



This instrument prepared by
and return to:
Marvin L. Beaman, Jr.
Marvin L. Beaman, Jr., P.A.
605 N. Wymore Road
Winter Park, FL 32789

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MARTHA O. HAYNIE, COMPTROLLER
ORANGE COUNTY, FL
04/30/2004 10:40:37 AM
REC FEE 208.50

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
TOWNHOMES AT HARPER PLACE**

THIS DECLARATION, made this ____ day of April, 2004, by **TECHNOLOGY REAL ESTATE PARTNERS OF WINTER PARK, LLC**, a Florida limited liability company, whose address is , 1194 N. Park Avenue, Winter Park, Florida 32789, hereinafter referred to as the "Declarant",

WITNESSETH

WHEREAS, the; Declarant is the owner of the real property situate, lying and being in Orange County, Florida, and described on *Exhibit A* attached hereto and incorporated herein by this reference, and desires to create thereon a residential community with common facilities for the benefit of said community; and

WHEREAS, it is contemplated that Townhomes at Harper Place (referred to as "Harper Place") will be developed as a single-family, attached dwelling type town home community, having streets, street lights, open spaces, stormwater drainage and retention areas and other common property and improvements for the benefit of the owners of the lots within Harper Place , made subject to the terms of this Declaration; and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values and quality of life in Harper Place , the personal and general health, safety and welfare of the owners of the affected lands, and for the maintenance of streets, parking areas, street lights, fencing, stormwater drainage and retention areas and improvements located in Harper Place , and other common facilities as may be specifically designated on a plot plan, surveyor's map or Planned Development Master Plan, or as are actually built; and, to this end, desires to subject the real property, described in *Exhibit A* to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each subsequent owner thereof, and shall be binding upon and run with the title to Townhomes at Harper Place; and

WHEREAS, to provide a means for meeting the purpose and intents herein set forth, the Declarant deems it desirable to create a non-profit corporation to which may be conveyed title and delegated and assigned the powers of maintaining and administering the common property and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under the laws of the State of Florida, as a nonprofit corporation, Harper Place Owners Association, Inc., for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, the Declarant, for itself and it successors and assigns, declares that the real property described in *Exhibit A* is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth, all of which shall be binding upon and enforceable by the Declarant, the association and subsequent owners of Lots in the Property, and which shall run with the land and be binding upon all parties having any right, title or interest in the property described in *Exhibit A* and their heirs, successors, tenants and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

The following words when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

1.1 "Articles of Incorporation and Bylaws" shall mean and refer to those of Townhomes at Harper Place Property Owners' Association, Inc., a Florida corporation not for profit, the Articles of Incorporation and Bylaws of which are attached hereto as *Exhibit C* and *Exhibit D* and byreference made a part hereof.

1.2 "Association" shall mean and refer to Harper Place Property Owners' Association, Inc., a Florida corporation not for profit, its successors and assigns, the Articles of Incorporation and the Bylaws. This is the Declaration of Covenants, Conditions and Restrictions for Harper Place to which the Articles of Incorporation and Bylaws of the Association make reference.

1.3 "Board of Directors" shall mean and refer to the Board of Directors for the Association.

1.4 "Common Expenses" shall mean and refer to all actual and estimated expenses of operating the Association and meeting the costs incurred or to be incurred relative to the performance of the duties of the Association for Harper Place, all as may be found to be necessary and appropriate by the Board of Directors of the Association pursuant to the Declaration, the Articles and the Bylaws.

1.5 "Common Property" shall mean and refer to those areas of land, including streets and parking areas, shown on a plot plan, surveyor's map or Planned Development Master Plan, intended to be devoted to the common use and enjoyment of the Owners of the Property, title to which is held by the Association. Common Property shall include all parts of the Property which are not otherwise designated as Lots or Units; including personal property held and maintained for the joint use and enjoyment of all of the Owners.

1.6 "Declarant" shall mean and refer to Technology Real Estate Partners of Winter Park, LLC, a Florida limited liability company, its successors and assigns. No successor or assignee of the Declarant shall have any rights or obligations of the Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment, or unless such rights pass by operation of law.

1.7 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Harper Place, including such amendments as from time to time shall be made, as recorded in the Public Records of Orange County, Florida.

1.8 "Fiscal Year" shall mean a calendar year.

1.9 "Limited Common Property" Intentionally deleted.

1.10 "Member" shall mean and refer to each Owner who is a Member of the Association as provided for herein.

1.11 "Harper Place" shall mean and refer to the real property described in *Exhibit A* and the residential community to be developed upon the Property.

1.12 "Owner" shall mean and refer to the record title holder, whether one or more persons or entities, of fee simple title to each Lot included in Harper Place (other than the Association); but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. Every Owner shall be treated for all purposes as a single Owner for each Lot owned by it, irrespective of whether, such ownership is joint, in common or tenancy by the entirety. In the event any life estate is created with respect to any Lot in Harper Place, the Owner of the life estate shall be deemed to be the Owner for purposes of this definition for as long as the life estate shall exist.

1.13 "Property or Properties" shall mean and refer to all such existing property as described, on *Exhibit A* attached hereto, as the Property subject to this Declaration and any subsequent amendments thereto.

1.14 "Rules and Regulations" shall mean and refer to those rules and regulations promulgated from time to time by the Board of Directors of the Association to which all Owners shall be subject.

1.15 "Surfacewater or Stormwater Management System (the System)" shall mean and refer to a system which is designed and constructed or implemented to control discharges, which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the System, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, Florida Administrative Code, and as described in the Declaration of Covenants, Conditions and Restrictions for Harper Place.

1.16 "Transfer Date" shall mean and refer to that certain date when management and control of the Association will be turned over to the Board of Directors thereof by Declarant.

1.17 "Lot" shall mean and refer to each separately described portion of the Property which is intended to be occupied as a single family residence or household, including without limitation, each legally described residential parcel (together with the residence, if any, constructed thereon), attached dwelling, townhouse and any other form of residential occupancy or ownership now existing or hereafter created. Lot shall include in its meaning any interest in real property appurtenant to the ownership of the Lot. The townhouse constructed on a Lot is referred to as "Unit".

1.18 "District" shall mean and refer to the St. Johns River Water Management District, an agency created pursuant to Chapter 373, Florida Statutes.

1.19 "Master Surface Water Management System" means the overall system designed, constructed and implemented upon the Property to control discharges caused by rainfall events, which system is intended to collect, convey, store, absorb, inhibit, treat, use or reuse surface water in order to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution, and to control the quality and quantity of discharges from the system, all as permitted by the District pursuant to Chapter 40C-4, 40C-40, 40C-42, Florida Administrative Code.

1.20 "Permit" shall mean ERP No. 42-095-8069 issued by the District.
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ARTICLE 2

GENERAL PLAN OF DEVELOPMENT OF HARPER PLACE

2.1 General Nature of Development. The purpose of this article is to generally describe the plan, manner, and method of development of Harper Place. Therefore, the provisions and statements contained in this article will necessarily be general in nature, and any conflict between them and more specific statements found hereafter in the remaining articles of the Declaration shall be resolved in favor of such more specific statements.

2.2 Development. Declarant has acquired fee simple title to the lands described in *Exhibit A*; and Declarant may, in its sole discretion, construct buildings as single detached Units or attached Units in rows, and the same may be either single story or multi-story. The form of ownership shall provide for each Owner to actually own the portion of land upon which the Owner's Unit is constructed described as a "Lot" on the Plat of Townhomes at Harper Place. In any event, the total number of residential Units to be built on the Property shall not exceed twenty-one (21).

Attached hereto as *Exhibit B* is a surveyor's map of the land described in *Exhibit A*, upon which shall be located no more than twenty-one (21) single family attached homes to be constructed by Declarant.

There shall be 5 separate building in which attached homes will be located. The Units numbered one (1) through six (6) shall be attached Units located on Lots one (1) through (6) respectively, Units 7-11 shall be attached Units located on Lots 7-11 respectively, Units 12-15 shall be attached Units and located on Lots 12-15 respectively, Units 16 and 17 shall be in attached Units and located on Lots 16 and 17 respectively, and Units 18-21 shall be attached Units and located on Lots 18-21 respectively.

2.3 Owners Association. The Declarant hereby delegates to the Association the responsibility and duty of: (1) owning, operating, administering and maintaining the Common Property; (2) administering and maintaining certain portions of the Units, including the carrying of hazard insurance coverage thereon, all as set forth herein; (3) assessing and collecting the assessment charges necessary to pay the Common Expenses; and (4) enforcing this Declaration. Each Owner of a Lot shall automatically be a Member of the Association, and as such, shall be entitled to the rights and privileges of such membership and be responsible for the duties of such membership, including the duties to pay assessment charges and comply with all rules and regulations of the Association and the terms of this Declaration. The Association may refuse to accept the duty of maintaining any Unit which is not constructed in accordance with this Declaration, but such refusal may be asserted only at the time such Unit is first constructed. After the duty of maintaining any Unit has been accepted, expressly or by implication, such duty cannot later be refused. The Declarant shall have the right, but not the obligation, to require the Association to refuse to accept such duty, as to any Unit which does not conform to the terms and conditions of this Declaration, notwithstanding that Declarant may have conveyed all its interest in the Property.

ARTICLE 3

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in Orange County, Florida, and is more particularly described on the attached *Exhibit A*.

ARTICLE 4

APPURTENANCE OF COMMON PROPERTY AND PARTITION

4.1 Appurtenance of Common Property. All easements and other rights herein given to Owners of Lots, including the right to be Members in the Association, are hereby declared to be appurtenant to such Lots and shall not be separately conveyed, encumbered or otherwise dealt with separately from the Units. Any instruments, whether a deed, mortgage or otherwise, which purport to transfer or convey a Lot shall also transfer and convey all of the Owner's rights, easements, duties and obligations hereunder, whether specifically mentioned or not. Once an Owner conveys title to a Lot to some other entity, that Owner shall automatically lose the Owner's rights and easements hereunder, and the grantee of the Owner shall automatically become the new Owner subject to all rights, duties and obligations hereof.

4.2 Waiver of Partition. The Declarant and each subsequent Owner of any interest in a Lot and in the Common Property, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the Common Property under the laws of the State of Florida as it exists now or hereinafter until this residential community is terminated according to the provisions hereof or by law. Any Owner may freely convey an interest in a Lot subject to the provisions of this Declaration.

ARTICLE 5

ASSOCIATION STRUCTURE, POWERS, DUTIES, MEMBERSHIP AND VOTING RIGHTS

5.1 Nonprofit Corporation. Articles of Incorporation for Townhomes at Harper Place Property Owners' Association, Inc., a Florida corporation not for profit, have been filed with the office of the Secretary of State of the State of Florida, and duly processed in said office to the end that a charter has been granted. The principal purpose of the Association is to perform the acts and duties desirable for residential community living as provided for in this Declaration, to own and hold title to all of the Common Property, to administer and manage Harper Place in accordance with the terms and conditions hereof and subject to its Articles of Incorporation and Bylaws, and to levy and enforce collection of assessments as are necessary to perform all of said acts, duties and obligations, and all other duties herein expressly or impliedly imposed upon the Association. Neither the Articles nor the Bylaws shall for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or subsequent amendments. In the event of any such inconsistency, the provisions of this Declaration and subsequent amendments thereto shall prevail.

5.2 Membership. The Declarant and each Owner shall automatically be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of any obligation shall not be a Member. Such membership shall continue for as long as such ownership continues, and shall automatically terminate when such person or entity no longer owns such interest.

The Association membership of each Owner shall be appurtenant to the Unit giving rise to such membership, and shall not be transferred except upon the transfer of title, to said Unit and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof.

5.3 Board of Directors. Bylaws, and Rules and Regulations. All of the affairs, policies, regulations and property of the Association shall be controlled and governed by the Board of Directors thereof, which Board shall consist of no fewer than three (3) nor more than seven (7) Members, the exact number to be determined by the Members of the Association prior to the vote therefore. Such directors shall be elected annually by all of the Members entitled to vote, and each director shall be the Owner of a Unit or partial Owner of a Unit where such Unit is owned by more than one individual, or if a Unit is owned by a corporation or partnership, including Declarant, any duly elected officer or director of an Owner corporation, or general partner of an Owner partnership may be elected a director or directors. Additionally, the Board of Directors may promulgate and enforce reasonable uniform rules and regulations which may be necessary or expedient for the general control, management and operation of Harper Place in accordance with the purposes and objectives of a residential community association and subject to the provisions hereof.

5.4 Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. In the event that joint or multiple Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners casts a vote on behalf of a particular Unit, it shall thereafter be conclusively presumed for all purposes that he or she was, or they were, acting with the authority and consent of all other Owners thereof. In the event more than the appropriate number of votes is cast for a particular Unit, none of said votes shall be counted and said votes shall be deemed void.

5.5 Voting Rights. The Association shall have two (2) classes of voting membership:

- a. Class A. Class A Members shall be all Owners, with the exception of the Declarant. Class A Members shall be entitled on all issues to one (1) vote for each Unit in which they hold the interest required for membership.
- b. Class B. Class B Members shall be the Declarant, which shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:
 - i. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
 - ii. On December 1, 2006; or
 - iii. When, in its discretion, the Declarant so determines; or
 - iv. When Declarant no longer owns any portion of the Property.

From and after the happening of any one of these events, the Declarant shall call a meeting as provided in the Bylaws for special meetings to advise the Association membership of the termination of Class B status. The Class B Members shall cast their votes on all issues as they among themselves determine. It shall be permitted for the Declarant to retain and to cast all Class B votes.

5.6 The Declarant Veto Power. From and after the termination of the Class B membership, the Declarant shall have a veto power over all actions of the Association and the Board of Directors of the Association. This power shall expire when the Class A Members, other than that held by the Declarant or its assigns, equals ninety percent (90 %) of the total membership vote (regardless of class distinction) of the Association, or June 1, 2006, whichever occurs first: The veto shall be exercised as follows.

No action authorized by the Association or the Board of Directors shall become effective, nor shall any action, policy or program be implemented, until and unless:

- a. The Declarant shall have been given written notice of each meeting of the Members and of the Board of Directors by certified mail, return receipt requested or by personal delivery, at the address it has registered from time to time with the Secretary of the Association, which notice otherwise complies with the terms of, the Bylaws as to regular and special meetings of the Members and Board of Directors, and which notice shall set forth with reasonable particularity the agenda to be followed at said meeting; and
- b. The Declarant shall have been given the opportunity at each such meeting, if Declarant so desires, to join in, or to have its representatives or agents join in, discussion of any prospective action, policy, or program to be implemented by the Board or the Association. The Declarant and its representatives or agents may make its concerns and suggestions known to the Members of the Association or of the Board. At such meeting the Declarant shall have, and is hereby granted, a veto power over any such action, policy or program authorized by the Board of Directors, the Association officers, or Association membership, and to be taken by said Board, the officers or agents of the Association, or any individual Member of the Association (if Association or Board approval is necessary for said Member's action). Except as set forth in subsection (c) below, the Declarant, veto must be exercised by the Declarant, its representatives, or agents at or before the meeting to consider proposed action. The veto power shall not include the authority to require any affirmative action on behalf of the Board or the Association; and
- c. If any action, policy or program is to be implemented by prior consent without the formality of a meeting, then the Declarant shall be provided a written notice and description of the proposed action, policy or program at least ten (10) days in advance of such implementation, and the Declarant shall have ten (10) days after receipt of such notice to exercise its veto.

5.7 Commencement of Management. The provisions of this Declaration shall become applicable, effective and binding insofar as the management and operation of Harper Place and the levying of assessments is concerned, whether or not actual management of Harper Place is delivered and turned over by Declarant to the Association.

Upon turning over the management and operation of Harper Place to the Association at the Transfer Date, or prior thereto, the Declarant shall render an accounting to the Association, and deposit with it any sums due the Association, and shall then automatically be released of any and all types of liability to any Unit and the Association.

While management, operation and control of Harper Place and the Association remain in the Declarant and have not been turned over solely to the Association to be administered by its duly elected Board of Directors, the Board of Directors shall be designated by the Declarant as provided in the Articles of Incorporation and the Declarant shall have the right to overrule any decision of the Board as provided for herein.

ARTICLE 6

EASEMENTS

6.1 Members' Easements of Enjoyment. Subject to the provisions of this Declaration, the Association, the Declarant, and every Member of the Association shall have a non-exclusive right, license, Privilege and easement of use and enjoyment in and to the Common Property, and such rights shall be appurtenant to and shall pass with the title to every Unit in the Properties. Said rights shall include, but not be limited to, the following:

- a. Pedestrian traffic over, through and across sidewalks, paths, walks, driveways, entrances to buildings, and other portions of the Common Property, as maybe from time to time be intended and designated for such purpose and use; vehicular traffic over, through and across such portions of the Common Property as may from time to time be paved and intended for such purposes; and ingress and egress over such streets, sidewalks, walks, driveways, entrances to buildings and other rights-of-way serving the Units as shall be necessary to provide for reasonable access to the public rights-of-way. In no event shall such easements give or create in any Unit Owner or any other person the right to obstruct such easements nor shall any Unit Owner or any other person have the right to park automobiles or other vehicles on any portion of the Property not designated for parking purposes.
- b. Rights and easements of drainage across stormwater drainage and retention structures and areas, and to connect with, maintain and make use of utility lines, wires, pipes, conduits and cable television lines which may from time to time be in or along the streets and roads or other areas of the Common Property; and,
- c. Rights to use and enjoy the Common Property for any purpose not inconsistent with this Declaration and any amendments thereto, the Bylaws and rules and regulations of the Association or governmental regulations; and,
- d. Rights and easements to drain across the Master Surface Water Management System in accordance with the Permit and District rules.

6.2 Title to Common Property. The Declarant may retain the legal title to all or any portion or portions of the Common Property until such time as it has completed improvements thereon and until such time as, in the opinion of the Declarant, the Association is able to maintain the same. The Declarant may convey or turn over certain items of the Common Property and retain others. The Declarant hereby covenants for itself, its successors and assigns, that it shall convey to the Association all then-existing and completed Common Property located within the Property no later than at such time as Declarant has conveyed to Owners fee simple title to seventy-five percent (75 %) of the Units in the Property. Said conveyances shall be free and clear of any mortgage lien. The conveyance of the Common Property to the Association shall be deemed to contain the following covenant which shall run with the land, whether or not specifically set forth in said conveyance, and shall be binding upon the Association, its successors and assigns, for as long as such property shall remain subject to the Declaration:

In order to preserve and enhance the property values and amenities of the Property, the Common Property and all landscaping and drainage and other improvements now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards.

The Association shall have a perpetual non-exclusive easement over all areas of the Master Surface Water Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any lot which is a part of the Master Surface Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Master Surface Water Management System as required by the Permit. Additionally, the Association shall have a perpetual non-exclusive easement for drainage over the entire Master Surface Water Management System. No person shall alter the drainage flow of the Master Surface Water Management System, including buffer areas or swales, without the prior written approval of the District.

6.3 Extent of Members' Easements. The rights and non-exclusive easements of use and enjoyment created hereby shall be subject to the following:

- a. The Association, subject to the rights of the Declarant and the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Property and all improvements thereon.
- b. The right of the Declarant without Owner or Association approval prior to conveyance of title to the Association, and the right of the Association thereafter, to grant or dedicate to any owner, to any governmental agencies and/or to any utility companies, and to reserve easements and rights-of-way in, through, under, over and across the Common Property for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, fiber optics, telephone, electricity, and other utilities, and for the completion of the development. No improvement or material may be placed upon any such an easement as may damage or interfere with the installation, maintenance and operation of utilities or that may change the direction, or affect the flow of drainage.
- c. The easements and rights of the Declarant reserved by this Declaration.

6.4 Easement Reserved to the Declarant Over Common Property. The Declarant hereby reserves to itself, its successors and assigns, the licenses, rights, privileges and easements in, through, over, upon and under all Common Property including but not limited to:

- a. The right to use the said Common Property for rights-of-way and easements to erect, install, maintain, inspect and use electric and telephone poles, wires, cables, conduits, sewer, water mains, pipes, telephone, electrical equipment, gas, fiber, optics, cable television, drainage facilities, ditches or lines, or other utilities or services and for any other materials or services necessary or convenient for the completion, marketing, use and enjoyment of the Property.
- b. The right to cut any trees or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utilities installation and to maintain reasonable standards of health, convenience, safety and appearance.
- c. The right to locate wells, pumping stations, irrigation systems and lines.

- d. The right and easement of ingress and egress for purposes of development, construction and marketing.
- e. The right and easement to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads, or within the Common Property, easements, or green belts, or to grant such rights to others.
- f. The exclusive easement rights over and across the Property to use any portion of the Property for the purpose of marketing, sales and rental of Units and other accommodations owned or operated by the Declarant or its agents or one of its affiliates on adjoining properties which are not part of the Property.
- g. The right to grant such easements from time to time as may be required by any government agency. Such easements shall specifically include but not be limited to any environmental easements required by state or federal environmental agencies for as long as the Declarant holds any interest in any Unit subject to this Declaration.
- h. Such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of the Property; provided, however, that said reservation and right shall not be considered an obligation of the Declarant to provide or maintain any such utility, development, or service.

The easements and rights-of-way herein reserved shall continue in existence in favor of the Declarant after conveyance of Common Property to the Association until such time as the Declarant has sold or committed to a separate scheme of development all Units within the Property. This section may not be amended without the written consent of the Declarant.

6.5 Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of the Association, the Declarant and the Owner, all as more specifically set forth elsewhere in this Declaration, and any Owner or the Declarant may also grant the benefit of such easement, license, right or privilege to tenants and guests for the duration of their tenancies or visits, but the same are not intended nor shall they be construed as creating any rights in or for the benefit of the general public.

6.6 Easement for Encroachments. An easement for encroachment in the event that any portion of any roadway, walkway, parking area, driveway, water lines, sewer lines, utility lines, sprinkler system, building or any other structure or improvement as originally constructed encroaches on any Unit or Common Property, and in the event that any Unit now or hereafter encroaches upon the Common Property as a result of a surveying error or inaccuracies in construction or reconstruction, or due to settlement or movement of any of such improvements so that the encroaching improvements shall remain undisturbed for as long as the encroachment exists. It shall be deemed that the Owner of such Unit or the Association, as the case may be, has granted a perpetual easement to the Owner of the adjoining Unit or the Association, as the case may be, for the continuing maintenance and use of such encroaching improvement or structure. The foregoing shall also apply to any replacements of any such improvements or structures if same are constructed in substantial conformity with the original structure or improvement. Any easement for encroachment shall include an easement for the maintenance of the encroaching improvements in favor of the Owner of such improvements.

6.7 Association Easements. The Association shall have an easement for access to all Units for ingress and egress as required by its officers, directors, employees, and their agents and independent contractors, in order to perform its obligations and duties of lawn care and maintaining, landscaping, painting and repairing such Units as set forth in this Declaration. This easement is also reserved for the Declarant as long as the Declarant owns any Unit.

6.8 Limited Common Property Easements. Intentionally deleted.

6.9 Easement of Support. With respect to the attached Units, each party wall of a Unit shall be subject to an easement of support for adjoining Units, and shall be subject to an easement for conduits, ducts, plumbing, wiring and other facilities for the furnishing and maintenance of public utility services to adjoining Units.

6.10 Other Easements. There shall be a shared access easement between the Lot Owners of Lots 2 and 3 over the walkway to be constructed between Lots 2 and 3 to the rear porch area of Units 2 and 3 located on Lots 2 and 3. There shall be a shared access easement between the Lot Owners of Lots 4 and 5 over the walkway to be constructed between Lots 4 and 5 to the rear porch area of Units 4 and 5 located on Lots 4 and 5. There shall be a shared access easement between the Lot Owners of Lots 7 and 8 over the

walkway to be constructed between Lots 7 and 8 to the rear porch area of Units 7 and 8 located on Lots 7 and 8. There shall be a shared access easement between the Lot Owners of Lots 9 and 10 over the walkway to be constructed between Lots 9 and 10 to the rear porch area of Units 9 and 10 located on Lots 9 and 10. There shall be a shared access easement between the Lot Owners of Lots 13 and 14 over the walkway to be constructed between Lots 13 and 14 to the rear porch area of Units 13 and 14 located on Lots 13 and 14. There shall be a shared access easement between the Lot Owners of Lots 19 and 20 over the walkway to be constructed between Lots 19 and 20 to the rear porch area of Units 19 and 20 located on Lots 19 and 20. Other easements, if any, as may have been granted over the Property as set forth in the survey contained in *Exhibit B* attached hereto.

6.11 Failure of Easement. Should the intended creation of any easement fail by reason of the fact that at the time of creation, there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to be so created shall nevertheless be considered as having been granted directly to the Association for the purpose of allowing the original party or parties to whom the easements were originally granted the benefit of such easement, and the Unit Owners designate the Declarant and/or the Association as their lawful attorney in fact to execute any instrument on their behalf as may hereafter be required or deemed necessary for the purpose of creating such easement.

ARTICLE 7

ASSESSMENTS

7.1 Creation of the Lien and Personal Obligation of Assessment; Claim of Lien. The Declarant, for each Unit owned within the Property, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such, deed or other conveyance, shall be deemed to and hereby does covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements and emergency requirements, such assessments to be established and collected in the manner hereinafter provided; and (3) other assessments as set forth in this Declaration. The annual and special assessments, together with interest thereon, late charges, lien charges and costs of collection thereof, including court costs and reasonable attorneys' fees (including fees and costs upon appeal), shall be a charge on the land and a continuing lien upon the Unit against which each such assessment is made from the date on which each such assessment is due. Each such assessment, together with interest, late charges; lien charges, costs and attorneys' fees, as herein provided, shall also be the personal obligation, of the person who was the Owner of such Unit at the time when the assessment fell due. The personal obligation for such delinquent assessments shall not pass to that Owner's successors in title. The Association has the right to cause a claim of lien to be recorded in the Public Records of Orange County giving notice to all persons that the Association is asserting a claim of lien upon the Unit. Said claim of lien shall state the description of the Unit, the name of the record owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Association or by a managing agent of the Association. Upon full payment of the total amount due, the party making payment shall be entitled to a recordable satisfaction of such lien. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit 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. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Liens for assessment may be foreclosed by suit brought in the name of the Association, in like manner as a foreclosure of a mortgage on real property. In such, foreclosure; the Owner of a Unit shall be required to pay a reasonable rental for the Unit or a portion thereof, and the Association shall be entitled as a matter of law to the appointment of a receiver to collect same.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used for the maintenance and repair of the surfacewater or stormwater management systems; including but not limited to work within retention areas drainage structures and drainage easements; and for promoting the recreation, health, safety, and welfare of the Owners in the Property, for the performance by the Association of its duties and the exercise of the power conferred upon it, for the improvement, repair and maintenance of the Property, services and facilities which have been or will be constructed, installed or furnished upon it, and which are devoted to the purpose and related to the use and enjoyment of the Common Property and of the Units situated within the Property, the System, and for such other purposes as may be deemed desirable or appropriate from time to time by the Board of Directors, including but not limited to:

- a. Payment of operating expenses of the Association, including management fee and manager's salary, if any, and legal and accounting fees;
- b. Lighting, improvement and beautification of entry ways, access ways and easement areas (whether dedicated to the public or private), and the acquisition, maintenance, repair and replacement of project

identification signs, directional markers and traffic control devices, parking, entry features, and the costs of controlling and regulating traffic on the access ways' if not maintained by a public body;

- c. Maintenance, improvement and operation of water, sewer and drainage easements and systems not maintained by any governmental agency;
- d. Management, maintenance, improvement and beautification of the Common Property, including but not limited to landscaping, irrigation system, stormwater drainage and retention features on Common Property;
- e. Maintenance, operation and repair of the surfacewater or stormwater management system. Maintenance of the surfacewater or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surfacewater or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surfacewater or stormwater management system shall be, as permitted or, if modified, as approved by the St. Johns River Water Management District;
- f. Management, maintenance, improvement and beautification of all yard maintenance for the yards of all attached Units, including the irrigation system, landscaping, shrubbery and maintenance thereof in a neat and orderly fashion;
- g. Maintenance, repair and replacement of all streets, driveways, roadways, parking areas, sidewalks, and walks situated upon the Common Property which have not been dedicated to any governmental Unit, drainage structures, walks and street lighting fixtures in the Common Property, which street lighting fixture maintenance shall include and extend to payment for all electricity consumed in their illumination;
- h. Maintenance, repair and replacement of all structural portions of an attached Unit (except interior surfaces, glass and mechanical operation of garage doors), which contribute to the support of the attached Unit and the building of which it is a part, which portions shall include but not be limited to load bearing columns, load bearing walls, roofs, and outside walls. The Association shall not have the responsibility for servicing any equipment for the furnishing of utility services to an individual attached Unit, including but not limited to air conditioning and heating compressor facilities, plumbing and wiring;
- i. All incidental damage caused to an attached Unit by reason of the maintenance, repair and/or replacement, which is the responsibility of the Association and which is not covered by the Unit Owner's hazard insurance. Such damage shall be promptly repaired by the Association;
- j. Repayment of funds and interest thereon borrowed by the Association, if any;
- k. Payment of premiums for hazard and liability insurance required to be kept and maintained by the Association;
- l. Payment of all real and personal property taxes and assessments, (if any) separately levied upon or assessed against the Association or the Common Property. Such taxes and assessments may be contested or compromised by the Association;
- m. Funding of appropriate reserves for future repair and replacement;
- n. Making available to Unit Owners and all holders, insurers, or guarantors of any mortgage encumbering a Unit current copies of the Declaration, Bylaws, other rules and regulations concerning Harper Place, and the books, records, and financial statement of the Association. To make available means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Upon written request of any holder of a mortgage, the Association shall furnish to such holder a copy of the Association's financial statement for the immediately preceding fiscal year;

- o. Upon receipt of a written request from the holder, insurer, or guarantor of any mortgage on a Unit; identifying the name and address of such holder, insurer, or guarantor and the Unit number or address, furnishing timely written notice of:
 - i. Any condemnation or casualty loss that affects either a material portion of Harper Place or the Unit which secures such mortgage;
 - ii. Any sixty (60) day delinquency in the payment of assessment or charges owed by the Owner of any such Unit;
 - iii. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - iv. Any proposed action that requires the consent of a specified percentage of mortgage holders; and
- p. Doing any other thing, necessary or desirable in the judgment of said Association to keep the Common Property neat and attractive or to preserve or enhance the value thereof, or to eliminate fire, health or safety hazards, or which, in the judgment of the said Association, may be of benefit to the Owners or occupants of the Property.

7.3 Annual Assessment. The Board of Directors of the Association shall approve annual budgets in advance for each fiscal year. The Board shall prepare and approve a budget covering the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and such capital improvements budget items as approved by the Board as provided herein. Failure of the Board to include any item in the annual budget shall not preclude the Board from levying an additional assessment in any fiscal year for which the budget has been projected. Likewise, notwithstanding any provision herein to the contrary, the Board may increase the amount of levy during a fiscal year after the budget has been adopted and the assessment has been made if the Board determines that additional monies will be required in order to fund and pay for any expenses otherwise properly included with the annual assessment. The Board shall set aside an amount estimated by the Board to be sufficient for the fulfilling of the Association's obligation for maintaining and repairing the Units, plus a reasonable reserve for such purpose. The Board shall budget an annual allocation from that portion of the annual assessment to be set aside in a reserve replacement account. The Board shall maintain a separate reserve replacement account and the annual allocation to that account shall be prorated based upon the number of improved Units in the Property. The funds held in the reserve replacement account shall be used by the Association to pay for capital replacements to attached Units as required. Repairs or replacements required because of abuse or negligence by the Unit Owner (as opposed to repairs or replacements required by normal wear and depreciation) shall not be paid for from the Unit Owner's reserve account, but shall be paid to the Association by the Unit Owner as special assessments for such work. No Owner shall have any interest claim or right to any of the funds held by the Association in the reserve replacement account. In the event that the membership so disapproves the proposed budget for the succeeding year, or in the event the Board shall fail to proposed a budget, then and until such time as a new, acceptable budget shall have been determined, the budget in effect for the preceding year shall continue for the succeeding year.

7.4 Special Assessment for Capital Improvements (Common Property). In addition to the annual assessments authorized by subsection 7.3 herein, the Association may levy in any assessment year a special assessment, applicable to that year only, to defray, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto. Provided, however, that no such special assessment shall be levied when the amount thereof shall exceed the current regular annual assessment, unless prior written consent is received from a majority of all Members voting at a duly called meeting of the Association. The due date for payment of all special assessments shall be fixed in the resolution authorizing such assessment.

7.5 Special Assessments for Maintenance and Capital Improvements (Attached Units). In addition to all other assessments authorized pursuant to this article, the Association may levy in any assessment year a special assessment applicable to a specific Unit whose reserve replacement account, as herein defined, is inadequate to pay for replacements of capital improvements to said Unit.

7.6 Rate of Assessment; Commencement. The rate of assessment for the budgeted annual and special assessments (exclusive of special assessments referred to in subsection 7.5 of this article) shall be prorated equally based upon the number of attached Lots/Units in the Property. The obligation for payment of assessments for each attached Unit shall begin at closing of the purchase of the Unit and shall be prorated on an accrual basis between successive Owners.

All assessments shall be based upon a calendar year budget adopted by the Association Board of Directors as herein provided. The first annual assessment as to any Unit shall be adjusted according to the number of months remaining in the calendar

year. The due dates shall be established by the Board of Directors and can be made payable monthly. Notwithstanding any provision herein to the contrary, the Declarant, for any Unit of which it is the Owner, shall not be liable for assessments if it shall provide the funds for any deficit in operating, expenses of the Association. In its sole discretion, the Declarant may at any time commence paying assessments as to Units owned by it and thereby automatically terminate its obligation for any deficit in the operating expenses of the Association.

7.7 Notice of Assessment. After adoption of a budget and determination of the annual assessment per Unit, or after adoption of any special assessment, the Association shall assess such sum-by promptly notifying all Owners of Units by delivering or mailing notice thereof to the Member representing each Unit Owner at such Member's most recent address as shown on the books and records of the Association. The due dates for payment of any assessment shall be established by the Board of Directors.

7.8 Delinquent Assessments. If the annual assessment is being paid annually and is not paid on or before thirty (30) days after the date when due, or if any special assessment is not paid or before thirty (30) days after the date of notice of the special assessment, then such assessment shall become delinquent and shall, together with interest thereon at the highest rate allowed by law and costs of collection thereof, including reasonable attorney fees, thereupon become a continuing lien of the Unit as provided in subsection 7.1 of this article. The personal obligation of the then Owner to pay such assessments, however, shall remain that Owner's personal obligation for the statutory period, notwithstanding that title to the Unit may be transferred to another with the lien still remaining thereon.

If the annual assessment is being paid in monthly installments and a monthly installment is not paid within fifteen (15) days after the day when due, the Association shall have the right at any time thereafter to accelerate and declare the entire balance of the annual assessment for that year immediately due and payable, and the assessment shall bear interest from the date of delinquency at the rate aforesaid. The Board of Directors may establish a late fee for any assessment not paid within fifteen (15) days of its due date. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the Unit in the manner and method provided in subsection 7.1 of this article. The Board of Directors shall have the authority to take such action as it deems necessary in order to collect the assessments, and it may settle and compromise the same if it is in the best interests of the Association. There shall be no offset against assessments for failure or delays in providing service. The Association may suspend the voting rights of a Member for the nonpayment of regular annual assessments that are delinquent in excess of ninety (90) days.

7.9 Certificate of Payment. The Association shall, upon demand, at anytime and for a reasonable charge, furnish to the Owner liable for any assessment a certificate in writing, signed by an officer of the Association, setting forth whether such assessment has been paid, and if not, the amount thereof. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. Prior to delivering such certificate, the Association shall have the right to demand and receive a written acknowledgment signed by a prospective purchaser of a Unit stating that person has received copies of this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations and agrees to be bound thereby. The Association shall make available, for a reasonable charge, copies of this Declaration, Articles of Incorporation, Bylaws, and rules and regulations to prospective purchasers and tenants.

7.10 Subordination of the Lien to Certain Mortgages. The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Unit in the Property and held by a commercial or savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund, or business trust, including but not limited to a real estate investment trust, any other lender regularly engaged in financing the purchase, construction; or improvement of real estate, or any assignee of loans made by such lender, or any private or governmental institution or agency which has insured the loan of any such lender, or any combination of any of the foregoing entities, or any of same constituting an institutional mortgage; provided, however, that a sale or transfer of any Unit pursuant to a decree of foreclosure, or pursuant to any proceeding in lieu of foreclosure, shall not relieve such Lot from liability for any assessments which thereafter become due, nor from the lien of any subsequent assessment. Said assessment liens, however, shall be subordinate to the lien of any such mortgage or mortgages hereafter placed upon the Property subject to assessment, and no mortgagee shall be responsible for the collection of assessment from an Owner.

ARTICLE 8

EXTERIOR MAINTENANCE AND MAINTENANCE ENFORCEMENT

8.1 Association Responsibility. In addition to maintenance of the Common Property, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder. In this connection, the Association shall have the right to do such things as, but not limited to, paint, repair, replace and care for roofs, gutters, downspouts and exterior, building surfaces, clean or

resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping, drainage and exterior improvements, as well as to provide general cleanup, and removal of debris which in the opinion of the Association detracts from the overall beauty, and setting of the community. Such exterior maintenance shall not include glass surfaces and all types of screening.

8.2 Non-Compliance by Owners. In the event the Owner of a Unit fails to maintain it as required herein or makes any structural addition or alteration without the required written consent, the Association or an Owner with an interest in any Unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The association shall have the right to levy at any time a special assessment against the Owner of a Unit and the Unit itself for the necessary sums to put the improvements within the Unit in good condition and repair, including undertaking maintenance that is the responsibility of the Unit Owner, or to remove any unauthorized structural addition or alteration, or to replace exterior landscaping or grass. In addition, the Association is authorized to use an Owner's water and electrical service for building and improvement maintenance when deemed necessary. The Association shall incur no cost in doing so and may assess such Owner for costs incurred by the Association.

8.3 Assessment of Cost. The cost of the repair or maintenance referred to herein shall be assessed as an individual assessment against the Owner of the Unit upon which such maintenance is done. In the event the assessment is not paid within sixty (60) days from the date payment is requested, the Association may proceed to place a lien against the Unit in the same manner as provided in Article 7 hereof. Said individual assessment shall be secured by a lien upon the affected Unit and shall also constitute a personal obligation of the Owner. The individual assessment shall be collectible along with interest at the highest rate allowed by law from date of expenditure to date of payment by the Owner, and costs of collection and attorneys' fees, in the same manner as delinquent annual assessments.

8.4 Access at Reasonable Hours. For the purpose of performing the repairs or maintenance authorized herein, the Association, through its duly authorized agents, contractors or employees, shall have the right to enter upon any Unit and the exterior of any improvements thereon during reasonable hours on any day: except Sundays and holidays, except that in an emergency, as determined by the Board, entry may be made on any day and hour. The Declarant and the Association, or their agents or employees, shall not be liable to the Owner for any trespass or damages or injury to the property or person of the Owner or the occupants or invitees of the affected Unit unless caused by gross negligence or intentional wrongdoing.

8.5 Association Maintenance Responsibility. The Association shall maintain and keep, in good repair the Common Property, and all improvements thereon. Said maintenance obligation shall be deemed to include but not be limited to maintenance, repair and replacement, subject to the insurance and casualty loss provisions contained herein, of all utility lines, pipes, wires, glass; conduits, structures, systems, trees, fences, shrubs, grass, streets, parking spaces, roads, and other improvements situated upon the said Common Property.

8.6 Non-Compliance by the Association. In the event the Association fails to maintain the Common Property or any Unit in accordance with its obligations hereunder, any Owner of any interest in a Unit or holder of a first mortgage on a Unit shall have the right to seek specific performance in a court of equity to compel the Association to do so. In the event of emergency repairs that are the responsibility of the Association, the Owner of an interest in any Unit may give the association twenty-four (24) hours notice to repair same, and if it is not done, said Owner may proceed to contract in the Owner's own name to make such repairs, and the Association shall be obligated to reimburse said Owner for the reasonable value of the repairs which are necessary and for which the Association has financial responsibility. For purposes of this provision, "emergency repairs" shall mean repairs that are otherwise the responsibility of the Association and that are required to fix breaches in the building envelope that causes, exposure of the interior of a Unit to the elements of the weather.

8.7 Contracts for Maintenance. The Board of Directors of the Association may enter into a contract with any firm, person or corporation for the maintenance and repair of the Common Property and the Units in order to fulfill and complete its obligations and duties hereunder. In so doing, however, it shall not be relieved of such obligation.

ARTICLE 9

COMMON WALLS, ROOFS AND EXTERIORS

9.1 Common Walls and Roofs of Attached Unit. The attached Units comprising each building are residential Units with common walls, known as "party walls," between each Unit that adjoins another Unit. The centerline of a party wall is the common boundary of the adjoining Unit.

Each common wall in a Unit shall be a party wall, and any party to said wall, their heirs, successors and assigns, shall have the right to use same jointly with the other party to said wall as herein set forth. The term "use" shall include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving; but shall prohibit any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original wall. The costs of maintaining each side of a party wall shall be borne by the Unit Owner using said side, except as otherwise provided herein.

The entire roof on the building, and all roof structure, support, and any and all appurtenances to such structures, including without limitation, the roof covering, roof trim, and roof drainage fixtures, shall be collectively referred to as "common roofing."

To the extent not inconsistent with the provisions of this article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction and any replacement of improvements in the Property.

9.2 Destruction by Fire or Other Casualty. If a Unit is damaged through an act of God or other casualty, the affected Unit Owner shall promptly have the Unit repaired and rebuilt substantially in accordance with the architectural plans and specification of the building. The Association shall have the right to specially assess all of the Unit Owners if insurance proceeds are insufficient to repair or rebuild the affected Units in accordance with this paragraph. The assessment and collection of any special assessment authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association for Association expenses.

The cost of the reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who make use of the wall or fence in proportion to such use.

In the event such damage or destruction of a party wall or common roof is caused solely by the neglect or willful misconduct of a Unit Owner or Unit Owner's family, guest or invitee of the Unit needing such maintenance or repair, any expenses incidental to the repair or reconstruction of such wall or common roof shall be borne solely by such wrongdoer. If the attached Unit Owner refuses or fails to pay the cost of such repair or reconstruction, the Association shall have the right to complete such repair and reconstruction substantially in accordance with the original plans and specification of the affected building, and the Association shall thereafter have the right to specially assess said Unit Owner for the costs of such repair and reconstruction. The assessment and collection of such assessment authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association for Association expenses.

9.3 Exterior Maintenance and Repair. In addition to maintenance of the Common Property, the Association shall provide exterior maintenance upon each Unit which is subject to assessment hereunder as provided in subsection 8.1 hereunder. No Owner shall authorize the painting, refurbishing or modification of the exterior surfaces of the Owner's Unit or of the building. Normal maintenance of the exterior surfaces, such as pressure cleaning, repainting and refinishing, shall be done uniformly at the same time for the entire building by the Association and as an Association expense. Normal maintenance of the common roof, such as cleaning, refinishing or recovering, shall be done uniformly at the same time for the entire common roof by the Association and as an Association expense.

9.4 Arbitration. In all parties agree, in the event of any dispute arising concerning a party wall, party fence or common roof, or under the provisions of this article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by majority of all the arbitrators. The decision of the arbitrators shall be binding and conclusive upon the parties and any party to the dispute shall not thereafter have the right to institute any action or proceeding at law or equity.

ARTICLE 10

ARCHITECTURAL CONTROL

10.1 Limitation Upon Right of Owners to Alter or Modify Unit. No Owner of a Unit shall permit any structural modifications or alterations to the Unit, except as otherwise provided herein. No Owner shall cause any improvements or changes to be made on or to the exterior of the Unit, including painting or other decoration, installation of electrical wiring, antennas, machines, air conditioning Units which may protrude through or be attached to the walls or roof of the Unit or in any manner change the appearance of any portion of the building not within the walls of such Unit, without the written consent of the Architectural Control Committee (ACC) being first obtained. No Owner shall in any manner change the appearance of any portion of the exterior of the Owner's Unit unless otherwise permitted herein, or unless the Owner shall first obtain the written consent of the ACC, which consent may be withheld in the event that a majority of members of the ACC determine in their sole discretion that such structural modifications or alterations

would adversely affect or in any manner be detrimental to the Property in part or in its entirety. No modification or alteration shall be permitted which would cause any increase in any insurance premiums paid by the Association. If the modification or alteration desired by the Owner of any Unit involves the removal of any permanent interior partition, the Association, shall have the right to permit such removal as long as the permanent interior partition to be removed is not a load-bearing partition, and as long as the removal thereof would in no manner affect or interfere with the provisions of utility services constituting Common Property located therein.

10.2 Architectural Control. The Architectural Control Committee shall initially have three (3) members, who shall be designated by the Declarant. The committee members shall continue to be designated by the Declarant, until such time as the Declarant retains title to no Unit or voluntarily relinquishes control, whichever shall first occur. The Committee may designate one (1) of its members to act as representative for the committee. The ACC shall have thirty (30) days after receiving appropriate plans and specifications to approve, or disapprove same, and a failure to render a finding within that time period shall result in an exemption for said plans and specifications, and this covenant shall be deemed to have been fully complied with. In the event a Unit or other improvement has been erected or its construction substantially advanced in violation of the terms of this covenant, the Association shall have the right to redress in a court of competent jurisdiction, including the right of injunction and/or damages incurred by the Association to correct the violation, and the Owner shall be responsible for all court costs and attorney fees incurred by the Association in such action. In the event a violation occurs which, in the opinion of the committee, is of a minor or insubstantial nature, it may release the Unit or portions thereof from the application of the covenants and restrictions set forth herein, but such a finding must be agreed to by a majority of the members of the ACC.

10.3 Rules and Regulations. The ACC may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval, and may publish such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details or other matters, as it may consider necessary or appropriate.

10.4 Right of Entry to Inspect. The Association shall have the further right through its agents, employees or committees, to enter upon and inspect any Unit at any reasonable time for the purpose of ascertaining whether any violation of the provision of this article, or any of the other provisions or requirements of this Declaration, exist with regard to such Unit. The Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Unit for any trespass or damage or injury to the property or person unless caused by gross negligence, or intentional wrongdoing.

10.5 Waiver of Liability. Neither the Declarant, the ACC, any member of the ACC, or the Association, or any of their representatives shall be liable in damages to anyone submitting plans for approval or to any Owner or occupant of a Unit by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of any plans, or the failure to approve any plans. Every person who submits plans for approval agrees, by submission of such plan, and every Owner agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damage. Approval of any building plans, specifications, site or landscape plans or elevations, or any other approvals or consents pursuant hereto or otherwise, is given solely to protect the aesthetics of the Property, and shall not be deemed a warranty, representation or covenant that such buildings, improvements, landscaping or other action taken pursuant thereto or in reliance thereof comply with, or are not in violation of any applicable laws, codes, rules or regulations. The Declarant, the ACC, the Association or any agent thereof, shall not be responsible in any way for any defects in any plan or specifications submitted, revised or approved, in accordance with the requirements of the ACC, or for any structural or other defect in any work done according to such plans and specifications.

This article may not be amended without the Declarant's written approval as long as the Declarant owns any Unit.

10.6 Enforcement of Planning Criteria. The Declarant or the Board of Directors shall have the standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the planning criteria and decisions of the ACC. Should the Declarant or the Association be required to enforce the provision hereof by legal action, the reasonable attorneys' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees and costs incurred on appeal from judicial proceedings, shall be collected from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, the Declarant and the Association shall have the right to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof, and charge the cost thereof to the Owner. The Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Unit for any trespass or damage or injury to the property or person unless caused by gross negligence or intentional wrongdoing.

10.7 Term of Approval. Approval by the ACC shall be effective for a period of one (1) year from the date the approval is given in writing by the ACC.

ARTICLE 11

OBLIGATIONS OF ASSOCIATION AND OWNERS: RESTRICTIVE COVENANTS

11.1 Obligations of Association. The Association shall have the power and authority to and shall promptly perform all of the matters set forth in subsection 7.2 herein, all of which shall become duties and obligations of the Association.

11.2 Obligations of Owners. Every Owner of an interest in a Unit shall (in addition to other obligations and duties set out herein):

- a. *Assessments.* Promptly pay all assessments levied by the Association.
- b. *Maintenance.* (Maintenance of Unit. Maintain in good condition and repair the Unit (including glass, all screening, driveways, party walls and all windows, doors, and associated hardware, and garage doors), all interior surfaces within or surrounding the Unit (such as the surfaces of the walls, ceilings, windows and floors), maintain and repair the fixtures therein, keep clean all exterior glass surfaces and pay for any utilities which are separately metered to the Unit. Said Unit shall be maintained in accordance with this Declaration, except for changes or alterations approved in writing by the Association;
- c. *Landscaping Maintenance.* Owners shall keep their yards clear so that the Association and its agents can perform regular maintenance without hindrance or inconvenience;
- d. *Parking Area.* Maintain in good condition and repair that portion of the parking area between the driveway and the Unit's garage door or Unit;
- e. *Alterations.* Not make or cause to be made any structural addition or alteration to the Unit or to the Common Property without prior written consent of the ACC;
- f. *Nuisances.* Not permit or suffer anything to be done or kept in the Unit which will increase the insurance rates on the Unit or the Common Property or which will obstruct or interfere with the rights of other Owners or annoy them by unreasonable noises or otherwise; nor shall an Owner commit or permit any nuisance, immoral or illegal act in the Unit or in or on the Common Property;
- g. *Rules and Regulations.* Conform to and abide by the Bylaws and uniform rules and regulations in regard to the use of Units and the Common Property which may be adopted in writing from time to time by the Board of Directors of the Association, and see that all persons using the Owner's property by, through or under the Owner do likewise;
- h. *Inspection by Association.* Allow the Board of Directors or the agents and employees of the Association to enter any Unit for the purpose of maintenance, inspection, repair or replacement of the improvements within the Unit of the Common Property, allows the Board of Directors of the agents and employees of the Association to enter any Unit in the case of an emergency threatening Units or the Common Property, and for the purpose of determining compliance with these covenants and restrictions and the Bylaws of the Association;
- i. *Plumbing, etc.* Pay for all plumbing and electrical repairs within the Unit and for the maintenance, repair and replacement of any air conditioning and heating compressor facility, and any other facility for the furnishing of the utility services presently or hereafter installed outside of any Unit, and which is intended only for the purpose of furnishing such utility services to a Unit, including the hookup from the Unit to the main water and sewer lines;
- j. *Waterbeds, etc.* Not permit or suffer anything to be done or kept in the Unit which will cause structural stress or danger to the Unit or any other Unit. Waterbeds are allowed to be placed on the second story of any two-story Unit but any damage caused to any Unit or Common Property by virtue of the existence of a waterbed shall be the sole responsibility of the Owner in whose Unit. the waterbed is located;

- k. *Utility Apparatus.* Each Owner of a Unit shall permit the provider of any public or quasi-public utilities to locate meters, junction boxes, control panels or other similar external apparatus on the exterior wall of a Unit for the benefit of other attached Units whenever it is deemed desirable or necessary by such provider, provided, however, that such external apparatus shall not be located on the front of any Unit; and
- l. *Garage Door.* Each Owner is responsible for the mechanical maintenance and operation of the garage door on the Unit, if one is located thereon. The Association is responsible for the outside painting of all garage doors of Units.

11.3 Entry into Adjacent Units. Whenever it is necessary to enter attached Unit for the purpose of performing any maintenance, alteration or repair to any portion of another Unit, i.e., to repair or replace electrical wiring, plumbing or air conditioning refrigeration lines running beneath the floor or within the walls of attached Units, the Owner of each Unit shall permit other Owners or their representatives, or the duly constituted authorized agents of the Association, to enter such Unit for such purposes, provided that such entry shall be made only at reasonable times and with reasonable advance notice. The Owner of any Unit for whose benefit such other Unit is entered shall be responsible and liable to the Owner of such entered Unit to leave the Unit, in the same condition it was in prior to such entry.

11.4 Restrictive Covenants. The use of all Units and Common Property in the Property shall be subject to the following restrictions, reservations and conditions which shall be binding upon each and every Owner and its heirs, personal representatives, tenants, invitees, successors, and assigns, as follows:

- a. *Residential Use.* All Units shall be used for private, single family residential purposes only, and no trade, business, profession or other type of commercial activity of any kind shall be may be carried on upon any Unit without prior written approval of the Association, and all applicable licensing and permitting authorities nor shall anything be done thereon which may be or become an annoyance or nuisance in the Property. Lease or rental of Unit, shall not be violation of this covenant. The foregoing shall not prohibit the Declarant from using Units as models or offices.
- b. *Rights of Declarant.* The Declarant, its agents or an entity affiliated with the Declarant, shall have the right to make such use of the Common Property and the Units as may facilitate the sale or rental of Units, including but not limited to showing the Property, use of a construction/marketing trailer, maintenance of sales, administrative, construction or other offices, the display of signs and other promotional devices without charge. Appropriate easement of access and use are expressly reserved to the Declarant, its successors and assigns, contractors, employees and invitees for this purpose.
- c. *Indemnity for Damage.* Nothing shall be done on or kept in any Unit or on the Common Property, or any part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to or waste of the Common Property, or any part thereof, or of the exterior of any Unit shall be committed by an Owner, tenants or any invitee of an Owner or tenant, and each such Owner shall indemnify and hold the Association and the other Owner harmless against all loss resulting from any such damage or waste caused by the Owner, the Owner's tenant or invitees to the Association, the Common Property or other Owners. The Association has the right to assess an Owner for any such damage and to enforce collection in the same manner as provided in Article 7 of this Declaration.
- d. *Noxious or Offensive Activity.* Except for the activities of the Declarant during original construction or except with the prior written approval of the Association, no noxious or offensive trade or activity shall be carried on, upon or within an Unit on the Property, nor shall any use or practice be allowed which is a source of annoyance to Owners, their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Unit or Common Property, and all laws, zoning ordinances, and regulation of all governmental bodies having jurisdiction shall be observed. The use, enjoyment and occupancy of the Property shall be in such a manner so as not to cause or produce any of the following effects discernible outside of buildings located thereon or affect the adjoining property or any portion or portions thereof: noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness; smoke, dust, dirt or fly ash; unusual fire or explosive hazards; or vibration or light.

- e. *Signs.* No signs of any kind shall be displayed to the public view on any Unit, except customary name and address signs approved by the ACC. Notwithstanding the foregoing; however, the Declarant or its assigns shall have the right to erect and maintain signs of such size as it deems necessary to advertise the Units or Property.
- f. *Resident Parking.* Each Unit has a garage and driveway space in the Unit immediately adjacent to the garage for the Unit Resident's parking.
- g. *Guest Parking.* Parking shall be available in spaces within the common roadways designated as Tract C. At no time shall guests park in or block access to driveways to the Units.
- h. *Trailers, Boats, etc..* No travel trailers, mobile homes, campers, utility trailers, buses, motor homes, boats, commercial vehicles or the like or any other vehicle commonly known as a recreational vehicle shall be parked or stored on or at any Unit unless stored and fully enclosed in a garage. No automobiles, trucks, buses, boats, boats and trailers, trailers, house trailers, motor homes, mobile homes, campers, or other similar vehicles shall be parked regularly or permanently on any street; including the right of way thereof, or on the Common Property at any time, nor shall they be used permanently or temporarily as a residence or parked for any other purpose, except as otherwise provided herein, on any of the Property. Such vehicles may be parked in the Unit driveway immediately adjacent to the garage and separate from the common roadway for not more than ten (10) hours in any calendar month. No trailers and commercial vehicles, other than those present for business purposes, shall be parked outside in the Property.
- i. *Bicycles and Motorcycles.* Bicycles and motorcycles shall not be stored on the Property except in such areas as may be designated for this purpose.
- j. *Repairs or Restoration.* No repairs or restoration of any automobile, motor vehicle, boat, camper, trailer or other vehicles shall be permitted on any Unit except for emergency repairs thereto and then only to the extent necessary to enable removal such vehicle to a proper repair facility, unless such repairs or restorations are done in a garage.
- k. *Antennas.* No outside radio or television antennas, satellite dishes masts, towers, poles, including without limitation any television, radio, microwave or such antenna, shall be erected, constructed, used or maintained on or in any Unit in the Property without the prior written approval of the ACC. Said approval shall not be granted until the ACC adopts an antennae policy, which adoption shall not occur before such time as, solely in the opinion of the ACC, technology and manufacturing advances provide for the availability of aesthetically acceptable antennae. No electrical or other equipment may be operated on the Property, which interferes with television signal reception.
- l. *Fences and Hedges.* No fence shall be erected without the prior written approval of the ACC. Plans for all fences shall be submitted to the ACC or assigns for approval prior to installation. No chain link fences are allowed. No fence shall be erected in the front yard of any Lot, or in the side yard of any corner Lot closer to the street than the house, unless approved in writing by the ACC as a decorative fence.
- m. *Screened Patios.* Screened patios may be added to approved attached Units provided that they are constructed on the existing slabs poured by the builder of the Unit for said purpose at the time of construction of the Unit, or are approved in writing by the ACC.
- n. *Animals.* No animals or pets of any kind shall be raised, bred or kept on a Unit or any portion of the Property except that dogs, cats or other common household pets may be kept in each attached Unit subject to rules and regulations adopted by the Association and provided that such animals are not kept, bred or maintained for any commercial purposes. Pets shall be registered, licensed and inoculated as may from time to time be required by law. Animal excrement shall be disposed of in a sanitary manner by the Owner of such animal, which disposal shall not include burying or concealment on a Unit, Common Property or the Property. Units Owners shall be responsible for all violations of this rule by guests and lessees of their Unit and such Owners shall be subject to such fines or penalties as the Association shall impose for each violation. All Owners shall indemnify the Association and hold it harmless against any

loss or damage, and liability of any kind or character whatsoever arising from or growing out of having any animal. No animal shall be allowed to make noise in a manner of such volume as to annoy or disturb other Owners.

- o. *Mailboxes.* Mailboxes, shall be placed only in areas designated for that purpose, and shall be of uniform design compatible with the Units and approved by the ACC. No newspaper tubes or other non-uniform receptacles shall be permitted without the express written consent of the ACC.
- p. *Garages.* In order to maintain a harmonious and aesthetic appearance, the garage door affixed to each attached Unit shall remain closed except when in actual use to allow ingress and egress into the garage. Garage door openings may not have screen doors enclosures. Garages shall not be used for a living area or storage area in such a manner that the garage cannot be used for the parking of a full-sized car, or in such a manner as to prevent compliance with the resident parking provisions.
- q. *Trash and Garbage.* No accumulation of trash shall be allowed on any Unit including patios or porches located on a Unit. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection and shall be stored inside the garage or storage space of each Unit or in trash receptacles as provided by Declarant. Containers shall be moved to the street on the morning of trash collection and returned to the garage or storage space of each Unit that same evening. No incinerators shall be kept or maintained on any Unit, except that the Association may cause trash receptacles to be placed on Common Property when it deems such to be in the best interests of Harper Place. All Owners shall use uniform trash containers as provided by the municipal trash collection services as applicable.
- r. *Outside Clothes Hanging.* No clothing, laundry, household fabrics or furnishings shall be aired, hung or dried on any portion of an attached Unit exposed to view from any other Unit or from any portion of the Common Property.
- s. *Window Coverings.* No Unit shall have any aluminum or reflective foil or other material placed in any window or glass door or any reflective substance placed on any glass. No tinted glass shall be permitted without approval of the ACC. All interior window coverings, including draperies, shades and blinds shall have a white backing or lining on the side visible to the outside for the purpose of providing a harmonious and uniform appearance from the outside of the Unit.
- t. *Solar Collectors.* No solar collector shall be installed or maintained on the exterior of any Unit unless otherwise approved in writing by the ACC.
- u. *Decorative Exterior Trim.* No Owner or tenant of any Owner shall install shutters, awnings, screen doors or other decorative exterior trim without written approval by the ACC; except small exterior decorations such as address plates and name plates may be installed.
- v. *Miscellaneous.* No tools, motorcycles, machinery or other items may be stored outside of any Unit or on patios, porches or driveways.
- w. *Landscaping.* No Owner of an attached Unit shall plant or allow to be planted any plants in the yard area of the Owner's Unit that detract from the visual harmony of the Property or interfere with Association maintenance of the yards and grounds. Yard ornamentation, such as flagpoles, fountains, bird feeders, bird baths, sculpture, accent lighting and pottery shall not be allowed in front or side yards of any Unit, unless approved in writing by the ACC. American flags may be displayed on national holidays, when attached to a Unit.
- x. *Lighting.* All exterior lighting on any Unit shall be approved by the ACC and shall conform to exterior lighting standards developed by the ACC. It is the intent of this provision that the standard for permitted exterior lighting shall be designed to prevent exterior lighting from being a nuisance to other Unit Owners.
- y. *Model Homes.* Every person, firm or corporation owning a Unit in the Property recognizes the Declarant or assigns shall have the right to maintain model homes in the Property, open to the public seven (7) days a week for such hours as it deems necessary until all Units have been constructed and sold.

- z. *Hot Tubs.* No hot tubs may be placed in or on a patio or porch which is a Limited Common Property without the written approval of the ACC.
- aa. *Drainage Structures.* No person or entity other than the Declarant without the prior written approval of the Board of Directors, shall obstruct, alter or in any way modify the method and/or structures of drainage utilized now, or hereinafter installed by the Declarant or the Association from, on and over any Unit or Common Property; nor shall any structure be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation.

ARTICLE 12

ADDITIONAL ENFORCEMENT PROVISIONS

12.1. Compliance by Owners. Every Owner and tenant shall comply with the covenants and restrictions set forth herein and any and all reasonable rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

12.2. Procedure. Any Owner who wishes to report a violation of these restrictions or of the rules and regulations shall do so in writing to the Board of Directors. The Board of Directors shall investigate the complaint, and if it is determined to be well founded, shall write a letter to the offending Unit Owner and such letter shall set forth the infraction and a time period within which such Owner shall comply with these restrictions and/or rules and regulations. In the event the Owner does not comply by the date set forth in the Board's letter, the Board may take any of the enforcement actions set forth herein.

12.3 Enforcement. Failure of an Owner or tenant to comply with such covenants and restrictions or rules and regulations shall be grounds for action by any Owner or the Association which may include, without limitation, any action to recover sums due for damages, injunctive relief, or any combination thereof. In addition to the rights of the Association to enforce the provisions of this Declaration, the St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in his Declaration which relate to the maintenance operation and repair of the surfacewater or stormwater management system. The Association shall have the right to suspend the voting rights and the use of Common Property by the Owner and/or tenant as it shall determine.

12.4 Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, suspension of use rights to use Common Areas and facilities and the levy of a fine or fines may be imposed upon an Owner for failure of an Owner, the Owner's family, guests, invitees, tenants or employees, or both, to comply with any covenant, restriction, rule or regulation, provided the following procedures are followed:

- a. *Notice.* A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended, and the Association shall notify the Owner of the infraction or infractions. Included in the Notice shall be the date and time of the next Board of Directors meeting at which time the Owner shall present reasons why penalties should not be imposed.
- b. *Hearing.* The non-compliance shall be presented at a hearing before a committee of at least three (3) Members, appointed by the Board of Directors who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee, after which the Board shall hear reasons why penalties should not be imposed. Any party charged shall be entitled to cross examine witnesses and may be represented by counsel. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. A written decision shall be submitted to the Owner or the Owner's family, tenants, guests, or invitees, or both, not later than twenty-one (21) days after the Board of Directors meeting. The requirements contained herein do not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay assessments or other charges when due as authorized by Article 7 of this Declaration.
- c. *Fines.* The Board of Directors may impose a fine in the nature of a special assessment against the Unit owned by the Owner as follows:
 - i. First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

- ii. Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00).
- iii. Third and subsequent non-compliance or violation or violations which are of a continuing nature: a fine not in excess of One Thousand Dollars (\$1,000.00) for each such occurrence.
- iv. Payment of Fines. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.
- v. Collection of Fines. Fines shall be treated as special assessment and a lien subject to the provisions for the collection of assessments and enforcement of liens as set forth in Article 8 herein.
- vi. Application of Fines. All monies received from fines shall be allocated to the reserve for replacement funds for the Association.
- vii. Non-exclusive Remedy. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

ARTICLE 13

INSURANCE AND DESTRUCTION OF IMPROVEMENTS

It is hereby declared to be reasonably desirable and necessary for the proper preservation and enforcement of the values and amenities in Harper Place to make certain that proper insurance is carried and maintained at all times as hereinafter stated. In other provisions of this Declaration, the Association is charged with the obligation and duty of maintaining, repairing and replacing the Common Property and the attached Units, and it is therefore proper and acceptable that the Association own and maintain insurance covering not only the improvements on the Common Property but also the Units.

13.1 Authority to Purchase: Named Insured. All insurance policies upon the Property shall contain extended coverage insurance and vandalism and malicious mischief insurance and shall be purchased by the Association from a fiscally responsible company authorized to do business in the State of Florida, and acceptable to holders of institutional first mortgages on the Units, insuring all the insurable improvements erected within Harper Place as allowed by Florida law, thereby including both improvements owned by the Association and all Units which may be owned by Owners. The premium for such coverage and all other insurance deemed desirable by the Association shall be assessed against the Owners of such Units as a part of the annual assessment for each Unit. OWNERS ARE HEREBY PUT ON NOTICE THAT THEY ARE RESPONSIBLE FOR INSURING ALL PORTIONS OF THEIR UNIT NOT COVERED BY THE INSURANCE OBTAINED BY THE ASSOCIATION AND THAT IT IS THEIR RESPONSIBILITY TO ASCERTAIN THE EXACT LIMITS OF THE COVERAGE PROVIDED BY THE ASSOCIATION. The Association shall annually make a survey and thereby determine replacement costs for insurance purposes for all then existing improvements for the ensuing year. On the basis of said survey, or if none is made, then on the basis of the preceding year's insurance coverage, increased or decreased as the case may be by inflation or deflation and other criteria, the Association, shall continue to maintain the necessary fire and extended coverage and vandalism and malicious mischief insurance to assure complete replacement or repair to damaged improvements as herein, set forth. The original policy of insurance shall be held by the Association, with holders of institutional first mortgages to be named in the policy as their interests may appear, and certification of such insurance shall be furnished to them.

13.2 Coverage.

- a. *Casualty*. All Units and improvements upon the Property shall be insured in an amount equal to one hundred percent (100%) of the current replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from coverage, and all personal property included in the Common Property shall be insured for its value, all as shall be determined from time to time by the Board of Directors of the Association. Coverage shall afford protection against:
 - i. Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement;

- ii. Such other risks as from time to time shall be customarily covered with respect to Units similar in construction, location and use as the Units on the Property, including all other perils normally covered by the standard "all risk" endorsement where such is available, including but not limited to vandalism and malicious mischief.
- b. *Public Liability.* The Association shall obtain full and complete public liability insurance shall be in such amounts as shall be required by the Board of Directors of the Association covering all of the Common Property, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability endorsements to cover liabilities of the Unit Owners as a group to an Owner. Except as required herein, nothing in this Declaration shall be construed to require the Board of Directors to obtain such coverage as a condition precedent to the Association conducting business.
- c. *Worker's Compensation.* Worker's compensation insurance shall be carried to the extent necessary to meet the requirements of the law.
- d. *Miscellaneous.* Such other insurance may be carried as the Board of Directors of the Association shall determine from time to time to be desirable.

13.3 Notice to Owners and Mortgagees. No insurance policy required by this Declaration may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and each mortgagee holding a first mortgage and which is listed as a scheduled holder of a first mortgage in the policies. Certificates of insurance shall be issued to each Owner and mortgagee upon written request therefore.

13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association and shall be assessed against the Owners of Units as a Common Expense and as a part of the annual assessment for each Unit.

13.5 Occurrence of Loss. In the event a loss occurs to any portion of a Unit maintained by the Association, or in the event that a loss occurs to improvements within the Common Property, payments under the policy shall be made jointly to the Association and to the holders of institutional first mortgages on the Units. Said proceeds shall be expended or disbursed as follows:

- a. All Association officers and employees handling funds shall be bonded at least to the full extent of the insurance proceeds and other funds on hand, and all payees on the insurance check shall endorse the same over to the Association, and the Association will promptly contract for the necessary repairs to the improvements within the Common Property and within the damaged Units; and
- b. The improvements shall be completely restored and repaired. The Association shall negotiate and obtain a contractor willing to do the work on a fixed price basis, and shall disburse the insurance proceeds and other funds in accordance with progress payments contained in the contract between the Association and the contractor, which construction contract shall be subject to written approval of the holders of institutional first mortgages when such mortgages encumber any damaged individual Unit or Units. Any reconstruction or repair shall be effected substantially in accordance with the plans and specifications of the original buildings or in accordance with the plans and specifications approved by the Board of Directors of the Association. Any restoration or repair after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications approved by the Board of Directors of the Association. However; where the residential community has been abandoned, as hereinafter provided, the insurance proceeds shall be disbursed by the Association to the Owners of the affected Units and all mortgagees of the Units as their interest appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the Mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums that insurance proceeds are insufficient to restore or repair the building to the condition existing prior to the loss and additional monies are not available for such purpose. Under all circumstances the Association shall have the authority to act as the agent for all Owners of Units for the purpose of

compromising or settling insurance claims for damage to improvements within the Units, the Units themselves or the Common Property. In the event the cost of replacement, repair or rebuilding of improvements on the Common Property exceeds the insurance proceeds available therefore, or no insurance proceeds are available therefor, the deficiency or full cost thereof may be assessed to all Unit Owners.

13.6 Association as Agent and Attorney-in-Fact. The Association is hereby irrevocably appointed agent and attorney-in-fact for each Unit Owner and for each Owner of any other interest in the Property to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

ARTICLE 14

TERMINATION

14.1 Termination and Abandonment Due to Loss or Consent of Members. At any time when there has been total loss of the Units and the improvements on the Common Property, and the Members by majority vote to abandon the community, said community shall be abandoned. Additionally, at any time upon the written unanimous consent of all Members and all holders of first mortgage liens on any Units, the community may be abandoned for any reasons whatsoever, whether or not any destruction to property has occurred, provided, that; the Property that is surveyed as Common Property is conveyed to and accepted by City of Winter Park authorities or another appropriate public agency.

14.2 Evidence of Termination and Abandonment. As evidence of the Members' resolution to abandon, passed by the required vote or written consent of the Members, the president and secretary of the Association shall effect and place in the public records of Orange County, Florida, an affidavit stating that such resolution was properly passed or approved by the Members and shall also record the written consent to such abandonment, if any, of the holders of all institutional first mortgages. After such an affidavit has been recorded and the Property conveyed as set forth herein, the title to the Property thereafter shall be free and clear from all of the covenants and restrictions, reservations, conditions and easements of every kind and sort set forth in this Declaration, and the purchaser and subsequent grantees of any of the Property shall receive title to said lands free and clear thereof. Provided, however, that the rights of the City of Winter Park, under the planned Unit development ordinance shall still apply to the Property if such zoning classification still applies thereto.

ARTICLE 15

AMENDMENTS AND MODIFICATIONS

15.1 By Declarant. The Declarant, as long as the Declarant owns lands within the Property, reserves and shall have the sole right to: (a) amend these covenants and restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein or any scrivener's error; (b) include in any contract or deed or other instrument hereafter made any additional covenants and restrictions applicable to the said land which do not lower standards of the covenants and restrictions herein contained; (c) release any building plot from any part of the covenants and restrictions which have been violated (including, without limiting the foregoing, violations of building restrictions lines and provisions hereof relating thereto) if the Declarant, in its sole judgment, determines such violation to be a minor or insubstantial violation; (d) amend this Declaration without vote or consent of the Owners in any manner which does not adversely affect the substantive rights of an existing Owner or mortgagee; and (e) amend this Declaration during the first two (2) years after same has been recorded to comply with the request of any mortgagee. The foregoing amendments may be made without the joinder or approval of any Owner, mortgagee or the Association.

15.2 By Owners. Except as to provisions relating to amendments set forth herein regarding certain specific items and the methods of amending or altering same, any other provisions, covenants, or restrictions set forth herein may be amended in accordance with this provision. The holders of at least two-thirds (2/3) of the votes in the Association, without regard to class, may change or amend any provision hereof by: (1) executing a written instrument in recordable form setting forth such amendment, or (2) causing a certified copy of a duly adopted, resolution of the Owners to be prepared, and having the same duly recorded in the public records of Orange County, Florida. No such amendment requiring FHA or VA approval shall be effective until same is approved by FHA or VA. A proposed amendment may be initiated by the Declarant, the Association, or by petition signed by fifteen percent (15 %) of the Owners. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each Owner at least thirty (30) days but not more than sixty (60) days prior to the meeting to discuss the proposed amendment. If adopted by vote, the affirmative vote required for adoption shall be two thirds (2/3) of the votes of the members' (without regard to class) who shall be present in person or by proxy at a meeting duly called, and the recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full

right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment or the certified copy of the duly adopted resolution among the public records of Orange County, Florida.

As long as the Declarant shall own any Unit within the Property, no Declarant-related amendment shall be made to this Declaration of any amendments thereto, or to the Articles or Bylaws of the Association unless such amendment is first approved in writing by the Declarant. Any amendment shall be deemed to be Declarant related if it does any of the following:

- a. Directly or indirectly by its provisions or in practical application relates to the Declarant in a manner different from the manner in which it relates to other Owners.
- b. Modifies the definitions provided for in Article 1 of this Declaration in a manner which alters the Declarant's rights or status.
- c. Modifies or repeals any provisions of Article 3 of this Declaration.
- d. Alters the character and rights of membership as provided for by Article 5 of this Declaration or modifies in any manner whatsoever the rights of Declarant as a Member of the Association.
- e. Alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivisions, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities.
- f. Denies the right of the Declarant to convey Common Property to the Association.
- g. Modifies the basis or manner of assessment as applicable to the Declarant or any lands owned by the Declarant.
- h. Alters or repeals any of the Declarant's rights or any provision applicable to the Declarant's rights as provided for by any provision of this Declaration or amendments thereto.

15.3 Prior Approval of St. Johns River Water Management District. Any amendment to the Declaration which alters any provision relating to the surface water or stormwater management, including the water management portions of the Common Areas, must have the prior approval of the St. Johns River Water Management District.

ARTICLE 16

ENFORCEMENT OF DECLARATION

16.1 Remedies. If any person or entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for the Declarant or the Association to: (1) prosecute proceedings for the recovery of damages against those so violating or attempting to violate any such covenants or restrictions, or (2) maintain a proceeding in a court of competent jurisdiction, against those so violating or attempting to violate any such covenants or restrictions for the purpose of preventing or enjoining all or any such violations or attempted violations. The remedies contained in this provision shall be construed as cumulative to all other remedies now, or hereafter provided by law. The failure of the Declarant, its successors or assigns or the Association to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto. In the event the Declarant or the Association shall prevail upon such proceeding for recovery of damages or to enjoin violations, the Owner/Member shall be responsible for all costs and expenses incurred or paid by the Declarant or the Association in the prosecution of such proceeding, including reasonable attorney fees, and the Declarant or Association shall be entitled to place a lien upon the Owner's Unit and enforce said lien, all as provided in Article 7 hereof to secure payment of such sums, if the Owner fails to pay such costs and expenses within thirty (30) days from the entry of the judgment or injunction.

16.2 Lessees to Comply with Declaration, Articles and Bylaws -Effect of Non-Compliance. All tenants shall be subject to the terms and conditions of this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations promulgated thereunder as though such tenant were an Owner.

Each Owner agrees to cause Owner's lessee, occupant, or persons living with such Owner or with Owner's lessee to comply with the Declaration, Articles, Bylaws and rules and regulations promulgated thereunder, and is responsible and liable for all

violations and losses caused by such tenants or occupants, notwithstanding the fact that such occupants of the Unit are also fully liable for any violation of the documents and regulations.

In the event that a lessee, occupant, or person living with the lessee violates a provision of the Declaration, Articles, Bylaws or rules and regulations adopted pursuant thereto, the Board shall have the power to bring an action or suit against the lessee to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity.

ARTICLE 17

MISCELLANEOUS PROVISIONS

17.1 Limited Common Property. Intentionally deleted..

17.2 Additional Covenants and Restrictions. No Owner, other than the Declarant, without the prior written approval of the Declarant or of the Association, once the turnover to it has occurred, may impose any additional covenants and restrictions upon any Unit.

17.3 Severability. The invalidation of any provision or provisions of the covenants and restrictions set forth herein by judgment or court order shall not affect or modify any of the other provisions of said covenants and restrictions which shall remain in full force and effect.

17.4 Notices. Any notice required to be sent to any Owner shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

17.5 Number and Gender. Reference to the singular shall include reference to the plural and to the plural shall include the singular, as indicated by the context of use. Reference to any gender shall include reference to all genders.

17.6 Section Headings. The section headings are for reference purposes only and shall not in any way affect the meaning, content or interpretation hereof.

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

Signed, sealed and delivered in the presence of:

DECLARANT:

TECHNOLOGY REAL ESTATE
PARTNERS OF WINTER PARK, LLC.,
a Florida limited liability company

By: [Signature]
WILLIAM C. ROLL,
As: Manager/Member

Print: MARVIN L. BEAMAN, JR.

Print: JENNIFER A. BEAMAN

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 20 day of April, 2004 by, by William C. Roll, as Manager/Member of TECHNOLOGY REAL ESTATE PARTNERS OF WINTER PARK, LLC., a Florida Limited liability company on behalf of the corporation. He ☒ is personally known to me or ☐ has produced _____ as identification.

(NOTARY STAMP)
Townhomes.Harper Place 03-266

Name: MARVIN L. BEAMAN, JR.
Title: Notary Public
My Commission Expires: _____



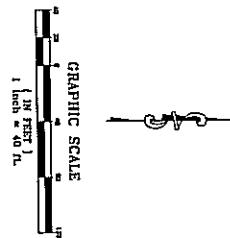
EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 11 through 18, and the West 31.4 feet of Lots 10 and 19, Block B, Harper Place as recorded in Plat Book N, Page 57, Public Records of Orange County, Florida.
Contains 1.57 acres, more or less.

Also described as:

Beginning at the Southwest corner of Harper Place as recorded in Plat Book N, Page 57, Public Records of Orange County, Florida; run thence North along the West line of Harper Place, a distance of 285.50 feet to the Northwest corner of Block B of Harper Place; thence S89°44'42"E along the North line of said Block B of Harper Place, a distance of 239.80 feet; thence S00°02'21"E a distance of 285.71 feet to the South line of Harper Place; thence N88°41'46"W a distance of 240.00 feet to the Point of Beginning.



- SET 1/2" SHILL ROD W/CLIP PL58172A
- SET H&L & DICE PL58178T
- WOOD POWER POOL
- CAN TIE
- TIE

GENERALIZATION

I hereby certify that the foregoing are true and correct to the best of my knowledge and belief.

Respectfully,

As witness my hand and the Seal of the Department of the Interior, this _____ day of _____, 2006.

Bryant W. Bishop, Secretary of the Interior

BRYANT W. BISHOP, Secretary of the Interior
Department of the Interior
Washington, DC 20540-0001

By: C. Anthony Barty
Paul S. Registered Land Surveyor No. 1188

Date: 11/7/2008

State of Mississippi
Paul S. Registered Land Surveyor No. 1188

For and to the effect of the SEPARATING AND THE CENSUS
 AND THE STATE OF A FLORIDA LICENSED SURVEYOR AND
 SURVEYOR



ASSOCIATES, INC.
ENGINEERS • LAND PLANNERS • SURVEYORS
208 WYOMING ROAD, WINTER PARK, FLORIDA 32781

[illegible]