

Instrument No. 1-2-1988  
THOMAS C. TURNER  
TURNER, FORD & BUCKINGHAM, P.A.  
Attorneys at Law  
1904 Gulf Life Tower  
Jacksonville, Florida 32207

DECLARATION OF RESTRICTIONS  
CUNNINGHAM CREEK UNIT III

ca

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WHEREAS, the undersigned ("Grantor") is the owner of certain property (the "Property") which Grantor intends to plat as Cunningham Creek Unit III, 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 III" 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, 2008, 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, 2008) 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, deed of trust, or other lien, consensual or nonconsensual, be foreclosed on the Property, or any Lot, the title acquired in connection with such foreclosure shall be subject to and bound by this Declaration.

V. Required Prior Approvals:

(a) Prior to January 2, 1998, no structure shall be erected, placed, or altered on any Lot until the construction plans and

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specifications and a plan showing the location of such structures have been approved by Grantor, who may consider, among other factors, the quality of workmanship and materials, harmony of exterior design with existing structures and the Property, location with respect to topography, and finish grade elevation.

(b) Prior to January 2, 1998, no living tree having a diameter greater than eight (8) inches at a height of five (5) feet above ground level may be cut on the Property without prior written consent of the Grantor.

(c) Notwithstanding the foregoing, Grantor reserves the unilateral right in its sole discretion to waive or terminate its right to the above described prior approvals, or any of them, by written instrument duly signed and recorded by Grantor.

#### VI. General Residence and Structure Restrictions:

(a) No structures whatsoever except no more than one private dwelling house (with necessary out-buildings) including garages, boat houses, or animal enclosures), shall be erected, placed or permitted on any Lot or any part thereof. Each dwelling house shall be used as a private residence only (although not necessarily a primary residence). Any garage shall be for not less than two (2) cars nor more than three (3) cars, and may also include a servant's or guest's or storage room or tool room as part of the garage structure. All garages must open toward the side or rear of the residence.

(b) No dwelling house placed on any Lot shall have a heated and air conditioned enclosed living area (exclusive of screened porches, storage rooms, and garages) of less than 1,800 square feet. No residence or other permitted structure shall be constructed by the use of exposed concrete block, excluding foundations. No metal roofs shall be permitted on any structure.

(c) When the construction of any structure is once begun, work thereof shall be prosecuted diligently and continuously until the full completion thereof. The main residence and all connected structures must be completed within nine (9) months after the start of construction, unless completion is rendered impossible as the result of strikes, fires, national emergencies, or natural calamities.

(d) Window air conditioners may not be installed or maintained on the exterior of any residence, and may not be installed on any other structure unless both not visible from the street and also facing a rear lot line.

(e) Swimming pools, if any, may not be located between the street and the main dwelling.

(f) No clothes or laundry shall be hung on clothes lines erected unless both not visible from the street and also facing a rear lot line.

(g) No structure, except as permitted hereinbelow for fences and/or docks, shall be placed within ten (10) feet of any side or rear lot line, or within forty (40) feet of any front lot line.

(h) Except in connection with the sale of a Lot (and the improvements thereto, if any), no signs of any kind shall be displayed to the public view on any Lot. Notwithstanding the foregoing, however, one small sign may be used to denote the name of the Lot owner and/or resident, provided such sign shall not exceed one hundred fifty (150) square inches in size. Nothing herein, however, shall be construed to restrict in any manner the Grantor from placing signs and advertising on the Property or any

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 within one hundred fifty (150) feet of the street. 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.

(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.

(r) All buildings within the Property shall connect to such central water and sewer utilities systems as may hereafter become available, within ninety (90) days after such utilities become available. Until such central water or sewer utilities systems or both, become available, the owners of the Lots shall maintain individual water supply and sewage disposal systems within

the respective Lots sufficient to serve their individual needs, in accordance with the requirements of St. Johns County and the State of Florida. Should a central water supply system become available, no individual water well shall be permitted within the Property except for nondomestic use such as irrigation and swimming pools, subject to the applicable governmental regulations. In addition to those easements shown in the recorded plat of the Property, Grantor hereby reserves perpetual, non-exclusive, assignable easement and rights-of-way for the construction, maintenance, and operation of utilities and drainage lines, whether public, quasi-public, or private. Such easements and rights-of-way shall be located within ten (10) feet of the front (street) line of each Lot, and within five (5) feet of all side and rear Lot lines. To the extent such easements overlap or conflict with those shown on the recorded plat of the Property, the easement which is greater in size shall be applicable.

(s) No owner or occupant of any Lot abutting on a retention area, drainage area or jurisdictional wetland shall dredge, fill, discharge into or otherwise impair or impact such retention area, drainage area or jurisdictional wetland.

VII. Animals, Birds, Livestock, and Pets:

No livestock may be maintained on any Lot, except that up to no more than four (4) pets (including dogs, cats, and/or other small animals not exceeding one hundred (100) pounds in weight) may be permitted on any Lot, provided that a residence on such Lot is complete and occupied and further provided that such animals shall be controlled on such Lot by a method commonly used for that species.

VIII. Further Subdivision:

Without Grantor's prior written consent, no Lot will be sold, subdivided, partitioned or in any way disposed of in a parcel or parcels smaller than that originally shown in the recorded plat of the Property.

IX. Fences, Hedges, and Docks:

Fences and hedges may be placed up to the side or rear lot lines of any Lot, but no closer to the property line bordering the street than the front line of the residence. All fences and posts shall be of all wood construction unless prior written approval is obtained from Grantor to use another material for construction. No fences shall exceed six (6) feet in height.

X. Amendments to Declaration:

Any provision of this Declaration may be amended, modified, rescinded, or revoked, and amendments, modifications, rescissions, 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.

XI. 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 under Section V hereinabove captioned Required Prior Approvals.

(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.

#### XII. Effect of Partial Invalidity of Indenture:

(a) In the event any provision of this Declaration shall be declared invalid by a court of competent jurisdiction, such declaration shall not in any manner affect, modify, or nullify any of the other provisions of this Declaration, and such other provisions shall continue unimpaired, in full force and effect.

(b) In the event any provision of this Declaration is declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the provisions shall be effective, then, and in such event, the relevant provision shall be reduced to a period of time which shall not violate the laws of the State of Florida.

(c) This Declaration or any part thereof notwithstanding, the Property shall be subject to any and all rights and privileges which any governmental authority may have acquired through dedication or the filing or recording of maps or plats of any part of the Property. This Declaration or any part thereof in conflict with any present or future ordinance, law, regulation, or statute of the State of Florida, the County of St. Johns, or any governmental subdivision within the jurisdiction of which all or any part of the Property is now or may hereafter be located, is or will be invalid to the extent of such conflict.

#### XIII. Successors of Grantors:

(a) The Grantor shall have the sole and exclusive right from time to time to transfer, assign to, and withdraw from such person or entity as it shall select, any or all of the rights, powers, and privileges given to or reserved by the Grantor by any part of the Covenants contained in this Declaration.

(b) The Grantor may (but need not) establish one or more corporations or other entities in which each owner of any part of the Property shall be a member. Any such entity may (but need not) be granted part or all of the authorities granted or reserved under this Declaration as well as any other instruments.

(c) To exercise any of the foregoing options reserved to the Grantor under the provisions of this Section XVII, the Grantor shall record an instrument in the public records of St. Johns County, Florida, referring to this Section XVII and specifying in reasonable detail the particulars of the action taken by the Grantor hereunder.

(d) If at any time hereafter there shall be no person or entity entitled to exercise the rights, powers, and privileges given or reserved by the Grantor under the provisions hereof, same shall be vested in and exercised by a committee of five (5) persons to be selected by the owners of a majority of the Lots; provided, however, that nothing herein contained shall be construed to confer

any rights, powers, or privileges upon such a committee except in the event described above.

XIV. Homeowners' Association:

(a) Owners. A Lot may be owned by one or more natural persons or an entity other than a natural person, so long as such entity is wholly owned by one natural person, a married couple or two persons of the same family; provided, however, that a Lot may be owned by a corporation or partnership that is in the business of building homes for resale and purchases the Lot with such intent. The term "Owner" or "Owners" as used in Section XIV - XVI of this Declaration shall not include Grantor.

(b) Members. Grantor and every Owner shall be a Member of the Cunningham Creek Unit III Homeowners' Association, a Florida not for profit corporation ("Association"). Membership shall be appurtenant to and may not be separated from title to any Lot except as provided herein.

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

i. Class A. Class A Members shall be Owners with the exception of the Grantor while the Grantor is a Class B Member. Class A Members shall be entitled to one vote for each Lot owned. If more than one person holds an interest in any Lot, other than as security for the performance of an 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 Master Plan.

(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.

XV. 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 within the Property (to the extent they are not maintained by St. Johns County) and operating and maintaining all improvements and facilities within the surface water management system as permitted by the St. Johns River Water Management District, including swales, lakes, ponds, watercourses, drainage ditches and drainage systems and may 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 that 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) Owner's Responsibility. To the extent that maintenance is not provided by the Association, each Owner shall keep all parts of that Owner's Lot in good order and repair and free of debris. If an Owner fails to maintain the exterior portions of that Owner's house and Lot and in a good and attractive manner, the Association, after written notice to the Owner and approval by a 2/3 vote of the Board of Directors, may enter upon such Lot to correct, repair, restore, paint, landscape and maintain any such part of the house and Lot. All costs related to such performance by the Association shall constitute an assessment against that Lot.

(d) Third Party Contracts. Subject to the approval of the Class B Member, if any, the Association may employ or contract with one or more third parties to perform all or any portion of the Association's management, maintenance and repair activities as the Board of Directors may choose. The Association shall be billed by those third parties and the associated costs shall be included within the general assessment or parcel assessment, as appropriate.

XVI. Covenants for Maintenance Assessments:

(a) Creation of Lien and Personal Obligations for Assessments. Each Owner of any Lot by acceptance of a deed or other transfer document therefor, whether or not such deed or transfer document so states, is deemed to covenant and agree to pay to the Association quarterly assessments or charges to meet the cost of the Association's carrying out its duties as herein provided. Quarterly assessments, together with interest, costs and reasonable attorney's fees shall be a charge on each Lot and shall be a continuing lien upon any Lot against which each such assessment is made and shall also be the personal obligation of the Owner of such Lot when any assessment falls due. No diminution or abatement of any assessment shall be allowed due to any alleged failure of the Association to perform a required function or any alleged negligent or wrongful acts of the Association or its officers, agents and employees. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless such successors expressly assume such obligation.

(b) Quarterly General Assessment. The quarterly assessments that the Association shall levy shall be used to perform the duties of the Association and promote the recreation, health, safety and welfare of the Property and Owners. The Board of Directors ("Board of Directors") of the Association shall by majority vote set the quarterly assessments at a level sufficient to perform the duties and meet the obligations of the Association. The Board of Directors may during any fiscal year increase the quarterly assessments to meet Association expenses and operating costs on a current basis. The Board of Directors shall set the date or dates that assessments shall come due, and shall have the option to declare due and payable in full the entire balance of a Lot's assessment upon default in the payment of one or more installments of that Lot's assessments.

(c) Commencement of General Assessments. The general assessments as herein provided shall commence as to each Lot on the day of the conveyance of the Lot subject to this Declaration to a non-Grantor Owner. The initial assessment on any Lot subject to that Lot is conveyed to the Owner. The first assessment year shall be adjusted according to the date of closing.

(d) Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate then permitted by law.

i. Lien. All assessments or other charges against any Lot pursuant to this Declaration, together with any interest and costs of collection (including reasonable attorney's fees, whether suit is filed or not), shall become a lien on such Lot. The Association may bring an action in law or equity against the Owner personally obligated to pay the same, foreclose the lien against the Lot, or both. Costs and reasonable attorney's fees incurred in any such action may be awarded to the prevailing party. The lien provided for in this section shall be in favor of the Association. The Association, acting on behalf of the Owners, may bid for an interest in any Lot foreclosed at any foreclosure sale of such Lot and hold, lease, mortgage and convey that Lot.

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 23<sup>rd</sup> day of February, 1988.

Signed, sealed, and delivered  
in the presence of:

FRUIT COVE, LTD.

Linda M. Clay

By: Thomas C. Turner

Thomas C. Turner  
General Partner

Kelley C. Wade

STATE OF FLORIDA

COUNTY OF DUVAL

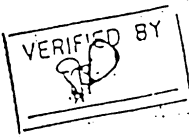
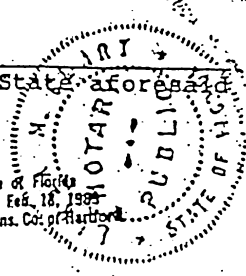
I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared Thomas C. Turner, to me well known to be the General Partner of Fruit Cove, Ltd., in whose name the foregoing instrument was executed, and that he acknowledged executing the same on behalf of Fruit Cove, Ltd., freely and voluntarily under authority duly vested in him by said Fruit Cove, Ltd.

WITNESS my hand and official seal in the State and County last aforesaid this 23<sup>RD</sup> day of FEBRUARY, 1988.

Linda M. Clay  
Notary Public, County and State aforesaid

My Commission expires:

Notary Public, State of Florida  
My Commission Expires Feb. 18, 1991  
Bonded thru National Fire Ins. Co. of Hartford



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PUBLIC RECORDS OF  
ST. JOHNS COUNTY, FLA.

1988 MAR -1 AM 9:27

Carl "Bud" Minkel  
CLERK OF CIRCUIT COURT.