

thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

The following words or letters when used in this Declaration (unless the context shall prohibit) shall have the following meanings. All other capitalized words shall have the same meanings as provided in the Master Declaration (as hereinafter defined).

Section 1. "Architectural Review Committee" means such committee as defined in Article VI hereof.

Section 2. "Articles of Incorporation" shall mean the Articles of Incorporation of the Association attached hereto as Exhibit "A", together with any recorded amendments thereto and such are incorporated herein by reference.

Section 3. "Association" shall mean and refer to Phoebe Park Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

Section 4. "Association Documents" shall mean this Declaration, the Articles of Incorporation, Bylaws, any rules or regulations of the Association or any other document governing or binding the Association.

Section 5. "Board" shall mean the Board of Directors of the Association.

Section 6. "Bylaws" shall mean the Bylaws of the Association attached hereto as Exhibit "B", together with amendments thereto and such are incorporated herein by reference.

Section 7. "CDD" shall mean the FishHawk Ranch Community Development District.

Section 8. "Common Areas" shall mean all property, whether improved or unimproved, and all easements therein, shown on the Plat, which from time to time is owned by the Association or dedicated on the Plat for the common use and enjoyment of all Owners. Such Common Areas are more particularly described in Article II, Section 1 of this Declaration.

Section 9. "Declarant" shall mean and refer to FishHawk Communities Limited Partnership, a Florida limited partnership, its successors and assigns, as to Lots under its ownership, and Westfield Homes of Florida, a Florida general partnership, as to

Lots under its ownership. "Declarants" shall refer to both FishHawk Communities and Westfield collectively.

Section 10. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Phoebe Park.

Section 11. "Lot" shall mean and refer to any plot of land shown on the Plat, excluding the Common Areas.

Section 12. "Master Association" shall mean and refer to Fishhawk Ranch Homeowners Association, Inc., a Florida not-for-profit corporation, its successors and assigns.

Section 13. "Master Declaration" shall mean and refer to the Declaration of Covenants Conditions and Easements for Fishhawk Ranch, recorded July 10, 1997 at O.R. Book 8632, Page 1126 of the Public Records of Hillsborough County, Florida, as amended from time to time through the date hereof.

Section 14. "Member(s)" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration and the Articles of Incorporation and the Bylaws of the Association. References herein to "members" shall mean "Members" and vice versa.

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

Section 16. "Plat" shall mean Fishhawk Ranch Phase 2, Parcel "Z" as described on the map or plat thereof recorded at Plat Book 94, Page 51-1 et seq. Public Records of Hillsborough County, Florida.

Section 17. "Property" shall mean and refer to all of that certain real property which is subject to the Plat, which may be also referred to herein as "Phoebe Park."

Section 18. Other Capitalized Terms. Other capitalized terms may be used in this Declaration, whose definitions shall be found in the other text hereof. Such defined terms shall have the same meaning throughout this document as they are defined in the text of this document.

ARTICLE II PROPERTY RIGHTS

Section 1. Common Areas. "Common Areas" shall consist of the following areas shown on the Plat:

Tract B-12, B-31 and B-32
Tract A

Such tracts shall be owned by the Association, Master Association or the CDD as more fully described on the Plat, but use and access shall be limited to Members and Owners of Phoebe Park (together with their respective tenants, licensees and invitees). In addition, such tracts shall be subject to a non-exclusive perpetual easement for pedestrian and vehicular ingress and egress over and across such tracts dedicated and granted to the CDD, the Master Association, and FishHawk Communities pursuant to the Plat.

Section 2. Community Development District Property. As provided in the Plat, Tracts "B-12" and "B-32" and the drainage easements shown on the Plat shall be conveyed to the FishHawk Community Development District by FishHawk Communities.

Section 3. Association Property. Tract "B-31" (Recreation Area) has been or shall be conveyed to the Association by FishHawk Communities.

Section 4. Private Streets. Tract "A" (streets and parking areas) has been or shall be conveyed to the Association by FishHawk Communities. As provided in the Plat, FishHawk Communities has granted to Hillsborough County, Florida, the CDD, the Association, utility companies providing service to the Property, all Owners, and all existing or future owners of lots or tracts in the Plat, non-exclusive perpetual easements for pedestrian and vehicular ingress and egress over and across Tract "A." These easements also inure to the benefit of the licensees, invitees and tenants of such benefited parties. In addition, Declarants hereby grant to fire, police, health, sanitation (including trash collection) and other public service personnel and vehicles, a permanent and perpetual easement for ingress and egress over and across Tract "A."

Section 5. Utility Easements. Pursuant to the Plat, FishHawk Communities has dedicated and granted to Hillsborough County, Florida, and other appropriate utility entities (including, but not limited to, providers of telephone, natural gas and cable services to the Lots), perpetual, non-exclusive utility easements within the areas designated on the Plat as "Utility Easement" and as Tract "A" for utility purposes and purposes incidental to utilities. Utilities serving the Property and Lots, have been, or will be, installed underground within such areas for the use, benefit and service of the Property, the Lots and all improvements upon the Property. Any and all use of utility easements shall be in accordance with the applicable provisions of this Declaration. If

any wall is installed by any Declarant, any Owner or any home builder over any utility easement, such installation is at the risk of the party making the installation and the utility shall have no obligation to restore the wall to its condition prior to any construction work by the provider of the utility.

Section 6. Public Easements. Fire, police, health, sanitation, (including trash collection), cable, communications, drainage and other public service personnel and vehicles shall have a permanent, perpetual and non-exclusive easement for ingress and egress over and across the Property, the Common Areas and each Lot.

Section 7. Wetland Conservation/Mitigation Area and Wetland Preservation Area. The areas designated on the Plat as "Wetland Conservation Area," "Wetland Preservation Area" or similar designations shall be transferred to the CDD for the benefit of the master drainage and wetlands mitigation plan for Fishhawk Ranch. No docks or other structures may be placed in or on such areas unless the owner of such areas has granted an easement within such areas which permits such dock or other structure.

Section 8. Association's Right of Entry. The Association's duly authorized representatives, contractors or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the Common Areas or any Lot for the purpose of fully and faithfully discharging the duties of the Association, including the duties of maintenance as set out herein.

Section 9. Permanence. The benefit of all rights and easements granted by the Declaration constitutes a permanent appurtenance to, and will pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as nonexclusive, its benefit, nevertheless, is exclusive to all Lots granted such benefit by this Declaration unless this Declaration expressly grants such benefit to additional persons. In no event does the benefit of any such easement extend to the general public except as provided in Section 4, Section 5 and Section 6 above. The burden of all rights and easements granted by this Declaration constitutes a permanent servitude upon the lands affected.

Section 10. Operation of Gated Entries. By acceptance of a deed to a Lot within the Property, each Owner agrees that the Association and the Declarants have no obligations whatsoever for providing protection to persons on the Property. Owners further acknowledge and agree that an entrance gate does not guarantee the Owners' personal safety or security of Owners' Property. Owners acknowledge that the Declarants and the Association have no control over said gates and Owners hereby release Declarants and the Association from all liability related to the gates. Owners agree that it shall be the sole and exclusive obligation of Owners to determine and institute for themselves the appropriate security and any other precautions to protect

from and against trespass, criminal acts and any other dangers to Owners' safety and security of their Property, because a gate in and of itself will not protect Owners from and against said risks and dangers. Owners further agree that the Declarants and the Association shall have no obligation whatsoever for providing protection to Owners or the Property from conditions existing within public or private streets, parks or Common Areas. Owners agree that the Declarants and the Association shall not be liable for injuries or damage suffered by any Owner resulting from any failure, defect or malfunction in a gate or equipment or personnel related thereto or acting in place of a gate (i) to restrict the Property to the residents and their invitees; or (ii) that limits the ability of Owner to leave or exit the Property by means of a gate.

Section 11. Liability of Association. Notwithstanding anything contained in the Association Documents, neither the Association nor the Declarants nor any officer or employee thereof shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, Owner, occupant or user of any portion of the Property or improvements thereon, including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

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

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

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

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

with any matter for which the liability of the Association has been disclaimed in this Article.

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

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

Section 12. All Rights and Easements Appurtenances. The benefit of all rights and easements granted by this Article, or by any supplemental Declaration, constitute a permanent appurtenance to, and shall pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as non-exclusive by this Article or by any supplemental Declaration, its benefit nevertheless is exclusive to all Lots granted such benefit by this Article, or by such supplemental Declaration, unless this Article, or such supplemental Declaration expressly grants such benefit to additional Persons. In no event shall the benefit of any such easement extend to the general public.

Section 13. Maintenance.

(a) Responsibility of Association. The Association shall provide grounds maintenance, exterior painting, and at the times determined by the Board of Directors of the Association, replacement of all of the shingles upon each Lot and each Lot is subject to an Annual Assessment (and Special Assessment if necessary) for such maintenance as provided in this Declaration, as the case may be, as follows: (i) the exclusive right to conduct grounds maintenance (hereinafter defined as the repair, replacement, mowing, fertilization, insect, weed and disease control, irrigation and maintenance of lawns; trimming of trees, shrubs and landscaped areas including any partially enclosed front yards of Lots, walks, fences, walls and hedges [if any]; maintenance, repair and replacement of the subdivision entry security gate; and other exterior improvements in the Common Area installed by a Declarant); (ii) the exclusive right to paint and repair exterior building surfaces at the times determined by the Board of Directors of the Association; (iii) the exclusive right to replace all shingles on all residential buildings; (iv)

repair, replacement, and maintenance of the utility easements located under each Lot; and (v) the right to repair, replace and maintain irrigation systems on or under the exterior of each Lot and within any irrigation easement or wall easement. The Association's duty of exterior maintenance does not include: glass surfaces, replacement of exterior doors, gutters or any trees, shrubs, lawns or landscaped areas within an enclosed patio or fully enclosed entry area including the enclosed rear patios of Lots, except that the Association will maintain and replace any hedge or other landscaping installed by Declarant along the boundary between any Lot and the Common Area, if any. The Association also is not responsible for any maintenance, repair or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty; and each Owner will promptly correct any and all such casualty damage to such Owner's Lot within a reasonable time as specified below. Where it is stated herein that the Association has "exclusive control", it means the Owners of Lots shall not be required, or entitled, to conduct such activities, it being the intent of the Association to control such activities for purpose of maintaining uniformity within the Property. All maintenance performed by the Association shall be at least up to the "Development Wide Standards" as defined in the Master Declaration. The Association shall have sole discretion as to the timing and necessity of maintenance activities.

(b) Responsibility of Owner. The Owner shall provide exterior maintenance as follows, the cost for which each Owner shall be individually responsible: (i) repair and replacement of all glass surfaces on said Lot; (ii) repair and replacement of all exterior doors; (iii) repair and maintenance of all caulking around exterior doors, windows and vents; (iv) repair, maintenance and cleaning of gutters; (v) inspection and repair of all cracks in cementitious texture surfaces; (vi) inspection and repair of all cracks or peeling exterior paint; (vii) replacement of any trees, shrubs, lawns or landscape areas within a fully enclosed patio or entry area, including the rear patios of an Owner's respective Lot; (viii) maintenance, repair, or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty damage within the Lot of an Owner; (ix) repair or replacement of any property whether upon such Owner's Lot or any other Lot, or the Common Area, which repair or replacement is required because of any gross negligence or the willful act of such Owner or any member of such Owner's family or household, or any guest, tenant or other invitee of such Owner; (x) repair, replacement and maintenance of additional landscaping installed by an Owner within a fully enclosed patio or entry area, including the enclosed rear patio of an Owner's Lot; (xi) cleaning walks or driveways when such cleaning is necessary as determined by the Association, and the cleaning is necessitated by excessive wear or staining; and (xii) roof repair (other than replacement of all of the shingles thereon required by the Association) and maintenance, including but not limited to, such repairs and maintenance as may be necessary to stop or prevent leaks and removal of mildew, algae and other stains. The owner shall be responsible for removing any staining of a residence or paved area, which may be caused due to water quality or irrigation system. The Association may require from time to time, that owners adopt systems to prevent stains (such as automatic de-

ionization systems). No owner with a Lot adjoining a lake may utilize the lake to irrigate unless provided by Declarant as part of the original construction, subject to applicable permitting. All maintenance performed by the owner shall be at least up to the Development Wide Standards, as defined in the Master Declaration.

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

(d) Exterior Maintenance Assessment. An annual exterior maintenance assessment to be used by the Association for the exterior painting and grounds maintenance, repair, servicing, renewal, replacement or improvement of the exterior of each Lot, including replacement of all of the shingles thereon and building painting, all as described in this Section 13(a) of Article II, together with reserves for any and all of the foregoing, shall be assessed against each Lot as more fully described in Article VIII hereof.

ARTICLE III GENERAL PROVISIONS

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