

Section 9. "Master Association" shall mean and refer to FishHawk Ranch Homeowners Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

Section 10. "Master Declaration" shall mean and refer to the Declaration of Covenants Restrictions, and Easements for FishHawk Ranch, recorded at O. R. Book 8632, Page 1126 of the Public Records of Hillsborough County, Florida, as may be amended from time to time.

Section 11. "Member(s)" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration and the Articles of Incorporation and the Bylaws of the Association. References herein to "members" shall mean "Members" and vice versa.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. "Property" shall mean and refer to that certain real property hereinabove described, and such other additions thereto as may hereafter be brought within the jurisdiction of the Association by recording supplemental Declarations.

Section 14. Other Capitalized Terms. Other capitalized terms may be used in this Declaration, whose definitions shall be found in the other text hereof. Such defined terms shall have the same meaning throughout this document as they are defined in the text of this document.

## ARTICLE II PROPERTY RIGHTS

Section 1. Common Area. "Common Area" as used herein means all property whether improved or unimproved, or any interest therein, which from time to time is owned by the Association or dedicated on the plat of the Property for the common use and enjoyment of all Owners. Tracts A and C shall be owned by the Association, but use and access shall be limited to Members and Owners (together with their respective tenants and invitees) of Townhomes, except as otherwise expressly provided herein. All other Common Area as shown on the plat of the Property may be delegated to others, as more fully described in Article X, Section 3 hereof.

**Section 2. Community Development District Property.** As provided in the Plat, Tracts B-1, B-2, B-3, B-4, B-5 and D-1 and drainage easements shown on the Plat shall be granted to the FishHawk Community Development District by FishHawk.

**Section 3. Utility Easements.** Public Utilities serving the Property and Lots, have been, or will be, installed underground within Tract A and within, below or upon the Property, for the use, benefit and service of the Property, the Lots and all improvements upon the Property and a permanent, perpetual and non-exclusive easement for utilities over the Property is hereby granted to the providers of utility (including Hillsborough County and any other governmental agency) service to the Property. Any and all use of utility easements shall be in accordance with the applicable provisions of this Declaration. If any wall or fence is installed by any Declarant, or any home builder over any public utility easement, such installation is at the risk of the party making the installation and the public utility shall have no obligation to restore the wall or fence to its condition prior to any construction work by the provider of the utility.

**Section 4. Public Easements.** Fire, police, health, sanitation, (including trash collection), cable, communications, drainage and other public service personnel and vehicles shall have a permanent, perpetual and non-exclusive easement for ingress and egress over and across the Property, the Common Area and each Lot.

**Section 5. Association's Right of Entry.** The Association's duly authorized representatives, contractors or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the Common Area or any Lot for the purpose of fully and faithfully discharging the duties of the Association, including the duties of maintenance as set out herein.

**Section 6. 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 Section 4 above. The burden of all rights and easements granted by this Declaration constitutes a permanent servitude upon the lands affected.

**Section 7. Private Streets.**

(a) Declarants hereby grant to fire, police, health, sanitation (including trash collection) and other public service personnel and vehicles, a permanent and perpetual

easement for ingress and egress over and across the Common Areas, including any private streets within the Property.

(b) Declarants hereby grant to each Owner, their guests, invitees, residents, and visitors, and utilities providers, guests and invitees of the Association, and reserves to itself, its employees, agents, contractors, and invitees, a perpetual and nonexclusive easement over the Common Areas constructed as streets and roadways, for the purposes of ingress and egress to any area of the Property.

**Section 8. Operation of Gated Entries.** By acceptance of a deed to a Lot within the Property, each Owner agrees that the Association and the Declarants have no obligations whatsoever for providing protection to persons on the Property. Owners further acknowledge and agree that an entrance gate does not guarantee the Owners' personal safety or security of Owners' Property. Owners acknowledge that the Declarants and the Association have no control over said gates and Owners hereby release Declarants and the Association from all liability related to the gates. Owners agree that it shall be the sole and exclusive obligation of Owners 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 Owners' safety and security of their Property, because a gate in and of itself will not protect Owners from and against said risks and dangers. Owners further agree that the Declarants and the Association shall have no obligation whatsoever for providing protection to Owners or the Property from conditions existing within public or private streets, parks or Common Areas. Owners agree that the Declarants and the Association shall not be liable for injuries or damage suffered by any Owner resulting from any failure, defect or malfunction in a gate or equipment or personnel related thereto or acting in place of a 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.

**Section 9. Liability of Association.** Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the Association (hereafter, collectively the "Association Documents"), neither the Association nor the Declarants nor any officer or employee thereof shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, Owner, occupant or user of any portion of the Property or improvements thereon, including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

(a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof;

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Hillsborough County and/or any other jurisdiction or the preventions of tortious activities;

(c) any provisions of the Association Documents setting forth the uses of assessments which are related to health, safety, and/or welfare shall be interpreted and applied only as limitations of the uses of assessment funds and not as creating a duty of the association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason;

(d) each Owner (by virtue of his acceptance of title to his Lot) and each other person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this Article and shall be deemed to have automatically waived any and all rights, claims demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this Article; and

(e) the Property may contain recreation areas/open spaces, and water areas and other natural elements which may present hazards to persons and which may contain wildlife and other organisms of danger to children and other persons. All Owners, on behalf of themselves, their families, guests, and invitees, hereby agree that the Association shall have no liability for any activities undertaken by any person on Association lands or Common Areas and easements, which result in injury from such natural elements. All Owners, families, invitees and guests agree that any person using such lands does so at his own risk. All Owners shall undertake to warn others of such hazards when appropriate.

As used in this Article, "Association" shall include within its meaning the Declarants, and the directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns of the Association and the Declarants.

Section 10. All Rights and Easements Appurtenances. The benefit of all rights and easements granted by this Article, or by any supplemental Declaration, constitute a permanent appurtenance to, and shall pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as non-exclusive by this Article or by any supplemental Declaration, its benefit nevertheless is exclusive to all Lots granted such benefit by this Article, or by such supplemental Declaration, unless this Article, or such supplemental Declaration expressly grants such benefit to additional Persons. In no event shall the benefit of any such easement extend to the general public.

## Section 11. Maintenance.

(a) Responsibility of Association. The Association shall provide grounds maintenance, exterior painting, and at the times determined by the Board of Directors of the Association, replacement of all of the shingles upon each Lot, and each Lot is subject to an Annual Assessment (and Special Assessment if necessary) for such maintenance as provided in this Declaration, as the case may be, as follows: (i) the exclusive right to conduct grounds maintenance, hereinafter defined as mowing, blowing, edging, fertilization, insect, weed and disease control, irrigation and maintenance of lawns; trimming and replacement of trees, shrubs and landscaped areas, including any partially enclosed front yards of Lots, walks, fences, walls and hedges (if any); removal of debris from gutters; maintenance, repair and replacement of the subdivision entry security gate, and other exterior improvements in the Common Area installed by a Declarant; (ii) the exclusive right to painting and repair of exterior building surfaces at the times determined by the Board of Directors of the Association; (iii) the exclusive right to replace all shingles on all residential buildings, (iv) repair, replacement, and maintenance of the utility easements located under each Lot, including, but not limited to water and sewer lines or pipes, fire hydrants, wells, lift stations, pumping stations, building sewage disposal plants, other utility plants and other appurtenant facilities lying within or upon the Property; and (v) the right to repair, replace and maintain irrigation systems on or under the exterior of each Lot and within any irrigation easement or wall easement. The Association's duty of exterior maintenance does not include: glass surfaces, replacement of exterior doors, gutters or any trees, shrubs, lawns or landscaped areas within an enclosed patio or fully enclosed entry area including the enclosed rear patios of Lots, except that the Association will maintain and replace any hedge or other landscaping installed by Declarant along the boundary between any Lot and the Common Area, if any. The Association also is not responsible for any maintenance, repair or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty; and each Owner will promptly correct any and all such casualty damage to such Owner's Lot within a reasonable time as specified below. Where it is stated herein that the Association has "exclusive control", it means the Owners of Lots shall not be required, or

entitled, to conduct such activities, it being the intent of the Association to control such activities for purpose of maintaining uniformity within the Property. All maintenance performed by the Association shall be at least up to the "Development Wide Standards" as defined in the Master Declaration. Such standard may be more specifically determined by the Board and/or committees required or permitted to be established pursuant to this Declaration or the By-Laws. The Association shall have sole discretion as to the timing and necessity of maintenance activities.

(b) Responsibility of Owner. The Owner shall provide exterior maintenance as follows, the cost for which each Owner shall be individually responsible: (i) repair and replacement of all glass surfaces on said Lot; (ii) repair and replacement of all exterior doors; (iii) repair and maintain all caulking around exterior doors, windows and vents; (iv) repair and maintain gutters (other than removal of debris therefrom); (v) inspect and repair all cracks in cementitious texture surfaces; (vi) inspect and repair all cracks or peeling exterior paint; (vii) replace any trees, shrubs, lawns or landscape areas within a fully enclosed patio or entry area, if any, including the rear patios of an Owner's respective Lot; (viii) maintain, repair, or replace damage resulting from any fire, wind, flood, tornado, hurricane or other casualty damage within the Lot of an Owner; (ix) repair or replace any property whether upon such Owner's Lot or any other Lot, or the Common Area, which repair or replacement is required because of any gross negligence or the willful act of such Owner or any member of such Owner's family or household, or any guest, tenant or other invitee of such Owner; (x) repair, replace and maintain additional landscaping installed by an Owner within a fully enclosed patio or entry area, including the enclosed rear patio of an Owner's Lot; (xi) clean walks or driveways when such cleaning is necessary as determined by the Association, and the cleaning is necessitated by excessive wear or staining; and (xii) roof repair (other than replacement of all of the shingles thereon required by the Association) and maintenance, including but not limited to, such repairs and maintenance as may be necessary to stop or prevent leaks and removal of mildew, algae and other stains. The owner shall be responsible for removing any staining of a residence or paved area, which may be caused due to water quality or irrigation system. The Association may require from time to time, that owners adopt systems to prevent stains (such as automatic de-ionization systems). No owner with a townhome adjoining a lake may utilize the lake to irrigate unless provided by Declarant as part of the original construction, subject to applicable permitting. All maintenance performed by the owner shall be at least up to the Development Wide Standards, as defined in the Master Declaration.

(c) Failure of Owner to Repair. The Association may perform maintenance or make repairs and assess the costs of any required exterior maintenance or repairs to the Owner of any Lot under the following circumstances: (i) such Owner does not maintain in a reasonable condition any lawn or landscaped area, if any, on such Owner's Lot that

the Association is not required to maintain; or (ii) such Owner does not when reasonably necessary replace any glass surfaces or exterior doors on such Owner's Lot; or (iii) any maintenance, repair or replacement, whether upon such Owner's Lot, or any other Lot or Common Area, is required because of any willful act of such Owner or any member of such Owner's family or household or any guest, tenant or other invitee of such Owner; or (iv) any Owner fails promptly to repair or replace, as the case may be, any casualty damage to such Owner's Lot; (v) the Owner fails to comply with any of the maintenance requirements set forth in subparagraph (b) immediately above; and (vi) such Owner has failed to undertake the necessary maintenance or replacement within a reasonable period of time following written notice from the Association. Upon the occurrence of the foregoing, and after reasonable prior notice to such Owner, and a reasonable opportunity to be heard, the Association's Board of Directors by a vote of not less than sixty-six percent (66%) of the full Board may undertake such maintenance, replacement or repairs and may assess by specific assessment the costs of such maintenance, replacement or repairs, as the case may be, against such Owner's Lot in the manner provided by this Declaration.

(d) Exterior Maintenance Assessment. An annual exterior maintenance assessment to provide and be used for the exterior painting and grounds maintenance, repair, servicing, renewal, replacement or improvement of the exterior of each Lot, including replacement of all shingles thereon and building painting, together with reserves for any and all of the foregoing, shall be assessed against each Lot as more fully described in Article VIII hereof.

### ARTICLE III GENERAL PROVISIONS

**Section 1. Notice.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postage pre-paid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**Section 2. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person violating or attempting to violate any covenant or restriction, either to restrain the violation or to recover damages, and against the land to enforce any lien created by this Declaration or the Association Documents. Failure of either Declarant, the Association or any Owner or Member to enforce any covenant or restriction herein contained shall, in no event, be deemed to be a waiver of the right to do so thereafter. These covenants and restrictions may be enforced by the Declarants, the Architectural Control Committee, the Association or any