

This Instrument Was Prepared By:

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3030 Hartley Road, Suite 200

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O.R. 886 PG 1095

DECLARATION OF RESTRICTIONS  
CUNNINGHAM CREEK UNIT IV

91 5311

WHEREAS, the undersigned ("Grantor") is the owner of certain property (the "Property") which Grantor intends to plat as Cunningham Creek Unit IV, more particularly described in Exhibit "A" hereto; and

WHEREAS, Grantor has established a general plan for the improvement and development of the Property, which general plan is and will be for the benefit of present and future owners of all or any part of the Property, and shall inure to the benefit of and run with each and every part of the Property;

NOW THEREFORE, in consideration of the premises and in order to accomplish the purposes herein set forth, Grantor does hereby create, declare, and establish the following restrictive covenants, reservations, and requirements (hereinafter referred to as the "Covenants" or a "Covenant") as to the Property:

I. The Property:

The Property may be referred to as "Cunningham Creek Unit IV" and lots or tracts thereof (whether described by lot number or metes and bounds) may sometimes hereinafter be referred to as the "Lots" or a "Lot".

II. Purpose - Binding Effect:

(a) The purpose of the Covenants is to insure use of the Property for attractive residential purposes only, to prevent nuisances, to maintain the attractive and desirable character of the Property and to secure for the present and future owners of all of the Lots, their respective heirs, administrators, executors, personal representatives, successors and assigns, the full benefit and enjoyment of their respective properties with no greater restriction on the free use of their land as is necessary to insure the same advantages to all of the others.

(b) Each grantee of any part of the Property and all subsequent purchasers will, by accepting any conveyance, accept same subject to the Covenants. All of the Covenants are and shall be construed as running with the land and shall be binding upon and inure to the benefit of all persons at any time having interest in the Property or any Lot.

III. Duration of the Covenants:

The Covenants shall continue and remain in full force and effect until January 2, 2010, on which date the Covenants shall terminate and be of no further legal or equitable effect. PROVIDED, HOWEVER, that the Covenants shall be automatically extended for a period of ten years and thereafter for successive ten-year periods unless prior to the end of one of such extension periods (or prior to January 2, 2010) the owners of a majority of the Lots shall by written instrument duly recorded declare a termination of the same.

IV. Application of Declaration to Purchasers at Foreclosure:

Should any mortgage...

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portion thereof in connection with the sale of Lots or residences located therein.

(i) Lots shall be used only for residential purposes and no manufacturing or commercial enterprise or any activity for profit shall be maintained on or in any connection with any Lot. No trees or other flora shall be grown on or removed from any Lot for commercial purposes. The operation of any quarry, mine, strip mine, or similar activity such as exploration for or removal of natural resources shall not be permitted, except that property owners shall have the right to establish and maintain a water well for personal use.

(j) No lot shall be used for any purpose or maintained in a manner that, as a matter of common experience, tends to create or constitute a private or public nuisance. No rubbish or trash shall be allowed to accumulate on any Lot. Lots shall be maintained in a mowed and neatly maintained condition at all times. Structures on a Lot shall not be allowed to fall into disrepair and will be reasonably maintained.

(k) No temporary residence or temporary out-building shall be placed on any Lot and no mobile home, automobile house trailer, trailer coach, movable house, modular home, recreational vehicle or other like structure designed to be moved and occupied after movement with only minor unpacking and/or assembly or not needing a foundation, or movable without use of regular house-moving equipment, will be placed on any Lot whether for use as a dwelling house or any out-building.

(l) No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(m) No vehicles except passenger automobiles in running order (including but not limited to boats, boat trailers, travel trailers, trucks, camp trailers, motor homes and mobile homes) or any similar property may be kept on any street or stored on any Lot except within a garage or behind the front line of the residence structure and shielded from view from the street.

(n) All garbage and trash must be stored in closed containers and until placed for pickup shall be kept in such location so as to be hidden from view.

(o) There shall be no outside storage of materials prior to the construction of a dwelling on any Lot. No out-buildings shall be erected prior to commencement of the construction of a dwelling.

(p) All propane tanks shall be buried or enclosed so as not to be visible from the street.

(q) All roads, driveways, and similar connections to the street shall be asphalt, concrete, or a smooth hard surface paving material similar thereto for at least twenty (20) feet from the point of access to the street. All such connections shall provide for proper grading and drainage to insure that no damage is done to, nor hazard created to the road or to vehicles or to individuals utilizing the road. Said connections shall at all times, for the required twenty (20) feet, be maintained by the owner in a safe condition.

(c) shall be constructed of wrought iron posts or similar appearing material unless prior written approval is obtained from Grantor to use another material for construction;

(d) as to design, shall be approved in advance by Grantor;

(e) shall not be placed any closer to the property line bordering the street than the front line of the residence.

XI. Amendments to Declaration:

Any provision of this Declaration (except XVI.(d)v.) may be amended, modified, rescinded, or revoked, and amendments, modifications, recissions, or revocations may be made at any time or from time to time but only by written instrument duly recorded and signed by the owners of a majority of the Lots.

Any amendment to the Covenants and Restrictions which alter the surface water or storm water management system beyond maintenance in its original condition, including the water management portions of the common areas, must have prior approval of the St. Johns River Water Management District.

XII. Enforcement of Declaration:

(a) It is understood and agreed that the Covenants attach to and run with the Property, and it shall be lawful not only for the Grantor, its successors and assigns, but also for the present or future owner or owners of any Lot or Lots, their respective heirs, administrators, executors, personal representatives, successors, and assigns to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate any of the covenants excepting only that no right whatsoever shall be construed to the benefit of any party to compel action or inaction by Grantor hereunder.

(b) No delay or omission on the part of any person entitled to enforce the Covenants in exercising any rights, power or remedy available to them shall be construed as a waiver of such right or acquiescence in breach of any provisions of this Declaration. No claim for relief and no right of action shall accrue in favor of any person against any other person entitled to enforce the Covenants for or on account of failure of the latter to bring any action on account of any breach of the Covenants or for the imposition of any provision in this Declaration which may be held unenforceable.

(c) Notwithstanding anything herein to the contrary, Grantor shall have the right to waive deviations from these Covenants which are deemed, in its sole judgment, as minor deviations.

(d) 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 surface water or storm water management system.

XIII. Effect of Partial Invalidity of Indenture:

(a) In the event any provision of this Declaration shall be declared invalid...

obligation, all such persons shall be Members. The vote for each Lot shall be exercised as they, among themselves, determine, by written designation to the Association, but in no event shall any Lot carry more than one appurtenant right to vote. The vote appurtenant to any Lot shall be suspended if and for so long as more than one Member holding an interest in that Lot lawfully seeks to exercise it.

ii. Class B. The Grantor shall be the Class B Member entitled to four (4) votes for each Lot owned by it as long as Grantor remains a Class B Member. The Class B membership shall cease ninety (90) days after the Grantor has conveyed sixty (60) percent of the Lots included in the Property, after which Grantor shall become a Class A member.

(d) Board of Directors. The term "Board of Directors" as used herein and in the Articles of Incorporation and Bylaws of the Association shall mean the Board of Directors of the Association.

XVI. Duties and Powers of the Homeowners' Association:

(a) Duties and Powers. The duties and powers of the Homeowners' Association ("Association") shall be those provided for by law and set forth in this Declaration, the Association's Bylaws and Articles of Incorporation, together with those duties and powers that may be reasonably implied to effect the purposes of the Association. Such duties and powers shall include but not be limited to maintaining the roads and swales within the Property (to the extent they are not maintained by St. Johns County) maintaining the lake banks and operating, maintaining, and repairing of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) shall mean the exercise of practices which allow the systems 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. The Association shall be responsible for its maintenance and operation. Any repair or reconstruction of the surface water or storm water management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. "Surface water or storm water management system" means a system which is designed to be 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 discharge from the system as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C. The Association may also take such measures and perform such services that in the judgment of the Board of Directors are necessary or desirable to perform such duties, to eliminate fire, health, or safety hazards, and to provide such other services or facilities as may be of general benefit to the Members ("Members") of the Association and the Property.

(b) Exterior Maintenance. Except as provided for herein, the Association is not responsible for any exterior maintenance of houses, including but not limited to glass surfaces on doors, screens and screen doors, exterior door and window fixtures, terraces, patio and deck improvements or roofs.

(c) Grantor

ii. Owner's Obligations. Each Owner, by acquisition of an interest in a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosures, by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with such lien. No Owner may waive or otherwise escape liability for the assessments herein provided by abandonment of the Lot.

iii. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be inferior and subordinate to the lien of a Mortgage held by a Mortgagee now or hereafter placed on any Lot subject to assessment so long as such mortgage lien is recorded prior to any claim of lien recorded by the Association. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceedings in lien thereof, however, shall terminate the lien of such assessments as to payments that become due prior to such sale or transfer.

iv. Certificate of Payment. The Treasurer of the Association, upon demand of any Owner liable for assessments, shall furnish to that Owner a certificate in writing signed by such Treasurer setting forth whether such assessments have been paid.

v. Lots Owned by Grantor. Notwithstanding anything contained herein to the contrary, any Lot owned by Grantor shall not be subject to assessment by the Association or any lien created by this Declaration.

IN WITNESS WHEREOF, Thomas C. Turner, as General Partner of Fruit Cove, Ltd., has executed this Indenture as of the 26th day of February, 1991.

Signed, sealed, and delivered in the presence of:

FRUIT COVE, LTD.

By: Brookwood Properties, Inc.  
General Partner

Linda M. Gray  
Kelley Cewade

By: Thomas C. Turner  
Thomas C. Turner,  
Vice President

STATE OF FLORIDA  
COUNTY OF DUVAL

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared Thomas C. Turner, to me well known to be the Vice President of Brookwood Properties, Inc., the General Partner of Fruit Cove, Ltd., in whose name the foregoing was executed.