

DECLARATION OF COVENANTS AND RESTRICTIONS  
of  
THE GOLF VILLAS AT CYPRESS HEAD

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**DECLARATION OF COVENANTS AND RESTRICTIONS  
of  
THE GOLF VILLAS AT CYPRESS HEAD**

THIS DECLARATION, by Pioneer Heights, Inc., a Florida corporation, its successors and assigns, (hereinafter referred to as "Owner") and Cypress Head Partners, Inc., a Florida corporation, its successors and assigns, (hereinafter referred to as "Developer" and whereby both Owner and Developer shall be jointly referred to as "Declarant").

**WITNESSETH**

WHEREAS, Owner is the fee simple title holder of real property located in Volusia County, Florida, known as The Golf Villas at Cypress Head, per map thereof recorded in Map Book 44, Page 185, Public Records of Volusia County, Florida; and

WHEREAS, the Developer and Owner intend to develop The Golf Villas at Cypress Head as a residential community; and,

WHEREAS, the parties hereto desire to provide for the preservation of the values and to subject The Golf Villas at Cypress Head to the covenants, restrictions, easements, charges and liens hereinafter set forth for the benefit of the Lot Owners thereof; and,

WHEREAS, the Association, a not for profit Florida corporation, has been formed and shall have the powers of administering and enforcing these covenants, restrictions and easements, and collectively and disbursing the assessments, all as more particularly set forth herein.

NOW, THEREFORE, the Owner hereby declares that The Golf Villas at Cypress Head, aforesaid, shall be owned, held, used, transferred, encumbered, sold, conveyed, demised and occupied subject to these covenants, conditions, restrictions, easements, reservations, regulations, charges and liens as set forth in this Declaration which shall run with the Property.

**ARTICLE 1  
DEFINITIONS AND MEANINGS**

The following words and phrases when used in this Declaration unless the context should clearly reflect another meaning, shall have the following meanings:

1.1 "Annual Assessment" shall mean the charge against each Lot and Lot Owner and for an equal share of the funds required for payment of Common Expenses, pursuant to the annual budget established by the Association.

1.2 "Articles of Incorporation" shall mean the document establishing and governing the Association.

1.3 "Association" shall mean and refer to Golf Villas Homeowners' Association, Inc., a Florida not for profit corporation, its successors and assigns.

1.4 "Association Property" means that property, real and personal, owned by the Association for the use and benefit of its Members.

1.5 "Board" shall mean the Board of Directors or other representative body which shall be responsible for administration of the Association.

1.6 "Bylaw" means the directive, regulation or secondary law, as it shall exist from time to time, governing the Association, its officers, directors and members.

1.7 "Common Area" shall mean all real property, excepting Lots 1 through 74, inclusive, within the boundary of The Golf Villas at Cypress Head per map thereof, as recorded in Plat Book 44, page 185, Public Records of Volusia County, Florida.

1.8 "Common Expenses" shall mean all expenses, services, reserves and assessments of the Owners which shall be properly incurred by the Association, including, not limited to, the costs and expenses of operation incurred or paid by the Association in administering, operating, reconstructing, maintaining, repairing and replacing the Association Property for the benefit of the Lot Owners or of the Common Property, including without limitation, grounds maintenance, landscaping, tree cutting and trimming, maintenance of irrigation system, painting and maintenance of building exteriors, roof repairs and replacement, maintenance and service of amenities, maintenance of underground utilities and services, street maintenance and all other repair and replacement of the Common Property.

1.9 "Common Property" shall mean all real and personal property owned by the Association for the common use and enjoyment of the Members, including the Common Area, Golf Villa Drive, all underground utilities (sanitary sewer, water service, re-use irrigation water, and security, telephone, electric and cable television systems), materials and equipment owned by the Association and not the utility provider, curbing, all driveways, street lights, fire hydrants, storm water management system, landscaping plants, irrigation system equipment and materials, parking areas, paths and walkways and all wooded and natural open areas and all improvements including the unheated pool, sun deck, cabana; and, all personal property owned and used by the Association, including patio furniture, cabana furniture and related equipment; and,

1.10 "Declaration" means this instrument and any and all supplements or amendments hereto which shall be recorded in the Public Records of Volusia County, in the State of Florida.

1.11 "Documents" shall mean this Declaration, the Articles of Incorporation, the Rules and Regulations and the Bylaws of the Association.

1.12 "Dwelling" means any single family residential structure intended for exclusive ownership constructed on a Lot which is subject to fee simple form of ownership and possession.

1.13 "Mortgagee" means any lending institution having a first mortgage lien upon a Lot and appurtenant Common Property interest including a commercial bank, federal or state savings and loan or building and loan association, real estate investment trust, mortgage banking company, the Federal National Mortgage Association or similar entity authorized to do business in the State of Florida.

1.14 "Lot" shall mean a particularly described portion of the subdivision and in the aggregate, Lots 1 through 74, that are described and depicted on the Replat.

1.15 "Lot Owner" shall mean and refer to the record holder, whether one or more persons of an entity or entities, of the fee or undivided fee, simple interest title to any Lot and includes the Declarant. "Lot Owners" shall mean all the record Lot Owners collectively; and, the term "Owner Members", as used in Article 4 of the Articles of Incorporation, shall mean and refer to the same persons or entities.

1.16 "Member(s)" shall mean and refer to a Lot Owner(s) who may vote and participate in Association matters (or select one of their number) to vote and participate in Association matters. "Association Members" (as used in Article 4 of the Articles of Incorporation) and "Members" shall mean and refer to the same persons or entities.

1.17 "Property" shall mean the lands described in Article 2 below.

1.18 "Replat" means the map or plat of The Golf Villas at Cypress Head recorded in Map Book 44, page 185 of the Public Records of Volusia County, Florida.

1.19 "Special Assessment" means any assessment levied against Lot Owners, other than the Annual Assessment.

1.20 "Voting Interest" means the voting rights distributed to the Association Members pursuant to the Articles of Incorporation and Bylaws of the Association and this Declaration.

**ARTICLE 2**  
**LANDS SUBJECT TO THIS DECLARATION**

The real property, easements and other interests which are and shall be held, transferred, sold, conveyed, leased and occupied, subject to this Declaration, is located in Volusia County, Florida and is more particularly described as follows:

The Golf Villas at Cypress Head per map or plat thereof as recorded in Map Book 44, Page 185, being a replat of Lot 131, Cypress Head Phase 1-A, as recorded in Map Book 44, Page 36, all of the Public Records of Volusia County, Florida.

**ARTICLE 3**  
**THE ASSOCIATION**

3.1 The Association.

A true and complete copy of the Articles of Incorporation and Bylaws of Golf Villas Homeowners' Association, Inc. are attached hereto as Exhibits "A" and "B" and incorporated herein.

3.2 Purpose and Powers.

The purposes and powers of the Association are to promote the health, safety and welfare of the Members and to implement, administer, enforce and interpret the provisions of the Declaration, the Articles of Incorporation and the Bylaws; to establish, make, levy and collect annual operating and special assessments against each Member and against each Member's Lot; and, to establish, make and enforce reasonable rules and regulations governing the use and enjoyment of all Common Property.

Except as otherwise provided in this Declaration, the Articles of Incorporation or the Bylaws, the Association shall have all the powers and privileges granted to corporations not for profit under the laws of the State of Florida.

3.3 Membership.

Any person or entity who is now or becomes a Lot Owner shall automatically be a Member of the Association, provided, however, that any such person or entity who holds such interest as a security for the performance of an obligation shall not be a Member, unless such person or entity acquires such interest pursuant to foreclosure proceedings or other lawful means in lieu of foreclosure. At such time as a person or entity is no longer a Lot Owner, the membership in the Association of such person or entity shall automatically terminate.

3.4 Association Property Appurtenant To Lot.

A Member's interest in Association Property cannot be conveyed, assigned, hypothecated or otherwise transferred, except as an appurtenance to such Member's Lot and no Member shall bring or have the right to bring any action for partition or division.

ARTICLE 4  
PROTECTIVE COVENANTS AND USE RESTRICTIONS

4.1 Residential Use.

Each Lot shall be used for single family residential purposes only. No Lot shall be reduced in size by further subdivision or by conveying or leasing less than the entire Lot.

The entire Dwelling and Lot only may be leased for single family residential purposes. When a Dwelling is leased, then the tenant, to the exclusion of the Lot Owner, shall have the sole right to use and occupy the Lot, Dwelling and Common Property.

4.2 Commercial Use Prohibited:

No commercial or business activities may be conducted on the Property without the express written consent of the Association. Notwithstanding the foregoing, the construction, development and sale or rental of improved Lots or the construction and maintenance of Common Area services such as utilities, communications, security and the construction and maintenance of Common Area improvements shall be permitted.

4.3 Owner's and Developer's Right of Use.

Notwithstanding anything to the contrary contained in this Declaration and in recognition of the fact that Declarant will have a continuing and substantial interest in the development and administration of the Property, Declarant hereby reserves for itself and its successors and assigns the right to the use of all Common Property in conjunction with and as part of its program of sale, leasing, constructing and developing of and within The Golf Villas at Cypress Head without charge or cost to Declarant for such rights and privileges. For purposes of this Article, the term Declarant shall include any Mortgagee who has loaned money to Declarant or one of them to acquire or construct improvements upon the Property if such Mortgagee acquires title to the Property or any Lot as the result of the foreclosure of any mortgage or acquires title thereto by deed in lieu of foreclosure.



#### 4.4 Common Property.

The Common Property shall be used only for the purposes for which they are intended in the furnishing of services and facilities to the Lot Owners and the Association.

#### 4.5 Disputes as to Use.

In the event there is any dispute as to whether the use of the Property or any portion thereof complies with this Declaration, such dispute shall be referred to the Board and a determination rendered by the Board shall be final and binding; provided, however, any use by the Owner or Developer of the Property or any parts thereof, in accordance with the terms of this Declaration, shall be deemed in compliance with this Declaration.

#### 4.6 No Waiver of Use.

No Owner may exempt himself or his Lot from liability for his contribution toward Common Expenses or Annual or Special Assessments by waiver of the use of or enjoyment of any of the Common Property or by abandonment or by lease of the Lot.

#### 4.7 Nuisances.

Lot Owner shall not cause or permit any unreasonably loud or obnoxious noises, sounds or odors and shall not cause or permit nuisances of any kind that shall be the source of annoyance to other Lot Owners, or which interferes with the peaceful possession and proper use of the Property and to the general health, safety and welfare of the neighborhood.

#### 4.8 Illegal Activities.

No immoral, improper, illegal or offensive activities or use shall be made of any Lot or Association Property, and all valid laws, zoning ordinances and regulations of the governing authorities having jurisdiction therein, shall be complied with and observed.

#### 4.9 Clothes Drying.

Clotheslines and clothes drying activity shall be permitted only upon approval by the Board of Directors of the Association as to their placement and shielding and such activity shall be more particularly described in the Rules and Regulations.

#### 4.10 Exterior Equipment.

Only mechanical equipment such as a heat pump compressors or other heating and cooling equipment shall be permitted on any Lot outside the Dwelling so long as such equipment shall be shielded from public view by landscape plants or materials.

#### 4.11 Garbage, Trash and Refuse.

In order to preserve a sanitary, odorless and inoffensive condition of the Property, no garbage, trash, refuse, rubbish or other solid or liquid waste material shall be deposited, dumped or kept outside a Dwelling or upon the Property, except in designated closed containers, secured trash bags or re-cycling bins for collection and disposition as may be established by the City of Port Orange, from time to time.

#### 4.12 Antennae and Aerials.

As long as the Association maintains a "Bulk Cable Television Multiple-Unit Agreement", or substantially similar Cable TV contract, there shall be no radio or television antennas, satellite discs, towers or aerials erected upon a Dwelling or Association Property without the express written approval of the Association.

#### 4.13 Animals and Pets.

Household pets shall be permitted subject to the Rules and Regulations governing the number, type and size of permitted pets as may be established by the Board. No animal, livestock or poultry of any kind shall be raised, bred or kept for commercial purposes on any Lot or any portion of the Common Area.

#### 4.14 Additional Use Restrictions.

No improvement, addition, modification, structure or change of any kind, including, without limitation, any building, shed, carport, trailer, awning, wall, sign, fence, swimming pool, tennis court, walkway or screen enclosure, either temporary or permanent, shall be erected, installed, placed or maintained on any portion of a Lot, or on Common Areas, without the prior written approval of the Board.

#### 4.15 Agreement and Right to Access.

All Lot Owners shall permit the Board, its agents, subcontractors or employees, to enter upon any Lot or Common Area for the purpose of fulfilling its obligations, duties and responsibilities imposed by this Declaration, Articles of Incorporation or Bylaws of the Association, including, without limitation, maintaining the Common Areas; to determine, in case of emergency, the circumstances threatening persons or property therein; and to determine each Lot Owner's compliance with provisions of this Declaration and the Bylaws and Rules and Regulations of the Association. The Association shall have the further right to have its employees, agents and



subcontractors appointed by it, to enter upon any Lot and the Common Area at all reasonable times to do as is deemed reasonably necessary by the Board to enforce compliance with the provisions of the Documents

#### 4.16 Alteration to Landscaping, Drainage and Shrubbery:

The removal of sod and shrubbery, alteration of landscaping and modification of storm water management controls shall not be permitted, except for the acts and activities of Owner or Developer in the development of The Golf Villas at Cypress Head. No sod, topsoil, muck, trees or shrubbery shall be removed from the Property and no change in the condition of the soil or the level of the land of any portion of the Property shall be made which results in any permanent change in the flow or drainage of surface water of or within the Property without the prior written consent of the Board.

#### 4.17 Management of the Surface Water or Storm Water Management System.

The Board shall be responsible for the maintenance, operation and repair of the surface water or storm water management system meaning the exercise of practices which allow the system to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District.

#### 4.18 Repairs and Reconstruction of the Storm Water Management System.

Any repair or reconstruction of the surface water drainage or storm water management system shall be as originally permitted or, if modified, shall be approved by the St. Johns River Water Management District. Any amendment to this Declaration which alters the surface water or storm water management system beyond maintenance in its original condition, including the water management of the Common Areas, must have the prior approval of the St. Johns River Water Management District. 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 this Declaration of Protective Covenants and Restrictions which relate to the maintenance, operation and repair of the surface water or storm water management system.

#### 4.19 Termination

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or storm water management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., or any subsequent amendment thereto, and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

## ARTICLE 5 ASSESSMENTS

### 5.1 Assessments in General.

The Association is hereby granted the right, which shall be operative and binding upon each Lot Owner, to establish, make, levy and collect annual operating and special assessments against each Lot Owner and against each Lot except as provided by paragraph 5.7 below.

### 5.2 Uniform Assessments.

All annual operating assessments and any special assessments established, made, levied and collected against the Lot Owners and their respective Lots shall be identical. Operating assessments may be prepaid annually, otherwise such annual assessment shall be prorated on a monthly basis against each Lot commencing monthly in advance on the first day of each and every month following its purchase by an individual or entity other than Developer.

### 5.3 Budget.

The Board shall establish an annual budget and such budget shall project all operating expenses for the forthcoming year and such capital maintenance and replacement funds which are required to implement the purposes and powers of the Association.

### 5.4 Capital Replacements.

The Board of Directors, in establishing an annual budget, shall include a sum to be collected and maintained as a special fund for capital replacements; and, the amount collected and allocated to such special fund shall be maintained in a special account by the Association. Nothing contained herein shall limit the Association from applying any monies in such special fund account to meet other needs or requirements of the Association in implementing the purposes and powers of the Association.

### 5.5 Special Assessments.

In addition to annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part, the cost of any unanticipated and non-budgeted Common Expense.

### 5.6 Exclusive Use.

The assessments levied by the Association shall be used exclusively for the purpose of paying the cost of implementing the purposes and powers of the

Association, operating and maintaining Common Property, the funding of capital reserves and the private street maintenance fund and paying Common Expenses.

5.7 Effect on Declarant

Notwithstanding any provision contained in this Declaration to the contrary, for so long as Declarant, or their successors in interest, are the Owner or Owners of any Lot for the purposes of development or sale in the ordinary course of business, Declarant shall have no liability of any kind to the Association for the payment of annual or special assessments or Common Expense deficits or capital contributions of any kind or amounts.

ARTICLE 6  
LIEN RIGHTS AND OBLIGATIONS OF OWNERS

6.1 Personal Obligation.

Each Lot Owner, on the first day of the first month after acquiring their Lot, and by acceptance of such deed, covenants and agrees to pay the annual operating assessment and any special assessments to the Association and such assessments shall be fixed, established and collected from time to time, as hereinafter provided. Each such assessment, together with interest thereon and the cost of collection thereof, shall also be the personal obligation of the person or entity that was the Lot Owner on the payment due date.

6.2 Creation of and Claim of Lien.

If the assessments, as provided for herein, are not paid on the date when due, then such assessments shall become delinquent and, together with interest thereon and the cost of collection thereof, shall thereupon become a continuing lien on the Lot. The lien created pursuant to this Declaration shall be effective from and after the recording in the Public Records of Volusia County, Florida, of a "Claim of Lien" stating the description of the Lot encumbered by the lien, the name of the Owner of the Lot, the amounts due and the date when same became due. The lien shall continue in effect until all sums secured by the lien have been fully paid. The Claim of Lien may include assessments which are due and payable when the claim of lien is made and recorded, plus interest, collection costs, attorney's fees and advances to pay taxes and prior encumbrances and interest thereon, as provided herein. The Claim of Lien shall be signed and verified by the President or Vice President of the Association.

6.3 Action at Law or to Foreclose Lien.

The Association may bring an action at law against the Lot Owner(s) personally obligated to pay the same or to foreclose the lien against the Lot, as hereinafter provided, or both. There shall be added to the amount of such assessments, the costs of

preparing and filing the complaint in such action and in the event a judgment shall be obtained, such judgment shall include legal interest on the assessments and attorney's fees, together with the costs of the action, as provided herein. The lien herein established may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida.

#### 6.4 Satisfaction of Lien.

When full payment of all sums secured by such lien is made, the Claim of Lien shall be satisfied of record by the President or Vice President of the Association.

#### 6.5 Collection Enforcement.

Institution of an action at law to effect collection of the payment of any delinquent assessment shall not be deemed to be an election of remedies by the Association which will prevent its seeking enforcement of the collection of any unpaid sums by foreclosure; nor shall proceeding by foreclosure to effect such collection be deemed to be an election of remedies precluding the institution of an action at law to attempt to effect collection of any unpaid sum then remaining owed to the Association.

#### 6.6 Notice of Lien Rights.

All persons, firms, corporations or other business entities which shall acquire, by whatever means, any interest in the ownership of any Lot or who may be given or acquire a mortgage, lien or other encumbrance on a Lot, are hereby placed on notice of the lien rights granted to the Association under this Declaration and all of such persons, firms, corporations or other business entities shall acquire their rights, title and interest in and to such Lot, expressly subject to the lien rights provided herein.

#### 6.7 Liability After Sale

If a Lot Owner shall sell or transfer the Lot, such sale or transfer shall neither relieve such Lot or Lot Owner from liability for any unpaid assessments made and established prior to the date of sale whether due or thereafter becoming due, or from the lien of any such assessments.

#### 6.8 Penalties and Interest

If any assessment or assessments shall not be paid within thirty (30) days after the due date, then a late charge, as shall be determined and fixed by the Board of Directors, shall be added thereto and the delinquent assessments shall also bear interest from the date of delinquency, at a deficit rate equal to the maximum rate allowed by law, per annum as shall be determined by the Board, until paid.

6.9 Acceleration of Delinquent Installments

If a Lot Owner shall be in default in the payment of an installment for more than sixty (60) days, the Board may accelerate the remaining annual installments of the annual Assessment upon notice to the Lot Owner and the then unpaid balance of the Assessment shall come due ten (10) days after hand delivery of the notice to the Lot Owner or twenty (20) days after delivery of such notice to the Lot Owner by certified mail, return receipt requested.

6.10 Certificate of Payment Status

The Association, upon demand and receipt of payment of a reasonable charge, shall furnish a certificate signed by an officer or authorized agent of the Association setting forth whether the assessments on a specific Lot have been paid. Such certificate, duly signed, shall be binding on the Association as of the date of the certificate.

ARTICLE 7  
MAINTENANCE, REPAIRS AND REPLACEMENTS

7.1 Common Property Maintenance

The Association shall at all times maintain in good repair, operate, manage, insure and replace as often as necessary the Common Property,

7.2 Lot and Common Area Grounds Maintenance

The Association shall provide maintenance and repair of all portions of each Lot not occupied by a Dwelling or other building improvements and all Common Area grounds in the form of lawn mowing, trimming and landscape treatment including fertilization and replacement of sod, all portions of the irrigation systems, landscape plantings, trees, shrubs and ground cover with materials of equal quality. Each Owner shall be responsible for all other maintenance and repairs of the Lot grounds.

7.3 Dwelling Maintenance.

In addition to Lot and Common Area maintenance, the Association shall provide and effect repairs and maintenance of certain exterior portions of the Dwellings in order to preserve the character, appearance and quality of each Dwelling as originally constructed. Such maintenance shall include, but is not necessarily limited to:

7.3.1 the painting or re-painting of exterior walls and trim;

7.3.2 the repair, maintenance and replacement of exterior stucco and plaster;



7.3.3 the repair, maintenance and replacement of soffit and fascia material and trim;

7.3.4 the repair, maintenance and replacement of exterior lighting fixtures, exclusive of lamps and bulbs;

7.3.5 the repair, maintenance and replacement of roofs and related roofing materials.

All other exterior repairs, replacements and maintenance shall be the responsibility of and performed by each Lot Owner at his cost and expense.

#### 7.4 Common Area Improvements.

The Association shall, at all times, maintain in good repair, operate, manage, insure and replace as often as necessary, all Common Area improvements, including but not limited to, the cabana and swimming pool.

#### 7.5 Mechanical Maintenance.

Each Dwelling shall have a separate air conditioner-heat pump with an exterior compressor unit. All maintenance, repair or replacement necessary for the operation of the air conditioner and heating units, whether interior or exterior of a Dwelling, shall be the sole responsibility of each Lot Owner.

#### 7.6 Other Maintenance.

The Association may elect to assume other Lot or Common Area maintenance and repair responsibilities, and in such event, the Board shall notify the Lot Owners of the election to do so. The cost of such maintenance and repair shall be a Common Expense in the same manner as all other Common Expenses which shall be assumed uniformly as to all Lots.

#### 7.7 Damage by Negligence.

In the event any repair or replacement is required for any items associated either with a Dwelling or with Common Areas whereby repair or replacement is the result of negligence or the willful misconduct of an Owner, his lessees, guests or invitees, then, in that event, the Association shall choose to repair or replace such items but shall be entitled to collect the full costs of the repair or replacement from the Owner whose negligence or misconduct, resulted in the loss or damage.

#### 7.8 Party Wall Maintenance and Repair.

The improvements on the Lots shall consist of four or six Dwellings separated by three and five common or party walls, respectively, constructed on the dividing



common Lot line of the Dwellings (hereinafter "Walls"). The structural portions of the Walls shall be repaired, maintained and insured (as provided by paragraph 11.2) by the Lot Owner or Association as more particularly set forth in paragraph 11.4 below).

#### 7.9 Private Road Maintenance

The Association shall at all times maintain, repair and replace Golf Villa Drive, its street lighting, pavement and curbing, in a good, safe, functioning and attractive condition. No governmental agency, including the governments of Port Orange and Volusia County, shall be responsible for the maintenance, repair or improvement of this private street as shown on the Replat. The Association shall establish and maintain an adequate reserve fund, funded by a portion of the Annual Assessment, to accomplish the requirements of this paragraph.

### ARTICLE 8 ACCESS EASEMENTS

#### 8.1 Golf Villa Drive Easement.

Each Lot shall have access to Cypress Springs Parkway, a 60 foot public right-of-way as now laid out, over and across Golf Villa Drive, a 24 foot access easement or private street as shown and depicted on the Replat and being legally described on Exhibit "C" attached to this Declaration and incorporated herein.

#### 8.2 Access Easement From Lots to Golf Villa Drive.

An access easement appurtenant to each Lot, respectively, is hereby established, granted and located over and across that portion of the Common Area lying between the front lot line of the Lot and the nearest Golf Villa Drive right-of-way line and bounded on each side by a straight line extension of each Lot side line from its point intersection with the front Lot line to a point of intersection with the nearest right of way line of Golf Villa Drive.

### ARTICLE 9 OTHER EASEMENTS

#### 9.1 Easement for Use of Common Area

Except as otherwise noted, the Common Areas shall be declared to be subject to a perpetual non-exclusive easement in favor of all Lot Owners for the use of those Owners, their immediate families, guests, lessees, invitees and others similarly situated, for all proper and normal residential purposes, including ingress and egress and for the quiet enjoyment of such Owners.

## 9.2 Maintenance Easement.

There is hereby granted and created to the Association, its employees, subcontractors, agents and designees a non-exclusive perpetual easement over, through, across and under each Lot, Common Area and Property to permit the Association, its employees, subcontractors, agents and designees to maintain and replace, as necessary, the Common Areas and those portions of all Lots required to be maintained, replaced and repaired by the Association, as provided in this Declaration and this easement shall automatically be granted over and attached to any such Lot.

## 9.3 Right of Egress and Ingress for Services

There is also hereby granted and created a non-exclusive and perpetual right over and across the driveways, streets and easements as depicted on the recorded Replat of The Golf Villas at Cypress Head, to the benefit of persons and their vehicles for commercial delivery and services, police and law enforcement, fire protection services, United States Postal Service carriers, express delivery, scavenger and recycling services, utility employees, communication representatives, mortgage lien holders, contractors and sub-contractors authorized by the Association to serve the Community.

## 9.4 Lot Access Easement

Each Lot Owner shall have an access easement over and across the Common Area lying between the front Lot line and the 24 Foot Access and Utility Easement as located and depicted on the Replat of The Golf Villas at Cypress Head and such easement shall include the right to use and control the existing paved driveway connecting to and from such Lot and the improved curbing located and lying within the 24 Foot ingress and egress easement; aforesaid and such Lot and Access Easement shall not be partitioned in a transfer of title or action at law in a court having jurisdiction therein.

## 9.5 Encroachments

In the event that any Dwelling or appurtenance thereto, shall encroach upon the Common Areas or any adjoining Lot, for any reason, than an easement shall exist to the extent of such encroachment so long as the same shall exist.

## 9.6 Right to Grant Easements.

The Declarant reserves the right to grant such easements as may be required for access over Common Areas to and the furnishing of utility, communication and other services which may be necessary for development of the Property.

9.7 Limitation of Rights and Easements

The rights and easements of enjoyment created hereby shall be subject to the right of the Association to take such steps as may be necessary to protect the Common Areas against foreclosure.

9.8 Indemnity.

The Association shall have the duty to defend and shall indemnify the Owner of any Lot against any and all expenses, claims and liabilities, including attorney's fees incurred by or imposed upon them for injuries or damages sustained and arising out of the use of their Lot by the Association.

ARTICLE 10  
COVENANT AGAINST PARTITION AND TRANSFER OF RIGHTS

10.1 Restriction for Transfer or Partition of Membership Rights.

The membership rights of any Lot Owner in the Common Areas shall have no right at law or equity to seek partition or severance of such membership rights in the Common Area and there shall exist no right to transfer the membership rights in the Common Areas in any other manner than as an appurtenance to and in the same transaction with a transfer of title or lease agreement.

10.2 Membership by Separate Transfer.

Any conveyance or transfer of a Lot shall include the membership rights in the Common Areas appurtenant to that Lot, whether or not such membership rights shall have been described or referred to in the deed by which said Lot shall have been conveyed.

ARTICLE 11  
INSURANCE

11.1 Liability Insurance - Association Property.

The Board of Directors of the Association shall maintain public liability insurance covering the Association and Association Property against personal injury and property damage and the Members as their interests appear, in such indemnity and deductible amounts as the Board of Directors of the Association may determine from time to time to be reasonably necessary. Premiums for the payment of such insurance shall be paid by the Association, as a Common Expense.

## 11.2 Casualty Insurance - Association Property.

The Association shall obtain and maintain fire, windstorm and extended coverage insurance with a multiple perils endorsement, including vandalism and malicious mischief, on all Association Property for the interests and benefit of the Association in a company licensed to do business in Florida and acceptable to the Board of Directors, in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the Association and such premiums and other expenses shall be a Common Expense.

## 11.3 Loss Payable Provisions - Association

All policies purchased by the Association shall be for the benefit of the Members and all insurance proceeds payable on the account of loss or damage to Association Property shall be payable to the Association and shall be used in accordance with the terms hereof.

## 11.4 Casualty Insurance - Dwellings

11.4.1 Each Lot Owner shall obtain and maintain a policy insuring the Dwelling against loss by fire, windstorm and extended coverage (broad form) with a multiple perils endorsement, for 100% of repair or replacement cost of the Dwelling or, if such insurance product is not available in the marketplace, such other type policy, coverage and amounts as may be available to accomplish, as nearly as possible, the desired protection and purposes. It shall be the obligation of each Lot Owner to provide a true copy of such casualty policy (or Certificate of Insurance) and each annual or semi-annual renewal policy (or updated Certificate) to the Association evidencing compliance with this paragraph.

11.4.2 In the event a Lot Owner shall fail to timely comply with the requirements of paragraph 11.4, the Association shall be authorized and required to purchase such insurance coverages or those required coverages or amount not provided by the defaulting Lot Owner's policy, and the cost either paid or incurred by the Association and not paid by the Lot Owner within the time established by the Board of Directors shall constitute a Special Assessment lien against the defaulting Lot Owner and his Lot and may be collected as provided by Article 6 herein.

## 11.5 Loss Payable Provisions For Dwellings

Proceeds on account of loss or damage to a Dwelling shall be payable to the Lot Owner, the Association and the Lot Owner's mortgagees of record, and, in every event, shall be used only to repair, reconstruct or replace such Dwellings.

#### 11.6 Obligation to Repair or Reconstruct

In order to maintain and preserve the values of all Lots and the overall appearance of the Property and the Dwellings constructed on the Lots, it is essential that all damaged or partially or fully destroyed Dwellings be promptly and repaired, reconstructed or replaced. Accordingly, when loss or damage occurs either to a Dwelling or Dwellings or to the Common Property, it shall be obligatory upon the Lot Owner(s) to repair or reconstruct the Dwelling(s) and to promptly contract for the replacement, repair or reconstruction of such Dwelling(s). No first mortgagee of record or any other mortgagee shall have the right to require the application of insurance proceeds to the payment of its loan except as to any proceeds remaining after the repair or reconstruction. The Association shall have the right to require application of the insurance proceeds to payment of all repair or replacement costs and expenses in the event the Lot Owner(s) fails or refuses to comply with the requirements of this paragraph.

#### 11.7 Assessments For Repair and Reconstruction - Association Property

If the proceeds of insurance are not sufficient to defray the actual cost of repair or reconstruction of Common Property, a special assessment shall be made by the Board of Directors against all Lot Owners in sufficient amount to provide funds for the payment of such costs.

#### 11.8 Conformance With Plans and Specifications

Any repair or reconstruction of Common Property or of Dwellings must be substantially in accordance with the Plans, Description of Work and Specifications as originally permitted and with materials of equal or better value and of equal or similar characteristics as were used for the original building or as the building was last repaired or reconstructed.

#### 11.9 Association's Powers to Compromise Claim

The Association is hereby irrevocably appointed agent for each Lot Owner for the purpose of compromising and settling claims arising under insurance policies purchased by the Association incident to Association Property and to execute and deliver releases therefrom upon the payment of claims.

#### 11.10 Lot Owner's Additional Insurance

Nothing herein contained shall be construed to prohibit a Lot Owner from purchasing, at his own expense, additional homeowner's insurance coverages upon or applicable to the Dwelling or his personal property.



#### 11.11 Other Association Insurance

The Association is authorized to obtain such other insurance from time to time as the Board of Directors shall determine to be desirable or beneficial for the protection of the Members or for the preservation of the Property. Such policies may contain deductible clauses which the Board determines shall be within the financial capabilities of the Association. The premiums for such policies of insurance coverages shall be considered a Common Expense.

### ARTICLE 12 ENFORCEMENT

The Declarant, the Association, or any Lot Owner or Member shall have the right to enforce, by any proceeding at law or in equity, all restrictions, rules and regulations, conditions, covenants, reservations, liens and charge now or hereafter imposed or authorized by 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 this Declaration which relate to the maintenance, operation and repair of the Storm Water Management System. In addition, the City of Port Orange shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance and repair of the Private Street. Failure of any party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. All costs and expenses, including reasonable attorney's fees, incurred by any moving party in any action or legal proceeding which results in the enforcement of any of the provisions hereof, shall be paid by the party compelled to comply with such provisions.

### ARTICLE 13 AMENDMENT AND TERMINATION

#### 13.1 Amendment and Termination Procedure.

This Declaration may be amended at a duly constituted special meeting for such purpose or at an annual meeting of the Members by a vote of not less than two-thirds (2/3) percent of the aggregate votes of Lot Owners. Such Members may amend, modify or rescind such provisions of this Declaration as they deem necessary or desirable and shall be evidenced by a certificate executed by the President and the Secretary of the Association with the formality of a deed and recorded in the Public Records of Volusia County, Florida certifying to the adoption of the amendment, modification or rescission. Such certificate shall recite that the amendment was adopted at a meeting duly called, at which a quorum was present and that at least a minimum of those entitled to vote had voted for the adoption of such amendment or termination.



Notwithstanding anything herein to the contrary, there may be no amendment to the Articles of Incorporation, the Bylaws, and the Declaration of Covenants and Restrictions unless the Owner and Developer specifically consent in writing to such amendment or termination.

### 13.2 Amendment Restriction

The Members may amend or modify this Declaration as they deem necessary or desirable, provided, that any such amendment or modification shall not alter, vary or change the rights and benefits contained in the Master Declaration and so long as such modification or amendment does not substantially change the character, nature or general scheme of the Cypress Head Community.

### 13.3 Scrivener's Errors and Omissions

The Declarant reserves the right to unilaterally make any revision, without the meeting of the Association, to correct any Scrivener's error or omission in this Declaration or in any amendments or supplements hereto.

## ARTICLE 14 GENERAL CONDITIONS

### 14.1 Equitable Servitude.

The covenants, conditions, easements and restrictions of this Declaration shall constitute covenants running with the land and each shall constitute an equitable servitude upon the Lot Owner and the appurtenant undivided interest in the Common Property and upon the heirs, personal representatives, successors and assigns of each Lot Owner.

### 14.2 Compliance with Laws.

The Association shall take such action as it deems necessary or appropriate in order for the Property and the improvements thereon to be in compliance with all laws, statutes, ordinances and regulations of any governmental authority.

### 14.3 Duration.

This Declaration shall be binding and of full force and effect for a period of thirty (30) years from the date this Declaration is recorded in the Public Records of Volusia County, Florida, after which time this Declaration shall automatically be extended for successive twenty (20) year periods, unless an instrument sign by not less than two-thirds (2/3) percent of the then record Owners of the Lots is recorded containing an agreement of said Lot Owners with respect to the alteration, change, modification or termination, in whole or in part, of the provisions of this Declaration.

#### 14.4 Notices.

Any notices, demands, requests, consents or other communications required or permitted to be sent to any Member or Lot Owner under the provisions of this Declaration shall be deemed to be properly sent when mailed, postpaid to the last known address of the person or entity who appears as a Member or Lot Owner on the records of the Association at the time of such mailing.

#### 14.5 No Implied Waiver.

Failure of the Board, Lot Owner or Declarant to enforce any provision of the Declaration or other Documents for any period of time, shall in no event be deemed a waiver or estoppel by such parties or other persons or entities having an interest therein, of the right to object to same and to seek compliance therewith, in accordance with the provisions of the Documents.

#### 14.6 Secondary Mortgage Market.

The Developer intends that the provisions of this Declaration meet and be consistent with the Federal Home Loan Mortgage market requirements in effect on the date hereof. Unless at least two-thirds (2/3) percent of the first mortgagees (based upon one vote for each first mortgage owned) or Lot Owners have given their prior written approval, not to be reasonably withheld, no amendment of this Declaration shall be effective if such amendment would disqualify or preclude the purchase of first mortgages on the Federal Home Loan Mortgage Corporation secondary mortgage market.

#### 14.7 Master Declaration and Association.

In addition to the terms and conditions contained herein, all Lots shall be conveyed and held subject to the Master Declaration of Protective Covenants, Conditions and Restrictions for Cypress Head Planned Unit Development recorded in Official Record Book 3775, page 4472 of the Public Records of Volusia County, Florida and all amendments thereto (Master Declaration). Lot Owners and Developer or any successor Developer shall be required to comply with this Master Declaration, be a member of the Cypress Head Master Homeowners Association, Inc., and pay assessments thereto, as required by the Master Declaration.

#### 14.8 Severability.

Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any provisions which shall remain in full force and effect.

14.9 Title and Captions.

Article titles or other captions contained in this Declaration are inserted only as a matter of convenience and for reference purposes and in no way define, limit, extend or describe the scope of the Declaration or the intent of any provision hereof.

14.10 Person or Gender.

Whenever the singular number is used herein and when required by the context, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

14.11 Applicable Law.

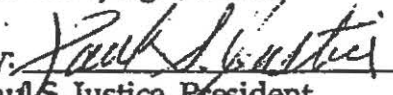
The provisions of this Declaration and any dispute arising hereunder shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals for this Declaration this 12th day of January, 1995.

Cypress Head Partners, Inc.

By:   
\_\_\_\_\_  
John A. Blondell, Vice President

Pioneer Heights, Inc.

By:   
\_\_\_\_\_  
Paul S. Justice, President

ACKNOWLEDGEMENTS

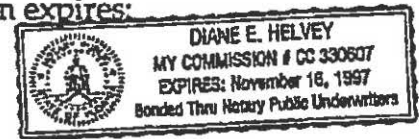
STATE OF FLORIDA )  
 )  
COUNTY OF VOLUSIA)

I HEREBY CERTIFY THAT, on this day before me, as a Notary Public duly authorized to take acknowledgments in the County of Volusia, State of Florida, personally appeared Paul S. Justice, as President of Pioneer Heights, Inc., a Florida corporation, personally known to me and who, after taking an oath, executed the foregoing Declaration of Protective Covenants, Restrictions and Easements for The Golf Villas at Cypress Head and, that the seal affixed thereto is the corporate seal of said corporation and, that it was affixed to said instrument by due and regular corporate authority and, that said instrument is the free act and deed of said corporation.

WITNESS MY HAND AND OFFICIAL SEAL, in the County of Volusia and in the State of Florida this 13th day of January 1995.

*[Handwritten Signature]*

Notary Signature  
My commission expires:



STATE OF FLORIDA )  
 )  
COUNTY OF VOLUSIA)

I HEREBY CERTIFY THAT, on this day before me, as a Notary Public duly authorized to take acknowledgments in the County of Volusia, Florida, personally appeared John A. Blondell, as Vice President of Cypress Head Partners, Inc., a Florida corporation, personally known to me and who, after taking an oath, executed the foregoing Declaration of Covenants and Restrictions of The Golf Villas at Cypress Head and, that the seal affixed thereto is the corporate seal of said corporation and, that it was affixed to said instrument by due and regular corporate authority and, that said instrument is the free act and deed of said corporation.

WITNESS MY HAND AND OFFICIAL SEAL, in the County of Volusia and in the State of Florida this 13th day of January 1995.

*[Handwritten Signature]*

Notary Signature *Gay E. Rickmyre*  
Notary Public, State of Florida  
CC 46783



GAY E. RICKMYRE  
MY COMMISSION EXPIRES  
July 8, 1995  
BONDED THRU TROY FARM INSURANCE, INC.