

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
TIMBER POND SUBDIVISION UNIT #3**

**THIS DECLARATION**, made on this 23<sup>rd</sup> day of October, 1990, by JAMES M. CHADWELL and DAVID R. CHADWELL, hereinafter referred to as the "Declarant".

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain property in Hillsborough County, Florida (The Property), more particularly described as follows:

Timber Pond Subdivision Unit #3 as recorded in the public records of Hillsborough County, Florida at Plat Book 69 page 32.

**WHEREAS**, Declarant intends to develop The Property into a residential community to consist of single family homes; and

**WHEREAS**, Declarant desires to impose a common plan of development and enjoyment upon The Property to protect its value and desirability;

**NOW THEREFORE**, the Declarant hereby declares that the real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property and be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall insure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration, the association's Articles of Incorporation ("Articles"), or the Association's By-Laws ("By-Laws").

Section 1.        "Architectural Committee" shall mean the Architectural Committee, provided in Article V hereof.

Section 2.        "Articles" means the Articles of Incorporation of the Association, as may be amended from time to time.

Section 3.        "Assessment" means the amount of money assessed against an Owner for the payment of the Owner's share of common fees, expenses and any other funds which an Owner may be required to pay to the Association as set out by this Declaration, the Articles or the By-Laws.

Section 4.        "Association" means TIMBER POND UNIT #3 HOMEOWNERS' ASSOCIATION, INC., a corporation not for profit organized or to be organized pursuant to Chapter 617, Florida States, its successors and assigns.

Section 5.        “Board” means the Association’s Board of Directors.

Section 6.        “Common Area” means all property whether improved or unimproved, or any interest therein, which from time to time is owned by the Association for the common use and enjoyment of all Owners and initially means the lands so designated on the plat of Timber Pond Unit #3 as recorded in Plat Book 69 Page 32, of the Public Records of Hillsborough County, Florida and the mitigation well on Lot 1, Block 5 of Timber Pond Subdivision Unit 3.

Section 7.        “Declarant” means JAMES M. CHADWELL and DAVID R. CHADWELL and their successors and assigns, if such successors and assigns are designated in writing by the Declarant as the successors and assigns of Declarant’s rights hereunder.

Section 8.        “Documentation” means the legal documentation for the Timber Pond Unit #3 Subdivision consisting of this Declaration and the Articles of Incorporation and By-Laws of the Timber Pond Unit # 3 Homeowners’ Association and any amendments to any of the foregoing now or hereafter made.

Section 9.        “Dwelling” shall mean the residential dwelling constructed upon a Lot.

Section 10.       “Interpretation”        Unless the context expressly requires otherwise, the use of the singular includes the plural, and vice versa; the use of the terms “including” or “include” is without limitation; the terms “Common Area”, “Lot”, and “Properties” include both any portion applicable to the context and any and all improvements, fixtures, trees vegetation, and other property from time to time situated thereon; and se of the words “must”, “will” and “should” is intended to have the same legal effect as the word “shall”. This Declaration should be construed in favor of the party seeking to enforce its provisions to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the properties as a residential community by providing a common plan for their development and enjoyment.

Section 11.       “Law” includes any statute, ordinance, rule, regulation, or order validly created, promulgated, or adopted by the United States, or any of its agencies, officers or instrumentalities, or by the State of Florida, or any of its agencies, officers, municipalities, or political subdivisions, or by any officer, agency, or instrumentality of any such municipality or subdivision, and from time to time applicable to the Properties or to any activities on or about the Properties.

Section 12.       “Lot” means any platted parcel of land shown on the recorded subdivision map or plat as recorded in the Public Records of Hillsborough County with the exception of the Common Area and portions, if any, of marked acreage. Lot shall also include unplatted lots shown or designated on the Timber Pond Unit # 3 Subdivision Master Plan.

Section 13.       “Maintenance” means the exercise of reasonable care to keep buildings, homes, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear accepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden-management practices necessary to promote a healthy weed-free environment for optimum plant growth, and which will, as a minimum, include the mowing of all grass on a Lot.

Section 14. “Member” means every person or entity who holds membership in the Association.

Section 15. “Mortgage” means any mortgage, deed of trust, or other instrument transferring of any interest in a Lot as security for the performance of an obligation. “First Mortgage” means any Mortgage constituting a valid lien prior in dignity to all other mortgages encumbering the same property.

Section 16. “Mortgagee” means any person named as the obligee under any Mortgage, or the successor in interest to such person.

Section 17. “Occupant” means the person or persons, other than the Owner in possession of a Lot, and may, where the context so requires, include the Owner.

Section 18. “Owner” means the record owner, whether one or more persons, of the fee simple title to any Lot, including contract sellers, but excluding any other person holding such fee simple title only as security for the performance of an obligation. As the context may admit, Owner includes all persons (i) claiming any right, title or interest in a Lot by, through, or under any Owner, or (ii) lawfully upon the Properties with the consent of any Owner, express or implied, such as an Occupant.

Section 19. “Person” means any natural person or artificial entity having legal capacity.

Section 20. “Properties” means any natural person or artificial entity having legal capacity.

Section 21. “Recorded” means filed for record in the Public Records of Hillsborough County, Florida.

Section 22. “Subdivision Map or Plat” means the final official plat as recorded and shall include the subdivided real property therein described and such additions thereto as may be brought within the jurisdiction of the Association as hereinafter provided.

Section 23. “The Work” means the initial development of the Properties by Declarant and may include changes in the initial development where deemed appropriate by Declarant so long as such changes are not inconsistent with the initial development.

## **ARTICLE II PROPERTY RIGHTS**

Section 1. Easements and Enjoyment. Each Owner has a nonexclusive right and easement of enjoyment in and to the Common Area that is appurtenant to, and will pass with, the title to every Lot, subject to the following:

(a) Fees. The Association’s right: to charge reasonable fees for the use, safety and maintenance of any common facilities from time to time situated on the Common Area.

(b) Suspension. The Association’s right: (i) to suspend the voting rights of any Owner for any period in which any assessment against such Owner’s Lot remains unpaid; (ii) to suspend such Owner’s right to use any facility owned or controlled by the Association for the

same period of unpaid assessments; and (iii) to suspend any Owner's right to use any such facility for any infraction of the Association's valid rules and regulations.

***(b) Suspension.*** *The Association's right: (i) to suspend the voting rights of any Owner for any assessment, fee, fine, or other monetary obligation due to the Association that is more than 90 days delinquent until full payment of all obligations currently due or overdue to the Association any period in which any assessment against such Owner's Lot remains unpaid, (ii) to suspend such Owner's right, and the right of any tenant, guest, or invitee of the Owner, to use any facility owned or controlled by the Association for the same period of unpaid assessments, fees, fines, or other monetary obligations, and (iii) to suspend, for a reasonable period of time, any Owner's right and the right of any tenant, guest, or invitee of the Owner, to use any such facility for any infraction of the Association's Declaration, By-Laws, and valid rules and regulations.*

(c) Dedication. The Association's right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as the Association considers advisable. Any such dedication or transfer requires the approval of seventy-five percent (75%) of the members present and voting in person or by proxy at a meeting duly convened for such purpose as provided in Article VII, Section 2, below.

(d) Delegation of Use. Such limitations as may be imposed by the By-Laws or reasonable rules and regulations adopted by the Association. Each Owner may delegate his right of enjoyment in and to the Common Area and accompanying facilities, if any, to members of his family, his guests, tenants and invitees.

(e) Rules and Regulations. The Association's right to adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Properties Common Area.

***(f) Fining.*** *The Association's right to levy reasonable fines against any Owner or any Owner's tenant, guest, or invitee for failure of such person(s) to comply with any provision of the Declaration, By-Laws, or reasonable rules and regulations of the Association. The Association, through its Board of Directors, may impose a fine up to the maximum amount permitted by law, which at the time of this Amendment is \$100.00 per violation, per day, up to \$1,000.00 in the aggregate for a continuing violation. The Board of Directors of the Association may establish procedures for the imposition of fines and suspensions and to fix the fine or suspensions for some common violations.*

***(1) A fine of \$1,000.00 or more may become a lien against a Lot, subject to foreclosure in the event of nonpayment. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the non-prevailing party as determined by the court.***

(2) At least fourteen (14) days' notice shall be provided to the person sought to be fined or suspended for a violation of the Declaration, By-Laws, or reasonable rules and regulations of the Association. The person sought to be fined or suspended shall be given the opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it shall not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Association imposes a fine or suspension, the Association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) The notice and hearing rights provided by this Section do not apply to a suspension imposed for delinquency in the payment of any assessment, fee, fine, or other monetary obligation due to the Association. All suspensions imposed for delinquency must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Owner and, if applicable, the Owner's occupant, licensee, or invitee, by mail or hand delivery.

Section 2. Permanence. The benefit of all rights and easements granted by the Declaration constitutes a permanent appurtenance to, and will pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as nonexclusive, its benefit, nevertheless, is exclusive to all Lots granted such benefit by this declaration unless this Declaration expressly grants such benefit to additional persons. In no event does the benefit of any such easement extend to the general public except as provided in the next Section. The burden of all rights and easements granted by this Declaration constitutes a permanent servitude upon the lands affected.

Section 3. Public Easements. Developer dedicates that portion of the Properties described on the recorded plat and made a part hereof for use and maintenance of public utility and drainage easements, together with a right of ingress and egress over and across the easement area for such purposes. Declarant dedicates the Common Area for use by all utilities for construction and maintenance of their respective facilities serving the Properties; and Declarant grants to such utilities serving the Properties; and Declarant grants to such utilities jointly and severally, easements for such purposes. Easements for drainage and/or for installation and maintenance utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or drainage structures or which may impede the flow of water through drainage channels in the easements. The easement area of each drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of lot, except for those improvements for which a public authority or utilities company is responsible.

Developer, or its successors or assigns, may place, build, erect and/or install walls (s) and or fence(s) along Telfair Road. No lot owner, or other person without the express written consent of Developer, or its successors or assigns, shall paint, deface, alter the appearance, change or renovate, such wall(s) or fence(s) in any manner whatsoever, nor shall any attachments be made thereto of any nature. However, it will be permissible for those lot owners adjacent to said wall or abut, at right angles, their side fences to such wall (s) installed along Telfair Road. It is intended that once Developer originally

constructs said wall(s) and/or fence(s), no lot owner or other person shall change the architectural or visual appearance, or affect the structural integrity, of such wall(s) or fence(s), without the express written consent of Developer in the reasonable manner required hereunder. Should Developer fail to respond to a written submittal of a rendering and or site plan within thirty (30) days, then Developer shall be conclusively presumed to have approved same. Upon approval of said renderings and/or sites plans, the Owners may proceed with the construction of improvements as long as the final plans for same are in substantial accordance with those which have been previously submitted to the Developer.

Section 4. No Partition. There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner, or any person acquiring any interest in the Properties or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in cotenancy.

Section 5. General Restrictions. Except with the Association's prior written consent or in accordance with the Association's rules and regulations.

(a) Obstructions. There will be no obstruction of the Common Area, nor will anything be kept or stored on the Common Area except items installed by Declarant as part of the work, and their replacement.

(b) Alterations. Nothing will be altered on, constructed upon, or removed from the Common Area except with the specific approval of the Association.

(c) Activities. All uses and activities upon or about the Common Area are subject to the Association's rules and regulations.

(d) Signs. No sign of any kind will be displayed to public view within the Properties except (i) customary name and address signs of each Lot, (ii) a Lot sign of not more than six (6) square feet in size advertising a Lot for sale or rent, or (iii) no trespassing, no solicitation or beware of dog or such similar signs approved by the Association. All signs permitted by this subsection are subject to the Association's rules and regulations, provided however that these restrictions shall not apply to signs used by Declarant or his assigns to advertise the property during the promotion and construction of dwellings and sale of Lots.

(e) General Prohibitions. No activity is permitted, nor may any object or substance be kept, stored, or emitted anywhere within the Properties in violation of law. No Owner shall cause or permit any unreasonable or obnoxious noises or odors and no obnoxious, destructive, illegal, or offensive activity that constitutes a nuisance to any Owner or to any other person at any time lawfully residing within the Properties is permitted anywhere within the Properties.

(f) Use of Lots. Each Lot may be improved and used for residential purposes only and only single detached family homes, approved in accordance with Article V may be constructed thereon. No trade, business, or professional of any kind may be conducted on any Lot except for the business of the Declarant and its transferees in developing the Properties, or home occupations.

Section 6. Animals. No animals, livestock, or poultry may be raised, bred or kept anywhere within the Properties, except that dogs, cats, and other customary household pets may be kept upon any Lot so long as (i) they are not kept, bred or maintained for any commercial purpose and (ii) they are quartered within the residential dwelling unit on such Lot. Each Owner shall have the responsibility to clean up the waste produced by his or her pet immediately, and all pets shall be most practical whether it is located upon or off a Lot, and shall be subject to all applicable local ordinances existing at the time.

Section 7. Trash. Except for regular collection and disposal, no rubbish, trash, garbage or other waste material or accumulations may be kept, stored or permitted anywhere within the Properties, except inside the improvements on each Lot, or in sanitary containers completely concealed from view.

Section 8. Appurtenances. No permanent outdoor clothes lines may be installed or maintained anywhere within the Subdivision except that portable rotary type or reel type clothes lines may be permitted in the rear yard only and said clothes lines must be stored when not in use. On corner lots, such clothes lines shall not be placed within 20 feet of a side street line. Above-ground swimming pools are not permitted.

Section 9. Storage of Automobiles, Boats, and other Vehicles. No motor vehicle shall be parked or stored on any Lot and included easement or right of way, unless such vehicle is capable of being concealed from public view or from adjacent residences inside a garage or other approved enclosure. Permitted vehicles are described as:

- (a) passenger automobile
- (b) passenger van (Other than a motor home or recreation vehicle)
- (c) motorcycle, and
- (d) pickup truck, whether or not with attached-bed camper, which can be completely concealed with the garage, as built, of the dwelling in the Subdivision in which the owner of such pickup truck resides,

if such vehicle has a current license plate, is being used daily as a motor vehicle on the streets and highways of Florida and if such vehicle can be concealed from public view or private residences in a garage.

No inoperative or abandoned cars, trucks, trailers, motorcycles or other types of vehicles shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours, provided, however, this provision shall not apply to any such vehicle kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lot in the Subdivision. Under no circumstances shall such repairs be performed if the same results in the creation of an unsightly or unsafe condition as determined by the committee.

Section 10. Maintenance. Each Owner must repair, replace and maintain the roofs, gutters, downspouts, lawns, shrubs, landscaping, walks, fencing, exterior building surfaces, windows, doors, trim members, driveways, and other exterior improvements and attachments from time to time situated on such owner's Lot. Each Owner's duty of maintenance includes any and all easement areas upon such Owner's Lot. No Owner may permit any waste to the exterior portions of such Owner's Lot. Each Owner must make all repairs, maintenance and replacements necessary to attachments and appurtenant driveways, if any, in a safe, sanitary and reasonably attractive condition. Should an Owner fail to meet the minimum standards for maintenance, required then the Association may perform or have performed the necessary required maintenance and thereafter specifically assess such Owner for such costs pursuant to Article III, Section 4 hereunder and Article IV, Section 4 hereunder.

Section 10. **Maintenance.** Each Owner must repair, replace and maintain the roofs, gutters, downspouts, lawns, shrubs, landscaping, walks, fencing, exterior building surfaces, windows, doors, trim members, driveways, and other exterior improvements and attachments from time to time situated on such Owner's Lot. Each Owner is required to sod his Lot as appropriate. Each Owner's duty of maintenance includes any and all easement areas upon such Owner's Lot, and also includes all trees, grass, and landscaping located in the area between the sidewalk adjoining the Owner's Lot and the adjacent roadway. No Owner may permit any waste to the exterior portions of such Owner's Lot. Each Owner must make all repairs, maintenance and replacements necessary to attachments and appurtenant driveways, if any, in a safe, sanitary and reasonably attractive condition. Should an Owner fail to meet the minimum standards for maintenance, then the Association may perform or have performed the necessary required maintenance and thereafter specifically assess such Owner for such costs pursuant to Article III, Section 4 and Article IV, Section 4 hereunder.

**(a) Community Standards for Maintenance.** The Association, through its Board of Directors, may from time to time establish and amend standards for the required maintenance of lawns, landscaping, and other improvements upon the Lots. All landscaping of every kind and character, including shrubs, trees, grass and other plants, shall be neatly trimmed, properly cultivated and maintained continuously by the Owner thereof, in a neat and orderly condition and attractive appearance. All lawn areas not landscaped with landscaping beds must be fully landscaped or sodded. Saint Augustine, Zoysia and Argentine Bahia are acceptable turf grasses for all lawn areas. Acceptable turf grasses do not require approval of the Association. Overseeding in the winter with Winter Rye is also acceptable. The Lot Owner shall regularly mow, trim, edge the lawn. Grass may be no higher than six inches, except for seed heads. Grass meeting a pavement edge may not overgrow the pavement by more than three inches. The Lot Owner shall weed and regularly irrigate and treat the lawn and all landscaping beds for weeds and pests. Dead plants and any dead or bare areas of lawn shall be promptly removed and replaced. All yard clippings and debris shall be removed from sidewalks, gutters and streets and placed in appropriate sanitary containers for disposal. Yard clippings and debris shall not be blown into sewers or storm drains. No synthetic or artificial plants, lawn or landscaping is permitted without the prior written approval of the Association. No refuse or other unsightly objects shall be allowed to be placed or suffered to remain anywhere upon the Lot visible from the street or neighboring Lots.

The Board of Directors, in its sole discretion, may choose to grant variances to this section to accommodate the limitations imposed by drought conditions or periods of heightened watering restrictions. For example, the Board of Directors may waive the replacement of brown or yellowed sod until such time as drought conditions and heightened watering restrictions have lifted.

**(b) Enforcement.** The Association may enforce this Section and any Community Standards the Board may from time to time establish, by all legal means available to the Association under the Declaration, Articles of Incorporation, By-Laws and applicable law, including levying fines, suspending the right of the Owner and any tenant, guest or invitee of the Owner to use Association common areas and facilities, utilizing the pre-suit mediation procedures provided by the State of Florida, or filing a law suit.



Section 11. Rules and Regulations. No Owner, invitee, or person residing within the Properties may violate the Association's rules and regulations for the use of the Properties. All Owners and other persons residing within the Properties, and their invitees, at all times will do all things reasonably necessary to comply with such rules and regulations. Wherever any provision of this Declaration restricts or prohibits any activity, condition or structure within the Properties except as permitted by the Association's rules and regulations, such restriction or prohibition is self-executing until the Association promulgates rules and regulations expressly permitting such activities. Without limitation, any rules or regulation will be deemed "promulgated" when mailed to all Owners at the address shown on the Association's books for when posted at a conspicuous place on the properties from time to time designated by the Association for such purpose.

Section 12. Dwellings. Only one dwelling may be constructed on any Lot. The minimum square footage of each space with each dwelling containing a two car garage of similar architectural style as the main dwelling unless otherwise approved by Declarant. No two-story structure shall have a first floor square footage of less than 1200. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding or any portion of the same shall be constructed or parked on any Lot at any time, except for a construction shack, security trailer, temporary structure or temporary toilet during the construction of a dwelling by Declarant or its transferees. Any dwelling placed on a Lot shall be in accord with the front yard, side yard and rear yard setback requirements set forth in the Hillsborough County Zoning Regulations at the time such dwelling is sought to be placed upon the Lot. No structural additions will be permitted without written permission from the Architectural Committee.

Section 13. Access By Association. The Association has a right of entry onto the exterior portions of each Lot to the extent reasonably necessary to discharge its duties of exterior maintenance, if any, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercise of any right granted by this Declaration or by any applicable Supplemental or Amended Declaration. Such right of entry shall be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit. Entry into any improvement upon any Lot shall not be made without the consent of its Owner or occupant for any purpose, except pursuant to Court order or other authority granted by Law. No Owner shall withhold consent arbitrarily to entry by the Association for the purpose of discharging any duty or right of exterior maintenance if such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner. The Association's right of entry may be exercised by its agents, employees and contractors.

Section 14. Fences. No fences shall be erected or maintained on any Lot which shall be in excess of six feet in height. No chain link fences will be permitted. No hedges of shrubbery shall exceed an average height of six feet. Fences located in the front of the front setback line are prohibited. All fences shall comply with County regulations and be subject to review by the Architectural Committee as provided in Section V.

Section 15. Replacement. In the event a residence is damaged destroyed by casualty, hazard or other loss, then within twelve (12) months after such incident, the Owner thereof shall either rebuild or repair the damaged residence or promptly clear the damaged improvements and regrass and landscape the Lot in a slightly manner.

**ARTICLE III**  
**OPERATION, MAINTENANCE AND MONITORING OF DRAINAGE FACILITIES**

Section 1. The Association shall maintain, as part of the common elements, drainage structures for the properties and comply with conditions of the permits from the Southwest Florida Water Management District for the drainage system. The Association, shall, when requested by Declarant, accept transfer of the District permit identified as number 406438 for Timber Pond Subdivision. The conditions include monitoring and record keeping schedules, and maintenance.

Section 2. Water quality data for the water discharged from the permittee's property or into the surface water of the state shall be submitted to the District as required. Parameter to be monitored may include those listed in Chapter 7-3. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association of Methods for Chemical analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the permittee shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total volume discharged during the days of sampling and total volume discharged during the days of sampling and total monthly discharge from the property or into surface waters of the state.

Section 3. The Association agrees to operate and maintain the system, and has sufficient ownership so that it has control over all water management facilities authorized.

Section 4. The Association shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the permit.

Section 5. The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenance) that are installed or used to achieve compliance with conditions of this permit, as required by District. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by District rules.

Section 6. The Association, specifically agrees to allow authorized District personnel, upon presentation of credentials or other documents as may be required by law, access to the premises, at reasonable time, when the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with this permit and District regulations, such as:

- (a) having access to and copying any records that must be kept under the conditions of the permit;
- (b) inspecting the facility, equipment, practices, or operations regulated or required under this permit;
- (c) sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with this permit or District rules; and
- (d) gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

Section 7. Establishment and survival of littoral areas provided for stormway quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

Section 8. The Association shall submit inspection reports in the form required by the District, in accordance with the following schedule unless specified otherwise here or in Application Information:

(a) for systems utilizing effluent filtration or exfiltration, the inspection shall be performed 18 months after operation is authorized and every 18 months thereafter;

(b) for systems utilizing retention and wet detention, the inspections shall be performed two (2) years after operation is authorized and every two (2) years thereafter;

(c) in lieu of the schedule in (a) or (b) above, the following inspection scheduled shall be used: N.A.

Section 9. It shall be responsibility of each property owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, F.C.A., approved and on file with the Southwest Florida Water Management District (SWFWMD).

Section 10. It is the lot owner's responsibility not to remove native vegetation (including cattails) that becomes established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, and cutting. Lot owners should address any question regarding authorized activities within the wet detention pond to SWFWMD, Surface Water Permitting Department Permitting Department.

Section 11. No owner of property within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas, and upland conservation areas described in the approved permit and recorded plat of the subdivision, unless prior approval is received from the SWFWMD pursuant to Chapter 40D-4.

#### **ARTICLE IV THE ASSOCIATION**

Section 1. Membership. Every Owner of a Lot is a Member of the Association. If title to a Lot is held by more than one person, each such person is a Member. An Owner of more than one Lot is entitled to one membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and it is transferred automatically by conveyance of title to that Lot and may not be separated from ownership of a Lot. No person except and Owner may be a Member of the Association, and a membership in the Association may not be transferred except by transfer of title to a Lot. An Owner who is a contract seller may assign such Owner's membership and voting rights to such Owner's vendee in possession.

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

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

Class B. The Class B member shall be Declarant, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on the anniversary date five years from the date when the first Lot is conveyed to an individual purchaser.

Section 3. Common Area. Subject to the rights of Owners set forth in this Declaration, the Association has exclusive management and control of the Common Area, its improvements if any, and all related furnishings, equipment, fencing and other personal property, if any. The Association's duties with respect to the Common Area include the management and operation of, improvements, equipment and personal property installed by the Declarant on the Common Area as part of the work, so as to keep all of the foregoing in good, clean condition, order and repair; the payment of all taxes validly levied, assessed, or imposed with respect to the Common Area; and the maintenance of adequate public liability and property insurance with respect to the Common Area. The only common areas in the subdivision are the easements containing the entry features, perimeter walls, and drainage easements which contain water retention ponds.

Section 4. Exterior Maintenance. The Association has no duty of exterior maintenance with respect to any Lot; and, as more particularly provided in Article II, Section 10 hereinabove, each Owner must maintain such Owner's Lot, including any appurtenant driveways, in a safe, sanitary and reasonable attractive condition. If:

(a) any Owner refuses or fails to make any repairs, maintenance, or replacements required by Article II, Section 10, above; and

(b) as a result, any condition on or adjoining such Owner's Lot becomes a hazard or nuisance to any other Owner, or measurably diminishes or impairs the value or marketability of any other Lot, or is visually objectionable to persons lawfully upon the Properties; and

(c) not less than seventy-five percent (75%) of the members of the Board so find reasonable notice to, and reasonable opportunity to be heard by, the Owner affected; then upon the occurrence of all of the foregoing, the Association may make or perform such repairs, maintenance, or replacements as reasonably are necessary to correct such condition and assess all costs so incurred against such Owner's Lot as provided in Article IV, Section 4, below.

*Section 4. Exterior Maintenance. The Association has no duty of exterior maintenance with respect to any Lot; and, as more particularly provided in Article II, Section 10 hereinabove, each*

Owner must maintain such Owner's Lot, including any appurtenant driveways, in a safe, sanitary and reasonable attractive condition. If:

(a) Following reasonable notice, any Owner refuses or fails to make any repairs, maintenance, or replacements required by Article II, Section 10, above; and

(b) As a result, any condition on or adjoining such Owner's Lot becomes a hazard or nuisance to any other Owner, or measurably diminishes or impairs the value or marketability of any other Lot, or is visually objectionable to persons lawfully upon the Properties, or fails to meet the minimum standards for the maintenance of Lots in the Association; and

(c) Not less than seventy five percent (75%) of the members of the Board so find reasonable notice to, and reasonable opportunity to be heard by, the Owner affected; then, upon the affirmative vote of at least two-thirds (2/3) of the members of the Board, the occurrence of all of the foregoing, the Association may, through its agents, employees and contractors, enter onto the Lot to make or perform such repairs, maintenance, or replacements as reasonably are necessary to correct such condition and assess all costs so incurred against such Owner's Lot as provided in Article V IV, Section 4, below. Entry to perform such repairs, maintenance or replacements shall be only at reasonable times and upon reasonable notice to the Lot Owner. Such entry as provided herein shall not be a trespass, not shall the Association be liable for doing anything reasonably necessary or appropriate in connection with carrying out these provisions.

Section 5. Services. The Association may obtain and pay for the services of any person to manage its affairs to the extent the Board deems advisable, as well as such other personnel are furnished or employed directly by the Association or by any person with whom it contracts. Without limitation, the Board may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration, or the Articles, By-Laws, rules and regulations.

Section 6. Rules and Regulations. The Association, from time to time may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Properties, consistent with the rights and duties established by this Declaration. The Association's procedures for enforcing its rules and regulations at all times must provide the affected Owner with reasonable prior notice and a reasonable opportunity to be heard, in person, or through representatives of such Owner's choosing, or both.

Section 7. Capital Improvements. Except for replacement or repair of items installed by Declarant as part of the Work, if any, and except for any personal property related to the Common Area, the Association may not authorize capital improvements to the Common Area without the prior approval of seventy-five percent (75%) of the Association Members present and voting in person or by proxy at a meeting duly convened for such purposes as provided in Article VI, Section 2, below.

Section 8. Amplification. The provisions of this Declaration may be amplified by the Articles of Incorporation and By-Laws of Timber Pond Unit #3 Homeowners' Association, Inc., but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in the Declaration, or any Supplemental Declaration. The Declarant intends that the provisions of this Declaration and any Supplemental or Amended Declaration, on the one hand, and the Articles of

Incorporation and By-Laws on the other hand, be interpreted, construed and applied to avoid inconsistencies or conflicting results, however, Declarant intends that the provisions of this Declaration, or any Supplemental or Amended Declaration, control anything to the contrary in the Articles of Incorporation or By-Laws.

## **ARTICLE V** **ASSESSMENTS**

Section 1. Assessments Established. For each Lot owned within the Properties, Declarant covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it is so expressed in such Deed, is deemed to covenant and agree, to pay to the Association:

- (a) an annual assessment, as provided in Section 2 of this Article; and
- (b) special assessments, as provided in Section 3 of this Article; and
- (c) specific assessments; as provided in Section 4 of this Article; and
- (d) all excise taxes, if any, that from time to time may be imposed by law upon all or any portion of the assessments established by this Article; and
- (e) interest and costs of collection of such assessments, including reasonable attorney's fees, as provided in this Declaration.

All of the foregoing are a continuing charge on the land and secured by a continuing lien upon the Lot against which each assessment is made, as provided in Section 8, below. Each such assessment, together with excise taxes, interest and all costs and expenses of collection, including reasonable attorney's fees, also in the personal obligation of the person who was the Owner of such Lot when such assessment fell due. Such personal obligation will not pass to an Owner's successors in title unless assumed expressly in writing, however.

The annual or special assessments on Class B lots shall be 50% of the corresponding assessments for Class A lots. Alternatively Declarant may pay expenses of the Association, including reserves, in excess of the amounts collected from Class A lots, in lieu of assessments, so long as Declarant shall own Class B lots and the Class A assessments are not in excess of \$100 per month.

Section 2. Annual Assessment. The annual assessment must be used exclusively to promote the recreation, health, safety and welfare of the residents within the Properties, including (i) the operation, management, maintenance, repair, servicing, renewal, replacement and improvements of the Common Area; and (ii) the cost of labor, equipment, materials, management and, supervision of the Common Area; and (iii) all other general activities and expenses of the Association.

Section 3. Special Assessments. In addition to the annual assessment, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, renewal, repair or replacement of a capital improvement upon the Common Area, provided such assessment first is approved by seventy-five percent (75%) of the members present and voting in person or by proxy at a meeting duly convened for such purpose. Any such special

assessment may be payable in one or more installations, with or without interest, as seventy-five percent (75%) of the Members so present and voting determine.

Section 4. Specific Assessments. Any and all accrued, liquidated indebtedness of any Owner to the Association arising under the provision of this Declaration, or by contract expressed or implied, or because of any act or omission of any Owner or person for whom such Owner is responsible, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay it within thirty (30) days after written demand.

Section 5. Amount. Until the close of the first fiscal year following Declarant's conveyance of the Common Area to the Association, the annual assessment will not exceed \$100.00 per Lot. At least thirty (30) days before the expiration of each fiscal year, the Board will prepare and distribute to each Owner a proposed budget for the Association's operations during the next ensuing fiscal year. If such budget requires an annual assessment of 115% or less of the annual assessment then in effect, the assessment so proposed will take effect at the commencement of the next ensuing fiscal year without further notice to any Owner. If such budget requires an annual assessment that is either more than one hundred fifteen percent (115%) of the annual amount exceeding the increase in the Consumer Price Index ("CPI") published by the U.S. Department of Labor for the preceding year, or a comparable index if the CPI is not available, whichever increase is greater, then however, the Board must call a membership meeting on not less than fifteen (15) days prior notice for the purpose of approving such increase. A majority of the votes, pursuant to Article III, Section 2, of those Members present and voting is sufficient for such approval, and the assessment approved will take effect at the commencement of the next ensuing fiscal year without further notice to any Owner. If the proposed assessment is disapproved, a majority of the votes will determine the annual assessment for the next ensuing fiscal year, which may be in any amount not exceeding that stated in the meeting notice. Each annual assessment may be payable in such number of installments, with or without interest, as the Board determines. In the absence of any action by the Board or the membership to the contrary prior to the commencement of any fiscal year, the annual assessment then in effect automatically will continue for the ensuing year.

Section 6. Commencement. The assessments provided by this Article will commence as to all Lots on the first day of the first month following Declarant's first conveyance of title to any Lot to an Owner other than Declarant and will be prorated on the basis of the number of months then remaining in the Association's fiscal year.

Section 7. Assessment Lien. All sums assessed to any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a continuing lien on such Lot in favor of the Association. Such lien is subject and inferior to the lien for all sums secured by any First Mortgage encumbering such Lot; but all other lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent that such liens are inferior to the lien established by this Declaration, whether or not such consent is set forth in the instrument creating such lien. The recordation of this Declaration constitutes constructive notice to all subsequent purchasers and creditors, or either, of the existence of the Association's lien and its priority. The Association may, but is not required to, from time to time, record a Notice of Lien to further evidence the lien established by this declaration.

*Section 7. **Assessment Lien.** All sums assessed to any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a continuing lien on such Lot in favor of the Association. The lien shall be superior to all other liens and encumbrances on the Lot except*

for liens of ad valorem taxes and liens of first mortgages held by recognized lending institutions, except as set forth in Chapter 720 of the Florida Statutes, as it may be amended from time to time. The liability of a first mortgagee, or the successor or assignee of the first mortgage, who acquires title by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title shall be as set forth in Chapter 720 of the Florida Statutes, as it may be amended from time to time. This section shall relate back to the date of recording of the original Declaration of Covenants, Conditions and Restrictions. Such lien is subject and inferior to the lien for all sums secured by any First Mortgage encumbering such Lot, but All other lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent to the liens and assessments of the Association and that such liens are inferior to the lien established by this Declaration, whether or not such consent is set forth in the instrument creating such lien. The recordation of this Declaration constitutes constructive notice to all subsequent purchasers and creditors, or either, of the existence of the Association's lien and its priority. The Association may, but is not required to, from time to time, record a Notice of Lien to further evidence the lien established by this Declaration.

Section 8. Association Remedies. Any assessment not paid within thirty (3) days after its due date bears interest at the maximum rate of interest allowed by law at the time. The Association may sue the Owner personally obligated to pay such assessment for a money judgment, or it may foreclose its lien against such Owner's Lot. A suit to recover a money judgment for unpaid assessments may be contained without foreclosing, waiving, or otherwise, impairing the security of the Association's lien, or its priority. No Owner may waive or escape liability for the Association's assessments by non use of the Common Area or by abandonment of such Owner's Lot.

*Section 8. **Association Remedies.** Any assessment not paid within thirty (30) days after its due date bears interest at the maximum rate of interest allowed by law at the time. The Association may charge an administrative late fee in an amount that the Board of Directors may determine from time to time, up to the maximum amount permitted by law, for collection of any assessment which has been delinquent for a period of more than thirty (30) days. The Association may sue the Owner personally obligated to pay such assessment for a money judgment, or it may foreclose its lien against such Owner's Lot. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise, impairing the security of the Association's lien, or its priority. No Owner may waive or escape liability for the Association's assessments by non use of the Common Area or by abandonment of such Owner's Lot.*

Section 9. Foreclosure. The lien for sums assessed pursuant to this Article may be enforced by a judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In such foreclosure, the Owner is required to pay all costs and expenses of foreclosure including reasonable attorney's fees. All such costs and expenses are secured by the lien foreclosed, Such Owner also is required to pay to the Association all assessments against the Lot that become due during the period of foreclosure, which also are secured by the lien foreclosed and will be accounted and paid as of the date the Owner's title is divested for foreclosure. The Association has the right and power to bid at the foreclosure, or to acquire such Lot by deed or other proceeding in lieu of foreclosure, and thereafter to hold, convey, lease, rent, use and otherwise deal with such Lot as its Owner for purposes of resale only. If any foreclosure sale results in a deficiency, the Association may petition the Court having jurisdiction of the foreclosure to enter a personal judgment against the Owner for such deficiency.



*Section 9. **Foreclosure.** The lien for sums assessed pursuant to this Article may be enforced by a judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In such foreclosure, the Owner is required to pay all costs and expenses of foreclosure including reasonable attorney's fees. All such costs and expenses are secured by the lien foreclosed. Such Owner also is required to pay to the Association all assessments against the Lot that become due during the period of foreclosure, which also are secured by the lien foreclosed and will be accounted and paid as of the date the Owner's title is divested for foreclosure. The Association has the right and power to bid at the foreclosure, or to acquire such Lot by deed or other proceeding ~~proceeding~~ in lieu of foreclosure, and thereafter to hold, convey, lease, rent, use and otherwise deal with such Lot as its Owner ~~for purposes of resale only~~. If any foreclosure sale results in a deficiency, the Association may petition the Court having jurisdiction of the foreclosure to enter into a personal judgment against the Owner for such deficiency.*

Section 10. Exempt Lots. Any and all Lots from time to time owned by the Association will be exempt from the assessments established by this Article during the period of such ownership. This Association may not own or otherwise acquire Lots except (i) pursuant to the foreclosure of the Association's lien, or (ii) one Lot for use as a residence by any resident manager for the Properties who is employed by the Association or Association's manager.

Section 11. Lien Subordination. The Association's lien established by the Declaration is subordinate to the lien of any First Mortgage. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer of any Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, extinguishes the Association's lien as to payments that became due prior to such sale or transfer, without prejudice, however, to the Association's rights to collect such amounts from the Owners personally liable for their payment. No such sale or transfer relieves such Lot from liability for assessment thereafter becoming due or from the lien thereof. Any encumbrancer holding a lien on a Lot may pay, but is not required to pay, any amount secured by the lien created by this Article; and, upon such payment, such encumbrancer will be subrogated to all rights to the Association with respect to such lien, including priority.

*Section 11. **Lien Subordination.** The Association's lien established by the Declaration shall be superior to all other liens and encumbrances on the Lot except for liens of ad valorem taxes and liens of First Mortgages held by recognized lending institutions, except as set forth in Chapter 720 of the Florida Statutes, as it may be amended from time to time. ~~The Association's lien established by the Declaration is subordinate to the lien of any First Mortgage.~~ Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer of any Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, extinguishes the Association's lien as to payments that became due prior to such sale or transfer, except as set forth in Chapter 720 of the Florida Statutes, as it may be amended from time to time, without prejudice, however, to the Association's right to collect such amounts from the Owners personally liable for their payment. No such sale or transfer relieves such Lot from liability for assessment thereafter becoming due or from the lien thereof. ~~Any encumbrancer holding a lien on a Lot may pay, but is not required to pay, any amount secured by the lien created by this Article; and, upon such payment, such encumbrancer will be subrogated to all rights to the Association with respect to each lien, including priority.~~ This section shall relate back to the date of recording of the original Declaration of Covenants, Conditions and Restrictions.*

Section 12. Homesteads. By acceptance of a deed thereto, each Owner of each Lot is deemed to acknowledge conclusively that (i) the assessments established by this Article are for the

improvement and maintenance of any homestead thereon; (ii) the Association's lien for such assessments has priority over any such homestead; and (iii) such Owner irrevocably waives the benefit of any homestead exemption otherwise available with respect to all amounts secured by such lien.

## **ARTICLE VI**

### **ARCHITECTURAL CONTROL**

Section 1. Authority. No dwellings, building, parking cover, shed, structure, fence, outbuilding, color change, addition, exterior alteration or substantial attachment may be erected, placed, reconstructed or permitted to remain on any Lot unless and until approved by the Architectural Committee. Such approval will not be unreasonable withheld for replacements or reconstructions that conform in design, materials, appearance and quality to that of the original work.

Section 2. Procedure. All applications to the Architectural Committee must be accompanied by reasonably detailed plans and specifications. If the Architectural Committee does not approve or disapprove any application within thirty (30) days after receipt of an application consisting of a complete set of plans and specifications, its approval will be deemed given. If no suit to enjoin or remove any structure, activity, use, change, alteration, or addition in violation of any provision contained in this Declaration is commenced within six (6) months following its completion, and a *Lis Pendens* or other notice of the pendency of such action recorded, its approval also will be deemed given as to all persons with or without knowledge of such violation. In all other events, approval must be in writing. The procedures for approval at all times must afford any affected Owner with reasonable prior notice and a reasonable opportunity to be heard in person or by representatives of such Owner's choosing, or both. The Architectural Committee may assess a reasonable fee against the Owner seeking approval for any such review.

The approval or consent of the committee to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matters subsequently or additionally submitted for approval or consent to the same for a different person.

Section 3. Committee Membership. The Architectural Committee Membership shall be initially composed of David R. Chadwell, James M. Chadwell and Larry E. Chadwell, who by majority vote may designate a representative (herein called "Designated Representative") to act for and on behalf of the Architectural Committee and to exercise all powers and perform all duties of the Architectural Committee. The Address of the Architectural Committee is 9612 Harney Road, Thonotosassa, FL 33592. However, at such time as all of the Lots in the Subdivision have been sold by Declarant, the powers and duties of the Architectural Committee shall immediately vest in and be assigned to the Association, and the Architectural Committee shall thereafter exist as a committee of the Association under the control of the Association's Board of Directors.

Section 4. Replacement. In the event of the death, inability to serve because of disability, or resignation of any member or members of the Architectural Committee, the remaining member or members thereof shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to exercise the powers and perform the duties of the Architectural Committee.

Section 5. Standards. In reviewing any particular application, the Architectural Committee must consider whether its action will: (i) assure harmony of external design, materials and location in relation to surrounding buildings and topography within the Properties; and (ii) preserve the value and desirability of the Properties as a residential community; (iii) be consistent with the provisions of this Declaration; and (iv) be in the best interest of all Owners in maintaining the value and desirability of the Properties as a residential community.

Section 6. Time Limit to Build. Construction of the exterior and interior of any structure shall be completed within one hundred and eighty (180) days from the date of the commencement of construction thereof; provided, however, that the Architectural Committee may grant a reasonable time extension upon receipt of a written application for such extension by Owner, which application shall advise the number of days for which the extension is requested and the reason that such extension is necessary. All construction shall be diligently pursued to completion within a reasonable time after such work has begun.

Section 7. Term. The duties and powers of the Architectural Committee, whether or not such duties and powers have been deemed to be transferred to the Association as above provided, shall cease on and after five (5) years from the date of this Declaration. Thereafter, all powers and duties of the Architectural Committee shall cease and terminate; provided, however, that any time after January 1, 1997, whether or not the term of the Architectural Committee specified above shall have expired, the Board of Directors of the Association, upon a vote of members of the Association holding not less than two-thirds of the votes of members of the Association entitled to vote thereon, may assume or retain the duties and powers of the Directors of the Association shall thereafter have all of the powers and duties provided herein for the Architectural Committee.

~~Section 7. Term. The duties and powers of the Architectural Committee, whether or not such duties and powers have been deemed to be transferred to the Association as above provided, shall cease on and after five (5) years from the date of this Declaration. Thereafter, all powers and duties of the Architectural Committee shall cease and terminate, provided, however, that any time after January 1, 1997, whether or not the term of the Architectural Committee specified above shall have expired, the Board of Directors of the Association, upon a vote of members of the Association holding not less than two-thirds of the votes of members of the Association entitled to vote thereon, may assume or retain the duties and powers of the Directors of the Association shall thereafter have all of the powers and duties provided herein for the Architectural Committee.~~

## **ARTICLE VII**

### **ANNEXATION AND MERGER**

Section 1. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Annexation. Additional land contiguous either to the Subdivision or to other lands subject to this Declaration may be annexed by the Declarant into the Association within five (5) years of the date of this instrument. The Declarant or any other owner of land shall have the right to submit and make subject to this Declaration any additional land upon approval of the Board members of the Association holding two-thirds (2/3) of the votes of each class of membership of the Association entitled to vote thereon. Any additional land authorized under

this and the succeeding subsections to be added to the Subdivision shall be made by recording in the Public Records of Hillsborough County, Florida, an amendment to this Declaration and an annexation agreement with the respect to the additional land which shall extend the covenants and restrictions of this Declaration to such additional land. Such amendment shall impose assessments on the land covered thereby on a uniform, per Lot bases; substantially equivalent to the assessments imposed by this Declaration, and may contain such complementary additions or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional land.

(b) Mergers. The Association may merge into or consolidate with another homeowner's association, and upon such merger of consolidation, the Association's Properties, rights, and obligations shall be transferred to the surviving or consolidated association; or the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the other association, as on scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration.

#### **ARTICLE VIII** **GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, has the right to enforce, by any appropriate proceeding, all restrictions, conditions, covenants, easements, reservations, rules, regulations, liens and charges now or hereafter imposed by, or pursuant to, the provisions of this Declaration. If any Owner or the Association is the prevailing party in any litigation involving this Declaration, then that party also has the right to recover all costs and expenses incurred, including reasonable attorneys' fees for all trial and appellate proceedings, if any. If the Association employs an attorney to enforce the provisions of this Declaration against any Owner, regardless of whether suit is brought, the costs and expenses of such enforcement, including reasonable attorneys' fees, may be assessed against such Owner's Lot as provided in Article IV, Section 4. Failure by the Association or any Owner to enforce any provisions contained in this Declaration does not constitute a waiver of the right to do so at any time, except as provided in Article V Section 2 above. If these restrictions are enforced by any Owner or Class of Owners, such Owner or Owners may be reimbursed by the Association for all or any part of the costs and expenses incurred, including reasonable attorneys' fees, in the discretion of the Board. Declarant also has the right to enforcement all provisions of the Declaration relating to the use, maintenance, and preservation of the Properties; and, if Declarant is the prevailing party in any litigation involving this Declaration, to recover all of Declarant's costs and expenses incurred, including reasonable attorneys' fees.

Section 2. Meeting Requirements. Wherever any provision of this Declaration, the Articles of Incorporation, or the By-Laws requires any action to be approved by two-thirds (2/3) or more of the votes, pursuant to Article III, Section 2, of membership at a meeting duly convened for such purpose, written notice of such meeting must be given to all Members not less than fifteen (15) days in advance, setting forth its purpose. As such meeting the presence in person or by proxy of Members entitled to cast at least fifty percent (50%) of the votes, pursuant to Article III, Section 2, outstanding constitutes a quorum.

Section 3. Rights of Mortgagees. By agreement between any Owner and the holder of any mortgage on such Owner's Lot, any and all membership rights of such Owner may be assigned to, and exercised by, such Mortgagee as collateral or additional security for performance of the obligations secured by such mortgage; but no such assignment of delegation will bind the Association until the Association has received written notice thereof.

Section 4. Approval of FHA/VA. Notwithstanding anything contained herein to the contrary, any amendment to this declaration, the articles, or the bylaws; or any annexation of additional property; or any merger or consolidation of the association or any dissolution of the association; or any mortgaging, sale or dedication of any common area, must be approved by the Federal Housing Administration or the Veterans Administration if any mortgage encumbering any lot is guaranteed or insured by such agency, if any such action is made by declarant or by the members prior to the completion of 75% of all of the dwellings which may be built within the subject property.

Section 5. Severability. Invalidation of any particular provision of his Declaration by judgment or court order will not affect any other provision, all of which will remain in full force and effect provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to reform any otherwise invalid provision of this Declaration when necessary to avoid a finding of invalidity which otherwise effectuating Developer's intent of providing a comprehensive plan for the use, development, sale and beneficial enjoyment of the Properties.

Section 6. Amendment. The provisions of this Declaration will run with and bind the Properties, and will insure to the benefit of and be enforceable by the Association or any Owner, their respective heirs, successors, and assigns, for so long as the Properties are used in whole or in part as a residential community, and in all events, for at least twenty (20) years following the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by members entitled to cast not less than ninety percent (90%) of the votes pursuant to Article III, Section 2 hereof, thereafter by an instrument signed by members entitled to cast not less than seventy-five percent (75%) of the votes pursuant to Article III, Section 2, hereof. No amendment shall be effective which shall impair or prejudice the rights or priorities of the Declarant or any Institutional Mortgagee without the specific written approval of the Declarant or Institutional Mortgagee affected thereby.

Section 7. Easements for Deminimum Unintentional Encroachments. Where necessary and appropriate, Declarant and/or the Association, whichever is in control of the particular portion of the Properties at the time, may grant easements for deminimum unintentional encroachments.

IN WITNESS THEREOF, Declarant has executed this Declaration the date stated above.  
WITNESSES:

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

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STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by, \_\_\_\_\_ and \_\_\_\_\_ as the individuals, known to me to be the persons whose names are subscribed to the foregoing instrument, and they acknowledged to me that they executed the same for the purposes therein expressed and in the capacity therein stated.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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NOTARY PUBLIC,  
State of Florida at large

My Commission expires: