

DECLARATION OF RESTRICTIVE COVENANTS,
RECORDED IN THE PUBLIC
CLERK OF CIRCUIT COURTEASEMENTS AND PARTY WALL AGREEMENT
AUG 14 2 16 PM '92

THIS DECLARATION, made on this 4th day of August, 1992, by TERRY C. NELSON hereinafter collectively referred to as "Declarant," for himself and his successors, grantees, and assigns,

WITNESSETH THAT:

1. Lands. The Declarant is the owner of certain land located in Leon County, Florida, more particularly described in Exhibit "A" attached hereto and made a part hereof, sometimes referred to herein as "the Property". The Declarant has divided or will divide the Property into thirty-one (31) lots upon which the Declarant will construct duplex townhouse type, residential units, said lots being substantially in accordance with the map or plat of the Property attached hereto as Exhibit "B" and made a part hereof, sometimes referred to herein as "the Plat". The Declarant further intends to impose upon the Property restrictive covenants under a general plan for the benefit of all covenants and restrictions are hereby imposed on all lands described on the attached Exhibit "A".

2. Name. The name by which the property shall be known and identified is "COPPER CREEK UNIT II".

3. Submission of Property to Restrictive Covenants.

Declarant does hereby impress and impose upon the Property the restrictive covenants, easements, cross-easements, reservations, obligations, covenants and conditions set forth and provided for herein which shall run with the land. This Declaration shall be binding upon Declarant, his successors, assigns, grantees, and mortgages.

4. Definitions. The terms used herein and in the By-Laws of the Homeowners' Association shall have meanings as follows:

(a) "Lot" shall mean the parcels of real property within COPPER CREEK UNIT II, as depicted upon Exhibit "B" is subdivided by the separate residential units, it shall be treated under these covenants and By-Laws as one lot. Upon the construction of a common or party wall between the residences upon a lot, it shall thereafter constitute two (2) separate lots, being one lot for each residential unit.

(b) "Homeowner" and "lotowner" mean the owner of a lot located in COPPER CREEK UNIT II.

(c) "Association" means COPPER CREEK UNIT II HOMEOWNERS ASSOCIATION INC., a nonprofit corporation, and its successors, which association shall be responsible for the operation and management of any common areas, detention or

retention ponds, roadways, and easement areas within the subdivision, and such other rights, duties and obligations as are set forth in this Declaration.

(d) "By-Laws" shall mean such By-laws as are established by the Association from time to time.

(e) "Common Expenses" mean the expenses for which the homeowners are liable to the Association.

(f) "Assessment" means a share of the funds required for the payment of common expenses which, from time to time, is assessed against a homeowner.

(g) "Common Surplus" means the excess of all receipts of the Association, including, but not limited to, assessments, rents, profits, and revenues over the amount of common expenses.

(h) The "Property" and the "subdivision" means and includes the land described on Exhibit "A", and all improvements thereon and hereinafter constructed thereon, together with all easements and rights appurtenant thereto intended for use in connection with the Property, and necessary to effectuate the purpose and intent of Declarant as set forth herein.

(i) "Common Area" means that portion of the Property owned by the Association.

5. Private Streets. The Streets located within the

subdivision are private streets, the maintenance and repair of which are the responsibility of the Association. The City of Tallahassee has no obligation or responsibility for the maintenance or repair of streets located within the subdivision.

6. Houses and Boundaries Thereof. Each house built in COPPER CREEK UNIT II shall consist of the following:

(a) With regard to common walls (if any) the center-line of said walls shall be the boundary between the two houses separated by the wall.

(b) Each house shall include a parcel of real property as described in the deed by which said land and house is conveyed by Declarant to third party purchasers.

(c) Bearing walls, columns, and wiring and other utility installations serving more than one house (if any) shall be commonly owned by the houses being served thereby.

7. Subdivision. Each of the lots shown on the map or plat attached as Exhibit "B" is restricted to the construction thereupon of a duplex townhome or one single family townhome. Each lot or part thereof as conveyed by the Declarant may not be divided or subdivided except as set out in this paragraph and paragraph 4(a) above.

8. Membership in the Association.

(a) Each homeowner shall automatically, upon becoming the owner of a lot, be a member of the Association and shall retain such membership until such time as he no longer owns a lot in COPPER CREEK UNIT II, at which time his membership in the Association shall automatically terminate.

(b) The Association shall have two classes of voting members as follows:

CLASS A. Class A members shall be all owners except the Declarant, and each of them shall be entitled to one vote for each lot owned by said owner. When more than one person owns an interest in a given lot, all such persons shall be members and the vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any lot owned by Class A members.

CLASS B. The Class B members shall be the Declarant, who collectively shall be entitled to exercise three (3) votes for each lot owned by the Declarant. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, or on January 1, 1995, whichever first occurs.

9. Assessments and Liens. Each homeowner (exclusive of


the Declarant, who is exempt from assessments hereunder until January 1, 1996, at which time lots owned by the Declarant shall become subject to assessment in accordance with the provisions of this Declaration) by the acceptance of a deed for a house located within the property whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association:

(a) Annual assessments or charges as herein set forth and as established by the Association; and

(b) Special assessments for capital or other improvements or acquisitions, which assessments are to be established and collected as hereinafter provided.


The annual and special assessments, together with interest, costs, and reasonable attorney's fees required to collect the same, if any, shall be a lien against the lot or lots owned by the party failing to pay the same; provided however, that any such lien shall be subordinate and inferior to any first mortgage on such lot or lots assessments shall be made pursuant to the By-Laws of the association. No homeowner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or easement areas or by the abandonment of his lot.

10. Purpose of Assessments. The assessments levied by the


 Association shall be used to promote and maintain the recreation, health, safety, and welfare of the members of the Association, and in particular, for the improvement and maintenance in a first class condition and in a good state or repair of the common areas, natural wetlands area, roadways, roadway lighting, entrance way and easement areas of the property, and such other areas as may be maintained by the Association, whether owned by the Association or by the homeowner.

11. Deposit of Assessments. Any and all sums collected from the assessments or related payments may be commingled with each other in a single account and shall be held and used for the purposes set forth in the Declaration, Articles, By-Laws, or other agreements among the homeowners.


12. Maximum Annual Assessments. Until January 1, 1994, the maximum annual assessment per homeowner shall be \$60.00 per year per home. From and after January 1, 1994, the maximum annual assessment may be increased each year by not more than ten percent (10%) above the maximum assessment for the previous year by the Association's Board of Directors without a vote of the membership. From and after January 1, 1994, the maximum annual assessment may be increased by more than ten percent (10%) only by the vote or written assessment of at least sixty percent (60%)

 of the votes entitled to be cast. Assessments will be on a calendar year basis from January 1, to December 31, and will be effective as to each lot upon the date of delivery of the deed for the lot, on a pro-rated basis; subject, however, to the provision that assessments shall not commence under this Declaration until January 1, 1993.

13. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of the improvements or easements or any other area or improvement which is the responsibility of the Association, including improvements, fixtures, and real or personal property related hereto, or for the exercise of the powers granted in Paragraph 18 hereof; provided, however, that any such assessment shall be made in accordance with the By-Laws of the Association.

 14. Collection of Assessments. Assessments shall be due on the first day of each month, and are delinquent if not paid by the 10th day of each month. The annual assessment may be prepaid in whole or in part. No set-offs shall be allowed to any home owner for repairs or improvements, or services contracted for by


homeowner without the express written authorization of the Board of Directors of the Association. The Association shall be entitled to collect from the homeowner all legal costs including a reasonable attorney's fee incurred by the Association in connection with or incident to the collection of such assessment and/or late charges or fees or in connection with the enforcement of the lien resulting therefrom.

 15. Service Charge of Delinquent Assessments. In order to defray the cost of additional bookkeeping, billing, and related expenses, all assessments not paid within ten (10) days after the due date may upon decision of the Board of Directors of the Association bear a service charge of \$5.00 per month from the due date.

16. Effective Transfer of Title on Assessments. The sale or transfer of any house shall not affect the assessment lien; provided, however, the sale or transfer of any house pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale to transfer shall relieve such house from liability for any assessment thereafter becoming due or from the lien thereof. In any voluntary conveyance, grantee shall be jointly and severally

liable with the grantor for all unpaid assessments against the grantor up to the time of such voluntary conveyance without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of the unpaid assessments against the grantor in excess of the amount of the statement; provided further, however, the grantee shall be liable for all assessments becoming due after the date of such statement.

17. Bidding at Foreclosure Sale. The Association shall have the power to bid on any house at foreclosure sale thereof and to acquire and hold, lease, mortgage, and convey the same.

 18. Architectural Control Committee. The Board of Directors of the Association shall as a part of its duties act and function as an Architectural Control Committee. All notices or submission requests to be given to the Committee shall be in writing delivered by mail to the principal registered office of the Association as from time to time set forth in the records for the office of the Secretary of State of Florida, Corporate Division. No homeowner shall erect or maintain any building, fence, wall, or other structure nor shall any homeowner commence or make any exterior addition to or change or alteration in the

shape, color, or appearance of the exterior of existing improvements or make any material alteration, addition, or deletion to the landscaping of any lot until and unless the plans and specifications showing the nature, kind, shape, height, materials, color, location, and all other details of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the quality of materials, harmony and external design, and color, and the location in relation to surrounding structures and topography. The effect of the changes, improvements, or alterations on the topography of the land and the environmental impact hereof may also be considered by the Committee in determining whether approval may be given. Such approval may be withheld for any reason, but if no written notice of approval or disapproval is given by the Committee within thirty (30) days after it has received full plans and specifications, approval will not be required and this provision will be deemed to have been complied with. If the written approval is given, no work shall be commenced until such time as the homeowner or his contractor has obtained all permits required by law.

19. Additional Duties and Powers of Association. In addition to the duties and powers of the Association, as herein-

above set forth, and in addition to any powers and duties set forth in the Articles of Incorporation and By-Laws of Association, the Association shall:

(a) Maintain and otherwise manage the roadways, common areas and storm water facilities located in the Property, with the maintenance and management of the storm water facilities to be in accordance with its approved plans and permits, together with all other facilities, improvements and landscaping appurtenant thereto, and all property amenities owned or built by the Association.

(b) Grant easements where necessary for utilities, cable television, and sewer and drainage facilities over the common areas or easement or cross-easement areas.

(c) Obtain and maintain such policy or policies of insurance as the Association may deem necessary or desirable in protecting the interest of the Association and its members.

(d) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.

20. Exterior Maintenance of Houses and Other Areas. The Association shall maintain the landscaping, including the trees,

shrubs, and grass, within the boundaries of the property owned by the Association. The Association may by rule duly adopted, reasonably regulate the use of all areas and lands which are owned by and/or to be maintained by the Association, including but not limited to parking rules and limitation on uses of common areas; provided, however, that any such rule of the Association may not be less restrictive than any covenant set forth herein.

*Any item or area not expressly the responsibility of the Association shall be the responsibility of each homeowner; provided, however, that if a homeowner shall fail to maintain or make repairs or replacements which are the responsibility of such homeowner, then upon vote of a majority of the Association and after not less than thirty (30) days' notice to the owner, the Association shall have the right (but not the obligation) to provide such maintenance or make such repair or replacements and the cost thereof shall be added to the assessments chargeable to such homeowner and shall be payable to the Association by such homeowner under such terms as the Board of Directors of the Association determines. For the purpose solely of performing the work authorized by this paragraph, the Association's agent or employee shall have the right after reasonable notice to the homeowner to go upon any such lot.

21. Easements. The following easements are hereby granted and imposed in favor of all of the owners of lots with COPPER CREEK UNIT II (unless the applicability thereof is specifically otherwise limited herein) and shall be deemed to be covenants running with the land:

(a) Areas and Easements reflected on Exhibit "B" attached hereto, as areas or easements for roadways or streets, utilities, sanitary sewer, drainage, and stormwater facility.

(b) If any house or appendage thereto shall encroach upon any easement area or other lot by reason of original construction thereof by the Declarant, then an easement appurtenant to such encroaching house or appendage, to the extent of such encroachment, shall exist so long as such encroachment shall exist.

(c) If any utilities equipment, roadway, driveway or paved parking pad or area constructed by the Declarant shall encroach upon any easement area or any lot within COPPER CREEK UNIT II, then an easement appurtenant to such encroachment, to the extent of such encroachment, shall exist so long as such encroachment shall exist.

(d) Whenever sanitary sewer, water, electricity, cable television, telephone lines, or connections are installed

within the property, which connections or lines or any portions thereof lie in or upon homes or lots owned by other than the owner of a house served by said lines or connections, the owner of any house served by said connections, the owner of any house served by said connections shall have the right and is hereby granted an easement to the full extent necessary therefor to enter upon such lot or to have the utility companies enter upon the lots upon which said connection or lines or any portions thereof lie or are located, to repair, replace, and generally maintain said connections as and when the same may be necessary. Whenever sanitary sewer, water, electricity, cable television, or telephone lines or connections are installed within the property, which connection or lines serve more than one house, the owner of each such house served by said connection and lines shall be entitled to the full use and enjoyment of such portions of aid connections and lines as services his house, and such owners shall be jointly and equally responsible for the maintenance or repair of any jointly used connections afore mentioned, unless, however, one of such owner causes damage to the commonly used facility, in which event that owner shall be responsible for the repair thereof.

22. Land Use and Building Type. No house shall be

occupied or used except for residential purposes by the homeowners, their tenants, or social guests, except that Declarant may use houses owned by him for model homesites and for display and sales offices.

23. Party Wall.

A. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing of Repair Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who made use of the wall in proportion to such use.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter made use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law

regarding liability for negligent or willful acts or omissions.

D. Weatherproofing. Notwithstanding any other provision of this Article, any owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the cost of furnishing the necessary protection against the elements.

E. Right to Contribution Runs With Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

F. Resolution of Disputes. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, the matter shall be referred to the Board of Directors of the Association and the decision of a majority vote by the board shall be determinative of the matter and binding upon the parties.

24. Nuisances. No noxious or offensive activities shall be carried on, in upon, or around any house or in or upon any common areas, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the remaining homeowners or any of them which shall in any way interfere with the quiet enjoyment of each of the homeowners of his respective house or

which shall in any way increase the rate of insurance for the property.

★ 25. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other building shall be used on any property at any time as a residence either temporarily or permanently; provided, however, Declarant may maintain offices or storage facilities during construction. The Association may maintain a storage and maintenance building in such areas as may be agreed upon.

26. Signs. No sign or billboard of any kind shall be displayed to the public view on any house or any portion of the easement areas except one sign of customary and reasonable dimension advertising the house for sale or rent, or except signs used by Declarant to advertise the property or houses during the construction and sale.

27. Garbage Disposal. All rubbish, trash, and garbage shall be regularly removed from the property and shall not be allowed to accumulate thereon. All trash, garbage, and other waste shall be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be maintained in a clean and sanitary condition, and shall be kept out of the sight of neighbors and other residents in the subdivision.

28. Radio and Television Antennas. External radio or television antennas or satellite dishes may be utilized in the subdivision by homeowners until such time as cablevision service is available for subscription by homeowners in the subdivision. Subsequent to the availability of cablevision subscription by the homeowners, no external radio or television antenna or satellite dishes may be utilized or placed in the subdivision, except, however, for such antennas or satellite dishes as were in place prior to the date that cablevision subscription became available to the homeowners.

29. Right to Lease. The homeowners shall have the absolute right to lease or rent their houses provided that the lease is made subject to the covenants, conditions, restrictions, limitations, and uses contained in this Declaration and those contained in the Articles of Incorporation, the By-Laws, and any rules and regulations of the Association.

30. Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of the property or any part of it.

31. Regulations. Reasonable regulations concerning the use of easement areas and all other areas which the Association owns or maintains may be made and amended from time to time by the Association, including but not limited to the establishment

of rules and regulations concerning parking of vehicles. Copies of such regulations and amendments shall be furnished by the Association to all homeowners and tenants.

32. Pets. Household pets such as dogs or cats are permitted but no dog or cat shall be permitted to run free, and it must be leashed or under the direct control of its owner when it is anywhere on the property other than upon the owner's lot.

33. Boats, Trailers, and Recreation Vehicles. No boats, or trailers, may be parked or stored within the boundaries of the Property.

34. Commercial Vehicles. No trucks, except pick-up trucks or similar sized non-commercial passenger vans, shall be stored or parked within the subdivision, unless engaged in isolated instances of transporting goods, materials or services to a residence in the subdivision.

35. Clotheslines. No laundry, mattresses, bedding materials, or clothing shall be hung on or over railings or patio fences of any home. Clotheslines are prohibited except inside a fenced-in patio and not substantially visible to neighbors.

37. Estimates of Cost of Repairs and Reconstruction.
Within a reasonable time after casualty or loss to property for which the Association has the responsibility of maintenance and

repair, the Association shall obtain reasonably accurate estimates of the cost of repairing or replacing said damaged property. The Association shall diligently repair or replace the same unless majority of the homeowners vote to the contrary.

38. Enforcement of Obligations. Each homeowner shall be governed by and shall comply with the terms of this Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association, and any Regulations adopted by the Association. Upon Failure of a homeowner to so comply, the Declarant, the Association, any Mortgages having a first lien on a house, and other homeowners shall have the right to institute legal proceedings to enforce compliance, and the prevailing party shall be entitled to recover its or his legal costs, including a reasonable attorney's fee. The failure of any of the foregoing named entities or person to enforce any right, requirement, restriction, covenant, or other provisions of the hereinabove documents, shall not be deemed to be a waiver of the right to seek judicial redress against subsequent noncompliance therewith.

39. Insurance and Homeowner's Obligation to Rebuild.

(a) Each homeowner shall maintain fire and extended coverage insurance on his house in an amount equal to the maximum insurance replacement value. The Association may require the

homeowner to provide written evidence of such coverage annually. In the event of loss, subject to the consent and approval of any mortgages named as a loss payee, all insurance proceeds shall be used to promptly repair or replace the damaged property unless the Board of Directors or the Association shall otherwise agree.

(b) If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within thirty (30) days after the damage occurs, and shall be completed within one hundred eighty (180) days after the damage occurs, unless prevented by causes beyond the control of the owner or owners.

40. Amendments to Declaration. Except as may be otherwise specifically provided herein, this Declaration may be amended or terminated only by the unanimous written consent, in a recordable form, signed by all homeowners and all mortgagee of record.

41. Development by Declarant. No provisions contained herein shall prevent Declarant, his contractors or subcontractors, from performing such work and activities as are reasonably necessary or advisable in connection with the construction of any

houses or other improvements upon the property, not shall said provisions in any way prevent the Declarant from maintaining such signs on the property as he thinks to be helpful for the sale, lease, or other disposition of houses.

42. Election of Board of Directors. In addition to all other rights and privileges granted to the Declarant under this Declaration, and notwithstanding any provisions of the Articles of Incorporation and By-Laws to the contrary, the Declarant shall, subject to the following limitations, be entitled to appoint all of the members of the Board of Directors of the Association. This right shall continue until the sooner occurrence of: (1) January 1, 1997; or (2) the date on which the Declarant has sold the last of the houses in the subdivision.

43. Variances. Variances for minor deviations from this Declaration may be granted by Declarant or the Architectural Control Committee at any time to Declarant or nay property owner owing a lot within the Property.

44. Titles. The titles of each of the paragraphs or subdivisions thereof contained herein are for convenience only and shall be deemed to have no legal effect.

45. Severability. The invalidity in whole or in part of any covenant, condition, restriction, agreement, provision,

section, subsection, sentence, clause, phrase, or word contained in this Declaration or in the Articles of Incorporation, By-Laws and Regulations of the Association shall not affect the validity of the remaining portions.

46. Duration. Unless sooner terminated by the unanimous vote of all homeowners and all first mortgages of record, these covenants and restrictions shall be binding until December 31, 2014.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed the day and year first above written.

Witnesses:

Suzanne W. Guerino
Suzanne W. Guerino
Kay Gluesenkamp
Kay Gluesenkamp
STATE OF FLORIDA
COUNTY OF LEON

Terry C. Nelson
TERRY C. NELSON
Terry C. Nelson, Jr.
TERRY C. NELSON, JR.
Mitchell E. Weldon
MITCHELL E. WELDON

The foregoing Declaration of Restrictive Covenants was acknowledged before me on the 5th day of August, 1992, by TERRY C. NELSON, TERRY C. NELSON, JR. and MITCHELL E. WELDON.

Suzanne W. Guerino
NOTARY PUBLIC, State of
Florida at Large



SUZANNE W. GUERINO
MY COMMISSION # CC 18885 EXPIRES
November 6, 1995
BONDED THRU TROY FAIR INSURANCE, INC.