

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
THE HARBORAGE OWNERS' ASSOCIATION, INC.

This DECLARATION is made this 10th day of June, 1986, by Harborage Development Company, Inc., a Florida Corporation, which declares that the real property described in Exhibit A, and to be known as THE HARBORAGE, is now and shall hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this document ("Declaration") for the purpose of establishing uniform standards for the development of the Subdivision and providing for the welfare of the Owners.

1.0 DEFINITIONS. The following words and phrases, when used in this Declaration, will have the meaning shown, except that singular nouns may include the plural, and one gender the others:

1.1 "**ASSOCIATION**" is THE HARBORAGE OWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit.

1.2 "**DEVELOPER**" is The Harborage Development Company, Inc., its successors and assigns.

1.3 "**SUBDIVISION**" is the real property which is described in the Plat which is identified on the first page of this Declaration. It will also include, however, any other Subdivision of other real property which is described in subparagraph 1.7 of this Declaration.

1.4 "**LOT**" is any parcel of real property within the Subdivision which is identified by number on the Plat and on which a single -family residential building may be constructed.

1.5 "**BUILDING SITE**" is any plotted lot, or a combination of a lot with one -third, one-half, or two - thirds of an adjacent lot. See paragraph 5.2 below regarding combinations of lots or fractions of lots.

1.6 "**OWNER**" is the person or entity who is a record Owner of a Lot or Building Site. It will not, however, include purchasers under contract or mortgages.

1.7 "**PLAT**" is the plat or map of the Subdivision of real property ("ORIGINAL PROPERTY") which is to be recorded in the Public Records of Lee County, Florida, as the same may hereafter be amended. It will include, however, the plat or map of another Subdivision of real property ("ADDITION"), if the following conditions are met:

1.7.1 The Addition consists of real property which is contiguous to either the Original Property or an earlier Addition, or both:

1.7.2 The addition to the Subdivision is made with the consent and approval of the Developer; and

1.7.3 The map or plat of the Addition is accompanied by a written Declaration which is made of public record in Lee County, Florida, which clearly identifies an intention that the terms and provisions of this Declaration be made applicable to the Addition.

1.8 "**COMMON AREA**" is comprised of the easements described herein and all other areas which are graphically depicted on the Plat as common areas.

1.9 "**LAKES**" are the lakes shown on the Plat.

1.10 "**EASEMENTS**" are the easements depicted on the Plat, and those described herein.

1.11 "**ROAD RIGHTS OF WAY**" are rights of way within which roads, sidewalks, curbs, gutters, sewers, storm sewers, water mains, gas mains, electric cables, telephone cables and other utilities may be

constructed, maintained and used. The Road Rights of Way may be used for any Association approved purpose. The initial road rights of way are graphically depicted on the Plat.

1.12 “ **UTILITY EASEMENTS**” are easements within which sewers, storm sewers, water mains, gas mains, electric cables, telephone cables, television cables, and other utilities may be constructed, maintained and used. The initial utility easements are either graphically depicted on the Plat or described herein.

1.13 “ **DRAINAGE EASEMENTS**” are easements within which drainage swales or storm sewers may be constructed, maintained and used. The initial drainage easements are either graphically depicted on the Plat or described herein.

1.14 “ **PRIVATE DRIVE EASEMENT**” is the easement shown on the Plat, which will serve as access to the Road Rights of Way for those lots, which would otherwise have inadequate access. The Private Drive Easement shall also serve as a Utility Easement.

1.15 “ **ARTICLES**” are the Articles of Incorporation of the Association, as from time to time amended as therein provided. Prospective lot purchasers may obtain a copy of the current Articles from the Association Secretary upon payment of the cost of copies.

1.16 “ **BYLAWS**” are the Bylaws of the Association, as from time to time amended as provided in the Articles and the Bylaws. Prospective lot purchasers may obtain a copy of the current Bylaws from the Association Secretary upon payment of the cost of copies.

2.0 PROPERTY RIGHTS CREATED AND RESERVED

2.1 **ASSOCIATION RIGHTS** The Developer hereby grants, bargains, sells and conveys to the Association the following rights, titles, easements, and interests:

2.1.1 **MEMBERSHIP**. The right to require that each of the Owners be members of the Association.

2.1.2 **ASSESSMENTS** The right to make assessments against each Building Site to provide funds for the Association or, to enforce any lien provided for herein, and a lien, encumbrance or security interest in each Building Site for the purpose of securing the payment of assessments against the Building Site, interest thereon from the date due and the costs of collection of the assessments.

2.1.3 **MAINTENANCE** The right to maintain the Common Areas, including but not limited to water management facilities, and make, maintain, repair, replace and use improvements within the Common Areas, which are not of a private nature. The Association shall also have the right to maintain the sidewalks and the cost thereof may be assessed by the Association.

2.1.4 **RULES** The right to promulgate reasonable rules for the use of all common areas in the Subdivision, including but not limited to roads, recreational facilities, lakes, and easements, including the requirement of a fee payment in connection with the use of particular common facilities.

2.1.5 **ENFORCEMENT** The right to enforce the terms and provisions of the Declaration of Association rules by any and all lawful means provided that the Association has established rules ‘meeting the fundamental requirements of due process, the Association may deny use of common areas other than roads to any person and may levy fines against any resident or Owner in the Subdivision. Any fines levied shall be a lien on any Lot or Building Site owned or occupied by the

person fined. In the event that an Owner, his tenant, resident or his guests who are in violation of either the Declaration or the Rules or Regulations refuses or fails to comply with a written notice from the Board of Directors advising said Owner of the violation and demanding that the Owner come into compliance with the terms of the Declaration and/or rules and regulations and/or cause his tenants, residents and or guests to come into compliance therewith within the time period specified in said notice, the Board of Directors may refer enforcement of said violation to legal counsel and the Owner shall be assessed the costs incurred by the Association including the legal fees and out-of-pocket expenses arising out of the attempts to obtain compliance with the terms of the Declaration and/or Rules and Regulations, whether or not it becomes necessary to file a legal action to compel compliance with the Declaration and/or Rules and Regulations of the Association.

2.1.6 **VARIANCES** The right to grant variances with respect to set back and building restrictions for all Building Sites within the Subdivision for the Purpose of accommodating the highest and best use of a Building Site which is consistent with the particular geometry of the Building Site and is consistent with the objectives of this Declaration.

2.2 “**OWNERS’ RIGHTS**” The Developer hereby grants, bargains, sells and conveys the Common Areas to the Association. Membership in the Association shall be an appurtenance to each Building Site for all purposes.

3.0 MEMBERSHIP IN ASSOCIATION AND ASSESSMENTS. Each Owner shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, Ownership of a Building Site. Each Owner shall be entitled to vote upon all matters coming before the membership as provided in the Articles. The Association shall provide Owners with copies of all current articles, bylaws, and rules upon payment of a reasonable charge to offset reprinting costs The Association will make, levy and collect assessments made against Lots or Building Sites as provided in the Articles and as follows:

3.1 **LIABILITY FOR PAYMENT.** The Owners of a Building Site at the time an assessment is made by the Association against the Building Site will pay to the Association the amount assessed, together with interest thereon at the maximum rate allowable by law, from the date due and payable until paid in full, and the costs and attorneys fees incurred by the Association in collecting delinquent assessments.

3.2 **LIENS.** There will be at all times a lien, charge or encumbrance (“ASSESSMENT LIEN”) against a Building Site for the un paid balance or assessments against that Building Site, interest thereon, and costs incurred by the Association in collecting the same, in favor of the Association. Each person or entity acquiring a Building Site, whether by deed, operation of law or otherwise will do so subject to the unpaid balance of The Assessment Lien encumbering that Building Site by operation of this Declaration. The assessment Lien will, however, be subordinate to the lien of any institutional first mortgage encumbering the Building Site. An institutional mortgage is defined as a mortgage owned by any state or federal bank or savings and loan association, or any life insurance company. Any institutional first mortgagee in possession, a receiver or purchaser at a foreclosure sale of an institutional first mortgage, or an institutional first mortgagee that has acquired title by in lieu of foreclosure, and the successor or assigns of such purchaser or mortgage shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected through enforcement of the Assessment Lien against any building Site by reason of the provision of this paragraph 3.2 shall be deemed to be an assessment divided equally among, payable by, and an Assessment Lien against all building Sites subject to assessment.

3.3 **PRORATA SHARE OF ASSESSMENTS.** It is the Developer’s intent that the common expenses of

the Association shall be allocated on the basis of Building Sites. The number of Building Sites may be less than the number of lots shown on the Plat because of combinations of lots, or of a lot with a fraction of a lot, to form one Building Site. For purposes of determining assessments, the word "Lot", as used in this document, or in the Association Articles or Bylaws, shall be deemed to be synonymous with "Building Site", as further defined in this paragraph. Initially, each lot, as shown on the plat, shall be deemed to be a Building Site. In the event that two or more adjacent lots are in a single Ownership, each lot shall continue to be deemed to be a Building Site until the occurrence of one of the following:

3.3.1 Ownership of a fraction of a lot is conveyed to another, in which event each fraction shall become a part of the Building Site for the whole lot to which the fraction is adjacent.

3.3.2 A Certificate of Occupancy is issued for a residence, which occupies parts of two platted lots.

3.3.3 The owner joins with the Association in filing a deed of restrictions, in a form acceptable to the Association, establishing the Building Sites within the group of lots owned by the Owner.

3.4 **INDIVIDUAL ASSESSMENTS**. This Declaration provides for certain instances where the Association may undertake an expense which would otherwise be an Owner's expense and provides that the Association may then assess the individual Owner for that expense. This Declaration also provides that the Association may enforce this Declaration, and any rules promulgated pursuant hereto, through the use of fines which become liens, whether or not this Declaration provides explicitly, the Association shall have the right to undertake the obligation of an Owner in default, and to be deemed to have an individual assessment against that Owner's Building Site for the cost thereby incurred. In all those instances, the levy against the individual may be enforced in the same manner as general assessment.

4.0 AESTHETIC CONTROLS. No improvement of any kind including, but without limitation, buildings, fences, walls, signs, site paving, grading, parking, building additions, screen enclosures, decorative structures, mailboxes, and barrier landscaping, shall be erected, placed or maintained on a Building Site unless and until the specifications, materials, building and site plans therefore have been presented to and approved by the Architectural Review Board of the Association ("A.R. Board"). The Association shall promulgate reasonable procedures and guidelines for the review process, and building Site Owners shall be bound by those procedures and guidelines, as well as by the substantive rules to be applied by the A.R. BOARD. If the plans and specifications reflect the construction of improvements, which are consistent with this Declaration, they will be approved by the A.R. BOARD. If they reflect the construction of improvements, which are not consistent with this Declaration, they will be disapproved by the A.R. Board and the notice of disapproval will recite with specificity the inconsistencies, which are the reason for disapproval. The Association may provide for reasonable fees to be paid to the Association or to professionals employed by the Association for review of matters, which require A.R. BOARD approval.

5.0 RESTRICTIONS.

5.1 USE.

Building sites may be used as the site for the residence of a single family, and for no other purposes whatsoever. No noxious or offensive use may be made of a Building Site and no such activity shall be permitted on any Building Site, which would be a nuisance by reason of unsightliness or excessive emission of noise, odors, liquids, gases, dust, vibration, fumes or smoke. Subject to A.R. BOARD approval, an Owner may construct a dock at his building Site prior to construction of a home. However, the use of Building Sites upon which homes have not been constructed may be subject to special rules, promulgated by the Association so that Building Sites are not used primarily as a recreational facility in a manner inconsistent with a residential neighborhood environment.

5.2 RE-SUBDIVISION OR COMBINATION OF LOTS

None of the Lots graphically depicted on the Plat may be subdivided into two or more Lots, submitted to condominium use or any combination thereof. However, two lots or one and one-third lot, or one and one-half lot, or one and two-thirds lot may be combined to form a single Building Site. In the event of conveyance of less than an entire lot from the Developer, the Developer shall approximate a third or half of a lot, and any division so accomplished shall be deemed to establish a third or half lot for all purposes, including assessments. Owners subsequent to the Developer shall not convey partial lots unless subdivided by the Developer or the written and recorded consent of the A.R. BOARD is first obtained. There shall be no conveyance of a fractional lot under any circumstances, unless provision is first made to include the remaining fraction as part of the other adjacent lot as a single Building Site.

5.3 BUILDINGS.

No building may be erected, altered, placed or permitted to remain on Building Site other than one detached single-family residential structure.

5.3.1 **MINIMUM SIZE** Unless approved by a two-thirds vote of the A.R. BOARD of the Association, no residential unit may be erected, altered, placed or permitted on any Lot unless it complies with the following building restrictions and includes the minimum living area, as specified in the following paragraphs. The minimum living area for homes on lots fronting on Park Road Canal shall be 1800 square feet. The minimum living area for homes on lots fronting on either lakes or Ten Mile Canal shall be 2,000 square feet. "Minimum living area" excludes open porches, garages, and other areas, which are not usually air-conditioned. The maximum living area permitted shall be 6,000 square feet.

5.3.2 **BUILDING SETBACK REQUIREMENTS.** Building constructed on Lots 1 through 11 and 58 through 92 shall be set back at least twenty-five (25) feet from the Road Right of Way. Buildings on all other lots shall be set back thirty-five (35) feet from any Road Right of Way. Buildings may not be constructed within ten feet of any side lot line; however, the eaves of the roof of a home may project outward into the side set back provided that the eaves are not less than eight feet from the side lot line, and further provided the lowest point on any eaves projecting past the ten foot setback is at least eight feet from the ground level. Parts of buildings, such as bay windows, under the eaves may be closer than ten (10) feet to the property line for less than one-third the total length of the wall, if approved in writing by the A.R. BOARD. Planters shall be set back not less than five feet from side lot lines. Rear set backs shall be measured from the closest point of a structure to a lake shore line at assumed water elevation 2.0 N.G.V.D. and a canal shoreline at assumed water elevation 1.0 N.G.V.D. Rear setbacks shall be the following minimums:

	Structure above 12' N.G.V.D.	Structure below 12' N.G.V.D.
<u>Lake Lots</u>		
Lots 1 thru 11 & 76 thru 80	25'	5'
Lots 12 thru 75	25'	10'
<u>Canal Lots</u>		
Lots 81 thru 92	25'	15'
Lots 92 thru 134	30'	20'

The foregoing rear setbacks do not apply to docks and davits, which have been approved by the A.R. BOARD.

5.3.3 **MAXIMUM BUILDING HEIGHT.** No improvement on a lot shall exceed 40 feet N.G.V.D. elevation.

5.3.4 **COMMENCEMENT AND COMPLETION.** Once the construction of any building or other improvement is commenced, substantial work toward the completion of the construction will be pursued diligently and the buildings and other improvements completed within a reasonable period of time after commencement. If, for any reason, no substantial progress is made toward the completion of a building or other improvement commenced on a Lot, for a period of ninety (90) days, the Association may invade the premises and take such action as the Association may deem appropriate to correct the undesirable appearance of the partially completed buildings and improvements, including completion thereof, at the cost and expense of the Owner of the Lot.

5.3.5 **MAINTENANCE.** Buildings, driveways, and other improvements made on a Lot will be regularly and continuously maintained in good condition and in a well-kept appearance by the Owners. All driveways, sidewalks and other hard surface areas will be swept and cleaned regularly and cracks and damaged areas replaced, repaired and otherwise kept in good condition and appearance by the Owners.

5.3.6 **MISCELLANEOUS.** The exterior of all buildings constructed on a Lot will be of colors, which are harmonious and compatible with the colors of natural surroundings and nearby buildings. No mobile home or prefabricated home may be placed on any Lot within the Subdivision.

5.4 **GARBAGE AND TRASH.** Garbage, trash, and other refuse ("TRASH") may be stored on a Lot for collection or other disposition for no more than a reasonable period of time, and then only in containers which are reasonably acceptable to the Association. Trash containers and other personal property stored or used on a Lot will be stored in such manner as not to be visible from any road easement, street, highway or other Lot. Storage may be below ground, inside buildings or within a visual barrier of an aesthetically pleasing appearance, which is approved by the Association consisting of earth mounding, landscaping, walls, fencing or combination thereof.

5.5 **PARKING.** The improvements made on any Building Site will include adequate parking facilities for the use to which the Building Site is committed. Parking of automobiles, trucks and other motor vehicles on or along streets and roads within the Subdivision will not be generally permitted. However, the Association may promulgate rules to accommodate street parking for special occasions. Parking area and driveway materials and design are subject to A.R. BOARD approval pursuant to paragraph 5.18.

5.6 **LANDSCAPING.** Within thirty (30) days following the completion of any building, parking lot or other improvement on any Building Site, the yard areas will be sodded with a type of sod approved by the A.R. Board, and the buildings, parking areas and other improvements will be substantially landscaped by the Owner in an aesthetically pleasing manner. Landscaping shall include the acquiring, planting, and maintenance of not less than three trees having at least a 6" trunk diameter measured 2 feet above the ground and shall be of approved type and specifications. Two of the required trees shall be placed between the front of the home and the street. The third tree shall be placed between the 'home and the rear lot line'. A list of approved trees and other specifications shall be provided by the Association. Owners shall select trees from an A.R. BOARD approved list, which must be planted in addition to other vegetation desired by the Owner. If the required trees are not planted within the time required, the Association shall select and plant trees on the Owner's Building Site and the owner shall be deemed to have granted the Association an

easement for the purpose of planting and maintaining the required trees. All landscaping and yard areas will be irrigated, fertilized, mowed, trimmed, and cared for regularly. Notwithstanding anything to the contrary elsewhere in this Declaration, owners shall maintain the grassy area between the Building Site and the roadway in front of the Building Site. Diseased and dead plants and grass shall be replaced, and landscaping shall be otherwise maintained at all times in an aesthetically pleasing manner by the Owner. In the event that the Owner fails to maintain landscaping, the Association shall have the right, after fifteen (15) day notice to Owner, to undertake the maintenance at the Owner's expense.

5.7 **UNIMPROVED LOTS.** The Association shall regularly mow and keep clean unimproved lots pursuant to Association rules. Each Owner of a lot without either a completed home or a home under construction shall be deemed to have granted the Association the right to go upon the lot for the purposes of this subparagraph.

5.8 **SIGNS AND GRAPHICS.** All signs located within the Subdivision will be conservative in size, shape, color and graphics, and otherwise aesthetically pleasing in appearance. All signs are subject to approval by the A.R. BOARD. Signs will not be located on any building exterior walls or "stand out" from exterior wall surfaces on any lot unless approved by the Association in advance. Signs may be lighted; however, flashing lights of any kind will not be permitted. Not more than one (1) sign may be erected or maintained on any one Building Site at any one time. No sign erected may have a surface area on any one side of more than one square foot, excepting only the following signs:

5.8.1 Signs advertising a Building Site and/or the improvements thereon for sale or lease may have a surface area on any one side of not more than four (4) square feet which have the written approval of Developer, as long as Developer owns any land in the Subdivision; and

5.8.2 Signs erected by the Developer or Developer's broker to advertise the property for sale.

5.8.3 Signs advertising a building site and/or improvements thereon for sale may have a surface area on any one side of not more than three (3) square feet and shall be approved by the A.R. Board. The A.R. Board shall promulgate and adopt specifications for said signs including height, width, materials, wording and colors, which specifications shall be included within the Architectural Guidelines and Review Procedures. The proposed location of said sign upon the subject property shall be approved by the A.R. Board.

5.9 **VEHICLE STORAGE.** No camper, motor home, truck, tractor, trailer, boat or other vehicle excepting only automobiles may be parked on any Building Site, unless parked unobtrusively within or behind a visual barrier or aesthetically pleasing appearance, which is approved by the Association, or within a garage. For purposes of this subparagraph, 'automobile' shall include passenger vans and trucks of up to one-half ton capacity. 'Automobile' does not include any vehicle marked with a commercial sign or not having a good exterior appearance. Notwithstanding the foregoing, a vehicle may be otherwise parked on a Building Site only on a temporary basis. For these purposes, "temporary" will not include either of the following:

5.9.1 Parking the vehicle on a Building Site for period of time of more than twelve (12) consecutive hours; or

5.9.2 Parking the vehicle on a Building Site on a regular re-occurring basis even though not parked for a period of more than twelve (12) consecutive hours on any particular occasion, other than during the course of construction of improvements on the Building Site;

5.9.3 Parking the vehicle on a Building Site overnight.

5.10 **EXTERIOR LIGHTING.** Each building will have exterior night lighting to discourage theft and

vandalism within the Subdivision. As a minimum, each completed home shall have an operative lamppost of a style consistent with the architecture and color of the home. The lamp in the post shall be equipped with solar activated switch so that the lamp is on from sunset to sunrise. The lamppost shall be located between the front of the home and the road or private drive easement. All exterior lighting is subject to the approval of the A.R. BOARD. Among other things, the A.R. BOARD shall consider light position, color, mounting structure and effect on adjacent properties.

5.11 **EASEMENTS**. The use and occupancy of the Building Site will be subject to the easements graphically depicted on the Plat, those hereinafter dedicated to and accepted by the Association, and those described in this paragraph.

5.11.1 **UTILITY AND DRAINAGE**. A Utility Easement and a Drainage Easement will exist over, across and under the portion of each Lot/ which is within six (6) feet of the Lot lines which are graphically depicted in the Plat, except that if two or more Lots, or one and one-third or one and one-half Lots, or one and two-thirds Lots having a common side lot line are consolidated into a singled Building Site, then the Utility Easements and Drainage Easements which would otherwise exist along either side of those common side lot lines may be vacated by the Association, provided the Owner of the Lots makes written request, and the Association determines that vacating the easements will not have any material adverse effect upon the use of any other Lots or the Common Areas. If the easements being vacated are in use, the Owners of the Lots being consolidated shall relocate water, sewer, storm sewers, transmission cables and other utilities located within the easements being vacated within another reasonably acceptable easement area at their cost and expense.

5.11.2 **MAINTENANCE**. Improvements made within any easement of a private nature will be maintained by the Owner of the Lot where they are located and will not unduly inhibit the use of the easement by others for the purpose intended. Those, which are not of a private nature will, however, be maintained by the Association, to the extent not maintained by governmental agencies or otherwise.

5.12 **LIVESTOCK, PETS, ETC**. No animals, livestock , or poultry of any kind may be raised, bred or kept on any lot; provided, however, that dogs, cats and other household pets ("PETS") may be kept on a Building Site subject to the following limitations:

5.12.1 No pets may be kept, bred, or raised on any Building Site for commercial purposes.

5.12.2 Each pet kept on a Building Site must be confined within fenced areas or restrained on a leash and personally attended by a responsible adult.

5.12.3 Pets may be kept on a Building Site only in reasonable numbers, and then only for so long as they do not unduly interfere with the use and enjoyment of the Building Sites and Common Areas by others.

5.12.4 A Pet Owner shall immediately remove and properly dispose of any pet litter deposited on any property other than the lot owned by the Pet Owner.

5.12.5 The Association may adopt additional rules regarding animals including rules excluding certain types of animals from the Subdivision.

5.13 **LAWN EQUIPMENT**. Playground equipment and other lawn equipment, including, but not limited to grills, swings, merry-go-rounds, tents, play pens, sandboxes and toys, may be located in the rear yard of a home, not in the front yard. Clotheslines are prohibited.

5.14 **HOME MECHANICAL EQUIPMENT.** Air conditioning units shall be screened from other Building Sites and from the street. The method of screening is subject to A.R. BOARD approval. Window air conditioning units are not permitted in the Subdivision. Wall air conditioning units may be affixed to buildings only with A.R. BOARD approval. Placement and other conditions relating to the use of solar collectors or any other exterior mechanical equipment shall be subject to A.R. BOARD approval.

5.15 **MAILBOXES.** Mailboxes shall be of a design prescribed by the A.R. BOARD and located pursuant to A.R. BOARD specifications. Mailboxes shall be located within the Road Rights of Way. There shall be two mailboxes for each support for Building Sites fronting on the East Lake and the north shore of the West Lake; there shall be four mailboxes for each support in all other areas. The A.R. BOARD may approve variances regarding the number of mailboxes on each support to accommodate the development of Building Sites, which vary from platted Lots. The first owner to obtain a building permit shall be responsible for supplying the common support to be used by that Owner and each Owner shall purchase a mailbox. Thereafter, the Association shall maintain and replace the common support, and each Owner shall maintain and replace his individual mailbox.

5.16 **GARAGES.** Each house within the Subdivision will have a garage. Each garage will enclose a space of not less than five hundred (500) square feet. Each garage will have one or more doors which, when closed, will have the effect of precluding access into the garage. No carports or other open garages will be permitted within the Subdivision. Garages shall be equipped with electronically operated doors.

5.17 **PRIVATE DRIVE EASEMENT.** Vehicles in the Private Drive Easement depicted on the Plat for Lots 76 through 80 shall be limited to the vehicles of Owners (and their guests) of the Building Sites encumbered by or adjacent to, the easement. However, the Association may, by rule, establish conditions for use of the easement by other Owners, for pedestrian and bicycle traffic. The Association shall maintain the Private Drive Easement reasonably within the original construction standards.

5.18 **DRIVEWAYS.** Each driveway, or parking area within the Subdivision will be constructed of concrete, brick or other hard surfaced material approved, by the A.R. Board. No asphalt, gravel, rock, shell, dirt, clay or other soft or loose surface Driveway or parking area will be permitted within the Subdivision.

5.19 **WATERFRONT.** Owners may not alter the Waterfront of a Building Site in any manner, including excavation, fill or construction of improvements, unless approval is first obtained from the A.R. Board. Owners shall take reasonable precautions to avoid the carrying of detrimental substances into the lakes or canals through run off or other means as described on the development permits for the Subdivision. Boat ramps shall not be constructed on any Building Site. Docks may be constructed on any Building Site and Owners of adjacent Building Sites may construct a common dock, all subject to A.R. BOARD approval. The A.R. BOARD shall have broad discretion in determining the conditions for approval. Owners shall permit reasonable access to the waterfront, over land and over water, to the Association and to governmental agencies for the purpose of monitoring water quality.

5.20 **USE OF LAKES AND CANALS.** The Owners of property in the Subdivision, and the guests of the Owners, may utilize the lakes for any lawful purposes, subject to rules to be promulgated by the Association. Motor driven boats operated in the lakes shall not exceed idle speed within 150' of any shoreline. The Owners of property in the Subdivision shall not operate motor boats in canals in or adjacent to the Subdivision at other than idle speed. Boats shall not be anchored in lakes overnight, but may be moored to docks overnight. Boats shall not be used as overnight accommodations. Any boat left in the lakes or canals shall be maintained in good condition and good appearance. The lakes within the Subdivision are for the exclusive use of Lot Owners and their guests. Owners shall not operate or maintain in the canals boats with a fixed draft in excess of the draft allowed by applicable governmental permits.

5.21 **COMMERCIAL ACTIVITIES.** No trade, business or other commercial activities may be conducted on any Building Site, other than by the Developer or the Developer's licensees incident to the development and sale of the Property located within the Subdivision. The construction and operation of model homes are exempt from the definition of commercial activities.

5.22 **UNDERGROUND UTILITIES.** All utilities provided to Lots will be by means of underground transmission lines, cables, and pipes. No overhead transmission lines or cables will be permitted within the Subdivision without the advance approval of the Developer.

5.23 **ANTENNA.** No radio or television aerial, antenna, or satellite dish will be placed, erected or permitted upon any Building Site or affixed in any manner to the exterior or roof of any building on any Lot in the Subdivision without the advance written approval of the A.R. Board.

5.24 **ARTIFICIAL VEGETATION.** No artificial trees, shrubs, grass or other vegetation will be placed or maintained on any Lot without the advance written approval of the A.R. BOARD.

5.25 **SEWAGE DISPOSAL.** No sewage disposal system shall be used in the property except as approved by the Association.

5.26 **GOVERNMENTAL AGENCY RESTRICTIONS.** The Association and each Owner shall at all times comply with the requirements of governmental agencies in connection with the development of this Subdivision, and shall comply with all laws or governmental agency requirements, which may apply in the future. The improvements to the Subdivision shall be completed by the Developer pursuant to various permits from governmental agencies. Copies of the permits, and appropriate related documents, shall be delivered to the Association after the Developer completes the contemplated improvements. After completion, the Association shall maintain the improvements according to any continuing requirements of the permits. The foregoing is not intended to prohibit an Owner from obtaining an individual permit to do anything otherwise permissible under this Declaration.

5.27 **VEHICLE OPERATION.** Unlicensed vehicles (such as motorized bikes, go-carts, off road vehicles) shall not be operated within the Subdivision, nor any vehicles without proper sound control devices. All permitted vehicles shall be operated in a safe manner and within speed limits established by the Association.

5.28 **SECURITY.** The Association may elect to provide a gate and guard at the entrance to the Subdivision. In that event, access in the Subdivision shall be pursuant to rules established by the Association.

5.29 **FENCES.** Fences shall not be permitted which enclose or define the boundary lines of a Building Site. Fences, walls or screens may be used, subject to A.R. BOARD approval, to enclose service areas, patios, swimming pools or other areas requiring privacy.

5.30 **ROOF MATERIAL.** Roof material shall be either wood shakes, cement tile or clay tile. However, the A.R. BOARD shall have absolute discretion to approve other materials of a quality and appearance, which are consistent with the objectives of this Declaration, provided that conventional asphalt or fiberglass shingles shall not be permitted.

5.31 **USE OF COMMON AREA GENERALLY.** Guests of Owners and residents in the Subdivision may use the common areas subject to Association rules and subject to the requirement that the Owner or resident is physically present at all times with the guests and the number of guests does not reasonably interfere with the enjoyment of the Subdivision by other Owners and residents.

5.32 **DURATION.** The restrictions contained in this Declaration will run with the land and be binding

upon the Owners, inuring to the benefit of and enforceable by the Association and each Owner and each person claiming by, through and under them, for a term beginning with the date of recording this Declaration and ending on December 31, 2035, after which they will be automatically extended for successive periods of ten (10) years each unless an instrument terminating them is executed by Owners owning not less than two-thirds (2/3) of the Lots included in the Subdivision and recorded in the Public Records of Lee County, Florida.

6.0 COMPLIANCE WITH ZONING REQUIREMENTS. Developer intends to develop the Subdivision pursuant to the terms and conditions of a Planned Unit Development (PUD) resolution of the Board of County Commissions for Lee County, Florida. One of the requirements of the PUD is that development be subject to unified control to assure that persons who acquire lots for resale shall be obligated to comply with all provisions of the PUD. Therefore, Developer covenants that it shall continue to enforce the conditions of the final PUD resolution until such time as all of the Property in the PUD is developed and certificated for use and occupancy or until a subsequent transferee assumes that obligation for all or part of the subject property by agreement in recordable form filed with the appropriate division of Lee County. As part of the consideration for the conveyance of any property described in the PUD, and upon acceptance of the conveyance, the grantee shall be deemed to have covenanted to abide by the conditions of the PUD, and shall indemnify the Developer for any damages, costs, or attorneys fees incurred by Developer because of the transferee's failure to abide by the PUD requirements.

7.0 STREET LIGHTING. Streetlights in the Subdivision are provided pursuant to an agreement between Florida Power and Light Company (FP&L) and the Association. The agreement requires the Association to maintain a letter of credit in favor of FP&L in the amount of Twenty-Two Thousand Six Hundred Sixty-five Dollars (\$22,665.00) to secure the continued performance of the Association pursuant to the agreement. The stipulated amount shall decrease by ten percent (10%) per year. The letter of credit shall not be payable except in the event of the Association's default under the terms of the agreement with FP&L. The directors of the Association shall provide for the cost of the letter(s) of credit in the budget for the Association. In the event that any issuer of a letter of credit given with respect to the Association is obligated to pay the letter, then the issuer shall have the right to compel the Association to access each Building Site for a prorata part of the amount paid pursuant to the letter of credit, pay reasonable costs and attorneys' fees incurred in compelling the Association to make the assessment. Any assessment so levied shall be a special assessment and the Association shall cause a notice of the special assessment to be filed in the Public Records of Lee County, Florida. After recording the notice, the special assessment shall be a lien on each Building Site, payable within ninety (90) days of the date of assessment and foreclosable in the same manner as a regular assessment. The special assessment shall provide for releases of Building Sites upon payment of the prorata portion of the total special assessment. The Association shall provide, upon request, to any issuer of a letter of credit given pursuant to this paragraph, an estoppel letter reciting whether this paragraph shall be in effect at a given time. Owners in the Subdivision shall be bound by the Association's estoppel letter. Any issuer of a letter of credit given and paid pursuant to this paragraph shall have the right to compel the Association to foreclose any special assessments, which are not timely paid.

8.0 SUBDIVISION ENTRANCE. Although Harborage Drive (Tract A on the Plat) connects to the westerly right-of-way line of Highway U.S. 41, applicable traffic regulations require acceleration and deceleration lanes, and other driveway improvements (Access) to provide safe access to the Subdivision. These improvements are described in Florida Department of Transportation driveway permit number 12-04-85 (the Permit). Parts of the improvements are outside of the Subdivision but are essential to the Subdivision. Part of the improvements shall be of benefit to Owners of parcels outside of the Subdivision. In the event and to the extent that the driveway improvements described in the Permit are privately maintained, then the Association shall be obligated to participate in the maintenance by providing up to fifty percent (50%) of the cost of such maintenance. However, as a prerequisite to the Association's obligation, Developer shall have provided for payment of the remaining costs and the

administration of the funds by the Owners of the commercial tracts described in the attached exhibits, and the Developer shall have established reasonable means of determine and enforcing the mutual obligations of the Association and the Owners of the commercial tracts. Developer reserves the right to cause the Association to participate in maintenance of, the Access by recording an agreement between the Association and the Owners of the commercial tracts setting out reasonable means of enforcing the agreement.

9.0 TRACT E. Notwithstanding anything appearing on the Plat to the county, each Owner of a Building Site adjacent to Tract E, as shown on the Plat, shall have an exclusive right to use the upland portion of Tract E, which lies between a westerly extension of each of the side boundary lines of the Building Site. Such use shall be as if the adjacent portion of Tract E were an integral part of the Building Site.

10.0 GENERAL PROVISIONS.

10.1 **ENFORCEMENT.** The covenants, conditions, restrictions and other provisions of this Declaration, and rules promulgated pursuant to this Declaration, will be enforceable by the Association, the Owners, or the Developer. Compliance herewith may be enforced in any manner permitted in law or in equity. In any action to enforce obligations derived from these restrictions, the prevailing party shall be entitled to attorney's fees and costs.

10.2 **NOTICES, ETC.** Notices, assessment bills, budgets, amended budgets and other materials and things required by either this Declaration, the Articles of Incorporation of the Association, or the Bylaws of the Association, to be sent or delivered to the Owner of a Lot will conclusively be deemed to have been delivered to the Owner when either posted in the United States mails, postage prepaid and properly addressed, or hand delivered to the last known Owner at his last known address. It will be the responsibility of an owner to notify the Association in writing of the Owner's name and address and any changes in either. In the event the failure of the Owner to receive any notice, assessment bill, budget, amended budget or other materials and things will not affect the validity or due date thereof if so posted or delivered.

10.3 **AMENDMENTS TO DECLARATION.** This Declaration may be amended at any time, and from time to time, by a written instrument executed by the Owners of two-thirds (2/3) of the Building Sites contained in the Subdivision, subject to the following:

10.3.1 APPROVAL OF SOUTH FLORIDA WATER MANAGEMENT

DISTRICT. No amendment may be made which would affect the surface water management facilities, without the prior approval of the South Florida Water Management District, or its Successor.

10.3.2 **APPROVAL OF DEVELOPERS.** No amendment may be made without the approval of the Developer as long as the Developer owns either Real Property, which is included in the Subdivision; or, Real Property, which is contiguous to the Subdivision.

10.3.3 **EVIDENCE OF OWNER APPROVAL.** An amendment certified by the President and secretary of the HARBORAGE OWNERS' ASSOCIATION, INC. shall be deemed to have been approved by the appropriate number of Owners, and interested parties shall be bound by each amendment without the Association having to establish the record title of each Owner.

10.4 **ASSOCIATION MEMBERSHIP.** The Association shall be entitled to rely on Lee County ad valorem tax records to establish Ownership of each lot at a given time, unless the Association has received actual notice of an Ownership entered which is inconsistent with and subsequent to the effective date of the tax records.

10.5 **SEVERABILITY.** The invalidity of any provision contained in this Declaration will not affect any

other provision contained herein.

10.6 **INTERPRETATION**. The provision of this Declaration will be interpreted without regard to the headings contained herein, which have been inserted and used for ease of reference only.

10.7 **SURVIVAL**. This Declaration will be binding upon the parties hereto and all persons claiming by, through and under them.