

This instrument prepared by  
and return to:  
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DATE: 03/08/2010 09:03:08 AM  
MALCOLM THOMPSON, CLERK OF COURT  
OSCEOLA COUNTY  
RECORDING FEES 44.00

**FIFTH SUPPLEMENTAL DECLARATION OF  
HARMONY RESIDENTIAL PROPERTIES  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

THIS FIFTH SUPPLEMENTAL DECLARATION OF HARMONY RESIDENTIAL PROPERTIES DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Supplemental Declaration") is made this 1st day of MARCH, 2010, by Birchwood Acres Limited Partnership, LLLP, a Florida limited liability limited partnership ("Birchwood"), whose address is 3500 Harmony Square Drive West, Harmony, Florida 34773.

WITNESSETH:

WHEREAS, Birchwood is the "Developer" under that certain Harmony Residential Properties Declaration of Covenants, Conditions and Restrictions recorded in the Public Records of Osceola County, Florida, at Book 2125, Page 2093, as amended by that certain First Amendment of Harmony Residential Properties Declaration of Covenants, Conditions and Restrictions recorded in the Public Records of Osceola County, Florida, at Book 2241, Page 2904, and Second Amendment of Harmony Residential Properties Declaration of Covenants, Conditions and Restrictions recorded in the Public Records of Osceola County, Florida, at Book 3174, Page 2640, and as supplemented by that certain First Supplemental Declaration recorded in the Public Records of Osceola County, Florida, at Book 2629, Page 245, Second Supplemental Declaration recorded in the Public Records of Osceola County, Florida, at Book 2629, Page 249, Third Supplemental Declaration recorded Public Records of Osceola County, Florida, at Book 2763, Page 865, and Fourth Supplemental Declaration recorded Public Records of Osceola County, Florida, at Book 3316, Page 2499, and as further amended and supplemented from time-to-time (collectively, the "Declaration"); and

WHEREAS, pursuant to Section 9.1 of the Declaration, Expansion by Developer, Developer has the right to annex all or portions of the real property that is described in Exhibit "B" of the Declaration and subject such property to the Declaration; and

WHEREAS, the Declaration further provides that such annexation shall be accomplished by filing a Supplemental Declaration in the Official Records of Osceola County, Florida, describing the property to be annexed and specifically subjecting it to the terms of this

Declaration; that such Supplemental Declaration shall not require the consent of Owners, but shall require the consent of the owner of such property, if other than Developer, and that any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

NOW, THEREFORE, Developer, for itself and its successors and assigns, declares that the description of the Properties are and shall be amended as hereinafter set forth.

1. The above recitals are true and correct and incorporated herein by this reference.
2. Developer is the owner of the following property (“Neighborhoods D-2 & E”):

Neighborhoods D-2 & E according to the Plat of HARMONY NEIGHBORHOODS D-2 & E recorded in Plat Book 21, at Pages 36 through 40, of the Public Records of Osceola County, Florida.

3. Neighborhoods D-2 & E are hereby included in the Properties and shall be treated for all purposes under the Declaration as included in Exhibit “A” of the Declaration, and is hereby expressly subjected to the terms of the Declaration.

4. The terms and conditions of this Supplemental Declaration shall run with the land and the benefits and burdens hereof and of the Declaration shall bind and inure to the benefit of the owners of the Properties, and any owner or occupant of other lands governed by the Declaration, and their successors, tenants and assigns.

5. To the extent that any provisions of the Declaration are different from or in contravention of matters set forth in this Supplemental Declaration, this Supplemental Declaration shall control as indicating the intent of the Developer. All other terms of the Declaration shall remain in full force and effect. All capitalized terms that are not defined herein shall be given the meaning ascribed thereto in the Declaration.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow.]

IN WITNESS WHEREOF, Developer has caused these presents to be executed on the day and year indicated below.

Signed, sealed and delivered in the presence of:

“DEVELOPER”

Birchwood Acres Limited Partnership, LLLP, a Florida limited liability limited partnership

By: VII GP Harmony, L.L.C., a Delaware limited liability company, as its General Partner

[Signature]  
Signature of Witness  
Print Name: Amber Sambura

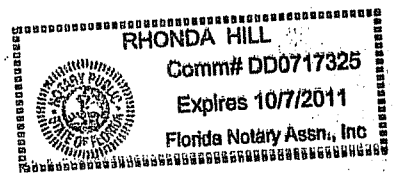
By: [Signature]  
Shad Tome  
As its: Vice President

[Signature]  
Signature of Witness  
Print Name Stephanie Pugliese

[CORPORATE SEAL]

STATE OF FLORIDA )  
 )ss.  
COUNTY OF OSCEOLA )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of March, 2010, by Shad Tome, as Vice President of VII GP Harmony L.L.C., a Delaware limited liability company, as the General Partner of Birchwood Acres Limited Partnership, LLLP, a Florida limited liability limited partnership, on behalf of the partnership. He is personally known to me or has produced \_\_\_\_\_ as identification.



(NOTARY SEAL)

[Signature]  
(Notary Signature)

Rhonda Hill  
(Notary Name Printed)  
NOTARY PUBLIC  
Commission No. DD0717325

## JOINDER AND CONSENT

For Ten Dollars (\$10.00) and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, EverBank, a Federal savings bank whose address is 8120 Nations Way, Suite 205, Jacksonville, FL 32256, for itself and as Administrative Agent ("EverBank"), for the benefit of the lenders under that certain Restated Loan Agreement dated June 29, 2005 and under that certain Mortgage Modification Agreement dated February 3, 2010, executed by Birchwood Acres Limited Partnership, LLLP, a Florida limited liability partnership ("Mortgagor") in favor of EverBank, recorded on February 9, 2010 in Official Records Book 3947, Page 809, Public Records of Osceola County, Florida, modifying that certain Mortgage Modification, Spreader and Release Agreement executed by Mortgagor in favor of Franklin Bank, SSB, a Texas savings bank ("Franklin Bank"), recorded January 17, 2006 in Official Records Book 3033, Page 904; as assigned in Assignment of Mortgage and Other Loan Documents from Federal Deposit Insurance Corporation, as Receiver for Franklin Bank, to EverBank, as Administrative Agent, recorded January 7, 2010 in Official Records Book 3934, Page 1891, pursuant to which EverBank, as successor to Franklin Bank, is the owner and holder of that certain Mortgage and Security Agreement dated October 23, 2003 and filed October 28, 2003 in Official Records Book 2371, Page 602, as modified by that certain Mortgage Modification and Spreader Agreement and Receipt for Future Advance recorded September 8, 2004 in Official Records Book 2590, Page 1958, that certain Mortgage Spreading Agreement recorded November 8, 2004 in Official Records Book 2634, Page 565, and that certain Mortgage Modification Agreement and Receipt for Future Advance recorded June 30, 2005 in Official Records Book 2828, Page 1177, all as assigned by Franklin Bank, to Franklin Bank as Administrative Agent, pursuant to that certain Assignment of Mortgage recorded in Official Records Book 2828, Page 1210, and as further amended by that certain Mortgage Modification, Spreader and Release Agreement recorded January 17, 2006 in Official Records Book 3033, Page 904, all of the Public Records of Osceola County, Florida, given by Mortgagor to Franklin Bank, together with that certain UCC-1 Financing Statement recorded in Official Records Book 2371, Page 632, and that certain UCC-1 Financing Statement recorded in Official Records Book 2590, Page 2091, and that certain UCC-1 Financing Statement recorded in Official Records Book 2634, Page 570, all of the Public Records of Osceola County, Florida (all of the foregoing mortgage instruments and UCC-1 Financing Statements, as modified, are hereinafter referred to as the "Mortgage"), which Mortgage encumbers certain real property described in that certain Fifth Supplemental Declaration of Harmony Residential Properties Declaration of Covenants, Conditions, and Restrictions (the "Fifth Supplemental Declaration") to which the Joinder and Consent is attached, hereby joins in, consents to and subordinates the lien of Mortgage, as it has been, and as it may be, modified, amended and assigned from time to time, to the Fifth Supplemental Declaration, with the intent that the Mortgage shall be subject and subordinate to said Fifth Supplemental Declaration.

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