

Exhibit "B" to
Ordinance No. 16-2007
DEVELOPMENT AGREEMENT
Newmark Estates RPUD located at
2000 Newmark Drive

THIS AGREEMENT entered into and made as of the 27TH day of ~~NOVEMBER~~ 2007, by and between the **CITY OF DELTONA, FLORIDA**, (hereinafter referred to as the "**City**"), and **HERITAGE GREEN, LLC**, a Florida limited liability company, whose address for the purposes hereof is 200 South Orange Avenue, Suite 2075, Orlando, Florida 32801 ("**Owner/Developer**") and/or its successors or assigns.

W I T N E S S E T H

WHEREAS, Owner/Developer warrants that it holds legal title to the property of the real property located in Deltona in the vicinity of Courtland Boulevard and Newmark Drive, consisting of approximately 45+/-acres and more particularly described on **Exhibit "A"**, attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, Owner/Developer desires to develop and market the Property as a town home residential development (the "**Proposed Development**");

WHEREAS, Owner/Developer desires to develop the Property, utilizing to the greatest extent feasible, the natural amenities of the site and to design the residential development to be located on the Property so as to encourage the provision and preservation of open space and existing natural features, which will be managed by a Homeowner's Association; and

WHEREAS, Owner/Developer is willing to limit the maximum density permitted on the Property in order to provide a transition between the existing single family development located to the west of the property along Courtland Boulevard.

WHEREAS, Owner/Developer desires to facilitate the orderly development of the subject property, in compliance with the laws and regulations of Deltona and of other governmental authorities, and desires to ensure that its development is compatible with other properties in the area and planned traffic patterns; and

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation.** The recitals herein contained are true and correct and are incorporated herein by reference.

2. **Ownership.** The Owner/Developer represents that it is the present owner of the following described property (hereinafter referred to as the "Subject Property"):

Attached hereto as Exhibit "A"

3. **Title Opinion/Certification.** The Owner/Developer will provide to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in Florida, or a certification by an abstractor or title company authorized to do business in Florida, showing marketable title to the Subject Property to be in the name of the Owner/Developer and showing all liens, mortgages, and other encumbrances not satisfied or released of record.

4. **Subordination/Joinder.** Unless otherwise agreed to by the City, all liens, mortgages, and other encumbrances not satisfied or released of record, must be subordinated to the terms of this Agreement or the leinholder must join in this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain the said subordination or joinder, in form and substance acceptable to the City Attorney, prior to the City's execution of the Agreement.

5. **Mass Transportation Programs and Improvements.** The City and the

Owner/Developer acknowledge that the City has adopted policies in its Comprehensive Land Use Plan which requires mass transportation programs and improvements. The City intends to fund capital and operating expenditures of the mass transit system through assessments on all properties except single family residential property in a manner similar to a special taxing district. Such assessments may include grants of rights of way or easements for multi modal, or transit, or pedestrian improvement. The Owner/Developer hereby agrees to participate in such a program, if duly enacted by the City; provided; however, the Owner/Developer reserves the right to appropriately evaluate any such program proposed by the City, and if so desired by the Owner/Developer, to politically support or oppose such a program prior to its enactment. The Owner/Developer and the City acknowledge and agree that the execution of this Agreement does not exempt the Owner/Developer from any such assessments nor does it provide vested rights against such future assessments.

6. Development Conditions

A. Density and Buffers

1. Owner/Developer agrees to limit the number of lots to 162 for a gross density of 3.6 dwelling units per acre.
2. Owner/Developer will design the Proposed Development so that a minimum 30-foot buffer exists along the western boundary of the Property. The buffer shall consist of a 20' naturally vegetated buffer that shall be comprised of the dense existing vegetation which will provide natural, opaque buffering between land uses and conserve the native flora. If any area is found to have nominal vegetation density it will be augmented as needed with landscaping; a 10' landscaped buffer compliant with Section 110-808 of the City of Deltona Land Development Regulations; and, in addition, a minimum 10' rear yard shall be provided up to the building footprint.
3. With respect to the State jurisdictional wetland line, a minimum twenty-five foot natural undisturbed upland buffer shall be provided. The wetland and twenty five feet wetland buffer shall be placed in a conservation easement and dedicated to

the St Johns River Water Management District to be protected in perpetuity. The only portions of the wetland and/or twenty five feet wetland buffer that shall be permitted to be modified are the minimum portions of property necessary to create the access connection to Newmark Drive in the most northern area of the property. No residential dwelling units shall encroach into the wetland and/or twenty five feet wetland buffer area.

4. Those areas of the wetland and/or wetland buffer that may be impacted as described above shall be mitigated in accordance with Chapter 98 by paying \$2.25 per square feet of impact into the Environmental Improvements Trust Fund before a Development Order is issued.

B. Townhome Specifications

1. Road Fronted Townhomes on the Western Boundary

- a. Maximum Building Height: 35 feet
- b. Maximum Building Envelope Width: 164 feet
- c. Maximum Number of Units in any building: 8
- d. Front Yard: minimum 20 feet
- e. Rear Yard: minimum 10 feet
- f. Side Yard: 0 feet

2. All Other Townhomes

- a. Maximum Building Height: 35 feet
- b. Maximum Building Envelope Width: 164 feet
- c. Maximum Number of Units in any Building: 8
- d. Front Yard: 5 feet
- e. Rear Yard: 5 feet
- f. Side Yard: 0 feet

C. Townhome Design Constraints

1. There shall be a minimum of one (1) and a maximum of two (2) garages. Community parking will be provided for the recreation area and other common areas throughout the Proposed Development. No parking shall be permitted along the sides between the building and the alley.
2. To provide aesthetic quality to the Proposed Development, architectural design features will vary from building to building. This variation of design includes but is not limited to painting, window treatments, roofline features such as dormiers, and other architectural enhancements which may include porches, patios, and balconies. These design features, when coupled with the curvilinear road, will promote an aesthetically pleasing town home

community. The architectural design shall comply with Deltona's architectural design standards.

3. Quality design and building materials are essential for a well-planned community. The architectural elevations shall be approved by the Director of Planning and Development Services before a Development Order shall be issued.

D. Other Proposed Development Design Constraints

1. Sidewalks: 4' sidewalks shall be provided on both sides of the 50' private access road.
2. Emergency Vehicle Access: Two ingress/egress points allow for primary emergency access to the site. Also provided shall be a loop road around the amenities in the central portion of the site and an emergency vehicle/loading vehicle turnaround bay on the southern end of the site.
3. Amenities: Theses shall include a pool and a minimum of one and a maximum of two open air pavilions, and shall be centrally located.
4. Nature Trails and Connectivity: Where feasible, natural trails will be provided between buildings to promote connectivity between the sidewalks and amenities. The trails will consist of such natural material as mulch and will be subject to approval by the Fire Inspector during final engineering.
5. Building Separation: It shall be an average of 18 feet throughout the Proposed Development and a minimum of 15 ft. Therefore, it will provide substantial open space and preserve important natural areas.
6. Stormwater Management: Stormwater will be handled on site with retention areas and with conveyance via the roadways and/or piping and/or other engineered solutions within appropriate easements. Drainage structures and facilities will be designed and constructed in compliance with the City of Deltona Land Development Code in effect at the time of permitting, subject to the permitting requirements of the St. Johns River Water Management District.
7. Project Signs and Gates: Two (2) Proposed Development identification signs and gates shall be constructed at each project entrance: being Newmark Drive and Tara Street. The signs shall be compliant with the Deltona Land Development Regulation Chapter 102.

8. Utility Providers: The Owner/Developer shall provide to Deltona such easements and other legal documentation, in a form mutually acceptable to Deltona and the Owner/Developer, as Deltona may deem reasonably necessary or appropriate for the installation and maintenance of the utilities and other services, including but not limited to, sewer, potable water, electric, cable, fire protection and telecommunications. Central water and sewer utilities shall be provided by Deltona utilities. All utility lines within the Proposed Development shall be underground, excluding ancillary utility equipment such as lift station telemetry units. The owner/developer shall provide City water and sewer at their sole expense. The Utility Agreement shall be executed and all utility fees paid before any Development Order shall be issued.
9. Open Space Requirements: Owner/Developer will design the units, to the greatest extent feasible, to provide open space connections throughout the development that will augment, enhance, and connect with the conservation area.
10. Fire sprinklers shall be installed in all townhomes.
11. Private road access easement width shall be fifty (50) feet and shall be maintained by the Homeowner's Association at their expense.
12. Private alley access easement width shall be twenty (20) feet and shall be maintained by the Homeowner's Association at their expense.
13. All common areas, including landscaping, irrigation, roadways, and stormwater facilities at a minimum, within the Proposed Development shall be maintained by a Homeowner's Association.
14. Project landscaping shall comply with Section 110-808 of the City of Deltona Land Development Regulations.
15. Detached accessory uses shall not be permitted.
16. Townhomes within the Proposed Development shall be fee simple ownership and lots shall be platted.
17. Illumination: Any proposed illumination of the RPUD roadways or parking area shall comply with Ordinance No. 10-2004, Exterior Lighting ordinance which provides for a maximum lumen and light standard design height.
18. The Owner/Developer shall comply with the mitigation agreement with the

Volusia County School Board as it has been approved by the school board.

19. The waste and recycling area for the Proposed Development shall be located at the northern portion of the site.
20. Proportionate Fair Share of Road Impacts: The owner/developer shall pay their fair share portion of the traffic impacts generated by this project within a 3.08 mile radius, and shall comply with any concurrency management requirements of the City of Deltona, Volusia County, and the Department of Community Affairs, before a Development Order shall be issued. The proposed development shall not adversely impact a deficient road segment or under capacity intersections, as identified in a Traffic Impact Analysis, without mitigation or construction of roadway/intersections improvements. Adversely, shall be defined as any development impact that increases the trips on a deficient road segment or intersection.

Based on the Traffic Impact Analysis dated September 2007, the owner/developer recognizes that mitigation may be necessary and shall conduct a Second Tier Traffic Impact Analysis based on the actual number of units proposed at the time of the Final Development Order approval request. If mitigation is required, based on accurate quantitative data, all mitigation options shall be negotiated between staff and the owner/developer. The mitigation agreement shall be approved by the City Commission by amending this Development Agreement at a public hearing. If mitigation is required, a Final Development Order shall not be issued until mitigation payment is agreed to by the parties and paid as indicated in the mitigation agreement.

7. Obligations. Should the Owner/Developer fail to undertake and complete its obligations as described in this Agreement, to the City's specifications, then the City shall give the Owner/Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner/Developer fails to complete the obligations within the ninety (90) day period then the City, without further notice to the Owner/Developer or its successors in interest, may, without prejudice to any other rights or remedies it may have, perform any and all of the obligations described in this Agreement. Further, the City is hereby authorized to assess the actual

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and verified cost of completing the obligations required under this Agreement against the Subject Property. The lien of such assessments shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments. Notice to the Owner/Developer and its successors in interest shall be deemed to have been given upon the mailing of notice to the above-mentioned address.

8. Enforcement. In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer shall be responsible for all costs and expenses, including attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement which costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should this Agreement require the payment of any monies to the City the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Subject Property and the Owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compound annually or at the maximum rate allowed by law.

9. Indemnification. The Owner/Developer shall indemnify and hold harmless the City from and against all claims, demands, disputes, damages, costs, expenses (to include attorneys' fees whether or not litigation is necessary and if necessary, both at trial and on appeal), incurred by the City as a result, directly or indirectly, of the use or development of the property described in Paragraph 2 above, by the City or by third parties, except those claims or liabilities caused by or arising from the gross negligence of the City, or its employees or agents. It is specifically understood

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that the City is not guaranteeing the appropriateness, efficiency, quality or legality of the use or development of the Subject Property, including, but not limited to, drainage or sewer plans, fire safety, or quality of construction, whether or not inspected, approved, or permitted by the City.

10. Site Plan Approval. The Master Development Plan approval for the Subject Property, given at the regular meeting of the City Commission on October 1, 2007, is specifically incorporated into this Agreement by reference for the purpose of clarifying boundaries, locations, areas, and improvements described in this Agreement, and all development shall be in accordance with and subject to the terms of the said Master Development Plan approval, attached as **Exhibit "B"**.

11. Compliance. The Owner/Developer agrees that it, and its successors and assigns, will abide by the provisions of this Agreement, the City's Comprehensive Plan, and the City's Land Development Code, including but not limited to, the site plan regulations of the City as amended from time to time, which are incorporated herein by reference and such subsequent amendments hereto as may be applicable. Further, all required improvements, including landscaping, shall be continuously maintained by the Owner/Developer, or its successors and assigns, in accordance with the City's Land Development Code. The City may, without prejudice to any other legal or equitable right or remedy it may have, withhold permits, certificates of occupancy or approvals, and may terminate sewer and/or water services to the subject property should the Owner/Developer fail to comply with the terms of this Agreement.

12. Utility Easements. The Owner/Developer shall provide to the City such easements and other legal documentation, in form mutually acceptable to the City Attorney and the Owner/Developer, as the City may deem reasonably necessary or appropriate for the installation and

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maintenance of the utility and other services, including but not limited to, sewer, potable water, and reclaimed water services, electric, cable, fire protection and telecommunications.

13. Concurrency and Vested Rights. The Owner/Developer acknowledges and agrees that prior to the issuance of any building permit(s) for the Subject Property, the Owner/Developer must have received and be in the possession of a valid unexpired Certificate of Capacity. The Certificate of Capacity verifies the reservation of infrastructure capacity sufficient to permit development pursuant to the approved site plan for the Subject Property without causing a reduction in the levels of service adopted in the City's comprehensive plan. The Certificate of Capacity shall be effective for a term as defined in the Land Development Code. Neither this Developer's Agreement nor the site plan approved shall create or result in a vested right or rights to develop the Subject Property without a current and valid Certificate of Capacity.

14. Notices. Where notice is herein required to be given, it shall be by certified mail return receipt requested, addressee only, hand delivery or courier. Said notice shall be sent to the following, as applicable:

OWNER/DEVELOPER'S REPRESENTATIVES:

Heritage Green, LLC.
200 South Orange Avenue, Suite 2075
Orlando, Florida 32801
Attention: Mr. Tom Wheeler
Telephone: (407)-377-0555
Telecopy: (407) [REDACTED]

LENDERS:

CITY'S REPRESENTATIVES:

Mr. Greg Stubbs
Planning & Development
Services Director
2345 Providence Blvd.
Deltona, FL 32725
Telephone: (386) 878-8100
Telecopy: (386) 789-7234

Should any party identified above change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein. It shall be the Owner/Developer's obligation to identify its lender(s) to all parties in a fashion as is required for notices herein.

15. Captions. The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.

16. Binding Effect. This Agreement shall run with the land, shall be binding upon and inure to the benefit of the Owner/Developer and its assigns and successors in interest, and the City and its assigns and successors in interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Volusia County, Florida, and shall reimburse the City for the preparation of this Agreement in such amount to be determined by the City. This Agreement does not, and is not intended to, prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

17. Severability. If any part of this Development Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Developer's Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected. To that end, this Developer's

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Agreement is declared severable.

Remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

OWNER/DEVELOPER

Thomas M. Wheeler
Signature of Witness # 1

Thomas M. Wheeler
Print or type name

Denise Reck
Signature of Witness #2

Denise Reck
Print or Type Name

BY:

A. Z. Kane
Signature

A. Z. KANE
Print or type name

AS:

V.P. DEVELOPMENT H.G.
Print or type

ATTEST:

[Signature]
Signature

D. WINTERBURN
Print or Type Name

AS:

VICE PRESIDENT.

Mailing Address: 200 South Orange Avenue
Suite 2075
Orlando, FL 32801

STATE OF FLORIDA

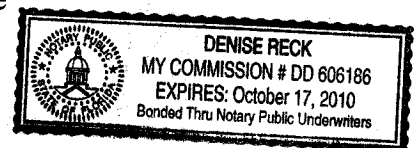
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 29th day of October, 2007, by A. Z. Kane, and Damian Winterburn, respectively, of Heritage Green, LLC, who is/are personally known to me or who has/have produced _____ as identification and who did not (did) take an oath.

(Notary Stamp)

Denise Reck
Signature

Denise Reck
Print or type name



ACCEPTED FOR THE CITY OF DELTONA

By:



Greg Stubbs, Director Planning and Development Services

Date:

11/27/07

Mailing Address:

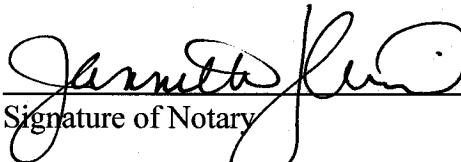
City of Deltona
2345 Providence Boulevard
Deltona, Florida, 32725

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 27th day of NOVEMBER 2007, by Greg Stubbs, AICP, Director Planning and Development Services of the City of Deltona, Florida, who is personally known to me and acknowledges executing the same freely and voluntarily under authority vested in him.



(Notary Stamp)



Signature of Notary

JANNETTE HEVIA

Print or type name

This instrument approved by:

L. Roland Blossom, City Attorney
as to form and legality for use and
reliance by the City of Deltona.

This instrument prepared by:

City of Deltona
Department of Development Services
2345 Providence Boulevard
Deltona, Florida 32725

EXHIBIT "A"

The Preserve

ALTERNATE KEY: 25820723

DESCRIPTION:

THE EAST 1/2 OF THE EAST 1/2 OF SECTION 24, TOWNSHIP 18 SOUTH, RANGE 31 EAST, LESS AND EXCEPT THAT PORTION PLATTED AS DELTONA LAKES UNITS THIRTY-SIX, THIRTY-EIGHT AND FORTY-SEVEN, ACCORDING TO THE PLATS THEREOF, RECORDED IN PLAT BOOK 27, AT PAGES 164 THROUGH 170, PLAT BOOK 27, AT PAGES 202 THROUGH 208, AND PLAT BOOK 28, AT PAGES 10 THROUGH 12, RESPECTIVELY, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

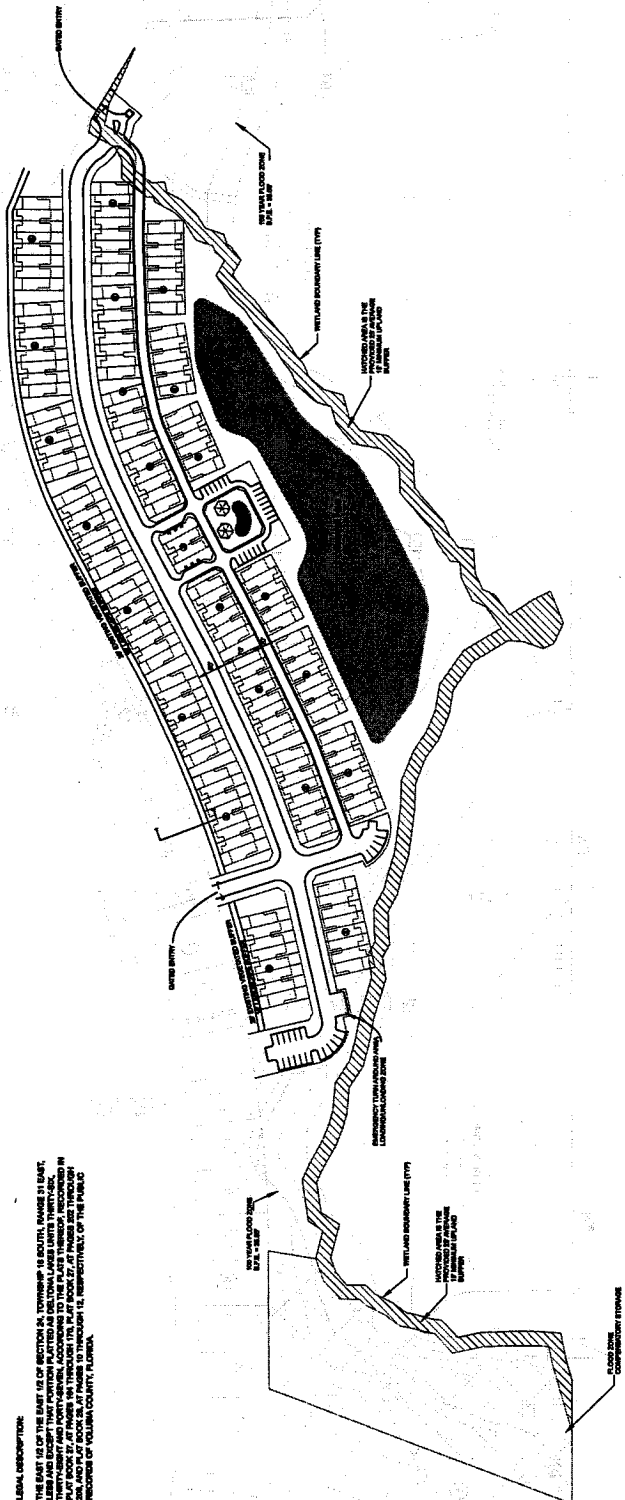
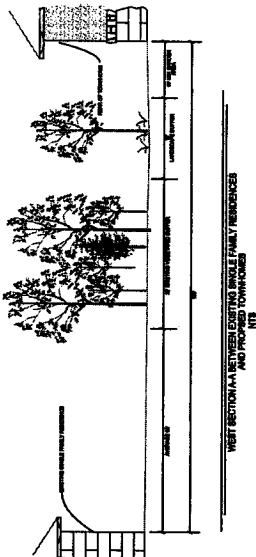
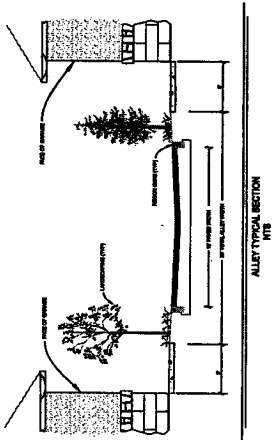
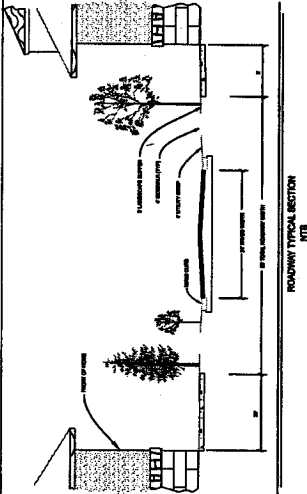
Exhibit B-

Instrument# 2007-276865 # 16
 Book: 6167
 Page: 3390
 Diane M. Matousek
 Volusia County, Clerk of Court

DEVELOPER: HERITAGE GREEN
 225 SOUTH HAVEN RD
 SUITE 100
 PALM BEACH, FL 33480
 (561) 840-1000
 FAX: (561) 840-1001

SURVEYOR: LARRY E. BIRD, JR., P.E.
 1000 WEST 10TH AVENUE
 SUITE 100
 PALM BEACH, FL 33480
 (561) 840-1000
 FAX: (561) 840-1001

OWNER: CANTY JENNIFER, P.E.
 1000 WEST 10TH AVENUE
 SUITE 100
 PALM BEACH, FL 33480
 (561) 840-1000
 FAX: (561) 840-1001



PROPOSED DEVELOPMENT DESCRIPTION:
 ALL TOWNHOMES SHALL BE 1.5 STORIES IN HEIGHT AND CONTAINING OF THE DEVELOPER'S
 MANAGEMENT PRACTICES INCLUDING, BUT NOT LIMITED TO, SUSTAINABLE PRACTICES, ENVIRONMENTAL
 DESIGN STRATEGIES.

LAND:
 TOTAL CONTIGUOUS ACRES: 48.230 AC
 TOTAL IMPAVED ACRES: 35.786 AC
 TOTAL UNPAVED ACRES: 12.444 AC

DEVELOPMENT:
 TOTAL PLANNED LOTS: 112
 TOTAL UNPAVED LOTS: 112

UTILITIES: WATER AND SEWER PROVIDED BY THE CITY OF DELTONA

LEGAL DESCRIPTION:
 THE EAST 1/2 OF THE EAST 1/2 OF SECTION 16, TOWNSHIP 18 SOUTH, RANGE 31 EAST,
 LINES 1 AND 2, EXCEPT THAT PORTION PLATTED AS DELTONA LAKES UNIT 1, TRACT 1, BEING
 1.5 ACRES, MORE OR LESS, BEING THE SAME AS THE TRACT DESCRIBED IN THE
 PLAT BOOK 17, AT PAGES 981 THROUGH 1014, PLAT BOOK 17, AT PAGES 981 THROUGH
 1014, AND OF BOOKS 17, AT PAGES 981 THROUGH 1014, RESPECTIVELY OF THE PUBLIC
 RECORDS OF VOLUSIA COUNTY, FLORIDA.