

**INSTR # 2000231035**  
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HILLSBOROUGH COUNTY  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**of**  
**MOSS CREEK**

THIS DECLARATION, made on this 9th day of August 2000, by MajorLand Corporation, a Florida corporation, whose address is 15201 Roosevelt Boulevard, Suite 112, Clearwater, Florida 33760, hereinafter referred to as "Declarant,"

**W I T N E S S E T H:**

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

SEE EXHIBIT "A"

**WHEREAS,** Declarant intends to develop Property into a community of single family residences; and

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

**NOW, THEREFORE,** the Declarant hereby declares that the 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 inure 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. "Articles" means the Articles of Incorporation of the Association, as may be amended from time to time.

Section 2. "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 3. "Association" means Moss Creek of Hillsborough Homeowners Association, Inc., a corporation not for profit organized or to be organized pursuant to Chapter 617, Florida Statutes, its successors and assigns.

Section 4. "Board" means the Association's Board of Directors.

Section 5. "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. The Common Area shall initially consist of the main entry area, roads, wetland conservation areas, and drainage structures and ponds, as shown on the plat.

Section 6. "Declarant" means MajorLand Corporation, a Florida corporation, whose address is 15201 Roosevelt Boulevard, Suite 112, Clearwater, Florida 33760, and its successors and assigns, if such successors and assigns are designated in writing as the successors and assigns of a Declarant's rights hereunder. Unless specifically assumed, an assignee Declarant shall not be liable for acts or omissions made by or on behalf of an assignor

Declarant prior to the date of assignment.

Section 7. "Documentation" means the legal documentation for Moss Creek consisting of this Declaration and the Articles of Incorporation and By-Laws of the Moss Creek of Hillsborough Homeowners Association, Inc., and any amendments to any of the foregoing now or hereafter made.

Section 8. "Dwelling" shall mean a residential dwelling constructed upon a Lot.

Section 9. "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 10. "Lot" means any platted parcel of land shown on a recorded subdivision map or replat of any part of the Properties, as recorded in the Public Records of Hillsborough County with the exception of the Common Area and portions, if any, of marked acreage or tracts.

Section 11. "Maintenance" means the exercise of reasonable care to keep buildings, homes, roads, landscaping, lighting, signage, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. 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 12. "Member" means every person or entity who holds membership in the Association.

Section 13. "Mortgage" means any mortgage, deed of trust,

or other instrument transferring 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 14. "Mortgagee" means any person named as the obligee under any Mortgage, or the successor in interest to such person.

Section 15. "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 16. "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 17. "Person" means any natural person or artificial entity having legal capacity.

Section 18. "Property" or "Properties" means the lands described as Moss Creek herein, including Lots and Common Areas.

Section 19. "Recorded" means filed for record in the Public Records of Hillsborough County, Florida.

Section 20. "Structure" shall mean: Any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot. Any excavation, grading, fill, ditch, diversion, dam, or other thing or

device which affects or alters the flow of any waters from, upon or across any Lot.

Section 21. "Subdivision Map or Plat" means each final official plat as recorded and shall include the subdivided real property therein described.

Section 22. "Surface Water Management System Facilities" shall mean: the facilities including, but not limited to all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

## ARTICLE II PROPERTY RIGHTS

Section 1. "Easements and Enjoyment" Each Owner has a non-exclusive 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 such Owner's right to use any facility owned or controlled by the Association for the same period of unpaid assessments; and (ii) to suspend any Owner's right to use any such facility for any infraction of the Association's valid rules and regulations for a period not to exceed 60 days.

(c) Dedication. The Association's right to dedicate, transfer or mortgage 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. If ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area shall be subject to the lot owner's easement.

(d) Delegation of Use. Subject to 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 Common Area.

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. Declarant dedicates that portion of the Properties described on the recorded plat and made a part hereof for use and maintenance of public utility, right-of-way, and drainage easements, together with a right of ingress and egress over and across the easement area for such purposes. Easements for drainage and/or for installation and maintenance of 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 lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible, or those areas designated as Common Areas.

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 Declarant's retained rights hereunder or 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 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's Board of Directors.

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

(d) General Prohibitions. No activity is permitted, nor may any object or substance be kept, stored, or permitted 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. This provision shall not apply to the activities of Declarant in the construction, maintenance, or sale of Dwellings.

(e) Use of Lots. Each Lot may be improved and used for residential and accessory agricultural purposes only and only single detached family homes, approved in accordance with Article VI may be constructed thereon. No trade, business, or profession of any kind may be conducted on any Lot except for the business of the Declarant and its transferees in developing the Properties or a home occupation as approved by Hillsborough County.

Section 6. Any walls, fences, gates and attendant landscaping constructed by the Declarant as part of the subdivision improvements or otherwise, shall be kept and maintained by the Association in condition and appearance as constructed as long as the Declarant continues to own a Lot, unless the Declarant otherwise consents. This section shall not apply to any fences constructed along the southern side of the 10 foot drainage easement along the northern boundary of the subdivision, which shall be maintained and kept in original condition by the Owner of each Lot on which the fence is located. No fence or other improvement shall be placed in the 10 foot drainage easement.

Section 7. Surface Water Management System Facilities. All Surface Water Management System Facilities shall be located on land owned by the Association or subject to an easement in favor of the Association. The Association shall maintain the Surface Water Management System Facilities in the same condition as when constructed.

Section 8. Access Easement. Declarant hereby grants to each Owner, their guests, invitees, residents, and visitors, emergency personnel and agencies, utilities providers, guests and invitees of the Association, representatives of the Association, and reserves to itself, its employees, agents, contractors, and invitees, a perpetual and non-exclusive easement over the Common Areas constructed as streets and roadways, for the purposes of ingress and egress to any area of the Property.

Section 9. Conservation Area. The Association shall assume maintenance responsibility for any Conservation Area as shown on the plat of the subdivision, including maintenance of



mitigation areas, as outlined in the subdivision site plan approval comments from Hillsborough County, Florida.

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, excluding a fence or wall located in the "10' Landscape Easement" located along Balm Riverview Road. 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 except as provided in Section 3 above and Section 12 below. 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, appurtenant driveways, and retaining walls, 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 V, Section 4 hereunder.

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 or when posted at a conspicuous place on the Properties from time to time designated by the Association for such purpose.

Section 12. Maintenance of Common Areas. The Association

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 the Common Area, including the fence and landscaping located in the "10' Landscape Easement" along Balm Riverview Road and the drainage swale located in the 10 foot drainage easement along the northern property boundary.

Section 13. a. Private Streets and Surface Water Management System Facilities. Any private streets on Association Common Area that may be constructed or created by the Declarant as part of the subdivision improvements or otherwise, shall be maintained by the Association in the same condition and appearance as constructed or created. The Association may, by adoption of the budget, establish reserves for the replacement of paving and other capital elements or improvements. All Surface Water Management System Facilities shall be located on land owned by the Association or subject to an easement in favor of the Association. The Association shall maintain the Surface Water Management System Facilities in the same condition as when constructed.

b. Any private streets, street lights, sidewalks, drainage systems, fences, walls and other improvements or amenities that have been constructed, installed or created by the Declarant as part of the subdivision improvements, shall be maintained by the Association in the same condition and appearance as constructed or created. The Association shall establish reserves for the replacement of these subdivision improvements.

c. By acceptance of a deed to a Lot within the Property, each Owner agrees that the Association and the Declarant have no obligations whatsoever for providing protection to persons on the Property. Furthermore, Owner acknowledges that the Property may have one or more gates at the entrances to assist in attempting to limit access to the Property to the residents therein and their invitees. Owner acknowledges and agrees, however, that the gates

will be open during the hours for which Declarant needs access to the model homes, construction trailer(s) or for the development of the Property or construction of homes. After Declarant notifies the Association through its Board of Directors that Declarant no longer needs such regular access, the Association will determine the hours, if any, for which the gates will be open. Owner further acknowledges and agrees that said gates do not guarantee the security of Owner's personal safety or security of Owner's property. Owner acknowledges that the Declarant and the Association have no control over said gates and Owner hereby releases Declarant from all liability related to the gates. Owner agrees that it shall be the sole and exclusive obligation of Owner to determine and institute for themselves the appropriate security and any other precautions to protect from and against trespass, criminal acts and any other dangers to Owner's safety and security of their property, because the gates in and of themselves will not protect Owner from and against said risks and dangers. Owner further agrees that the Declarant and the Association shall have no obligation whatsoever for providing protection to Owner or the Property from conditions existing within public or private streets, parks or Common Areas. Owner agrees that the Declarant and the Association shall not be liable for injuries or damage suffered by Owner resulting from any failure, defect or malfunction in a gate or equipment or personnel related thereto or acting in place of the gate (i) to restrict the Property to the residents and their invitees; or (ii) that limits the ability of Owner to leave or exit the Property by means of a gate. The Association shall have the responsibility for providing for gate access for all Owners, and of maintaining all other systems for Owner identification and access.

Section 14. Access Easement. Declarant/Owners hereby grant to each Owner, their guests, invitees, residents, and visitors, emergency personnel and agencies, utilities providers, guests and invitees of the Association, representatives of any Master Association, and reserves to itself, its employees, agents, contractors, invitees, and assigns, a perpetual and non-exclusive easement over the Common Areas constructed as streets and roadways, for the purposes of ingress and egress to any area of the Property.

**ARTICLE III  
OPERATION, MAINTENANCE AND MONITORING OF  
SURFACE WATER MANAGEMENT SYSTEM FACILITIES**

Section 1. The Association shall maintain, as part of the Common Area, drainage structures for the Property and comply with conditions of the permits from the Southwest Florida Water Management District (District) for the drainage system. The Association, shall, when requested by Declarant, accept transfer of any District permit for the Property (now known as Moss Creek). The conditions may include monitoring and record keeping schedules, and maintenance of drainage systems and mitigation areas.

Section 2. Water quality data for the water discharged from the permittee's property or into the surface waters of the state shall be submitted to the District as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. 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 monthly discharge from the Property or into surface waters of the State.

Section 3. The Association agrees to operate and maintain the Surface Water Management System Facilities, including mitigation areas, and shall maintain 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 appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by the 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 times, where 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 the permit;
- c. sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the 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. It shall be responsibility of each 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, Florida Administrative Code, approved and on file with the Southwest Florida Water Management District.

**Section 8.** The Owners shall not remove native vegetation (including cattails) that become established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, and cutting and the introduction of grass carp. Owners shall address any question regarding authorized activities within the wet detention pond to the Southwest Florida Water Management District, Tampa Permitting

Office, Surface Water Regulation Manager.

**Section 9.** No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities include, but are not limited to: digging or excavating; depositing fill, debris, or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water Management System Facilities. No vegetation in a wetland mitigation area or wet detention pond shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the Southwest Florida Water Management District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the Southwest Florida Water Management District in the Environmental Resource Permit may be conducted without specific approval from the District.

**Section 10.** No Owner within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements described in the approved permit and recorded plat of the subdivision, unless prior approval is received from the Southwest Florida Water Management District Tampa Regulation Department.

#### **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 an 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 of single-family Lots, with the exception of the Declarant (as defined in the Declaration), and shall be entitled to one vote for each Lot owned.

Class B. The Class B member shall be the Declarant, and 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 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 ten years from the date when the first Lot is conveyed to an individual purchaser; or
- (c) on a date when Declarant shall record a notice terminating its Class B membership status.

When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3. Common Area. Subject to the rights and duties 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, so as to keep all of the foregoing in good, clean substantial, attractive, sanitary, safe and serviceable 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.

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 and retaining walls, in a safe, sanitary and reasonably 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 diminishes or impairs the value or marketability of any other Lot, or is visually objectionable to persons lawfully upon the Properties; and

(c) at least a majority of the members of the Board present and voting find that the Owner was provided reasonable notice of the failure of repair, maintenance or replacement and the Board's consideration thereof, and was given an opportunity to be heard by the Board;

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 V, Section 4, below. Declarant hereby grants to the Association an easement over the exterior portions of all Lots for the purpose of carrying out the actions permitted under this Declaration.

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 as the Board determines are necessary or desirable for the proper operation of the Properties, whether such 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. As provided in the Bylaws, 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, 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 two-thirds (2/3) of the Association Members present and voting in person or by proxy at a meeting duly convened for such purposes as provided in Article VII, Section 2, below.

Section 8. Amplification. The provisions of this Declaration may be amplified by the Articles of Incorporation and By-Laws of Moss Creek of Hillsborough 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. If such conflict necessarily 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.

Section 9. Termination of Association. If the Association ceases to exist, all of the Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility.

**ARTICLE V  
ASSESSMENTS**

Section 1. **Assessments Established.** For each Lot, Declarant covenants, and each Owner of a 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:

- i. An annual assessment, as provided in Section 2 of this Article; and
- ii. Special assessments, as provided in Section 3 of this Article; and
- iii. Specific assessments; as provided in Section 4 of this Article; and
- iv. 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
- v. Interest and costs of collection of such assessments, including reasonable attorney's fees, as provided in this Declaration; and

All of the foregoing are a continuing charge on the Lot and secured by a continuing lien upon the Lot against which each assessment is made, as provided in Section 7, below. Each such assessment, together with excise taxes (if any), interest and all costs and expenses of collection, including reasonable attorney's fees, also is the personal obligation of the person who was the Owner of such Lot when such assessment became 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 Lots owned by the Declarant shall be twenty-five percent (25%) of the corresponding assessments for Lots owned by other Owners. As an alternative in lieu of such assessments, Declarant may, at its sole option, pay the excess expenses of the Association, including reserves, which

exceed the amounts collected from Class A lot assessments.

Section 2. **Annual Assessment.** The annual assessment shall be due on January 1 of each year. The annual assessment shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and Occupants, including (i) the operation, management, maintenance, repair, servicing, renewal, replacement and improvements of the Common Area required to be maintained by the Association, including the Surface Water Management System Facilities, monitoring and maintenance of any wetland mitigation areas until the Southwest Florida Water Management District determines that the area is successful in accordance with the Environmental Resource Permit, and the establishment of reserve accounts for all such items; and (ii) the cost of labor, equipment, materials, management and, supervision of the Common Area required to be maintained by the Association; and (iii) all other general activities and expenses of the Association.

Section 3. **Special Assessments for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements.** In addition to the annual assessment authorized above, the Association may levy special assessments as follows:

- i. Upon sale of a Lot by the Declarant to a third party, a special assessment for a working capital fund, equal to three (3) months' estimated regular assessment may be assessed which shall be due and payable upon conveyance of each Lot. The aggregate working capital fund established by such special assessment shall be accounted for separately, and shall be available for all necessary expenditures of the Association.
- ii. In an assessment year, a special assessment (in addition to the annual assessment or the assessment provided in subsection (a) above) which is applicable to that year only for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement

of a capital improvement upon the Common Area required to be maintained by the Association, including fixtures and personal property related thereto may be assessed. The Association shall separately account for the proceeds of such special assessments and proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question, provided such assessment first is approved by a majority of the Members present and voting in person or by proxy at a meeting duly convened for such purpose. Any such special assessment shall be due on the date fixed by, and may be payable in one or more installments (with or without interests), as the Board determines.

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 first Lot, and subject to the provisions of the paragraph below, the annual assessment will not exceed \$720.00 per Lot. At least thirty (30) days before the end of each fiscal year, the Board shall 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 one hundred fifteen percent (115%) or less of the annual assessment for the fiscal year then ending, the assessment so proposed shall take effect at the commencement of the next ensuing fiscal year without further notice to any Owner. However, if such budget requires an annual assessment that is more than one hundred fifteen percent (115%) of the annual assessment then in effect, the Board shall 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 VII, 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 Members voting shall 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.

Notwithstanding the above provisions, the assessment may increase an amount greater than fifteen percent without a vote of the Members if such additional increase is due solely to maintenance costs of amenities or recreational features which have been added by the Declarant or Association since the preparation of the last budget and assessment. If any such amenities or recreational features are added, the initial years assessment and subsequent assessments shall be adjusted by the Board to cover the additional maintenance costs.

Section 6. **Commencement.** The assessments provided by this Article shall commence as to all Lots on the first day of the first month following Declarant's first conveyance of title to any Lot to a third party and shall 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 8. **Association Remedies.** Any assessment not paid within thirty (30) days after its due date shall be deemed delinquent and shall bear interest from its initial due date at the maximum rate of interest allowed by law. 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, or both. 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 by foreclosure. The Association has the right and power to bid at the foreclosure sale, 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 10. **Exempt Lots.** Any and all Lots from time to time owned by the Association are exempt from the assessments established by this Article during the period of such ownership.

This Association may not own or otherwise acquire Lots except pursuant to foreclosure of the Association's lien.

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 a judicial sale upon foreclosure of any First Mortgage, or any deed in lieu thereof, extinguishes the Association's lien as to payments that became due prior to such judicial sale or deed in lieu of foreclosure, 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 assessments thereafter becoming due or from the lien thereof. Any lienholder may pay, but is not required to pay, any amount secured by the lien created by this Article; and, upon such payment, such lienholder will be subrogated to all rights of the Association with respect to such lien, including priority.

Section 12. **Homestead.** 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; an (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 COMMITTEE

Section 1. Creation and Composition. The "Architectural Committee" shall mean, as follows: Until all the Lots in Moss Creek have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Architectural Committee shall mean the Declarant, and shall not be a committee of the Association. At such time as all of the Lots in Moss Creek have

been fully developed, permanent improvements constructed thereon, and sold to permanent residents, the Declarant shall notify the Association and all the Owners of Lots in Moss Creek to that effect, and, thereupon, the Declarant's rights and obligations as the Architectural Committee shall forthwith terminate. Thereafter, the Association shall have the right, power, authority, and obligation to establish a successor Architectural Committee as a committee of the Association in accordance with the Association Documents and prescribe rules and regulations pursuant to which such Committee shall act. Notwithstanding the foregoing, if additional property is annexed and subjected to this Declaration in accordance with Article VIII, Section 9, then, as to the Lots in each subsequent phase, Declarant shall be the Architectural Committee until such time as all such Lots have been fully developed, permanent improvements constructed thereon, and sold to permanent residents, after which the Architectural Committee established by the Association shall take over.

Section 2. Design Standards. The Architectural Committee shall from time to time, subject to this Declaration and the Association Documents, adopt, promulgate, amend, revoke, and enforce guidelines, hereinafter referred to as the "Design Standards" for the purposes of:

(i) governing the form and content of plans and specifications to be submitted to the Architectural Committee for approval pursuant to this Declaration;

(ii) governing the procedure for such submission of plans and specifications; and

(iii) establishing guidelines with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of any Structure, and all other matters that require approval by the Architectural Committee pursuant to this Declaration.

(iv) establishing guidelines for approval of landscaping changes and maintenance of structures, including roof



replacement.

Generally, exterior modifications to the Structures constructed by Declarant are discouraged and will not be approved. In reviewing any particular application, the Committee shall consider whether its action will: (i) assure harmony of external design, materials and location in relation to surrounding buildings and topography within the Property; and (ii) preserve the value and desirability of the Property as a residential community; and (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 Property as a residential community.

Section 3. Review and Approval of Plans. No exterior change shall be commenced, erected, or maintained on any Lot, nor shall any exterior addition to or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to the Architectural Committee for written approval (i) as to conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of Moss Creek, (ii) as to the size, height, and location of the Structure in relation to surrounding Structures and topography and finished ground elevation, and (iii) shall be consistent with the provisions of this Declaration. No landscaping may be added to the front yard of any Lot without approval of the Architectural Committee. In the event the Architectural Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted in writing, the proposal shall be deemed to be disapproved by the Architectural Committee. The Committee may impose a fee for the costs involved with such approval.

Such plans and specifications shall be in such form and shall contain such information as may be reasonable required by the Architectural Committee.

Upon approval by the Architectural Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for

permanent record with the Architectural Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the Architectural Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot or Structure and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

It shall be the responsibility of each Owner at the time of construction of any structure on the Owner's Lot, to comply with all applicable Laws, including without limitation compliance with the construction plans for the surface water management system pursuant to Chapter 40D-4, F.A.C., approved and on file with the Southwest Florida Water Management District.

Notwithstanding anything to the contrary, the Architectural Committee may request changes in any plans and specifications, or Structures, that are completed or being built, if required by Law, and neither the Declarant nor the Architectural Committee shall be liable for damages.

In regards to any plans and specifications approved by the Architectural Committee neither Declarant, nor any member of the Architectural Committee, shall be responsible or liable in any way for any defects in any plans or specifications, nor for any structural defects in any work done according to such plans and specifications nor for the failure of the plans and specifications to comply with any Law. Further, neither Declarant, nor any member of the Architectural Committee shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any

such plans or specifications or the exercise of any other power or right the Architectural Committee provided for in this Declaration. Every Person who submits plans or specifications to the Architectural Committee for approval agrees, by submissions of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Committee, to recover for any such damage.

Prior to the issuance of a certificate as set out in section 4 below, any employee or agent of the Architectural Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and Structure thereon for the purpose of ascertaining whether the installation, construction, alteration, or maintenance of any Structure or the use of any Lot or Structure is in compliance with the provisions of this Declaration; and neither the Architectural Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 4. Certification by Architectural Committee. At the request of any Owner, the Association from time to time will issue, without charge, a written certification that the improvements, landscaping, and other exterior items situated upon such Owner's Lot have been approved by the Architectural Committee, if such is the case.

Section 5. Violations. If any Structure shall be erected, placed, maintained, or altered upon any Lot, otherwise than in accordance with the plans and specifications approved by the Architectural Committee pursuant to the provisions of this Article, such erection, placement, maintenance, or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the Architectural Committee such violation shall have occurred, the Architectural Committee shall notify the Board of the Association. If the Board of the Association shall agree with the determination of the Architectural Committee with respect to the violation then the Board shall provide written notice to the Owner by certified mail, setting forth in reasonable detail the nature of the

violation and the specific action or actions required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Association shall have and be entitled to, in addition to any other rights set forth in this Declaration, all rights and remedies at law or in equity. Actions of the Board are final.

Section 6. Partial Delegation to Association. At any time prior to the termination of Declarant's responsibilities as provided in Section 1 above, Declarant may delegate to a committee of the Association the responsibilities of the Architectural Committee with regard to any activities on individual Lots which have been fully developed, permanent improvements constructed thereon, and sold to permanent residents. The Declarant may then retain all other duties of the Architectural Committee with regard to new construction.

## ARTICLE VII

### GENERAL COVENANTS AND RESTRICTIONS

The following covenants, conditions, restrictions, and easements are herewith imposed on the Property:

**Section 1. Signs.** No sign of any kind will be displayed to public view within the Property except (i) customary name and address signs on each Lot, (ii) one (1) Lot sign of not more than six (6) square feet in size, placed in the front yard only, advertising a Lot or dwelling for sale or rent, or (iii) no trespassing, no solicitation, beware of dog or such similar signs affixed to the front of a Dwelling, not to exceed one-half (1/2) square foot in size, and approved by the Association as to color

and content. No sign shall be lighted. No advertising or third-party signs shall be permitted except as provided in (ii) above. 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 its designee to advertise the Property during the promotion and construction of Dwellings and sale of Lots.

**Section 2. General Prohibitions.** No activity is permitted, nor may any object or substance be kept, stored, or permitted anywhere within the Property in violation of law. No Owner shall cause or permit any unreasonable or obnoxious noises or odors or waste and no obnoxious, destructive, illegal, or offensive activity that constitutes a nuisance to any Owner or to any other person lawfully residing within the Property is permitted anywhere within the Property. This provision shall not apply to the activities of Declarant in construction, maintenance or sale of Dwellings.

**Section 3. Use of Lots.** Each Lot may be improved and used for residential purposes only and only one residence, approved in accordance with Article VI, may be constructed thereon. No trade, business, or profession of any kind may be conducted on any Lot except for the business of the Declarant and its transferees in developing the Property or a home occupation as approved by Hillsborough County.

**Section 4. Animals.** No animals, livestock, or poultry may be raised, bred or kept anywhere within the Property, except that no more than four (in the aggregate) dogs, cats or other conventional household pets may be kept upon any Lot so long as they are not kept, bred or maintained for any commercial purpose. Each Owner shall have the responsibility to clean up the waste produced by his or her pet immediately. No pet shall be permitted to run at large outside a Lot. Each Owner and Occupant shall insure that his pet shall not disturb other Owners and Occupants with excessive or repetitive noise. All pets outside a Dwelling shall be properly leashed or shall be kept within an approved fence, shall be otherwise controlled in whatever manner is most practical on or off a Lot, and shall be subject to all applicable local ordinances existing from time to time. No outside animal pen, cage or shelter

shall be constructed without approval of the Architectural Committee. No fenced dog runs are permitted.

**Section 5. Trash.** Except for regular curbside collection and disposal, no rubbish, trash, garbage or other waste material or accumulations may be kept, stored or permitted anywhere within the Property, except inside a Dwelling, or in sanitary containers completely concealed from view. No trash containers shall be placed at curbside for pickup more than twenty-four (24) hours prior to the scheduled pickup.

**Section 6. Appurtenances.** No porch, deck, patio, fence, screened enclosure, carport or other attached or detached structure (whether free-standing, structural or non-structural and whether in the front, side or rear of a Dwelling), shall be constructed without the approval of the Architectural Committee. No permanent outdoor clothes lines may be installed or maintained on any Lot 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 twenty (20) feet of a side street line. No storm doors or screen doors are permitted on the front door of a Dwelling. No above-ground swimming pools, free-standing storage sheds or outbuildings, screening of front porches or garages, antennas are permitted on any Lot.

Notwithstanding the above provision, each Lot shall be permitted to install and maintain one (1) satellite dish antenna of not more than one meter in diameter, and one solar collector, at a location and in a manner as may be approved by the Architectural Committee. The satellite dish antenna shall not be visible from the street.

**Section 7. Storage of Vehicles, Water Craft, Machinery or Equipment.** Except as specifically permitted hereinafter, no vehicle (motorized or non-motorized, licensed or not), no water craft (motorized or non-motorized) and no trailer of any kind (licensed or not), or any other machinery or equipment (whether mobile, licensed or not) shall be parked or stored on any Lot, sidewalk, public or private right-of-way within the Property, or

any portion of the Common Area. Except and to the extent that it is parked temporarily and is in use for construction, repair or maintenance of a Lot or Dwelling or the Common Areas, the foregoing prohibition shall include all of the foregoing items which are of a commercial character.

Notwithstanding the foregoing, "permitted vehicles" may be parked in driveways. A "permitted vehicle" shall mean a licensed motor vehicle which is (i) a passenger automobile or van (including a high-top conversion van or sport vehicle with oversized tires, but excluding a motor-home or recreational vehicle), (ii) a motorcycle, or (iii) a pickup truck, whether or not the bed has been enclosed, provided such pick-up truck can be otherwise completely concealed within a standard sized garage, and provided in each instance that any such vehicle has a current license tag and is in daily use as a motor vehicle on public rights-of-way. A "permitted vehicle" shall not include a vehicle used for commercial purposes, vehicles which contains racks or tool storage units or similar equipment (excluding low-profile units installed parallel to and immediately behind the cab). None of the foregoing items which are inoperative or abandoned shall be permitted on any Lot for a period in excess of forty-eight (48) hours unless such item is entirely within a garage. No major repairs shall be performed on any such items on any Lot except within a garage and under no circumstances shall such repairs be performed if they result in the creation of an unsightly or unsafe condition as determined by the Board. Unless specifically designated by the Board for parking, no temporary parking shall be permitted on any Common Area.

**Section 8. Dwellings.** Only one Dwelling may be constructed on any Lot. The minimum square footage of each Dwelling shall be 1600 square feet of air conditioned living space. No trailer, manufactured home, manufactured building, mobile home, tent, shack, garage, barn, storage shed, structure of a temporary character, or other outbuilding shall be constructed or parked on any Lot at any time, except for a construction shack, security trailer, temporary structure or temporary toilet during construction of a Dwelling by Declarant or its transferees. Any Dwelling constructed on a Lot shall be in accord with the front yard and rear yard setback requirements set forth in the Hillsborough County Zoning

Regulations. No structural or non-structural additions shall be permitted without written permission of the Architectural Committee. All driveways and sidewalks shall be constructed, reconstructed or repaired with the materials and in the manner in which they were originally constructed, and no colors, coatings, pavers, epoxies or similar treatments shall be permitted.

**Section 9. Access By Association.** The Association has a right of entry onto each Lot (but not inside a Dwelling) to the extent reasonably necessary to discharge its rights or 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. 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 Dwelling 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 upon a Lot 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 10. Fences.**

a. No fences shall be erected or maintained on any Lot which shall be in excess of six feet (6') in height.

b. No chain link fences are permitted, except that the Declarant may erect a vinyl-covered chain link fence along any common area, which fence shall be maintained by the Association.

c. No hedges or shrubbery shall exceed a height of eight feet (8').

d. Fences located in front of the front setback line are prohibited, except temporary fences erected by Declarant prior



to sale of a Dwelling.

e. The Architectural Committee shall adopt and promulgate standards for fences. All fences shall comply with County regulations and shall be subject to review by the Architectural Committee for compliance with the adopted standards of the Architectural Committee, unless the Architectural Committee waives such requirements based on special circumstances.

f. A fence located along a retention pond, or located along a drainage easement adjacent to a retention pond, may be constructed in accordance with the adopted standards of the Architectural Committee, and shall be subject to review by the Architectural Committee. Such fence shall not exceed four feet (4') in height.

**Section 11. Replacement.** In the event a Dwelling is damaged or destroyed by casualty, hazard or other loss, then within twelve (12) months after such incident, the Owner shall either rebuild or repair the damaged Dwelling or promptly clear the damaged improvements and re-sod and landscape the Lot in a sightly manner.

**Section 12. Mailboxes.** The Architectural Committee may approve a standard mailbox design for use throughout the Property. No mailboxes shall be installed which do not meet the adopted standard, if any, or are approved by the Architectural Committee.

**Section 13. Use of Waterways and Recreational Areas.** No Owner, Occupant or invitee shall permit the use of any water craft, motorized or non-motorized, on any lake or ponds in the Property, or permit the construction or maintenance of any dock, or permit any storage of any items on the banks of such lakes or ponds. The Association shall, by rule, adopt regulations for the control of fishing and recreational areas within the Property.

**Section 14. Maintenance of Entry Wall and Fencing.** The entry wall and fencing adjacent to the entrance and in the "10' Landscape Easement" along Balm Riverview Road shall be maintained on the interior and exterior of such wall or fence and any

structural repair or reconstruction shall be the responsibility of the Association.

**Section 15. Signs.** No sign of any kind will be displayed to public view within the Property except (i) customary name and address signs on each Lot, (ii) one (1) Lot sign of not more than six (6) square feet in size, placed in the front yard only, advertising a Lot for sale or rent, or. No advertising or third-party signs shall be permitted except as provided in (ii) above. 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 its designee to advertise the Property during the promotion and construction of Dwellings and sale of Lots.

#### 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 V, 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. Declarant also has the right to enforce all provisions of this 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.

The Southwest Florida Water Management District has the right to take enforcement measures, including a civil action for injunction and penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities.

The Association may impose fines against any Member, occupant, tenant, guest, or invitee, for violation of the provisions of this Declaration or the standards of the Architectural Committee. For occupants, tenants, guests or invitees, the Member responsible for such person's presence shall be responsible for any fine. Such fines shall not exceed \$50 per violation, and may be imposed only after a hearing before a committee of three members appointed by the Board who are not related to officers, directors, or employees of the Association, with 14 days notice to the person sought to be fined.

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 VII, 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. At 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 IV, 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 or 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 By-Laws; 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 as long as there is a Class "B" member.

Section 5. Severability. Invalidation of any particular provision of this 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 effectuate Declarant'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 inure to the benefit of and be enforceable by the Association 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-five (25) 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 by an instrument signed by members entitled to cast not less than two thirds (2/3) of the votes of each class of membership pursuant to Article IV, 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. Any amendment affecting the Surface Water Management System Facilities or the operation and maintenance of the Surface Water Management System Facilities shall have the prior written approval of the Southwest Florida Water Management District. During the first two years after execution hereof, Declarant may amend this Declaration by recording an instrument stating such amendment, for the sole purpose of complying with requirements of the Federal Housing Administration,

Veterans Administration, or Southwest Florida Water Management District.

Section 7. Easements for De Minimis 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 de minimis unintentional encroachments.

Section 8. 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 use 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 9. Annexation. Within ten years of the date of execution of this Declaration, either Declarant may add contiguous lands to the Property, by the filing of a supplemental declaration declaring such annexed lands to be subject to the provisions hereof, with such modifications and additions as may be applicable to such annexed lands. Upon the filing of such a supplemental declaration, the Lots and lands annexed thereby shall become subject to this Declaration, to the assessment provisions hereof, and to the jurisdiction of the Architectural Committee and the Association. For purposes of Article VII, Section 2, the Lots in the annexed lands shall be considered to have been part of the Property since the filing of this Declaration. Within ten (10) years of the date of execution of this Declaration, Declarant may remove any lands from the Property by the filing of a Supplemental Declaration declaring the same, if such lands have not been made part of any residential plat or subdivision or otherwise developed

for residential purposes.

Section 10. Rights of Declarant. The following actions shall require the approval of Declarant, as long as Declarant shall own a Lot: Amendment of this Declaration, Annexation of Additional Properties, and establishment of any assessment or yearly assessment.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date first stated above.

WITNESSES:

MajorLand Corporation,  
a Florida corporation,

Joan L. Roman

Joan L. Roman  
Please Print Name

Judith L. James  
Please Print Name

By: Rogers K. Haydon, Jr.  
President

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 9TH day of AUGUST, 2000, by Rogers K. Haydon, Jr., as President of MajorLand Corporation, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced N/A as identification.

Joan L. Roman  
NOTARY PUBLIC  
Name: \_\_\_\_\_  
Serial #: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

