

This instrument prepared by:
Robert Cuff
ITT Community Development Corporation
1 Corporate Drive
Palm Coast, Florida 32151

DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR
PALM HARBOR HOMEOWNERS ASSOCIATION

THIS DECLARATION is made this 26th day of May, 1994 by ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation, its successor or assigns (the Declarant), and joined in by PALM HARBOR HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit (the Association).

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the Committed Property (as that term is hereinafter defined); and

WHEREAS, the Committed Property is located in Flagler County, Florida, and is legally described on Exhibit "A" attached hereto; and

WHEREAS, Declarant intends to develop the Committed Property under the general name of Palm Harbor or the Palm Harbor Homeowners Association, as described in Article II hereof; and

WHEREAS, Declarant by this Declaration imposes those certain protective covenants, conditions and restrictions set forth herein upon the land legally described on Exhibit "A" attached hereto; and

WHEREAS, Declarant may, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within or without the Committed Property by deed, easement, or otherwise to the Association (which must accept the same), or Declarant may, in its sole discretion, cause additional parties to do so, for the purpose of maintenance, landscaping, drainage, recreation or other purposes that will be for the use and benefit of some or all of its "Members" (as that term is hereinafter defined) and of families, tenants and guests; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities established as aforesaid to create a not-for-profit corporation pursuant to Chapter 617, Florida Statutes, known as the Palm Harbor Homeowners Association, Inc., which Association has joined in this Declaration and to which there has been and will be delegated and assigned certain powers and duties of operation, administration, maintenance and repair of

REC 0512 PAGE 1276

portions of the Committed Property, including the collection and disbursement of the Operating Expenses (as that term is hereinafter defined), all as more particularly set forth herein;

NOW, THEREFORE, Declarant declares that the Committed Property is and shall be owned, used, sold, conveyed, encumbered, demised, and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Declaration, all as hereinafter set forth, which shall run with the Committed Property and be binding on all parties having any right, title or interest in the Committed Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as that term is hereinafter defined) thereof.

ARTICLE I

Definitions

The following words and phrases when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Architectural Review Committee" or "Committee" shall mean and refer to a committee appointed by Declarant pursuant to Article X, Section 3, herein.

(b) "Articles" shall mean and refer to the Articles of Incorporation of Palm Harbor Homeowners Association, Inc., a Florida corporation not for profit, attached hereto as Exhibit "B," as may be amended from time to time.

(c) "Association" shall mean and refer to the Palm Harbor Homeowners Association, Inc., a Florida corporation not for profit, its successors or assigns, which has its principal place of business in Flagler County, Florida. The Association is NOT a condominium association.

(d) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(e) "Bylaws" shall mean and refer to the Bylaws of the Association, attached hereto as Exhibit "C," as may be amended from time to time.

(f) "Committed Property" shall initially mean and refer to the property described in Exhibit "A" attached hereto and made a part hereof, as the same may be added to from time to time by the Declarant by means of Supplemental Declarations.

(g) "Common Area" shall mean and refer to any portion of Committed Property owned or maintained by the Association, and

OFF 0512 PAGE 1277
REC

OFF 0512 PAGE 1278 REC

devoted to the common use and enjoyment of all Owners, together with any improvements thereon. Common Areas may include, without limitation, any commonly owned open space, utilities, private streets, sidewalks, street lights, signage, recreation facilities, and Surface Water or Stormwater Management Systems within or about the Committed Property, all as further described in Article IV hereof.

(h) "County" shall mean and refer to Flagler County, Florida.

(i) "Declarant" shall mean and refer to ITT Community Development Corporation, a Delaware corporation, doing business as ITT Community Homes, its designees, successors and assigns.

(j) "Declaration" shall mean and refer to this Declaration of General Protective Covenants for Palm Harbor Homeowners Association, Inc., as may be amended or supplemented from time to time.

(k) "Dwelling Unit" shall mean and refer to a residential home of whatever style or type as may be constructed in Palm Harbor to be used as an abode for one family and shall also include the platted lot intended for the construction of such a residential home.

(l) "Institutional Mortgagee" shall mean and refer to (a) a lending institution having a first mortgage lien upon a Dwelling Unit including any of the following institutions: (a) Federal or State Savings and Loan or Building and Loan Association, a national or state bank or real estate investment trust, or mortgage banking company doing business in the State of Florida, or life insurance company; or (b) any "Secondary Mortgage Market Institution" including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and such other Secondary Mortgage Market Institution as the Board shall hereafter approve in writing which has acquired a first mortgage upon a Dwelling Unit; or (c) any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Declarant to acquire, or construct improvements upon the Committed Property and who have a mortgage lien on all or a portion of the Committed Property securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Dwelling Unit.

(m) "Member" shall mean and refer to all those Owners who are members of the "Association."

(n) "Neighborhood" shall mean and refer to any portion of the Committed Property designated as a Neighborhood pursuant to this

Declaration or a Supplemental Declaration for purposes of administration by the Association or a Neighborhood Association.

(o) "Neighborhood Association" shall mean and refer to a not for profit corporation established by the Declarant, at Declarant's option, for the administration of a portion of the Committed Property designated as a Neighborhood. The operation of any such Neighborhood Association shall be subordinate to the Association. A Neighborhood Association may be, but is not necessarily, a condominium association.

(p) "Neighborhood Declaration" shall mean and refer to any Supplemental Declaration or additional declarations of protective covenants and restrictions designated as a Neighborhood Declaration in the declaration and imposed upon a portion of the Committed Property designated as a Neighborhood. Any such Neighborhood Declaration shall be subordinate to and construed with reference to this Declaration.

(q) "Neighborhood Committee" shall mean and refer to a body of at least three individuals elected from a Neighborhood to represent the interests of that Neighborhood to the Association. In those Neighborhoods with a Neighborhood Association, the Neighborhood Committee shall be the Board of Directors of the Neighborhood Association. In those Neighborhoods with no Neighborhood Association, the Committee shall be elected by all of the Members in that Neighborhood in the manner provided in this Declaration.

(r) "Neighborhood Operating Expenses" shall mean and refer to a portion of the Operating Expenses applicable only to a particular Neighborhood and assessed only against Dwelling Units within that Neighborhood, as opposed to those Operating Expenses assessed against all Dwelling Units in the Committed Property.

(s) "Operating Expenses" shall mean and refer to the expenses for which Owners are liable to the Association as described in this Declaration and in any other document governing Palm Harbor, and include, but are not limited to, the costs and expenses incurred by the Association in fulfilling its obligations hereunder and in administering, operating, owning, constructing, reconstructing, financing, maintaining, repairing and replacing the Common Areas, other real property, or portions of either and improvements thereon, as well as expenses incurred by the Association in fulfilling its obligations under this Declaration and any other document governing Palm Harbor, which mean and include the costs and expenses described in these documents as such and include regular and special assessments made by the Association in accordance with the terms hereof.

(t) "Owner" shall mean and refer to the record owner (other than Declarant), whether one or more persons, firms or entities, who has acquired fee simple title to any Dwelling Unit.

OFF REC 0512 PAGE 1279

REC 0512 PAGE 1280

(u) "Palm Harbor" shall mean and refer to the residential development being constructed by Declarant and located on the Committed Property.

(v) "Property Line" shall mean and refer to the perimeter boundary line of any Dwelling Unit (as herein defined) within the Committed Property.

(w) "Property Plan" shall mean and refer to the Plat(s) or site plans of the Committed Property attached hereto as Exhibit "D" as may be amended or added to from time to time.

(x) "Rules and Regulations" shall mean and refer to the rules and regulations promulgated by the Board in accordance with the terms of this Declaration.

(y) "Surface Water or Stormwater Management System" shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code. Except as otherwise specifically excepted herein, all Surface Water or Stormwater Management Systems located on the Committed Property shall be part of the Common Areas of Palm Harbor and shall be maintained by the Association as part of the Operating Expenses.

(z) "Supplemental Declaration" shall mean and refer to an instrument executed by Declarant for the purpose of subjecting additional real property to this Declaration, imposing additional conditions or restrictions on a specific Neighborhood or other portion of the Committed Property, or for such other purposes as more fully described herein.

ARTICLE II

Plans for Development and Declarant's Rights and Powers

Section 1. General Plan of Development. Declarant is the owner of Palm Harbor and presently plans to develop Palm Harbor as a multi-parcel planned development. The current plan, stated for information and not as a guarantee, is to develop a series of non-contiguous subdivisions (Neighborhoods) which will contain specific types of Dwelling Units (i.e. detached single family, patio home, townhouse) and Common Areas for the use of each Neighborhood. Declarant has the right, but is not obligated, to build up to one thousand (1000) Dwelling Units within the Committed Property. Therefore, the development may consist of two or more Neighborhoods having a combined total of one thousand (1000)

Dwelling Units, together with the Common Area and improvements thereto as described in this Declaration. Declarant reserves the right to add additional Committed Property in the form of additional Neighborhoods to Palm Harbor, so long as the maximum number of Dwelling Units in Committed Property does not exceed one thousand (1000) Dwelling Units.

Section 2. Committed Property. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED OR CONTAINED IN ANY OTHER DOCUMENT, ONLY THAT PORTION OF PALM HARBOR WHICH IS COMMITTED PROPERTY (AS THAT TERM IS DEFINED IN THIS DECLARATION) SHALL BE SUBJECT TO THE PROVISIONS OF THIS DECLARATION AND ANY OTHER DOCUMENT GOVERNING THE COMMITTED PROPERTY.

Section 3. Additions to Committed Property; Certain Amendments. Declarant shall have the right, and hereby reserves the right, from time to time to bring other property not presently part of Palm Harbor into the Committed Property. Any additional properties brought within the scheme of this Declaration may contain Dwelling Units, Common Areas or both Dwelling Units and Common Areas and shall become part of the Association. The right of Declarant as provided for in the preceding sentence of this Section 3 shall be for a period of twenty (20) years commencing with the recording of this Declaration in the Public Records of Flagler County, Florida.

Declarant, its successors and assigns, shall not be obligated to add to the Committed Property and bring within the scheme of this Declaration any or all of the remaining portions of Palm Harbor. The additions and amendments authorized under this subsection shall only be made by Declarant, shall not require the consent or approval of the Association, Members or any other person or entity, and shall be made by the recording in the Public Records of the County of a Supplemental Declaration with respect to the additional property, which shall extend the scheme of this Declaration to such property or modify the Declaration with respect to such additional properties as hereinafter set forth. Such Supplemental Declaration(s) shall identify Dwelling Units and Common Properties within the properties described therein. Declarant's rights under this Section 3 are paramount to the provisions of Section 7 of Article XII of this Declaration.

Supplemental Declarations may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of that portion of Palm Harbor or the additional properties which are the subject of such Supplemental Declaration as are not inconsistent with the scheme of this Declaration, as determined by Declarant. Further, such Supplemental Declarations may contain provisions relating to such portions of Palm Harbor and/or such additional property, or any portions thereof, dealing with, among other things, the creation of Neighborhood Associations and Neighborhood Assessments, assessments

and the basis thereof, rules and regulations, architectural controls and other provisions consistent with the nature of the development of such properties and pertaining to all or part of such portion and/or such additional properties to the exclusion of other portions of Palm Harbor.

The provisions of this Article II, Section 3, cannot be amended without the written consent of Declarant, and any amendment of this Article II, Section 3 without the written consent of Declarant, shall be deemed null and void.

Section 4. Warranties. Upon conveyance of a Dwelling Unit by Declarant to an Owner, Declarant shall provide such Owner with only those warranties specified in the Owner's Contract for Purchase and Sale. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, EXCEPT FOR THE WARRANTIES DESCRIBED IN THIS SECTION 4, DECLARANT DISCLAIMS ANY OTHER EXPRESS WARRANTIES, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS AS TO THE DWELLING UNIT OR IMPROVED DWELLING UNIT, AND ALL ITEMS OF PERSONAL PROPERTY CONTAINED THEREIN, WHETHER ARISING FROM CUSTOM, USAGE, COURSE OF TRADE, CASE LAW OR OTHERWISE, OR ANY OTHER WARRANTIES WHATSOEVER.

Section 5. Changes in Use or Boundaries. Declarant shall have the right, by an amendment or Supplemental Declaration executed by Declarant alone, without the consent of the Association, any Institutional Mortgagees or the Owners, to take such action as may be required to relocate portions, change the use, or modify the boundaries of any of the Common Areas notwithstanding that such portions of the Common Areas may be Committed Property.

Section 6. Neighborhood Associations. As described in this Article II, Palm Harbor is planned to consist of a series of Neighborhoods, all of which will be Committed Property and subject to the terms of this Declaration. In Declarant's sole discretion, Declarant may also cause to be formed certain Neighborhood Associations for specific portions of the Committed Property. These Neighborhood Associations, if any, may be assigned specific responsibilities and rights with respect to Common Areas in the Neighborhood(s) where they exist. The creation of such Neighborhood Associations and their rights and responsibilities shall be set forth in a Supplemental or Neighborhood Declaration, as described in this Article. Therefore, Owners in a particular Neighborhood may also be members of a Neighborhood Association and subject to the rights, responsibilities and restrictions contained in a Supplemental Declaration creating such Neighborhood Association, in addition to the rights, responsibilities and restrictions contained in this Declaration.

ARTICLE III

Membership and Voting Rights
in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Dwelling Unit which is or is at any time made subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of a Dwelling Unit. Transfer of Dwelling Unit ownership either voluntarily or by operation of law shall terminate membership in the Association, and said membership shall thereupon be vested in the transferee.

When any one Dwelling Unit is owned by more than one person, firm, individual, corporation or other legal entity, the composite title holder shall be and constitute one Member of the Association. Any person, firm, individual, corporation or legal entity owning more than one Dwelling Unit shall be as many Members as the number of Dwelling Units owned.

Section 2. Classes of Memberships and Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all of those Owners as defined in Section 1, with the exception of Declarant. The Class A Members shall be entitled to one membership interest and one vote for each Dwelling Unit in which they hold the interests required for membership by Section 1.

Class B. Class B Members shall be Declarant, including any of its subsidiaries to which Declarant may transfer title. The Class B Member shall be entitled to ten (10) membership interests and ten (10) votes for each Dwelling Unit in which it holds the interest required for membership by Section 1, and the Class B Member shall be entitled to elect a majority of the Board of Directors until such time that the last Dwelling Unit owned by Declarant within Palm Harbor has been sold and conveyed by the Declarant.

Upon the transfer of title of any Dwelling Unit which is held for sale by Declarant to an Owner other than to one of Declarant's subsidiaries, the Class B membership interest appurtenant to such Dwelling Unit shall be automatically converted to a Class A membership interest.

When any one Dwelling Unit is owned by more than one person, firm, individual, corporation or other legal entity, the voting rights pertaining to such Dwelling Unit shall be as prescribed in the Articles or Bylaws.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, DECLARANT OR ITS DULY AUTHORIZED SUBSIDIARY SHALL HAVE THE RIGHT TO ELECT A MAJORITY OF THE BOARD OF DIRECTORS OF THE ASSOCIATION UNTIL SUCH TIME AS DECLARANT NO LONGER HOLDS THE TITLE TO ANY PORTION OF PALM HARBOR.

ARTICLE IV

Common Areas

Section 1. Common Area. Common Areas are those portions of the Committed Property designated as such in this Declaration, a Supplemental Declaration, Property Plan or other written instrument recorded in the Public Records of the County. Common Areas shall include all Surface Water and Stormwater Management Systems located on the Committed Property. So long as Declarant appoints a majority of the Board of Directors, the Common Areas shall be only that property designated as such by Declarant. Declarant shall have the right, and the power, but neither the duty nor the obligation, in its sole discretion, to, or to cause others to, convey, lease or grant a license or other use right to real property within or without Palm Harbor whether it be Committed Property or not, to the Association for such purposes as may be expressed in the instrument of conveyance, lease or grant of easement or use. No such real property shall be considered to be Common Area until actually so conveyed, leased or grant of easement or other use right is created by a written instrument. The Association shall accept from Declarant, or others approved by Declarant, any such conveyance, lease, grant of easement or grant of use right.

Section 2. Easements. Declarant reserves the right for itself and its designees to grant additional easements for use, ingress and egress, governmental services and utilities over, across and under the Common Areas, for the use and benefit of persons designated in such easements, whether or not such persons are Members of the Association.

Section 3. Maintenance. The Association may enter into agreements with other persons or entities, including any applicable Neighborhood Association, to provide for the maintenance, upkeep and repair of any of the Common Area or any other property which the Association has the obligation to maintain, upkeep and repair under this Declaration.

Section 4. Title in Association. Within six months after issuance of a final certificate of occupancy as to all improvements to be made to the real property known as Palm Harbor, Declarant, or its successors and assigns, shall convey and transfer to the Association the record fee simple title of those portions of the Committed Property that constitute the Common Areas and are to be owned by the Association. The Association shall accept such

OFF REC 0512 PAGE 1285

conveyance, subject to this Declaration. To preserve and enhance the property values and amenities of Palm Harbor, the Common Areas, and any facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Common Areas may include, but not be limited to, the repair and maintenance of roadways, landscaped areas, walkways, recreational facilities (if any), streetlights, entrance features or signs. The Association, by its execution of this Declaration, covenants and agrees to accept all conveyances of Common Areas. This section shall not be amended to reduce or eliminate the obligation for maintenance or repair of the Common Areas without the prior written consent of Declarant.

The Association shall be responsible for the maintenance thereof in a continuous and satisfactory manner, compliance with any continuing obligation imposed on the owner of any such Common Area by the terms of any permit issued by a governmental agency having jurisdiction over such Common Areas. The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or, if modified, as approved by the St. Johns River Water Management District. The Association shall be responsible for the payment of taxes assessed against Common Areas and any improvements and any personal property thereon accruing from and after the conveyance to the Association. Such taxes shall be prorated as of the date of conveyance. Prior to completion of the Common Areas and conveyance of the title thereto to the Association, the taxes assessed against such non-public property shall be paid by Declarant or its successors or assigns.

Section 5. Title to Additional Common Areas. From time to time, Declarant reserves the right, but not the obligation, to convey to the Association legal title to additional Common Areas, subject only to the condition that such properties shall be subject to the covenants set forth in this Declaration, and such additional Common Areas shall be conveyed to the Association within the time provided in Section 3 of Article II.

Declarant shall not be obligated to bring any additional Common Areas within the scheme of this Declaration nor to convey title to such Common Areas to the Association. The additions authorized under this section may be made by Declarant in accordance with Article II, Section 3, of this Declaration.

OFF REC 0512 PAGE 1286

Section 6. Neighborhood Common Areas. Certain portions of the Common Areas as described in this Article may be designated by the Declarant as a Neighborhood Common Area assigned to a particular Neighborhood within the Committed Property. This designation may be made on the face of a Plat depicting such Areas, in a Property Plan created by the Declarant, in a Supplemental Declaration, in the deed of conveyance to such Areas from the Declarant to the Association, or in such other written instrument executed by the Declarant and delivered to the Association as Declarant, in Declarant's discretion, shall determine. The effect of such designation shall be to restrict the use of such Common Areas to the Members of the Association who own Dwelling Units within the designated Neighborhood, their tenants, agents, and invitees, the Declarant and Declarant's successors and assigns. The maintenance of such Neighborhood Common Areas shall be by the Association, as provided in this Article, unless Declarant has created a Neighborhood Association for the Neighborhood in which such Neighborhood Common Areas exist, in which case the Declarant may elect to assign responsibility for such maintenance to the Neighborhood Association. The expense of any maintenance of Common Areas designated as Neighborhood Common Areas shall be borne solely by the Members who own Dwelling Units within the Neighborhood to which such Neighborhood Common Areas are assigned. However, such allocation of the maintenance costs for Neighborhood Common Areas shall not prohibit the Board, in its discretion, from entering into one or more master contracts for maintenance of all or some Neighborhood Common Areas in different Neighborhoods and other Common Areas for which it is responsible and assigning to the Neighborhood benefitted by such maintenance, that Neighborhood's prorata share of the total cost of such master contract as a Neighborhood Common Expense.

Section 7. Waterbodies, Lakes and Drainage Systems. Certain portions of the Common Area may contain waterbodies, lakes and Surface Water or Storm Water Management Systems (hereafter "Lakes"). With respect to any such Lake which becomes part of the Committed Property:

(a) The boundaries of any Lake shall be subject to accretion, reliction and other minor natural changes.

(b) Swimming in any Lake is prohibited. No boat traffic, rafts or other water craft shall be permitted on a Lake, except for boats used by the Association, their agents, Declarant, Declarant's designees or a governmental agency. If the use of boats on a Lake in a particular Neighborhood is expressly permitted by the terms of the Supplemental Declaration establishing that Neighborhood, the Board shall have the right to promulgate and enforce rules and regulations concerning the use of boats, vessels or rafts on such Lake, as well as their storage or docking on any Dwelling Unit or Common Area when not in use. ANY PERSONS WHO SWIM IN OR OTHERWISE USE A LAKE SHALL DO SO AT THEIR OWN RISK AND SHALL

HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY CLAIM OR LOSS ARISING THEREFROM.

(c) No dock, davit or other structure abutting a Lake shall be constructed, other than the docks or similar structures originally constructed by the Declarant, unless such construction is approved by the Committee.

(d) Except as otherwise provided in this Declaration or a Supplemental or Neighborhood Declaration, the Association shall maintain all Lakes. A nonexclusive easement is hereby reserved in favor of Declarant, the Association and their designees for ingress, egress, and access to any portion of the Committed Property in order to maintain a Lake. All costs of maintenance of any Lake shall be an Association Operating Expense, unless otherwise provided in this Declaration or in a Supplemental or Neighborhood Declaration.

(e) The Association shall not be responsible for the maintenance of any approved bulkheading, dock or other lakeshore treatment on any portion of a Lake constructed as part of a Dwelling Unit. Such maintenance shall be the responsibility of the Dwelling Unit Owner.

(f) No person, other than the Declarant or Association with the Declarant's written permission, shall withdraw water from any Lake for any purpose.

ARTICLE V

Grant and Reservation of Easements

Section 1. Easement of Enjoyment. Each Member and each tenant, agent or invitee of Members shall have a right and easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title of the Dwelling Unit, subject to this Declaration, including the following:

- (a) The right and duty of the Association to levy assessments against each Dwelling Unit for the purpose of maintaining the Common Areas and facilities.
- (b) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of

OFF 0512 PAGE 1287
REC

Directors, provided that no such dedication, transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless seventy-five (75%) percent of the Members shall vote in favor thereof at a meeting of the Members called for such purpose, or unless an instrument signed by Members entitled to cast seventy-five (75%) percent of the eligible votes have been recorded, agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every Member at least ninety (90) days in advance of any action taken.

- (d) The right of Declarant and the Association to grant and reserve easements and rights-of-way in, through, under, over and across the Committed Property for the installation, maintenance, and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television and other utilities, and the right of Declarant to grant and reserve easements and rights-of-way in, through, under, over, upon and across the Committed Property for the completion of the Development.

Section 2. Access Easements. Declarant does hereby establish and create for the benefit of the Association and for the benefit of any and all Owners of Dwelling Units subject to this Declaration, their tenants, invitees and Institutional Mortgagees, and does hereby give, grant and convey to each of the aforementioned, an easement for right-of-way for ingress and egress by vehicles or on foot, as practicable, in, through, over, under and across the streets, roads, and walks within Common Areas (as they may be built or relocated in the future) for all purposes.

Section 3. Public Easements. Fire, police, health, sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Committed Property as needed.

Section 4. Easement for Encroachments on Dwelling Units or Common Areas.

(a) If any portion of any roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water line, sewer line, utility line, sprinkler system or any other structure as originally constructed by Declarant or its designee, successor or assign encroaches on any Dwelling Unit or Common Area, it shall be deemed that the Owner of such Dwelling Unit or Common Area has granted a perpetual easement to the Owner of the adjoining Dwelling Unit or Common Area or the Association as the case may be, for continuing maintenance and use of such encroaching roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water line, sewer line, utility line, sprinkler system or

REC 0512 PAGE 1289

other structure originally constructed by Declarant. The foregoing shall also apply to any replacement of any such roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water line, sewer line, utility line, sprinkler system or other structure, if same are constructed in substantial conformance to the original. Other encroachments may hereafter be maintained as provided in a Supplemental Declaration. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of this Declaration.

(b) There shall be an easement for encroachment in favor of the Association and all Owners in the event any Common Area or Dwelling Unit now or hereafter encroaches upon any other Dwelling Unit as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement. The encroaching improvements shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvement in favor of the Dwelling Unit Owners, their designees, mortgagees and the Association. If any portion of any Dwelling Unit encroaches upon the Common Areas as a result of the construction, reconstruction, repair, shifting settlement or moving of any portion of the Committed Property, a valid easement for the encroachment and for the maintenance of same shall exist so long as the encroachment exists.

Section 5. Easement for Maintenance by Association. Declarant hereby grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Dwelling Unit to permit the Association, its employees, subcontractors, agents or designees to maintain and replace, as necessary, those portions of the Dwelling Unit required to be maintained, replaced and repaired by the Association, as provided in this Declaration.

Section 6. Utility Easement. Declarant hereby grants to the Owner of each Dwelling Unit a non-exclusive perpetual easement on, over, under and across the Common Area and all other Dwelling Units for the installation, maintenance, operation, repair and replacement of utility lines, including water and sanitary sewer lateral pipes servicing the Dwelling Unit, together with wires, pipes, conduits, cable television lines, telephone lines and equipment and drainage lines.

Section 8. Reservation of Easement by Declarant.

(a) Easements for Development and Sales.

(1) Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Committed Property, including all Dwelling Units,

for the purpose of constructing adjacent properties and completing its work in developing and providing for the development of the Committed Property; and, toward this end, reserves the right to grant and reserve easements and rights-of-way, through, under, over and across the Committed Property, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, electric and other utilities and for any other materials or services necessary for the completion of such work.

(2) Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines which may from time to time be in or along the streets and roads of other areas of the Common Areas.

(3) Declarant also reserves the right for itself, its designees, successors and assigns, to continue to use the Committed Property, and any roadways, sales offices, model homes, signs and parking spaces located on the Committed Property at no charge, in its efforts to market or develop Dwelling Units in Palm Harbor.

(b) Amendment. This section may not be amended without the prior written consent of Declarant.

Section 9. Easements in Neighborhood Common Areas. The easements created by this Article V with respect to all Common Areas shall be equally applicable to any Neighborhood Common Areas designated by the Declarant.

ARTICLE VI

Maintenance

Section 1. Maintenance of Common Areas. The Association shall at all times maintain in good repair, operate, manage, insure and replace as often as necessary, any and all improvements situated on the Common Areas, including but not limited to, any courtyards, fences, gates, recreational facilities, lawns, landscaping, sprinkler systems, paving, drainage structures, street lighting fixtures and appurtenances, sidewalks and other structures, and utilities, all of such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. Unless the responsibility of maintenance for a Neighborhood Common Area has been assigned by Declarant to a Neighborhood Association, the Association shall have the same maintenance responsibilities with respect to such Neighborhood Common Areas as for the other Common Areas.

Section 2. Dwelling Unit Maintenance. The Owner is responsible to maintain and repair all portions of the Dwelling Unit, including but not limited to, the exterior of the Dwelling Unit, any landscaping, utility lines, paving and any other improvements located on the platted lot on which the Dwelling Unit is located. Owners shall be responsible for the maintenance, repair and replacement, if applicable, of water and sanitary sewer lateral pipes servicing their Dwelling Units, which laterals extend from the applicable water and sewer main to the Dwelling Units, notwithstanding that a portion of such lateral may be located within the Common Area. The Owner is responsible to maintain, repair and replace the air-conditioning and heating system and appurtenances thereto, servicing the Dwelling Unit and improvements located on his Dwelling Unit and any other portion of the air-conditioning and heating system or appurtenances thereto servicing his Dwelling Unit which may be located on the Common Area. Notwithstanding the provisions of Section 1 of this Article, each Owner of a Dwelling Unit shall be responsible to mow and provide routine maintenance to any portion of the right of way between the Dwelling Unit's Property Line and the edge of pavement of the right of way, whether such area be described as Common Area or a portion of the public right of way. In addition, Declarant may assign specific maintenance duties to the Owners of some or all Dwelling Units in a particular Neighborhood by a Supplemental or Neighborhood Declaration pertaining only to the Committed Property in the Neighborhood covered by the Supplemental or Neighborhood Declaration.

Section 3. Assessments. All maintenance performed by the Association pursuant to Section 1 above and all expenses hereunder shall be paid for by the Association as Operating Expenses through assessments imposed by the Board of Directors in accordance with Article VII. Such assessments shall be against all Dwelling Units equally for Operating Expenses attributable to the Association's maintenance of Common Areas. Assessments for maintenance of Neighborhood Common Areas against Dwelling Units located within a particular Neighborhood which has the obligation to support such Neighborhood Common Areas shall be equal for all Dwelling Units located within that Neighborhood. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or Neighborhood Common Areas or abandonment of his right to use the Common Areas or Neighborhood Common Areas.

Assessments shall include payment for insurance and taxes on the Common Area or Neighborhood Common Area. In those Neighborhoods, if any, where the Dwelling Units are not separately metered for water and sewer service the Association shall assess each Dwelling Unit Owner for water and sewer service in a fair and equal portion with all other Dwelling Unit Owners in that Neighborhood.

The cost and expense of Association-provided maintenance shall be funded by an Association assessment against all Owners or all Owners within a particular Neighborhood, as the case may be, and shall be paid by the Association notwithstanding that title to a Common Area or Neighborhood Common Area may be vested in Declarant.

Section 4. Disrepair of Dwelling Units. If the Owner of any Dwelling Unit shall fail to maintain his Dwelling Unit, and the improvements situated thereon, as required by any provision of this Declaration, in a manner reasonably satisfactory to the Board of Directors of the Association or any committee established by such Board, except for such areas as the Association is required to maintain, upon direction of the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon the Dwelling Unit to maintain and restore the improvements making up such Dwelling Unit. The cost of any maintenance supplied by the Association pursuant to this Section shall be added to and become part of the assessment to which such Dwelling Unit is subject.

Section 5. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agents and employees, shall have the right without notice to enter upon any Owner's Dwelling Unit. Except in the case of an emergency, such entry shall be at reasonable hours on any day except Sunday and legal holidays.

Section 6. Negligence of Owner. Should any portion of a Dwelling Unit which the Association is required to maintain pursuant to this Article be required to be maintained, repaired or replaced as a result of the negligence of the Owner, his family, lessee, guests, servants or invitees, the applicable Owner shall be responsible for the cost thereof and the Association shall have the right to levy an assessment against the Owner of said Dwelling Unit for same, which assessment shall have the same force and effect as all other assessments.

Section 7. Management. The Association, through the action of its Board of Directors, shall have the right to employ a manager or management firm which employment may either be on the basis of an employee of the Association or as an independent contractor.

ARTICLE VII

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of the Assessments. Each Owner of any Dwelling Unit by acceptance of a deed therefor or instrument of conveyance, whether or not it shall be so expressed in such deed or other instrument of

conveyance, including any purchaser at a judicial sale, or by the acquisition of title in any other manner, shall be deemed to covenant and agree to pay to the Association annual assessments or charges for the maintenance of the Dwelling Units, Common Areas, and any applicable Neighborhood Common Areas as provided in this Declaration, including such reasonable reserves as the Association may deem necessary, special assessments as provided in this Article, and assessments for maintenance as provided herein. Assessments for Operating Expenses shall be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, together with such interest and costs of collection as hereinafter provided, shall, upon the recordation of a claim of lien, be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs of collection, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment became due. All assessments by the Association for Operating Expenses shall be assessed against all Dwelling Units equally, except that assessments for Operating Expenses attributable to Neighborhood Common Areas shall be assessed equally only against those Owners of Dwelling Units within the Neighborhood where such Neighborhood Common Elements are located. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use or abandonment. Furthermore, the obligation of the Association and the Owners for assessments, and the obligation for maintenance shall commence upon conveyance of the Dwelling Unit.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners in Palm Harbor and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the appropriate portion of the Common Areas, Neighborhood Common Areas, and of the Dwelling Units situated upon the Committed Property, including, without limiting the foregoing, the payment of taxes (if any), insurance, repair, replacement, maintenance, additions, and the cost of labor, equipment, materials, utilities, services, management and supervision, as well as any other costs set forth in this Declaration for which the Association is responsible.

Section 3. Budget and Commencement of Payment.

(a) The Association's Board of Directors shall, from time to time, but at least annually, fix and determine a budget representing the sum or sums necessary and adequate for the continued operation of the Association. The Board shall determine the total amount of Operating Expenses, including the operational items such as insurance, repairs, replacements, reserves, maintenance and other expenses, as well as charges to cover any

deficits from prior years and capital improvements and reserves approved by the Board. The total annual assessments and any supplemental assessments shall be shared by all Dwelling Units based upon the formula and terms and provisions set forth herein and in the Articles and Bylaws.

(b) Each Dwelling Unit shall commence paying its share of the Association assessments on the day title to the Dwelling Unit is conveyed by deed from Declarant to the first grantee thereof; provided, however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance to the first grantee. Subject to the provisions of Section 4 immediately below (which provisions are only applicable during any guarantee period or any extension thereof), the assessment for Operating Expenses for each Dwelling Unit shall be the dividend arrived at by dividing the total anticipated Operating Expenses reflected by the budget, other than those Operating Expenses which are properly the subject of a special assessment, by the total number of all Dwelling Units on the Committed Property as of the date the budget was adopted. The total number of Dwelling Units responsible for payment of Operating Expenses may be adjusted from time to time in accordance with this Declaration. All questions regarding the number of Dwelling Units subject to assessments shall be determined by the Declarant prior to the expiration of Declarant's Class B membership and, thereafter, by the Association.

(c) In those Neighborhoods where there exist designated Neighborhood Common Areas, the portion of the annual Operating Expenses determined by the Association to be attributable to the operation and maintenance of such Neighborhood Common Area shall be assessed against all of the Dwelling Units located within the Neighborhood where such Neighborhood Common Areas are located. Subject to the provisions of Section 4 immediately below (which provisions are only applicable during any guarantee period or any extension thereof), the assessment for Operating Expenses applicable only to a Dwelling Unit in a particular Neighborhood shall be the dividend arrived at by dividing the total anticipated Operating Expenses attributable solely to that Neighborhood reflected by the budget, other than those Operating Expenses which are properly the subject of a special assessment, by the total number of all Dwelling Units which are located within the Committed Property in the applicable Neighborhood as of the date the budget was adopted. The total number of Dwelling Units in a particular Neighborhood responsible for payment of Operating Expenses attributable to that Neighborhood only may be adjusted from time to time in accordance with this Declaration. All questions regarding the number of Dwelling Units in a Neighborhood subject to assessments under this Subsection (c) shall be determined by the Declarant prior to the expiration of Declarant's Class B membership and, thereafter, by the Association.

REC 0512 PAGE 1295

Section 4. Interim Assessment Period. For a period of one year commencing with the date of the conveyance by Declarant of the first Dwelling Unit within the Committed Property, excluding conveyances by Declarant to an entity or subsidiary related to or affiliated with Declarant, the assessments of the Association shall be in the amount as specified in the initial estimated operating budget of the Association (the "Interim Assessment Period"). During the Interim Assessment Period, Declarant shall pay the amount of Operating Expenses of the Association incurred during that period and not produced by the assessments at the level stated in the initial estimated operating budget receivable from other Dwelling Unit Owners, as provided herein, and during said period, Declarant shall not be required to pay any specific sum for its share of the Operating Expenses of the Association as to any Dwelling Units owned by it. Provided, however, Declarant shall pay the deficit during said period. During the Interim Assessment Period, however, Declarant's responsibility to fund deficits in the budget is not intended to include, and does not include and shall never be deemed to include, expenses or fees called for or occasioned by an action or decision of the Board of Directors when Owners, other than Declarant, elect a majority of the Board of Directors, when such expenses or fees are inconsistent with expenses or fees preceding that time. In such event, Declarant, at its option, may pay the sums required to be paid by it; or, Declarant, at its option, may terminate the Interim Assessment Period. In such case, it shall pay the assessments of the Association as to the Dwelling Units owned by it.

Declarant hereby reserves the right, to be exercised in its sole discretion, to extend from time to time the termination date of the Interim Assessment Period for such period of time as Declarant determines. Should Declarant elect to extend the Interim Assessment Period, Declarant shall notify the Board of Directors of the Association of its election prior to the termination date of the original term or an extended term, and such notice shall set forth the new termination date of the Interim Assessment Period. Declarant reserves the right, in its sole discretion, to require the Board of Directors of the Association to increase the amount of the assessments due from Owners other than Declarant for each extension by an amount not to exceed twenty five (25%) percent of the amount of assessment for the preceding period, exclusive of any special assessments levied in the preceding period. Provided, however, in no event may Declarant require the Board of Directors to increase the assessment due from Owners other than Declarant by more than twenty five (25%) percent for each year of extension of the guarantee. The Board of Directors of the Association agrees to comply with the requirements of Declarant, as provided herein, and increase the assessments payable from Owners other than Declarant during any extension of the Interim Assessment Period. Should the Board of Directors of the Association fail to increase such assessments, as may be required by Declarant hereunder, Declarant shall have the unconditional right to terminate the Interim

Assessment Period, as contained herein; or, Declarant shall have the right to specifically enforce its rights as provided herein.

Section 5. Due Dates; Duties of the Board of Directors. All assessments shall be payable monthly, in advance, on the first day of the calendar month, or on such other basis as is ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Dwelling Unit and shall prepare a roster of the Dwelling Units and assessments applicable, which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his Institutional Mortgagee, the Board shall promptly furnish such Member or his Institutional Mortgagee with a written statement of the unpaid charges due from such Member.

Section 6. Effect of Non-Payment of Assessment; The Personal Obligation of the Member; The Lien; Remedies of the Association. If an assessment is not paid on the date when due, then at the option of the Board, such assessment, together with the balance of the annual assessment established by the Board, shall become delinquent and shall, together with such interest thereon, late charges and the cost of collection thereof, including reasonable attorneys' fees and court costs, thereupon become a continuing lien on the Member's Dwelling Unit which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens of the taxing division of any governmental authority, including but not limited to, state, county and school district taxing agencies; and (b) all sums unpaid on any bona fide first mortgage held by an Institutional Mortgagee of record encumbering the Dwelling Unit. The personal obligation of the Member who was the Owner of the Dwelling Unit when the assessment fell due, to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them, although the lien shall continue to encumber the Dwelling Unit.

If the assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the due date at the maximum permissible rate in the State of Florida. A late charge of up to \$25.00 may also be assessed by the Board and the Association through its Board. The Board may bring an action at law against the Member or former Member personally obligated to pay the same or it may bring an action to foreclose the lien against the Dwelling Unit. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the cost of the action and the aforesaid late charge.

Section 7. Selling, Leasing and Gifts of Dwelling Units, Etc.

(a) No Member shall convey, mortgage, pledge, hypothecate, sell or lease his Dwelling Unit unless and until all unpaid assessments assessed against such Dwelling Unit shall have been paid as directed by the Board of Directors; such unpaid assessments, however, may be paid out of the proceeds from the sale of the Dwelling Unit or by the purchaser of such Unit. Any sale or lease of the Dwelling Unit in violation of this section shall be voidable at the election of the Board of Directors.

(b) Upon the written request of a Member or his Institutional Mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement but unlisted thereon. A reasonable charge may be made by the Board for issuance of such statements.

(c) The provisions of this section shall not apply to the acquisition of a Dwelling Unit by an Institutional Mortgagee who shall acquire title to such by foreclosure or by deed in lieu of foreclosure. In such event the unpaid assessments against the Dwelling Unit which were assessed for Operating Expenses and became due prior to the acquisition of title by such Institutional Mortgagee shall be deemed waived by the Association and shall be charged to all other members of the Association as an Association expense. Such provisions shall, however, apply to any assessments which are assessed and become due after the acquisition of title by the Institutional Mortgagee and to any purchaser from such Institutional Mortgagee.

(d) Whenever the term Dwelling Unit is referred to in this section, it shall include the Member's interest in the Association and the Member's interest in any property acquired by the Association. Any Member may convey or transfer his Dwelling Unit by gift during his lifetime or devise the same by will or pass the same by intestacy.

(e) The provisions of this section shall not apply to Declarant. This section may not be amended without the prior written consent of Declarant.

Section 8. Subordination of Lien. The lien for assessments provided for in this Article shall be superior to all other liens, except tax liens, mortgage liens in favor of Institutional Mortgagees, and mortgage liens in favor of mortgagees under mortgages now existing or hereafter granted by Declarant, as mortgagor.

Section 9. Capital Improvements. Funds necessary for capital improvements, emergencies or non-recurring expenses may be levied

by such Association as special assessments, upon approval of a majority of the Board of Directors of such Association. If the amount of such special assessment is estimated to exceed the sum of \$4,000.00, the assessment must be approved by two-thirds favorable vote of the Members of such Association voting at a meeting or by ballot as may be provided in the Bylaws of such Association. An assessment for the purpose described in this Section 9 which is intended to benefit only Neighborhood Common Areas or the Dwelling Units and Members within a specific Neighborhood, must be approved the Board of Directors of the Association and also, for such funds exceeding the sum of \$4000.00, by two-thirds favorable vote of the Members owning Dwelling Units within such Neighborhood, unless a different procedure is provided for by an applicable Supplemental Declaration applicable to the Neighborhood where the assessment will be levied.

Section 10. Certificate of Assessment. The Association shall furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Dwelling Unit. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

Section 11. Capital Contribution. Upon the initial conveyance of title to a Dwelling Unit from the Declarant to an Owner, such Owner shall pay the Declarant, in addition to any other sums required, a capital contribution equal to two (2) months' installment of the then current Association Assessment. The Capital Contribution shall be held by the Seller on behalf of the Association and may be used to pay start-up expenses, insurance premiums, utility deposits and delinquent assessments, and to meet unforeseen expenditures or to acquire additional equipment or services. The Capital Contribution Fund may or may not earn interest, as Declarant shall determine.

ARTICLE VIII

Insurance

Section 1. Common Areas.

(a) General Liability. The Association, by action of its Board of Directors, shall maintain public liability insurance, to the extent obtainable, covering the Association and each Association Member, lessee and occupant, and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Common Areas.

(b) Additional Insurance. To the extent obtainable, the Board of Directors may also obtain the following insurance:

(i) Property damage insurance, including vandalism and malicious mischief endorsements, insuring the Common Areas; and,

(ii) worker's compensation insurance, if required by law; and,

(iii) Directors' and Officers' liability insurance, fidelity insurance and other insurance it may deem proper to protect the Association, its members and property; and,

(iv) Such other insurance as the Board may, in its discretion, deem advisable.

(c) Assured and Loss Payable. All casualty insurance policies purchased by the Association hereunder shall be for the benefit of the Association and all Owners and their mortgagees as their interests may appear and shall provide that all proceeds covering casualty losses of \$10,000.00 or less shall be paid to the Association. Any sum in excess of \$10,000.00 shall be paid either to the Association or to an insurance trustee as the Association shall determine at the time. An "Insurance Trustee" shall be any bank or trust company or other corporate trustee authorized for and doing business in Florida, as designated by the Board of Directors of the Association. The duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust pursuant to the terms of the insurance trust agreement to be executed by the Association and the Insurance Trustee, which shall not be inconsistent with any of the provisions herein set forth.

(d) Payment of Premiums. The Board of Directors shall collect and pay the premiums for insurance as a part of the Operating Expenses. Expenses of any Insurance Trustee appointed shall be paid by means of special assessment by the Board.

(e) Mandatory Repair. Unless there occurs substantial damage or destruction to all or a substantial part of a Common Area facilities, the Association and the Owners shall use insurance proceeds to repair, replace and rebuild the damage caused by casualty loss. Related costs and expenses not covered by insurance shall be borne by the Owners in a fair and equal manner.

(f) Association as Agent. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute releases thereof.

Section 2. Dwelling Units.

(a) Owner's Insurance Coverage. Each Owner shall be required to obtain and maintain adequate insurance on his Dwelling Unit against loss by fire, storm or other hazards or casualty.

Each Owner shall also be responsible for purchasing of liability insurance for accidents occurring on his or her Dwelling Unit. The Association shall have no obligation to obtain or carry insurance coverage for any Dwelling Unit or insure against any risk relating to a Dwelling Unit.

(b) Repair or Replacement of Damaged or Destroyed Property. Each Owner shall be required to reconstruct or repair any Dwelling Unit destroyed by fire or other casualty according to the plans and specifications for the original Dwelling Unit. Any changes from the original plans and specifications must be approved by the Committee prior to start of reconstruction or repair. Such reconstruction or repair shall be commenced within thirty days of the casualty and diligently continued until the reconstruction or repair is completed. If the Owner elects not to repair or reconstruct the Dwelling Unit, the damaged structure (including any slab or foundation and any driveway, walkway or similar improvement) shall be cleared from the property within thirty days of the casualty and the property shall be sodded and maintained by the Owner in a neat and attractive condition, acceptable to the Association and, so long as Declarant holds Class B membership in the Association, the Declarant. In no event shall the Owner's failure to rebuild or repair a Dwelling Unit result in any abatement of the assessments due to the Association for that Dwelling Unit.

(c) Association Action - Repair or Demolition of Damaged or Destroyed Dwelling Unit. If no repair or reconstruction has been contracted for or otherwise substantially started by the Owner of a damaged Dwelling Unit within thirty (30) days after a written notice from the Board of Directors that such repair or demolition is required, the Board of Directors of the Association is hereby irrevocably authorized by such Owner, in the discretion of the Board of Directors to initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Dwelling Unit or to remove the damaged Dwelling Unit if the Board determines that demolition is more practical due to the extent of the damage. The Board of Directors of the Association may advertise for sealed bids from any licensed contractors and may then negotiate with said contractors. The contract or contracts selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding, unless such requirement is waived by the Board of Directors of the Association. The Board of Directors of the Association shall levy a special assessment against the Owner in whatever amount is required to reimburse the Association for the costs of such repair or demolition, which costs shall include a reasonable administrative fee for the Association. Notwithstanding anything to the contrary in this Article, the Association, its Director or officers, shall not be liable to any person for failure to make any repair to or for the demolition and removal of a damaged Dwelling Unit.

REC 0512 PAGE 1300

REC 0512 PAGE 1301

ARTICLE IX

The Association

The Association shall have all statutory and common law powers of a Florida corporation not for profit, to the extent they do not conflict with all powers provided in its Articles and Bylaws, and all powers granted in this Declaration.

ARTICLE X

Building and Use Covenants

Section 1. Land Use. The use of a Dwelling Unit or of the Common Areas by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the Articles and Bylaws and the Rules and Regulations of the Board of Directors. A Dwelling Unit shall be used only for residential purposes for immediate members of a single family and their guests and invitees.

Section 2. Building Type. No building shall be erected, altered, placed or permitted to remain on any platted lot other than the Dwelling Unit of the type originally constructed by Declarant. All building exteriors shall be completed within six (6) months from commencement of construction or issuance of a building permit, whichever comes first.

Section 3. Architectural Control. (a) No building, wall, fence, decking, paving, awning, pool, storage shed, door screening or other structure or improvement of any nature other than such structures originally constructed by Declarant shall be erected, placed, modified, altered or permitted to remain on any Dwelling Unit or Common Area unless the construction plans and specifications and a plan showing the kind, shape, materials, colors and location of the structure, exterior elevations, and landscaping, as may be required by the Architectural Review Committee have been approved in writing by the Architectural Review Committee. ¶ In the case of structures initially constructed by Declarant on a Common Area or Lot prior to the conveyance of the Common Area to the Association or the sale of that Dwelling Unit to the initial Owner other than Declarant, no review and approval by the Architectural Review Committee shall be required. All other buildings, walls, fences, or other structures or improvements of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plan, or any of them, may be based on any ground, including purely aesthetic grounds, which, in the sole discretion of said Architectural Review Committee, seems sufficient. Any change in the exterior appearance of any building,

wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Committee may promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. These rules and regulations may include a general set of design guidelines for all or a portion of the Committed Property, which design guidelines or standards may vary among the Neighborhoods making up Palm Harbor. The Committee may set and collect fees for review of submissions and no submission may be deemed approved until the applicable fee has been paid.

(b) The Architectural Review Committee shall review the proposed submission as to the submission's conformance to any design guidelines adopted by the Committee for that area of the Committed Property, the type and quality of materials, harmony of the exterior design and location of the building or structure with existing buildings or structures, location of the building or structure with respect to topography, trees, vegetation and the finished grade elevation and floor slab, exterior color(s) of any building or structure and any other relevant considerations. Upon completion of the proposed improvements, an "as-built" survey showing the finished floor and grade elevation and location of all improvements shall be filed with the Association and with the Architectural Review Committee.

(c) The Architectural Review Committee shall be composed of not less than three (3) nor more than seven (7) persons. The members of the Committee shall be appointed by Declarant, its designees, successors or assigns. The membership, rules of procedure and duties of the Committee shall be prescribed by and, from time to time, changed or modified by Declarant. If and when Declarant deems the circumstances appropriate, Declarant, in its sole discretion, may assign to the Association or any other body, all or part of the rights, duties, and functions of the Architectural Review Committee as set forth in this Declaration. From and after the date of any such assignment, Declarant shall be relieved of any further duties or obligations concerning the Committee, and the Association or other body shall assume the duties and obligations and perform the functions as set forth herein.

(d) If the Architectural Review Committee shall disapprove, in whole or in part, any submission required herein, the Committee shall notify the person, firm or entity making the submission of the reasons for such disapproval. If the Architectural Review Committee fails or refuses to approve or disapprove a submission containing all the requirements as set forth herein within forty-five (45) days after submission is received by the Committee, it shall then be presumed that the submission has been approved by the Architectural Review Committee.

Section 4. Regulations. Regulations promulgated by the Board concerning the use of Palm Harbor shall be observed by the Members and their family, invitees, guests and tenants; provided, however, that copies of such regulations are furnished to each Member by personal delivery or by regular mail prior to the time the regulations become effective.

Section 5. Dwelling Unit Location. Dwelling Units shall be located in conformance with this Declaration, the applicable ordinances of Flagler County and any specific approvals thereunder, or as originally constructed on a platted lot by Declarant or its successors or assignee.

Section 6. Damage to Dwelling Units. If a Dwelling Unit is damaged, through Act of God or other casualty, then Owner shall promptly cause the Dwelling Unit to be repaired and rebuilt substantially in accordance with the original architectural plans and specifications, unless other plans and specifications are approved, in writing, by the Architectural Review Committee.

Section 7. Temporary and Accessory Structures. No accessory building or structure of a temporary character, or trailer, tent, mobile home, or recreational vehicle shall be permitted on any Dwelling Unit or Common Areas at any time or used on any Dwelling Unit as living quarters or for storage at any time, either temporarily or permanently, except as permitted by the Architectural Review Committee. No gas tank, gas container, or gas cylinder serving a Dwelling Unit shall be permitted to be placed on or about the outside of any Dwelling Unit or any ancillary building, and all gas tanks, gas containers and gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative screen approved by the Architectural Review Committee.

Section 8. Signs. A single "for sale" sign of no more than five by seven inches may displayed on a Dwelling Unit during any period when the Dwelling Unit is being offered for sale. The Committee shall have the right to adopt and enforce uniform standards as to the appearance and method of display of such "for sale" signs. No other sign, advertisement or poster of any kind shall be erected or displayed to the public view on the Committed Property without the prior written approval of the Architectural Review Committee as to size, color, content, material, height and location. This paragraph shall not apply to Declarant.

Section 9. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind or size shall be raised, bred or kept on any Dwelling Unit, except that dogs, cats or other household pets may be kept as authorized by the Board of Directors of the Association. However, the number of said pets shall not exceed two (2) for any Dwelling Unit, provided that they are not

kept, bred or maintained for any commercial purpose and provided that they do not become a nuisance or annoyance to any neighbor. No dogs or other pets shall be permitted to have excretions on any Dwelling Unit, Common Areas, or anywhere else within the Committed Property, except in locations designated by the Association.

Section 10. Nuisances. No noxious or offensive activity shall be carried on upon any Dwelling Unit, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.

Section 11. Antenna. No television, radio, electronic or other type antenna or satellite dish may be erected on the Committed Property or attached to the exterior of any Dwelling Unit thereon.

Section 12. Exterior Appearances and Landscaping. The paint, coating, stain, roof color and material and other exterior finishing colors on all Dwelling Units may be maintained as that originally installed, without prior approval of the Architectural Review Committee. Prior approval by the Architectural Review Committee shall be necessary before any such exterior finish color is changed. Furthermore, prior approval shall be required if an Owner wishes to paint, varnish, stain or make any application to exterior trellises or wood treatment, if any. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways, and ground elevations, shall be maintained as originally installed by Declarant, unless the prior approval for any substantial change is obtained from the Architectural Review Committee. Neither aluminum foil, paper, nor anything which the Architectural Review Committee deems objectionable, may be placed on windows or glass doors. All items such as lawn furniture, grills, outdoor play structures or any similar item used on any Dwelling Unit must be stored within the Dwelling Unit (including any porch attached to the Dwelling Unit) when not in use or, if left outside of a Dwelling Unit in a location where the item is visible from any other Dwelling Unit, roadway or portion of Common Area for a period of more than twenty four (24) hours, must be approved by the Committee.

All Dwelling Units shall be kept in a clean and sanitary manner and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist.

Section 13. Existing Trees. Neither the Association nor an Owner or other person, without the prior written consent of the Architectural Review Committee, shall remove any live tree with a trunk of four (4) inches or more in diameter (as measured one (1) foot from ground level) from any portion of the Committed Property. If said trees are removed without the prior consent, the Owner or the Association, as appropriate, may be required by the Committee to replace same with trees of comparable size.

Section 14. Grades and Elevations. To preserve and maintain proper drainage in Palm Harbor, no changes in grades or elevations of any portion of a Dwelling Unit (including the swale areas) or Common Area shall be made without the prior written approval of the Architectural Review Committee. Final floor elevations and all other applicable grades must be shown on the site plan and approved by the Committee prior to construction.

Section 15. Drainage System, Swales. The Association shall maintain any drainage system within the Common Areas of the Committed Property. Owners must maintain the swales located on an Owner's Lot, unless the maintenance of these swales is assigned to the Association by a Supplemental Declaration. Standards for the location, width, depth and invert grades of culverts shall be initially established by the Declarant and the Delcarant shall provide the Association with a set of "as-built" drawings for the drainage system within the Committed Property which set forth the location of invert grade, width and depth of the drainage system, including swales. Nothing shall be constructed, maintained, altered or permitted to exist on any portion of the Committed Property if it obstructs or could obstruct the flow of surface drainage or any other function of the drainage system.

Section 16. Fertilizers, Pesticides. Only biodegradable fertilizers and EPA/DER approved pesticides and fungicides may be used anywhere in Palm Harbor. No person shall use any EDB or dioxin within Palm Harbor.

Section 17. Commercial Vehicles, Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, campers, mobile homes, motor-homes, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored overnight at any place on any Dwelling Unit or Common Area in the Committed Property; except only during the periods of approved construction of a Dwelling Unit, or if parked in an area designated by Declarant for such purpose or parked in a fully enclosed garage with the garage door fully closed. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other commercial services. Private passenger vehicles may be parked on the paved portion of a Dwelling Unit. For the purposes of this section, a private passenger vehicle shall be deemed to mean an automobile, pick up truck or van of one ton or less capacity which does not display any lettering or sign relating to a commercial activity or business and which is operable and currently licensed for operation on the public roads. No person shall park any vehicle so as to obstruct any resident's use of ingress or egress to any Dwelling Unit or Common Area or park any vehicle on any unpaved portion of any Dwelling Unit or Common Area, except as expressly permitted by Declarant.

REC 0512 PAGE 1306

Section 18. Sales and Rentals. No Dwelling Unit may be sold, rented, leased or sublet without express written notice to the Board of Directors of the Association. This provision is for the purpose of making certain that subsequent owners and renters understand the rights and obligations of Members of the Association, including, but not necessarily limited to, the Declaration and Rules and Regulations. In addition, the Board of Directors may authorize the use of a registration form to be completed by prospective purchasers or renters. No Dwelling Unit may be rented, leased or sublet for a period of less than thirty (30) days.

Section 19. Walls/Fences. No fence, wall, gate, hedge, or other structure shall be erected or maintained on any Dwelling Unit, except as originally installed by Declarant, or except any approved in writing by the Architectural Review Committee as provided herein.

Section 20. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Dwelling Unit except in areas designated by the Association for such purpose. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition and shall be kept hidden from view.

Section 21. Outdoor Drying and Laundry. No clothing, laundry or wash shall be aired or dried on any portion of any Common Area or the front yard or side yards of any Dwelling Unit. Clotheslines are permitted in the rear yards of Dwelling Units so long as the clothesline is screened from view from other Dwelling Units, roadways, and Common Areas. The Association may adopt rules or regulations pertaining to the screening necessary under this section. No clothing, laundry, garments, rugs, etc., shall be hung from windows or doorways of Dwelling Units.

Section 22. Swimming Pools and Screen Enclosures. All screen enclosures, pools, deck areas, patios, hot tubs, jacuzzis, and sun decks, except for such structures originally installed by Declarant as part of the first construction of a Dwelling Unit, must be approved in writing by the Architectural Review Committee. Above ground pools are not permitted.

Section 23. Lawful Conduct. No immoral, improper, offensive or unlawful use shall be made of any Dwelling Unit or other improvements. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be strictly observed.

Section 24. Risks. No Owner shall permit or suffer anything to be done or kept in his Dwelling Unit which will increase the rate of insurance as to other Owners or as to their Dwelling Units or to the Association as to the Common Areas.

Section 25. Parking Spaces. Each Owner shall have the exclusive right to use the paved portions of the Owner's Dwelling Unit for parking and shall not park on any unpaved areas.

Section 26. Basketball Boards. Basketball nets and backboards must be approved by the Committee prior to installation.

Section 27. Skateboard Ramps. Skateboard ramps are prohibited on any Dwelling Unit or Common Area.

Section 28. Flagpoles. All flagpole structures and their locations must be approved by the Committee prior to construction and/or installation of same.

Section 29. Decorative Items. The use of decorative items, including, but not limited to, statues, gates, rocks, planters, bird baths and other ornamental accessories must be submitted to the Architectural Review Committee for review and approval prior to use, installation or construction.

Section 30. Mailboxes. All mailboxes shall be of the standardized type originally installed by Declarant or as thereafter designated by the Architectural Review Committee as to style, location, material, color, height and type of post mounting.

Section 31. Lighting. All exterior lighting, including, but not limited to, walkway, driveway or accent, except as originally installed by the Declarant must be approved by the Architectural Review Committee prior to construction or installation.

Section 32. Businesses. No trade, business, professional office, or any other type of commercial activity shall be conducted on any portion of the Committed Property or in any Dwelling Unit; however, notwithstanding this restriction, Declarant and its assigns shall not be prohibited from operating sales models and/or a sales and leasing office on any portion of the Committed Property.

Section 33. Wells, Mining, Drilling and Excavation. No wells, mining, drilling or excavation of any type, except for such excavation as may be necessary for construction of Dwelling Units and Common Areas, shall be permitted on any portion of the Committed Property. No Owner of any Dwelling Unit shall draw water from any water body on or adjacent to the Committed Property for irrigation or any other purpose.

Section 34. Water Conserving Fixtures. Only water conserving fixtures designed to meet county or state standards shall be installed in any Dwelling Unit.

Section 35. Violations. In the event of a violation of this Declaration, or of any rule properly promulgated by the Board of

Directors of the Association, the Association may, as an additional remedy, provide written notice of the violation to the Owner of record, and if said violation shall continue for a period of seven (7) days from the date of the written notice, the Owner may be assessed an amount up to \$5.00 per day, per violation. This assessment shall be considered in the same manner as hereinbefore provided for regular assessments and those sections providing for the recording of the assessment lien, enforcement and collection shall also apply.

Section 36. Declarant Rights. Notwithstanding any other provision in this Declaration, Declarant is irrevocably empowered to sell, lease or rent Dwelling Units on any terms to any purchasers or lessees for as long as it owns any Dwelling Unit. This section is intended to provide Declarant with the broadest authority and power to transact and implement its business, and such activities shall be free and clear of any restrictions contained in this Declaration which would impede such activities. Declarant shall have the right to transact any business necessary to consummate sales and leases of said Dwelling Units, temporary uses for model homes, parking and/or sales offices, maintain signs, have employees in the office, use the Common Areas and show Dwelling Units and Common Areas. Sales office signs and all items pertaining to sales shall not be considered property of the Association and shall remain the property of Declarant.

ARTICLE XI

Additional Powers Reserved to Declarant

Section 1. Declarant Related Documents. So long as Declarant shall own any Dwelling Units or any portion of the Committed Property, no Declarant related amendment shall be made to the Declaration, to any Supplemental Declaration, to the Articles, Bylaws, Rules and Regulations, or any other similar Association document, nor shall any such Declarant related amendments or documents be executed, adopted or promulgated by the Association or the Board of Directors unless such Declarant related amendment or document shall be specifically approved in writing by Declarant in advance of such execution, adoption, promulgation and recording.

Section 2. Definitions. For the purposes of Section 1 of this Article, an amendment or document which does any of the following shall be considered to be a Declarant related amendment:

(a) Discriminates or tends to discriminate against Declarant as an Owner or otherwise;

(b) Directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners;

(c) Modifies the definitions provided for by Article I of this Declaration in a manner which alters Declarant's rights or status;

(d) Modifies or repeals any provision of Article II of this Declaration;

(e) Alters the character and rights of membership as provided for by Article III of this Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association;

(f) Alters any previously recorded or written agreement with any public or quasi-public agency, utility company, political subdivision, public authority or other similar agency or body, respecting zoning, streets, roads, drives, easements or facilities;

(g) Denies the right of Declarant to convey the Common Areas to the Association;

(h) Denies the right of Declarant to record a Supplemental Declaration with respect to portions of Palm Harbor or adding properties subject to this Declaration or otherwise making provisions in accordance with the powers granted to Declarant in this Declaration;

(i) Modifies the basis or manner of Association assessments as applicable to Declarant or any Dwelling Unit owned by Declarant as provided for by Articles VI and VII;

(j) Modifies the provisions of Article X (architectural control) as applicable to Declarant or any Dwelling Units owned by Declarant;

(k) Alters the provisions of any Supplemental Declaration; or

(l) Denies the right to Declarant, its contractors and subcontractors, to maintain temporary construction trailers, sheds or other buildings upon the Committed Property; or

(m) Alters or repeals any of Declarant's rights or any provision applicable to Declarant's rights as set forth in any provision of this Declaration or of any Supplemental Declaration or other document applicable to Declarant.

The decision to approve or failure to approve any Declarant related document or Amendment by Declarant in accordance with Section 1 of this Article shall be in the sole and absolute discretion of Declarant and Declarant shall not be liable to the Association, its Members or any party as a result of granting or refusing to grant such approval.

OFF 0512 PAGE 1310
REC

Section 3. Declarant Lands. So long as Declarant continues to construct any facilities in Palm Harbor, no action may be taken by the Board or the Association applicable to the Declarant or any of the Dwelling Units or other lands owned by Declarant unless such action shall be approved in writing by Declarant; or, unless the need therefor shall be waived by the Declarant in writing.

ARTICLE XII

General Provisions

Section 1. Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to, the Association, Declarant and its subsidiaries and assigns, the Owners, and to any other party to whom the Declarant or Association is entitled to grant such easements, licenses, rights and privileges under this Declaration; and any Owner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject, in the case of the Common Areas, to the Rules and Regulations of the Association; but, the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

Section 2. Duration. The covenants and restrictions of this Declaration shall run with and bind the land that has been made a part of the Association and shall inure to the benefit of and be enforceable by Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds of the Dwelling Units and all Institutional Mortgagees of Dwelling Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 3. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by Declarant, its assigns, the Association or any Owner of five (5) or more Dwelling Units by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by Declarant, the Association, any Owner or other party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Those covenants pertaining to matters requiring approval of the Architectural Review Committee may also be enforced by the Committee. Any provision of this Declaration relating to the maintenance, operation or repair of the surface water or stormwater management system may be enforced by the St. Johns River Water Management District. The prevailing party in any proceeding at law or in equity provided for in this Section shall be entitled to recover in said suit the cost of the action, including reasonable attorneys' fees as fixed by the court, including attorneys' fees in connection with appeal of any action.

Section 5. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal assets, including the Common Areas, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the case of any surface water or stormwater management system which is maintained by the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with § 40C-42.027, Florida Administrative Code and be approved by the St. Johns River Water Management District prior to any termination, dissolution or liquidation of the Association. If such dedication is refused acceptance, which refusal in the case of the County shall be by formal resolution of the Board of County Commissioners, such assets shall be granted, conveyed and assigned to any corporation not for profit, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to Palm Harbor, unless made in accordance with the provisions of this Declaration or said covenants restrictions and deeds.

Section 6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

Section 7. Amendment. Excepting Supplemental Declarations and in addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time, upon the execution and recordation of any instrument executed by: (1) Declarant, for so long as it holds title to any land affected by this Declaration and said amendment by Declarant shall not require the consent of any mortgagees, Owners or partial owners of Dwelling Units nor of the Association, either now or in the future; or, alternatively, (2a) by Owners holding not less than two-thirds vote of the membership in the Association or by an instrument signed by the President and Secretary of the Association attesting that such instrument was approved by Members entitled to vote two-thirds of the votes of the Association at a meeting of the Members called for such purpose; provided, that so long as Declarant is the owner of any land affected by this Declaration, Declarant's consent must be obtained; and (2b) by all Institutional Mortgagees of Dwelling Units affected by this Declaration, provided that so long as Declarant is the owner of any land affected by this Declaration, Declarant's consent must be obtained. Any amendment must be properly recorded in the Public Records of the County to be effective.

Any amendment to this Declaration which alters any surface water or stormwater management system, beyond the maintenance in its original condition, including the water management portions of the Common Areas, must have the prior approval of the St. Johns River Water Management District.

Section 8. Administration. The administration of the Association shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws which are made a part of this Declaration and attached hereto as Exhibits "C" and "D" respectively.

Section 9. Conflict. In case of any conflict between the Articles and Bylaws, the Articles shall control. In case of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall control.

Section 10. Effective Date. This Declaration shall become effective upon its recordation in the Official Records Book of the County.

Section 11. Community Benefit Program. In addition to any other assessment provided for herein, the Owner of a Lot or Dwelling Unit in Palm Harbor is hereby made liable to the Palm Coast Community Service Corporation (PCCSC), as the Assignee of Declarant, for a pro rata share of the actual costs of the operation expenses of a Community Benefit Program for facilities and services in Palm Coast or to further the environmental and

aesthetic principals. The implementation of the program and the extent thereof shall be within the sole discretion of the PCCSC. The funds collected may be used to cover the costs (1) for the maintenance, expansion or creation of facilities, amenities, programs or services of community nature or (2) to further the environmental and aesthetic principals. Each Owner's share shall be computed by multiplying the current Assessment Rate by the total number of Assessment Units owned by that Owner in Palm Harbor. An Assessment Unit for Palm Harbor shall be equal to one Lot or Dwelling Unit. The Assessment Rate shall be computed by dividing the total number of Assessment Units in the Palm Coast community assessable by the PCCSC into the total estimated operating budget for the current year and shall be subject to adjustment by the Board of Directors of the PCCSC on an annual basis. The assessment shall be billed by the PCCSC annually, in advance, to the Owner of record of the Lot or Dwelling Unit and shall be payable on January 1. Every Owner in Palm Harbor subject to the Community Benefit Program Assessment shall be a member of the PCCSC and entitled to one vote for each Assessment Unit owned by such Owner on any matters upon which members of the PCCSC are entitled to vote. Each Owner hereby agrees that the PCCSC shall have a lien upon such Owner's Lot or Dwelling Unit for the monies due until such amount is paid to the same extent as the lien for Palm Harbor assessments provided for in Article VII, Section 1 of this Declaration. In the event that monies due remain unpaid for a period of thirty (30) days, the PCCSC shall have all the rights and privileges accorded to the Board with respect to the collection thereof as provided in Article VII, Section 6, above.

Section 12. Approval of Association Lawsuits by Owners. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of all Owners (at a duly called meeting of the Owners at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Palm Harbor Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Palm Harbor documents, including, but not limited to, those against tenants; or
- (d) in an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to Palm Harbor or any portion thereof.

OFF REC 0512 PAGE 1314

IN WITNESS WHEREOF, ITT Community Development Corporation has hereunto caused this document to be signed by its proper officers this 26th day of May, 1994.

Signed in the presence of:

Rachel L. Keene
Victoria P. Gard

ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation

By: [Signature]
President

Attest: [Signature]
Secretary

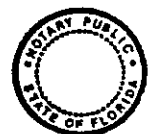
(Corporate Seal)

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me on the 26th day of May, 1994, by James E. Gardner and Robert G. Cuff, as President and Secretary, respectively, of ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation, on behalf of and as the act and deed of the corporation. They are personally known to me and did not take an oath.

[Signature]
Notary Public

My Commission Expires:



Notary Public, State of Florida (Seal)
DEBRA K. REGISTER
My Comm. Exp. Jan. 14, 1997
Comm. No. CC 253385

FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, Palm Harbor Homeowners Association, Inc., a Florida corporation not for profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, the above described corporation, a Florida corporation not for profit, has caused these presents to be signed in its name by its President and its corporate seal affixed, attested by its Secretary, this 25th day of May, 1994.

OFF 0512 PAGE 1315
REC

Signed, Sealed and Delivered
in the presence of:

PALM HARBOR HOMEOWNERS
ASSOCIATION, INC.,
a Florida Corporation not for
profit

Rachel L. Keene

Victoria L. Gaed

By: Steven A. Tubbs
President

Attest William G. Bram
Secretary

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me on
the 25th day of May, 1994 by Steven A. Tubbs and
William G. Bram, as President and Secretary,
respectively, of PALM HARBOR HOMEOWNERS ASSOCIATION, INC., a
Florida corporation not for profit, on behalf of and as the act and
deed of the corporation. They are personally known to me and did
not take an oath.

Debra K. Register
Notary Public

My Commission Expires:

(Seal)

C:\WP51\OAKS\DEC1.C&R rev: 5-24-94



Notary Public, State of Florida
DEBRA K. REGISTER
My Comm. Exp. Jan. 14, 1997
Comm. No. CC 253385

A parcel of land lying in Government Sections 44 and 46, Township 11 South, Range 31 East, Flagler County, Florida, being more particularly described as follows:

As a POINT OF REFERENCE being the southeast corner of Section 44 thence North 20°45'47" West along the easterly line of Section 44 a distance of 1220.55 feet, thence departing said Section Line South 69°14'13" West a distance of 229.30 feet to a point being the northeast corner of the Subdivision Plat The Oaks, Map Book 27 Pages 53 and 54, said point being the POINT OF BEGINNING of the herein described parcel, thence along the northerly boundary of said Plat the following courses South 85°40'58" West a distance of 99.00 feet to a Point of curvature, concave northerly, having a radius of 708.98 feet and a central angle of 23°48'32", thence westerly along the arc of said curve to the right a distance of 294.61 feet, said arc subtended by a chord which bears North 82°24'47" West a distance of 292.50 feet to a point of compound curvature with a curve, concave northeasterly, having a radius of 718.64 feet and a central angle of 21°34'19", thence westerly along the arc of said curve to the right a distance of 270.57 feet, said arc subtended by a chord which bears North 59°43'21" West a distance of 268.97 feet to a Point of tangency, thence North 48°56'12" West a distance of 314.73 feet to a Point of curvature, concave southwesterly, having a radius of 581.92 feet and a central angle of 21°19'59", thence northwesterly along the arc of said curve to the left a distance of 216.67 feet, said arc subtended by a chord which bears North 59°36'11" West a distance of 215.42 feet to a point being the northwesterly corner of said boundary for the Subdivision Plat The Oaks, thence departing said curve along a non-tangent line North 08°01'38" East along the easterly boundary of Reserved Parcel "A" of Country Club Cove Section-8 Map Book 6, Page 33, also recorded in Official Records Book 47, Pages 265 and 266 a distance of 167.57 feet, thence North 59°50'44" East along said boundary of Reserved Parcel "A" a distance of 485.73 feet, thence North 21°23'49" East a distance of 211.32 feet to a point on the southeasterly boundary line as surveyed of Lot 69, Block 1, of the Subdivision Map Country Club Cove Section-8 Map Book 6, Pages 28 through 33, thence departing said Reserved Parcel "A" North 33°45'43" East along said boundary of Lot 69 a distance of 144.57 feet to a point on a curve, concave northwesterly, having a radius of 40.00 feet and a central angle of 98°01'14", thence northeasterly along the right-of-way line of Crompton Place and along the arc of said curve to the left a distance of 68.43 feet, said arc subtended by a chord which bears North 33°45'43" East a distance of 60.39 feet to a point of intersection with a non-tangent line, thence departing Crompton Place North 33°45'43" East along the southeasterly boundary line as surveyed of Lot 70, Block 1, of said Section-8 a distance of 124.81 feet, thence departing said Lot 70, Block 1, North 73°29'26" East a distance of 146.29 feet to a point on a curve, concave westerly, having a radius of 3970.00 feet and a central angle of 12°07'18", thence southerly along the arc of said curve to the right a distance of 839.90 feet, said arc subtended by a chord which bears South 10°26'56" East a distance of 838.34 feet to a point of intersection with a non-tangent line, thence South 80°59'42" West a distance of 30.43 feet, thence South 09°00'18" East a distance of 50.00 feet, thence North 80°59'42" East a distance of 26.34 feet, thence South 04°19'03" East a distance of 472.14 feet, thence North 85°40'57" East a distance of 3.98 feet, thence South 04°19'03" East a distance of 60.00 feet to the POINT OF BEGINNING.

Parcel containing 19.2990 acres more or less.

Bearings refer to the Transverse Mercator Grid System of the East Zone of Florida and locally referenced to the easterly line of Government Section 44 being North 20°45'47" West.

Exhibit A
to
Declaration and General Protective Covenants
for
Palm Harbor Homeowners Association

OFF 0512 PAGE 1316
REC

*Debbie Register will p/u

This instrument prepared by:
Robert G. Cuff
ITT Community Development Corporation
1 Corporate Drive
Palm Coast, Florida 32151

AMENDMENT TO FIRST SUPPLEMENT TO
DECLARATION AND GENERAL PROTECTIVE COVENANTS
FOR PALM HARBOR HOMEOWNERS ASSOCIATION

(COVINGTON PARK NEIGHBORHOOD)

Above space for recording information

THIS AMENDMENT TO THE FIRST SUPPLEMENT TO DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR COVINGTON PARK NEIGHBORHOOD is made this 21st day of September, 1994, by ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation (the "Declarant"), with offices at 1 Corporate Drive, Palm Coast, Florida.

RECITALS:

WHEREAS, on May 27, 1994, the Declarant caused to be recorded in Official Records Book 0512 at Pages 1276-1341, of the Public Records of Flagler County, Florida, the Declaration and General Protective Covenants for Palm Harbor Homeowners Association, (the "Declaration") for that property as shown on the plat recorded at Map Book 30, Pages 2 and 3 of the Public Records of Flagler County, Florida, and

WHEREAS, Declarant supplemented this Declaration with a First Supplement, recorded in Official Records Book 0512 at Pages 1342-1350, which First Supplement added that property shown on the Plat of Covington Park Neighborhood as recorded at Map Book 30, Pages 2 and 3 of the Public Records of Flagler County, Florida, and

WHEREAS, the Declaration reserves the right to the Declarant to amend the Declaration from time to time, and

WHEREAS, the Declarant now desires to amend the First Supplement to the Declaration to provide for certain building set backs for homes constructed in Covington Park Neighborhood, as set out below.

NOW, THEREFORE, the Declarant declares that the existing First Supplement to the Declaration and General Protective Covenants (Covington Park Neighborhood) is amended as follows:

1. The First Supplement is hereby amended by the addition of a new Paragraph 5 to read as follows:

5. Setbacks. No part of any Dwelling Unit, except as otherwise allowed, shall be located nearer than: 30 feet to the front lot line; 30 feet to the side

of a corner lot, 10 feet to the side lot line and 20 feet from the rear lot line.

2. Except as expressly modified herein, the remainder of the Declaration and General Protective Covenants for Covington Park Neighborhood and any prior amendments or supplements thereto shall remain in full force and effect.

IN WITNESS WHEREOF, ITT Community Development Corporation has hereunto caused this document to be signed by its proper officers this 21st day of September 1994.

Signed in the presence of:

ITT COMMUNITY DEVELOPMENT CORPORATION

Debra K. Regis
Debra K. Regis

BY: James E. Gardner
James E. Gardner, President

Pamela Thompson
Pamela Thompson

Attest: Robert G. Cuff
Robert G. Cuff, Secretary

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing AMENDMENT TO THE FIRST SUPPLEMENT TO DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR THE PALM HARBOR HOMEOWNERS ASSOCIATION was acknowledged this 21st day of September, 1994, by James E. Gardner and Robert G. Cuff, the President and Secretary, respectively of ITT COMMUNITY DEVELOPMENT CORPORATION, a Delaware corporation, on behalf of the corporation. They are personally known to me and did not take an oath.

Victoria P. Gard
Victoria P. Gard
Notary Public, State of Florida

My Commission Expires:
My Commission No. is:



VICTORIA P. GARD
MY COMMISSION # CC 202009 EXPIRES
June 1, 1996
BONDED THROUGH TRACY FARM INSURANCE, INC.

F:\WP60\RGCI\COVINGTON.AMD
Rev: 9/16/94