

BYLAWS OF
HERITAGE COVE OWNERS' ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

The name of the corporation is HERITAGE COVE OWNERS' ASSOCIATION, INC. (hereinafter referred to as the "Association"). The principal office of the corporation shall be at 218 Jernigan Lane, Yorktown, Virginia 23692, but meetings of Members and the Board of Directors may be held at such place within the Commonwealth of Virginia as may from time to time be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

Section 1. "Association" shall mean and refer to Heritage Cove Owners' Association, Inc., a Virginia non-stock corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to all of the land within the Subdivision as on the plat of Heritage Cove Subdivision, and all other property which may be annexed pursuant to the Annexation provisions set forth hereinafter.

Section 4. "Common Area" shall mean the area identified as open space and conservation areas of the Subdivision Plat, together with such additional areas of Common Area as may be annexed.

Section 5. "Lot" shall mean and refer to the ninety-four (94) numbered lots intended for the purpose of constructing residential homes thereon, as shown in the Subdivision as lots 1 through 94; "Lot" as used herein is intended to refer to residential lots and not to any Common Area.

Section 6. "Declarant" shall mean and refer collectively to Lambs Creek, Inc. and Heritage Cove, Inc., both Virginia corporations, their successors and assigns, if such successors or assigns should acquire more than one (1) underdeveloped Lot from the Declarant for the purpose of development.

Section 7. "Mortgage" as used herein shall mean a mortgage or deed of trust, said terms having the same meaning and may be used interchangeably.

Section 8. "Board of Directors" shall mean and refer to Jeffrey L. Weeks.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to the covenants of record dated January 12, 1996, known as "Declaration of Covenants, Conditions and Restrictions of Heritage Cove Subdivision," recorded in the Clerk's Office of the Circuit Court of the County of York, Virginia, in Deed Book 881, page 240, including contract purchasers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

Section 2. Suspension of Membership. During any period in which a Member shall be in default in payment of an annual or special assessment levied by the Association, the voting rights and right to use the recreational facilities, if any, of such Member may be suspended by the Board of Directors until such assessment has been paid. Such rights of any Member may also be suspended, after notice and hearing, for a period not to exceed thirty (30) days for violation of any rules and regulations established by the Board of Directors governing the use of the Common Area and facilities.

Section 3. Voting membership. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners of Lots with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B Member shall be the Declarant, who shall be entitled to two (2) votes for each Lot owned. Such entitlement to two (2) votes shall be in effect at any time hereafter when the total votes outstanding in the Class A Membership is less than the total votes outstanding in the Class B Membership. For so long as the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership, then the Class B Membership shall be entitled to only one (1) vote for each Lot owned; provided, however, that in any event on December 1, 1998, the Class B Membership shall cease and be converted to Class A Membership and thereafter the Class B Member and the

Class A Members shall be entitled to one (1) vote for each Lot ownership thereafter. All such calculations shall be on a cumulative basis in the event of Annexation as provided herein.

ARTICLE IV
PROPERTY RIGHTS; RIGHTS OF ENJOYMENT

Each Member shall be entitled to the use and enjoyment of the Common Area and facilities as provided in the Declaration. Any Member may delegate his right of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the property. Such Member shall notify the Secretary in writing of the name of any such delegee. The rights and privileges of such delegees are subject to suspension to the same extent as those of the Member.

ARTICLE V
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. Number. The affairs of the Association shall be managed by a Board of Directors of from one (1) to three (3) persons, who need not be Members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association, but may not be enlarged to more than five (5) Directors. The name and address of the person who is to initially act in the capacity of Director until the election of his successor(s) is:

Jeffrey L. Weeks
218 Jernigan Lane
Yorktown, Virginia 23692

Section 2. Election. At the first annual meeting, the Members shall elect one (1) class of directors, consisting of one (1) Director, for a term of one (1) year; one (1) class of directors, consisting of one (1) Director, for a term of two (2) years; and one (1) class of directors,

consisting of three (3) Directors, for a term of three (3) years. Each subsequent regular election of a Director will elect him for a term of three (3) years.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining members of the Board of Directors and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any Director, after not less than three (3) days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nomination Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Member or his proxy may cast, with respect to each vacancy, as many votes as he is entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common facilities and the personal conduct of the Members and their guests thereon, and to penalties for the infraction thereof;
- (b) exercise for the Association all powers, duties and authority vested in or to this Association and not reserved to the Membership by other provisions of these the Articles of Incorporation or the Declaration;
- (c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (d) employ a manager, independent contractor or such other employees as they deem necessary and to prescribe their duties and compensation.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members of the annual meeting of the Members or at any special meeting, when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

(c) as more fully provided herein and in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, ensuring that an adequate reserve fund for replacement of the Association property is established and funded by this assessment as hereinafter provided in Article XII; and

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(e) procure and maintain adequate liability and hazard insurance on the property owned by the Association, if deemed necessary by the Directors. Such insurance shall include fire and extended coverage on insurable Association property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs). Hazard insurance proceeds for loss to any Association property shall be used only for the repair, replacement or reconstruction of such improvements.

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area, except as otherwise stated in the Declaration, to be maintained; and

(h) charge for private use of amenities such as the clubhouse, pool, etc. outside of posted hours.

ARTICLE IX **COMMITTEES**

Section 1. The Board of Directors may appoint other committees as deemed appropriate in carrying out its purposes, such as:

(a) a Recreation Committee, which shall advise the Board of Directors on all matters pertaining to the recreational programs and activities of the Association and shall perform such other functions as the Board, in its discretion, determines;

(b) a Maintenance Committee, which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Properties and shall perform such other functions as the Board, in its discretion, determines;

(c) a Publicity Committee, which shall inform the Members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association; and

(d) an Audit Committee, which shall supervise the annual audit of the Association's books and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular meeting, as provided in Article XI, Section 8(d). The Treasurer shall be an & *officio* member of the Committee.

Section 2. It shall be the duty of each Committee to receive complaints from Members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such

other Committee, Director or officer of the Association as is further concerned with the matter presented.

ARTICLE X

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of the incorporation of the Association 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 the hour of 7:00 p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors or upon written request of the Members who are entitled to vote one-fourth (14) of all the votes of the entire Membership or who are entitled to vote one-fourth (1/4) of the votes of the Class A Membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of Membership shall

constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE XI

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The Officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors; a Secretary and a Treasurer; and such other officers as the Board may from time to time create by resolution.

Section 2. Election of Officers. The election of Officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The Officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign or shall be removed or shall otherwise be disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time, giving notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled in the manner prescribed for regular election. The Officer selected to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the Officers are as follows:

(a) President: The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall cosign all checks and promissory notes.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act and shall discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings to

the Board and to the Members; shall keep appropriate current records showing the Members of the Association together with their addresses; and shall provide written notification to the first mortgagee of a unit of any default by the mortgagor Member of such unit in the performance of such mortgagor's obligations under the Declaration of Covenants, Conditions and Restrictions governing the Properties, the Articles of Incorporation of the Association or these By-Laws, which is not cured within thirty (30) days, upon receipt of a request for such information by such first mortgagees.

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of accounts; shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting and deliver a copy of each to the Members.

ARTICLE XII

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of General Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association as general assessments the following:

- (a) general annual assessments or charges; and
- (b) general special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The general annual and general special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made in accordance with the Virginia Property Owner's Association Act, being Sections 55-508, et seq., of the Code of Virginia, 1950, as amended (the "Act"). Each such assessment, together with interests, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of General Assessments. The general assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Area and to provide for such adequate reserve funds for the repair and replacement of improvements in the Common Area as the Board of Directors may deem appropriate from time to time.

Section 3. Maximum General Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum general annual assessment shall not exceed ONE HUNDRED AND 00/100 DOLLARS (\$100.00) per year per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum general annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum general annual assessment may be

increased above twenty percent (20%) by a majority vote of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the general annual assessment at an amount not in excess of the maximum.

Section 4. Working Capital Fund. The Declarant, as Agent of the Association, may establish for the Association a Working Capital Fund by collecting from each Owner up to six (6) months of the annual General Assessment for each Lot at the time the Lot is purchased to serve as a reserve fund for capital expenditures or replacements. The Declarant shall not use the Working Capital Fund to pay any construction costs or expenses and shall maintain this as a segregated fund separate and apart from other funds of the Association.

Section 5. General Special Assessments for Capital Improvements. In addition to the general annual assessments authorized above, the Association may levy, in any assessment year, a general special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than five (5) days or more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast thirty percent (30%) of all the votes of membership shall constitute

a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7 Uniform Rate of Assessment. Both general annual and general special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 8. Date of Commencement of General Annual Assessments; Due Dates. The general annual assessments provided for herein shall commence as to any Lot after the conveyance of the Lot by the Declarant to an Owner not a Declarant as herein defined. The Declarant shall not be required to pay the general annual assessment on Lots on which improvements are not completed, provided the Declarant shall be responsible for the maintenance and upkeep of such unimproved Lots. The first general annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the general annual assessment against each Lot at least thirty (30) days in advance of each general annual assessment period. Written notice of the general annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of General Assessments: Remedies of the Association.

Any general assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate permitted by the Act. The Association may record a memorandum of lien, bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property pursuant to the Act. No Owner may waive or otherwise escape liability for the general assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Such subordination shall not release the Owner from personal liability for such assessment.

Section 11 Exempt Property. The following property subject to the Declaration shall be exempt from the assessments crated therein: (a) all properties dedicated to and accepted by a local public authority; (1))the Common Area and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the Commonwealth of Virginia. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE XIII
BOOKS AND RECORDS

The books, records and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, Articles of Incorporation and By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable cost.

ARTICLE XIV
CORPORATE SEAL

The Association may have a seal in circular form having within its circumference the words "HERITAGE COVE OWNERS' ASSOCIATION, INC." and the word "SEAL."

ARTICLE XV
AMENDMENTS

Section 1. These By-Laws may be amended at a regular or special meeting of the Members by a vote of a majority of a quorum of Members present in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control and, in the case of any conflict between the Declaration and these By-laws, the Declaration shall control.