

Prepared By and Return to:  
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**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
VENETIAN BAY SUBDIVISION  
NEW SMYRNA BEACH, VOLUSIA COUNTY, FLORIDA AND  
NOTICE OF PROVISIONS FOR VENETIAN BAY  
HOMEOWNERS' ASSOCIATION, INC.**

**THIS DECLARATION**, made this 14<sup>th</sup> of APRIL, 2004, by Venetian Bay of New Smyrna Beach, L.L.C. a Florida limited liability company having its principal place of business at 1221 Dunlawton Avenue, Port Orange, Florida 32129. Hereinafter, Venetian Bay of New Smyrna Beach, L.L.C. is sometimes referred to as the Developer.

**W I T N E S S E T H**

**WHEREAS**, the Developer is the owner of certain real property located in Volusia County, Florida, generally known as Venetian Bay and more particularly described in Exhibit A attached hereto and made a part hereof (the Property); and

**WHEREAS**, in accordance with the applicable provisions of state law and local ordinance, Developer intends to subdivide the Property into platted residential subdivisions known as Venetian Bay, and each platted subdivision will be designated Venetian Bay with the appropriate Unit Number; and

**WHEREAS**, the Developer intends to develop or provide within the Property such public and private streets, Common Areas, Conservation Easement Areas and Drainage Areas as will be indicated on the platted subdivisions; and

**WHEREAS**, there is a need to specify, make and impose covenants and to grant necessary easements for the use and benefit of the platted subdivisions and to provide for effective management, protection, maintenance and administration of the Common Areas, Conservation Easement Areas, Private Roads and Drainage Areas in the platted subdivisions; and

**WHEREAS**, the Developer has caused to be incorporated a Florida not-for-profit corporation known as Venetian Bay Homeowners' Association, Inc. (hereinafter called the Owners Association:) which has been formed to manage, maintain and administer the Common Areas, Conservation Easement Areas, Drainage Areas, private streets, islands and other areas and to

enforce this Declaration and to collect assessments and generally provide for the orderly enjoyment of the subdivisions to be platted by Developer, its successors or assigns; and

**WHEREAS**, water and sewer utilities servicing the Property shall be provided by the City of New Smyrna Beach, or its successors and assigns.

**NOW, THEREFORE**, this Declaration is made, filed and recorded by the Developer so that from the effective date hereof, the real property described in the Legal Description which is attached hereto as Exhibit A, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the restrictions, conditions, easements, charges, burdens, assessments, affirmative obligations, and liens (all hereinafter sometimes referred to as the Covenants) hereinafter set forth. This Declaration shall become effective on the date and at the time it is filed and recorded in the Public Records of Volusia County. This Declaration does not and is not intended to create a condominium within the Florida Condominium Act.

## **ARTICLE I DEFINITIONS AND DESCRIPTIONS OF PROPERTY**

**Section 1.1 Definitions.** The following words and terms when used in this Declaration and any supplemental declaration, unless the context clearly indicates otherwise, shall have the following meanings:

- a. **Associations.** Inclusively refers to the Owners Association and any Neighborhood Associations which Developer establishes.
- b. **Committee** shall mean the Design Review Committee appointed by the Developer, with responsibilities as defined in Article II hereof.
- c. **Common Area** shall mean those areas shown and indicated as Common Areas on the plats to be recorded and subjected to this Declaration.
- d. **Conservation Easement Ares** shall mean all those areas which are subject to the special use restrictions specified in Section 7.3 of this Declaration and which are shown and indicated as Conservation Easements on the plats to be recorded and subjected to this Declaration. Except to the extent they are located on Lot, all Conservation Easement Areas shall be dedicated to and owned by the Owners Association in fees simple. The Conservation Easements, including but not limited to those that restrict the use of a Lot, are fully enforceable by the Owners Association,

the City of New Smyrna Beach and the Saint Johns River Water Management District..

e. **Developer** shall mean and refer to Venetian Bay of New Smyrna Beach, L.L.C., a Florida limited liability, its successors and assigns.

f. **Drainage Area** shall mean any Drainage Area or Drainage Easement shown indicated on the plats to be recorded and subjected to this Declaration.

g. **Dwelling Unit** shall mean a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached residence for a single family, and shall unless otherwise specified include within its meaning (by way of illustration, but not limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes and single family detached houses on separately platted lots, as well as vacant land intended for development as such, all of which may be developed, used and defined as herein provided.. The terms shall include all portions of the lot owned as well as any structure thereon. In, the case of an apartment building or other structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Dwelling Unit.

h. **Lot** shall mean any parcel of land and any condominium unit located within a subdivision of the Property, according to a recorded plat, is identified by a number and is intended for use as a site for a Dwelling Unit.

i. **Neighborhood Association** shall mean and refer to those sub-homeowners associations created by Developer to fund necessary maintenance, repair and replacement of common roofs, walls, yards, amenities and similar expenses which are specific to a particular platted subdivision.

j. **Venetian Bay-and Venetian Bay Community** shall mean and refer to the Property.

k. **Owners Association.** shall mean and refer to the Venetian Bay Homeowners' Association, Inc., a Florida corporation not-for-profit, and its successors and assigns, the members of which shall consist of owners of Lots: in subdivisions of the Property hereinafter platted and recorded in the Public Records of Volusia County, Florida. A copy of the Articles of Incorporation and the By-laws of the Association are attached hereto as Exhibits B and C respectively.

l. **Phrases "purchase from Developer" "sale by Developer"** and similar phrases when used in conjunction with the sale of Lots, refer to transactions pursuant to contract between Developer and a purchaser in which the purchaser receives title to a Lot.

m. **Surface Water or Stormwater Management System** shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall

events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

n. **Structure** shall mean any manmade item placed on, in or under the lands or placed on in or under any improvement or facility, including, but not limited to, buildings, dwelling units, swimming pools, fountains, fences, walls, signs, barbecue pits, television or radio antennae, or satellite dish or microwave antennae, clotheslines, garages, sheds, outbuildings, porches, balconies, patios, driveways, walls, lighting apparatus, window bauiers, window awnings, pipes, poles, recreational facilities such as basketball courts or goals, tennis courts, shuffleboard courts, and lawn decorative objects such as statues, tables, tents, flags, shacks, barns, sheds or other temporary storage or residence facilities.

o. **Subdivision** shall mean any platted unit or phase of the Property, recorded by the Developer in the Public Records of Volusia County, Florida.

p. **Wetlands** shall mean those areas indicated or shown as Wetlands on any recorded plat which is subjected to this Declaration.

**Section 1.2. Property Subject to Covenants and Restrictions.** The Property subject to the Declaration of Covenants and Restrictions is that Property, and any plats or replats thereof, described in the Legal Description which is attached hereto as Exhibit A.

## ARTICLE II RESTRICTIVE COVENANTS

**Section 2.1. Lot Usage** No Lot shall be used for any purpose other than a single-family dwelling, garage and grounds. The areas included within the lot line of each individual Lot, but not included within the Dwelling Unit constructed on each Lot, are hereinafter referred to as grounds, and shall be used for normal and customary yard purposes. Except, however, those portions of Lots shown on the plats as Conservation Easement Areas shall not be disturbed except as specifically allowed by order or permit issued by appropriate local government body or regulatory agencies.

**Section 2.2. Design Review Committee Approvals.** Except for Developer, no person or entity (including the Associations) may erect on, place on, alter, or permit any structure or addition to remain within the Subdivisions unless and until the site plan, floor, plan, elevation, landscaping plan, abbreviated specifications, etc., are reviewed and approved by the Design Review Committee

(hereinafter the Committee). The Committee is a committee of the Owners Association (with or without express approval of the Owners Association) for the purposes of enforcing the decisions of the Committee, including but not limited to injunctive relief. In order to preserve the character of the Subdivisions, the Developer hereby reserves for itself and its successors the right to appoint the members of the Committee. All property owned or controlled by the Owners Association and any Neighborhood Associations is subject to the Committee's authority. The Committee shall review proposed buildings or structures (including plans and specifications for same or alterations of prior approved buildings or structures) as to the harmony of the external design and location of the building or structure with respect to existing buildings and structures, with respect to topography, vegetation, drainage and the finished grade of elevation of the Lot, and with respect to any other relevant considerations the committee deems appropriate which are based upon acceptable standards of Planning, Zoning, Construction and shall include the requirements of Exhibit "B" to the Venetian Bay Master Development Agreement. The Committee may include considerations which are exclusively based on aesthetic factors. Owners will remain responsible for securing City building permits as necessary after securing approvals from the Committee.

**Section 2.3 Non-Permitted Structures and Vehicles.** No vehicles and no structure of a temporary nature or character, including, but not limited to, boats, trailers, house trailers, mobile homes, campers, recreational vehicles, tents, shacks, sheds, barns or similar structures or vehicles shall be used or permitted to remain on any Lot. No automobile, truck, or other commercial vehicle, which contains lettering, shall be parked (for any period of time in excess of ten consecutive hours) or stored or otherwise permitted to remain on any Lot except in a garage attached to the residence.

**Section 2.4. Parking.** No automobile, truck, motorcycle, boat and trailer, trailer, house trailer, mobile home, camper, or other similar vehicle shall be parked on any street (including the right-of-way) overnight or for a continuous period of time in excess of ten consecutive hours, except in designated off-street parking areas. No more than two (2) vehicles for each garage space shall be permitted on any lot.

**Section 2.5 R.V. and Boat Storage and Parking.** No recreational vehicle, boat, boat and trailer, or trailer alone shall be parked for any period of time in excess of ten consecutive hours, or stored or otherwise permitted to remain on any Lot except in a garage attached to the residence or in an approved detached garage. If there is demand sufficient to generate enough rental income to make it economically feasible, Developer may designate an area for storage of recreational vehicles, boats, boats and trailers and trailers alone, subject to rules and fees established by the Association, but in no way shall an owner be excluded from the above stated time restrictions for parking a

recreational vehicle, trailer, boat or boat and trailer in the event that space is not available within a designated area for storage.

**Section 2.6. Remodeling or Changes.** In order to preserve the character of the Venetian Bay Community, no exterior walls or roofs of any structure (including materials and colors of said walls and roofs) shall be changed or modified without specific prior written approval of the Committee. No garage shall be converted to uses other than storage of vehicles or other personal property unless the Committee has approved another garage to be constructed as a replacement.

**Section 2.7. Owner Maintenance.** All owners shall keep landscaped portions of their grounds well maintained, free of disease, bugs and in a presentable condition, and shall not permit thereon any unsightly growth, weeds, or underbrush. If any owner shall fail to maintain the landscaped portion of his Lot as herein required, the Owners Association shall have the power to correct such omission and assess the cost thereof to such owner and place a lien for such cost against owner's Lot and improvements thereon. Owners, subject to approval of the Committee, may leave designated portions of their Lot, and if undeveloped, the entire Lot, in a natural state as long as it is not unsightly and does not constitute a nuisance. Any Conservation Easement located on a Lot must be left in a natural condition and undisturbed as required by any plats or Development Orders. The Owners Association shall have the right to adopt additional rules and regulations to enforce this subsection.

**Section 2.8. Owners Association Maintenance Rights.** Without limiting the above, the Owners Association shall have the right to maintain, require and enforce maintenance of that portion of Common Areas, street rights of way or Lots lying between fence line and the abutting Lot line or lying between the curb of a street within the Subdivision and the Lot line. The Owners Association shall have the right to adopt rules and regulations to enforce this provision.

**Section 2.9 Maintenance Easements.** For the purpose of providing access to each owner of a boundary line wall or structure, to permit painting, maintenance, repairs or reconstruction of such wall or structure that abuts such owner's boundary lines, the adjoining owner or owners of each Lot which abuts such boundary line wall or structure hereby give and grant a perpetual easement to the owner or owners of such wall or structure to enter upon the property of such adjoining owner or owners for the specific purpose of painting, maintaining, repairing or reconstructing such wall or structure. Such entry will be made in a reasonable manner and only at reasonable times, and any damage caused by such entry shall be repaired as soon as practicable and at the expense of the owner of the wall or structure who causes such entry to be made. In the event of controversy, the decision of the Board of Directors of the Owners Association shall control.

**Section 2.10. Special Maintenance Easements.** In the event any portion of any structure originally constructed by the Developer or a designated successor developer, including boundary line wall, shall protrude over an adjoining Lot or Common Area, such structure or boundary line wall shall not be deemed to be an encroachment upon the adjoining Lot or Common Area. In the event there is such a protrusion, the owner or owners of the Lot or Common Area on which such protrusion extends shall be deemed to have granted a perpetual easement to the adjoining owner or owners for continuing maintenance and use of such projection or boundary wall, including any replacement thereof. .

**Section 2.11. Design Review Committee Membership** The Committee shall be composed of three (3) persons. The members of the Committee shall be appointed by the Developer or its successors. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the Committee, the Developer or its successors shall retain the right to appoint members of the Committee even after turnover of the Owners Association to owners of Lots.

**Section 2.12. Committee Decision Making** The Committee shall indicate its approval or disapproval, as the case may be, of the matters required in Section 2.2 hereof to be approved or acted upon by them, by a written instrument filed with the Secretary of the Board of Directors of the Owners Association, and served personally or by certified mail upon the applicant, identifying the proposed building or structure and, if the same is disapproved, the reason for such disapproval. The decision of the Committee shall be final. If the Committee fails or refuses to approve or disapprove the aforesaid matters within thirty (30) days after the application of request for action is made and after a floor plan, elevation and abbreviated specifications (including landscaping, exterior materials, colors, and site plan for all structures) have been received by the Committee, then it shall be conclusively presumed, as to all owners and interested persons, that the particular alleged violation of this Declaration is, and it shall be deemed automatically to be, excused, but solely as to that particular applicant and application, and any and all rights of action of the Committee arising from said particular alleged violation shall be deemed to have been waived, but only with respect to that particular applicant and application.

**Section 2.13. Domesticated Animal Control.** In order to maintain and preserve the peace and tranquility of the Venetian Bay Community, the Owners Association shall have the right to adopt reasonable rules and regulations regarding the keeping of dogs, cats and other domesticated household pets, including prohibiting the keeping and breeding of such animals for commercial purposes, and specifically shall have the right (i) to require such animals to be leashed; (ii) to prohibit such animals from roaming at large beyond the confines of their owner's grounds; (iii) to

require that owners keep their pets from making noises likely to disturb others; (iv) limit the number of such animals; (v) require owners to dispose of animal waste in a sanitary manner and to control the odors therefrom and (vi) to adopt such other rules and regulations as may seem necessary or required to carry out the purposes of this restriction.

**Section 2.14. Livestock Prohibition.** Except as provided otherwise in Section 2.13 above, no livestock, swine, poultry or animals of any kind other than those described in the preceding section shall be raised, bred or kept within the Venetian Bay Community.

**Section 2.15. Sign Control.** No sign of any kind shall be erected, permitted to remain on or displayed to public view on or from any Lot, except an approved sign giving the name of the occupant of the residence located on said Lot or an approved sign advertising the premises for sale or rent. All signs must be approved by the Committee as a condition to their being erected or being allowed to remain. Political signs shall be erected and removed in accordance with applicable City ordinances. The Declarant, and builders designated by him, reserves the right to erect signs, flags, or the like upon common areas or Lots owned by the Declarant for the purpose of advertising or marketing Declarant's Lots or the Venetian Bay Community in general to the public.

**Section 2.16. Offensive Activities.** No noxious or offensive activity may be or may, become an annoyance or a private or public nuisance shall be carried on or suffered to exist on any Lot.

**Section 2.17. Garbage Control** No Lot, Common Area, Drainage Area or Conservation Easement Area shall be used for dumping, discharge or storage of rubbish, trash, garbage, or other solid waster material. All Lots shall be kept free of the accumulations of rubbish, trash, garbage, and other waster materials. All incinerators or other equipment used for the collection, storage or disposal of solid waste materials shall be kept in a clean and sanitary condition. The use of any incinerators or similar equipment or facilities shall be in accordance with applicable state, county and city environmental laws and ordinances.

**Section 2.18. Fences and Shrubs.** Fence or wall placement and hedge or shrub planting near streets shall be subject to Committee approval and in compliance with the applicable provisions of the Ordinances of the City of New Smyrna Beach.

**Section 2.19. Tree Removal.** Removal of trees from any Lot within the Subdivision shall be in accordance with applicable provisions of the Committee and Ordinances of the City of New Smyrna Beach.

**Section 2.20. Driveways** Each Lot owner is granted an exclusive easement for ingress and egress purposes over those parts of the Common Areas upon which a driveway to said owner's



garage is built, said easement running with the land. It shall be the owner's duty and obligation to maintain and repair said driveway in good condition. The driveway to a garage is to be for the exclusive use of the garage owner. No driveway shall be constructed, maintained, altered or permitted to exist on any Common Area or Lot if the driveway obstructs or would obstruct or significantly impede the flow of surface drainage in the area adjacent to the Lot or in the street right-of-way or swale area, adjoining or abutting the Lot. No driveway shall be constructed of a material such as mulch that is subject to displacement by stormwater.

**Section 2.21. Common Area Management and Ownership** Except where operation, maintenance and management is more appropriately vested in a Neighborhood Association, the Owners Association shall operate, maintain and manage all Common Areas, all islands located in the streets, all private roads and all road rights-of-way which are not maintained by the City of New Smyrna Beach, whether or not such Common Areas, islands or road rights-of-way are shown on a plat. It is intended that the Owners Association shall maintain all rights-of-way and all islands, as well as all Common Areas, not specifically and more appropriately under Neighborhood Association ownership and maintenance. The Owners Association and all Neighborhood Associations must accept any deed to the above-described areas from the Developer when tendered by the Developer. The Developer is authorized to record such deeds prior to delivering same to the Owners Association or to a Neighborhood Association. The Owners Association shall enforce the restrictions and covenants contained herein, and shall undertake and perform all acts and duties necessary and incident to such duties, all in accordance with the provisions of this Declaration, the Articles of Incorporation and By-Laws of said Owners Association.

**Section 2.22. Maintenance of Stormwater System and Discharge Facilities Management and Ownership Drainage Areas and Conservation Easement Areas.** The Owners Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management systems shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or, if modified, as approved in writing by the St. Johns River Water Management District. The Owners Association shall manage and maintain all discharge facilities, and shall manage, maintain, monitor and, where applicable, preserve natural assets and materials located within the Drainage Areas and Conservation Easement Areas, including, but not limited to, groundwater, wetlands, lakes, ponds,

tributaries and wildlife habitat. The Owners Association has the responsibility and authority to establish and enforce rules, regulations and other controls as needed to accomplish the maintenance, monitoring, management and preservation obligations outlined above. The Owners Association must accept from the Developer when tendered by the Developer any deed transferring to the Owners Association all or any part of the Drainage Areas or the Conservation Easement Areas. The Developer is authorized to record such deeds prior to delivering same to the Owners Association. The Owners Association is hereby granted authority to enforce and shall enforce the restrictions and covenants contained in this Section 2.22 herein or in Development Orders issued by the City of New Smyrna Beach, and shall undertake and perform all acts and duties necessary and incident to such Development Orders, all in accordance with the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Owners Association.

**Section 2.23. Enforcement of Conservation Easements.** All Conservation Easements are perpetual undivided interests in the real property upon which the Conservation Easements are located. Nothing in this Declaration shall prohibit the Conservation Easement Areas from being acquired by any governmental body or agency or by a charitable corporation or trust described in Section 704.06, Florida Statutes (1995), as long as such acquisition is approved by the St. Johns River Water Management District or its successor governmental regulatory body (hereinafter inclusively referred to as the District;) and by the City of New Smyrna Beach. The Conservation Easements created by virtue of being shown and indicated on any recorded plat of real property which is developed as a unit or phase of Venetian Bay Community and is subjected to this Declaration and the restrictions applicable to such Conservation Easement Areas shall be enforceable by the District, the City of New Smyrna Beach and the Owners Association, and shall not be amended without the prior approval of the District and the City of New Smyrna Beach. The Saint Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Covenants and Restrictions which relate to the maintenance, operations and repair of the surface water or stormwater management systems.

**Section 2.24 Insurance** Each Lot owner shall, at all times after construction of a Dwelling Unit on the Lot, and each owner of a Dwelling Unit shall maintain fire and extended coverage casualty insurance on the improvements on such Lot and on the Dwelling Unit, and shall use the proceeds thereof to repair or replace any damage to or destruction of such improvements or the Dwelling Unit within a reasonable time after such casualty. Similarly, the owner of any boat, recreational vehicle or other vehicle stored in a designated storage area must carry casualty Insurance.

**Section 2.25. Changes in Covenants.** No change in the Covenants which would materially alter the character of the Venetian Bay Community or the permitted use of the lands and structures within the Venetian Bay Community shall be made without the prior approval of the City Commission of the City of New Smyrna Beach. Any amendment to the Covenants which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior written approval of the St. Johns River Water Management District.

**Section 2.26. Amendments to Subdivision Plats.** The Developer or its successors, subject to approval of the District and the City of New Smyrna Beach regarding amendments to Conservation Easement Areas, shall solely retain the right to amend or replat the plats of the present and any future phases and units of the Subdivisions, without requiring concurrence by the Associations, Lot Owners or Dwelling unit owners, provided amendments are consistent with Article VIII of this Declaration.

**Section 2.27 Duties of the Association** The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the Saint Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved in writing by the Saint Johns River Water Management District.

**Section 2.28 Easement for Access and Drainage** The Owners Association shall have a perpetual non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the surface water or stormwater management system, at reasonable times, and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Owners Association shall have a perpetual non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District. The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the

Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or stormwater management system.

**Section 2.29 Drainage Swales** The developer has constructed drainage swales upon each lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such lot from time to time. Each lot owner, including builders, shall be responsible maintenance, operation and repair of the swales on the lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance and other stormwater management capabilities as permitted by the Saint Johns River Water District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the drainage swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the owner(s) of the Lot(s) upon which the Drainage Swale is located.

**Section 2.30 Property Rental** Short term rental of Single-family residential units is prohibited. Rentals must be for Six (6) months or longer. Maintenance and payment of dues and fees are the responsibility of the property owner.

### ARTICLE III

#### OWNERS ASSOCIATION AND NEIGHBORHOOD ASSOCIATION

**Section 3.1. Membership.** The owner of each Lot and the owner of each Dwelling Unit (all Subdivision Phases and all Units) shall automatically and mandatorily become a member of the Owners Association and the Neighborhood Association (if applicable) upon his or her acquisition of any ownership interest in the title to any Lot or Dwelling Unit. The memberships of such ownerships of such owners shall terminate automatically at the time that such persons divest himself or is divested of such ownership interest or title, regardless of the means by which such ownership may have been divested.

**Section 3.2. Membership Limits.** No person or corporation or other business entity holding any lien, mortgage or other encumbrance upon any Lot or Dwelling Unit shall be entitled by virtue of such lien, mortgage or other encumbrance, to membership in the Associations, or be charged with any of the duties of such membership; provided, however, that nothing contained herein shall be construed as prohibiting membership in the Associations of a person, corporation, or other business entity which acquires title to a Lot or Dwelling Unit either by foreclosure or by

voluntary conveyance from a mortgagor or the mortgagor's successors or assigns.

**Section 3.3. Adoption of Rules and Regulations.** The Owners Association shall adopt and enforce reasonable rules and regulations regarding security that may be provided within the Subdivision. The Owners Association and any Neighborhood Associations, each with respect to the areas of the Subdivisions subject to their ownership or control, shall enforce the restrictions and covenants contained herein, as well as their rules and regulations promulgated hereunder and shall undertake and perform all acts and duties necessary and incident to enforcing such restrictions, covenants, rules and regulations, all in accordance with the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Owners Association and Neighborhood Associations, whichever is applicable. True and complete copies of the Articles of Incorporation and By-Laws of the Owners Association are annexed hereto as Exhibit B and such documents are expressly made a part hereof.

**Section 3.4. Management and Enforcement Authority.** In the administration, operation and management as herein designated to the Associations and in the enforcement of the applicable Covenants and Restrictions, each of the Associations, in addition to any authority granted elsewhere herein, shall have and is hereby granted with respect to areas of the Venetian Bay Community within that Association's ownership and control, full power and authority: (a) to enforce all applicable provisions of this Declaration; (b) to levy and collect assessments in accordance herewith; and (c) in order to carry out the purposes of each of the Associations, to adopt, promulgate, and enforce reasonable rules and regulations governing the use and enjoyment of the areas of the Venetian Bay Community within that Association's ownership or control.

**Section 3.5. Liability Insurance.** The Owners Association is hereby required to maintain in force public liability insurance in an amount not less than \$500,000.00 C.S.L. with respect to all vehicle storage areas, Common Areas, Drainage Areas, Conservation Easement Areas, and all traffic islands located within any public or private road right-of-way in the Venetian Bay Community. The Owners Association and the Neighborhood Associations shall be named insured's with respect to the areas they own or control, and the Neighborhood Associations shall reimburse the Owners Association for a reasonable pro-rata share of the insurance policy's premium in light of each such Association's liability risk. The City of New Smyrna Beach shall be named as an additional insured for those islands in public road rights-of-way in the Venetian Bay Community which the Associations maintain. Such coverage shall be as required by City Ordinances.

**ARTICLE IV**  
**COVENANTS AND MAINTENANCE ASSESSMENTS**

**Section 4.1 Creations of Lien and Personal Obligation.** The Developer agrees to, and each owner and each tenant of each Lot or Dwelling Unit shall, by acceptance of a deed or other instrument of conveyance or lease, whether or not it shall be so expressed in any such deed or instrument, be deemed to have agreed to all terms, covenants, conditions, restrictions, and other provisions of this Declaration and to have agreed to promptly pay to or on behalf of the Owners Association and, if applicable, one of the Neighborhood Associations or their successors or assigns, the following:

(a) All quarterly assessments or charges (whether collected quarterly or annually); and  
(b) All special assessments or charges for the purposes set forth in Section 4.2 of this Declaration that shall be fixed, established, levied, and collected from time to time as hereafter provided. Annual and special assessment by any or all Associations (together with such interest thereon And the cost of collection including reasonable attorneys' fees as hereinafter provided) shall be a charge and continuing lien on the real property and improvements thereon against which such assessment is made, whether or not a claim of lien is filed. Each assessment (together with such interest thereon and the costs of collection including reasonable attorneys' fees as above established) shall also be the personal obligation of the person who was the owner of such Lot or Dwelling Unit at the time when the assessment first become due and payable, and also the joint and several personal obligation of any subsequent grantees who take title to the Lot or Dwelling Unit without first obtaining a letter from the Associations as herein provided to the effect that there are no outstanding assessments against the Lot or Dwelling Unit being purchased. In the case of co-ownership pr co- tenancy of a Lot or Dwelling Unit, each owner or tenant shall be jointly and severally liable for the entire amount of the assessments and the aforesaid interest, collection costs, and reasonable attorneys' fees. Prospective purchasers are hereby notified of the possible charge against the Lots and Dwelling units in the Venetian Bay Community.

**Section 4.2. Purpose of Assessments.** Assessments levied by any of the Associations shall be exclusively: (a) to improve, maintain, enhance, enlarge, protect, monitor and operate the areas within their respective ownership or control as specified in this Declaration; (b) to cover operating and administrative expenses; (c) to fund services and benefits which that particular Association is authorized to provide, including, but not limited to: insurance; construction; maintenance, repair and replacement of improvements; the escrowing of sufficient monies for specific purposes to

satisfy the City of New Smyrna Beach; the acquisition of labor or services (including security services and professional services of attorneys, accountants, engineers, consultants, etc.); equipment, materials, management, and the supervision necessary to provide the authorized services or benefits; (d) for the payment of principal, interest and other charges connected with loans made to or assumed by that particular Association for the purpose of enabling said Association to perform its authorized functions (including the payment of mortgages upon areas of the Venetian Bay Community owned by said Association, even though such mortgages were of record at the time the Association received title from Developer; (e) to pay the costs of social functions open to all member; (f) to keep in force and pay for liability insurance on all areas of the Subdivision within its ownership or control in amounts not less than required by this Declaration; and (g) to be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements.

No initiation fee may be charged to members of any of the Associations as a pre-condition to use of such areas or facilities. User fees, however, may be charged. The Associations shall not be bound in setting assessments in subsequent years by the amount of the assessments set in earlier years. Notwithstanding any of the provisions of this Article, in no event shall assessments and other revenues collected by the Associations exceed their expenses and reasonable reserves to an extent which would violate any Association's not-for-profit status.

**Section 4.3 Assessment Amounts.** The initial regular annual assessment is hereby set at the rate of \$800.00 per Lot or Dwelling Unit for the Owners Association. The initial regular annual assessment for any Neighborhood Association shall be established at the time each Neighborhood Association is incorporated. All areas of the Subdivision that have private streets will have an additional assessment charged by the Owners Association against Lots and Dwelling Units therein in an amount sufficient to fund the replacement, repairs and maintenance of the private streets. If areas with private streets require security service or security equipment, then an additional assessment will be charged by the Owners Association against Lots and Dwelling Units in those areas to cover same. All assessments for private road replacement, repair or maintenance shall be held in an escrow account separate from the Owners Association's other funds.

Any Change in the annual assessment shall be determined at a meeting of the Board of Directors of the applicable Association, provided, however, that the portion escrowed for private street improvement and repair shall be automatically adjusted by the Board of Directors of the Owners Association from the base monthly escrow amount in accordance with the rate if inflation

based upon changes in Consumer Price Index, unless a greater increase is prescribed by the City of New Smyrna Beach.

With respect to any Neighborhood Association annual assessment, and with respect to the non-escrow component of the Owners Association annual assessment, the following two adjustment provisions shall apply. First, the assessment shall automatically adjust from one Association year to the next (subject to the approval of a majority of the Board of Directors of the applicable Association) up or down in an amount in accordance with the percentage increase or decrease in the Consumer Price Index during the last complete calendar year; provided, however, that the Directors shall have the authority in their approving resolution to round any such automatic adjustment upward or downward to a convenience amount. Second, the assessment may be increased beyond that set at the annual meeting upon approval of the two-thirds of the members in attendance at any regular or special meeting of the applicable Association at which a quorum is present, but only after written notice of such meeting and such issue is given to all members of that Association at least ten (10) days prior to the date of said meeting. Nothing herein, however, shall be construed to preclude the Board of Directors of any of the Associations from once annually fixing and levying an emergency assessment may be levied without notice to the membership and without the holding of any special or regular meeting of said membership of the Association.

Any Association, upon proper resolution adopted by its Board of Directors, may bill and collect assessments on a quarterly basis. Except as elsewhere provided herein to the contrary, each owner of a Lot or Dwelling Unit shall be obligated to pay assessments which accrued prior to his taking title and shall be obligated to pay the regular annual assessment continually from, at the latest, the date such Owner takes title to said Lot or Dwelling Unit.

In the event that, and at such time as, two Lots under single ownership shall have one Dwelling Unit constructed upon them in such a way that no other Dwelling Unit can be constructed thereon, then at the time of issuance of a Certificate of Occupancy for that one Dwelling Unit, the owner shall become liable for one regular annual assessment, and no longer for two such assessments as were owned prior to the completion of the Dwelling Unit.

The Developer shall not be obligated to pay any assessments on any vacant Lots or lands which it may own, notwithstanding the fact such Lots may have been platted or such Lots may be on paved roads. However, in the event the Developer constructs a Dwelling Unit on any Lot, it shall be liable for the annual and other assessments upon that Lot or Dwelling Unit which are charged, levied or assessed for the first time after the issuance of a Certificate of Occupancy for the Dwelling Unit, except Developer shall have the right to construct "model homes" for which no assessment



shall be due until said model home is sold to a third party for residential use.

**Section 4.4. Late Charges.** Assessments which are not paid on or before the date the same become due shall be delinquent, and each delinquent assessment shall bear simple interest at eighteen percent (18%) per annum until it is paid in full. In addition to the accrual of interest, when an assessment becomes delinquent in payment, the applicable Association has the right to accelerate assessment payments for the balance of the calendar year and, in such event, the Association's lien shall be for the full amount as accelerated. There shall be no exemption from the payment of any assessment by waiver of the use of the Common Areas, Drainage Areas or other areas or by abandonment of the Lot or Dwelling Unit, or by extended absence from the Subdivision, or for any reason, except as provided for the Developer in Paragraph 4.3.

**Section 4.5. Statement for Assessments.** Any of the Associations, upon written request of any Lot owner or Dwelling Unit owner, shall furnish to a prospective purchaser or prospective mortgagee or any other authorized person a statement of the current status of that Association's assessments on such owner's Lot or Dwelling Unit. When executed by the Secretary/Treasurer of the applicable Association, a mortgagee, potential purchaser or title examiner may rely upon such statement as an accurate statement of the status of the assessments by that Association upon the Lot or Dwelling Unit in question.

**Section 4.6. Billing: Revenue Collected.** Nothing herein shall prevent the Associations from cooperating in the billing of their assessments so as to save postage and administrative expenses. In such event, any revenue received by one of the Associations for assessments of another Association shall be segregated and promptly delivered to the applicable assessing Association. Revenue received by any Association on its assessment on any Lot or Dwelling Unit may be commingled with revenues received by that Association on its assessments on other Lots or Dwelling Units, except to the extent segregation is required by the City of New Smyrna Beach or the Articles of Incorporation of a Neighborhood Association.

**Section 4.7. Assessment of Membership.** Although all funds and other assets of the Associations, and any income derived therefrom, shall be held for the benefit of their respective members, no member of any Association shall have the right to assign, encumber, hypothecate, pledge, or in any manner transfer his, her or its membership or interest in or to said funds and assets, except as an appurtenance to his Lot or Dwelling Unit. When an owner of a Lot or Dwelling Unit shall cease to be a member of the a Association by reason of divestment of ownership of said Lot or Dwelling Unit, by whatever means that occurs, none of the Associations shall be required to account to said owner for any share of the funds or assets it holds.

**Section 4.8. Foreclosure.** In the event that any institutional first mortgagee (defined as a chartered Bank, a chartered Savings and Loan Association, or the Developer) shall acquire title to any Lot or Dwelling Unit by foreclosure, judicial sale, documents of transfer from a governmental entity or documents of transfer from the mortgagor or his receiver, trustee in bankruptcy, personal representative, successors or assigns, then such institutional first mortgagee shall take title subject to the lien or liens of the Associations, no to exceed the aggregate of assessments charged by the Associations to such Lot or Dwelling Unit during the twelve month period immediately preceding the date such institutional first mortgagee acquires title to the Lot or Dwelling Unit shall be liable or obligated for the payment of any assessments which were charged to the Lot or Dwelling Unit more than twelve months prior to the date the institutional first mortgagee acquired title to the Lot or Dwelling Unit, except a pro-rata share as follows: In the event of the acquisition of title as aforesaid, any assessments or assessments as to which the institutional first mortgagee so acquiring title shall not be fully liable, shall be absorbed and paid by all the owners of all the Lots and Dwelling Units; provided, however, that nothing contained herein nor any action taken by said institutional first mortgagee shall be construed as releasing the prior owner from liability for such delinquent assessments or construed as a waiver of the applicable Association's right to legally enforce collection from the prior owner. In the event that any institutional first mortgagee shall acquire title to any Lot or Dwelling Unit as described above in this Section 4.8, the mortgagee so acquiring title shall also be liable and obligated for such assessments as may accrue to said Lot subsequent to the date of acquisition of such title.

**Section 4.9. Liens for Assessments.** Recognizing that proper management and operation of all the areas of the Venetian Bay Community benefits all owners of Lots or Dwelling Units, the Association are hereby granted a lien upon all the Lots and Dwelling Units within the Venetian Bay Community and the present and future interests of each Lot and Dwelling Unit owner in the Common Areas, Drainage Areas, Conservation Easement Areas and improvements thereof, to secure the prompt payment of each and all assessments made and levied in accordance with this Declaration. Each Lot and Dwelling Unit owner shall be liable for, and this lien shall secure, the full amount of said assessment including reasonable attorney's fees, deposition costs (whether or not depositions are used at trial), reasonable expert witness fees and costs (whether or not expert testifies at trial), postage, long distance, telephone, travel, lodging and meal costs which are incurred (either prior to trial, at trial, on appeal or on retrial) by any of the Association with respect to enforcement or interpretation of the provisions of this Declarations or of the Articles of Incorporation or the By- Laws of any of the Associations.

**Section 4.10. Foreclosure of Lien.** The lien herein established may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. The lien granted herein shall also secure such payment of or advances for taxes and payments on superior mortgages, lien or encumbrances which are advanced by any of the Associations in order to protect its interests, and each of the Associations shall be entitled to interest computed on the basis of advances made from time to time at the highest legal rate of interest on all such advances made by that Association.

**Section 4.11. Ownership Subject to Existing Liens.** All persons, firms, corporations, and other business entities, which shall acquire by whatever mean, any interest in the ownership of any Lot or Dwelling Unit, or who may be given or who may be given or who may acquire a mortgage, lien or other encumbrance on a Lot or Dwelling Unit are hereby placed on notice of the lien rights granted to the Associations under this Declaration (including the partial exception for institutional first mortgages) and all, of such persons, firms, corporations, and other business entities shall acquire their rights, title and interest in and to said Lot or Dwelling Unit expressly subject to the lien rights (and exceptions) provided herein.

**Section 4.12. Lien Preparation and Recording.** The lien created pursuant to this Declaration exists as of the date the Association sets the amount of its quarterly assessments for that year. The lien shall continue in effect until all sums secured by the lien have been fully paid. Such lien shall be perfected for the purpose of determining priority among competing creditors by the, recording in the public records of the County in which the Lot is located of a claim of lien stating the description of the Lot or Dwelling Unit encumbered by the lien, the name of the record owner of the Lot or Dwelling Unit, the amounts due at that time and the date when any part of the unpaid amount first became due. If the Association accelerated the assessment for the balance of the calendar year, the claim of lien shall perfect a lien for the total accelerated amount. The claim of the lien shall perfect the lien not only for assessments which are due and payable when the claim of lien is recorded, but also for interest, collection costs, reasonable attorneys' fees, and advances to pay taxes and prior encumbrances and interest thereon, all as provided herein. The claim of lien shall be signed and verified by the President or Vice President of the particular Association filing the lien. When full payment of all sums secured by such lien is made, the claim of lien shall be satisfied of record by the President or Vice President of the Association involved.

**Section 4.13. Enforcement.** These Covenants and Restrictions may be enforced by an action at law for damages, a proceeding in equity for an injunction, or in a manner as provided for in Section XVI of the By-Laws of the Association.

**ARTICLE V**  
**CHANGES, AMENDMENT AND TERMINATION**

**Section 5.1. Developer Changes and Amendments.** Subject to approval of the governmental agencies with jurisdiction over the subject area, the Developer hereby reserves for itself, its successors and assigns the right to amend, modify or rescind such parts of this Declaration or any recorded plat as it, in its sole discretion, deems necessary or desirable so long as: (a) it is the sole owner of the property to which the plat or this Declaration (whichever is appropriate) applies; or (b) such amendment or modification does not substantially change the character, nature, or general scheme of development of the Subdivision. Subject to approval of the governmental agencies with jurisdiction over the subject area, Any amendment to the Covenants and Restrictions which alter any provision relating to the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior written approval of the Saint Johns River Water Management District. Developer also reserves the following rights to amend, change or vary with respect to Subdivision units and phases: (a) the right to add more phase or units to the Venetian Bay Community; (b) the right in future phases and units to vary the mix and location of housing types as dictated by market conditions; and (c) the right to provide in future units and phases only those amenities as are shown on the recorded plats for such future units or phases. Neither the foregoing amendments nor Developer's exercise of the foregoing rights require the concurrence of any of the Associations or individual owners of Lots or Dwelling Units.

**Section 5.2. Owner's Right To Amend.** In addition to the rights of the Developer reserved in the preceding section, subject to the approval of the governmental agencies with jurisdiction over the subject area and upon affirmative vote by seventy-five percent (75%) of all members of record in the Owners Association, on a proper Resolution at a proper Owners Association meeting, the members of Owners Association may amend or modify such provisions of this Declaration as they deem necessary or desirable, except that (a) provisions relating to the rights, powers and duties of the Owners Association or the Committee may not be amended until control of the Board of Directors of the Owners Association has been turned over to the Members; and (b) the owners cannot amend the Declaration in a manner which conflicts with or is inconsistent with the Development Orders issued by the City of New Smyrna Beach or is inconsistent with the requirements of St. Johns River Water Management District contained in this Declaration.

**ARTICLE VI  
USE OF COMMON PROPERTY**

**Section 6.1. Lot Owners Common Area Usage.** The Common Areas, as specifically described herein, or hereafter designated by Developer (excluding area within utility easements where above ground utilities structures are located) shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all owners of Lots developed within the Subdivision, for the use of such owners and their immediate families, guests, tenants, invitees, and others similarly situated, for all proper and normal residential purposes, for the furnishing of services and facilities for which the Common Area can be reasonably utilized and for the quiet enjoyment of said owners.

**Section 6.2. Developers Common Area Usage.** Until all areas subject to Development Orders issued by the City of New Smyrna Beach have been developed and transferred or conveyed to third parties, Developer shall have the right (at no charge or fee) to reasonably utilize Common Areas for promoting the Subdivision and marketing Lots and Dwelling Units, including, but not limited to, the right to maintain sales offices in a Subdivision Community Building of Developer's choice.

**ARTICLE VII  
ALLOWED USES AND USE RESTRICTIONS APPLICABLE TO DRAINAGE AREAS  
AND CONSERVATION EASEMENT AREAS**

**Section 7.1. Areas Located on Plats.** In order to maintain the values inherent in large areas of natural undisturbed and substantially undisturbed lands for the benefit of the residents of the Venetian Bay Community, Developer shall in plats of the Venetian Bay Community locate and identify Drainage Areas and Conservation Easement Areas which shall, as is more particularly described below, be preserved and protected in their current condition or will be subjected only to certain allowed improvements and activities.

**Section 7.2. Drainage Areas.** All parts of Drainage Areas constituting wetlands within the dredge and fill jurisdiction of the Florida Department of Environmental Protection will be preserved and protected in their natural state. Those parts of the Drainage Areas not falling within the dredge and fill jurisdiction of the Florida Department of Environmental Protection shall be

improved and utilized as follows:

(1) Drainage facilities, retention ponds, lakes and related improvements may be made by the Developer as long as they are in compliance with all applicable Development Orders issued by the City of New Smyrna Beach.

(2) Vegetation shall not be altered or removed except as permitted by applicable Development Orders. No motorized boats or personal water craft (e.g., jet skis) shall be allowed upon the lakes or retention ponds except for boats utilized in necessary maintenance of such lakes and ponds;

(3) No water shall be removed or added to the lakes by any person or entity without the prior permission of the Owners Association,

(4) No waste or foreign materials shall be dumped or scattered in the Drainage Areas, but this shall not prohibit the use of fertilizers or pesticides in the minimum amounts necessary to stabilize and maintain vegetation in the Drainage Areas in functionally and aesthetically pleasing conditions.

**Section 7.3. Land Use Limitations Applicable to Conservation Easements.** The below listed activities and uses are prohibited in or upon all Conservation Easements Areas, except to the extent such activities are specifically authorized by permits issued by the District or the City of New Smyrna Beach:

(1) Construction or placing of buildings, roads signs, billboards or other advertising, utilities, or other structures on or above the ground.

(2) Dumping or placing of soil or other substances or materials as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

(3) Removal or destruction of trees, shrubs, or other vegetation.

(4) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.

(5) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(6) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

(7) Acts or uses detrimental to such retention of land or water areas.

(8) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

All construction, including dredging or filling, shall be prohibited waterward of the

wetlands limit lines established jointly by the Developer and the District and shall be prohibited within Conservation Easements designated on plats, even if such Conservation Easements overlap Lots or Common Areas; except, however, construction may occur in these areas to the extent specifically authorized by applicable permits issued by the District or the City of New Smyrna Beach. The district and the City of New Smyrna Beach may enforce the restrictions contained in this Section and this Section may not be amended without prior approval of the District and the City of New Smyrna Beach.

**Section 7.4. Cross Easements.** The Owners Association is hereby granted a perpetual easement upon all Common Areas and all Lots for the purpose of going upon said properties to fix, repair, alleviate or change any condition adversely affecting the stormwater management systems, discharge facilities, Drainage Areas, or Conservation Easement Areas. In exercising this right, the Owners Association shall act reasonably so as to cause the least in convenience or difficulty to the owner or owners of said properties.

**ARTICLE VIII  
COVENANTS AGAINST PARTITION  
AND SEPARATE TRANSFER OF COMMON AREAS**

It is recognized that the full use and enjoyment of any Lot or Dwelling Unit within the Venetian Bay Community is dependant upon the use, enjoyment, maintenance, protection and preservation of certain Common Areas Drainage Areas, Conservation Easement Areas and the improvements made thereto, and that it is in the interests of all Lot and Dwelling Unit Owners that the ownership of the Common Areas, Drainage Areas and Conservation Easements Areas be retained by the Associations as provided in this Declaration. Accordingly, no Lot or Dwelling Unit owner shall have the right to transfer the Lot or Dwelling Unit owner's interest in the Associations other than as an appurtenance to and in the same transaction with a transfer of title to the Lot or Dwelling Unit, and the Associations shall have no right to transfer title to any part of the Common Areas, Drainage Areas or Conservation Easement Areas without Developer's prior written consent. Nothing in this Article VII, however, shall: (a) preclude a conveyance by the Developer, its successors or assigns of any undivided interest in the Common Areas, Drainage Areas or Conservation Easement Areas to the Associations for the purpose of effectuating the purposes of this Declaration; or (b) preclude a conveyance by the Developer, its successors or assigns of any utility easements across, under, above or upon the Common Areas, Drainage Areas or Conservation

Easement Areas.

## ARTICLE IX CONTROL AND TURNOVER OF ASSOCIATIONS

**Section 9.1. Appointment of Directors by Developer.** The Developer shall have the right to at any time appoint members to the Board of Directors of the Owners Association and to the Board of Directors of any Neighborhood Association to assure that Developer's appointed Directors constitute up to seventy-five percent (75%) of each of said Association's Directors until the earlier of the following events occurs: (i) Three months after 90 percent of the Lots in all phases of the Venetian Bay Community that will ultimately be operated by the Owners Association have been conveyed to Members or (ii) such other date as the Developer may designate. .

**Section 9.2. Veto by Developer.** Until the Developer turns over control of the Owners Association to the Members, the Developer shall have the right to veto any action taken by the Board of Directors of that particular Association at a time when more than twenty-five percent (25%) of the Directors of that Association were not appointed by the Developer. Control of the Owners Association, all Neighborhood Associations and their records shall be turned over to the members at such time as the Developer has turned the Owners Association and Neighborhood Association over to the members.

## ARTICLE X COVENANTS TO RUN WITH LAND

The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with Property, and each provision and covenant shall constitute an equitable servitude upon the heirs, personal representatives, successors and assigns of each owner of a Lot or Dwelling Unit, and the same shall likewise be binding upon the Developer and its successors and assigns. This Declaration shall be binding and in full force and effect for a period of thirty (30) years from the date this Declaration is first recorded in the Public Records of Volusia County, Florida, after which time this Declaration shall be automatically extended for successive ten (10) year periods, unless (a) an instrument, signed by seventy-five percent (75%) of the then



owners of record of Lots and Dwelling Units in the Subdivision, is recorded in the Public Records of Volusia County, Florida, pursuant to which the said owners repeal the provisions of this Declaration, and (b) proper governmental authority for repeal of this Declaration is obtained.

IN WITNESS WHEREOF, the Developer, VENETIAN BAY OF NEW SMYRNA BEACH, L.L.C., a Florida limited liability company, has set its hand and seal on the date indicated below.

By: VENETIAN BAY DEVELOPMENT, INC. a Florida corporation, as Managing Member

Danya Gandy  
Witness 1

Danya Gandy  
Print Name

Linda Porter  
Witness 2

LINDA PORTER  
Print Name

By: [Signature]  
Its: PRESIDENT  
Date: 4-14-2004

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of APRIL, 2004, by JERRY S. JOHNSON, as President of Venetian Bay Development, Inc., a Florida corporation, as Managing Member of Venetian Bay of New Smyrna Beach, L.L.C., a Florida limited liability company, on behalf of the company. He is personally known to me or has produced \_\_\_\_\_ as identification and did/did not take an oath.

Notary Public, State of Florida at Large  
[Signature]  
My Commission Expires \_\_\_\_\_  
JAMES R. FISHER  
MY COMMISSION EXPIRES  
January 18, 2008  
#DD 275506  
Bonded thru  
Notary Public Under  
NOTARY PUBLIC, STATE OF FLORIDA

EXHIBIT "A"

08-04-245

Page 1 of 2

A PORTION OF SECTIONS 7 AND 10, TOWNSHIP 17 SOUTH, RANGE 33 EAST, BEING ALSO A PORTION OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3758, PAGE 3588, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 7, THENCE S01°03'07"E ALONG THE WEST LINE OF SAID SECTION 7 A DISTANCE OF 1856.53 FEET FOR A POINT OF BEGINNING; THENCE S82°18'05"E A DISTANCE OF 2175.96 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1301.00 FEET, A CHORD BEARING OF S20°50'44"E, A CHORD DISTANCE OF 182.11 FEET, RUN THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°01'36", A DISTANCE OF 182.26 FEET; THENCE S24°51'32"E A DISTANCE OF 1023.01 FEET; THENCE N65°08'28"E A DISTANCE OF 102.00 FEET; THENCE S24°51'32"E A DISTANCE OF 714.38 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 630.00 FEET, A CHORD BEARING OF N76°58'30"E, A CHORD DISTANCE OF 254.80 FEET, RUN THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 23°20'02", A DISTANCE OF 256.57 FEET; THENCE N88°38'31"E A DISTANCE OF 786.57 FEET; THENCE N01°28'01"W A DISTANCE OF 1397.03 FEET; THENCE S80°30'04"E A DISTANCE OF 1224.30 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 7; THENCE S01°28'01"E ALONG SAID EAST LINE A DISTANCE OF 2666.74 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 7 ALSO BEING THE NORTHEAST CORNER OF SAID SECTION 18; THENCE S01°25'21"E ALONG THE EAST LINE OF SAID SECTION 18 A DISTANCE OF 1399.78 FEET; THENCE N65°15'57"W A DISTANCE OF 475.94 FEET; THENCE S16°25'02"E A DISTANCE OF 1500.02 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 1/2 OF SAID SECTION 18 ALSO BEING THE NORTH LINE OF CORONADO ACRES AS RECORDED IN PLAT BOOK 33, PAGE 16, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE S89°19'14"W ALONG THE SOUTH LINE OF THE NORTH 1/2 OF SAID SECTION 18 A DISTANCE OF 5231.54 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 18; THENCE N01°04'47"W ALONG SAID WEST LINE A DISTANCE OF 2658.03 FEET TO THE NORTHWEST CORNER OF SAID SECTION 18 ALSO BEING THE SOUTHWEST CORNER OF SAID SECTION 7; THENCE N01°04'09"W ALONG THE WEST LINE OF SAID SECTION 7 A DISTANCE OF 2644.12 FEET TO THE WEST 1/4 CORNER OF SAID SECTION 7; THENCE N01°03'07"W ALONG THE WEST LINE OF SAID SECTION 7 A DISTANCE OF 790.51 FEET TO THE POINT OF BEGINNING.

Book: 5327  
Page: 3977

# EXHIBIT "A"

08-04-171

Page 2 of 2

A PORTION OF SECTIONS 6 AND 7, TOWNSHIP 17 SOUTH, RANGE 33 EAST, BEING ALSO A PORTION OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3758, PAGE 3588, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF SAID SECTION 7, ALSO BEING THE SOUTHWEST CORNER OF SAID SECTION 6; THENCE N00°53'04"W ALONG THE WEST LINE OF SAID SECTION 6 A DISTANCE OF 1000.37 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF PIONEER TRAIL; THENCE N83°19'37"E ALONG SAID SOUTH RIGHT-OF-WAY LINE A DISTANCE OF 634.21 FEET TO A POINT OF CURVATURE ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1522.98 FEET, A CHORD BEARING OF N88°43'20"E, A CHORD DISTANCE OF 288.39 FEET, RUN THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°47'25", A DISTANCE OF 286.82 FEET TO THE POINT OF TANGENCY; THENCE CONTINUE ALONG SAID SOUTH RIGHT-OF-WAY LINE THE FOLLOWING FIVE COURSES; (1) S85°52'58"E A DISTANCE OF 521.18 FEET; (2) THENCE S85°08'21"E A DISTANCE OF 205.81 FEET; (3) THENCE S83°44'27"E A DISTANCE OF 210.88 FEET; (4) THENCE S82°28'22"E A DISTANCE OF 208.34 FEET; (5) THENCE S80°22'35"E A DISTANCE OF 240.39 FEET; THENCE DEPARTING SAID SOUTH RIGHT-OF-WAY LINE RUN S00°24'31"E A DISTANCE OF 919.81 FEET; THENCE S01°18'06"E A DISTANCE OF 2119.75 FEET; THENCE S80°06'02"E A DISTANCE OF 901.25 FEET; THENCE S82°01'14"E A DISTANCE OF 866.36 FEET; THENCE S01°28'01"E A DISTANCE OF 1397.03 FEET; THENCE S88°38'31"W A DISTANCE OF 786.57 FEET TO A POINT OF CURVATURE ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 630.00 FEET, A CHORD BEARING OF S76°58'30"W, A CHORD DISTANCE OF 254.88 FEET, RUN THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 23°20'02", A DISTANCE OF 256.57 FEET; THENCE N24°51'32"W A DISTANCE OF 714.38 FEET; THENCE S85°08'28"W A DISTANCE OF 102.00 FEET; THENCE N24°51'32"W A DISTANCE OF 1023.01 FEET TO A POINT OF CURVATURE ON A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1301.00 FEET, A CHORD BEARING OF N20°50'44"W, A CHORD DISTANCE OF 182.11 FEET, RUN THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°01'36", A DISTANCE OF 182.26 FEET; THENCE N82°18'06"W A DISTANCE OF 2176.11 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 7; THENCE N01°02'49"W ALONG THE WEST LINE OF SAID SECTION 7 A DISTANCE OF 1836.50 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**

**FILED**

03 FEB 12 AM 10:13

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION  
OF  
VENETIAN BAY HOMEOWNERS' ASSOCIATION, INC.  
(A Florida Corporation Not for Profit)**

**ARTICLE I. NAMES**

The name of this Corporation is Venetian Bay Homeowners' Association, Inc. For convenience, the Corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles" and the By-Laws of the Association as the "By-Laws".

**ARTICLE II. PURPOSES**

The purposes for which the Association is organized are as follows:

- A. To take title, operate, administer, manage, lease and maintain the assets and property of the Association as such are dedicated to or made the responsibility of the Association by the recorded Plats of the Venetian Bay Subdivision, the Declaration, these Articles or the By-Laws.
- B. To Manage the Association of owners established by the Declaration of Covenants and Restrictions for Venetian Bay Subdivision (the "Declaration"). The Declaration was executed by Venetian Bay of New Smyrna Beach, LLC, a Florida limited liability company, (the "Declarant") developer of the subdivision.
- C. To enforce the Declaration and perform all duties and responsibilities imposed upon the Association by the Declaration.
- D. To carry out all duties placed upon it by these Articles, the By-Laws, the Declaration and the Florida law.

**ARTICLE III. POWERS**

The Association shall have the following powers:

- A. The Association shall have all common law and statutory powers of a corporation not for profit, not in conflict with the terms of these Articles, the By-Laws and the Declaration.
- B. The Association shall have the power to administer and to enforce the provisions of

these Articles, the By-Laws and the Declaration and all powers reasonably necessary to carry out the responsibilities and duties conferred upon it by these Articles, the By-Laws and the Declaration, as amended and supplemented from time to time, including but not limited to, the power to levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the surface water and storm water management system and Conservation Easement Areas. Such assessments shall be used for maintenance, and repair of the surface water and storm water management systems and Conservation structures and drainage easements.

#### **ARTICLE IV. DUTIES**

The Association shall have the following duties:

- A. The Association shall have all common law and statutory duties of a corporation not for profit.
- B. In Addition the Association shall have all responsibilities and duties delegated to it pursuant to the provisions of these Articles, the By-Laws and the Declaration, including but not limited to operating, maintaining and managing the surface water and storm water management system and Conservation Easement Areas in a manner consistent with the St. Johns River Water Management District Permit requirements and applicable District Rules and City of New Smyrna Beach requirements and applicable City rules, regulations and ordinances; and further shall assist in the enforcement of the restrictions and covenants contains in the Declaration relating to said system.

#### **ARTICLE V. MEMBERSHIP**

Every person or entity who is or becomes a record owner of any "Lot or Dwelling Unit" in the "Property" or is otherwise considered an "Owner", as those terms are defined in the Declaration, shall be a "Member" of the Association. Declarant shall also be a Member of the Association as long as it owns a Lot or Dwelling Unit in the Property. Membership is solely for those having a fee simple ownership interest and is not intended to and shall not include any persons or entities who hold an interest in real property merely as security for the performance of an obligation. All memberships in the Association shall be automatic and mandatory and shall terminate automatically when a Member becomes divested of a fee simple ownership in a Lot or Dwelling Unit in the Property.

When a corporation or partnership is the owner of a Lot or Dwelling Unit, the membership privilege shall be exercised by only one (1) individual being the one designated by the entity to cast its vote as hereinafter provided. When more then one person holds an interest in a Lot or Dwelling Unit, each person shall be a Member, even though each person does not acquire a separate right to

vote.

**ARTICLES VI. MANAGEMENT**

- A. The affairs and property of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than nine (9) persons. The Board members shall be elected by the voting membership at the times and in the manner provided in the By-Laws. The Board members may be removed and vacancies in the Board filled in the manner provided in the By-Laws.
- B. The initial Board shall consist of three (3) persons, who need not be members entitled to vote in the Association, and who shall be appointed by Declarant. The initial Board named in these Articles shall serve until the Owners, other than Declarant, are entitled to elect the Board members in the manner set forth in the By-Laws. Vacancies in the initial Board appointed by Declarant may be filled by Declarant. After the election of the Board by the Owners other than the Declarant, vacancies occurring between annual meetings of the membership shall be filled in the manner provided in the By-laws.
- C. The number of members on the Board shall be increased to (9) persons at the time and in the manner provided in the By-Laws.
- D. Board members shall be elected by the membership in accordance with the By-Laws at the regular annual meeting of the membership of the Corporation to be held on the first Monday of June of each year or on such other date as may be set by the vote of a majority of the membership.
- E. All officers shall be elected by the Board in accordance with the By-Laws at the annual meeting of the Board to be held immediately following the annual meeting of the membership. The Board shall elect or appoint at the time and in manner set forth in the By-Laws a President, Vice President, Secretary, Treasurer, and other officers as it may deem desirable.

**ARTICLE VII. BOARD OF DIRECTORS**

The number of persons constituting the first Board of Directors shall be three (3). The names and street addresses of the persons who are to serve as the first Board are as follows:

<u>Name</u>	<u>Address</u>
Jerry Johnson, Sr.	1221 Dunlawton Ave., Suite 200 Port Orange, FL 32127
Dipak Jobalia	846 Riverside Drive Ormond Beach, FL 32176

Arthur Campbell

1221 Dunlawton Ave., Suite 200  
Port Orange, FL 32127

The number of Board members may be increased or diminished from time to time as provided by the By-Laws, but shall never be less than three (3). All Board members shall be natural persons.

**ARTICLE VII. OFFICERS**

The names of the officers who are to serve until the first election of officers by the Board are as follows:

- |                               |   |                    |
|-------------------------------|---|--------------------|
| President                     | - | Dipak Jobalia      |
| Vice President &<br>Treasurer | - | Jerry Johnson, Sr. |
| Secretary                     | - | Arthur Campbell    |

**ARTICLE IX. PRINCIPAL OFFICE**

The initial principal office of the Association is 1221 Dunlawton Ave., Suite 200, Port Orange, FL 32127

**ARTICLE X. INCORPORATORS**

The Incorporator is Venetian Bay of New Smyrna Beach, LLC, a Florida limited liability company. The rights and interests of the Incorporator shall automatically terminate when these Articles are filed with the Florida Secretary of State.

**ARTICLE XI. BY-LAWS**

By-Laws of the Association shall be adopted by the first Board and thereafter may be altered, amended or rescinded in the manner provided in the By-Laws. In the event of a conflict between the provisions of these Articles and the provisions of the By-Laws, the provisions of these Articles shall control.

**ARTICLE XII. EXISTENCE AND DURATION**

Existence of the Association shall commence with the filing of these Articles of Incorporation with the Florida Secretary of State. The Association shall exist in perpetuity, unless dissolved pursuant to the provisions of Article XIII below.

**ARTICLE XIII. DISSOLUTION AND SUCCESSOR ENTITIES**

The Association may be dissolved only with the consent in writing by the Owners and holders of all mortgages and liens on any lots, by the City Commission of the City of New Smyrna Beach, and by two-thirds (2/3) of the voting Members. In the event of the dissolution of the Association, or any successor entity thereto, other than incident to a merger or consolidation, any property dedicated or conveyed to the Association shall be transferred to either a successor entity or an appropriate governmental agency or public body to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to non-profit corporation, association, trust or other organization to be devoted to such similar purposes. In the event of termination, dissolution or liquidation of the Association, the responsibility for the operation and maintenance of the surface water and storm water management system must be transferred to and accepted by an entity which complies with Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

**ARTICLE XIV. SEVERABILITY**

Invalidation of any of these Articles or portions thereof by judgement, court order, or operation of law shall in no way affect other provisions, which shall remain in full force and effect.

**ARTICLE XV. REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of the Association is 444 Seabreeze Blvd., Suite 900, Daytona Beach, FL 32118 and the initial Registered Agent of the Association at that address shall be Jeffrey P. Brock.

**ARTICLE XVI. INDEMNIFICATION**

The Association shall indemnify any officer, Board member or committee member or any former officer, Board member or committee member to the full extent permitted by law.

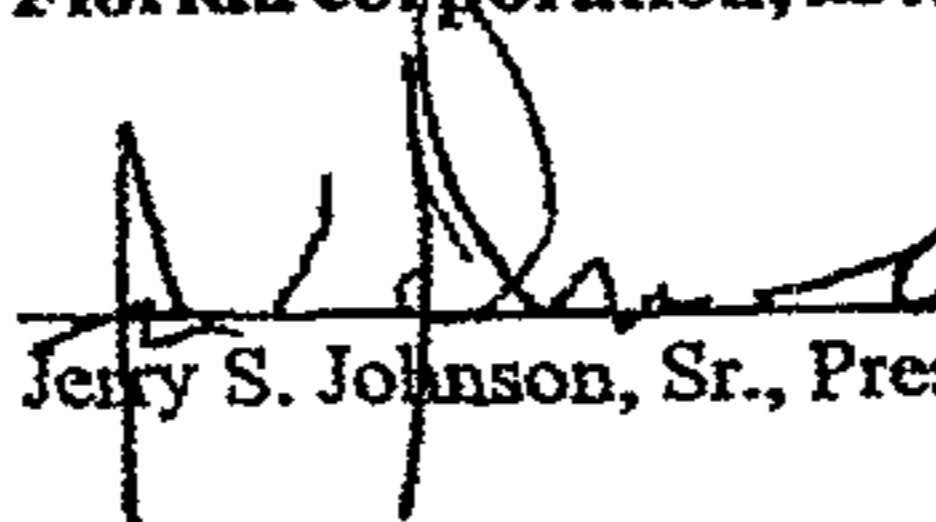
[Signatures on Following Page]



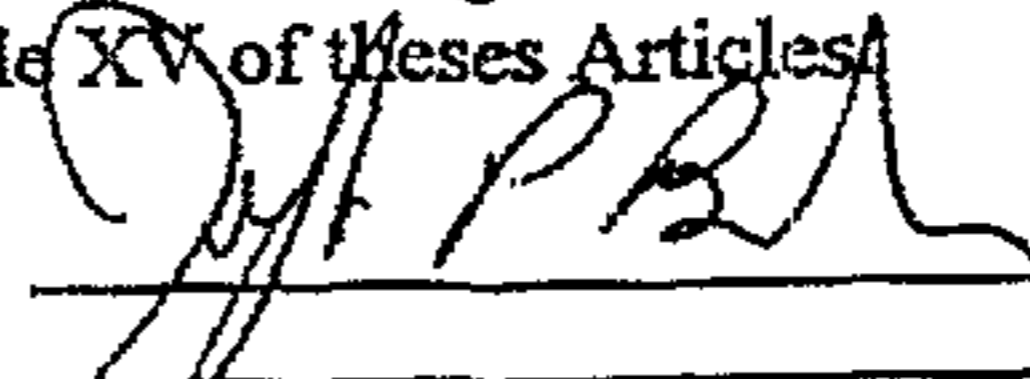
IN WITNESS WHEREOF, the Incorporator of the Venetian Bay Homeowners' Association, Inc. have hereunto affixed my signature this 27<sup>th</sup> day of January 2003.

Venetian Bay of New Smyrna Beach, L.L.C., a Florida limited partnership

By: Venetian Bay Development, Inc., a Florida corporation, as Managing Member

  
Jerry S. Johnson, Sr., President

The undersigned hereby accepts the designation of Registered Agent of Venetian Bay Homeowners' Association, Inc. as set forth in Article XV of these Articles

  
Printed Name

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of January, 2003, by Jerry S. Johnson, Sr., as President of Venetian Bay Development, Inc., a Florida corporation, which is the Managing Member of Venetian Bay of New Smyrna Beach, L.L.C., a Florida limited liability company. Jerry S. Johnson, Sr. is personally known to me or has produced N/A as identification and who did not take an oath.



Type, Print or Stamp Name  
My commission expires:



## **EXHIBIT C**

**BY-LAWS  
OF  
VENETIAN BAY HOMEOWNERS' ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

### **ARTICLE I**

#### **NAME AND LOCATION**

**1.01** The name of this corporation is Venetian Bay Homeowners' Association, Inc., hereinafter referred to as the Association.

**1.02** The initial principal office of the corporation shall be located at 1221 Dunlawton Avenue, Port Orange, Florida 32129, which may be changed from time to time by resolution of the Board of Directors.

### **ARTICLE II**

#### **DEFINITIONS**

**2.01** All terms and provisions in these By-Laws shall have the same meaning as in the Declaration of Covenants and Restrictions, Venetian Bay Subdivision (Declaration) executed by Venetian Bay of New Smyrna Beach, LLC, a Florida limited liability company (referred to herein as Declarant) and recorded in the Public Records of Volusia County, Florida.

### **ARTICLE III**

#### **PURPOSE**

**3.01.** The specific purposes for which this Association is formed are to provide for management, maintenance, preservation and architectural control of the lots and common areas within the Venetian Bay Property, as defined in the Declaration, and to promote the health,

safety and welfare of the owners and residents within the above Property, and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and to:

- (1) 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 property in connection with the affairs of the Association.
  - (2) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Articles of Incorporation (the Articles:), Declaration, and all supplementary or amendatory declarations, applicable to the Property and recorded in the Public Records of Volusia County, Florida and as the same may be amended from time to time.
  - (3) Fix, levy, collect, and enforce payment by any lawful means, of all charges or assessments pursuant to the terms of the Declaration.
  - (4) Pay all expenses incident to the conduct of the business of the Association.
  - (5) Pledge, sell, lease, operate, maintain, transfer or otherwise dispose of any or all of its personal property.
  - (6) Dedicate, sell or transfer all or any part of the real property and improvements thereon owned by it, subject to the approval of two-thirds (2/3) of the Members, except as otherwise provided in the Declaration.
  - (7) Mortgage any or all of the real property and improvements thereon owned by it, subject to the approval of two-thirds (2/3) of the Members.
  - (8) Participate in any merges or consolidations with other corporations authorized by the laws of the State of Florida.
  - (9) Have all powers authorized by law and to have and exercise all powers necessary or convenient to effect any or all purposes for which the corporation is organized.
- 3.02** This Association is not organized for pecuniary gain or profit to the members thereof.

**ARTICLE IV**

**CORPORATE SEAL**

**4.01** The corporate seal of the Association shall bear the name of the Association, the name Florida, and the words Corporation Not for Profit: and is affixed hereto.

**ARTICLE V**

**MEMBERSHIP**

**5.01** The qualification of Members: of the Association, the manner of their admission into membership and their termination from such membership shall be as set forth in Article V of the Articles.

**5.02** Declarant shall be a Member of the Association so long as it holds title to any Lot or Dwelling Unit in the Property.

**ARTICLE VI**

**NEIGHBORHOODS**

**6.01** The Declarant may create separate Neighborhoods: within the Property. Each Neighborhood created shall represent separately developed residential areas in which Owners have common interests such as a common theme, entry feature, development name, and/or common areas and facilities not available for use by all Association members. Lot or Dwelling Units within a particular Neighborhood shall be subject to additional covenants and the Owners

in a Neighborhood shall be members of another owners association, referred to as a Neighborhood Association, in addition to the Association.

**6.02** Each Neighborhood Association shall adopt a separate declaration of covenants and restrictions, Articles of Incorporation, By-Laws and such other documents as necessary to manage and enforce the responsibilities of the Neighborhood Association. Each Neighborhood Association shall adopt rules and regulations necessary to manage and enforce the Neighborhood Association's responsibilities. In addition to their rights in this Association, Lot or Dwelling Unit Owners shall have the membership, voting and other rights as determined under their Neighborhood Documents.

## **ARTICLE VII**

### **MEETINGS OF MEMBERS**

**7.01** The Association shall have an annual meeting of its Members. The annual meeting shall be held on the First Tuesday in March and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at a place in Volusia County designated by the Directors, at the hour of 7:00P.M., or at such other time as determined by the Directors. The date of the annual meeting of the Members may be changed by the vote of a majority of the Voting Members at any annual or special meeting of the Members.

**7.02** Special meeting of the Members shall be held at any place within Volusia County, Florida, whenever called by the President or a majority of the Board of Directors. A special meeting must be called by the President upon receipt of a written request from ten percent (10%) of the Members.

**7.03** Meetings of the Members shall be open to all Members. Unless a Member serves as a Voting Member or unless he has been specifically invited to participate in the meeting, such Member shall not participate in the meeting, but shall only be entitled to attend as an observer. If a Member not serving as a Voting Member or not otherwise invited to participate in a meeting attempts to become more than a mere observer at such meeting or conducts himself in a manner detrimental to the carrying out of such meeting, then the Member may be expelled from the meeting by any reasonable means which may be necessary to accomplish such expulsion. Also,

any person who is not able to provide sufficient proof that he is a Member may be excluded from the meeting unless said person was specifically invited to attend such meeting.

**7.04** A written notice of the meeting (whether the annual meeting or a special meeting of the Members) shall be mailed to each Member at his last known address as it appears on the books of the Association. Such written notice of an annual meeting shall be mailed to each Member not less than fourteen (14) days nor more than forty (40) days prior to the date of the annual meeting. Written notice of a special meeting of the Members shall be mailed not less than ten (10) days nor more than forty (40) days prior to the date of a special meeting. The written notice of a special meeting shall state the specific matter or matters to be voted on, and every written notice of a meeting, whether an annual meeting or special meeting, shall state the time and place of such meeting and shall be signed by an officer of the Association. Should a matter or matters to be voted on at a Members meeting require consideration by a Neighborhood Association prior to said Members meeting, then the timing requirements for the written notice of the meeting shall be adjusted accordingly. Notice of any meeting may be waived by any Member before, during or after a meeting, which waiver shall be in writing and shall set forth a waiver of written notice of such meeting.

**7.05** The percentage of voting interests required to constitute a quorum at any annual or special meeting of the Members shall be 30 percent of the total voting interests. Decisions that require a vote of the Members shall be made by the concurrence of at least a majority of the voting interest present, in person or by proxy, at a meeting in which a quorum has been attained, unless a higher voting requirement is specified in the Articles, Declaration or otherwise provided in these By-Laws.

**7.06** At the Annual Members Meeting; and as far as applicable and practical at other members meetings, the order of business shall be as follows:

1. Calling of the roll and certifying proxies
2. Proof of notice of the meeting
3. Reading and approval of minutes
4. Reports of officers and committees
5. Election of inspectors of election
6. Election by members or appointment by Declarant of Directors, where applicable
7. Unfinished business

8. New business

**7.07** Minutes of all meetings of the Members shall be kept and made available for inspection by the Members, Voting Members, Directors and Institutional Mortgagees at reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect. 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, except a copy of the budget shall be provided to Members free of charge.

**ARTICLE VIII**

**VOTING BY MEMBERS**

**8.01** Initially there shall be 294 Units in the Association. Additional Units will be added as additional parcels of the Property are platted and the number of votes in the Association will increase correspondingly.

**8.02** The Association shall have two classes of voting membership:

(1) **Class A.** Class A Members shall be all Owners with the exception of the Class B Members, if any. Class A Members shall be entitled to one (1) vote for each Unit Owned.

When a Member is entitled personally to exercise the vote for his Unit, and more than one (1) person or entity is the Owner of the Unit, the vote for such Unit shall be exercised by that party designated on the records of the Secretary of the Association. In the absence of such designation, the Unit's vote shall be suspended if more than one (1) person or entity seeks to exercise it.

(2) **Class B** The Class B: Members shall be the Declarant.

The Class B Member shall be entitled to three (3) votes for each Unit owned, and shall be entitled to appoint a majority of the members of the Board of Directors during the Class B Control Period, as provided in the By-Laws.

The Class B membership shall terminate and become converted to Class A membership upon the earlier of:

(i) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the Association have been conveyed to Members other than the Declarant. For purposes of this section the term Members other than the Declarant shall not include builders, contractors or others who purchase a Lot for the purpose of constructing improvements thereon for resale ; or

(ii) when, in its discretion, the Declarant so determines.

**8.03** The number of votes in the Association shall be determined as set forth in the preceding Section 8.02. The class A Members shall be entitled to one (1) vote for each Lot or Dwelling Unit owned and the Class B Member shall be entitled to three (3) votes for each Lot or Dwelling Unit owned.

(a) 8.04 The Class B Control Period terminates simultaneously with the termination of the Class B membership as provided in Section 8.02 above. .

**8.04** Association voting shall be conducted as follows:

(1) The presence at a meeting of Members and Voting Members entitled to cast thirty percent shall constitute a quorum, except as otherwise provided in the Articles, Declaration or these By-Laws. If, however, such Quorum shall not be present or represented at a duly called meeting, the Board may call a second meeting at which the quorum required for the first meeting shall be reduced by fifty percent (50%). The notice for the first meeting may include notice for the



second meeting with the time and date for the second called meeting and shall be sufficient for any adjournment thereof.

(2) Voting Members shall be entitled to cast the votes attributable to Lots or Dwelling Units in their Neighborhood on all matters requiring action by the Members of the Association.

(3) At meetings of the membership, votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the secretary before the appointed time of the meeting. A member may withdraw his proxy at any time before it is voted. The proxy must be dated, must state the date, time and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place. Any proxy shall automatically expire 90 days after the date of the meeting for which it was originally given.

## ARTICLE IX

### **BOARD OF DIRECTORS ELECTIONS AND MEETINGS**

**9.01.** The affairs and property of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than (9) persons.

**9.02** The initial Board of Directors shall consist of three (3) persons, who need not be Members who are entitled to vote in the Association, and who shall be appointed by Declarant. The initial Board of Directors named in the Articles shall serve until the termination of the Class B Control Period and the Owners, other than Declarant, are entitled to elect the Directors in the

manner set forth herein. Vacancies in the initial Board of Directors appointed by Declarant may be filled by Declarant.

**9.03** On the termination of the Class B Control Period, as provided herein, the number of persons on the Board of Directors shall automatically be increased to (9) persons, and the Owners, other than the Declarant, shall be entitled to elect a majority of the Board of Directors at a special meeting called for that purpose. At such meeting after the election of the Board of Directors, Declarant shall deliver to the Association the contributions to working capital as required in the Declaration, less pre-paid items which shall be pro-rated. After the election of a majority of the Board by the Owners, other than the Declarant, vacancies occurring between annual meetings of the membership shall be filled by the remaining Board members.

**9.04** . Nothing in the Declaration shall be amended, interpreted or transferred, to prevent Declarant or its contractors or subcontractors from doing or performing in all or any part of the Property actually owned or controlled by Declarant, its transferees, or its or their contractors or subcontractors as the case may be, whatever they determine to be reasonably necessary or advisable in connection with the completion of the development of the Property, including, without limitation.

- (1) Erecting, constructing, and maintaining thereon such structures and vehicles as may be reasonably necessary for the conduct of Declarant's business of completing and establishing the Property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or
- (2) Maintaining such sign or signs thereon as may be reasonably necessary in connection with the sale, lease or other transfer of the Property in parcels;
- (3) Provided, however, that operations being conducted under subparagraphs (a) and (b) immediately above shall be permitted upon only those parts of the Property owned or controlled by the party causing or conducting said operations. As used in this section, the terms "its transferees": specifically does not include purchasers of lots improved as completed residences, or to purchasers of unimproved lots who are not contractors or builders.

**9.05** A Director designated by Declarant, as provided in the Articles, may be removed only by Declarant in its sole and absolute discretion and without any need for a meeting or vote. Declarant shall have the unqualified right to name a successor for any Director designated and thereafter removed by it or for any vacancy on the Board of Directors as to a Director designated by it and Declarant shall notify the Board of Directors of the name of the respective successor Director and the commencement date for the term of such successor Director. No Director or Officer designated or appointed by Declarant shall be required to be a Member of the Association.

**9.06** The first meeting of a newly elected Board of Directors shall be held in such place and the Directors at the meeting at which they were elected shall fix time as. No further notice of the organizational meeting shall be necessary.

**9.07** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors.

**9.08** Notice of the time and place of regular and special meetings of the Board of Directors, or adjournments thereof, shall be given to each Director personally or by mail, telephone or telegraph at least seven (7) days prior to the day named for such meeting. Any Director may waive notice of a meeting before, during or after a meeting, and such waiver shall be deemed equivalent to the receipt of notice by such Director.

**9.09** A quorum of the Board of Directors shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board of Directors, except as otherwise provided in the Declaration, Articles or elsewhere herein. If at any meeting of the Board of Directors there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting being held because of such an adjournment, any business which might have been transacted at the meeting as originally called may be transacted. In the case of a meeting, notice to the Directors of such adjournment shall, subject to the Declaration, be as determined by the Board of Directors.

**9.10** The presiding officer at Board of directors meetings shall be the President.

**9.11** Minutes of all meetings of the Board of Directors shall be kept and made available for inspection by Members, Voting Members, Directors and Institutional Mortgagees at reasonable times. The minutes shall be retained by the Association for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

**9.12** Meetings of the Board of directors shall be open to all Members. Notices of all board meetings shall be posted in a conspicuous place in the Property at least 48 hours in advance of a meeting, except in an emergency. Unless a Member serves as a Director or unless he has been specifically invited by the Directors to participate in a meeting of the Board of Directors, such Member shall not participate in the meeting, but shall only be entitled to act as an observer. If a member not serving as a Director or not otherwise invited by the Directors to participate in a meeting attempts to become more than a mere observer at such meeting or conducts himself in a manner detrimental to the carrying on of such meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish such expulsion. Also, any Director shall have the right to exclude from any meeting of the Board of Directors any person who is notable to provide sufficient proof that he is a Member, unless said person was specifically invited by the Directors to attend such meeting

## **ARTICLE X**

### **BOARD OF DIRECTORS POWERS AND DUTIES**

**10.01** The Board of Directors shall have the powers necessary for the proper administration of the affairs of the Association and it may do all acts and things which are not specifically reserved to be exercised and done by the Members in the Declaration, Articles of Incorporation or these By- Laws

**10.02** In addition to the duties imposed by these By-Laws, the Declaration, or by resolution of the Association, the Board of Directors shall be responsible for the following:

- (1) To call the annual meeting of the Members and to call special meetings of the Members whenever it deems necessary; and it shall call a meeting ay any time upon written request from ten percent of the Members, and to see that minutes of the meeting are kept.
- (2) To appoint and remove at its pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security of fidelity bond, as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, officer or Director of the Association in any capacity.
- (3) To establish, levy, assess, and collect the assessments or charges created or authorized by the Declaration and/or supplementary declaration.
- (4) To adopt and then distribute to the lot owners the Rules and Regulations governing the use of the property and the conduct of the Members, their families, guests and tenants as needed to protect the health, comfort, safety and welfare of the Members.
- (5) To exercise for the Association, all powers, duties and authority vested in or delegated to this Association, except those reserved to the Members.
- (6) To make and collect assessments authorized by the Declaration and to lease, maintain, repair and replace the common elements.
- (7) To grant or contract for easements, licenses, and other privileges and duties on behalf of the Members.
- (8) To cause to be kept a complete record of all its acts and corporate affairs and to present a summary thereof to the Members at the annual meeting of the Members or at any special meeting.
- (9) To maintain a Book of Rules and Regulations containing all Rules and Regulations adopted by the Board of Directors and committees of the Association from time to time.

(10) To maintain accounting records according to generally accepted accounting practices, which shall be available and open to inspection by Members or their mortgages at reasonable hours or pursuant to reasonable rules promulgated by the Board of Directors regulating the frequency, time, location, notice and manner of inspections.

(11) To supervise all officers, agents and employees of the association and see that their duties are properly performed.

(12) To issue, upon the request of a Member, a certificate stating whether or not the assessments against the Member's unit have been paid, for which a reasonable charge may be made.

(13) To designate depositories for Association funds, designate those officers, agents and/or employees who have authority to withdraw funds from such accounts on behalf of the Association, and cause such persons to be bonded, as it may deem appropriate

(14) To hold a general meeting for Members for discussion of its proposed annual budget. Adoption of the annual budget shall be an affirmative vote of a majority of Directors.

(15) By an affirmative vote of a majority of the Directors, to set an annual assessment at an amount sufficient to pay the expenses of the Association and to meet the obligations imposed by the Declaration and any supplementary declarations. Annual assessments may be due in quarterly installments at the discretion of the Board of Directors.

(16) To send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of the due date of the annual assessment or first installment thereof. Quarterly notices will not be sent. Quarterly installments are due on the first day of January, April, July and October in the amount specified in the one notice.

unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it j effective.

**11.06** A vacancy in any office may be filled by appointment by the Board. The officers appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.

**11.07** Any person may hold two or more of the same offices except that the President shall not also be the Secretary or Treasurer.

**11.08** The President shall be chief executive officer of the Association, who shall have all of the powers and duties which are usually vested in the office of the President of a property owners association, including, but not limited to, the power to appoint such committees at such times from among the Members as the President may, in the President's discretion, determine appropriate to assist in conducting the affairs of the Association. The President shall preside at all meetings of the Board of Directors.

**11.09** In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors.

**11.10** The Secretary shall cause to be kept the minutes of all meetings of the Board of Directors and the Members; shall have custody of the seal of the Association and shall affix the same to instruments requiring such seal when duly authorized and directed by the Board of Directors to do so; shall keep the records of the Association, except those of the Treasurer; and shall perform all duties incident to the office of the Secretary of the Association as may be required by the Board of Directors or the President.

**11.11** The Treasurer shall have custody of all the property of the Association, including funds, securities and evidences of indebtedness; shall keep the assessments rolls and accounts of the Members; shall keep the books of the Association in accordance with good accounting practices; and shall perform all of the duties incident to the office of a Treasurer.

**ARTICLE XII**  
**ACCOUNTING RECORDS AND FISCAL MANAGEMENT**

**12.01** The Board of Directors shall appoint a Budget Committee to be responsible for establishing and maintaining the accounting policies and procedures of the Association.

**ARTICLE XIII**  
**OBLIGATIONS OF OWNERS**

**13.01** All Owners are obligated to pay the periodic assessments imposed by the Association.

**13.02** Every Owner and occupant of any Lot or dwelling Unit, their family members, guests, or invitees shall comply with all lawful provisions of this Declaration, the By-Laws, and the rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot or Dwelling Unit Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws. The Owner shall be liable to the Association for all violations of the governing documents due to the acts or omissions of Owner, Owner's family members, guests or invitees.

**13.03** Conduct of Members, their family members, guests, or invitees shall be governed by rules and regulations, which from time to time may be adopted by the Board and adopted by committees appointed by the Board.

**ARTICLE XIV**  
**RULES AND REGULATIONS**

**14.01** The Board of directors may adopt Rules and Regulations for the operation and use of the Venetian Bay Property at any meeting of the Board of Directors. Copies of any Rules and Regulations promulgated, amended or rescinded shall be mailed to all Owners at their last known address as shown on the books and records of the Association and shall not take effect until forty-eight (48) hours after such mailing.

**ARTICLE XV**  
**COMMITTEES**

**15.01** The Board shall appoint the committees hereinafter named and such other committees as it deems appropriate to carry out its purposes. Committees shall consist of not less than three (3), nor more than nine (9) members and shall serve at the pleasure of the Board unless otherwise specified in the Declaration or these By-Laws.



**15.02 Design Review Committee**

The duties of this committee shall be as defined in the Declaration and include regulating the external design, appearance, location and maintenance of the property and of the improvements thereon and regulating uses of property as permitted in the Declaration.

Declarant shall appoint three (3) persons to serve as the initial Design Review Committee of the Association. Persons appointed to the Design Review Committee by Declarant need not be Members of the Association; however, when the directors are elected by the Lot Owners other than Declarant, members of the committee shall be Lot Owners. Subsequent to the election of the Directors by the Lot Owners other than Declarant, the Design Review Committee shall be appointed for the terms provided in the Declaration, from the Lot Owners and shall be composed of a chairman, who need not be a Director, and four (4) other members. A quorum for action shall be a majority of the members of the committee.

**15.03 Budget Committee**

The duties of this committee shall be as defined in these By-Laws and include establishing and maintaining the accounting policies and procedures of the Association, reviewing the financial condition of the Association at least semi-annually, reporting the financial condition to the Board, and recommending the annual budget to the Board.

**15.04 Traffic Control Committee**

The duties of this committee shall include developing and recommending to the Board for adoption of rules and regulations covering the use of the streets and driveway areas and parking of vehicles within the subdivision designed for the safety of the residents and for the preservation of the beauty and orderly appearance of the development.

**15.05 Elections Committee**

The duties of this committee shall include designing and duplicating ballots for each election, controlling the distribution of ballots, verifying; counting and tabulating all ballots and certifying the results to the meeting. The chairman may receive ballots starting 48 hours prior to election.

**15.06 Enforcement Committee**

The duties of this committee are set forth in Article XVI of these By-Laws.

**ARTICLE XVI**

### ENFORCEMENT PROCEDURE

**16.01** Pursuant to Section 4.13 of the Declaration, the Association shall have the right to levy fines against an Owner or its guests, relatives, or lessees, in the manner provided herein, and such fines shall be collectible as provided under Chapter 720 Florida Statutes.

**16.02** Each Board of Directors (the Appointing Board) shall have the power to create an Enforcement Committee: to be comprised of three (3) members who are not officers, directors, or employees of the Association or the spouse, parent, child, brother, or sister of an officer, director, or employee of the Association. The Enforcement Committee shall serve a term consistent with the term of its Appointing Board. Members of the Enforcement Committee may be replaced with or without cause by majority vote of the Appointing Board.

**16.03** At least 14 days prior to a hearing of the Enforcement Committee being called, alleged Non-complying Members shall be notified by certified mail, return receipt requested or by hand delivery, of the alleged Non-complying condition and be given a reasonable opportunity thereafter to rectify the alleged Non-complying condition.

**16.04** Conduct of Enforcement Hearing:

(1) Alleged Non-complying Members shall be notified by certified mail, return receipt requested, or by hand delivery, of a hearing at least fourteen (14) days in advance of said hearing. No alleged Non-complying Member shall be given notice of hearing before the Enforcement Committee unless said Alleged Non-Complying Member has first been given reasonable opportunity to rectify the alleged Non-complying condition.

(2) The Chairperson of the Enforcement Committee may call hearings of the Enforcement Committee; hearings may also be called by written notice signed by any member of the Enforcement Committee.

(3) The Chairperson shall present each case before the entire Enforcement Committee, and the Alleged Non-complying Member: shall be given reasonable opportunity to be heard after the Chairperson's presentation. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings.

(4) At the conclusion of the hearing, the Enforcement Committee shall issue an order affording the proper relief, if any, consistent with the powers granted herein. The orders shall be by motion approved by at least two (2) members of the Enforcement Committee in order for the action to be official.

**16.05** The Enforcement Committee shall have the power to:

(1) Adopt rules for the conduct of its hearings;

(2) Effectuate the provisions set forth in this provision;

(3) Issue orders consistent with this provision; and

(4) Order Non-complying Members, adjudged so pursuant to the provisions of this paragraph, to pay a fine not to exceed One Hundred Dollars (\$100.00) for each day the violation continues past the date set by the Enforcement Committee for compliance, and not to exceed One Thousand Dollars (\$1000.00) under any circumstances. .

#### ARTICLE XVII

#### PARLIAMENTARY RULES

**17.01** The then latest edition of Robert's Rules of Order shall govern the conduct of meetings of this Association; provided, however, if such Rules of Order are in conflict with the Articles, these By-Laws or the Declaration, then the Articles, By-Laws or Declaration, as the case may be, shall govern.

#### ARTICLE XVIII

#### AMENDMENT OF THE BY-LAWS

**18.01** Until such time as Owners, other than the Declarant, are entitled to elect the Board of Directors, Declarant reserves the right to amend, modify alter any of the provisions of these By-Laws.

**18.02** At such time as Owners, other than Declarant, are entitled to elect the Board of Directors, these By-Laws may be amended by the affirmative vote of Voting Members representing not less than seventy-five (75%) of the votes presented at an Annual Meeting or a special meeting of the Members and the affirmative approval of a majority of the Board of Directors at a regular or special meeting of the Board of Directors. A copy of the proposed amendment shall be sent to each Member along with the notice of the special meeting of the Members or Annual Meeting. An amendment may be approved at the same meeting of the Board of Directors and/or Members at which such amendment is proposed.

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**18.03** An amendment may be proposed by either the Board of Directors or by the Members, and after being proposed and approved by one of such bodies, it must be approved by the other as above set forth in order to become enacted as an amendment.

**18.04** Amendments to these By-laws shall be made in accordance with the requirements of the law and amendments thereto in effect at the time of amendment.

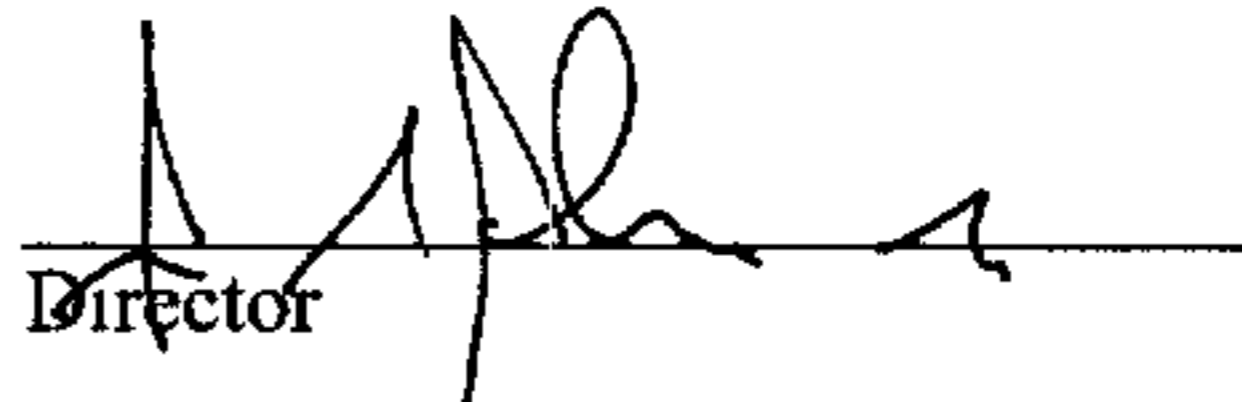
**18.05** No modification or amendment to these By-Laws shall be effective which would affect or impair the priority or validity of a mortgage held by any Institutional Mortgagee or Declarant, without the Institutional Mortgagee's or Declarant's prior written consent.

ARTICLE XIX

19.01 In the event of any conflict between the provisions of the Declaration, the Articles and the provisions of these By-Laws, the provisions of the Declaration and/or Articles shall prevail.

The foregoing By-Laws of Venetian Bay Homeowners' Association, Inc. are hereby adopted by all of the Directors or the Venetian Bay Homeowners' Association, as and constituting the Board of Directors of said Association this 14<sup>th</sup> day of APRIL, 2004

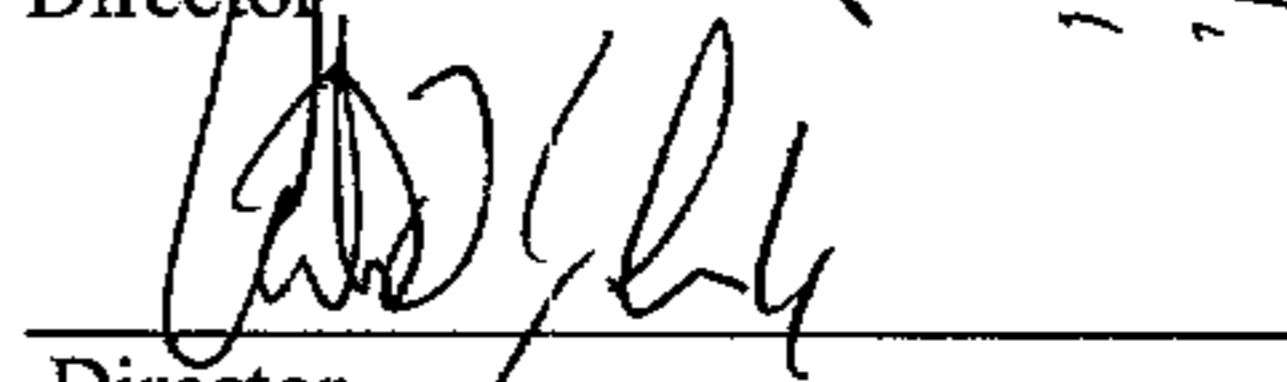
Jerry S. Johnson

  
\_\_\_\_\_  
Director

Dipak Jobalia

  
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Director

Arthur Campbell

  
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Director