

This instrument prepared by:  
Charles E. Wallace, Ph.D.  
HOPOA Secretary  
16621 NW 165<sup>th</sup> LN.  
Alachua, FL 32615  
Legal review completed 5/16/16



**SUPPLEMENTAL DECLARATION  
AMENDMENT 1 TO THE FIRST AMENDED DECLARATION OF COVENANTS AND  
RESTRICTIONS FOR HERITAGE OAKS AND ITS BYLAWS**

THIS AMENDMENT TO THIS FIRST AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS FOR HERITAGE OAKS (hereinafter referred to as "Amendment 1") is made on the 25<sup>th</sup> day of October, 2016, by the Heritage Oaks Property Owners Association, Inc. (hereinafter referred to as the "Association").

WITNESSETH:

WHEREAS, Association filed the " FIRST AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS" (hereinafter the "Declaration") on March 18, 2014, which Declaration is recorded in Official Records Book 4264, Page 168 of the Public Records of Alachua County, Florida; and

WHEREAS such Declaration in Article 3, Section 3.2 provided that Association by amendment may submit or annex additional property of the "HERITAGE OAKS" Development as property subject to such declaration, and also provides for amendment to such Declaration; and

WHEREAS Duration Builders, Inc. (hereinafter "Developer") has acquired all real property in the subdivision known as Heritage Oaks, Phase II (Parcel No. 03053-001-000) as recorded in Official Records Book 4231, Page 1068 of the Public Records of Alachua County, Florida; and

WHEREAS Developer has submitted a Planned Development (PD) in the City of Alachua, Florida (hereinafter "City") known as Heritage Oaks Planned Development-Residential (PD-R); and

WHEREAS Developer wishes to improve that portion of the PD-R known as Heritage Oaks Phase II (hereinafter "Phase II"); and

WHEREAS City has approved a Master Plan for development of Phase II in City Ordinance 15-05; and

WHEREAS Section 7.7.2 of the City Code of Ordinances requires that Developer shall have a Declaration of Covenants and Restrictions and establish a home or property owners' association prior to selling homes or lots in Phase II; and

WHEREAS Section 7.7.2 requires certain notifications regarding responsibility for liability insurance, local taxes, and maintenance; and

WHEREAS at its Annual Meeting on February 21, 2016, the Membership of Association agreed in principle to annex Phase II and accept the common areas, effective before any lots in Phase II are sold; and

WHEREAS by letter to the Association dated October 17, 2016, Developer has requested that Phase II be annexed into the Heritage Oaks Property Owners' Association and that Developer wishes to transfer all common area/open space in Phase II (identified as "C-2" in Ordinance 15-05) to Association upon inspection and acceptance by the City; and

WHEREAS the Association desires to make other miscellaneous changes to the Declaration; and

WHEREAS, the Declaration is hereby amended by the affirmative vote or written consent of the Members having not less than two-thirds (2/3) of the votes of the Membership;

NOW, THEREFORE, Association hereby declares that such Declaration be amended to submit "HERITAGE OAKS PHASE II" according to the plat thereof recorded in Plat Book 31, Page 58 (2 pages) of the Public Records of Alachua County, Florida, on June 14, 2016, as additional property the subject of such Declaration with all provisions applicable to "HERITAGE OAKS PHASE I" as set forth in said Declaration to be applicable to the property submitted by this Amendment, to become effective before any lots in Phase II are sold.

AND, THEREFORE, Association hereby declares that the said Declaration is amended to reflect the following changes made to the articles and sections indicated:

Article 1, Section 1.10, add at the end: "Under no circumstances shall the City provide liability insurance for any common areas or recreational facilities."

Article 2, Section 2.10, delete the phrase, "In order to maintain a harmonious appearance," and capitalize the "n" of "no."

Article 2, Section 2.28, at the end of the first sentence replace "City Ordinance 05-12" with "the then current City Ordinances".

Article 2, Section 2.32, add at the end: "As per Section 3, #6, Ordinance 15-05, all Category I and II and exotic plant species shall be removed from the site and properly disposed of at the time of construction of the development (prior to the City accepting public infrastructure). Regular site monitoring shall be required to ensure no Category I and/or Category II exotic plant species establish/re-establish on site."

Article 7, Section 7.1, Add after the first sentence, "The ARB shall consist of a minimum of five (5) and a maximum of seven (7) members, but there should be an odd number if possible." Add at the end of the section, "No member shall sit on both the ARB and the Board of Directors unless it is necessary to reach the minimum membership requirement of one or both bodies."

Article 7, Section 7.2, in the last sentence, replace the parenthetical phrase with, "per the then current City Ordinances".

Article 7, Section 7.11, Correct the typo ("In" to "in") in the first line. Replace the entire second sentence with the following: "Any variance granted must, before becoming effective, be approved by a simple majority of the ARB. If the variance is rejected by the ARB, the Owner has the right to appeal to the Board of Directors, which may make a determination by a simple majority vote. If again rejected, the Owner may appeal to the Membership of the Association, which must have a two-thirds (2/3) vote to have the variance accepted. (Note that if a minority of at least two of five, or three of seven, members of the ARB disagree with the granting of a

variance, these members shall have the same rights of appeal to the Board of Directors, which will require unanimous approval of the appeal.) “

Article 10, Section 10.1, replace the phrase, “the Members having not less than two-thirds (2/3) of the votes” with “a majority”.

Article 12, Section 12.8 (added), this new section reads as follows:

**Section 12.8 Subordination to State Statutes and Local Ordinances:** In the event that any provision of these First Amended Covenants and Restrictions are in conflict with State Statues, including, but not limited to, Title XL, REAL AND PERSONAL PROPERTY, Chapter 720 covering HOMEOWNERS' ASSOCIATIONS, or local ordinances, or any successor thereto, the provision(s) of the State Statues or local ordinance shall prevail.

AND, FURTHER THEREFORE, Association hereby declares that the Bylaws of the Association are hereby amended to reflect the following changes to the sections shown on Exhibit "B" to said Declaration titled "First Amended By-Laws of Heritage Oaks Property Owners' Association, Inc.:"

Article 1, replace “13709 Progress Blvd., Box 35” with “the address of the Registered Agent of the Association”.

Article 3, Section 3.2, replace option (c) entirely with the following: “(c) upon written request of five (5) or more Members who are entitled to vote in the Association.”

Article 3, Section 3.5, on the fourth line, delete the words “two days”.

Article 5, Section 5.2, replace the first sentence to read, “Election to the Board of Directors shall be by a show of hands, written ballot, or by acclamation if there are no positions contested at an annual or special meeting of the membership.”

Article 7, Section 7.1.4, replace the entire clause with the following: “May declare a member of the Board of Director’s position to be vacant in the event such member is absent for two consecutive regular meetings of the Board of Directors.”

Article 8, Section 8.8.1, in the third line, delete “checks and”.

Article 8, Section 8.8.2, add at the end of the clause the following: “The Secretary may, however, delegate to a designated agent the responsibility to hold the corporate seal for use on documents submitted to official agencies on behalf to the Association.”

Article 8, Section 8.8.3, in the fifth and sixth line, delete the phrase, “cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year;” and add at the end of the clause the following: “The Treasurer may, however, delegate to a designated agent the responsibility to disburse funds, keep books of account, and assist in preparing the annual budget as directed by resolution of the Board of Directors, with approval of the Treasurer. The Board of Directors may, from time to time, direct the Treasurer to order an audit of the Association books to be made by a public accountant.

Article 12, Section 12.1, in the second line, delete the words “three fourths”.

(Approved by 94% of the Association Members, 7/1/2016)

IN WITNESS WHEREOF, the Association has executed this instrument the day and year first above written.

Signed, sealed and delivered  
in our presence as witnesses:

Heritage Oaks Property Owners'  
Association, Inc., a Florida Corporation

CE Wallace

Thomas McKercher

Witness: Charles E. Wallace

By: Thomas McKercher  
Its President

Sandra Burgess

Witness: Sandra Burgess

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of October,  
2016 by Thomas McKercher as President, on behalf of Heritage Oaks Property Owners'  
Association, Inc., a Florida Corporation, who is personally known to me.

Sandra V. Burgess  
Notary Public

My commission expires: 8/7/18

