

DECLARATION OF COVENANTS AND RESTRICTIONS OF POLEY CREEK

McNeill Development Company, a Florida Corporation, Declarant, is the owner in fee simple of a portion of that certain real property located in Polk County, Florida, known by official plat designation as POLEY CREEK, pursuant to a plat recorded in Plat Book 85, at pages 22 and 23, of the public records of Polk County, Florida and any additions thereto, less and except the following:

See Attached Sheet;

For the purpose of enhancing and protecting the value, attractiveness and desirability of the lots or tracts constituting such subdivision, Declarant hereby declares that all of the real property described above and each part thereof shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. The enforcement of these restrictions shall not give rise to a possibility of reverter or right of re-entry, but may result in claims for damages and enforcement by injunction.

The subdivision shall be occupied and used only as follows:

1. **SINGLE FAMILY RESIDENCES**: Each parcel shall be used exclusively for single family residential purposes, and no more than one dwelling may be located on any one parcel.
2. **ARCHITECTURAL REQUIREMENTS**: No dwelling shall be erected having a living area of less than two thousand two hundred (2,200) square feet inside living area of the building, unless a specific written waiver is given by Declarant or its successor and assigns. Porches, garages, guest houses and like structures, whether separate or attached to the main building upon any parcel, are excluded for the purposes of such footage. The enclosed living area shall be measured by outside dimensions. **Said porches, garages, utility and storage buildings or barns, must be roofed and sided in accordance with the design and materials of the main structure, whether attached or detached. Garage entrances must face away from the street or roadway.** Each dwelling shall have at least an enclosed two car garage with remote electric door closers. All driveways must be paved from the street to the garage.
3. **ARCHITECTURAL REVIEW**: Declarant shall have the right to review all plans for landscaping and for construction of residences and other structures within the subdivision **and to reject plans not in keeping with the general character of the subdivision. One of the factors to be considered shall be the proximity of recreation facilities such as swimming pools and basketball, tennis or racquetball courts to lot lines. Declarant shall review such plans in good faith and shall not unreasonably withhold approval.** Plans which are not rejected within ten (10) days of delivery to Declarant shall be deemed approved. Where concrete block construction is to be utilized there shall be no block left open to view, whether painted or unpainted, unless prior written approval is

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given by Declarant. It is the intention of Declarant that all concrete block construction is to be covered or faced with brick, stucco or other suitable veneer covering. All dwellings shall face the street frontage, and all lots except 4, 5, 6, 7, & 8, which are provided for below, shall have a minimum front yard setback of at least fifty (50) feet from the property lines abutting either public right-of-way. Side yard setbacks shall be a minimum of twenty-five (25) feet from the property line. Rear yard setbacks shall be a minimum of thirty (30) feet from the rear property line. Lots 4, 5, 6, 7, & 8, shall have a minimum front yard setback of thirty (30) feet from the property lines abutting either public right-of-way. All other setbacks as to these lots, shall be as heretofore provided for. No fence, wall, hedge, or similar structure, shall be constructed to a height in excess of three (3) feet between the front of the residence and the roadway or on the side of the residence closer to the front property line than the residence itself. Chainlink and barbed wire fences shall be permissible as long as they begin no further than the front of the residence allowing fencing of side and rear yards. All other fences shall be of masonry, wood or substitute material approved by the Declarant.

No owner shall make any structural alteration or undertake any exterior alteration or addition to his residence which would substantially alter the exterior appearance thereof prior to the sale of all lots by Declarant without the prior written approval of the plans and specifications therefore by the Declarant.

4. **UTILITY WIRING AND TV ANTENNAE:** All public or private transmission and service wiring for electrical, gas, telephone and cable television communication services and service lines pertaining thereto must be installed and buried underground where permitted in accordance with applicable codes that may be imposed or imposed by any public or private electrical, gas, telephone or cable television communication service servicing subject property. A satellite TV reception dish shall be permitted if it is not visible from the roadway.
5. **ANIMALS:** No animals of any kind shall be raised, bred or kept on any parcel, except household pets such as cats and dogs which may be kept provided they are not kept, bred or maintained for any commercial purposes and provided proper restraint and control are used in the keeping of them and they are not permitted to trespass on any other lot than that belonging to the owner of said pet. However, on Lots 1 through 22 only, horses (no cattle) will be permitted.
6. **TEMPORARY RESIDENCES PROHIBITED:** No mobile home or house trailer shall be permitted on said property at any time. No garage, camper, motor home, or out-building shall be used as a residence, even temporarily.
7. **NOXIOUS OR HAZARDOUS ACTIVITIES:** No trade or noxious activity of any sort shall be carried out upon any parcel, nor shall anything be done or kept thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any use be made of this property, that will in any way be a hazard to, injure or lower the value of any adjoining property or any remaining property as a whole.
8. **LANDSCAPING:** Each lot owner shall provide and maintain landscaping, lawn and shrubbery upon his premises in keeping with architecture of his residence. Prior to occupancy all front yards shall be equipped with an underground sprinkling system. Front yards as used herein shall mean that portion of the building lot between the front of the dwelling and the street for the entire width of said lot, except driveways and walks. All portions of the building lot which are not improved shall be either seeded, sprigged or

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sodded for the purpose of developing a suitable lawn. Declarant shall have no responsibility for maintenance or landscaping on lots, common areas, streets, drainage swales and easements, or retention areas.

9. **LANDSCAPE MAINTENANCE**: Except during the period of construction of improvements upon a lot, each owner shall be responsible for the care and maintenance thereof and shall keep the same clean and neat. Grass, shrubbery and vegetation shall be regularly mowed and trimmed. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of the premises and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain anywhere thereon; provided that after proper notice, if such condition is not corrected, Declarant shall have the right to enter upon the premises and make such correction at the expense of the owner.
10. **SIGNS**: No sign shall be displayed to public view on a lot or any common area or roadway without the prior written consent of the Declarant except customary name and address signs. Lawn signs advertising a property for sale shall be permitted.
11. **TRASH**: No trash, garbage, construction debris or other waste material shall be kept or permitted on any lot or on any common area except in sanitary containers located in appropriate areas concealed from public view.
12. **DEVELOPMENT**: Declarant shall be permitted to undertake the work of developing the lots included within the subdivision. In order that such work may be completed and the subdivision be established as a residential community, nothing in this declaration shall be understood or construed to:
 - 12.1 Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors from doing on any part or parts of the subdivision owned by Declarant or whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;
 - 12.2 Prevent Declarant from constructing and maintaining an any part or parts of the property owned by Declarant, such structures as may be reasonably necessary for the completion of such work, and the disposition of lots;
 - 12.3 Prevent Declarant from conducting on any part or parts of the subdivision property owned by Declarant, the business of completing such work, of establishing the subdivision as a residential community, and of disposing of lots.
13. **MAINTENANCE**: Each owner shall, at his sole cost and expense, repair and maintain his residence and landscaping in a condition comparable to the condition of such residences at the time of its initial construction, excepting only normal wear and tear.
14. **RECONSTRUCTION**: If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the owner thereof, with all reasonable diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within six (6) months after the damage occurs, unless prevented by causes beyond the control of the owner or owners. In lieu of the above, owner may elect to demolish the remainder of the structure and clear the site of improvements and debris.
15. **VEHICLE STORAGE**: No owner shall park, store, or keep any truck, camper, boat, recreational vehicle, trailer, or any vehicle other than private passenger vehicle where visible from roadway. No owner shall repair or restore any motor vehicle, boat, trailer, or

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other vehicle on any unenclosed portion of any lot, except temporarily for emergency repairs.

16. **VIEW BLOCKAGE**: Air conditioning and heating facilities shall be so located and landscaped as to not be visible from the front of the property. Exterior clothes lines are permitted if they are not visible from the roadway.
17. **ENFORCEMENT**: Declarant, its successors and assigns, or any lot owner shall have the right to enforce all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of any right to do so thereafter.
18. **HOMEOWNERS ASSOCIATION**: Declarant has incorporated Poley Creek Community Association, Inc., a Florida Corporation not for profit, known as the "Association". "Members" thereof shall initially mean the incorporator thereof until control of the Association has been turned over to the lot owners as provided herein and thereafter shall mean every person who is a lot owner. The members consisting of lot owners shall take control of the Association from Declarant five years from the date of incorporation, or when the Declarant relinquishes control or when the last lot is sold, whichever occurs first. It is the intent of this paragraph to form a contractual relationship between Declarant and the Members, under which the Declarant will provide the services contemplated herein without the need of accounting therefor, and thereafter the lot owner Members shall take control of the Association. After the period of initial control by Declarant, membership shall be appurtenant to ownership of a lot. Members shall be entitled to one vote for each lot owned.

18.1 Declarant hereby covenants for each lot, and each owner of a lot is hereby deemed to covenant by acceptance of his deed, to pay to the Association an annual assessment which shall be a charge on the land and a continuing lien on each lot against which an assessment is paid. Each such assessment, together with interest, costs, and attorney's fees shall also be the personal obligation of the owner of the lot as of the time the assessments become due and payable. Such obligation shall not pass to the successors in title unless expressly assumed by them.

18.2 The assessments shall be used exclusively to provide maintenance of the common areas including, but not limited to, signs, landscaping, drainage swales, drainage easements, and other common areas, however identified. The assessments shall not exceed One Hundred Dollars (\$100.00) annually during the time that Declarant is in control of the Association, and may be set thereafter by a two-thirds (2/3) vote of the members. Annual assessments shall be payable by each lot owner on January 1, next ensuing after the purchase of a lot, or such other time as the Association may require. Unpaid assessments shall bear interest at the legal rate for judgment of that amount if not paid within 30 days of due date, and may be foreclosed in the manner provided by law for mortgage foreclosures. Liens for assessments shall be subordinate to any first mortgage. After the lot owners have assumed control of the Association, special assessments for capital improvements may be levied by a majority vote of the lot owners.

18.3 Written notice of any meeting after control has been relinquished by Declarant, shall be sent to all members not less than ten (10) days nor more than thirty (30) days in advance of such meeting.

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19. **SEVERABILITY**: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
20. **AMENDMENTS**: Covenants and restrictions of this declaration may be amended by duly recording an instrument executed and acknowledged by the Association of not less than three-quarters (3/4) of the lot owners within the subdivision, with each lot entitled to cast one vote.
21. **SUBORDINATION**: No breach of any of the conditions herein contained, or reentry by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the subdivision or any lot therein; provided, however, that such conditions shall be binding on any owner whose title is acquired by foreclosure, or otherwise.
22. **DURATION**: All right to architectural control by Declarant shall terminate five years from the date of this Declaration unless earlier terminated by Declarant. The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by any or all of the lot owners or the Association for a period of twenty-one (21) years from the date hereof.
23. **AMENDMENTS**: The Declarant shall have the right to add further restrictions so long as they up-grade present restrictions. Any added restrictions or amendments shall not bind the purchaser of any lot whose deed of conveyance is recorded prior to the date of such additions or amendments are recorded. Declarant may modify this Declaration within one (1) year from this date provided that such modification applies to lots then still owned by Declarant and that said modification shall not be to the detriment of other lots in the subdivision.

Executed at Lakeland, Polk County, Florida this 29th day of February, 1988.

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MEMORANDUM OF SUPPLEMENTS AND AMENDMENTS TO THE DECLARATION OF COVENANTS AND RESTRICTIONS OF POLEY CREEK

This Memorandum of Supplements and Amendments to the Declaration of Covenants and Restrictions of Poley Creek is dated as of November 1, 1994 and evidences certain supplements and amendments to the Declaration of Covenants and Restrictions of Poley Creek, dated as of February 29, 1988 recorded in Official Records Book 2609, pages 0090 through 0099, in the public records of Polk County, Florida (the "Declaration") and pertaining to that certain real property located in Polk County, Florida known by official plat designation as Poley Creek, pursuant to a plat recorded in Plat Book 85, at pages 22 and 23, of the public records of Polk County, Florida (less and except the real property described in the attachment thereto), as approved by the requisite number of owners of lots in the Poley Creek subdivision and Members of Poley Creek Community Association, Inc., a Florida not-for-profit corporation (the "Association").

SECTION 1. Amendments to Declaration. By written consent in accordance with the provisions of Section 617.0701(4), Florida Statutes of not less than three-quarters of the owners of lots in the Poley Creek subdivision, finally received on October 10, 1994, the following amendments to the Declaration were approved and made:

(a) Subsection 18.2 of the Declaration is amended in its entirety to read as follows:

18.2 The assessments shall be used exclusively to provide maintenance of the common areas including, but not limited to, signs, landscaping, drainage swales, drainage easements, the surface water management system for the subdivision as permitted by the Southwest Florida Water Management District, and other common areas, however identified. The assessments shall not exceed One Hundred Dollars (\$100.00) annually during the time that Declarant is in control of the Association, and may be set thereafter by a two-thirds (2/3) vote of the Members. Annual assessments shall be payable by each lot owner on January 1, next ensuing after the purchase of a lot, or such other time as the Association may require. Unpaid assessments shall bear interest at the legal rate for judgment of that amount if not paid within 30 days of due date, and may be foreclosed in the manner provided by law for mortgage foreclosures. Liens for assessments shall be subordinate to any first mortgage. After the lot owners have assumed control of the Association, special assessments for capital improvements may be levied by a majority vote of the lot owners.

(b) Section 22 of the Declaration shall be amended in its entirety to read as follows:

22. **Duration.** The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by any or all of the lot owners or the Association for a period of twenty-five (25) years from the date hereof and after such initial term, the covenants and restrictions of this declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument varying or terminating the covenants and restrictions hereof shall be approved

by owners of not less than three-quarters (3/4) of the lots within the subdivision, with each lot entitled to cast one vote, and executed by the Association, and recorded among the public records of Polk County, Florida.

(c) The Declaration is amended to add a new Section 24 thereto reading as follows:

24. **Surface Water Management System.** Unless transferred to and accepted by an agency or unit of local government or another not-for-profit corporation or organization established for such purposes, the surface water management system for the subdivision as permitted by the Southwest Florida Water Management District shall constitute common property of the Association and shall be operated and maintained by the Association. Any amendment to this Declaration that affects the surface water management system for the subdivision, including any water management portion of the common area, must have the prior approval of the Southwest Florida Water Management District (or successor replacement governing agency). Approval may be evidenced by recording a letter, certificate, resolution, or other approval document along with the amendment.

SECTION 2. **Supplements to Declaration.** By written consent in accordance with the requirements of Section 617.0701, Florida Statutes, of not less than two-thirds (2/3rds) of the Members of the Association finally received on November 13, 1993, the following supplement to Section 18.2 of the Declaration was approved and adopted:

Pursuant to Section 18.2 of the Declaration, the regular annual assessment of the Association shall be such amount as established by the Board of Directors of the Association, not to exceed \$200.00 per year, unless a higher amount is approved as provided in the Declaration.

SECTION 3. **Written Consents.** The written consents referred to in Sections 1 and 2 above are held in the corporate records of the Association.

DATED as of this 1st day of November, 1994.

POLEY CREEK COMMUNITY ASSOCIATION INC.

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