

Declaration or by law and any other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE IV  
ASSESSMENTS

4.01 Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner of a Lot, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows:

- (a) To pay to the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by such Owner;
- (b) To pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by such Owner;
- (c) That there is hereby created a continuing charge and lien upon all Lots owned by such Owner against which all such assessments are made to secure payment of such assessments and any interest thereon as provided in Section 4.09 hereof and costs of collection including reasonable attorneys' fees;
- (d) Regardless of how title is acquired, an Owner, including a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the Owner. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor, for a share of common expenses or otherwise, up to the time of conveyance, without regard to any right the grantee may have to recover from the grantor the amount paid by the grantee. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Property, Recreational Area, or by the abandonment of the Lot against which the assessments are made, or otherwise.
- (e) Assessments, and installments thereof, not paid in full when they are due, shall bear interest at the highest lawful rate from the due date until paid. The Association shall have a lien on each Lot for any unpaid assessment on such Lot, with interest, reasonable attorneys' fees, at both trial and appellate levels, and costs incurred by the Association incident to the collection of the assessments or enforcement of the lien. The lien is effective from and after the recordation of a Claim of Lien in the Public Records of Hillsborough County, stating the description of the Lot, the name of the record Owner, the amounts due and due dates. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A Claim of Lien shall be signed and acknowledged by an officer or agent of the Association. The person making

full payment is entitled to a release of the lien. The Association may bring an action to foreclose a lien for unpaid assessments in the same manner as a mortgage of real property is foreclosed, and may also bring an action at law to recover a money judgment for the unpaid assessments without waiving its right under any Claim of Lien. If an Owner shall be in default in the payment of an assessment or any part thereof, the Board of Directors may accelerate the remaining installments for assessments for the fiscal year, upon notice to the Lot Owner, whereupon the unpaid balance of the assessment due for the remainder of the fiscal year shall become due upon the date stated in the Notice, but not less than fifteen (15) days after the delivery of such Notice to the Lot Owner.

(e) In the event an Owner fails to pay assessments, in full and when due as provided in this Declaration, the Association may at any time thereafter institute an action to foreclose the lien in favor of the Association against Owner's Lot, and/or to institute an action at law against the Owner personally obligated to pay such assessment. The Association's acceptance of any subsequent payment of any assessment, in whole or in part, shall not be deemed a waiver of the Association's right to enforce its lien against any Lot or to enforce the Owner's obligation to pay any such assessments as provided in this Declaration.

(f) The lien in favor of the Association for outstanding assessments shall be subordinate to a bona fide mortgage on any Lot, which mortgage is recorded in the Public Records of Hillsborough County, Florida, prior to the recording of any Claim of Lien against such Lot. A lien in favor of the Association for outstanding assessments shall not be affected by the sale or transfer of any Lot, except that in the event a first mortgagee obtains title to a Lot as a result of the foreclosure of the mortgage owned and held by such mortgagee or by deed given in lieu of foreclosure, or in the event another person or entity acquires title to the Lot at a foreclosure sale, any such acquirer of title, and his successors and assigns, shall not be liable for the outstanding assessments pertaining to such Lot or chargeable against the former Owner which became due prior to such acquirer's acquisition of title. In the event a Claim of Lien has not been recorded by the Association prior to the recording of the foreclosed mortgage or the mortgage for which a deed is given in lieu of foreclosure, the unpaid assessments shall be deemed to be assessments collectible from all other Owners and may, at the discretion of the Board of Directors, be reallocated and assessed against all Lots, including the Lot acquired through foreclosure or deed in lieu of foreclosure. Any foreclosure sale or transfer made in lieu of foreclosure shall not relieve the acquirer of title from the liability for, nor relieve the Lot so acquired from the lien of any assessments made after such acquisition of title. Notwithstanding anything contained herein to the contrary, the prior Owner of any Lot sold or transferred pursuant to a foreclosure shall not be released from liability to the Association for any outstanding assessments, or from the enforcement of the prior owner's personal obligation for outstanding assessments by means other than foreclosure of the lien in favor of the Association.

4.02 Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of providing for the common good and general welfare of the people of the new community of the Development, including, but not limited to, security, the

acquisition, construction, improvement, maintenance and equipping of Common Property, payment of any ad valorem taxes upon any property owned by the Association, the enforcement of the Restrictions contained in this Declaration, the enforcement of the Design Standards of the ACC, the payment of operating costs and expenses of the Association and the payment of all principal and interest when due on all debts owed by the Association.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus as the Board may deem to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.04 Annual Assessment.

(a) Beginning on the Commencement Date and continuing thereafter until January 1 of the year immediately following the Commencement Date, each Lot shall be subject to an annual assessment of \$120.00 per Lot. In the event that the Commencement Date falls on a day other than January 1, the annual assessment for such year shall be prorated so that each Owner pays an annual assessment proportional to the number of days remaining in the calendar year. The words "Assessment Year" as used herein shall mean the calendar year with the first Assessment Year commencing on January 1 of the year immediately following the Commencement Date.

(b) Commencing with the first Assessment Year and continuing thereafter, the annual assessment may be increased at any time and from time to time during each Assessment Year not more than ten percent (10%) above the increased annual assessment for the previous Assessment Year without a vote of the Membership as provided for in Section 4.04(c) below.

(c) Commencing with the first Assessment Year and continuing thereafter, the annual assessment for each Assessment Year may at any time and from time to time be increased more than ten percent (10%) above the maximum annual assessment for the previous Assessment Year if such increase is approved by a two-thirds (2/3) vote of the Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

4.05 Special Assessments.

In addition to the annual assessments authorized by this Article IV, the Association may levy, in any Assessment Year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair

or replacement of any improvement on the Common Property. Such special assessments may be levied by the Board in any Assessment Year without the approval of the members, which special assessments in the aggregate do not exceed an amount equal to the annual assessment then in effect. Special assessments exceeding said amount shall require the approval of two-thirds (2/3) of the Members of the Association who are present in person or by proxy at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association and this Declaration.

#### 4.06 Assessment Procedure.

(a) The Board shall establish the annual assessment for each Assessment Year at an amount not in excess of the maximum annual assessment as determined by the provisions of this Article IV, and shall also establish the date during the Assessment Year on which the annual assessment shall be due and payable (such date is hereinafter referred to as the "Due Date"). The Board shall also establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set aside each year into a reserve allowance to be used for future repair and replacement of the Common Property; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that portion of such costs will be covered by Special Assessment. The Board shall cause the Association to send to each Owner at least thirty (30) days in advance of the Due Date written notice setting forth the amount of the annual assessment and the Due Date. The annual assessment shall become due on the thirtieth (30th) day following such written notice or the Due Date, whichever is later. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the Assessment Year. The Board shall also establish payment procedures for payment of any special assessments for any improvements which may be levied in accordance with the provisions of this Article IV.

(b) All Members of the Association shall be given written notice by the Board not less than thirty (30) nor more than sixty (60) days in advance of any meeting of the Members of the Association at which the Board shall propose taking action pursuant to Section 4.04(c) and Section 4.05 of this Article IV. Such written notice shall specify under which Section or Sections the Board will propose action. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the total votes outstanding shall constitute a quorum. If the required quorum is not present at such meeting, a second meeting may be called by the Board subject to the same notice requirement, and the required quorum at such second meeting shall be thirty percent (30%) of the total votes outstanding. No such second meeting shall be held more than sixty (60) days following the first meeting. If the required quorum is not present at the second meeting, the Board may take such action without approval of the Members.

4.07 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Residences.

4.08 Contribution by Declarant. For so long as Declarant has the authority to appoint and remove Directors and Officers of the Association, Declarant shall not be liable for the payment of any assessments. Provided, however, during said period Declarant shall advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for the reserve allowance), and the sum of annual, special and specific assessments collected by the Association in any Assessment Year, and such advances shall be evidenced by promissory notes from the Association to Declarant.

4.09 Effect of Nonpayment of Assessments. Assessments, and installments thereof, not paid in full when they are due, shall bear interest at the highest lawful rate from the due date until paid. The Association shall have a lien on each Lot for any unpaid assessment on such Lot, with interest, reasonable attorneys' fees, at both trial and appellate levels, and costs incurred by the Association incident to the collection of the assessments or enforcement of the lien. The lien is effective from and after the recordation of a Claim of Lien in the Public Records of Hillsborough County, stating the description of the Lot, the name of the record Owner, the amounts due and due dates. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A Claim of Lien shall be signed and acknowledged by an officer or agent of the Association. The person making full payment is entitled to a release of the lien.

4.10 Collection of Assessment and Enforcement of Lien. The Association may bring an action to foreclose a lien for unpaid assessments in the same manner as a mortgage of real property is foreclosed, and may also bring an action at law to recover a money judgment for the unpaid assessments without waiving its right under any Claim of Lien. If an Owner shall be in default in the payment of an assessment or any part thereof, the Board of Directors may accelerate the remaining installments for assessments for the fiscal year, upon notice to the Lot Owner, whereupon the unpaid balance of the assessment due for the remainder of the fiscal year shall become due upon the date stated in the Notice, but not less than fifteen (15) days after the delivery of such Notice to the Lot Owner. The Association's acceptance of any subsequent payment of any assessment, in whole or in part, shall not be deemed a waiver of the Association's right to enforce its lien against any Lot or to enforce the Owner's obligation to pay any such assessments as provided in this Declaration.

4.11 Subordination of Lien. The lien in favor of the Association for outstanding assessments shall be subordinate to a bona fide mortgage on any Lot, which mortgage is recorded in the Public Records of Hillsborough County, Florida, prior to the recording of any Claim of Lien against such Lot. A lien in favor of the Association for outstanding assessments shall not be affected by the sale or transfer of any Lot, except that in the event a first mortgagee obtains title to a Lot as a result of the foreclosure of the mortgage owned and held by such mortgagee or by deed given in lieu of foreclosure, or in the event another person or entity acquires title to the Lot at a foreclosure sale, any such acquirer of title, and his successors and assigns, shall not be liable for the outstanding assessments pertaining to such Lot or chargeable against the former Owner which became due prior to such acquirer's acquisition of title. In the event a Claim of

Lien has not been recorded by the Association prior to the recording of the foreclosed mortgage or the mortgage for which a deed is given in lieu of foreclosure, the unpaid assessments shall be deemed to be assessments collectible from all other Owners and may, at the discretion of the Board of Directors, be reallocated and assessed against all Lots, including the Lot acquired through foreclosure or deed in lieu of foreclosure. Any foreclosure sale or transfer made in lieu of foreclosure shall not relieve the acquirer of title from the liability for, nor relieve the Lot so acquired from the lien of any assessments made after such acquisition of title. Notwithstanding anything contained herein to the contrary, the prior Owner of any Lot sold or transferred pursuant to a foreclosure shall not be released from liability to the Association for any outstanding assessments, or from the enforcement of the prior owner's personal obligation for outstanding assessments by means other than foreclosure of the lien in favor of the Association.

4.12 Certificate of Payment. Upon written demand by an Owner, the Association shall within a reasonable period of time issue and furnish to such owner a written certificate stating that all assessments (including penalties, interest and costs, if any) have been paid with respect to any Lot owned by said Owner as of tile date of such certificate, or if all assessments, interest and costs have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser of, or lender on, the Lot in question.

4.13 Approval By Declarant. Notwithstanding anything to the contrary contained herein, no special assessment shall be made without the Approval of Declarant for so long as Declarant has the right to appoint Officers and Directors of the Association.

4.14 Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Owners for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

- (a) Expenses of the Association which benefit less than all of the Lots which may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received. The Board shall determine, in its sole discretion, the manner in which a special assessment shall be equitably assessed among the Lots benefitted.
- (b) Expenses incurred by the Association pursuant to Section 6.14 hereof; and

(c) Reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws.

ARTICLE V  
ARCHITECTURAL CONTROL

5.01 Architectural Control Committee - Creation and Composition.

(a) An Architectural Control Committee (the "ACC") shall be established consisting of not less than three (3) or more than five (5) individuals, provided, however, that the ACC shall always have an uneven number of members. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, but not the obligation, to appoint all members of the ACC until the plans for all of the Residences for all of the Lots in the Development have been approved by the ACC. Thereafter, the Board shall appoint the members of the ACC. All costs of operating the ACC, may, at the discretion of Declarant, be borne by the Association.

(b) Each initial member of the ACC shall be appointed for a term expiring on December 31, 1997. Thereafter each member of the ACC shall be appointed for a calendar-year term. If any vacancy shall occur in the membership of the ACC by reason of death, incapacity, resignation, removal or otherwise, the remaining members of the ACC shall continue to act and such vacancy shall subject to the provisions of 5.01(a) be filled by the Declarant (or Board if at the time the Board has the right to appoint members of the ACC) at the earliest possible time. Any ACC member may resign at any time by giving written notice of such resignation to the Chairman of the ACC and such resignation shall take effect on receipt thereof by the Chairman. Any member of the ACC may be removed at any time with or without cause by the Declaration (or Board if at the time the Board has the right to appoint members of the ACC).

5.02 Purpose, Powers and Duties of the ACC. The purpose of the ACC is to assure that any installation, construction or alteration of any Structure on any Lot shall be submitted to the ACC for approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of external design and general quality with the existing standards of the neighborhood and with the standards of the Fishhawk Ranch development, and (ii) as to the location of Structures with respect to topography, finished ground elevation and surrounding Structures. To the extent necessary to carry out such purpose, the ACC shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any Structure on any Lot.

5.03 Officers, Subcommittees and Compensation. The members of the ACC shall appoint a Chairman from among their number and may appoint from among their number such