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Prepared by and Return to:  
Richard A. Schlosser  
Brickleyer Smolker & Bolves, P.A.  
500 East Kennedy Blvd., Suite 200  
Tampa, Florida 33602

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF MAGNOLIA TRACE AT CROSS CREEK PARCEL "M"**

THIS DECLARATION, is made this 6<sup>th</sup> day of December, 1999 by MID ATLANTIC DEVELOPMENT COMPANY, a Florida corporation, hereinafter called "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the Owner of certain property in Hillsborough County, Florida, which is more particularly described on Exhibit "A-1" attached hereto and by this reference made a part hereof known as Cross Creek Parcel "M" (the "Property"); and

WHEREAS, the Property is subject to that certain Master Declaration of Covenants, Conditions and Restrictions for Cross Creek II, recorded in O.R. Book 7597, Page 825, Public Records of Hillsborough County, Florida (hereafter, the "Master Declaration", and

WHEREAS, the Master Declaration contemplates that each neighborhood within the property described therein shall be subject to a neighborhood declaration and neighborhood homeowner's association, and therefore, Declarant desires to impose upon Cross Creek Parcel M certain covenants, conditions and restrictions which will touch and concern such property and are intended by Declarant to be covenants running with the land.

NOW THEREFORE, Declarant hereby declares that all of the Property above described shall be held, sold and conveyed subject to the following easements, conditions, covenants and restrictions, 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 described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
Definitions**

The following words or letters when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

**Section 1.** "Articles of Incorporation" shall mean the Articles of Incorporation, and any recorded amendments thereto, of the Association, which are attached hereto as Exhibit "B" and incorporated herein by reference.

**Section 2.** "Association" shall mean and refer to Magnolia Trace at Cross Creek Parcel "M" Association, Inc., a Florida non-profit corporation, its successors and assigns. The Association is a "Homeowner's Association" as that term is used in the Master Declaration.

**Section 3.** "Board" shall mean the Board of Directors of the Association.

**Section 4.** "By-Laws" shall mean the By-Laws, and any amendments thereto, of the Association, which are attached hereto as Exhibit "C" and are incorporated herein by reference.

**Section 5.** "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners and those areas dedicated to Hillsborough County, Florida, which Declarant has elected to continue to maintain. The Common Areas shall initially include those areas so designated on the plat of Cross Creek Parcel M Phase I, including Tracts "A-2", "C", "E", and "F" and easements designated on the plat as Drainage Easements, Utility/Landscape Easements and Wall/Landscape Easements, adjacent or contiguous to the Properties.

**Section 6.** "Declarant" shall mean and refer to Mid Atlantic Development Company, as the current owner of the Properties and its successors and assigns, and includes *I.H. Homes of Tampa, Inc.* for purposes of any rights that the Declarant may have herein.

**Section 7.** "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Magnolia Trace at Cross Creek Parcel "M". The Properties are subject to all of the terms and conditions of the Master Declaration. It is intended by the Declarant that the terms and conditions of the Master Declaration and of this Declaration be interpreted and enforced so as not to result in any conflict between the two instruments, however in the event of any conflict between the terms and conditions of the Master Declaration and the terms and conditions of this Declaration, the terms that are more restrictive shall control.

**Section 8.** "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

**Section 9.** "Master Declaration" shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions for Cross Creek II, recorded in O.R. Book 7597, Page 825, Public Records of Hillsborough County, Florida.

**Section 10.** "Member(s)" shall mean and refer to those persons entitled to membership as provided in this Declaration, the Articles of Incorporation and the By-Laws. References herein to "members" shall mean "Members" and vice versa. Voting rights of the members are set forth in Article IV hereof.

**Section 11.** "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 12.** "Plat" shall mean and refer to the recorded plat of the Properties per map or plat thereof, recorded in Plat Book 86, Page 62-1, Public Records of Hillsborough County, Florida.

**Section 13.** "Properties" or "Property" shall mean and refer to that certain real property described in Exhibit "A-1" hereof, and such other additions thereto as may hereafter be brought within the jurisdiction of the Association by the recording of supplemental declarations.

## ARTICLE II Property Rights

**Section 1. Easements of Enjoyment.** Each Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area that is appurtenant to , and will pass with, the title to every Lot, subject to the following conditions. If ingress and egress to any Lot is through any of the Common Area, then any conveyance or encumbrances of that portion of the Common Area must be subject to that Lot Owner's easement.

(a) Fees. The Association's right to charge reasonable fees for the use, safety and maintenance of any common facilities from time to time situated on the Common Area.

(b) Suspension. The Association's right: (i) to suspend such Owner's right to use any facility owned or controlled by the Association for a period of unpaid assessments; and (iii) to suspend any Owner's right to use any such facility for any infraction of the Association's valid rules and regulations.

(c) Dedication. The Association's right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as the Association considers advisable. Any such dedication or transfer requires the approval of two-thirds (2/3) of the members present and voting in person or by proxy at a meeting duly convened for such purpose. So long as there is a Class B Membership, if any mortgage encumbering any Unit is guaranteed or insured by the Federal Housing Administration or by the Veterans Administration, then any such dedication or transfer must be approved by both agencies, provided however such approval shall specifically not be required where the amendment is made to correct errors or omissions, or is required to comply with the requirements of any institutional lender, or is required by any governmental authority.

(d) Rules and Regulations. The Association's right to adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Common area.

**Section 2. Delegation of Use.** Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property.

**Section 3. Operation of the Common Area.** The Association shall at all times operate, supervise, control and manage the Common Area and any income producing activities that may be established or permitted to operate in the Common Area. The Association, in its sole discretion, shall determine all activities and programs to be carried on in the Common Area and shall employ the necessary personnel required therefore. The Landscape/Wall Easements shown on the Plat are owned by the Association, but the interior side of the wall shall be maintained by the individual Lot Owner. The Association shall maintain the exterior side of the wall and shall be responsible for any structural improvements or repairs.

**Section 4. Utility Service.** Public Utilities serving the Property and Lots, have been, or will be, installed underground in the Common Area and within, below or upon the Property, for the use, benefit and service of the Property, the Lots and all improvements upon the Property. Any public utility serving the subdivision shall have the right to install, maintain, and repair all utilities for lines, wires, pipes, equipment and other items necessary for supplying light, heat, air conditioning, water, sewer, power, telephone, any CATV and other means of communication to the Property, and such other utility and/or communications made available in the future by advances in technology and approved by the Board.

**Section 5. Public Easements.** Fire, police, health, sanitation, cable, communications, drainage and other public service personnel and vehicles shall have a permanent, perpetual and nonexclusive easement for ingress and egress over and across the Common Area.

**Section 6. Lot Utility Easements.** Each Lot Owner shall be responsible for the maintenance of all easements situated on his respective Lot for utility purposes.

**Section 7. Utility/Landscape Easements and Wall/Landscape Easements.** There is shown on the Plat certain Utility/Landscape Easements and Wall/Landscape Easements along certain perimeter boundaries of the Properties. Use of these easements are restricted to the Owners of Lots that are encumbered by the Easements and to the Association for the sole purpose of maintenance of there areas contained therein. Only the Association may install and maintain improvements within these easements and no permanent improvements of any kind shall be installed or maintained in these easements by the Owner of any Lot. The Association shall have the sole responsibility to maintain these easements and the cost of such maintenance shall be part of the annual assessment described in Article V hereafter.

**Section 8. Entry Features.** There is one entry feature into the Property from Cross Creek Boulevard, which is part of the Common Area. The walls, signage, lighting, landscaping, irrigation, and other improvements shall initially be installed at the sole cost and expense of the Declarant or its assigns. However, after initial installation, the Association shall have the sole responsibility to maintain the entry features and control over the use thereof. The cost of maintenance shall be part of the annual assessment described in Article V hereafter.

**Section 9. Association's Right of Entry.** The Association's duly authorized representatives 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.

**Section 10. 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 to additional persons. In no event does the benefit of any such easement extend to the general public except as provided in Section 5 hereof. The burden of all rights and easements granted by this Declaration constitutes a permanent servitude upon the lands affected.

**Section 11. No Partition.** There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner, or any person acquiring any interest in the Properties or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in cotenancy.

**Section 12. Drainage Easements.** Those areas shown as "Drainage Easement" on the Plat shall be maintained by the Association, and the cost thereof shall be part of the annual assessment described in Article V hereafter. Common Area Parcel E is a drainage pond shared by the Property and by the property that comprises Pinehurst at Cross Creek Parcel "M". Pinehurst at Cross Creek Parcel "M" Association, Inc. (hereafter, "Pinehurst") shall be responsible for arranging for the maintenance of Parcel E. The Association and Pinehurst shall each pay one half of the cost of ongoing maintenance expense of Parcel E. Pinehurst shall render periodic statements to the Association which shall be due and payable not later than thirty (30) days after receipt. If payment is not timely made, Pinehurst may recover from the Association interest at the rate of eighteen per cent per annum (18%) on the unpaid bill from the date of the statement, together with all costs and expenses of collection, including a reasonable attorney's fee.

**Section 13. Capitalized terms from Master Declaration.** Any capitalized terms used herein that are not specifically defined herein shall have the same meanings as in the Master Declaration.

**ARTICLE III**

**Restrictions on Subdivision Lots**

**Section 1. Use.** No Lot shall be used for any purpose other than for residential purposes. No building, structure or improvements shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling not to exceed two (2) stories, patios, porches, garages, a swimming pool, landscaping, walls, fencing, driveways and sidewalks appurtenant thereto. All Lots must have a minimum of a two-car garage. Carports are not allowed. All such improvements must be approved in writing by the ACC (hereafter defined) prior to commencement of construction.

**Section 2. Outbuildings Prohibited.** No structure of a temporary character, trailer, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a residence, temporarily or permanently. No structure, including utility buildings, may be erected on any Lot for other than residential purposes, except a builder's temporary structure. However, a utility building, not to exceed six feet (6') in height, which is approved by the ACC, may be permitted provided it is located in the rear yard and the rear yard is fenced in accordance with Section 13. Cabanas or pool houses shall be permitted. No storage buildings shall be permitted. However, the provisions of Sections 25 and 26 of this Article III shall supersede this section.

**Section 3. Minimum Residence Size.** No dwelling shall be erected or allowed to remain on any Lot unless the living area of the dwelling, exclusive of the garage, porches, patios and lanais shall be not less than 1,000 square feet. However, living area shall include screened porches with permanent roofs which are constructed as a component of the original roof structure.

**Section 4. Minimum Lot Size.** No dwelling shall be constructed on a Lot or plot having an area of less than 4,500 square feet. No Lot shall be divided, resubdivided or reduced in size by any method whatsoever, unless all portions of said Lot are used to increase the size of adjacent Lot(s), or other adjacent property, and notwithstanding the foregoing, no Lot shall be divided, resubdivided or reduced in size by any method whatsoever, without the prior written consent of the Declarant. All building plots formed as a result of the foregoing, shall thereupon be deemed and treated as original Lots, and may not be further divided, subdivided or reduced in size by any method whatsoever, or changed back to the original configuration, without the prior written consent of Declarant. More than one (1) Lot under one (1) ownership may be used for one (1) dwelling, in which event this Declaration shall apply to such Lots as if they were a single Lot, subject to easements indicated on the recorded plat.

**Section 5. Setbacks.** The minimum setback lines hereinafter imposed are not intended to engender uniformity of setbacks; they are meant to avoid overcrowding and monotony. It is intended that setbacks may be staggered as appropriate so as to preserve important trees, and assure vistas of water and open areas. No dwelling or other structure

shall be erected closer to the front Lot line than twenty (20) feet. No dwelling or other structure shall be erected closer than twenty (20) feet to the rear Lot line, or closer than five (5) feet to any side interior Lot line, except for a swimming pool. No dwelling or other structure situated on a corner lot shall be erected closer than twenty (20) feet to any street right-of-way. These setbacks may be decreased by up to 25% if approved by Hillsborough County and the ACC in accordance with adopted regulations.

**Section 6. Nuisance Prohibited.** No residence or other structure on any Lot shall be used for commercial or business purposes, except as set forth in Paragraphs 25 and 26 of this Article. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No noxious, offensive or illegal activities shall be carried on upon any Lot. Without limiting the generality of the foregoing:

(a) The assembly or disassembly of motor vehicles and other mechanical devices which might cause disorderly, unsightly or unkept conditions, the shooting of firearms, fireworks or pyrotechnic devices of any kind or size, and any other similar inherently dangerous activities, shall not be pursued or undertaken on any Lot.

(b) No rubbish of any character whatsoever, nor any substance, thing or material shall be kept upon any Lot which would be unsightly, or which will emit foul or noxious odors, or that will cause any loud noise that will or might disturb the peace and quiet of the occupants of surrounding Property.

**Section 7. On Site Construction Required.** No structure shall be moved onto any Lot, except a builder's temporary structure, which shall be used by the Declarant or builder in connection with construction work and activities engaged upon any Lot.

**Section 8. Animals.** No animals, livestock or poultry of any kind shall be kept, raised or bred on any Lot except that dogs, cats and other common household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes; and provided further that no person owning, or in custody, possession, charge or control of any dog shall cause, permit or allow the dog to stray, run or in any manner be at large in or upon any public street or the private property of others without the express or implied consent of the Owner of such other private property; and provided further that no more than a total of three (3) such animals may be kept on any Lot.

**Section 9. Signs.** No signs of any kind, including "For Rent", "For Sale", or any other similar signs shall be displayed to the public view, erected or maintained on any Lot (including within windows of improvements), except for one (1) professionally lettered sign not more than two square feet in size, solely advertising the property for sale or rent; and except for signs approved by Declarant used by a builder to advertise the Lot(s) or dwellings during the construction and sales period; or except as may be required by legal proceedings. Signs permitted pursuant to Paragraph 25 herein are exempt from this Section 9.

**Section 10. Exterior Attachments.** No exterior radio, television, electronic or like antennas, aerials, satellite dishes or transmission or receiving tower(s), apparatus or devices, or other similar or dissimilar exterior attachments, shall be installed, permitted or located on any Lot. Notwithstanding the above, 18" satellite dishes are permitted on all Lots, provided they have received prior approval from the ACC, do not exceed 4 feet in height and are landscaped.

**Section 11. Utility Easements.** Easements for the installation and maintenance of utilities are reserved as shown on the Plat of the Properties. Within these easements, no structure, trees or bushes or other material or plantings shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may impede the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

**Section 12. Trees.** In connection with the development of any Lot for residential purposes, or the construction of improvements thereon, reasonable care shall be used to preserve and retain as many trees as is reasonably possible. No excavation, fill or cutting of trees shall be performed in violation of law or of this Declaration.

**Section 13. Fences, Wall, and Hedges.** Fences, walls and hedges may be constructed or maintained only as permitted by the ACC, but in no event to exceed six (6) feet in height, except that Declarant may construct an eight foot (8') wall along the major roadways adjoining the Property. Fences shall be of shadow box or board on board only. No fence, wall or hedge shall be constructed or maintained between a front street and front dwelling line or between a side street and side dwelling line. No chain link fence shall be placed on or permitted to remain on any Lot or any part thereof. Each fence which is built as part of the original construction of the improvements upon the Lot(s) or placed by the Declarant on the dividing lines between the Lots shall be treated in law as if it were a party wall; and no such fence shall be deemed to be an encroachment and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The reasonable cost of repair and maintenance of a fence shall be shared equally by the Lot Owners whose property is contiguous to the fence. Additionally, the following rules with respect to fences, walls and hedges shall apply:

- (a) If a fence, wall or hedge is destroyed or damaged by fire, windstorm or other unavoidable accident, any Owner who has a Lot contiguous to the fence may restore or repair it, and the Owner of adjacent property contiguous to such fence shall contribute one-half (1/2) of the cost of such restoration and repair of the fence.
- (b) All repairs to any fence, wall or hedge shall be made using materials which are of like grade, quality, material, color, finish and workmanship as that which was provided by the Declarant at the time of conveyance of the Lot to the Owner of such Lot, or as



approved by the ACC if the fence was originally constructed by someone other than the Declarant.

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(c) No fence or wall shall be painted, but shall remain the same natural color as that which was provided by Declarant to the Owner(s) of the Lot(s) contiguous to the fence, or the same color as was approved by the ACC if the fence was originally constructed by someone other than the Declarant. Fences may be covered by a clear water sealant or similar coating.

(d) Notwithstanding the above, an Owner of a Lot who by his or her negligent or willful act causes damage to or the destruction of a fence shall pay the entire cost of repair or replacement of the damaged portion.

(e) The provisions of this Section 13 concerning fences are also applicable to any fence or wall erected, or to be erected, along any lake, drainage are, drainage easement or any portion of the Common Area. No fence or wall shall be erected or constructed that will impede the flow of water or modify the drainage design. A Lot Owner is responsible for maintenance of any such fence or wall located on his Lot.

**Section 14. Sidewalks.** Simultaneously with the construction of a dwelling on any Lot, a four (4) foot wide concrete sidewalk shall be installed at the expense of the Lot Owner according to the specifications of Hillsborough County, Florida, the line and grade of said sidewalk to be in accordance with the site plan of such Lot approved by the ACC.

**Section 15. Commercial Uses.** No trade, business, profession or other type of commercial activity shall be carried on upon any Lot unless permitted by Hillsborough County as a Home Occupation, except that real estate brokers, Owners and their agents may show dwellings and Lots for sale or lease, and except for commercial uses of the Declarant and any home builder, pursuant to Paragraphs 25 and 26 of this Article.

**Section 16. Appearance of Lots.** No lot or any part thereof shall be used as a dumping ground for rubbish. Each Lot, whether improvements are or are not located thereon, and whether occupied or not, shall be maintained reasonably clean from refuse, debris, rubbish, unsightly growth and fire hazard. No stripped, unsightly, offensive, wrecked, junked, dismantled, inoperative or unlicensed vehicles or portions thereof, or similar unsightly items; nor any furniture or appliance designed for normal use or operation within (as distinguished from outside of ) a dwelling; shall be parked, permitted, stored or located upon any Lot in any such manner or location as to be visible from the public streets or neighboring Lots.

However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pickup by garbage and trash removal services, if placed in a neat and sanitary manner curbside within twelve (12) hours of such expected removal. No lumber, brick, stone, cinder block, concrete or other building materials, mechanical devices or any other thing used for building purposes shall be stored on any Lot, except for the purpose

of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonable necessary for the construction to completion of the improvement for which same is to be used.

**Section 17. Lot Upkeep and Maintenance.** All Lot Owners with completed residences thereon shall keep and maintain such Owner's Lot (including but not limited to that portion of the Lot between sidewalks, if any, and the street), together with the exterior of all buildings, structures and improvements located thereon, in a first class, neat, attractive, sanitary and substantial condition and repair, including without limitation, having the grass regularly cut, and the exercise of generally accepted garden management practices necessary to promote a healthy, weed free environment for optimum plant growth; together with painting, repairing, replacing and caring for roofs, gutter, downspouts, exterior building surfaces, lighting fixtures, shrubs and other vegetation, walks, driveways and other paved areas, and all other exterior improvements, such as to keep the same in a condition comparable to their original condition, normal wear and tear excepted. No Owner shall allow any grass or weed on his or her Lot to attain a height in excess of three (3) inches.

**Section 18. Mailboxes.** The mailboxes and support, if any, shall be of a single type, uniform throughout the Properties.

**Section 19. Vehicles.**

(a) Except as hereinafter expressly provided, no boat, boat trailer, camper, mobile home, travel trailer, aircraft, glider, trailer, aircraft glider, or bus shall be permitted to remain on any Lot or public street within the subdivision, unless inside a garage or otherwise parked, stored or located in such manner and location so as not to be visible from the public streets and neighboring Lots. Commercial vehicles as defined herein or any truck or vehicle which has signage or other advertising or commercial displays affixed thereto are not permitted to be parked within the subdivision except on a temporary, short term basis as defined hereafter. All motor vehicles permitted to be on a Lot must park at all times on pavement, and shall not park on the grass or non-paved area of the Lot.

(b) **Certain Vehicles.** No motorcycle, motor bike, motor scooter, moped, ATV (all terrain vehicles) or other two-wheeled, three-wheeled or four-wheeled ATV or go-cart, or tandem axel or tandem wheel vehicle, or the like, shall be permitted to be parked or stored on any Lot, or other Residential Property, street, road or any other part of the Properties, unless the same shall be stored entirely within and fully enclosed by a garage. No such vehicles may be operated within the Properties except for entering and leaving the Properties and then only if such vehicle is licensed or registered by the State of Florida to operate on public roads and except to the extent any such vehicles may be used by the Declarant prior to turnover.

(c) "Parking on a Temporary, Short-Term Basis" shall mean parking, on a non-recurring basis and for a single period not exceeding twenty-four (24) hours in duration, of commercial or recreational vehicles belonging to guests of Owners, and it shall also mean parking of commercial vehicles used in connection with the furnishing of services and/or the routine pickup and delivery respectively, of materials from and to dwelling units (including those commercial vehicles used in connection with bona fide current on-going construction of improvements on Lots, other Residential Property or Common Property) and commercial and recreational vehicles belonging to or being used by Owners for loading or unloading purposes only.

(d) "Commercial Vehicle" shall mean a truck, motor home, bus or van of greater than three-quarter (3/4) ton capacity or any vehicle, including a passenger automobile, with a sign displayed on any part thereof advertising any kind of business or within which any commercial materials and/or tools are visible. Commercial vehicles shall be parked on a temporary, short term basis only.

(e) Enforcement. Any commercial, recreational or other vehicle parked, stored, repaired, serviced, painted, dismantled, rebuilt, constructed or operated in violation of the restrictions provided in this section or in violation of any reasonable rules and regulations, adopted by the Association from time to time, may be towed away or otherwise removed by or at the request of the Association, and the Owner of the Lot or dwelling unit to whom such vehicle belongs or to whom the operator of such vehicle is a family member, guest or invitee shall reimburse the Association for any costs incurred by the Association and the Association shall have a lien right against such Lot or dwelling unit to enforce collection of such reimbursement. Any cost or expense not incurred by, or the responsibility of, the Association but necessary to recovery of the towed or removed vehicle shall be borne by the owner or operator of the towed or removed vehicle.

**Section 20. Initial Construction, Repair and Rebuilding.** Construction of any dwelling or other structure or improvement shall be completed within five (5) months from the commencement of construction thereof. Every building, structure or other improvement, the construction, repair, rebuilding, or reconstruction of which is begun on any Lot, shall be diligently and continuously prosecuted after the beginning of such construction, repair, rebuilding or reconstruction until the same shall be fully completed, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God and other similar causes.

No building, structure or improvement which has been partially or totally destroyed by fire or casualty shall be permitted to remain in such state for more than six (6) months from the date of such damage or destruction. If reconstruction or repair of any such building, structure or improvement is not so commenced within six (6) months, the Owner thereof shall raze or remove the same promptly from such Owner's Lot. Any Owner who has suffered damage to his residence by reason of fire or any other casualty may apply to the ACC for

approval for reconstruction, rebuilding or repair in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty.

**Section 21. Repainting of Homes.** If the exterior of any home (including trim, doors and garage doors) is repainted within the first five years subsequent to conveyance by Declarant, it shall be painted in the same color or as close to the same color as possible of that which was provided by the Declarant at the time of conveyance, unless an alternative color is approved by the ACC.

**Section 22. Window Air Conditioners.** Window air conditioning units are not permitted anywhere within the Properties.

**Section 23. Street Lighting.** Each Lot is subject to the power and authority of the Lighting District created by Hillsborough County. If at any time hereafter, Declarant requests that a separate street lighting district be organized pursuant to Hillsborough County Ordinance, or as otherwise provided by law, all Owners of such Lots will upon written request by Declarant; (i) join in any petition to the Board of County Commissioners requesting the formation of a street lighting district; (ii) grant any easement rights which may be required therefore, without payment of any compensation; (iii) pay any assessments imposed on their Lots by such street lighting district, and, (iv) join in any petition to annex contiguous property to the street lighting district.

**Section 24. Basketball Goals.** Basketball goals and hoops may be located in front yards or in driveways provided such basketball goals and hoops meet the standards of the ACC and are approved pursuant to Article VI, Section 2.

**Section 25. Exemption of Declarant.** Nothing contained in this Declaration shall be interpreted or construed to prevent Declarant, or its designated assigns or it or their contractors, or subcontractors, from doing or performing on all or any part of the Property owned or controlled by the Declarant, or its designated assigns, whatever they determine to be reasonably necessary or advisable in connection with the completion of the development, including, without limitation:

(a) Erecting, constructing and maintaining thereon such structures as many be reasonably necessary for the conduct of Declarant's business of completing the final development and establishing the Property as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(b) Erecting and maintaining such signs thereon as may be reasonably necessary in connection with the sale, lease, or other transfer of any portion of the Properties. All provisions of this Declaration in conflict with this Paragraph shall be deemed inoperative as to Declarant and its designated assigns.

**Section 26. Exemption of Declarant and Designated Builders.** Every person, firm or corporation purchasing a Lot recognizes that Declarant or designated builders shall have the right to:

- (a) Use of Lots and residences erected thereon for sales offices, field construction offices, storage facilities and general business offices;
- (b) Maintain furnished model homes on the Lots which are open to the public for inspection seven (7) days per week for such hours as deemed necessary or convenient by Declarant or designated builder; and
- (c) Erect and maintain such signs on the Lot in connection with the uses permitted in (a) and (b) above.

Declarant's and builder's rights as defined in Sections 25 and 26 shall terminate when the last Lot is sold to a resident or December 31, 2009, whichever occurs later, unless prior thereto Declarant has indicated its intention to abandon such rights by a written instrument duly recorded. It is the express intention of this paragraph that the rights granted herein to maintain sales offices, general business offices, furnished or unfurnished model homes and signs shall not be restricted or limited to Declarant's or builder's sales activity relating to the Property, but shall benefit Declarant or builder in the construction, development and sale of such other property and Lots which Declarant or builder may own. All provisions of this Declaration in conflict with this paragraph shall be deemed inoperative as to Declarant or a designated builder.

**Section 27. Front Doors.** The front door of each residence constructed on a Lot shall be maintained in an attractive manner, and therefore no screen doors, storm doors, glass doors, or the like shall be allowed on such front doors. The original door color shall be maintained unless otherwise approved by the ACC.

**Section 28. Front Yards.** The front yard of each residence constructed on a Lot shall remain grass, and each Owner is required to maintain such grass, and no such front yard shall be paved over (either concrete, asphalt or otherwise), nor covered with rock, gravel or other similar material, unless the initial construction by the Declarant utilizes an alternate plant ground cover due to heavy shade on the Lot. Thereafter the same type of plant ground cover shall be utilized unless otherwise approved by the ACC.

**Section 29. Window Coverings.** All interior window coverings which are visible from any street shall be white in color, or have a white backing, in order that all windows present a uniform white presence to the exterior of the improvement.

**Section 30. Drainage Easements.** The Plat reflects certain areas as "Drainage Easements". The Plat provides the following in regard to these areas and each Owner of a Lot is subject thereto:

"Permanent drainage easements shall not contain permanent improvements, including but not limited to sidewalks, driveways, impervious surfaces, patios, decks, pools, air conditioners, structures, utility sheds, poles, fences, sprinkler systems, trees shrubs, hedges, and landscaping plants other than grass, except as approved by the County Administrator."

**Section 31. Swimming Pools and Porch Enclosure.** In the event any Owner constructs a swimming pool on a Lot, such swimming pool must be entirely in-ground, and the Owner of the Lot must erect a screen enclosure or a fence at least six (6) feet in height around the entire perimeter of that portion of the Lot located behind the house so as to prevent access to such swimming pool. However, this Section shall not create any liability or responsibility on the part of the Declarant or the Association from any claims arising from the lack of a fence and the existing swimming pool. The term swimming pool shall also include any spa, whirlpool bath, or similar device as determined by the ACC. All porch enclosures must be approved by the ACC and shall be constructed with white aluminum supports.

**Section 32. Outdoor Clotheslines.** No outdoor clothesline of any kind whatsoever, temporary or permanent shall be permitted on any Lot, unless the lines are not visible from the exterior of the Lot.

**Section 33. Mining, Wells, Underground Installations.** No oil drilling, oil development operations, oil refining, quarrying, or mining operation of any kind shall be permitted upon or in any Lot. No derrick or other structures designed for the use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot. No wells, tanks, tunnels, mineral excavation, or shafts shall be installed, erected, maintained, or permitted upon or in any Lot, whether such use is for water, oil or petroleum products, natural gas, propane or any other substance.

**Section 34. Garages.** The primary use of all garages in the Properties shall be for the storage of motor vehicles. All garages must be capable, at all times, of containing the number of motor vehicles for which it was designed. All garage doors must be closed at all times with the exception of ingress to or egress from the interior of said garage.

**ARTICLE IV  
Membership and Voting Rights**

**Section 1. Membership.** Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Lot which is subject to the assessment.

**Section 2. Voting Rights.** The Association shall have two (2) classes of voting memberships:

**Class A.** Class A Members shall be all those Owners, as defined in Section 1, with the

exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership in Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Class A Members, and the vote for such lot shall be exercised as they, among themselves, determine; but in no event shall more than one (1) vote be cast with respect to any such Lot.

**Class B.** The Class B Member shall be the Declarant as to the Lots it owns and I. H. Homes of New Tampa, Inc. as to the Lots it owns. Until completion of construction of a residential structure on any Lot exists, the Class B membership designation may be assigned to any subsequent lot developer or lot builder, but not to any party intending to reside on the Lot. Each Class B Member shall be entitled to three (3) votes for every Lot owned. Unless converted earlier and voluntarily by the Declarant, the Class B membership shall cease, and be converted to Class A membership upon the earliest of the following events (the period of time from the date of this Declaration to the date of such event being referred to herein as the "Class B Control Period"):

- (1) When seventy-five percent (75%) of the Lots have been deeded to Owners other than the Declarant; or
- (2) Seven (7) years from the date of the recording of this Declaration among the public records of Hillsborough County, Florida; or
- (3) On an earlier date specified at the option of the Declarant.

## ARTICLE V

### Covenant for Maintenance and Operation Assessments

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** The Declarant, for each Lot within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant, and agrees to pay the Association, as hereinafter provided:

- (a) annual assessments or charges, which shall include assessments for the maintenance and operation of the Common Area and shall include such reasonable reserves as the Association may deem necessary. These annual assessments may be collected in monthly, quarterly or yearly payments; and
- (b) special assessments for capital improvements as provided in Section 3 of this Article. Such assessments shall be for those purposes stated hereinafter and shall be fixed, established and collected from time to time as hereinafter provided; and

(c) other assessments as hereinafter provided for.

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The annual, special and other assessments, together with interest thereon and costs of collection of same, including attorneys' fees, shall be a charge on each Lot and shall be a continuing lien upon the Lot for the assessments and the costs of collection of the same, including reasonable attorneys' fees, and shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. All assessments, whether annual, special or other imposed by the Association, shall be against all Lots subject to its jurisdiction, fixed at a uniform rate per Lot and may be collected on a monthly, quarterly or yearly basis, as directed by the Board of Directors.

**Section 2. Purpose of Assessment.** The assessments levied by the Association shall be used exclusively to (i) promote the health, safety and welfare of the residents in the Property, (ii) for the improvement, repair, replacement and maintenance of the Common Area including, but not limited to, payment for operation and maintenance of improvements to the Common Area, the costs of taxes, insurance, labor, equipment, materials, management, maintenance and supervision thereof, and (iii) for such other purposes as are permissible activities of the Association and undertaken by it as set forth in this Declaration.

**Section 3. Special Assessments for Capital Improvements.** In addition to the annual assessment 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 any capital improvement that, in the judgment of the Board of Directors of the Association, benefits all Lots, including the necessary fixtures and personal property related thereto.

**Section 4. Other Assessments.** Any and all accrued, liquidated indebtedness of any Owner to the Association arising under the provision of this Declaration, or by contract expressed or implied, or because of any act or omission of any Owner or person for whom such Owner is responsible, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay it within thirty (30) days after written demand.

**Section 5. Date of Commencement of Annual Assessment; Due Dates.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The annual assessment shall be payable in monthly installments due on the first day of each calendar month, or in annual or quarter-annual installments if so determined by the Board of Directors. The due date of any special assessment levied under Section 3 hereof shall be fixed in the resolution authorizing such assessment.

**Section 6. Duties of the Board of Directors.** The Board of Directors shall fix the amount of assessment against each Lot subject to the Association's jurisdiction and shall set the date of commencement for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Property and assessments,



applicable thereto, that shall be kept on file in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereafter be sent to every Lot Owner subject thereto.

The Association shall, upon demand at any time, furnish to any Lot Owner liable for said assessments, a certificate in writing signed by an Officer of the Association setting forth whether said assessments have been paid as to any particular Lot. This certificate shall be conclusive evidence of payment of any assessment, due to the Association, which is stated therein to have been paid.

From time to time, the Association, through actions of its Board of Directors, may enter into an agreement or agreements with one or more persons, firms or corporations, for the purpose of providing professional management, operation of and maintenance of services for the Common Area.

**Section 7. Amount of Monthly Assessments.** Until January 1 of the year immediately following the conveyance of the first Lot to Class A Members, the maximum annual assessment shall be Three Hundred Twenty-eight and 50/100 Dollars (\$328.50), being Twenty-seven and 38/100 Dollars (\$27.38) per month.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to Class A Members, the maximum annual assessment may be increased, each year, not more than Fifteen (15%) Percent above the maximum assessment for the previous year, without a vote of the membership of the Association.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to Class A Members, the maximum annual assessment may be increased above fifteen percent (15%) by a vote of two-thirds (2/3) of all voting members who are voting in person or by proxy at a meeting duly called for this purpose, and the quorum for such a meeting shall be at least Sixty Percent (60%), in person or by proxy, of all voting members, and if said quorum is not attained, a second meeting may be called at which the quorum requirement shall be reduced to Thirty Percent (30%).

(c) The assessment for each Lot owned by a Class A Member shall be equal to the assessment for each other Lot owned by a Class A Member. The Board of Directors of the Association shall, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for each year in an amount not to exceed the maximum annual assessment as herein defined.

~~(d) Special assessments, as described herein may be made by the Board only by same vote and quorum requirements as is described in subsection (b) above of this Section 7.~~

(e) So long as Declarant is a Class B Member, Declarant may be excused from paying assessments on a per Lot basis during such period of time as the Declarant funds any deficit between the assessments received from the Class A Owners and actual operating expenses of the Association. Declarant hereby obligates itself to fund such deficit.

(f) The amount of each individual Lot assessment for Class A Members shall be uniform throughout the Properties and shall be an amount equal to a fraction of the total assessment budget, where the numerator is one and the denominator is the total number of Lots in the Properties in accordance with the recorded Plat or Plats thereof.

**Section 8. Effect of Nonpayment Assessment; Remedies of Association.** If the assessments are not paid within thirty (30) days after the date when due (being the dates specified in Section 5 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and the costs of collection thereof, including attorneys' fees, as hereinafter provided, thereupon become a continuing lien on the property so assessed, which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns.

If the assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date when due at the rate of eighteen percent (18%) per annum, provided, however, in no event shall this interest rate exceed the maximum allowable by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the Lot or may foreclose the lien against the Lot, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment, and recoverable by the Association, the costs of collection of same, including, but not limited to, reasonable attorneys' fees and the costs of preparing and filing the claim of lien and the complaint in any such action. Additionally, in the event that a judgment is obtained, such judgment shall include interest on the assessment as provided hereinabove and costs of collection and reasonable attorneys' fees. Attorneys' fees, as provided for herein, shall include attorneys' fees incurred in any appeal of such action, to be fixed by the court, together with the costs of the action.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot. It shall be the legal duty and responsibility of the Association to enforce the timely payment of the assessments.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to, or an interest in, any Lot as to which the assessment is delinquent, including, without limitation, persons acquiring such interest by operation of law and by judicial sale, shall not be entitled to the enjoyment of the Common Area, until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid, provided, however, that the provisions of this sentence shall not be applicable to the mortgages and purchases contemplated by Section 9 of this Article.

**Section 9. Subordination of the Lien to Mortgages and Tax Liens.** The lien of the assessments provided for herein shall be subordinate to any tax lien and to the lien of any first mortgage encumbering any Lot. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer without prejudice, however, to the Association's right to collect such amounts from the Owners personally liable for their payment. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Any unpaid assessment that cannot be collected as a lien against a 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 jurisdiction of the Association, including the Lot as to which the foregoing, or conveyance in lieu of foreclosure, took place.

**Section 10. Homesteads.** By acceptance of a deed thereto, each Owner of each Lot is deemed to acknowledge conclusively that (i) the assessments established by this Article are for the improvement and maintenance of any homestead thereon; and (ii) the Association's lien for such assessments has priority over any such homestead; and (iii) such Owner irrevocably waives the benefit of any homestead exemption otherwise available with respect to all amounts secured by such lien.

**Section 11. Trust Funds.** The entire amount of all regular and special assessments collected by the Association shall be held by the Association in trust for the Owners of all Lots, as their interest may appear, until disbursed as contemplated herein for the purposes for which the assessments were collected.

**Section 12. Special Taxing Districts.** In the event that a Special Taxing District is established to provide any services currently rendered by, or which are the responsibility of, the Association, these covenants and conditions shall no longer be of any force and effect as to any such services provided by said Special Taxing District, provided, however, the covenants and conditions set forth herein shall continue to bind and run with the lands as to all of the Property for services not provided by said Special Taxing District. If said Special Taxing District is terminated for any reason, these covenants and conditions shall thereupon apply in full force and effect as if said Special Taxing District had never been created.

**ARTICLE VI**

**Architectural Control**

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**Section 1. Architectural Control Committee.** In order to assure that the residences and other buildings, structures, and improvements in the subdivision covered by this Declaration will be constructed in a manner to preserve a uniformly high standard of construction quality, and in order to create, maintain and preserve an attractive, unique and exclusive residential subdivision, with harmony in design and location in relation to surrounding buildings, improvements and topography, and with homogeneity in density, size, and materials of the structures, and appearances of all buildings, structures and improvements on any Lot, there is hereby created an Architectural Control Committee (the "ACC"). The ACC shall initially be composed of Edward D. Andrews, William R. Howell, II, and Gregory E. Matovina. The address of the ACC is c/o Edward D. Andrews, Andrews Asset Management Corp., 7402 N. 56th Street, Suite 480, Tampa, Florida 33617. However, at such time as there are no longer any Class B Members of the Association, the powers and duties of the ACC shall immediately vest in and be assigned to the Association, and the ACC shall thereafter exist as a committee of the Association under the control of the Association's Board of Directors.

**Section 2. Purpose and Powers of the ACC.** The ACC shall have the power to regulate those matters described in this Article VI. The power to regulate shall include the power to prohibit those buildings, structures or improvements deemed inconsistent with the provisions of the Declaration, or the aesthetic scheme, design or quality intended to be created and preserved hereby, or in maintaining the value and desirability of the Property, as a residential community with exclusive, unique and desirable aesthetic qualities.

No building, structure or improvement shall be erected, constructed, placed or altered on any Lot until the Owner of the Lot shall submit in duplicate complete plans and specifications for such building, structure or improvement and a detailed site plan showing its proposed location, and ACC shall have approved such plans and specifications and detailed site plan, in writing. The approval of said plans and specifications by the ACC may be withheld not only because of the noncompliance with any of the specific easements, covenants, conditions and restrictions of this Declaration, but also by reason of the reasonable dissatisfaction of the ACC with any other aspect of such plans and specifications, including but not limited to compliance with this Declaration, the landscaping or grading plan, the proposed location of the structure with respect to topography and finished grade elevations, the quality of workmanship and materials, the type of materials, the color scheme, finished design, proportions, architecture, style, shape, height, size, style or appropriateness of the proposed buildings, structures or improvements located or to be located upon the Property, including the height, kind and appearance of fences, walls, and excavation or fill, change in appearance, drainage or terrain, planting, utility installation and any other physical change or improvement to any Lot, the size, location and materials to be used in the construction of the walks and drives, and the sizes and species of landscaping materials, all of which are included within the definition of "improvements" as such word is used herein. One set of plans an

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specifications and detailed site plan as finally approved shall be retained by the ACC for its permanent records.

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It is the intention of this provision to vest in the ACC the right, power and authority to regulate the appearance of the buildings, structures or improvements to be located upon each Lot, for the purposes herein set forth. Upon completion of any building, structure or improvement in accordance with the plans specifications and detailed site plan as approved by the ACC, no changes, alterations, additions, reconstruction or attachments of any nature whatsoever shall be made to the exterior of the building, structure and/or improvement of the Lot, including that portion thereof not actually occupied by the improvements thereon, unless the same are identical to the original work without the ACC's prior written approval in the manner above provided.

All of the foregoing approvals of the ACC shall not be unreasonably withheld so long as such original plans, specifications and detailed site plans of such change, alteration, addition, reconstruction or attachment, as the case may be, conforms substantially to, and is in harmony with, the creation and preservation of the general plan of development intended to be created and preserved by this Declaration.

The ACC's approval, disapproval or conditional approval shall be endorsed upon the plans and specifications submitted by the Owner, and shall be further evidenced by a written instrument executed and acknowledged by the ACC. Such written instrument shall be returned, accompanied by one set of the submitted documents, to the applicant within forty-five (45) calendar days after submission by the Owner for approval. If the ACC does not take action to either approve or disapprove the submission within such forty-five (45) day period, the request shall be deemed disapproved.

**Section 3. Exculpation of ACC.** Members of the ACC cannot and shall not be held responsible, or be liable to any person whomsoever, in any manner whatsoever, for any loss or damages arising out or resulting from the approval, the failure or refusal to approve, or the disapproval of , any plans and specifications or site plans, or for any errors in structure, design or any non-conformance with applicable building codes or local laws or regulations in the plans and specifications or site plan, not for any defect in design or construction of any building, structure or improvement constructed in accordance with any such plans, specifications or site plan.

**Section 4. Submission of Plans and Specifications for Review by ACC.** No plans and specifications shall be considered to have been accepted for review by the ACC unless evidenced by a written receipt of such plans and specifications by the ACC.

**ARTICLE VII**

**General Provisions**

**CERTIFIED COPY**

**Section 1. Duration.** The covenants and restrictions of this Declaration, and any Supplemental Declaration, shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Architectural Control Committee, the Association, or the Owner of any land subject to this Declaration or any supplemental declaration, and their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated at the end of any such period by a vote of at least seventy-five percent (75%) of each class of voting members. This and any supplemental declarations may be amended as provided in Section 5 of this Article.

**Section 2. 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, postpaid, 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 3. Enforcement.** These covenants and restrictions may be enforced by the Declarant, the Architectural Control Committee, the Association or any Owner of property which is subject to these covenants and conditions. 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 these covenants. Failure of the Declarant, the Association or any Owner 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. In the event legal action is taken to enforce the covenants and restrictions provided herein, the prevailing party shall be entitled to recover the costs of such action, including attorneys' fees, and appellate costs and attorneys' fees, if necessary. If any such action is brought by any Owner against any other Owner, neither the Declarant nor the Association shall have any obligation to indemnify or reimburse either party to such action.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

**Section 5. Amendment.** This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by the Association with the approval of at least seventy-five percent (75%) of each class of the voting members, and thereafter with the approval of not less than two-thirds (2/3) of the voting members. If the Federal Housing Administration and/or the Veterans Administration insures or guarantees any mortgage loans on Lots within the Property, any such amendment shall have the prior approval and be contingent upon the approval of the Federal Housing Administration and/or Veterans

Administration before being effective as to the Lots in the Property. Provided, however, that no such amendment shall adversely affect the rights and duties of the Declarant without its prior written consent thereto, nor shall any amendment affect the drainage provisions hereunder without the consent of the Southwest Florida Water Management District. Any such amendment shall be recorded in the public records of Hillsborough County, Florida. Notwithstanding the above, Declarant may amend this Declaration without the consent of any other party within two years of recording if: (a) required by a governmental agency or Southwest Florida Water Management District, or (b) to correct a scrivener's error herein.

**Section 6. FNMA/FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the United States Department of Housing and Urban Development (HUD), Federal National Mortgage Association (FNMA), Federal Housing Administration (FHA) or Veterans Administration (VA), if any such agency has insured or guaranteed any mortgage loan on a Lot in the Property:

- (a) Mortgaging of Common Area;
- (b) Dedication and conveyance of Common Area to any party other than the Association;
- (c) Annexation of additional property other than the property described in Exhibit A-2 hereof;
- (d) Amendment of this Declaration of Covenants Conditions and Restrictions; or
- (e) Merger, consolidation and/or dissolution of the Association.

This Declaration is being submitted to the HUD, FNMA, the FHA, and the VA for approval. Notwithstanding anything to the contrary contained in Section 5 of this Article, Declarant shall have the right from time to time, without the necessity of joinder or consent by any Owners, to amend, add to, change, modify or derogate from, the provisions of this instrument in the manner and to the extent required by HUD, FNMA, the FHA or the VA in order for such organizations to approve financing of residential houses on Lots within the Property. HUD, FNMA, FHA or VA approval of any such documents or amendments executed by the Declarant shall be conclusive evidence that the amendment or other change was required by the HUD, FNMA, the FHA, or the VA pursuant to this provision.

**Section 7. Notice to Lenders.** Upon written request to the Association, identifying the name and address of the mortgage holder, insurer or guarantor and the Lot number and address, any such mortgage holder, insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which adversely affects a material portion of the Property or any Lot on which there is a first mortgage held, insured or guaranteed by such mortgage holder, insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a lot subject to a first mortgage held, insured or guaranteed by such mortgage holder, insurer or guarantor which remains delinquent for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of mortgage holders.

**Section 8. Association Information.** Upon request during normal business hours or under other reasonable circumstances, the Association shall make available to Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of this Declaration, the Articles of Incorporation and By-Laws of the Association, any rules and regulations concerning the Property, and the books, records and financial statements, for the immediate proceeding fiscal year of the Association.

**Section 9. Effective Date.** This Declaration shall become effective upon its recordation in the Hillsborough County Public Records.

**Section 10. Encroachment Easements.** In the event that any improvements on a Lot shall encroach upon any of the Common Area, or upon any other Lot, or in the event that any Common Area shall encroach upon any Lot, then an easement shall exist to the extent of accommodating and abating that encroachment, for so long as the encroachment shall exist.

**Section 11. Interrelationship of Documents.** In the event of a conflict between the terms and provisions of this Declaration of Covenants, Conditions and Restrictions and the Articles of Incorporation and/or By-Laws of the Association, the Declaration of Covenants, Conditions and Restrictions shall govern. In the event of a conflict between any term or provision of this Declaration and the Master Declaration, the more restrictive provisions shall control.

**Section 12. Interpretation.** When the context in which the words are used in this Declaration indicates that such is the intent, words in the singular shall include the plural and vice versa. The table of contents, article or section title, captions and abbreviations contained in this Declaration are for convenience only and shall not be deemed a part of this Declaration.

**Section 13. Additional Land.** The Declarant reserves the right to annex the additional land adjacent to the property which is the subject of this Declaration described in



Exhibit A-2 hereof, and such additional lands shall be included and be subject to the terms, covenants, and conditions of this Declaration without the approval of Class A membership. Upon filing of a supplemental declaration, the Lot Owners of the annexed real property shall be members of the Association and shall enjoy all the rights and privileges thereto. No other additional real property may be annexed or added to the Property unless upon the prior approval of at least two-thirds (2/3) of all voting members.

**Section 14. Mortgage or Conveyance of Common Area.** The Common Area, or any part of the common area, cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Class A Members.

**Section 15. Meeting Requirements.** Wherever any provision of this Declaration, the Articles of Incorporation, or the By-Laws requires any action to be approved by two-thirds (2/3) or more of the votes of membership at a meeting duly convened for such purpose, written notice of such meeting must be given to all members not less than fifteen days in advance, setting forth its purpose. At such meeting the presence in person or by proxy of members entitled to cast at least sixty-six percent (66%) of the votes described in Article III, Section 2, outstanding constitutes a quorum.

#### **ARTICLE VIII Operation, Maintenance and Monitoring of Drainage Facilities**

**Section 1.** The Association shall maintain, as part of the common elements, drainage structures for the properties and comply with conditions of the permits from the Southwest Florida Water Management District (SWFWMD) for the drainage system. The Association, shall, when requested by Declarant, accept transfer of the SWFWMD permit for the development. The conditions may include monitoring and record keeping schedules, and maintenance. The Association is responsible for maintenance, repair and replacement of common elements and drainage facilities in perpetuity.

**Section 2.** The Association shall maintain, as part of the common elements, any areas designated on the Properties as mitigation areas for wetlands. The Association shall comply with all applicable permit conditions for such areas, including monitoring and maintenance of wetland vegetation, and the replanting of wetland vegetation to meet required survival rates.

**Section 3.** It shall be the responsibility of each property Owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, F.A.C., approved and on file with SWFWMD.

**Section 4.** It is the Lot Owner's responsibility not to remove native vegetation (including cattails) that become established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, cutting, and the

introduction of grass carp. Lot Owners should address any question regarding authorized activities within the wet detention pond to SWFWMD, Tampa Permitting Department and all other appropriate governmental entities, including Hillsborough County.

**Section 5.** Lot Owners are notified that this Property is subject to the requirements of a permit issued by the Southwest Florida Water Management District. In addition, the Owner is required to obtain a Surface Water Management Permit in accordance with Chapter 40D-4, F.A.C. from SWFWMD prior to initiating any construction or alteration of a Surface Water Management System on this Property.

**Section 6. Ponds, Cypress Trees and Conservation Areas.** Any ponds or other water retention areas on Lots or otherwise within the Property are for the exclusive use of the Owners and occupants of those Lots on which such ponds are located, subject to any drainage easements that are part of the Plat or provided for herein. It is the exclusive right and obligation of the Association to maintain such ponds and water retention areas. The area(s) shown as wetland conservation easement on any recorded plat of the Property, shall be left to remain and survive intact in its present (created or natural) condition, character and state. The disturbance in any manner of the existing (created or natural) condition, character and state of such areas, or the vegetation thereon, or the ecology, topography or bionomics thereof is hereby prohibited. It is the intention of Declarant that these areas shall not be changed, disturbed, used, affected or molested in any manner whatsoever, except as permitted by law. Notwithstanding the foregoing, Declarant may change, disturb and affect such areas as permitted or required by law in the course of the development of the Property or Declarant's other property, and upon completion of any such change, the then existing state and condition shall be deemed for the purposes of this paragraph, to be the present and existing condition, character and state thereof.

**IN WITNESS WHEREOF**, the Declarant has caused these presents to be duly executed in its corporate name, by its duly authorized officer, and its Corporate seal to be affixed hereto the day and year first above written.

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THIS IS NOT A

OR BK 10004 PG 1961

WITNESSES:

Donald K Borstein  
DONALD K BORSTEIN  
Print Name

MID ATLANTIC DEVELOPMENT  
COMPANY, a Florida Corporation

By: Gregory E. Matovina  
Print Name: Gregory E. Matovina  
Address: c/o Matovina and Company  
2955 Hartley Road  
Suite 106A  
Jacksonville, Florida 32257

Joseph B. Ellis  
Joseph B. Ellis  
Print Name

STATE OF FLORIDA  
COUNTY OF ~~HILLSBOROUGH~~ DuVAL

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 1999 by Gregory E. Matovina as V. Pce President of Mid Atlantic Development Company, a Florida corporation, on behalf of said corporation. He is personally known to me or ~~has~~ produced \_\_\_\_\_ as identification.

[AFFIX SEAL]

Michelle Berlin  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Michelle Berlin  
My Commission CC870795  
Expires September 13, 2003

THIS IS NOT A

CONSENT AND JOINDER OF MORTGAGEE

CERTIFIED COPY

First Union National Bank is the holder of that certain Mortgage and Security Agreement recorded in O.R. Book 9704, Page 1218 off the Public Records of Hillsborough County, Florida, encumbering the Property, and hereby joins in and consents to the recording of this Declaration and subordinates its lien in and to the easements set forth in this Declaration.

WITNESSES

FIRST UNION NATIONAL BANK,  
a national banking association

Leslie H. Matovina

By [Signature]  
Print Name: LYNN E VERMILYA

Leslie H. Matovina  
Print Name

Title: VICE PRESIDENT

Address: 225 WATER ST  
JACKSONVILLE FL 32202

Gregory E. Matovina

Gregory E. Matovina  
Print Name

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 6th day of December 1999, by Lynn E. Vermilya, as Vice President of First Union National Bank, a national banking association, on behalf of said bank. He/She is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

[AFFIX SEAL]

Michelle Berlin

Notary Public

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



Michelle Berlin  
My Commission CC870785  
Expires September 13, 2003

THIS IS NOT A **OR BK 10004 PG 1963**

EXHIBIT "A-1"

**Legal Description of lands originally subject to this Declaration:**  
CERTIFIED COPY

**Lots 1 through 10, Block 7, Lots 1 through 21, Block 8, Lots 1 through 15, Block 9 and Tracts A-2, C, E and F of Cross Creek Parcel "M" Phase 1, according to the plat or map thereof recorded in Plat Book 86, Page 62-1, Public Records of Hillsborough County, Florida.**

EXHIBIT "A-2"

~~All of the following described land, less and except the property described in the foregoing Exhibit "A-1":~~

A parcel of land lying in the Southwest 1/4 of Section 9, Township 27 South, Range 20 East, Hillsborough County, Florida, and being more particularly described as follows:

From the Southwest corner of said Section 9, run thence along the West boundary of said Section 9, N.00°52'00"W., 1323.56 feet to the Northwest corner of the Southwest 1/4 of the Southwest 1/4 of said Section 9; thence along the North boundary of said Southwest 1/4 of the Southwest 1/4 of Section 9 S.89°49'24"E., 1222.95 feet to a point on the Easterly right-of-way line of Brookron Drive as recorded in Official Record Book 8796, Page 694 of the Public Records of Hillsborough County, Florida, said point also being the POINT OF BEGINNING; thence along said Easterly right-of-way line, N.26° 14'58"E., 364.76 feet to a point of curvature; thence continue along said Easterly right-of-way line and the Easterly right-of-way line of Brookron Drive as recorded in Official Record Book 8796, page 689 of the Public Records of Hillsborough County, Florida Northwesterly, 929.91 feet along an arc of a curve to the left having a radius of 640.00 feet and a central angle of 83° 14'58" (chord bearing N.15°22'31"W., 850.24 feet) to a point on the Southeasterly boundary of CROSS CREEK PARCEL K PHASE IA, according to the plat thereof as recorded in Plat Book 83, Page 97 of the Public Records of Hillsborough County, Florida; thence along said Southeasterly boundary, N.33° 00'00"E., 625.10 feet; thence N. 62°08'59"E., 1163.58 feet to a point on the East boundary of the West 2561.25 feet of the aforesaid Section 9; thence along said East boundary, S.00°52'00"E., 2059.07 feet to a point on a curve; thence Southwesterly, 1869.21 feet along the arc of a curve to the right having a radius of 3100.00 feet and a central angle of 34°32'52" (chord bearing S.51°04'24"W., 1841.02 feet) to a point of compound curvature on the aforesaid Easterly right-of-way line of Brookron Drive as recorded in Official Record Book 8796, page 694 of the Public Records of Hillsborough County, Florida, thence along said Easterly right-of-way line the following four (4) courses: 1)Northwesterly, 55.83 feet along the arc of a curve to the right having a radius of 35.00 feet and a central angle of 91° 24'08" (chord bearing N.65° 57'06"W., 50.10 feet) to a point of tangency, 2) N.20°15' 02"W., 224.96 feet to a point of curvature; 3) Northeasterly, 373.33 feet along the arc of a curve to the right having a radius of 460.00 feet and a central angle of 46° 30'00" (chord bearing N.02° 59' 58"E, 363.16 feet) to a point of tangency; 4) N. 26° 14' 58"E., 453.43 feet to the POINT OF BEGINNING.

Containing 71.856 acres, more or less.

THE FOREGOING PROPERTY IS PROPOSED EXPANSION PROPERTY ONLY, AND IS NOT DEDICATED TO THE DECLARATION AT THIS TIME. THE FOREGOING PROPERTY MAY BECOME PART OF MAGNOLIA TRACE AT CROSS CREEK PARCEL "M", OR PINEHURST AT CROSS CREEK PARCEL "M", OR MAY NOT BE DEDICATED TO EITHER SUBDIVISION, AT THE DECLARANT'S DISCRETION.

THIS IS NOT A

EXHIBIT "B"

CERTIFIED COPY  
ARTICLES OF INCORPORATION OF THE ASSOCIATION

THIS IS NOT A  
CERTIFIED COPY

# State of Florida



## Department of State

I certify from the records of this office that MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on December 23, 1999.

The document number of this corporation is N99000007567.

I further certify that said corporation has paid all fees due this office through December 31, 1999, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

OR BK 10004 PG 1966

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Twenty-seventh day of December, 1999



CR2EO22 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State



THIS IS NOT A  
CERTIFIED COPY

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC., a Florida corporation, filed on December 23, 1999, as shown by the records of this office.

The document number of this corporation is N99000007567.

OR BK 10004 PG 1967

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Twenty-seventh day of December, 1999



CR2EO22 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State

**MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC.**

The undersigned incorporator, a resident of the State of Florida and of full age, hereby makes, subscribes, acknowledges and files with the Department of the State of Florida these Articles of Incorporation for the purpose of forming a corporation not for profit under the laws of the State of Florida.

**ARTICLE I**

**NAME**

The name of this corporation is **MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC.**, a Florida corporation not for profit (hereinafter called the "Association" in these Articles).

**ARTICLE II**

**OFFICE AND REGISTERED AGENT**

The Association's principal office is c/o Andrews Asset Management Corp. 7402 N. 56th Street, Suite 480, Tampa, Florida 33617. The Association's registered agent is Richard A. Schlosser who maintains a business office at 500 E. Kennedy Blvd., Suite 200, Tampa, Florida 33602. Both this Association's registered office and registered agent may be changed from time to time by the Board of Directors as provided by law.

**ARTICLE III**

**PURPOSE**

This Association does not contemplate pecuniary gain or profit to its members and the specific purposes for which it is formed are to provide for the maintenance, preservation and architectural control of all common areas and residential lots within that certain tract of property (hereinafter called the "Properties") in Hillsborough County, Florida, and more particularly described as:

All of the Magnolia Trace Section of Cross Creek, Parcel "M", according to the map or plat thereof, recorded in the Public Records of

Hillsborough, County, Florida, initially being Lots 1 through 10, Block 7, 1 through 21, Block 8, and 1 through 15, Block 9, Cross Creek Parcel "M" Phase 1, Plat Book 86, Page 62-1, Public Records of Hillsborough County, Florida, together with all subsequent additions to the Magnolia Trace Section of Cross Creek, Parcel "M".

## ARTICLE IV

### POWERS

Without limitation this Association is empowered to:

(a) Declaration. Exercise all rights, powers, privileges, and perform all duties of this Association set forth in that certain Declaration of Covenants, Conditions and Restrictions for Magnolia Trace at Cross Creek Parcel "M" (hereinafter called the "Declaration") applicable to the Properties and recorded or to be recorded in the Public Records of Hillsborough County, Florida, and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth in full;

(b) Property. In any lawful manner, acquire, own, hold, improve, manage, operate, maintain, repair, replace, operate, convey, sell, lease, transfer, assign, and otherwise dispose of property of any nature whatsoever, real, personal, or mixed, tangible or intangible, in connection with this Association's affairs;

(c) Assessments. Fix, levy, collect, and enforce by any lawful means all charges or assessments established by, or pursuant to, the Declaration; and to use and expend the proceeds of assessments in the exercise of its powers and duties hereunder;

(d) Costs. Pay all costs, expenses, and obligations lawfully incurred in connection with this Association's affairs including, without limitation, all licenses, taxes, or other governmental charges levied or imposed against this Association's property;

(e) Borrowing. Borrow money and, with the approval of two-thirds (2/3) of each class of members, mortgage, pledge, deed in trust, hypothecate, assign, grant security interests in, or otherwise transfer any or all of its property as security for money borrowed, debts incurred, or any of its other obligations;

(f) Dedications. With the approval of two-thirds (2/3) of each class of members, dedicate, sell or transfer all or any part of its property to any public agency, authority, or utility for such purposes, and subject to such conditions, as two-thirds (2/3) of each class of members determine;

(g) Mergers. With the approval of two-thirds (2/3) of each class of members, participate in mergers and consolidations with other non-profit corporations organized for similar purposes;

(h) Rules. From time to time adopt, alter, amend, rescind, and enforce reasonable rules and regulations governing the use of the Lots and Common Area (as those terms are defined in the Declaration) consistent with the rights and duties established by the Declaration and these Articles;

(i) General. Have and exercise all common law rights, powers, and privileges and those that a corporation not for profit may now or hereafter have or exercise under the laws of the State of Florida, together with all other rights, powers, and privileges reasonably to be implied from the existence of any right, power, or privilege so granted, or granted by the Declaration or these Articles, or reasonably necessary to effectuate the exercise of any right, power, or privilege so granted;

(j) Enforcement. To enforce by legal means the obligations of the members of this Association and the provisions of the Declaration;

(k) Litigation. To sue or be sued; and

(l) Other. Engage in all lawful acts permitted or authorized by law.

## ARTICLE V

### MEMBERSHIP

Every person who from time to time holds the record fee simple title to, or any undivided fee simple interest in, any Lot that is subject to the provisions of the Declaration is a member of this Association, including contract sellers, but excluding all other persons who hold any interest in any Lot merely as security for the performance of an obligation. An Owner of more than one Lot is entitled to one membership for each Lot owned. Membership is appurtenant to, and may not be separated from, ownership of at least one Lot that is subject to the provisions of the Declaration, and membership may not be transferred other than by transfer of title to

such Lot. Each membership is transferred automatically by record conveyance or other transfer of title of a Lot.

ARTICLE VI

VOTING RIGHTS

This voting rights of members shall be as set forth in the Declaration.

ARTICLE VII

BOARD OF DIRECTORS

Section 1. This Association's affairs are managed by a Board of Directors initially composed of three Directors. The number of Directors from time to time may be changed by amendment to this Association's By-Laws, but at all times it must be either three (3) members or five (5) members. The initial Directors named below shall serve until this Association's first annual meeting. The term of office for all Directors is one year. Before any such annual meeting occurring after the Class "B" Control Period (as defined in the Declaration) expires, all vacancies occurring on the Board of Directors, if any, will be filled by majority vote of the remaining Directors, even if less than a quorum. Any Director may succeed himself or herself in office. All Directors will be elected by secret written ballot. Each member may vote for each vacancy; however, cumulative voting is not permitted. Directors need not be Association members.

Section 2. The names and addresses of the persons who will serve as Directors until their successors have been duly elected and qualify, unless they sooner die, resign, or are removed, are:

Name: Edward D. Andrews

Address: c/o Andrews Asset Management Corp.  
7402 N. 56th Street, Suite 480  
Tampa, FL 33617

**Name:** William R. Howell, II  
**Address:** c/o Matovina and Company  
2955 Hartley Road, Suite 106A  
Jacksonville, Florida 32257

**Name:** Gregory E. Matovina  
**Address:** c/o Matovina and Company  
2955 Hartley Road, Suite 106A  
Jacksonville, Florida 32257

**ARTICLE VIII**

**DURATION**

This Association exists perpetually.

**ARTICLE IX**

**DISSOLUTION**

This Association may be dissolved in the manner from time to time provided by the laws of the State of Florida and with the consent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of this Association in any manner other than incident to a merger or consolidation, all of this Association's assets must be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. If dedication is refused, such assets must be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes. In no event, however, may any assets inure to the benefit of any member or other private individual.

CERTIFIED COPY  
BY-LAWS

This Association's By-Laws initially will be adopted by the Board of Directors. Thereafter, the By-Laws may be altered, amended, or rescinded with the approval of the Board of Directors, except as to those provisions for amendment to the By-Laws which are provided in the Declaration or any future supplemental declaration in which case those provisions shall control such amendments.

ARTICLE XI

AMENDMENTS

Subject to the provisions of Article XII, amendments to these Articles may be proposed and adopted in the manner from time to time provided by the laws of the State of Florida, provided that each such amendment must have the approval in writing of two-thirds (2/3) of the entire membership, except as to those provisions for amendment to these Articles which are provided in the Declaration or any supplemental declaration in which case those provisions shall control such Amendments.

ARTICLE XII

FNMA/FHA/VA APPROVAL

As long as there is a Class B membership, the following actions will require the prior approval of the United States Department of Housing and Urban Development (HUD) Federal National Mortgage Association (FNMA), Federal Housing Administration (FHA) or Veterans Administration (VA), if determined necessary by the Class B membership:

- (a) Amendment of these Articles of incorporation; or
- (b) Merger, consolidation and/or dissolution of the Association.

CERTIFIED COPY  
INTERPRETATION

Express reference is made to the Declaration where necessary to interpret, construe, and clarify the provisions of these Articles. Without limitation, all terms defined in the Declaration have the same meaning where used in these Articles. By subscribing and filing these Articles, the incorporator intends for its provisions to be consistent with the provisions of the Declaration and to be interpreted, construed, and applied with those of the Declaration to avoid inconsistencies or conflicting results.

ARTICLE XIV


INCORPORATOR

The name and residence of the incorporator is:

Name: Richard A. Schlosser

Address: 500 East Kennedy Blvd., Suite 200  
Tampa, Florida 33602

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, I, the undersigned, constituting the incorporator of this Association, have executed these Articles of Incorporation this December 21, 1999.

  
Richard A. Schlosser  
Incorporator



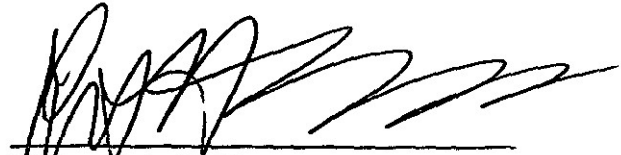
OR BK 10004 PG 1975

**THIS IS NOT A  
CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR  
THE  
SERVICE OF PROCESS WITHIN THE STATE OF FLORIDA AND NAMING  
THE  
REGISTERED AGENT UPON WHOM PROCESS MAY BE SERVED**

MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC., desiring to organize under the laws of the State of Florida, as a corporation not for profit with its principal office as indicated in its Articles of Incorporation has named Richard A. Schlosser, whose business office is 500 E. Kennedy Boulevard, Suite 200, Tampa, Florida 33602, as its registered agent to accept service of process within Florida.

**ACCEPTANCE**

Having been named to accept service of process for the foregoing corporation at the place designated in this certificate, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes, including the duties and obligations imposed by Section 617.0503, Florida Statutes, relative to the proper and complete performance of my duties.



Richard A. Schlosser

Date: December 21, 1999

FILED  
99 DEC 23 AM 8:28  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

THIS IS NOT A **OR BK 10004 PG 1976**  
EXHIBIT "C"  
BY-LAWS OF THE ASSOCIATION  
CERTIFIED COPY

THIS IS NOT A <sup>OR BK 10004 PG 1977</sup>  
CERTIFIED COPY <sup>BY-LAWS</sup> <sub>OF</sub>

MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is MAGNOLIA TRACE AT CROSS CREEK PARCEL "M" ASSOCIATION, INC., hereinafter referred to as the "Association." The principal office of the corporation shall be located at c/o Andrews Asset Management Corp. 7402 N. 56th Street, Suite 480, Tampa, Florida 33617 or such other place as is designated by the Board of Directors, but meetings of members and directors may be held at such places within Hillsborough County, Florida, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

The definitions as set out in the Declaration of Covenants, Conditions, and Restrictions for Magnolia Trace at Cross Creek Parcel "M" ("Declaration") are hereby incorporated by reference.

ARTICLE III

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held on Tuesday of the third week in January in the year subsequent to this year, and each subsequent regular annual meeting of the members shall be held in the same week of the same month of each year thereafter, at the hour of seven o'clock, p.m. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class

A membership.

**CERTIFIED COPY**  
Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Notice shall also be posted in a conspicuous place 48 hours in advance of the meeting. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of limited or general proxies entitled to cast, thirty percent (30%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Unless otherwise provided in these By-Laws, the Articles of Incorporation or Declaration, decision shall be made by a majority of the voting interests represented at a meeting at which a quorum in present.

Section 5. Proxies. At all meetings of members, each Member may vote in person or by limited proxy. All proxies shall be in writing and filed with the secretary prior to its use. Every proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meeting thereof. A proxy is not valid for a period longer than 90 days after the date of the first meeting for which it was given. A proxy is revocable at any time at the pleasure of the Member who executes it. Limited proxies may also be used for votes taken to amend the Articles of Incorporation or these By-Laws or for any matter that requires or permits a vote of the members.

#### ARTICLE IV

##### BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by an

initial board of three (3) directors. Thereafter the Board of Directors shall consist of either three (3) members or five (5) members as determined by the members at each annual meeting.

Section 2. Term of Office. The term of office for all directors is one year. The initial directors of the Association set forth in the Articles of Incorporation shall hold office until the first annual meeting. Thereafter, election of directors shall take place at each annual meeting.

Section 3. Removal. Any director may be removed from the Board of Directors, with cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board of Directors and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration.

The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

CERTIFIED COPY

Section 3. Use of Proxy. For election of members of the Board of Directors, members shall vote in person at a meeting of the members or by a ballot that the Member personally casts.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Meetings. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and rights to use of the Common Area of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these By-laws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deemed necessary, and to prescribed their duties.

Section 2. Duties. It shall be the duty of the Association, by and through the Board of Directors, to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the

members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote, at least ten (10) days prior to the meeting or special meeting; all such records to be retained for at least seven (7) years;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period;

(3) foreclose the lien against any Lot for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the Owner personally obligated to pay the same; and

(4) collect at first closing on the Lot the balance of the assessment owing for the remaining portion of the year.

(d) issue or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. Reasonable charges may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained; and

(h) establish prior to the beginning of the fiscal year and prior to setting the assessments of the coming year, an annual budget for the Association, including

maintenance of Common Area, and to establish reserve accounts for replacement of those parts of the Common Area which have a limited useful life span.

~~(1) initiate or defend litigation on behalf of the Association.~~

Section 3. Meetings. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board of Directors are open to all members, except for meetings between the Board of Directors and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board of Directors meetings must be posted in a conspicuous place on the Property at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place on the Property, notice of each Board of Directors meeting must be mailed or delivered to each Member at least 7 days before the meeting, except in an emergency. An assessment may not be levied at a Board of Directors meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Directors may not vote by proxy or by secret ballot at Board of Directors meetings, except that secret ballots may be used in the election of officers.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold



office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

**CERTIFIED COPY**  
Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaced.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all checks and promissory notes.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve

notice of meetings of the Board of Directors and of the members; keep appropriate current records showing members of the Association together with their addresses, and shall perform such other duties as required by the Board of Directors.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare or have prepared an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## **ARTICLE VIII**

### **COMMITTEES**

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## **ARTICLE IX**

### **BOOKS AND RECORDS**

Section 1. The books, records and papers of the Association shall at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 2. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and shall be available for inspection by members, or their authorized representatives, and Board members at reasonable times subsequent to transfer of control of the Association to owners other than the Declarant. The Association shall retain these minutes for at least 7 years.

Section 3. The Association shall maintain each of the following items, when applicable, which shall constitute the official records of the Association:

(a) A copy of the plans, specifications, permits, and warranties for the improvements to the Common Area, but not including the construction drawings of the individual homes and lots.

(b) A copy of the By-Laws of this Association and of each amendment to the By-Laws.

(c) A copy of the Articles of Incorporation of the Association, or other documents creating the Association, and of each amendment thereto.

(d) A copy of the Declaration and each amendment thereto.

(e) A copy of the current rules of the Association.

(f) The minutes of all meetings of the Association, of the Board of Directors and of members, which minutes shall be retained for at least seven (7) years.

(g) A current roster of all members and their mailing addresses, parcel identifications, and, if known, telephone numbers.

(h) All current insurance policies of the Association or a copy thereof, which policies must be retained for a least seven (7) years.

(i) A current copy of all contracts to which the Association is a party, including any management agreement, lease, or other contract to which the Association is a party or under which the Association has an obligation or responsibility. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one (1) year.

(j) Accounting records for the Association and separate accounting records for each parcel, according to generally accepted accounting principles. All accounting records shall be maintained for at least seven (7) years. The accounting records shall be open to inspection by members or their authorized representatives at reasonable times. The failure of the Association to permit inspection of its accounting records by a Member or their authorized representatives entitles any person prevailing in an

enforcement action to recover reasonable attorney's fees from the person in control of the books and records who, directly or indirectly, knowingly denied access to the books and records for inspection. The accounting records shall include, but are not limited to:

1. Accurate, itemized, and detailed records of all receipts and expenditures.
2. A current account and a periodic statement of the account for each Member of the Association, designating the name of the Member, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
3. All tax returns, financial statements, and financial reports of the Association.
4. Any other records that identify, measure, record, or communicate financial information.

## ARTICLE X

### ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association all assessments as listed in the Declaration which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest at the rate of eighteen percent per annum (18%) and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment, provided however, in no event shall this interest rate exceed the maximum allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

OR BK 10004 PG 1987

THIS IS NOT A  
ARTICLE XI  
CORPORATE SEAL  
CERTIFIED COPY

The Association shall have a seal in circular form having within its circumference the words: Magnolia Trace at Cross Creek Parcel "M" Association, Inc., and within the center the word "Florida" and the year of incorporation.

**ARTICLE XII**

**AMENDMENTS**

Section 1. These By-Laws may be amended, at a regular or special meeting of the Board of Directors by the Board of Directors.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles shall control; and in the case of any conflict between the Declaration and the By-Laws, the Declaration shall control.

**ARTICLE XIII**

**FNMA/FHA/VA APPROVAL**

As long as there is a Class B membership, the following actions will require the prior approval of the United States Department of Housing and Urban Development Federal National Mortgage Association (FNMA), Federal Housing Administration (FHA) or Veterans Administration (VA), if determined necessary by the Class B membership:

- (a) Amendment of these Bylaws; or
- (b) Merger, consolidation and/or dissolution of the Association.

THIS IS NOT A **OR BK 10004 PG 1988**  
ARTICLE XIV  
CERTIFIED COPY **MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

**ARTICLE XV**

**RIGHT OF MEMBERS TO PEACEFULLY ASSEMBLE**

All common areas serving any homeowner's association shall be available to members and their invited guests for the use intended for such areas. The entity or entities responsible for the operation of the common areas may adopt reasonable rules and regulations pertaining to the use of such common areas. No entity or entities shall unreasonably restrict any Member's right to peaceably assemble or right to invite public officers or candidate for public office to appear and speak in common areas.

Adopted pursuant to Organizational Minutes as of December 23, 1999.