition of Townhomes, is essential to the establishment and welfare of the Community as an ongoing residential community. In order that such work may be completed and the Community established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever in their judgment is reasonably necessary or advisable for the completion of the work and the establishment of the Community as a residential community. As used in this paragraph, the words, "its transferees" specifically do not include purchasers of Lots improved with completed Townhomes.

**7.4 Enforcement of Maintenance.** If the Owner of a Townhome fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot, with or without consent of the Owner. The Association may repair, replace, or maintain any item which constitutes an immediate hazard to other property or residents, or which has a material adverse effect on the appearance of the Community. Any expenses so incurred by the Association shall be assessed against the Owner, together with reasonable attorney's fees and other expenses of enforcement.

**7.5 Negligence; Damage Caused by Condition in Townhome.** The Owner of each Townhome shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or intentional action by that of any member of his family or his guests, employees, agents, or lessees, only to the extent that such expense is not met by proceeds of insurance. Each Owner has a duty to maintain his Townhome, and the personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Townhomes, the Common Areas or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Townhomes, the Common Areas, Association property or property within other Townhomes, the Owner of the offending Townhome shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Townhomes involved is not occupied at the time the damage is discovered, the Association may enter the Townhome without prior notice to the Owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner.



**7.6 Alterations and Additions.** Funds necessary for material alterations or substantial additions to the Common Areas by the Association may be levied as special assessments by the Association only upon prior approval by a majority of the whole Board of Directors and approval by two-thirds (2/3rds) of the voting interests present and voting at a meeting called for the purpose. Prior to the commencement of any such project relating to the Common Areas or to the buildings, the Association shall obtain the written approval of the ACC. However, if changes that are necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval by the Owners is necessary.

**7.7 Pest Control.** The Association may elect to supply pest control services for the inside of each Townhome, with the cost thereof being part of the common expenses. The cost of any pest control provided by the Association shall be a common expense.

**7.8 Hurricane Shutters.** Notwithstanding anything to the contrary above, the Board of Directors shall adopt, with the approval of the ACC, a model, style and color of hurricane shutter as a standard for use in the Properties. No hurricane or storm shutters except the standard model, color and style adopted by the Board of Directors and approved by the ACC shall be used.

## **8. PARTY WALLS.**

**8.1 Definition.** Any wall which by definition includes any utility lines or facilities within the wall, which is built as part of the original construction of any Townhome subject to this Declaration and placed on the dividing line between adjoining Townhomes and Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 8, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

**8.2 Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who share the wall.

**8.3 Weatherproofing.** Notwithstanding any other provision of this Section 8, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements, or to infestation by termites or other injuries, agencies or elements, shall bear the whole cost of furnishing the necessary protection against such elements.

**8.4 Contribution.** The right of any Owner to contribution from any other Owner(s) under this Declaration shall be appurtenant to the land and shall pass to such Owner's successors in title.

**8.5 Binding Arbitration.** Any dispute concerning a party wall shall be submitted to arbitration under Chapter 682, Florida Statutes. Each party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

**9. INSURANCE OF TOWNHOMES, BUILDINGS AND OTHER LOT IMPROVEMENTS.** Even though this development is not a residential condominium, it is the

Declarant's intent that the Association will obtain and maintain insurance as though this development was created and developed as a residential condominium under Florida law. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

**9.1 By the Unit Owner.** Each Owner is responsible for obtaining and maintaining a standard HO6 condominium unit owners insurance policy insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the Owner; and all alterations, additions and improvements made to the unit or the common elements by the Owner or his predecessors in title. Each Owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance. In addition to the foregoing, each Owner shall be required to purchase loss assessment protection at the maximum available coverage amount.

**9.2 Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage as though this was a residential condominium governed by Chapter 718 of the Florida Statutes, as amended from time to time and under these documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self insure. Once a Certificate of Occupancy (CO) or temporary Certificate of Occupancy has been issued for any Unit within a Building, the Association shall then be responsible for obtaining and maintaining insurance on the entire Building in accordance with this Section 9.

**9.3 Required Coverage.** The Association shall maintain adequate insurance covering the buildings and other improvements on the individual Lots, as well as all association property, in such amounts, and with such deductibles, as is determined annually by the Board of Directors to be reasonable in the exercise of its good business judgment, such insurance to afford at least the following protection:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "all risk" property contract.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit Owners as a group to a unit Owner. The Association's liability coverage does not extend to accidents, injuries or deaths occurring inside Townhome units.

(C) Automobile. Automobile liability for bodily injury and property damage for owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.

(D) Statutory Fidelity Bond.

**9.4 Hazard Insurance.** Every hazard insurance policy issued or renewed on or after January 1, 2010, shall provide primary coverage for:

(A) all Buildings or other Lot improvements as initially installed on a Lot or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the Building was developed and the unit was initially conveyed; and

(B) all portions of the property for which this Declaration requires coverage by the Association.

Anything to the contrary notwithstanding, the terms "building(s)," or "other lot improvements," or any other term found in this Declaration which defines the scope of property or casualty insurance that this Association is required to obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Lot and serve only one Lot.

Every hazard insurance policy issued or renewed on or after January 1, 2010, to an individual unit Owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit Owner providing such coverage shall be without rights of subrogation against the Association. All real or personal property located within the boundaries of a lot which is excluded from the coverage provided by the Association as set forth above shall be insured by the individual unit Owner.

**9.5 Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit Owners. Some of the more common options include:

(A) Flood insurance.

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Directors and Officers Liability.

(D) Medical Payments.

(E) Leakage, seepage and wind-driven rain.

(F) Endorsement for loss by operation of local ordinance.

**9.6 Description of Coverage.** A detailed summary of the coverages included in the Community policies, and copies of the community policies, shall be available for inspection and copying by unit Owners or their authorized representatives upon request.

**9.7 Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the unit Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

**9.8 Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the unit Owners and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit Owners and their respective mortgagees.

(A) Mortgagee. If a mortgagee endorsement has been issued as to a Lot, the shares of the mortgagee and the unit Owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a Townhouse, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(B) Deductibles. The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total.

**9.9 Distribution of Proceeds.** Insurance proceeds from Association policies shall be distributed to or for the benefit of the Lot Owners in the following manner:

(A) Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) Cost of Repair or Reconstruction. If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the Costs of reconstruction. Any proceeds remaining after repairs and reconstruction shall be distributed to

the beneficial Owners, remittances to unit Owners and their mortgagees being paid jointly to them.

(C) **Failure to Repair or Reconstruct.** If it is determined in the manner elsewhere provided here in that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial Owners, remittances to unit Owners and their mortgagees being payable jointly to them.

**9.10 Association as Agent.** The Association is hereby irrevocably appointed as agent for each unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Development property.

**10. REPAIR OR RECONSTRUCTION AFTER CASUALTY.** If any part of any Townhouse or Lot improvements which are covered by the Association's insurance policy is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

**10.1 Damage to Townhome Unit Interiors.** Where loss or damage occurs within the interior of one or more Townhome Units, any Association insurance proceeds on account of the loss or damage shall be distributed to the Owner(s) of the damaged Townhome Unit(s) in shares. The Owner(s) of the damaged Townhome Unit(s) interior shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

**10.2 Damage to Buildings or Other Lot Improvements Covered by the Association's Insurance Policy.** Where loss or damage occurs to any Building(s) or other Lot Improvements which are covered by the Association's insurance policy, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the Building or other Lot Improvements which are covered by the Association's insurance policy, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Owners in proportion to their shares of the common expenses for the deficiency. Such special assessments need not be approved by the Owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

**10.3 Application of Insurance Proceeds.** It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be distributed to all Owners, pro rata.

**10.4 Equitable Relief.** In the event of damage to the Townhome or other Lot Improvements which are covered by the Association's insurance policy which renders any Townhome uninhabitable, if repairs and reconstruction are not begun and completed within a reasonable period of time, the Owner of the uninhabitable Townhome may petition a court for equitable relief. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within twelve (12) months following the damage or destruction, and is completed within twelve (12) months thereafter.

**10.5 Plans and Specifications.** Any repairs or reconstruction must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the Owners of at least three-fourths (3/4ths) of the Townhomes, by the ACC, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Townhome without the consent of the Townhome Owner and his institutional mortgagee, if any.

## **11. GENERAL COVENANTS AND USE RESTRICTIONS.**

**11.1 Residential Use.** Each Townhome shall be occupied by only one family and its temporary guests at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any Townhome. No person may publicly advertise the address of a Townhome as the address of any business. The use of a Townhome as a public lodging establishment shall be deemed a business or commercial use. This Section 11.1 shall not be construed to prohibit any Townhome occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Townhome, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Townhome. Such uses are expressly declared customarily incident to residential use. This Section 11.1 is, however, intended to prohibit commercial or business activity by an Owner which would noticeably change the residential ambiance of the Community, or make it obvious that a business is being conducted, Such as by regular or frequent traffic in and out of the Community by persons making deliveries or pick-ups, or by employees and business associates, or by customers and clients.

**11.2 Occupancy of Townhome when Owner is not in Residence.** An Owner may occasionally allow family, friends or business associates in reasonable numbers to temporarily occupy his Townhome in his absence. Except as otherwise provided in Section 15.1 below, this provision is not intended to allow any Owner to use his Townhome as short-term transient accommodations for several individuals or families. The Owner must register all guests with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The Owner is responsible for the conduct of his guests. When the Owner is not in residence, no more than six (6) overnight occupants are allowed at any time.

**11.3 Leases.** No portion of a Townhome (other than an entire Townhome) may be rented. All leases shall be on forms approved by Association and shall provide (or, if it does not provide, shall be automatically deemed to provide) that (i) a material condition of the lease shall be the

tenant's full compliance with the covenants, terms, conditions and restriction of this Declaration (and all Exhibits hereto) and with any rules and regulations adopted by the Association from time to time (before or after the execution of the lease) and (ii) Association shall have the right to terminate the upon default by the tenant in observing any of the provisions of this Declaration, the Articles, and By-Laws of Association, applicable Rules or other applicable provisions of any agreement, document, or instrument governing the Community or administer by Association. Landlord is obligated to sufficiently assure the Board that no Townhome will be occupied by any sexual offender or predator or anyone who has been arrest or adjudicated as a sexual offender or predator. Owners are responsible providing to their tenants copies of all such documents or instruments. Each lease must be for a minimum period of one (1) month or thirty (30) days, whichever is less. No subleasing or assignment of lease rights by the tenant is permitted. The Association may also charge a reasonable fee to offset the costs of a background check on tenant. As a condition to the approval by Association of proposed lease of a Townhome, Association has the authority to require that a security deposit in an amount not to exceed the equivalent of one (1) month's rent (or such greater amount permitted from time to time by the Act) be deposited into an account maintained by Association as permitted by the ACT. The security deposit shall protect against damages to the Common Areas or Property. A security deposit held by Association under this Section 11.3 shall be governed by Chapter 83 of the Florida Statutes, as it may be renumbered from time to time. The Townhome Owner will be jointly and severally liable with the tenant to Association for any amount in excess of such sum which is required by Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant.

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

**11.4 Nuisance.** No member shall use or permit a Townhome to be used in any manner which would be unreasonably disturbing, detrimental or a nuisance to the occupant of another Townhome or which would not be consistent with the maintenance of the highest standards for the first class residential development, nor permit the premises to be used in a disorderly or unlawful way. The use of each Townhome and the Common Areas shall be consistent with existing laws and the Governing Documents, and residents shall at all times conduct themselves in a peaceful and orderly manner. No unlawful, disorderly or offensive activity shall be carried on upon any Lot or in any Townhome, nor shall any Owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

**11.5 Temporary Structures.** Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents or shacks shall not be used on any Lot at any time as a residence, either temporary or permanent.

**11.6 Signs.** In order to maintain an attractive community, no sign, banner, advertisement or poster (including "open house", "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed, in, on or upon any part of the Properties. This provision includes signs inside of Townhome windows or the windows of motor vehicles. This Section 11.6 shall not apply to signs used by Developer or its agents to market Townhomes owned by Developer.

**11.7 Appearance; Refuse Disposal.** Each Owner shall keep his Lot and Townhome free of trash and debris and shall reasonably maintain his Townhome. Personal property of residents shall not be left on the lawns or landscaped areas outside the Townhomes. Trash, garbage or other waste must be kept in appropriate containers suitably screened from view from the street and adjacent Lots. Porches, and lanais shall be used only for the purposes intended, and shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

**11.8 Maintenance.** The Developer shall care for unimproved Lots within the Properties at its expense, remove and destroy tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary to keep the Lot in reasonable order. The Association shall have the right to repair any structure or improvement on any Lot which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Lot Owner is given no less than five (5) days notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the Owner of the Lot, which charge shall be a lien on the Lot which may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

**11.9 Awnings and Windows.** Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the ACC and as further set forth in Section 7.8.

**11.10 Fences.** No fence, wall, hedge or other physical and visual barrier shall be erected in the Common Areas, except as originally installed by Developer, or as approved by the ACC.

**11.11 Heating/Air Conditioning Equipment and Water Heater.** The heating/air conditioning equipment and water heater serving a Townhome shall form a part of the Townhome where such equipment is located. The maintenance of any such equipment shall be the sole responsibility of the Townhome being served.

**11.12 Parking Areas.**

A. All parking shall be general, open parking for all Members of the Association. There shall be no assigned parking for the Vista Townhomes at Heritage Bay. In addition, there may be some parking spaces available for use by both Members of the Association and residents of other communities within Vistas at Heritage Bay.



B. All parking in the Community is solely for non-commercial automobiles with a current passenger registration. No vehicle which cannot operate on its own power shall be permitted to remain on the Properties for more than forty-eight (48) hours.

C. No commercial vehicles, campers, mobile homes, motor homes, house trailers, or trailers of ever other description, boats or boat trailers or vans shall be permitted to be parked or to be stored at any place in the Community provided, however, the Board shall have the right to permit service vehicles or vans to be parked for specified periods of time in designated service parking areas to the extent that some exists. The term commercial vehicle shall not be deemed to include recreational or utility vehicles (i.e. Broncos™, Blazers™, Explorers™, etc.) no longer than 19' or clean "non-working" vehicles such as pick-up trucks and vans not in excess of ¾ ton or cars, if they are used by the Owner on a daily basis for normal transportation. The term commercial vehicle shall also not be deemed to include law enforcement vehicles. Notwithstanding any other provision in this Declaration to the contrary, the foregoing provisions shall not apply to construction or maintenance vehicles in connection with the construction, improvement, installation, or repair by Developer of any part of the Properties. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other temporary commercial services. In addition, this parking prohibition shall not apply to Developer's vehicles when engaging in any activity relating to construction, maintenance, or marketing of Townhomes.

D. No vehicle maintenance or repairs shall be performed on the Properties, except for emergency repairs.

**11.13 Water Supply; Wells; Water Rights.** All water supplied to the Townhomes shall be metered by two common meters for the Community. The cost of water shall be a common expense of the Association. No Owner may install or operate a private well for any reason, including operation of a water source heat pump.

**11.14 Landscaping.** All landscaping, including without limitation, trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Association. No landscaping shall be added, augmented, replaced, cut down, destroyed or removed without the prior written approval of the ACC. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon any Lot outside of the Townhome and the Townhome's privacy walls, unless approved by the ACC.

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

the Townhome. Pets may not be left unattended or leashed in yards, garages, or on porches or lanais.

Notwithstanding the foregoing, pit bull and pit bull mix dogs or other recognized aggressive breeds of dogs shall be prohibited regardless of size or weight. A pit bull or pit bull mix is defined as any dog that, in the sole and exclusive discretion of the Board, has the appearance and characteristics of being predominately and commonly referred to as a "pit bull" regardless of the opinion of any veterinary doctor. Any Townhome Owner who keeps or maintains any pet, in exchange for and in consideration of the privilege to keep the pet, hereby indemnifies and holds the Association and each Owner free and harmless from any loss, claim or liability of any kind or character of whatever nature arising from or related to the keeping or maintaining of such pet in the Townhome.

**11.16 Antennas, Radio Equipment and Flagpoles.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, unless expressly approved in writing by the ACC, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the ACC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment. This Section 11.16 shall not apply to the Developer or its agents to market Townhomes owned by Developer.

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

**11.18 Lakes; Water Retention Ponds.** No Lot or Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that

have been or may be created without the prior written consent of the ACC and the District. No person other than the Declarant or the Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

**11.19 Barbecue Grills.** Barbecue grills are prohibited on any portion of the Properties..

**11.20 Bicycles.** Bicycles may not be stored in the balconies, patios, terraces or in any place that causes the bicycle to be visible from the exterior of the Buildings.

**12. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every Owner, and all guests, tenants and occupants of Townhomes, shall at all times comply with Chapter 720, Florida Statutes, the Governing Documents, and the rules of the Association. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, this Chapter 720, the governing documents of the Community, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against:

(A) The Association;

(B) A member;

(C) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and

(D) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section does not deprive any person of any other available right or remedy.

**12.1 Enforcement Action.** Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**12.2 Self-Help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Declarant, its

successors and assigns, and/or the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any construction or other violation that may be or exist thereon. The Developer, its successors and assigns and/or the Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal.

**12.3 Suspension of Common Area Use Rights; Fines.** The Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities, and may levy reasonable fines, not to exceed the amount allowed by law, against any member or any tenant, guest, or invitee.

(A) A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(B) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(C) Suspension of common area use rights shall not impair the right of an owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

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

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

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

**13. The Commons Association.** By taking title to a Lot, an Owner also becomes a member of Vista Townhomes at Heritage Bay Commons Association, Inc. (The "Commons Association") and is subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for Vista Townhomes at Heritage Bay Commons Association, Inc., as originally

recorded in Book 4322, at Page 3571, in the Official Records of Collier County, Florida, (the "Commons Association Declaration"), as it may be amended from time to time.

**13.1 Commons Association Assessments.** Pursuant to the Commons Association Declaration, the Commons Association has the right to assess its members for all expenses incurred in the performance of its duties. These assessments are collected directly by the Commons Association from each member.

**13.2 Voting in Commons Association Affairs.** In accordance with the provisions of the Governing Documents, all Owners are automatically and irrevocably members of the Commons Association. Each Owner is entitled to one vote per Lot.

**13.3 Notices to Commons Association.** Copies of all amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, and any easements or conveyances affecting the Common Areas, shall be forwarded to the Commons Association no later than fifteen (15) days after recording in the public records of the county. The Association shall also provide a current list of the names and mailing address of all Owners within fifteen (15) days after receiving a written request for same from the Commons Association.

**13.4 Termination of the Association.** If the Association is terminated or shall cease to exist for any reason, and no other community association has assumed its duties and functions, the Commons Association shall maintain all Common Areas and otherwise perform all functions of the Association, and shall be authorized to assess all Owners for the cost of such services.

**14. TRANSFERS OF OWNERSHIP OF TOWNHOMES.** In order to foster a community of congenial, financially responsible residents with the objectives of inhibiting transiency, protecting the value of the Townhomes and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Townhome by an Owner other than the Developer shall be subject to the following restrictions, which each Owner covenants to observe:

**14.1 Forms of Ownership.**

(A) One Owner. A Townhome may be owned by one natural person who has been approved as provided herein.

(B) Co-ownership. Co-ownership of Townhomes is permitted. However, if the proposed co-owners are other than husband and wife, the Board shall condition its approval upon designation of one of the approved co-owners as "primary occupant," and the use of the Townhome by other persons shall be as though the primary occupant were the only actual Owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 14.

(C) Ownership by Corporations or Trusts. A Townhome may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided for other transfers or title. However, the intent of this provision is to allow flexibility in

estate, financial or tax planning, and not to create circumstances in which the Townhome may be used as short term transient accommodations for several individuals or families. The approval of a Director, or corporation or other entity as an Owner shall be conditioned upon designation of one natural person to be the "primary occupant", and the use of the Townhome by other persons shall be as though the primary occupant were the only actual Owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift, subject to all the provisions of this Section 14. No more than one such change will be approved in any twelve-month period.

**(D) Life Estate.** A Townhome may be subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member from such Townhome, and occupancy of the Townhome shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and holders of the remainder interest shall be jointly and severally liable for all assessments and charges against the Lot. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. Except in the case where such a transfer has been made, if the consent or approval of the Owner is required for any purpose, that consent or approval of the holders of the remainder interest shall not be required.

#### **14.2 Transfers.**

**(A) Sale or Gift.** No Owner may effectively convey title to a Townhome or any interest therein by sale or gift without the prior written approval of the Board of Directors.

**(B) Devise or Inheritance.** If any Owner acquires his title by devise or inheritance, his right to occupy or use the Townhome shall be subject to the approval of the Association. The approval of the Association shall not be denied to any devisee or heir who was the decedent's lawful spouse or related to the Owner by blood or adoption within the first degree.

**(C) Other Transfers.** If any person acquires title in any manner not considered in the foregoing subsections, his right to occupy the Townhome shall be subject to the approval of the Association under the procedure outlined in Section 14.3 below.

#### **14.3 Procedures.**

##### **(A) Notice to Association.**

1. Sale or gift. An Owner intending to make a sale or gift of his Townhome or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the date of the proposed transfer, together with the name, and address of the proposed purchaser or donee and such other information as the Board may reasonably require.

2. Devise, Inheritance, or Other Transfers. The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument

evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the Townhome following the procedures provided in this Declaration.

3. Failure to give Notice. If no notice is given, the Association at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.

**(B) Board Action; Approval.** Within twenty (20) days of receipt of the required notice and all information requested, but not later than sixty (60) days after receipt of the notice, whichever occurs first, the Board must approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee or the closing agent if the Board neither approves or disapproves within twenty (20) days, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval.

**(C) Disapproval.**

1. The Board may disapprove a transfer of ownership only if a majority of the whole Board so votes, after receiving a written opinion of counsel that such disapproval is for a good cause. Only the following shall be deemed to constitute good cause:

a. The application for approval on its face indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Properties;

b. The person seeking approval has a history of disruptive behavior or an attitude of disregard for the rights and property of others, as evidenced by his conduct in other social organizations or associations, or by his conduct as a tenant, owner or occupant of a Townhome in Vista Townhomes at Heritage Bay; or

c. The person seeking approval failed to provide the information and appearance required to process the application in a timely manner or concluded the transaction without obtaining approval.

**14.4 Exception.** The provisions of Sections 14.2 and 14.3 do not require Association approval of transfers of ownership by the Developer or of the acquisition of title by any acquirer who acquires title through an institutional mortgage, whether by foreclosure or deed in lieu of foreclosure; however, Association approval is required for a purchaser from such mortgagee.

**14.5 Unapproved Transfers.** Any sale or transfer which is not approved pursuant to the terms of this Declaration shall be void or voidable unless subsequently approved by the Board.

**15. DEVELOPER'S RIGHTS AND DUTIES.** As long as the Developer holds any Lots in the Community for sale in the ordinary course of business, the following shall apply, notwithstanding any other provisions to the contrary.

**15.1 Developer's Use.** Until the Developer has completed all of the contemplated improvements and has sold all of the Lots in the Community neither the Owners nor the Association, nor their use of the Lots and Common Areas shall unreasonably interfere with the completion of the contemplated improvements or the sales of Townhomes. The Developer may make any use of the unsold Lots and the Common Areas as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of sales office, display of signs, leasing Townhomes, and showing the Properties to prospective purchasers. The Developer also reserves the right to lease back one or more Townhomes for use as "hospitality suites", providing short term guest accommodations for prospective purchasers or other business guests of the Developer.

**15.2 Assignment of Development Rights.** All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any successor developer, without the consent of any other Owner or any holder of a mortgage secured by any Lot. In the event of such assignment, the assignee shall assume such rights, powers and duties, and the assignee shall be relieved of further liability or obligation to the extent of the assignment. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such interest.

**15.3 Amendment of Documents.** In addition to any other right of amendment or modification provided for in the Townhome Documents, the Declarant, or any entity which succeeds to its position as the Developer of the Property described in Exhibit "A" may, in its sole discretion, by an instrument filed of record in the county, unilaterally modify, enlarge, amend, waive or add to the provisions of this Declaration or any of its recorded exhibits. The rights set forth in this paragraph shall expire when construction of the Community is completed and the Declarant no longer holds any Lots and Townhomes in the Properties for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made without notice to the members or to any other person. However, no amendment shall change the shares of liability for assessments or ownership of the common surplus of the Association, or the voting rights appurtenant to any Townhome, unless the Owner of the Townhome and his institutional mortgagee (if any) consent in writing to the amendment.

**15.4 Sales or Leases of Townhomes.** The Developer has the right to sell, lease or transfer ownership of any Townhome owned by it on such terms and conditions as it deems in its own best interest.

**15.5 Additions or Withdrawals of Property.** The Declarant has the right and the power, but neither the duty nor the obligation, to record instruments bringing additional lands within the Community and subjecting those lands to the protective covenants, conditions, restrictions or provisions provided for in this Declaration. The Declarant also reserves the right in its sole



discretion to withdraw property from submission to this Declaration, except that the Declarant shall not be permitted to withdraw any property after it has been conveyed to an Owner other than the Declarant, without the joinder of the Owner.

**15.6 Security; Non-Liability of Declarant and Association.** The Declarant reserves the right as long as it owns any Lot or Townhome within the Community for sale in the ordinary course of business, to determine the level (if any) of security services to be provided, or to engage or discontinue any such services.

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

NEITHER THE ASSOCIATION, THE DECLARANT, THE COMMONS ASSOCIATION OR DEVELOPER ARE INSURERS OR GUARANTORS OF SECURITY FOR PERSONS OR PROPERTY WITHIN THE COMMUNITY.

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

## **16. TURNOVER OF CONTROL.**

**16.1 Time of Turnover.** The turnover of control of the Association by the Developer shall occur not later than ninety (90) days after conveyance of title to at least ninety percent (90%) of the Lots within the Properties. At the Turnover Meeting the members shall elect a Board of Directors and the Directors appointed by the Developer shall resign.

**16.2 Procedure for Calling Turnover Meeting.** No more than 75 days and no less than 60 days prior to the Turnover Meeting, the Association shall notify in writing all members of the date, time and place of the Turnover Meeting.

**16.3 Early Turnover.** The Developer may turn over control of the Association to Owners other than the Developer prior to the turnover deadline set forth above by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of Developer's decision to cause its appointees to resign is given to the Owners, neither the Developer, nor its appointees, shall be liable in any manner for doing so, even if Owners other than the Developer refuse or fail to assume control.

**16.4 Developer Representative.** The Developer is entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5 %) of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

## **17. DURATION OF COVENANTS; AMENDMENT OF DECLARATION.**

**17.1 Duration of Covenants.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Community Association, the Developer and any Owner, their respective legal representatives, heirs, successors and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of the recording of the Community Association Declaration in the public records of the county. Upon the expiration of the initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of potential successive ten (10) year renewal periods shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, unless during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal will be considered, shall be given at least forty-five (45) days in advance of the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the public records of the county, and may be relied upon for the correctness of the facts recited therein as they relate to the termination of this Declaration.

**17.2 Proposal.** Amendments to this Declaration may be proposed at any time by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. Any amendments so proposed must be submitted to a vote of the Owners not later than the next annual meeting.

**17.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended at any time if a duly proposed amendment is approved by at least seventy-five (75%) percent of the voting interests of the Association present in person or by proxy and voting at any annual or special meeting called for the purpose, provided that the text of each proposed amendment has been given to the members with notice of the meeting. However, no amendment shall be effective to change the share of liability for assessments or ownership of the common surplus of the Association, or the voting rights, appurtenant to any Townhome, unless the Owner and his institutional mortgagee (if any) consent in writing to the amendment. Until control of the Association has been turned over to

Owners other than the Developer, this Declaration may also be amended by vote of two-thirds (2/3rds) of the Board of Directors, without need for a vote of the Owners.

**17.4 Certificate; Recording.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where this Declaration is recorded, and 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.

**17.5 Amendment of Provision Relating to Developer.** As long as the Developer holds any Lot in the Community for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

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

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

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

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

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

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

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

AS USED IN THIS ARTICLE "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING, ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF DECLARANT, WHICH SHALL BE FULLY PROTECTED HEREBY.

## **18. GENERAL PROVISIONS.**

**18.1 Waiver.** Any waiver by any person of any provisions of this Declaration, or breach thereof, must be in writing to be effective, and shall not operate or be construed as a waiver of any other provision or subsequent breach.

**18.2 Severability.** If any Section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and its invalidity shall not affect the validity of the remaining portions.

**18.3 Headings and Capitalization.** The headings of the sections subsections, paragraphs and subparagraphs herein, and the capitalization of certain words, are for convenience only, and are not intended to affect the meaning or interpretation of the contents.

**18.4 Notices.** Any notice required to be sent to any Owner under this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. The Owner bears the responsibility for notifying the Association of any change of address.

**18.5 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretations shall be binding upon all parts unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

IN WITNESS WHEREOF, Lennar Homes, LLC, a Florida Limited Liability Company, does hereby execute this Declaration of Covenants, Conditions and Restrictions through its undersigned, duly authorized agents, this 25<sup>th</sup> day of October, 2010.

Lennar Homes, LLC, a Florida Limited Liability Company

By:

Print Name: DARIN M. MURRAY

Title: VICE PRESIDENT

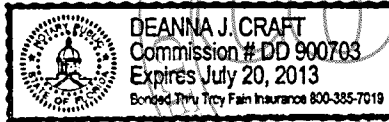
Address: 10481 SIX MILE CYPRESS PKWY  
FT MYERS, FL 33966

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 25 day of OCTOBER 2010, by DARIN M. MURRAY, Manager/Member of Lennar Homes, LLC, a Florida Limited Liability Company. He is ☒ personally known to me or ( ) did produce \_\_\_\_\_ as identification.

(SEAL)



Notary Public

FAWPDATA\CM\CLIENTS\U.S. Home\Heritage Bay (69066.001)\Vista Townhomes at HB 66069.122 CTS\Vista Townhome Declaration Final.doc

VISTA TOWNHOMES AT HERITAGE BAY - DECLARATION

Exhibit "A"  
Page 1 of 4

## **Banks Engineering**

Professional Engineers, Planners & Land Surveyors  
PORT CHARLOTTE ♦ FORT MYERS ♦ SARASOTA ♦ NAPLES

DESCRIPTION  
OF A  
PARCEL OF LAND  
LYING IN  
SECTION 13, TOWNSHIP 48 SOUTH, RANGE 26 EAST  
COLLIER COUNTY, FLORIDA

A PARCEL OF LAND LYING IN SECTION 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA:

A PORTION OF TRACT "E", HERITAGE BAY COMMONS, A SUBDIVISION AS RECORDED IN PLAT BOOK 43, PAGES 46 THROUGH 54, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

(PARCEL-1)

COMMENCING AT THE NORTHEASTERLY CORNER OF TRACT "E" OF SAID SUBDIVISION THE SAME BEING A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 1,970.00 FEET; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID TRACT "E" AND SAID CURVE THROUGH A CENTRAL ANGLE OF 07°05'19" FOR 243.73 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 830.00 FEET; THENCE SOUTHERLY ALONG SAID EAST LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 10°16'52" FOR 148.94 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 270.00 FEET; THENCE SOUTHERLY ALONG SAID EAST LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 32°13'36" FOR 151.86 FEET; THENCE S 53°37'55" E ALONG SAID EAST LINE FOR 60.48 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N 60°10'30" W; THENCE SOUTHERLY ALONG SAID EAST LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 78°55'30" FOR 34.44 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF BELLAIRE BAY DRIVE (60.00 FEET WIDE) AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 380.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS N 40°54'00" E; THENCE WESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 40°54'00" FOR 271.26 FEET; THENCE N 90°00'00" W ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 466.78 FEET; THENCE N 00°00'00" E FOR 66.00 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE N 90°00'00" W FOR 164.55 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 124.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°33'56" FOR 40.18 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°56'37" FOR 104.23 FEET; THENCE N 06°37'19" E FOR 18.00 FEET; THENCE N 83°49'50" W FOR 16.37 FEET; THENCE N 04°42'45" E FOR 106.78 FEET TO A POINT ON THE SOUTH LINE OF A DRAINAGE AND ACCESS EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 4268, PAGE 3809 AND BOOK 4270, PAGE 3956, COLLIER COUNTY, PUBLIC RECORDS; THENCE S 88°17'15" E ALONG THE SOUTH LINE OF SAID EASEMENT FOR 37.31 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 75.00 FEET; THENCE EASTERLY ALONG SAID SOUTH LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 13°33'49" FOR 17.75 FEET; THENCE S 74°43'26" E ALONG SAID SOUTH LINE FOR 91.86 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 109.32 FEET; THENCE EASTERLY ALONG SAID SOUTH LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 24°12'05" FOR 46.18 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET; THENCE EASTERLY ALONG SAID SOUTH LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF 08°55'31" FOR 7.79 FEET; THENCE N 90°00'00" E ALONG SAID SOUTH LINE FOR 23.73 FEET TO THE BEGINNING OF A CURVE TO THE LEFT HAVING A

SHEET 1 OF 4

Exhibit "A"  
Page 2 of 4

RADIUS OF 15.00 FEET; THENCE NORTHEASTERLY ALONG THE EAST LINE OF SAID EASEMENT AND SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ}59'03''$  FOR 23.56 FEET; THENCE  $N 00^{\circ}00'57'' E$  ALONG SAID EAST LINE FOR 214.91 FEET TO POINT "A"; THENCE  $N 61^{\circ}54'37'' E$  FOR 46.58 FEET; THENCE  $S 89^{\circ}59'03'' E$  FOR 27.58 FEET; THENCE  $N 56^{\circ}50'37'' E$  FOR 50.57 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 88.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS  $N 56^{\circ}50'37'' E$ ; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $33^{\circ}10'21''$  FOR 50.95 FEET; THENCE  $S 00^{\circ}00'57'' W$  FOR 306.67 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $89^{\circ}59'03''$  FOR 78.53 FEET TO THE POINT OF BEGINNING.

AND

(PARCEL-2)

COMMENCING AT AFORESAID POINT "A" AND THE BEGINNING OF A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS  $S 89^{\circ}59'03'' E$ ; THENCE NORTHWESTERLY ALONG SAID EAST LINE AND SAID CURVE THROUGH A CENTRAL ANGLE OF  $90^{\circ}00'14''$  FOR 31.42 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE  $N 89^{\circ}59'16'' W$  ALONG THE NORTH LINE OF SAID EASEMENT FOR 436.76 FEET; THENCE  $N 00^{\circ}00'00'' E$  FOR 125.40 FEET; THENCE  $N 90^{\circ}00'00'' E$  FOR 445.87 FEET TO POINT "B" AND THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $49^{\circ}24'47''$  FOR 43.12 FEET TO THE BEGINNING OF A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 312.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $04^{\circ}38'30''$  FOR 25.28 FEET; THENCE  $S 44^{\circ}46'18'' W$  FOR 27.71 FEET; THENCE  $S 00^{\circ}00'00'' E$  FOR 40.42 FEET; THENCE  $S 56^{\circ}41'10'' W$  FOR 53.57 FEET TO THE POINT OF BEGINNING.

AND

(PARCEL-3)

COMMENCING AT AFORESAID POINT "B"; THENCE  $N 00^{\circ}00'00'' E$  FOR 24.00 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND HEREIN DESCRIBED; THENCE  $N 90^{\circ}00'00'' W$  FOR 269.11 FEET; THENCE  $N 00^{\circ}00'00'' E$  FOR 5.19 FEET; THENCE  $N 65^{\circ}00'00'' W$  FOR 47.67 FEET; THENCE  $S 65^{\circ}00'00'' W$  FOR 13.39 FEET; THENCE  $S 00^{\circ}00'00'' E$  FOR 19.68 FEET; THENCE  $N 90^{\circ}00'00'' W$  FOR 282.36 FEET; THENCE  $N 00^{\circ}00'00'' E$  FOR 24.00 FEET; THENCE  $N 90^{\circ}00'00'' E$  FOR 2.11 FEET; THENCE  $N 00^{\circ}00'00'' E$  FOR 88.41 FEET TO A POINT ON THE SOUTH LINE OF TRACT "B-1" OF SAID HERITAGE BAY COMMONS; THENCE  $N 84^{\circ}07'29'' E$  ALONG SAID SOUTH LINE FOR 0.59 FEET; THENCE  $N 88^{\circ}28'39'' E$  ALONG SAID SOUTH LINE FOR 55.62 FEET; THENCE  $N 89^{\circ}41'24'' E$  ALONG SAID SOUTH LINE FOR 53.59 FEET; THENCE  $S 01^{\circ}04'59'' W$  ALONG SAID SOUTH LINE FOR 22.04 FEET; THENCE  $N 77^{\circ}27'20'' E$  ALONG SAID SOUTH LINE FOR 99.22 FEET; THENCE  $S 84^{\circ}41'34'' E$  ALONG SAID SOUTH LINE FOR 61.11 FEET; THENCE  $S 83^{\circ}29'16'' E$  ALONG SAID SOUTH LINE FOR 41.16 FEET; THENCE  $N 83^{\circ}43'51'' E$  ALONG SAID SOUTH LINE FOR 66.92 FEET; THENCE  $N 76^{\circ}06'13'' E$  ALONG SAID SOUTH LINE FOR 12.14 FEET; THENCE  $N 83^{\circ}42'04'' E$  ALONG SAID SOUTH LINE FOR 31.27 FEET; THENCE  $S 88^{\circ}12'59'' E$  ALONG SAID SOUTH LINE FOR 136.31 FEET; THENCE  $S 77^{\circ}06'37'' E$  ALONG SAID SOUTH LINE FOR 21.55 FEET; THENCE  $S 61^{\circ}11'09'' E$  ALONG SAID SOUTH LINE FOR 30.36 FEET; THENCE  $S 66^{\circ}04'15'' E$  ALONG SAID SOUTH LINE FOR 20.44 FEET; THENCE  $S 16^{\circ}09'28'' E$  ALONG SAID SOUTH LINE FOR 31.93 FEET; THENCE  $S 34^{\circ}50'03'' E$  ALONG SAID SOUTH LINE FOR 46.79 FEET; THENCE  $S 38^{\circ}57'05'' W$  FOR 29.94 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 74.00 FEET AND TO WHICH POINT OF CURVE A RADIAL LINE BEARS  $N 25^{\circ}34'42'' E$ ; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF  $25^{\circ}34'42''$  FOR 33.04 FEET TO THE POINT OF BEGINNING.

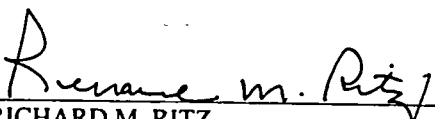
COMBINED PARCELS CONTAIN 206,006.0 SQUARE FEET OR 4.729 ACRES MORE OR LESS.



Exhibit "A"  
Page 3 of 4

BEARINGS ARE BASED ON THE NORTH RIGHT-OF-WAY LINE OF BELLAIRE BAY DRIVE AS BEARING N.90°00'00"W, PER THE PLAT OF HERITAGE BAY COMMONS AS RECORDED IN THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, PLAT BOOK 43, PAGES 46 THROUGH 54.

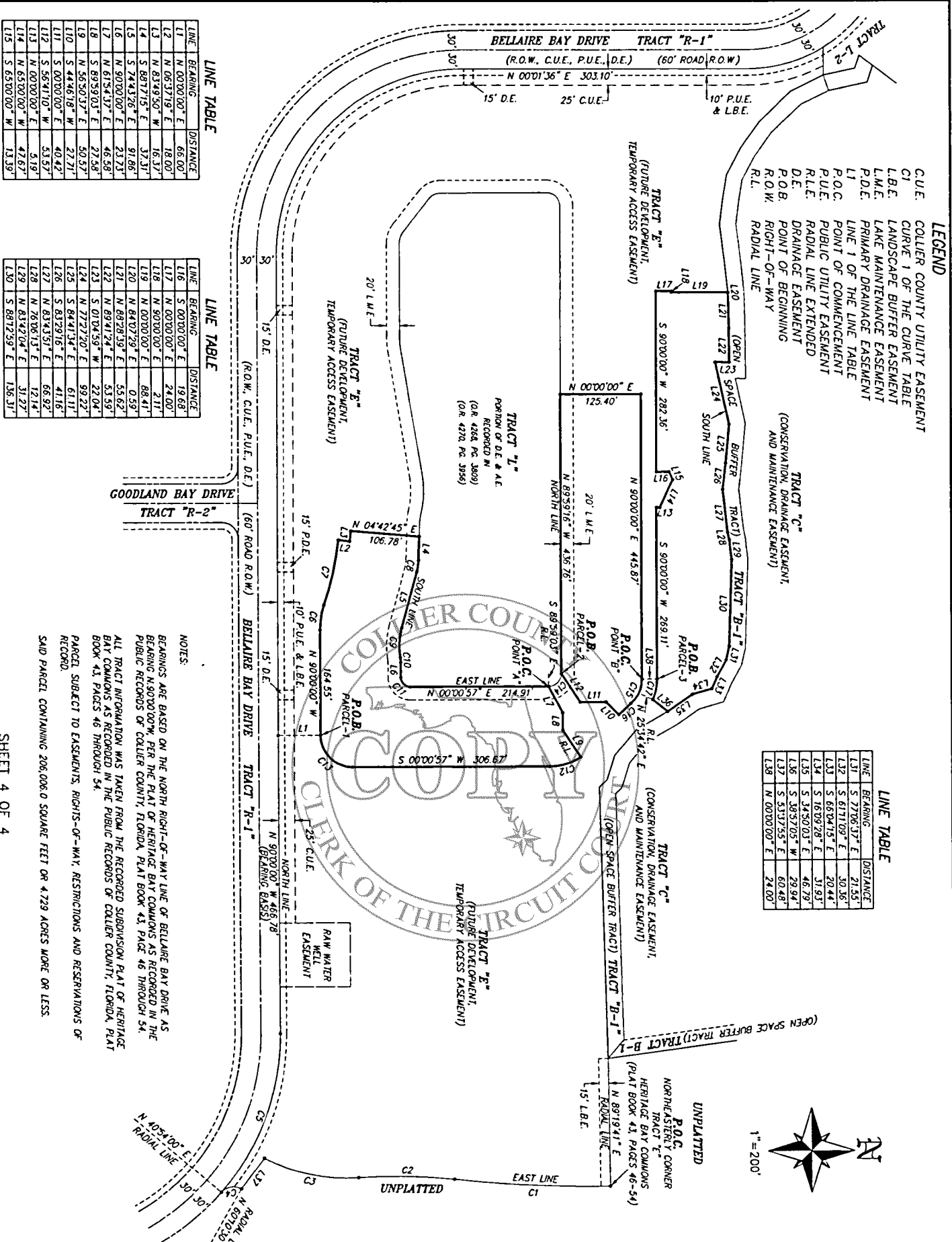
PARCEL SUBJECT TO EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS AND RESERVATIONS OF RECORD.

  
RICHARD M. RITZ  
REGISTERED LAND SURVEYOR  
FLORIDA CERTIFICATION NO. LS4009

OCTOBER 19, 2010.



Exhibit "A"  
Page 4 of 4



LINE TABLE

LINE	BEARING	DISTANCE
L1	N 00°00'00" E	66.00
L2	N 06°37'19" E	18.00
L3	N 83°49'50" W	16.37
L4	S 88°17'15" E	37.37
L5	S 74°43'26" E	91.86
L6	N 90°00'00" E	21.73
L7	N 61°54'37" E	46.58
L8	S 89°59'03" E	27.58
L9	N 56°50'37" E	50.57
L10	S 44°46'18" W	27.71
L11	S 00°00'00" E	40.42
L12	S 56°41'10" W	53.57
L13	N 00°00'00" E	3.19
L14	N 63°00'00" W	42.67
L15	S 63°00'00" W	13.39

LINE TABLE

LINE	BEARING	DISTANCE
L16	S 00°00'00" E	19.68
L17	N 00°00'00" E	24.00
L18	N 90°00'00" E	2.11
L19	N 00°00'00" E	88.41
L20	N 84°07'29" E	0.59
L21	N 89°28'39" E	55.62
L22	N 89°41'24" E	53.59
L23	S 01°04'59" W	22.04
L24	N 77°27'20" E	99.22
L25	S 84°41'34" E	61.11
L26	S 83°39'16" E	41.16
L27	N 83°43'51" E	66.92
L28	N 76°06'13" E	12.14
L29	N 83°42'04" E	31.27
L30	S 88°12'59" E	136.31

NOTES:  
BEARINGS ARE BASED ON THE NORTH RIGHT-OF-WAY LINE OF BELLAIRE BAY DRIVE AS BEARING N 90°00'00" W, PER THE PLAT OF HERITAGE BAY COMMONS AS RECORDED IN THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, PLAT BOOK 43, PAGE 46 THROUGH 54.  
ALL TRACT INFORMATION WAS TAKEN FROM THE RECORDED SUBDIVISION PLAT OF HERITAGE BAY COMMONS AS RECORDED IN THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, PLAT BOOK 43, PAGES 46 THROUGH 54.  
PARCEL SUBJECT TO EASEMENTS, RIGHTS-OF-WAY, RESTRICTIONS AND RESERVATIONS OF RECORD.  
SAID PARCEL CONTAINING 206,006.0 SQUARE FEET OR 4.729 ACRES MORE OR LESS.

THIS IS NOT A SURVEY  
RICHARD M. RITZ  
REGISTERED LAND SURVEYOR  
FLORIDA CERTIFICATION NO. 4009  
— THIS SKETCH IS NOT A SURVEY —  
— SIGNALS AND ORIGINAL RAISED SEALS OF A PROFESSIONAL SURVEYOR AND MAPPER —  
— PREPARED OCTOBER 18, 2019 —  
PREPARED BY  
AND SURVEYED  
Banks Engineering  
ENGINEERING, SURVEYING & LAND PLANNING  
10611 SIX MILE CYPRESS PARKWAY SUITE - 101  
FORT MYERS, FLORIDA 33906  
PHONE: (239) 939-5490 FAX: (239) 939-5523  
FLORIDA SURVEYING BUSINESS CERTIFICATION NO. 6690

SKETCH TO ACCOMPANY DESCRIPTION  
OF A  
PARCEL OF LAND  
LYING IN  
SECTIONS 23, TOWNSHIP 48 SOUTH, RANGE 26 EAST  
COLLIER COUNTY, FLORIDA

CURVE TABLE

CURVE	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
C1	1970.00	07°05'19"	243.73	243.57	S 02°32'21" W
C2	830.00	10°16'52"	148.94	148.74	S 01°16'34" W
C3	270.00	37°13'36"	151.86	149.87	S 12°14'56" W
C4	25.00	78°55'30"	34.44	31.78	S 09°38'15" E
C5	380.00	40°34'00"	271.26	265.54	N 69°33'00" E
C6	124.00	18°33'56"	40.18	40.00	N 80°43'02" W
C7	500.00	11°56'17"	104.23	104.04	N 77°24'23" W
C8	75.00	13°33'49"	12.75	12.71	S 81°30'21" E
C9	109.32	24°12'05"	46.18	45.83	N 86°48'29" W
C10	50.00	08°55'31"	7.79	7.78	N 85°32'14" E
C11	15.00	89°59'03"	23.56	21.21	S 45°00'29" W
C12	88.00	33°10'21"	50.95	50.24	S 16°14'13" E
C13	50.00	89°59'03"	78.53	70.70	S 45°00'29" W
C14	20.00	90°00'14"	31.42	28.29	S 45°00'29" W
C15	50.00	49°24'47"	43.12	41.80	S 65°12'56" E
C16	312.00	04°38'30"	29.28	29.27	N 42°34'27" W
C17	74.00	25°34'42"	33.04	32.76	S 77°12'39" E

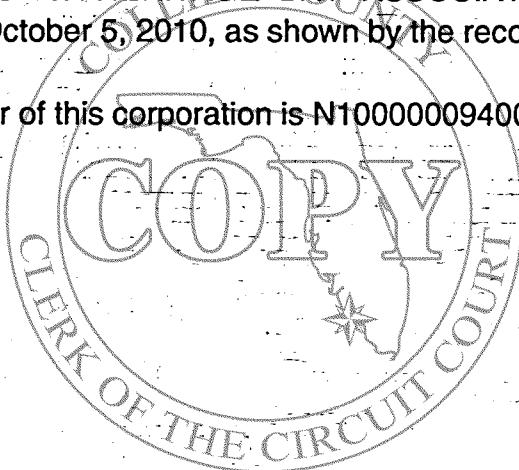
# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of VISTA TOWNHOMES AT HERITAGE BAY ASSOCIATION, INC., a Florida corporation, filed on October 5, 2010, as shown by the records of this office.

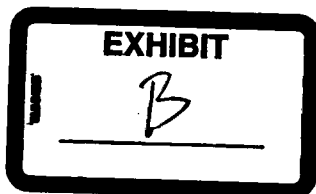
The document number of this corporation is N10000009400.



Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capital, this the  
Sixth day of October, 2010



CR2E022 (01-07)



*Dawn K. Roberts*  
Dawn K. Roberts  
Secretary of State

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

2010 OCT -5 PM 3:19

FILED

**ARTICLES OF INCORPORATION  
OF  
VISTA TOWNHOMES AT  
HERITAGE BAY ASSOCIATION, INC.**

Pursuant to Section 617.01201, Florida Statutes (2009), these Articles of Incorporation are created by Charles Mann, Esq., 1833 Hendry Street, Fort Myers, Florida 33901, as sole incorporator, for the purpose set forth below.

**ARTICLE I**

**NAME:** The name of the corporation is Vista Townhomes at Heritage Bay Association, Inc., sometimes hereinafter referred to as the "Association".

**ARTICLE II**

**PRINCIPAL OFFICE:** The initial principal office of the corporation is located at 10481 Ben C. Pratt/6 Mile Cypress Pkwy, Fort Myers, FL 33966-6460.

**ARTICLE III**

**PURPOSE AND POWERS:** This Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers or Directors. It is a corporation not for profit organized on a non-stock basis for the purpose of providing a corporate residential homeowners' association. For the accomplishment of its purpose, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit, except as limited or modified by these Articles and a Declaration of Covenants, Conditions and Restrictions to be recorded in the Public Records of Collier County, Florida, and shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential neighborhood subject to the said recorded Declaration, as it may from time to time be amended, including but not limited to the power to:

(A) Fix, levy, collect and enforce payment by an lawful means all charges or assessments levied pursuant to the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all license fees, taxes or governmental charges.

(B) Enforce any and all covenants, conditions, restrictions and agreements applicable to the residential neighborhood known as the Vista Townhomes at Heritage Bay.

(C) Acquire (by gift, purchase or otherwise) own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

(D) Borrow money, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security.

(E) Dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

(F) Purchase policies of insurance upon the Properties and use the proceeds from such policies to effectuate its purposes.

(G) Participate in mergers and consolidations with other non-profit corporations organized for the same or similar purposes, or to annex additional property and common areas, provided that merger, consolidation or annexation shall have the consent of at least two-thirds (2/3rds) of the voting interests of the Association.

(H) Exercise any and all powers, rights and privileges which a corporate homeowners association organized under Chapter 720, Florida Statutes, may now or hereafter have or exercise; subject always to the Declaration as amended from time to time.

#### ARTICLE IV

**MEMBERSHIP AND VOTING RIGHTS:** Membership and voting rights shall be as set forth in the Bylaws of the Association.

#### ARTICLE V

**TERM:** The term of the Association shall be perpetual.

#### ARTICLE VI

**BYLAWS:** The Bylaws of the Association may be altered, amended or rescinded in the manner provided therein.

#### ARTICLE VII

VISTA TOWNHOMES AT HERITAGE BAY - ARTICLES OF INCORPORATION

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

(A) **Proposal.** Amendments to these Articles may be proposed by a majority of the Board or by petition to the Board signed by at least one-fourth (1/4) of the voting interests.

(B) **Procedure.** A proposed amendment must be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

(C) **Vote Required.** Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved at any annual or special meeting called for the purpose by at least a majority of the voting interests of the Association, or if it is approved in writing by a majority of the voting interests without a meeting, as authorized in Section 3.11 of the Bylaws, provided that notice of any proposed amendment must be given to the members of the Association, and the notice must contain the full text of the proposed amendment.

(D) **Effective Date.** An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

## ARTICLE VIII

### **DIRECTORS AND OFFICERS:**

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors set in the Bylaws, but never less than three (3), and in the absence of a Bylaw provision shall consist of three (3) Directors.

(B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting after the annual meeting of the Members and shall serve at the pleasure of the Board.

## ARTICLE IX

**INITIAL DIRECTORS:**

The initial Directors of the Association shall be:

Anthony J. Burdett, President/Director	10481 Ben C. Pratt/6 Mile Cypress Pkwy Fort Myers, FL 33966-6460
Darin McMurray, Vice President/Director	10481 Ben C. Pratt/6 Mile Cypress Pkwy Fort Myers, FL 33966-6460
Bryan Hurst, Secy/Treasurer/Director	10481 Ben C. Pratt/6 Mile Cypress Pkwy Fort Myers, FL 33966-6460

**ARTICLE X**

**INITIAL REGISTERED AGENT:**

The initial registered office of the Association shall be at:

c/o Pavese Law Firm  
1833 Hendry Street  
Fort Myers, Florida

The initial registered agent at said address shall be:

Charles Mann, Esquire

**ARTICLE XI**

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

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

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

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

(D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for human rights, safety or property, in an action by or in the right of someone other than the association or a member.

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

In the event of a settlement, there is no right to indemnification unless a majority of the disinterested Directors approve such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which a Director or officer may be entitled.

WHEREFORE the incorporator has caused these presents to be executed this 4<sup>th</sup> day of October, 2010.

By: 

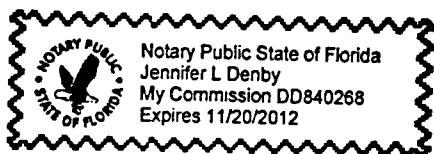
Charles Mann, Esquire

STATE OF FLORIDA )  
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2010, by Charles Mann, Esquire, who is personally known to me and did not take an oath.

(Seal)

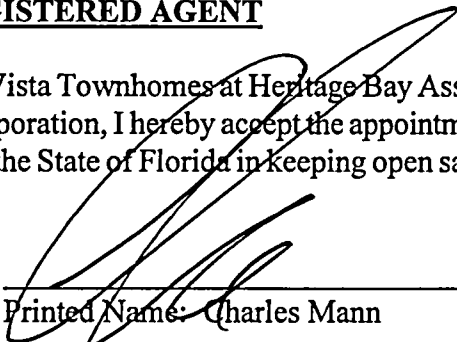
  
Notary Public

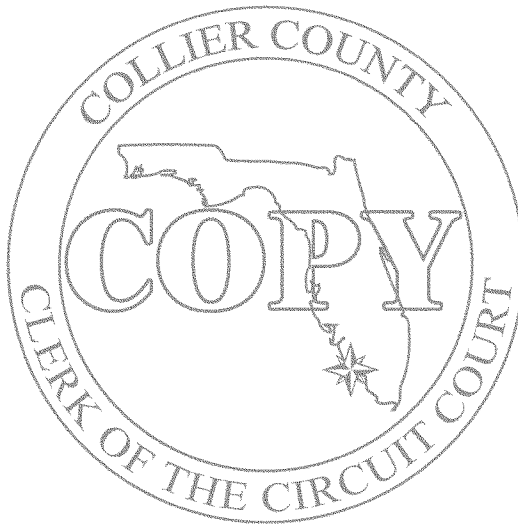




**ACCEPTANCE BY REGISTERED AGENT**

Having been named to accept service of process for Vista Townhomes at Heritage Bay Association, Inc., at the place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.

  
Printed Name: Charles Mann



F:\WPDATA\CMCLIENTS\U.S. HOME\HERITAGE BAY (69066.001)\VISTA TOWNHOMES AT HB 66069.122 CJS\ARTICLES 7-20-10.DOC

FILED  
2010 OCT -5 PM 3:19  
CLERK OF THE CIRCUIT COURT  
TALLAHASSEE, FLORIDA

VISTA TOWNHOMES AT HERITAGE BAY - ARTICLES OF INCORPORATION

**BYLAWS  
OF  
VISTA TOWNHOMES AT HERITAGE BAY ASSOCIATION, INC.**

**1. GENERAL.** These are the Bylaws of Vista Townhomes at Heritage Bay Association, Inc., hereinafter the "Association", a Florida corporation not for profit organized for the purpose of serving as a residential Community homeowners' association.

**1.2 Principal Office.** The principal office of the Association shall initially be at 10481 Ben C. Pratt/6 Mile Cypress Pkwy, Fort Myers, FL 33966-6460, and shall subsequently be at such location as may be determined by the Board of Directors.

**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 where a seal is required.

**1.4 Definitions.** The definitions for various terms used in these Bylaws shall be as set forth in Section 1 of the Declaration of Covenants, Conditions and Restrictions for Vista Townhomes at Heritage Bay (the "Declaration"), to which these Bylaws are attached as Exhibit "D".

**2. MEMBERS; VOTING RIGHTS.** Every record owner of legal title to any Lot located in the Properties is a Member. If a Lot is subject to an agreement for deed, whether recorded or not, the purchaser in possession shall be treated as the owner solely for purposes of determining voting and use rights. Membership is appurtenant to, runs with, and may not be separated from, the real property interest upon which membership is based.

**2.1 Voting Interests.** The members of the Association are entitled to one (1) vote for each Lot owned by them. The total number of votes shall equal the total number of Lots subject to this Declaration. The vote of a Lot is not divisible. The right to vote may not be denied because of delinquent assessments. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more natural persons, that Lot's vote may be cast by any one of the record owners. If two or more owners do not agree among themselves how their one vote shall be cast on any issue, that vote shall not be counted on that issue. If a Lot is owned in trust, or the owner is a corporation, partnership or other entity which is not a natural person, the vote of that Lot shall be cast by the primary occupant designated as set forth in Section 14 of the Declaration.

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

**Class A.** Class A Members shall be all those owners, as defined in Section 3.1, with the exception of the Declarant (as to Declarant, as long as the Class B Membership shall

exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify).

**Class B.** The Class B Member shall be the Declarant, or a representative thereof designated by it in a written notice to the Association, who shall have and cast one (1) vote in all Association matters, plus one-hundred (100) votes for each vote which may be cast by the Class A Members. Such Class B Member may be removed and replaced by the Developer in its sole discretion. The Class B Membership shall cease and terminate (and convert to a Class A Membership) as and when provided in the Declaration.

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

**2.3 Approval or Disapproval of Matters.** Whenever the decision or approval of an owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of that owner's Lot at an Association meeting, as stated in Section 2.1 above, unless the written approval or joinder of record owners is specifically required.

**2.4 Termination of Membership.** 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 the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

### **3. MEMBERS' MEETINGS.**

**3.1 Annual Meeting.** The annual meeting of the members shall be held in Collier County, Florida, each year during the first three months of each calendar year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members. The annual meeting is a general meeting, and unless the law or the governing documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

**3.2 Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by members representing at least twenty-five percent (25 %) of the voting interests. Business at any special meeting shall be limited to the items specified in the notice of meeting.

**3.3 Notice of Meetings.** Notices of all meetings of the Members must be mailed or hand-delivered to the members at least fourteen (14) days before the meeting, and must state the time, date, and place of the meeting, and include a detailed agenda. Mailed notices must be sent to each member at his address as it appears on the books of the Association. Each member bears the

responsibility for notifying the Association in writing of any change of address. A person entitled to receive notice of any meeting may waive notice altogether by written waiver. Notice of any meeting may, be hand-delivered if a written waiver of mailing is obtained. If ownership of a Lot is transferred after a notice has been mailed, no separate notice to the new owner is required. Attendance at any meeting by a member constitutes a waiver of notice by that member, unless the member objects to the lack of notice at the beginning of the meeting.

**3.4 Quorum.** The percentage of voting interests required to constitute a quorum at a meeting of the members shall be thirty percent (30%) of the total voting interests.

**3.5 Vote Required.** The acts approved by a majority of the votes cast at a meeting of the members at which a quorum has been attained shall be binding upon all owners for all purposes, except where a higher vote is required by law or by any provision of the Governing Documents.

**3.6 Proxies.** To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by a person authorized to cast the vote for the unit, and specify the date, time and place of the meeting for which it is given. The signed and dated original must be delivered to the Secretary at or before the time of the meeting or continuance thereof. Holders of proxies need not be members. No proxy is valid if it names more than one person proxy holder, but the proxy holder has the right, if the proxy so provides, to substitute another person to hold the proxy.

**3.7 Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Section 720.303(2), Florida Statutes (2009) 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 (2009), as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

**3.8 Order of Business.** The order of business meetings shall be substantially as follows:

- (A) Determination of existence of quorum.
- (B) Reading or waiver of reading of minutes of last members' meeting.
- (C) Reports of Officers.
- (D) Reports of Committees.
- (E) Election of Directors (annual meeting only).
- (F) Unfinished Business.

(G) New Business.

(H) Adjournment.

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

**3.10 Parliamentary Rules.** Robert's Rules of Order (latest edition) shall govern the conduct of an Association meeting when not in conflict with the law, with the Declaration, or with these Bylaws. The Presiding Officer may appoint a Parliamentarian, but the Presiding Officer's decisions on questions of Parliamentary Procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**3.11 Action by Members Without Meeting.** Except for 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 consents or other 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 by vote of the members 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. If the vote is taken by the method described in this Section 3.11, the list of owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

**3.12 Polling of Members.** To the extent feasible and practical, the Association shall poll its members on questions to be decided by a vote of the members of the *Commons Association*, so that this Association's votes are more likely to be cast in the manner preferred by the majority of the members. If such a poll is conducted, the Board shall instruct its Voting Representative to cast all votes of the Association in a block, supporting the point of view preferred by the majority of the members who responded to the poll. The Voting Representative may not vote by proxy at Commons Association meetings, but the Board of Directors may designate in writing an alternate representative to substitute if the Voting Representative cannot attend any meeting of the Commons Association.

**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 approval or consent of the unit owners only when specifically required.

**4.1 Number and Terms of Service.** The Board of Directors shall initially consist of three (3) Directors, and shall remain at that number unless changed by amendment of this

Section 4.1. In order to provide for a continuity of experience by establishing a system of staggered terms of office, in the first election in which owners other than the Developer elect at least a majority of the Directors, the two (2) candidates receiving the highest number of votes shall each be elected for a term which expires at the final adjournment of the annual meeting at which his successor is to be elected. The candidate receiving the next highest number of votes shall be elected for a term which expires at the final adjournment of next annual meeting. Thereafter, all Directors shall be elected for two (2) year terms, ending at the final adjournment of the annual meeting at which successors are to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy, as provided in 4.4 below.

**4.2 Qualifications.** Except for Directors appointed by the Developer, each Director must be a Member or Primary Occupant of a Townhome, or the spouse of one of them. No person shall be elected or appointed for successive terms totaling more than four (4) consecutive years, unless there occurs a hiatus of at least one (1) year between terms. Initial terms by appointment for less than one year shall be excluded from consideration in determining the total number of years served.

**4.3 Nominations and Elections.** In each annual election the members shall elect by written secret ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

(A) **First Notice; Candidates.** Not less than sixty (60) days before the election, the Association shall mail or deliver, to each owner entitled to vote, a first notice of the date of the election. The first notice may be given by separate Association mailing or included in another Association mailing or delivery, including a regularly published newsletter. Any owner or other eligible person desiring to be a candidate may qualify as such by giving written notice to the Association not less than forty (40) days before the annual election.

(B) **Second Notice.** If there are more qualified candidates than there are Directors to be elected, balloting is required, and at least fourteen (14) days before the election, the Association shall mail or deliver a second notice of election to all owners entitled to vote in the contested election, together with a ballot listing all qualified candidates in alphabetical order, by surname, and the notice of the annual meeting required by Section 3.3 above.

(C) **Balloting.** Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in elections. In the election of Directors, there shall be appurtenant to each Lot as many votes for Directors as there are Directors to be elected, but no Lot may cast more than one vote for any candidate, it being intended that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by another method required by law (if any).

**4.4 Vacancies on the Board.** If the office of any Director becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor to fill the remaining unexpired term.

**4.5 Removal of Directors.** Any Director may be removed from office, with or without cause, by the vote or agreement in writing of a majority of the voting interests. The notice of a meeting of the owners to recall one or more Directors must name the specific Director(s) sought to be removed, and a separate vote for each Director sought to be removed shall be taken. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. Any Director who is removed from office is not eligible to stand again for election to the Board, or be appointed to the Board, until the next annual election. A Director who is removed from office shall turn over to the Association within 72 hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county may summarily order the Director to relinquish his office and turn over corporate records upon application of any owner. In any such action, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

**4.6 Board Meetings.** A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members, except for meetings between the Board and its legal counsel with respect to proposed or pending litigation, and otherwise where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board meetings must be posted in a conspicuous place in the Community at least forty-eight (48) hours in advance of every meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the Community, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessment. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. Any owner may tape-record or videotape meetings of the Board of Directors and meetings of the members. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.

**4.7 Waiver of Notice by Directors.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

**4.8 Quorum of Directors.** A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee by means of a conference telephone call or other similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means is deemed equivalent to presence in person at a meeting.

**4.9 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 is then present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

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

**4.11 Vote Required.** The acts approved by a majority of those Directors who are present and voting at a Board meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Governing Documents or by law. A Director who is present at a meeting of the Board shall be deemed to have voted with the majority on any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest.

**4.12 Directors' Fees and Reimbursement of Expenses.** No compensation or fees shall be paid to Directors for their service as Directors. Directors may be reimbursed for all actual and proper out-of-pocket expenses related to the proper discharge of their respective duties.

**4.13 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Community. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If at any time the law requires that meetings of a committee, including any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the Association be noticed and conducted with the same formalities as required for meetings of the Board, such requirement shall apply only to the least extent required or permitted by law, it being the intent hereof to exempt as many committees as possible from such a law.

**4.14 Emergency Powers.** In the event of any "emergency" as defined in Section 4.14(G) below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes, as amended from time to time.

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

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

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



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

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

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

(G) For purposes of this Section 4.14, an "emergency" may be found to exist only when the Community, or a larger geographic area in which the Community is located, is subjected to:

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

**5. OFFICERS.** Officers are elected by vote of a majority of the entire Board, and serve at the pleasure of the Board. The executive officers of the Association shall be a President, and a Vice-president, who must be Directors, and a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed from office 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 necessary or desirable to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

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

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

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

**5.4 Treasurer.** The Treasurer shall be responsible for the safekeeping of Association funds and assets, budget preparation, and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

**5.5 Compensation of Officers.** No compensation shall be paid to any member for services as an officer of the Association. This provision does not preclude the Board of Directors from employing officers in other capacities as employees of the Association.

**6. FISCAL MATTERS.** The provisions for 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 funds in accounts in federally insured accounts at financial institutions in the State of Florida as shall 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.

**6.2 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.

**6.3 Budget.** The Board of Directors shall adopt in advance an annual budget of common expenses for each fiscal year. The budget must reflect the estimated revenues and expenses for the next fiscal year, and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another person. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be considered shall be mailed to or served on each owner not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income accounts and expense classifications. The minutes of the Association shall reflect the adoption of the budget, and a copy of the proposed and adopted budgets shall be maintained as part of the financial records of the Association. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and payments shall be continued at such rate until a budget is adopted and new quarterly installments are calculated, at which time an appropriate adjustment shall be added to or subtracted from each Townhome's next due quarterly installment.

**6.4 Reserves.** The Board may establish one or more reserve accounts for contingencies, cash flow shortfalls, capital expenditures, and deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

**6.5 Assessments.** Regular annual assessments based on the adopted budget shall be payable in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to all Members at least ten (10) days prior to the due date. Failure to send or receive the notice does not excuse the obligation to pay.

**6.6 Special Assessments.** Subject to the limitations in Section 4 of the Declaration, special assessments may be imposed by the board of Directors whenever necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and 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 credited back to the members' accounts.

**6.7 Fidelity Bonds.** The President, Secretary, Treasurer, and any persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or by the Board of Directors. The premiums on such bonds shall be a common expense.

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

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

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

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

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

**6.9 Audit.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all owners.

**6.10 Application of Payments.** All payments on account by an owner shall be applied first to interest, then to late payment fees, then to attorney's fees and costs, then to other charges, and finally to unpaid regular and special assessments, in the order they first came due.

**6.11 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each year.

**7. RULES AND REGULATIONS; USE AND RESTRICTIONS.** The Board of Directors may, from time to time adopt and amend reasonable rules and regulations governing the operation, use, maintenance, management and control of the Common Areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each owner. The Board has the power to impose fines and suspensions of common area use privileges, as further provided in Section 12 of the Declaration, for violations of the rules and regulations.

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

**8.1 Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests.

**8.2 Procedure.** Upon any amendment to these Bylaws being so proposed by the Board or owners, such proposed amendment shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.

**8.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the Townhomes Documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that the full text of any proposed amendment was given to the Members with notice of the meeting. Prior to the Turnover of Control of the Association by the Developer as provided for in Section 16 of the Declaration, Bylaw amendments may be adopted by vote of a majority of the Directors, without need for a vote of the owners.

**8.4 Effective Date, Recording.** A copy of each amendment shall be attached to a certificate reciting that the amendment was duly adopted, and executed by an officer of the Association. The certificate must also identify the book and page of the Public Records where the Declaration was originally recorded. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Official Records of Collier County, Florida.

## **9. MISCELLANEOUS.**

**9.1 Gender.** Whenever a masculine or singular pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, as the context requires.

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

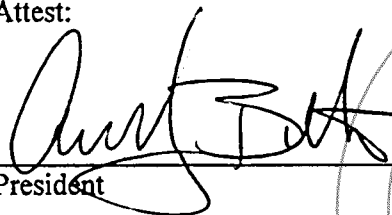
**9.3 Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration or Articles of Incorporation, the provisions of the Declaration and the Articles of Incorporation shall prevail over the provisions of the Bylaws.

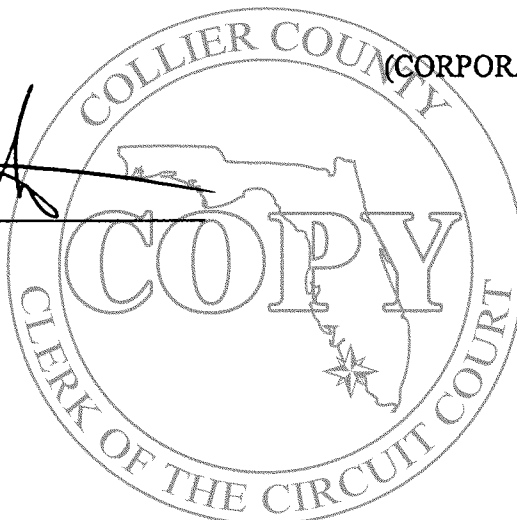
The foregoing constitutes the first Bylaws of Vista Townhomes at Heritage Bay Association, Inc. and was duly adopted at the first meeting of the Board of Directors held on October 25, 2010.

Date: October 25, 2010.

  
Secretary

Attest:

  
President



(CORPORATE SEAL)

F:\WPDATA\CM\CLIENTS\U.S. Home\Heritage Bay (69066.001)\Vista at HB Townhomes 66069.122 CJS\BYLAWS-VISTA TOWNHOMES AT HERITAGE BAY.doc

VISTA TOWNHOMES AT HERITAGE BAY – BYLAWS