

DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGES OF DEVONSHIRE

APRIL 20, 2001

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VILLAGES
OF DEVONSHIRE**

THIS DECLARATION is made and entered into this 20th day of April 2001, by **BEAZER HOMES, CORP.**, a Tennessee corporation, the “Declarant”.

RECITALS:

- A. Declarant is the owner of certain real property located in Hillsborough County, Florida, which is more particularly described on Exhibit “A” attached hereto and made a part hereof (the “Property”).
- B. Declarant intends to develop the Property into a community to be known as Villages of Devonshire, pursuant to that Plat recorded in Plat Book 88, Page 59, of the Public Records of Hillsborough County, Florida.
- C. At the time of the recordation of the plat for Village of Devonshire, Declarant shall encumber the Property with these covenants and restrictions and be bound to these regulations and other Governing Documents (as hereinafter defined).
- D. The Property shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, liens, and charges set forth in this Declaration.
- E. The Property is subject to that Declaration of Covenants, Conditions and Restrictions of Arbor Greene recorded at Official Records Book 8381, Page 1616, Public Records of Hillsborough County, Florida, as amended and restated pursuant to that Amended and Restated Declaration of Covenants, Conditions and Restrictions of Arbor Greene recorded at Official Records Book 8473, Page 1973, Public Records of Hillsborough County, Florida as amended from time to time which shall hereinafter collectively be referred to as the Master Declaration (“Master Declaration”). To the extents this Declaration conflicts the Master Declaration, the Master Declaration shall govern.

NOW, THEREFORE, Declarant hereby declares that all of the Property 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, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. “Articles” shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of Florida, as same may be amended from time to time, a copy of which is attached hereto as Exhibit “B”.

Section 2. “Assessments” shall mean any and all assessments levied by the Association or the Declarant including but not limited to Common Assessments, Special

Assessments, Specific Assessments and Commencement Assessments.

Section 3. “Association” shall mean and refer to Villages of Devonshire Homeowners Association, Inc., its successors and assigns.

Section 4. “Board” shall mean the Board of Directors of the Association.

Section 5. “Bylaws” shall mean the Bylaws of the Association which have been or will be adopted by the Board, as same may be amended from time to time, a copy of which is attached hereto as Exhibit “C”.

Section 6. “Common Assessments” shall mean and refer to assessments or charges levied against all Lots to fund Common Expenses, in accordance with this Declaration.

Section 7. “Common Expenses” shall mean and include the actual and estimated expenses incurred by the Association in connection with fulfilling its obligations with respect to the Lot Maintenance Area, or for the general benefit of all Owners, including, if so determined by the Board, any reasonable reserves, all as may be found to be necessary or appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles.

Section 8. “Lot Maintenance Area” means the maintenance responsibility of the Association for each Lot, together with all improvements, fixtures, and tangible personal property now or hereafter situated thereon, as described in Article V hereof.

Section 9. “Declarant” shall mean and refer to Beazer Homes Corp, and its successors and assigns. Declarant may assign all or a portion of its rights hereunder. Un the event of a partial assignments, the assignee shall be Declarant and may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

Section 10. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Villages of Devonshire.

Section 11. “Governing Documents” shall mean and collectively refer to the Declaration, Articles and Bylaws.

Section 12. “Institutional Lender” shall mean a bank, savings and loan association, insurance company, Federal Mortgage Association, or other lender generally recognized as an institution type lender, which holds a mortgage on one or more of the Lots.

Section 13. “Lot” shall mean and refer to any plot of land intended for use as a site for a Residence and which is shown as a lot upon and recorded Plat of the Property.

Section 14. “Member” shall mean and refer to every person or entity who is an

Owner, as defined herein, and is being such an Owner comprises the Membership of the Association, with the exception of Arbor Green Joint Venture which shall not be considered a member notwithstanding its ownership of any Lot or Lots unless and until a certificate of occupancy is issued with respect to any Lot or Lots owned by Arbor Greene Joint Venture at which time Arbor Greene Joint Venture shall be considered a member only with respect to the Lot upon which a certificate of occupancy has been issued for a single family residence.

Section 15. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a simple title to any Lot which is part of the Property, including contract sellers, but excluding those having such interest merely as a security for the performance of an obligation.

Section 16. “Person” shall mean and include an individual, corporation, governmental agency, estate, trust, partnership, association, sole proprietorship, joint venture, two or more persons having a joint or common interest, or any other legal entity.

Section 17. “Plat” or “Plats” shall mean and refer to the plat described in paragraph of the Recitals of this Declaration.

Section 18. “Property” or “Properties” shall mean and include the real property described in Exhibit AA” attached hereto, and, when added in accordance with the terms and conditions hereof, shall also include such real property as is in the future subjected to this Declaration.

Section 19. “Residence” means any residential dwelling unit constructed or to be constructed on or within any Lot together with any appurtenant improvements.

Section 20. “SWFWMD” shall mean the Southwest Florida Water Management District.

Section 21. “Special Assessment” shall mean and refer to assessments or charges levied against all Lots for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement in accordance with Article VI of this Declaration of capital improvements.

Section 22. “Specific Assessment” shall mean and refer to assessments or charges levied against a specific Owner’s Lot to recover any indebtedness of Owner to the Association arising under any provision of the Governing Documents, including any indemnity, or by contract express or implied, or because of any act or omission of the Owner or any occupant of such Owner’s Lot, or arising by reason of any Owner’s failure to properly maintain his Lot and Residence as herein provided.

ARTICLE II

PROPERTY RIGHTS

Section 23. Applicability of Master Declaration. Each Lot and every Owner's rights with respect to such Lot is and shall be subject to the terms and conditions of the Master Declaration and this Declaration, to the extent not in conflict with the Master Declaration. To the extent that any of the terms, provisions, conditions or restrictions of this Declaration are more restrictive than any of the terms, provisions, conditions or restrictions contained in the Master Declaration, the same shall not be construed as in conflict with the Master Declaration and shall be enforceable in accordance with the terms of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Upon acceptance of title to Lot and as more fully provided in the Articles and Bylaws, each owner shall be a Member of the Association. Membership rights are governed by the provisions of this Declaration, the deed to the Lot, the Articles and the Bylaws.

A. Membership shall be an appurtenance to and may not be separated from the Ownership of a Lot. Declarant's rights with respect to the Association are set forth in this Declaration, the Articles and the Bylaws.

Section 2. Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, prior to occupancy of the Lot, designate one or more persons who are to be the occupants of the Lot and register such persons with the Association. All provisions of this Declaration and rules and regulations promulgated pursuant hereto shall apply to both the Owner and the designated occupants.

Section 3. Voting Interests. Voting interests in the Association are governed by the provisions of the Articles and Bylaws.

Section 4. Document Recordation by Owners Prohibited. Neither the Association nor any Owner, nor group of Owners, may record any documents which, in any way, affect or restrict the rights of Declarant, or conflict with the provisions of this Declaration.

Section 5. Conflicts. In the event of a conflict among any of the terms or provisions of this Declaration, the Articles and the Bylaws, this Declaration shall control.

ARTICLE IV

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS TO THE PROPERTY

Section 1. Property Subject to Declaration. This Property is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration.

Section 2. Amendment. As long as there is a Class B Membership, the provisions of this Article IV cannot be amended without the written consent of Declarant. And any amendment of this Article IV without the written consent of Declarant shall be deemed null and void.

Section 3. Merger. Nothing in this Declaration is intended to limit or restrict in any way the Association's rights or ability to merge or consolidate with any other association as the Board may feel is in the best interests of the Association and its Members. A merger or consolidation of the Association must be approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association. Upon a merger or consolidation of the Association with another association, all rights, and obligations shall, by operation of law, be transferred to the surviving or consolidated association or, alternately, the properties, rights, and obligations of another association, by operation of law, may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants established by this Declaration within the Property together with the covenants and restrictions established by any supplement upon any other properties as one scheme.

Section 4. Special Taxing Districts. A Community Development District has been established pursuant to Chapter 190, Florida Statutes, known as Arbor Greene Community Development District (hereinafter "Taxing District") and to the extent that any services currently rendered by or which are the responsibility of the Association conflict with the services provided by the Taxing District, then these covenants and conditions shall no longer be of any force and effect as to any such services provided by the Taxing District, provided however the covenants and conditions set forth herein shall continue to bind and run with the land as to all Properties for services not provided by the Taxing District.

ARTICLE V

FUNCTIONS OF THE ASSOCIATION

Section 1. Through Board Action. The affairs and decisions of the Association shall be conducted and made by the Board. The Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

Section 2. Required Services. In addition to those other responsibilities specified in the Governing Documents, the Association, or its management company if applicable, shall be required to provide the following services as and when deemed necessary or appropriate by the Board and shall have easement rights necessary to perform same:

A. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of each Lot, except for vegetation within a building or within a courtyard or Seller improvement. Such maintenance shall include mowing, edging, weeding, trimming, pruning trees, fertilizing and lawn pest control but shall not include watering or irrigation of the lawn or landscaping. In addition, the Association shall provide exterior maintenance upon any residence located on a Lot limited to the following matters:

(1) Paint, stain, repair, replace, and care for roof surfaces and roof systems, gutters, downspouts, chimney, irrigation system maintenance (but excluding lawn watering)

and all exterior building surfaces including courtyard walls, but excluding sliding doors, windows, screens and hardware appurtenant to any of the excluded items.

As part of the Association's Common Expenses, the Association Board shall provide reasonable reserves to fund repair and replacement of roof surfaces and roof systems, and reserves for painting the exterior of residences. All other maintenance, repair, and replacement costs shall be treated as current expenses for which no reserves need to be established. The reserves are not specific to any Lot but any part of the reserve fund may be used in any part of the Subdivision for the type of maintenance, repair or replacement for which the fund was established.

B. Taking any and all actions necessary to enforce all covenants, restrictions, and easements affecting the Property and performing any of the functions or services delegated to the Association in the Governing Documents, not otherwise undertaken by the Master Association.

C. Conducting business of the Association, including arranging ancillary administrative services such as legal, accounting, financial, and communication services such as informing Owners of activities, meetings and other important events.

Section 3. Authorized Services. The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:

- A. Such other services as are authorized in the Governing Documents.
- B. Such other services which the Board deems appropriate to promote the recreation, health, safety, and welfare of the residents in the Property.

Section 4. Actions by Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim, or extra-judicial action unless such legal action, claim, or extra-judicial action shall be specifically approved for such purposes by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than seventy-five (75%) of the total votes of the Association, except for:

- A. Actions brought by the Association to enforce the provisions of this Declaration.
- B. Collecting of debts owed to the Association.
- C. Bringing any contest or appeal of tax assessments relating to any property by the Association.
- D. Counterclaims brought by the Association in proceedings instituted against it.

Section 5. Owner's Responsibility. Except as provided in Section 2 of this Article V, all maintenance of any Residence on a Lot shall be the responsibility of the Owner of such

Residence. In addition, the Owner shall maintain entry doors, sliding doors, windows, screens, courtyard gates, garage doors, the hardware pertinent to any of these items, all pipes, lines, ducts, conduits or other apparatus which serve only the residence, whether located within or without a residence's boundaries (including all gas, electricity, water, sewer, air conditioning, pipes, lines, ducts, conduits or other apparatus serving only the residence) and any and all other interior maintenance, repair and replacement of the residence. In the event that the Association Board determines that (a) any owner has failed or refused to discharge properly his or her obligations with regard to maintenance, repair or replacement of items for which he or she is responsible hereunder, or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused by the willful or negligent act or omission by an Owner, his or her family, guests, lessees or invitees, then, the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity, the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement or in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide such maintenance, repair or replacement at Owner's sole cost and expense and all costs shall be added to and become part of the assessment to such Owner and the Association may place a lien against the residence for such costs in the manner of regular assessment.

Section 6. Owner's Insurance. Each Owner shall obtain and keep in force at all times, hazard insurance for the highest insurable value of the residence. The Association shall be named as an additional insured and the proceeds of such policies may be used by the Association to repair or replace any residence improvements if the Owner does not act promptly to repair or replace damaged improvements. The required policy shall not be terminated nor amended without thirty (30) days advance written notice to the Association. The insurer and the form of coverage shall be subject to the approval of the Association Board pursuant to standards adopted by the Board from time to time. In the event that an Owner fails to maintain appropriate insurance coverage, the Association may require the insurance on behalf of the Owner and cost of such insurance shall be added to and become part of the assessment to such Owner and the Association may place a lien against the residence for such costs in the manner of the regular assessments.

Section 7. Association Insurance. In order to adequately protect the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

A. The Association Board shall obtain and keep in force at all times the insurance coverage which it is required to carry and may obtain and keep in force any or all of such other or additional insurance coverage as it is authorized to carry.

B. If available, the Association shall maintain property and liability insurance covering all of the insurable improvements owned by the Association, if any, for the

maximum insurable replacement value thereof as determined annually by the Association Board, such insurance to afford the following protection:

(1) Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief and other hazards covered by the standard “all-risk” property contract.

(2) Flood insurance to the maximum amount available from time to time as underwritten and insured by the federal, state or local government.

(3) Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Association Board.

(4) Automobile liability and bodily injury and property damage for all owned and non-owned motor vehicles in such limits of protection and with such coverage as shall be required by the Association Board.

(5) Worker’s compensation insurance on at least a minimum premium basis to meet the requirements of the law.

(6) Statutory dishonesty bond in the minimum amount of ten thousand dollars (\$10,000) per director, officer or employee handling or having access to Association funds.

Section 8. Premiums. Premiums on insurance policies purchased by the Association shall be paid by the Association and charged to Owners as part of the Association operating expense.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title to a Lot, shall be deemed to have covenanted and agreed that the Assessments and other charges and fees set forth herein, together with interest, late fees, costs and reasonable attorney’s fees and paraprofessional fees at all levels of proceedings including appeals, collections and bankruptcy, shall be a charge and continuing lien in favor of the Association encumbering the Lot and all personal property located thereon owned by the Owner against whom each Assessment is made. The lien is effective from and after recording a claim of lien in public records stating the legal description of the Lot, the name of the Owner and the amounts due as of the date. The claim of lien shall also cover any additional amounts which accrue thereafter until satisfied. Each Assessment together with interest, late fees, costs and reasonable attorneys’ fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, and other costs and expenses provided for herein shall be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment became due, as well as the Owner’s heirs, devisees, personal representatives, successors or assigns.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents in the

Property and for the improvement and maintenance of the Lot Maintenance Area, the easement area benefitting the Property, or right-of-way area adjacent to the Property the Association chooses to maintain, or for any other purpose set forth in the Declaration that the Board deems appropriate.

Section 3, Establishments of Assessments. Assessments shall be established in accordance with the following procedures:

A. Monthly Assessments shall be established by the adoption of a twelve (12) month operating budget by the Board. The budget shall be in a form required by Chapter 720 of the Florida Statutes, as amended from time to time. Written notice of the amount and date of commencement thereof shall be given to each Owner not less than ten (10) days in advance of the due date of the first installment thereof. Notwithstanding the forgoing, the budgets may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of the Association.

B. Special assessments, specific assessments and all other assessments and charges against Owners may be established by the Board, from time to time, and shall be payable at such time or times as determined by the Board.

C. In the event that the Common Expenses as estimated by the Declarant and/or the Board for a particular fiscal year, or, after the actual Common Expenses for that period is known, are less than the actual expenses, then the difference shall, at the election of the Board: (1) be added to the calculation of Common Assessments, as applicable, for the next ensuing fiscal year; or (2) be immediately collected from the Owners as a Special Assessment, as applicable. The Board shall have the unequivocal right to specially assess Owners retroactively as of January 1st of any year for any shortfall in Common Assessments, which Special Assessment shall relate back to the date that the original Common Assessment could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other assessment except to the extent specifically provided herein).

D. Any surplus in Assessments collected by the Association shall be allocated towards the next year Common Expenses. Under no circumstances shall the Association be required to pay surplus Assessments to Owners.

Section 4, Specific Assessments. The Association may levy a Specific Assessment against an Owner's Lot to recover any indebtedness of Owner to the Association arising under any provision of the Governing Documents.

Section 5, Uniform Rate of Assessment. All Common Assessments must be fixed at a uniform rate for all Lots.

Section 6, Commencement Assessment. A Commencement Assessment of Two Hundred Fifty and No/100 Dollars (\$250.00) per Lot shall be paid to the Association at the time of closing by the original purchaser of a Lot purchasing from the Declarant or its

successor. The Association may use the Commencement Assessment for any purposes set forth in this Declaration.

Section 7. Date of Commencement of Common Assessments: Due Dates. The Common Assessments provided for in this Article shall commence as to all Lots on the date (which shall be the first day of the month) fixed by the Board to be the date of commencement. Each subsequent Common Assessment shall be imposed for the year beginning January 1 and ending December 31. The Common Assessments shall be payable in advance in monthly installments, or in annual, semi-annual, or quarter-annual installments if so determined by the Board. The first Common Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the assessments shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Declarant's Obligation for Assessments. Notwithstanding anything herein to the contrary, as long as Class B Membership exists, as to unoccupied Lots owned by Declarant, Declarant may elect not to pay the Common Assessment on each unoccupied Lot. Should Declarant elect not to pay the Assessments, Declarant shall pay all costs incurred by the Association in accomplishment of the purpose set forth in Article VII, Section 2 hereof, in excess of the total amount collected by the Association through all assessments. This obligation of Declarant shall hereinafter be referred to as Declarant's "Deficiency Obligation". Irrespective of any election on the part of Declarant, any Residence located on any Lot owned by Declarant which is occupied as a residence shall be subject to one hundred percent (100%) of any and all applicable assessments. Declarant may at any time revoke this election and place itself in the position of being obligated to pay the full impact of all assessments for each Lot owned by Declarant at the time said revocation is presented to the Association.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment is not paid within fifteen (15) days (or such period of time established by the Board) after the due date, a late fee of Thirty-Five Dollars (\$35.00) per month (or such greater amount established by the Board) beginning from due date until paid in full may be levied. The Association may, at any time thereafter, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot, or both. The Association shall not be required to bring such action if it believes the best interests of the Association would not be served by doing so. It shall be added to the Assessment of all costs expended in preserving the priority of the lien and all costs and expenses of collection, including attorneys' fees and paraprofessional fees, at all level of proceedings, including appeals, collection and bankruptcy. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of, or waiver of the right to use such Owner's Lot or by abandonment of the Lot.

In the event of a default of the payment of any Assessment, the Association may accelerate the Assessments then due up to the next ensuing twelve (12) months, which Association shall

then be due and payable for the entire period specified by the Association within thirty (30) days from the date of written notice from the Association to the Owner.

Section 10. Assumption of Delinquent Assessments by Successors. The personal component of the obligation for delinquent assessments shall not pass to the Lot Owner's successors in title unless expressly assumed by them. Irrespective of the assumption of the personal component of the obligation by any successor in title; the lien for delinquent assessments shall continue to be a lien upon the Lot until such time as it is fully paid.

Section 11. Subordination of the Lien to Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage provided that such lien is recorded after the recording of the Mortgage. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to the assessment by the Association, including the Lots as to which the foreclosure (or Conveyance in lieu of foreclosure) took place. Notwithstanding any contrary provision hereof, no Institutional Lender acquiring title to a Lot through foreclosure or conveyance in lieu of foreclosure, and no purchaser at a foreclosure sale, and no persons claiming by, through or under such Institutional Lender or purchaser, shall be personally obligated to pay assessments that accrue prior to Institutional Lender's or the foreclosure purchaser's acquiring title.

Failure to pay assessments shall not constitute a default in any mortgage unless provided in such mortgage. Nothing contained in the Declaration shall be construed to impose a duty on any mortgagee to collect assessments.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charge and lien created herein:

- A. Any property not designated as a Lot.
- B. Any Lot owned by Arbor Greene Joint Venture, A Florida general partnership, provided that during such ownership, no Residence is constructed thereon. At such time as any Residence is constructed on any Lot owned by Arbor Greene Joint Venture and a certificate of occupancy is issued for such Residence, such Lot or Lots shall be subject to assessments and the lien rights of the Master Association as set forth in the Master Declaration.

ARTICLE VII

ARCHITECTURAL CONTROL

The architectural control and review procedures for the Subdivision and all Lots contained therein shall be under control of the Master Association in accordance with the Master Declaration.

ARTICLE VIII

USE RESTRICTIONS

All use restrictions as contained in the Master Declaration shall apply to the Subdivision. In addition, no fences, walls or other improvements may be erected, constructed or otherwise built on or along any boundary line of any Lot, nor shall any fences, walls or other similar improvements be erected, constructed or otherwise built on any other portion of any Lot without the Declarant's approval, which approval may be given or withheld in Declarant's sole and absolute discretion. At such time as Declarant no longer owns any Lots, the approval of any such walls, fences or similar improvements shall be made by the Board, which approval may be given or withheld by the Board, in its sole and absolute discretion.

Section 1. Other Restrictions Established by the Board. The Board shall have the authority, from time to time, to include other restrictions as it shall deem appropriate. Said restrictions shall be governed in accordance with residential planning criteria promulgated by the Board. However, once the Board Promulgates certain restrictions, same shall become as binding and shall be given the same force and effect as the restrictions set forth herein until the Board modifies, changes or promulgates new restrictions or the Board modifies or changes restrictions set forth by the Board.

Section 2. No Implied Waiver. The failure of the Association or Declarant to object to an Owner's or other party's failure to comply with this Declaration or any other Governing Documents shall in no event be deemed a waiver by Declarant or the Association, or any other Person having an interest therein, of that Owner's or other party's requirement and obligation to abide by this Declaration.

Section 3. Imposition of Fines for Violations. It is acknowledged and agreed among all Owners that a violation of any of the provisions of this Declaration by an Owner or resident may impose irreparable harm to the other Owners or residents. All Owners agree that a fine may be imposed by the Association for each day a violation continues after notification by the Association. All fines collected shall be used for the benefit of the Association. Any fine levied shall be paid within fifteen (15) days after mailing of notice of that fine. If not paid within fifteen (15) days, the amount of such fine shall accrue interest at a rate of ten (10) percent per annum, and shall be treated as a Specific Assessment as provided in Article VI.

Section 4. Association Waiver. In the event that a violation of any of these restrictions shall occur, which violation shall not be of such nature to defeat the intent and purpose of these covenants, the Board shall have the right and authority to waive such violation.

Section 5. Compliance with Documents. Each Owner and family members, guests, invitees, lessees and their family members, guests, and invitees; and his or its tenants, licensees, guests, invitees and sub-tenants shall be bound and abide by the Master Declaration and this Declaration. The conduct of the foregoing parties shall be considered to be the

conduct of the Owner responsible for, or connected in any manner with, such individual's presence within the Property. Such Owner shall be liable to the Association for the cost of any maintenance, repair or replacement of any real or personal property rendered necessary by his act, neglect or carelessness, or by that of any other of the foregoing parties which shall be immediately paid for by the Owner as a Specific Assessment as provided for in Article VI. Failure of an Owner to notify any Person of the existence of the covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act as a limit or divest the right to enforcement of these provisions against the Owner or such other Person.

Section 6. Violation. If any Person claiming by, through or under Declarant, or its successors or assigns, or any other Person, shall violate or attempt to violate any of the covenants herein, it shall be lawful for Declarant or any Owner to bring proceeding at law or in equity against the Person(s) violating or attempting to violate any such covenants, including action to enjoin or prevent him or them from so doing, or cause the violation to be remedied and to recover damages or other dues for such violation. If the party or parties bringing any such actions prevail, they shall be entitled to recover from the Person(s) violating these restrictions the costs incurred by such prevailing party, including reasonable attorneys' fees and disbursements incurred through all appellate levels. Invalidation of any of these covenants by judgement of court order shall in no way affect any of the other covenants and provisions, contained herein, which shall remain in full force and effect.

Section 7. Rights of Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant shall have the right to use Property for ingress and egress thereover including the use of construction machinery and trucks thereon and no Person shall in any way impede or interfere with the completion of the contemplated improvements or sale of Lots and improvements thereon. Declarant may make such use of Property free from the interference of Owners, or contract purchasers, as may be reasonably necessary to facilitate the completion and sale of Lots and Residences thereon, including but not limited to, the maintenance of a sales office and model area, the showing of Property, the display of signs, and the right to construct or place sales and construction offices of a temporary nature on the Property.

ARTICLE IX

ENFORCEMENT OF NON-MONETARY DEFAULTS

Section 1. Non-Monetary Defaults. In the event of a violation by any Member or Owner (other than the nonpayment of any assessments or other monies) of any of the provisions of the Governing Documents or restrictions set forth by the Association, the Association shall notify the Member or Owner of the violation by written notice. If the violation is not cured as soon as practicable, and in any event, no later than seven (7) days after the receipt of the written notice, or if the Member or Owner fails to commence, within said seven (7) day period, and diligently proceed to completely cure the violation, the Association may at its option:

A. **Specific Performance.** Commence an action to enforce the performance on the part of the Member or Owner, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

B. **Damages.** Commence an action to recover damages; and/or

C. **Corrective Action.** Take any and all action reasonably necessary to correct such violation, which may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or perform any maintenance required to be performed by this Declaration, including the right to enter a Lot to make such corrections or modifications as are necessary, or remove anything in violation of the provisions of the Governing Documents or any restrictions set forth by the Board.

Section 2. Expenses. All expenses incurred by the Association in connection with the correction of any violation, or the commencement of any action against any Owner, including administrative fees and costs and reasonable attorneys' fees and disbursements through the appellate level, shall be a Specific Assessment, as provided in Article VII, assessed against the applicable Owner, and shall be due upon written demand by the Association.

Section 3. Late Fees. Any amount due to Declarant or the Association which is not paid within fifteen (15) days after the due date shall bear a late fee of Thirty-Five Dollars (\$35) and interest at the rate of ten percent (10%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot.

Section 4. No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by the Governing Documents shall not constitute a waiver of the right of the Association to enforce such right, covenant or condition in the future.

Section 5. Rights Cumulative. All rights, remedies, and privileges granted to the Association pursuant to any terms, provisions, covenants, or conditions of the Governing Documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, rights or privileges as may be granted or as it might have by law.

Section 6. Enforcement By or Against the Persons. In addition to the foregoing, the Declaration may be enforced by Declarant, the Association, or any Owner by any procedure at law or in equity against any Person violating or attempting to violate any provision herein, to restrain any violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration shall be borne by the Person against whom enforcement is sought, provided such proceeding results in a finding that such Person was in violation of this Declaration. The prevailing party in any such action shall be entitled to recover its reasonable attorney fees and disbursements through the appellate level.

Section 7. Certificate as to Default. Upon request by any Owner or mortgagee, holding a mortgage encumbering any Lot, the Association shall execute and deliver a written certificate as to whether such Owner is in default with respect to compliance with the terms and provisions of this Declaration.

Section 8. Enforcement by Master Association. Notwithstanding anything else to the contrary contained in this Article IX, to the extent that any such violations are enforced or are in the process of being enforced by the Master Association, no enforcement action shall be taken by the Association, Declarant, or any Owner.

ARTICLE X

INDEMNIFICATION

Section 1. Indemnification of Officers, Directors or Agents. The Association shall indemnify any Person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a Director, employee, Officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association. The termination of any action, suit or proceeding by judgement, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

A. To the extent that a Director, Officer, employee or agent of the Association is entitled to indemnification by the Association in accordance with this Article, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

B. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of Members, or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a Person who has ceased to be a member of the Board, Officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a Person.

C. The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a Director, Officer, employee or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as

such, whether or not the Association would have power to indemnify him against liability under the provisions of this Article.

ARTICLE XI **AMENDMENTS**

Section 1. Amendment by Declarant. In addition to any other right of amendment or modification provided for this Declaration, Declarant in its sole discretion, by an instrument filed of record, may modify, enlarge, amend or waive any of the terms or provisions of this Declaration so long as Declarant is the owner of any Lot.

Section 2. Amendment by the Association. As long as there is a Class B Membership, this Declaration may be amended, changed or added to, at any time and from time to time, upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association together with the consent of the Declarant. Any amendment of this Declaration shall be recorded in the Public Records of Hillsborough County, Florida. At such time as there is no longer a Class B Membership, this Declaration may be amended, changed, or added to, at any time and from time to time, upon the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association.

Section 3. Amendment to Comply with Governmental Authority. As long as there is a Class B Membership, Declarant specifically reserves the right to amend this Declaration, without the consent or joinder of any party provided that such amendment cannot change any Owner's voting rights granted hereunder.

Section 4. Form of Amendment. An amendment certified by the President and Secretary of the Association shall be deemed to have been approved by the appropriate number of Owners, and interested parties shall be bound by each amendment without the Association having to establish the record title of each Owner.

Section 5. No Adverse Affect On Declarant. Notwithstanding anything to the contrary herein contained, no amendments to the initial Declaration shall be affected which shall impair or prejudice the rights or priorities of the Declarant or the Association or of any other governing documents without specific written approval of the Declarant or the Association.

Section 6. Dissolution. In the event of dissolution of the Association, each Lot shall continue to be subject to the assessments specified in this Declaration and each Owner shall continue to be personally obligated to the Declarant or the successor or assign of Association as the case may be for such assessment to the extent that such assessments are required to enable Declarant or the Association or any such successor or assigns acquiring any real property previously owned by the Association to properly maintain, operate and preserve it. The provisions of this paragraph shall only apply with regard to the maintenance, operation and preservation of the Property which the Association is obligated to maintain pursuant to this Declaration.

Section 7. Amendment to Correct Scrivener's Errors and Clarify Ambiguities. Declarant shall have the right at any time to amend this Declaration to correct scrivener's errors and to clarify ambiguities determined to exist herein. No amendment shall impair or prejudice rights or priorities of any Institutional Lender without their written consent.

ARTICLE XII **GENERAL PROVISIONS**

Section 1. Assignment of Rights and Duties to the Association. Declarant may at any time assign and delegate to the Association all or portion of Declarant's rights, title, interests, duties or obligations created by this Declaration. It is understood that the Association has been formed as a homeowner's association in order to effectuate the intent of Declarant for the proper development, operation and management of the Property. Wherever herein Declarant or the Association or both are given the right, duty, or obligation to approve, enforce, waive, collect, sue, demand, give notice, or take any other action or grant any relief or perform any task, such action may be taken by Declarant or the Association until such time as Declarant or any successor declarant is divested of its interest in any portion of the Property, or has terminated its interest in the Property, or Declarant has assigned its rights, duties, and obligations hereunder to the Association. Thereafter, all rights, duties and obligations of Declarant shall be administered solely by the Association in accordance with the procedures set forth herein and the Governing Documents.

Section 2. Covenants to Run with the Title to the Land. This Declaration, as amended and supplemented from time to time as herein provided, shall be deemed to run with the title to the Property and shall remain in full force and effect until terminated in accordance with the provisions set out herein.

Section 3. Enforcement. Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidity of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. Thereafter these covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless termination of the provisions of this Declaration is approved by the affirmative vote (in person or by proxy) or written consent, or any combination thereof, of Owners holding not less than two-thirds (2/3) of the total votes of the Association. Any termination of this Declaration shall be recorded in the Public Records of Hillsborough County, Florida. Unless this Declaration is terminated as provided above, the

Association shall re-record this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

Section 6. Communication. All communication from individual Owners to Declarant, its successors or assigns, the Board, or any Officer of the Association shall be in writing.

Section 7. 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 mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles and Bylaws and the Articles shall take precedence over the Bylaws. The Master Declaration shall take precedence over conflicting provisions contained in this Declaration. In addition, the rights and obligations of any community development district as set forth in the Master Declaration shall take precedence over any conflicting provisions in this Declaration.

Section 9. Usage. Whenever used herein the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 10. Governing Law. The construction, validity, and enforcement of this Declaration shall be determined according to the laws of the State of Florida. Any action or suit brought in connection with this Declaration shall be in Hillsborough County, Florida.

Section 11. HUD/VA Approval. As long as there is a Class B Membership, and so long as the Department of Housing and Urban Development or the Veteran's Administration is holding, insuring, or guaranteeing any loan secured by property subject to this Declaration, the following actions will require the approval of the Department of Housing and Urban Development or the Veterans Administration: annexation of additional properties and amendment of this Declaration.

Section 12. Security. Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make them safer than they otherwise might be. Neither Declarant nor the Association shall in any way be considered insurers or guarantors of security within the property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of any effectiveness of security measures undertaken.

ARTICLE XIII **MISCELLANEOUS**

Section 1. Non-Liability. Notwithstanding anything to the contrary in the Association documents, neither the Declarant, nor the Association shall be liable or responsible for, or in any manner a guarantor or insurer of, health, safety or welfare of any Owner, occupant or user of any portion of the Villages of Devonshire including, without

limitation, residents and their families, guests, lessees, licensees, invitees, agents, servants, contractors, and/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 Declarant and the Association which govern or regulate the uses of the Villages of Devonshire have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining enjoyment of the Villages of Devonshire and the value thereof; and

B. The Declarant and the Association are not empowered, and have not been created, to act as an agency which enforces or ensures the compliance laws of the State of Florida and/or Hillsborough County or prevents tortious activities; and

C. The provisions of the Association documents setting forth the uses of Assessments which relate to health, safety and welfare shall be interpreted and applied only as limitations on 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.

Each Owner (by virtue of his acceptance of title to Lot) and each other person having an interest in or lien upon, or making a use of, any portion of the Villages of Devonshire (by virtue of accepting such interest or lien or making such use) shall be bound by this section and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Declarant and the Association arising from or connected with any matter for which the liability of the Declarant, or the Association has been disclaimed in this section or otherwise. As used in this section, ADeclarant "and AAassociation" shall include within its meaning all of their directors, supervisors, officers, committee and Board members, employees, agents and contractors (including management companies, subcontractors, successors and assigns).

Section 4. Waiver of Trial By Jury and Release. By acceptance of a deed, each Owner knowingly, voluntarily, and intentionally waives any right he may have to a trial by jury of any claim, demand, action, or cause of action, with respect to any action, proceeding, claim, counterclaim, or cross claim, whether in contract and/or in tort (regardless if the tort action is presently recognized or not), based on, arising out of, in connection with or in any way related to the Association documents, including any course of conduct, course of dealing, verbal or written statement, validation, protection, enforcement action or omission of any party. Declarant hereby suggests that each Owner understand the legal consequences of accepting a deed to a Lot. As a further material inducement for Declarant to subject the Villages of Devonshire to this Declaration, each Owner does hereby release, waive, discharge, covenant not to sue, acquit, satisfy and forever discharge Declarant, its officers, directors, employees, and agents and its affiliates and assigns from any and all liability, claims, counterclaims, defenses, actions causes of action, suits, controversies, agreements, promises and demands whatsoever respecting this Declaration, or the Exhibits hereto. This release and waiver is intended to be broad and inclusive as permitted by the laws of the State of Florida.

