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**AMENDED AND RESTATED DECLARATION OF
COVENANTS AND RESTRICTIONS OF HERON SHORES**

*[Substantial Rewording of the Declaration of Covenants and
Restrictions of Heron Shores. See Original Declaration
and prior amendments for previous text]*

Article I
Introduction and Submission

1.1 The Property and Submission Statement. Gulfstream Homes of Southwest Florida, Inc. (hereinafter “Developer”) owned the fee simple title to certain land in Sarasota County, Florida, which was developed as Heron Shores. The land described in Exhibit A was developed as Heron Shores and made subject to the Declaration of Covenants and Restrictions of Heron Shores, recorded in Official Records Book 1790, Page 2555, et seq. of the Public Records of Sarasota County, Florida, and platted in Plat Book 30 Pages 21-21E of the Public Records of Sarasota County, Florida (hereinafter referred to as “the Property”). As a result, the Property is divided into seventy-four (74) Lots.

1.2 Submission Statement. Developer submitted the Property, all improvements erected to or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith to the ownership obligations and use restrictions described in the original Declaration of Covenants and Restrictions of Heron Shores, recorded in Official Records Book 1790 Pages 2555, et seq. of the Public Records of Sarasota County, as amended from time to time, and in accordance with Florida Statutes Chapter 720.

1.3 Identity. The name by which this Subdivision is identified is Heron Shores. Heron Shores is governed by this Amended and Restated Declaration, as well as the Articles of Incorporation and Bylaws that are attached hereto as Exhibits “B” and “C,” respectively.

Article II
Association

2.1 Membership in Association. Every Lot Owner shall be a Member of the Association, which shall be a Florida corporation not for profit. Each Lot Owner shall have the voting rights provided in the Articles of Incorporation for the Association. All Members must maintain this Membership in good standing. Memberships shall be effective upon acquisition of the fee simple title to such lands by an instrument recorded in the Public Records of Sarasota County, Florida. Memberships shall automatically terminate upon the sale or other transfer of title by an

instrument recorded in the Public Records of Sarasota County, Florida. Reference to this Membership in any instrument of conveyance or transfer of title shall be unnecessary. The words "Lot Owner" shall mean and refer to the record owner, whether one or more persons or legal entities, of the fee simple title to any of the land subject to maintenance assessments and maintenance liens.

2.2 Duties of the Association. The Association has been organized to operate, maintain, manage and improve the Common Areas of Heron Shores and to enforce the provisions of this instrument. The Association, in addition to these powers and duties and any powers set forth in its Articles of Incorporation or given to it by law, shall have the power and duty to levy and collect maintenance assessments as provided in this instrument.

2.3 Property. The term "Property" means the property which is subject to this Declaration, which property is described in Exhibit "A" attached hereto, and includes any Units or improvements constructed thereon.

2.4 Building. The term "Building" means any building contained within the Property. A Building may contain one or more Units which may be connected by party walls and, in that event, the Building as defined shall include the Units within the Building.

2.5 Unit. The term "Unit" shall mean and refer to the residential dwelling constructed upon a Lot which may be connected to one or more Units by a common party wall.

2.6 Acquisition and Disposal of Property. The authority to acquire and dispose of personal property necessary to carry out the duties of the Association and costing less than \$25,000.00 shall be exercised by the Board. The power to acquire, improve, mortgage, and dispose of real property, and personal property costing more than \$25,000.00 may be exercised by the Board, but only after approval by at least a majority of the voting interests of the membership present in person or by proxy at a duly noticed and convened Members meeting.

2.7 Budget. Prior to the beginning of each fiscal year, the Board shall adopt a budget for such calendar year which shall estimate all of the Common Expenses to be incurred by the Association during the fiscal year. The Board shall then establish the Assessment for Common Expenses for each Lot, and shall notify each Owner in writing of the amount, frequency, and due dates of the Assessment for Common Expenses. From time to time during the fiscal year, the Board may modify the budget, and pursuant to the revised budget or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency and/or due dates of the Assessments for Common Expenses. If the expenditure of funds for Common Expenses is required in addition to funds produced by Assessments for Common Expenses, the Board may, with approval of the members as required by the Bylaws, make Special Assessments for Common Expenses, which shall be levied in the same manner as hereinbefore provided for regular Assessments, and shall be payable in the manner determined by the Board, as stated in the notice of any Special Assessments for Common Expenses. In the event any Assessments for Common Expenses are made payable in equal periodic payments, as provided in the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the

periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the Association notifies the Owner in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any Assessments for Common Expenses be due less than fourteen (14) days from the date of the notification of such Assessments.

2.8 Lands Subject to Assessment. All of the Property is subject to a lien for the Assessments and any Special Assessments as described in this instrument, with the exception of the following lands:

- a. Roadways, rights of way, utility sites, and similar lands and improvements that may be conveyed or dedicated by the Association to any governmental body or public or private utility company, as reflected in any plats of Heron Shores or in any document recorded in the Public Records of Sarasota County, Florida;
- b. The Common Areas as more particularly defined in Section 3.1.

2.9 Assessment. The Assessment to be levied against all land subject to maintenance assessments and maintenance liens shall be calculated in the following manner:

- a. A Lot Owner's share of the Assessment and any Special Assessment shall be determined by a fraction, the numerator of which shall be one and the denominator of which shall be the number of Lots in the Property subject to this Declaration.
- b. Each Lot Owner shall be advised each fiscal year in writing, mailed to his address as recorded in the records of the Association of:
 - 1) The percentage applicable to the Lot Owner's individual parcel, and the manner by which the percentage was calculated.
 - 2) The Association's annual budget.
 - 3) The dollar amount of the payment due and payable by the Lot Owner for the particular year.
 - 4) Any amounts due from or repayable to the Lot Owner with respect to any under expenditure or over expenditure from the prior year's budget.

2.10 Assessment and Budget. Prior to the beginning of each fiscal year, the Board shall adopt a budget for such calendar year which shall estimate all of the Common Expenses to be incurred by the Association for the fiscal year. The Association shall then levy an Assessment against parcels subject to the Assessment. This budget and Assessment shall be in such amount

as shall be deemed sufficient in the judgment of the Association's Board of Directors to allow it to carry out its purposes, which may include the following:

- a. To pay all ad valorem taxes assessed against Common Areas, and against all personal property owned by the Association.
- b. To pay any other taxes assessed by the Association.
- c. To pay all expenses required for the operation, maintenance, management, repair and improvement of the Common Areas, including, without limitation, roads, ponds, canals, lighting, landscaping, security services, horticultural improvements, irrigation, drainage, and aquatic plant control consistent with the requirements and standards of the University of Florida's Institute of Food and Agricultural Sciences Extension.
- d. To pay all utility charges incurred in connection with the operation of the Common Areas or the performance of the Association's obligations under this instrument.
- e. To pay for casualty, liability, and other forms of insurance determined by the Association to be necessary or desirable, in such amounts as it may deem appropriate.
- f. To pay for accounting, legal, engineering and such other professional and employee services as may be appropriate.
- g. To provide a reasonable contingency fund for the ensuing year and to provide a reasonable annual reserve for anticipated major capital repairs, maintenance and improvements, and capital replacements.
- h. To pay operating expenses of the Association, including reimbursement of actual expenses incurred by Officers and Directors.
- i. To pay or repay any funds borrowed by the Association for any of its lawful purposes, including interest on funds borrowed.
- j. To make any other expenditures necessary or desirable for the purpose of accomplishing the objectives of this instrument.

2.11 Interest and Late Fees. If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the defaulting Lot Owner a late fee of ten percent (10%) of the amount of the Assessment, or Twenty-Five Dollars (\$25.00), whichever is greater, plus interest at the then highest rate of interest allowable by law, from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association. No payment by check is deemed received until the check has cleared. Bounced checks shall be subject to a \$60 penalty fee.

2.12 Acceleration of Assessments. If any Lot Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such Owner to pay to the Association Assessments for Common Expenses for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments for Common Expenses. In the event of such acceleration, the defaulting Lot Owner shall continue to be liable for any increases in the regular Assessments for Common Expenses, for all Special Assessments for Common Expenses, and/or for all other Assessments payable to the Association.

2.13 Lien for Assessments. The Association has a lien on each Lot for unpaid Assessments owed to the Association by the Owner of such Lot, and for late fees, costs, and interest, and for reasonable attorneys' fees incurred by the Association incident to the collection of the Assessment or enforcement of the lien, and all sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the Association's lien. The lien is effective from and after recording a claim of lien in the Public Records of Sarasota County. Upon payment in full of all sums secured by the lien, the Association shall record a satisfaction of the lien.

2.14 Collection and Foreclosures. The Association may bring an action in its name to foreclose a lien for Assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien, and the applicable Owner shall be liable to the Association for all costs and expenses incurred by the Association in connection with the collection of any unpaid Assessments, and the filing, enforcement, and/or foreclosure of the Association's lien, including, but not limited to reasonable attorneys' fees and all sums paid by the Association for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the Association's lien.

Article III **Common Areas**

3.1 Definition Of The Common Areas. The Common Areas shall include all of the Property not within a Lot or public right-of-way, deeded to the Association by Developer for the common use and enjoyment of all Lot Owners in Heron Shores. The Common Areas include sidewalks and walkways, ponds, drainage canals, parks, nature preserves and common open space, and any other areas set aside for the benefit of all Lot Owners of Heron Shores.

3.2 Ownership, Use and Maintenance of Common Areas. The Association shall retain ownership of the Common Areas and shall maintain at its expense all portions of the Common Areas. Every Lot Owner shall have the nonexclusive right to use Common Areas in accordance with the following provisions:

- a. All persons residing within any Lot, and their guests and invitees, shall have and are hereby given the right to use all Common Areas for the

purposes for which same are intended, subject to the terms of this Declaration and reasonable nondiscriminatory rules and regulations which may be adopted by the Board from time to time. Lot Owners and their respective tenants, guests, invitees and licensees, and the holders of liens on the property shall have a nonexclusive, perpetual right of ingress and egress over and across all road, sidewalks and walkways and common ground in Heron Shores. Lot Owners and their guests and/or invitees may not traverse across the privately owned Lots to access the Common Areas unless they have the specific permission of the Lot Owners to do so. This provision shall permit access to portions of the Property by those having a legitimate need for access, including those providing transportation services, utility services, United States mail carriers, and representatives of fire departments, police departments, and all other governmental agencies. The Association may grant similar rights to other parties by instruments recorded in the Public Records of Sarasota County, Florida.

- b. The Association shall control the maintenance of all ponds, canals and drainage control devices on the Property that are a part of the Common Areas except when such areas are being maintained by the East Village Master Association. Such maintenance shall include but not be limited to maintaining the shores of the ponds in such a manner as to control and prevent erosion.
- c. The Association shall have the right to prevent use of portions of the Common Areas by the general public.
- d. Subject to any rules and regulations adopted by the Association, portions of the Common Areas may be used for appropriate purposes as are permitted by law which do not interfere with the peaceful enjoyment of Lot Owners.
- e. Lot Owners, their respective tenants, guests, and invitees may use the ponds within the Common Areas for such private and recreational purposes as are permitted by law and which do not interfere with the peaceful enjoyment of other Lot Owners and are consistent with reasonable rules and regulations adopted from time to time by the Association. However, no commercial use may be made of any pond or other water body within the Common Areas. Any docks constructed by the Association shall not be modified in any way without the prior written consent of the Association. No docks or structures of any type may be installed or maintained that protrude into any pond without the prior written consent of the Association, which may be granted or withheld in its sole discretion.
- f. No part of the Common Areas shall be used for hunting or the discharge of firearms or other weapons or the keeping or grazing of animals. No fires

shall be lit except in designated picnic areas. No trees, shrubbery, or similar landscaping materials may be cut or trimmed except by the Association. No improvements or structures on portions of the Property outside the Common Areas shall be made or erected that will adversely affect drainage of the Common Areas. No improvements or structures other than those built by or approved by the Association shall be constructed on the Common Areas. No discharge of any material, other than natural surface drainage in accordance with the Association's drainage designs and plans, may be made into any pond or other water body in the Common Areas. There shall be no alteration of any ponds or water bodies, or alteration of or interference with water control structures, unless specifically approved by the Association. These provisions regarding Association approval shall not affect the Association's or the Lot Owner's obligation to comply with all laws and regulations relative to the subject matter of the approval; and if prior approval by any governmental body or agency is required, this shall first be obtained before approval by the Association may be given.

- g. Portions of the Common Areas may be designated by the Association as preservation areas. Lot Owners shall not use these preservation areas in a manner that will constitute a threat to the natural vegetation within the preservation areas.

3.3 Additions, Alterations or Improvements. The protection, maintenance, repair, insurance, and replacement of the Common Area is the responsibility of the Association and the cost of such is a Common Expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the Common Area costing the Association more than \$12,500.00 in the aggregate in any calendar year without approval from at least a majority of voting interests present in person or by proxy at a duly noticed and convened Membership meeting. Alterations or additions costing less than this amount may be made with Board approval. Notwithstanding, if work reasonably necessary to protect, maintain, repair, or replace the Common Area also constitutes a material alteration or substantial addition to the Common Area, no prior Owner approval is required.

3.4 Utility Easements. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for the installation, maintenance, construction and repair of utilities for cable, communication, sewer, water, gas, drainage, irrigation, lighting, television transmission, telephone, security, garbage and waste removal, emergency services, and other such purposes, subject to such conditions as may be agreed to by the Board. A Lot Owner shall do nothing on his or her Lot which interferes with or impairs the utility services using these easements. The Board or its designee shall have a right of access to each Lot and Unit to inspect, maintain, repair, or replace the utility service facilities contained under the Lot and to remove any improvements interfering with or impairing the utility services or easement herein reserved; provided such right of access shall not unreasonably interfere with the Owner's permitted use of the Lot and, except in the event of an emergency, entry into any Unit shall be made with reasonable notice to the Owner.

3.5 Easement of Support. Every portion of a Unit contributing to the support of a Building or an adjacent Unit shall be burdened with an easement of support for the benefit of the other Unit in the Building.

3.6 Encroachments. If any portion of the Common Areas encroaches upon any Lot; if any Unit encroaches upon any Lot or upon any portion of the Common Areas; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvements; (ii) settling or shifting of any improvements; (iii) any addition, alteration or repair to the Common Areas made by or with the consent of the Association, (iv) any repair or restoration of any improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Areas; or (v) any non-purposeful or non-negligent act of an Owner except as may be authorized by the Board, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

Article IV **Property Maintenance**

4.1 By the Association. The Association shall operate, maintain, repair, and replace, as a Common Expense, the following portions of the Property:

4.1.1 Common Areas. The Association shall maintain all Common Areas or other areas for which the duty to maintain has been delegated to and accepted by the Association, and all roads, parking areas, common driveways (excluding any driveway serving only one Unit), landscaping and improvements contained thereon from time to time.

4.1.2 Landscaping. The Association shall be responsible for the maintenance and care of all landscaping throughout the Property and in the unpaved portion of contiguous road right-of-ways, which responsibility shall specifically include the maintenance and care of all landscaping upon all of the Lots. The Association shall plant, remove and/or replace sod, mulch, plants, flowers, shrubbery and trees when in the sole discretion of the Board same is appropriate and in the best interest of the Property and in compliance with Florida Friendly Landscaping as provided in Section 373.185, Florida Statutes, as amended. The Association's responsibility shall include mowing, trimming, pruning, edging, fertilizing, and weed, insect and disease control.

4.1.3 Ponds. The Association shall maintain all ponds within the community, including the shore lines for same.

4.1.4 Subdivision Water Sprinkler System. The Association shall maintain and repair pipes and water sprinkler systems throughout the Property.

4.1.5 Utility Services. The Association shall maintain all utility services not owned by any governmental authority or utility company, except for utility services located within any Lot, which serve only the Lot or the Unit on the Lot.

4.1.6 Building Exteriors. The Association shall be responsible for the periodic painting of the exterior walls and cleaning the roofs of all Units.

4.1.7 Other Property. The Association shall have the right to maintain such other areas within or contiguous to the Property as the Board determines from time to time is in the best interest of the Owners, and the cost of any such maintenance shall be a Common Expense.

4.1.8 Repair for Negligent or Purposeful Damage. Notwithstanding the foregoing, if any such maintenance is required due to the actions of any Owner, or the occupants and/or guests or invitees of any Unit, the Owner of the Unit shall be responsible for the cost of such maintenance and may be assessed for such cost by the Association.

4.2 By The Owners. Each Owner shall maintain his or her Unit and all improvements upon his or her Lot in first class condition, except those portions of the Unit and Lot which are to be maintained by the Association as discussed above. Included within the responsibility of the Owner, shall be windows, screens, sliding glass doors, and doors on the exterior of the Unit, and framing for same, the driveway exclusively serving the Owner's Unit, and any fence upon the Owner's Lot or serving the Owner's Unit, all of which shall be maintained by the Owner in good condition and repair and in a neat and attractive manner. Owners have the discretion to choose not to rebuild any fences on a Lot in the event they are removed and/or damaged. Owners of the Units within a Building are jointly responsible for the maintenance and replacement of the roof of that Building; notwithstanding, in the event that a section of a roof which is located entirely only over one (1) Unit requires repair, that Unit Owner shall be solely responsible for that repair. In the event that an Owner of a Unit within a Building refuses to contribute to such repair or replacement, said Owner shall be subject to enforcement to pay his or her share of the maintenance expense as provided in Article IX.

Article V **Insurance**

5.1 Owner's Personal Property and Liability. Owners shall obtain casualty, hurricane and wind insurance, as applicable, at their own expense and at their own discretion for their personal property, personal liability, living expenses, flood damage and for improvements made to their Lot or Unit. All real and personal property located within the boundaries of the Unit, which is excluded from coverage provided by the Association, shall be insured by the Owner of the Unit. Each Unit Owner shall carry homeowner's insurance with endorsements for leakage, seepage and wind-driven rain, additions, and alterations, and loss assessment protection, or recognize that he or she bears financial responsibility for any damage to his or her property and liability to others that would otherwise be covered by such insurance.

5.2 Casualty Coverage. All Units and all improvements upon the Property and all personal property of the Association are to be insured in an amount equal to one hundred percent

(100%) of the then current replacement cost, excluding foundation and excavating costs and other items normally excluded from coverage, as determined annually by the Association. The Board shall establish the amount of the deductible under the insurance policies, and other features, as they deem desirable and financially expedient, in the exercise of their business judgment. Prior to obtaining any casualty insurance or renewal thereof, the Association shall obtain an appraisal of the full replacement cost of the Units and improvements upon the Property and all personal property of the Association, without deduction for depreciation, for the purposes of determining the amount of casualty insurance to be obtained pursuant to this Paragraph. Such coverage shall afford protection against:

- a. Loss or damage by fire and other hazards covered by a standard extended coverage endorsement
- b. Such other risks as from time to time shall be customarily insured against with respect to buildings and improvements similar in construction, location and use, including, but not limited to vandalism and malicious mischief, and all other risks normally covered by a standard "All Risk" endorsement, where available.
- c. The hazard insurance policy shall cover, among other things, all of the Units including, but not limited to, walls, windows, doors, stairways, kitchen cabinets and fixtures, built-in kitchen appliances, electrical fixtures, and bathroom cabinets and fixtures, floor and ceiling coverings, all as originally supplied by the Developer or replacements thereof of like kind and quality in accordance with the original plans and specifications. If such plans and specifications are not available as they existed at the time the Unit was initially constructed, the Board shall evaluate the cost thereof. The hazard insurance policy shall not include any improvements made in any Units by an Owner in addition to or having a value in excess of that originally supplied by Developer, or any wall coverings, window treatments including curtains, drapes, blinds, hardware and similar window treatment components, fans, free-standing appliances, furniture, furnishings or other personal property installed or brought into a Unit, from time to time, by the Owner or residents of a Unit, or their guests or invitees. Provided however, upon reasonable prior written notice, the Owners shall also be responsible to insure any portion of the Property that may be removed from Association insurance responsibilities by virtue of future amendments to the Florida Statutes or changes in the insurance industry that prevent the Association from insuring such Property or make it economically unfeasible for the Association to do so when compared to the cost of the Owner insuring such Property.

5.3 Liability Coverage. Comprehensive general public liability insurance insuring the Association against loss or damage resulting from accidents or occurrences on or about or in connection with the Property, or any work, matters or things related to the Property or this Declaration and its exhibits, with such coverage as shall be required by the Association, but with

a combined single limit liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury, death or property damage, arising out of a single occurrence, and with cross liability endorsement to cover liabilities of the Owners as a group to an Owner.

5.4 Additional Coverage. The Association may obtain such other insurance coverage as the Board shall determine from time to time to be necessary or as may reasonably be required by an institutional lender, and as is customarily obtained with respect to Units and improvements similar in construction, location and use to those contained within the Property, such as, where applicable, contractual and all-written contract insurance, employer's liability insurance and comprehensive automobile liability insurance. In no event shall the Association be required to purchase flood insurance, and in the event any institutional lender requires flood insurance the responsibility for same shall be the applicable Owner.

5.5 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that any increase in any insurance premium occasioned by misuse, occupancy or abandonment of a Unit by a particular Owner, or by a resident of any Unit, or by a member of their families or their guests or invitees, shall be assessed against and paid by that Owner.

5.6 Duties. The duty of the Association shall be to receive such insurance proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Owners and their respective mortgages.

- a. Common Areas. Proceeds on account of damage to Common Areas shall be held by the Association.
- b. Units. Proceeds on account of damage to Units shall be held in the following undivided shares:
 - 1) When the Units are to be repaired and restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Owner.
 - 2) When the Units are not to be repaired and restored as elsewhere provided, for the Owners of all damaged Units, each Owner's share shall be based on the latest appraised value of the Unit.
 - 3) In the event a mortgagee endorsement has been issued as to a Unit, the share of the Owner shall be held in trust for the institutional lender and the Owner as their interests may appear. However, no institutional lender shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no institutional lender shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof

made to the Owner and institutional lender pursuant to the provisions of this Declaration.

5.7 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to, or for the benefit of, the beneficial Owners in the following manner:

- a. Cost 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. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be retained by the Association as common surplus.
- c. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged Units for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the Owners of the damaged Units, remittances to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.
- d. Limitation on Use of Proceeds. In no event may any hazard insurance proceeds for losses to any portion of the Property be used for other than expenses per Paragraph 5.7.a., or for repair, replacement, or reconstruction of any damage, without the approval of at least eighty percent (80%) of the vote of the Owners.

5.8 Additional Board Authority. In addition to the authority granted to the Association by Chapter 720, Florida Statutes, as amended from time to time, and the Declaration, Articles, and Bylaws, the Board shall have the following power and authority after a casualty:

- a. To declare any portion of the Property unavailable for occupation by Owners, tenants, or guests after a casualty, including during the rebuilding process. Such decision by the Board shall be made only if necessary to protect the health, safety, or welfare of the Association, Owners, tenants, or guests.
- b. To mitigate damage and take action to prevent the spread of fungus (mold, mildew, etc.) by tearing out wet drywall and carpet (even if the Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and store at an offsite location, with the Owner

responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

- c. To contract on behalf of Owners, with said Owner responsible to reimburse the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units.

Article VI **Reconstruction or Repair After Casualty**

6.1 Determination to Reconstruct or Repair. If any part of the Property is damaged or destroyed by casualty, whether or not the damage will be repaired shall be determined in the following manner:

- a. **Common Areas.** If the damaged improvement is contained within a Common Area, the damaged property shall be reconstructed or repaired unless a majority of the Owners vote to the contrary.
- b. **Units.** In the event of damage to or destruction of any Units as a result of fire or other casualty, except as hereinafter provided, the Association shall arrange for the prompt repair and restoration of the Unit or Units as such were initially installed, or replacements thereof of like kind and quality, in accordance with the original plans and specifications. If such plans and specifications are not available as they existed at the time the Unit or Units were initially constructed, the Board shall evaluate the cost thereof. The obligation to rebuild shall not include improvements having a value in excess of that originally installed by Developer, or furniture, furnishings or other personal property supplied by any Owner or tenant of an Owner. The Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Notwithstanding the foregoing, if a Unit or Units within any Building are substantially damaged or destroyed, as defined below, then within sixty (60) days after such damage or destruction, a special meeting of the Owners shall be called to determine whether the damage or destruction will be repaired and restored. The damage or destruction shall be repaired and restored unless a majority of the Owners, including Owners of the damaged or destroyed Units, vote to the contrary. In the event the damaged Units are not to be repaired or restored, the fee title to each Lot containing a damaged Unit which is not to be repaired or restored shall be vested in the Association. By accepting a deed conveying a Lot, each Owner covenants for himself, his heirs, personal representatives, successors and assigns to execute any and all instruments which may be reasonably required by the Association to carry out the terms of this

paragraph, including, without limitation, a deed conveying all of the Owner's rights, title and interest in and to his Lot to the Association. In such event, the Association shall diligently pursue selling all of the Lots which contain Units which are not to be repaired or restored, and the net proceeds from such sale, together with the net proceeds of insurance resulting from damage or destruction shall be divided among all the Owners of such damaged Units, each Owner to receive an amount based on a percentage of the latest appraised value of his or her Unit compared to the total value of all Units destroyed as applied to the amount of funds available to be distributed; provided, however, that no payment shall be made to an Owner until there has first been paid off out of his or her share of such funds all liens on his Lot in the order of priority of such liens.

For the purposes of this Declaration, "substantial damage or destruction" shall mean that the Board has concluded that the Units cannot be restored to the condition (or a better condition) that existed prior to the casualty through available insurance proceeds, plus a Special Assessment against each Owner not to exceed five percent (5%) of the average fair market value of the Units, as determined by the Board. This calculation shall not include costs affiliated with those items the Owner is obligated to repair or replace, at the Owner's expense. A governmental agency's declaration or order that the Units may not be occupied due to safety concerns shall not conclusively establish that the Units are substantially damaged or destroyed, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "substantially damaged or destroyed," a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

6.2 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by a majority of the Owners, and if the damaged property is one or more Units, by the Owners of all such Units (and their respective institutional lenders), for which the plans are to be altered, which approval shall not be unreasonably withheld. If reconstruction in accordance with the original plans and specifications cannot be effectuated due to governmental regulations intervening between the time of original construction and reconstruction, then the Board shall have the authority to make such modifications to the construction plans as may be necessary to comply with such governmental regulations.

6.3 Responsibility. If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Owner, the Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

6.4 Assessments. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association, or if at any time during or after the reconstruction and repair the funds for the payment of the cost thereof are insufficient, Assessments shall be made against all Owners, in sufficient amounts to provide funds to pay such costs. Such Assessments shall be made equally against all Owners. The affected Owners shall be responsible for payment of cost of repair and replacement of the damaged portions of the Units which are not covered by insurance proceeds to the extent the Owners are responsible for the repair and replacement of the damaged portions of the Units.

6.5 Deductible Provision. The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be assessed against the Owners in the same manner as provided in Paragraph 6.4 above.

6.6 Construction Funds. The funds for payment for costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Association from Assessments, shall be disbursed in payment of such costs in the following manner.

- a. Lesser Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than twenty-five thousand Dollars (\$25,000.00), then the construction funds shall be disbursed in payment of such costs upon the order of the Board.
- b. Major Damage. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than twenty-five thousand Dollard (\$25,000.00), then the construction funds shall be disbursed in payment of such costs in the manner required by the Board and upon approval of an architect qualified to practice in the State of Florida and engaged by the Association to supervise the work.
- c. OWNER. If there is a balance of insurance proceeds after payment of costs of reconstruction and repair that is the responsibility of the Association, such balance shall next be distributed to the Owners of damaged Units. The distribution shall be in the shares that the estimated costs of reconstruction and repair in each damaged Unit bears to the total of these costs in all damaged Units; provided, however, that no Owner shall be paid an amount in excess of the estimated costs of reconstruction and repair for his Unit. If there is a mortgage upon a Lot, the distribution shall be paid to the Owner and the mortgagee jointly and they may use the proceeds as they may determine.
- d. Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be retained by the Association as common surplus. If, however, the

funds surplus to the project are made up of insurance and assessment funds and the balance can be related to the assessment funds, then these funds will be reimbursed to the owners in proportion to the share paid by each Owner. In such cases the excess of assessment funds paid by the Owners shall not be made payable to any mortgagee.

Article VII **Use Restrictions**

7.1 Use Provisions. Heron Shores is a residential community. To assist in creating a harmonious development, specific land use provisions have been set forth below. These provisions are applicable to all of the Property and shall govern the conduct of all Lot Owners and shall also supply to all occupants, tenants and visitors of any Lot. Every Lot Owner shall cause all occupants of his or her Lot to comply with this instrument, and the Bylaws and shall be responsible for all violations and losses to the Association caused by such occupants, notwithstanding the fact that such occupants of a Lot are also fully liable for such violations.

7.2 Construction and Occupation of Units. Only one (1) Unit may be constructed on any Lot. No Units shall be permanently occupied by more than two (2) persons for each bedroom in the Unit. Additional temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the Property.

7.3 No Trade or Business. No trade, business, profession, or commercial activity, or any other nonresidential use, shall be conducted upon any portion of the Property or with any Lot or Unit; provided however, Owners, tenants and occupants may conduct limited professional or business activities incidental to the primary use of the Lot as a residence, but only if the activity is acceptable under the Zoning Regulations of Sarasota County; cannot be seen, heard or smelled by other residents; does not cause a significant increase in pedestrian, or vehicular traffic in the Property; does not increase the insurance risk of other Owners, or the Association; or constitute a dangerous activity jeopardizing the health, safety or welfare of other residents or their pets.

7.4 Alterations, Additions or Improvements. No Owner shall make, install, place, or remove any building, fence, wall, swimming pool, spa, or any other significant alteration, addition, improvement or change of any kind or nature whatsoever to, in or upon any portion of the Common Areas, the Owner's Lot, or the exterior of the Owner's Unit, unless the Owner first obtains the written consent of the Board to such addition, alteration, improvement or change. The requirement for prior written approval is subject to further regulation by the Board whether by separate rule or by the promulgation of design standards, architectural criteria, or policies. Any request by an Owner for consent by the Board to any addition, alteration, improvement or change shall be in writing and shall be accompanied by plans and specifications or other details as the Board may deem reasonably necessary in connection with its determination as to whether or not it will approve any such addition, alteration, improvement or change. The approval, rejection or withholding of any approval by the Board shall not be construed or interpreted as a representation or determination that any building, plumbing, electrical code or other applicable governmental regulations or requirements have or have not been properly met. The approval of the Board relates to the aesthetics of the improvements and alterations, and to other factors

determined appropriate by the Board. Approval may be denied if the Board determines that the proposed construction, improvement, modifications or alterations would adversely affect, or in any material manner be detrimental to, the Property, in part or in whole, and shall include but not be limited to the harmony of the size, exterior design, color, and location of the proposed construction, improvement, or alteration, in relation to and its effect upon surrounding structures, vegetation, topography, and the overall community design; the character of the exterior materials; the planned quality of the exterior materials; design and construction standards; aesthetics; and any other factor deemed material or relevant by the Board. All additions, alterations, improvements or changes made by an Owner shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the Board with respect to design, structural integrity, aesthetic appeal, construction details or otherwise. An Owner making or causing to be made any additions, alterations, improvements or changes agrees shall be deemed to have agreed, for such Owner, and the Owner's heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and all other Owners harmless from any liability or damage to the Property and expenses arising therefrom. Each Owner shall be solely responsible for and shall maintain all exterior additions, alterations, improvements or changes made by the Owner or his or her predecessor in a first class condition and in good working order as originally approved by the Board.

NOTE: APPROVAL OF ANY ALTERATION, ADDITION, IMPROVEMENT OR CHANGES MUST ALSO BE OBTAINED FROM THE PARTY EXERCISING ARCHITECTURAL CONTROL PURSUANT TO THE DECLARATION OF COVENANTS AND RESTRICTIONS OF EAST VILLAGE, AS AMENDED.

7.5 Prohibited Improvements. No Owner shall install any fence or wall.

7.6 Ponds. The ponds are stormwater retention and flood control ponds which are a necessary part of the community's infrastructure and are not for the recreational enjoyment of the community. No swimming or boating is allowed in any pond within the Property. Owners, guests or invitees accessing the ponds do so at their own risk.

7.7 Outside Storage of Personal Property. The personal property of the Owner shall be stored inside the Owner's Unit, with the exception that patio furniture and grills are permitted outside out of view from the street unless a residence is unoccupied for more than ten (10) consecutive days within hurricane season.

7.8 No Temporary Buildings. No out-buildings, portable buildings, temporary or accessory buildings or structures, storage buildings, or tents, shall be erected, constructed or located upon any Lot for storage or any other reason, with the exception of when such structures shall temporarily be necessary for construction, maintenance and/or repairs being actively made to a Unit or in the event that occupants are moving into or out of a residence.

7.9 Garbage, Trash and Recycles. Each Owner shall regularly pick up all garbage, trash, refuse or rubbish on the Owner's Lot. Garbage, trash, refuse or rubbish that is required to be placed at the front of the Lot in order to be collected may be placed and kept at the front of the

Lot for periods not exceeding twenty-four (24) hours, and except for garden trash and rubbish to be collected, same shall be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities shall be stored inside a Unit and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

7.10 Automobile and Vehicle Parking Regulations. No residents' motor vehicles shall be parked on the streets, driveways, or Common Areas of the Property overnight. Notwithstanding, the Board may grant approval for motor vehicles to be parked temporarily in driveways for a period not to exceed thirty (30) days when the occupants of the residence are moving in or out or when a residence is being renovated. Guest parking in the Property in excess of ten (10) consecutive days must be approved by the Board. Permitted vehicles shall be limited to those vehicles which are used primarily as passenger motor vehicles, and which have a body style consisting of two doors, four doors, hatch back or convertible, and shall also include station wagons, mini-vans, full sized vans equipped with windows all around them, sport utility vehicles and certain pick-up trucks as more fully described below.

Unless specifically exempted by a unanimous vote of the Board on an individual case basis, all other motor vehicles, including but not limited to: (1) commercial vehicles (any vehicle used in a trade or business and having visible advertising, promotional symbols or information, exposed materials or equipment); (2) trucks (any motor vehicle designed or used principally for the carriage of goods and including a motor vehicle to which has been added a platform, rack, or other equipment for the purpose of carrying goods other than the personal effects of the passenger, and cargo vans. Pickup trucks having a manufacturer load rating of one-half (1/2) ton or less are permitted if not classified as a commercial vehicle as provided herein); (3) boats; (4) campers; (5) recreational vehicles (vehicles having either kitchen or bathroom facilities); (6) trailers; (7) motor homes; (8) mobile homes; and any and all other vehicles other than the permitted vehicles described in the preceding paragraph, may not be parked on the streets, driveways or Common Areas. An exemption by the Board for the parking of a vehicle does not establish a precedent for that class of vehicle and any additional requests for exemption for a similar type vehicle must be resubmitted to the Board for independent review and action.

Notwithstanding the foregoing parking restrictions, the following exceptions shall be made: (1) service vehicles may be temporarily parked at the Property during the time they are actually servicing a Unit, but in no event overnight; (2) boats, trailers, trucks, commercial and recreational vehicles, and other prohibited vehicles may be temporarily parked at the Property when they are being actively loaded or unloaded, but in no event overnight; (3) and any of the prohibited vehicles may be parked or stored in a garage provided the garage door is kept closed at all times except when the garage is being actively used. Members of the Association and guests are permitted to park an unoccupied motorhome or recreational vehicle in the East Village Master Association parking lot for one night after receiving permission from the Members' Master Association representative. Each occasion requires prior approval and in no event will the Master Association nor the Association be responsible for the safety or security of the vehicle while parked in the East Village parking lot.

The Board shall have the authority to prohibit the use or parking of any vehicle that would otherwise be permitted under this provision, if the Board determines in its sole judgment that the vehicle constitutes a safety hazard or is unsightly. The opinion of the Board shall be binding upon all parties. All motor vehicles must be operable and must have a current license tag. No repairs or maintenance of vehicles is permitted unless accomplished in a closed garage, except for minor emergency repairs, such as changing a flat tire or replacing a defective battery. The cleaning of oil or fluid leaks onto a driveway or street is the responsibility of the Owner of the Unit, and he or she is responsible for the expense of any necessary repairs for damage in connection with same.

No motor vehicle, trailer, boat or any other property of any nature whatsoever that is regulated by this section may be parked or stored on a lawn or unpaved area.

No motor vehicle shall be parked on the streets of the Property overnight.

Subject to the provisions of applicable laws, any vehicle of any nature whatsoever parked in violation of these, or other restrictions set forth in this Declaration, or Rules or Regulations adopted pursuant thereto, may be towed by the Association at the sole expense of the owner of the vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time from which a notice of violation is placed on the vehicle. The Association shall not be liable for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor the failure of the owner to receive it for any reason, shall be grounds for relief of any kind. By acquisition of title to a Lot, the Owner grants to the Association the irrevocable right to tow vehicles parked on the Owner's Lot or the Property that are in violation of this Declaration or the Rules and Regulations.

7.11 Animals and Pets. Only common household pets are permitted within any Unit. No more than two (2) dogs per Lot are allowed. No pet is permitted which creates an unreasonable source of noise or annoyance to other residents of the Property. No pet may be kept outside of any Unit in the absence of any resident of the Unit. All pets must be carried or kept on a leash when outside of a Unit. All occupants are required to immediately pick up any animal waste deposited by their pet on any portion of the Property. The Board may require any pet to be immediately and permanently removed from the Property due to a violation of these restrictions.

7.12 Air Conditioning Units. Only central air conditioning units are permitted. All window, wall, or portable air conditioning units are prohibited.

7.13 Clotheslines and Outside Clothes Drying. No permanent clothesline nor clothes drying pole shall be erected on a Lot. Temporary clotheslines are permissible when in active use and located at the rear of a Lot.

7.14 Nuisances and Annoyances. No nuisances shall be permitted within the Property, and no use or practice which is an unreasonable source of annoyance to the residents within the Property or which shall interfere with the peaceful possession and proper use of the Property by its residents shall be permitted. No offensive or unlawful action shall be permitted, and all laws,

zoning ordinances and regulations of all controlling governmental authorities shall be complied with at all times by the Owners.

7.15 Towers, Aerials, Cables and Electric Emissions. Unless approved by the Association in writing, no towers, antennas, aerials or overhead wires or cables shall be permitted in Heron Shores. No electrical or electronic system or device shall be permitted or maintained if it interferes with radio, telephone, television or other public communications reception in Heron Shores. Satellite dishes less than one (1) meter in diameter are allowed as provided in the Federal Communications Commission's Over-the-Air Reception Devices Rule.

To safeguard the safety of the Owners, occupants of the residence in which the antenna is located, neighboring Owners, and other residents in the Property, it shall be the obligation of the Owner to comply with all applicable local, state and federal safety requirements, including but not limited to obtaining a permit for the installation of any antenna or related device, hiring licensed contractors with sufficient expertise and adequate insurance to protect their work, installing the antenna or device away from power lines and other potentially dangerous areas, installing and using the antenna or device in accordance with safety recommendations and requirements of the manufacturer, and in accordance with the customs and standards for the antenna industry, including compliance with electrical code requirements to properly ground the antenna or device, and installation requirements to properly secure it.

It is the intent of this provision to comply with the Telecommunications Act of 1996, as amended. Nothing herein shall be interpreted or applied by the Association to prevent or unreasonably delay antenna installation, maintenance, or use; unreasonably increase the cost of antenna installation, maintenance, or use; or preclude reception of acceptable quality signals. Any installation must be in accordance with these provisions and reasonable rules and regulations adopted by the Board to interpret these regulations.

7.16 Signs. No advertising or other signs are permitted which are visible from the exterior of any Lot except for one security sign of reasonable size provided by the contractor in proximity to the entrance to the Unit. For Sale or For Rent signs are permitted to be displayed in the front windows of a residence.

7.17 Flags and Flagpoles. No flag may be kept or placed upon any Lot so as to be visible from public view except that a Lot Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than four and a half (4½) feet by six (6) feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. A Lot Owner may additionally erect a freestanding flagpole no more than twenty (20) feet high on any portion of the Lot, if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, Sarasota County noise and lighting ordinances and all setback and locational criteria contained in this instrument.

7.18 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding two (2) weeks after an Owner or tenant first moves into a Unit or when permanent window treatments are being cleaned and/or repaired.

7.19 Hurricane Shutters. Hurricane shutters are permitted. The type and appearance of shutters is subject to prior written approval by the Architectural Control Committee. Except as otherwise provided by Florida law, no hurricane shutter except the standard models, colors and styles by the Board shall be permitted.

7.20 Landscaping. Without limiting the provisions of Paragraph 7.4, the Board may grant permission to an Owner to install special landscaping on the Owner's Lot, which when approved and installed shall be maintained by the Association's lawn and landscaping company in good condition at all times. Notwithstanding, if an Owner plants approved trees, the maintenance of same is that Owner's responsibility and expense. Applications for landscaping shall propose installations and improvements which are in compliance with Florida Friendly landscaping as provided in Section 373.185, Florida Statutes, as amended, as applicable.

7.21 Maintenance. Except for portions of the Property to be maintained by the Association as elsewhere provided, each Owner shall maintain, in a first class condition, his or her Lot and Unit and all other improvements existing upon the Lot from time to time.

7.22 Rules and Regulations. The Owners shall comply with all reasonable rules and regulations adopted by the Association relating to the use and maintenance of the Units and the Common Expenses.

7.23 Waiver. The Board shall have the right to waive the application of one or more of these restrictions, or to permit a deviation from these restrictions, as to any Lot where, in the discretion of the Board, circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event any party fails to enforce any violation of these restrictions, such actions or inactions shall not be deemed to prohibit or restrict the right of the Board, or any other person having the right to enforce these restrictions, from insisting upon strict compliance with respect to all other Lots, nor shall any such actions be deemed a waiver of any of the restrictions contained herein as same maybe applied in the future.

Article VIII **Leasing Units**

8.1 Requirements and Terms. All leases of Units must be in writing and specifically be subject to the Declaration, the Articles and the Bylaws, and copies delivered to the Association prior to the occupancy by the tenant(s). Without the prior written consent of the Association, which may be withheld in the Association's sole discretion, no lease shall be for a period of less than three (3) months. Any person (s) occupying a Unit in the absence of the Owner shall be deemed occupying the Unit pursuant to a lease, regardless of the presence or absence of consideration with respect to the occupancy. Notwithstanding the foregoing, an Owner may

permit members of his or her immediate family (immediate family for this purpose shall mean parents, children, grandchildren and siblings, together with spouses or children of any of the foregoing) to occupy his or her Unit as a guest in his or her absence for periods of less than one (1) month, provided the Board is advised of such occupancy.

8.2 Tenant Compliance. The Lot Owner is responsible for ensuring that all guests and tenants abide by all Association restrictions. The Lot Owner shall be jointly and severally liable with the tenant to the Association to repair any damage to the Common Areas resulting from any acts or omissions of a tenant or a tenant's guests, as determined in the sole judgment of the Association, and to pay for injury or damage to property caused by the negligence of the tenant or the tenant's guests, and special assessments may be levied against the Lot Owner in connection therewith. All leases shall be subordinate to any lien filed by the Association, whether prior to or subsequent to such lease.

8.3 Delinquent Owners Renting. In the event that any Lot Owner renting or intending to rent his or her residence becomes delinquent in paying assessments to the Association, the Association may collect the rent payments directly from the tenants of the residence as provided by Florida law.

Article IX **Covenant Enforcement**

9.1 Enforcement. Subject to statutory pre-suit mediation requirements provided in Chapter 720, Florida Statutes, these covenants and restrictions may be enforced by the Association or by any other Lot Owner by filing an action at law or in equity against any person violating or attempting to violate the covenants and restrictions. The party bringing the action may recover damages and/or injunctive relief and the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, both at the trial and the appellate levels.

9.2 Violations. Failure of a Lot Owner or any family member, guest, invitee or tenant of a Lot Owner to comply with such restrictions, covenants or rules and regulations shall be ground for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof, all to the extent of the Lot Owner's liability under applicable law. The offending Lot Owner shall be responsible for all costs of enforcement including reasonable attorney's fees and costs, both at the trial and the appellate levels.

9.3 Right of Association to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present in any Unit or any portion of the Property, other than an Owner and the members of his immediate family permanently residing with him or her in the Unit, if such person shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Common Areas or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property

and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

9.4 Fines. In addition to all other remedies, and to the maximum extent permissible by law, the Association may levy and impose a fine or fines upon a Lot Owner for failure of a Lot Owner, family member, guest, invitee or tenant to comply with any covenant, restriction, rule or regulation, by following the procedures provided below:

- a. After levying the fine, the Board shall notify the Lot Owner of the alleged infraction(s). Included in the notice shall be the date and time of a hearing of the fining committee (hereinafter "the Fining Committee") as set forth herein, at which time the Lot Owner shall present reasons why a fine(s) should not be imposed. At least fourteen (14) days' notice of such hearing shall be given.
- b. A fine shall not be imposed without providing the Lot Owner an opportunity for a hearing before the Fining Committee. The Fining Committee shall consist of at least three (3) Lot Owners who are not 1) related to the Lot Owner given the notice, 2) a complainant against same with respect to the matter for which a fine is proposed, 3) reasonably believed to be objective in the reasonable judgment of the Board, or 4) who are Officers, Directors or employees of the Association, or the spouse, parent, child, brother or sister of an Officer, Director or employee.
- c. The Fining Committee shall hear reasons why a fine(s) should or should not be imposed. If the Fining Committee rejects the fine by a majority vote, it may not be imposed. If the Fining Committee confirms the imposition of a fine, the Board of Directors may establish the amount of the fine at a duly noticed meeting and written notice of the amount of the fine should be sent to the Lot Owner with a deadline for payment.
- d. For the first non-compliance or violation, the Board may impose a fine not in excess of one hundred dollars (\$100.00). For subsequent non-compliance or a violation of a continuing nature, the Board may impose a fine for each day of a continuing violation, not to exceed (\$1,000.00) in the aggregate. A single notice and opportunity for hearing is sufficient to comply with notice requirements, even though a Lot Owner may have subsequent violations of the same nature and such violations may be of a continuing nature.
- e. Fines shall be paid not later than ten (10) days after giving notice of the imposition of the fine in question.

9.5 Access. The Association shall have the right to access on any Lots or any improvements constructed on lots, between the hours of 9:00 a.m. and 5:00 p.m., upon advance notice to the Lot Owner to determine whether or not a Lot Owner has complied with the provisions of this instrument relating to land use. Every such entry on the part of the Association or its employees or agents shall be deemed a lawful entry and not a trespass.

9.6 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

9.7 Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any tenns, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of anyone or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association thus exercising the same from executing such additional remedies, rights or privileges as may be granted or as it might have by law.

9.8 Enforcement By or Against other Persons. In addition to the foregoing, this Declaration may be enforced by the Association by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration. In addition to the foregoing, any Owner shall have the right to bring an action to enforce this Declaration against any person violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

9.9 Term of Declaration. All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as against all Owners, their successors, heirs or assigns, regardless of how the Owners acquire title, for a period of fifty (50) years from the date of the recording of the original Declaration, unless within such time, one hundred percent (100%) of the Owners execute a written instrument declaring a termination of this Declaration (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years each, until a majority of the votes of the entire membership of the Association execute a written instrument declaring a termination of this Declaration (as it may have been amended from time to time). Any termination of this Declaration shall be effective on the date the instrument of termination is recorded in the public records of Sarasota County.

Article X
Party Walls

10.1 Party Walls. Each common wall shared by two (2) Units which divides the two (2) Units shall be a party wall for the perpetual benefit of and use by the Owners of the two (2) Units, including their respective heirs, assigns, successors and grantees.

10.2 Easement for Encroachment. Each Owner hereby grants to the Owner of the adjacent Unit(s) an easement for the continuance of any encroachment of the party wall on the adjoining Unit existing as a result of the construction of the party wall, or which may come into existence thereafter as a result of settling or shifting of the party wall, or as a result of repair or reconstruction of the party wall.

10.3 Repair and Maintenance. Except as otherwise provided herein, each Owner shall bear the responsibility to repair and maintain the unfinished surface of the exterior portion of the party wall which is located within his or her Unit. As to the structural and interior portions of the party wall, each Owner shall share equally in the cost of the repair, maintenance and reconstruction of same. However, if any Owner's negligence or willful misconduct causes damage to or destruction of a party wall, such negligent or willfully mischievous Owner shall bear the entire cost of repairing or reconstructing the party wall. If an Owner executes a mortgage encumbering his or her Unit, then the holder of the mortgage shall have the full right, at its option, to exercise the rights of its mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the mortgagee for repairs or reconstruction and not reimbursed to the mortgagee by the Owner.

10.4 Easement for Repairs. Each Owner shall have the right to enter into an adjacent Unit where necessary in connection with the repair, maintenance, or reconstruction of a party wall, at reasonable times and upon reasonable notice. The foregoing right shall constitute an easement and a covenant running with the land.

10.5 Materials, Location and Size. Whenever a party wall is to be repaired, maintained or reconstructed, same shall be performed with the same or better materials and quality as the original party wall. Whenever a party wall or any part thereof shall be reconstructed, it shall be reconstructed such that it shall be of the same size and shall be at the same location as initially constructed, and shall be of the same or similar materials and quality as used to initially construct the party wall.

10.6 Use. Each Owner shall have the right to the full use of the party wall for whatever purposes he or she chooses, subject to the limitation that such use shall not infringe upon the rights of the Owner of the adjoining Unit, or his or her enjoyment of the party wall, or in any manner impair the structure of the party wall. The term "use" shall and does include normal interior usage such as paneling, plastering, painting, decorating and erection of tangent walls and shelving, but prohibits any form of alteration (other than a minor alteration) which would cause an aperture, hole, break or other displacement of the original structure forming the party wall. Additionally, each Owner shall not cut windows or other openings in the party wall, nor make

any herein above prohibited alterations, additions or structural changes to the party wall unless agreed upon by both Owners sharing the party wall.

Article XI
Amendments to the Declaration

11.1 Vote Required. This Declaration may be amended at any time by the affirmative vote of not less than a simple majority of the voting interests of the members represented in person or by proxy at a duly noticed membership meeting at which a quorum of the membership is attained. Notice of the subject matter or proposed amendment shall be included in the notice of the meeting at which the proposed amendment is considered.

11.2 Restrictions on Amendments. No amendment shall discriminate against any Owner or class or group of Owners, unless the Owners so affected join in the execution of the amendment. No amendment shall change the number of votes of any Owner or increase any Owner's proportionate share of the Common Expenses, unless the Owners affected by such amendment join in the execution of the amendment. No amendment may be made which adds or amends any material provision of this Declaration, the Articles, or the Bylaws, which establish, provide for, govern or regulate voting, Assessments, Assessment liens or subordination of such liens, or any provisions which are for the express benefit of institutional lenders except for amendments granting or expanding the rights or protections of the foregoing, except with the consent of any institutional lenders as required by Chapter 720, Florida Statutes, as amended.

11.3 Correction of Errors. Amendments for correction of scrivener's errors or other non-material changes may be made by the Board of Directors without the consent of the Members.

Article XII
Additional Provisions

12.1 Interpretation. The provisions of this instrument, as amended and supplemented from time to time in accordance with this instrument, shall be deemed covenants running with the land. Titles, captions and paragraph headings have been used for convenience only, and shall not be used in interpreting this instrument. In the event of any conflict between the Articles and the Bylaws and/or this Declaration, this Declaration, the Articles, and the Bylaws, in that order, shall control.

12.2 Severability. The invalidity in whole or in part of any covenant or restriction, or any Section or other provisions of this Declaration, the Articles, or Bylaws shall not affect the validity of the remaining portions.

12.3 Gender. Unless otherwise so required, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

[SEE CERTIFICATE FOR SIGNATURE PAGE]

EXHIBIT "A"

All of the plat of "Heron Shores" according to the Plat thereof recorded in Plat Book 30, Pages 21-21E, of the Public Records of Sarasota County, Florida.

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