

THIS IS NOT A  
DECLARATION OF RESTRICTIONS:  
OAK TRAIL  
CERTIFIED COPY

OFF. REC. 4163 PG 244  
12370593 CODES 1041050721 FEB 83  
3520 CHRG RECD PROFD 030546B 105.00  
Tmc 12 05 P  
11 A683  
Recorded 38546 B

This document is the "DECLARATION OF RESTRICTIONS: OAK TRAIL" and is made August 1, 1983, by OAK TRAIL DEVELOPERS, INC., a Florida Corporation ("Developer").

ARTICLE I: Background and Purpose

Developer owns the lands in Hillsborough County, Florida, described, platted, and known as:

All of OAK TRAIL, as per plat recorded at Plat Book 55, Page 31, Hillsborough County Public Records.

The foregoing land is called the "Properties" in this Declaration. Developer has prepared a comprehensive plan for the use, development, disposition, and enjoyment of the Properties as a residential community. To implement such plan, Developer has or will establish Oak Trail Homeowners Association, Inc., as a Florida Corporation Not For Profit (the "Association").

By executing, delivering, and recording this Declaration, Developer will implement such comprehensive plan by establishing certain Common Properties, the Association's jurisdiction over the Properties, and certain reciprocal easements, charges, and restrictions upon the Properties. Developer intends by the foregoing to enhance the value, desirability, and marketability of the Properties as a planned residential community.

JAMES F. TAYLOR, JR.  
CLERK CIRCUIT COURT  
RECORDING DEPT.  
HILLSBOROUGH CO.  
TAMPA, FL 33601

ARTICLE II: Definitions and Interpretation

Section 1. DEFINITIONS. Unless the context expressly or necessarily requires otherwise, the following terms have the following meanings wherever used in the Legal Documents:

(a) "Applicable Law" means any constitutional provision, statute, ordinance, rule, regulation, order, permit requirement, resolution, or other positive enactment having the force of law and (i) from time to time applicable to the Properties, any activities on or about the Properties, the Association, or any person affected, and (ii) validly enacted, promulgated, adopted, or enforced by any sovereign. To the extent not inconsistent with the context, such term also includes the general principles of decisional law.

(b) "Articles" means the Association's articles of incorporation, as from time to time amended.

(c) "Association" means Oak Trail Homeowners Association, Inc., a Florida Corporation Not For Profit, its corporate successors, and such of its assigns as may receive title to any of the Common Properties upon dissolution of the Association, as provided in the Articles.

(d) "Board" or "Board of Directors" means the Association's Board of Directors, as from time to time duly constituted pursuant to the Articles and By-laws.

INT. TAX	SURTAX	DOC. STAMP	REC. FEE	TOT. DUE	ACC. NUM.	REC. CLK.
			105.00	105.00	3520	

(e) "By-laws" means the Association's By-laws, as from time to time amended.

(f) "Common Properties" means all real property, or interests in real property, from time to time owned by the Association for the common use and enjoyment of all Homeowners. The Common Properties initially consist of (i) all of Parcel "A," as established by the Plat, (ii) the Community Streets, (iii) the Community Wall and the benefit of the easements established by this Declaration for its maintenance and restoration, (iv) the benefit of the private drainage easements established over certain Lots by the Plat, and (v) title to, and the benefit of the easements established by this Declaration for, any other common facilities that from time to time may be installed or situated on any Lot, as provided in this Declaration.

(g) "Community Streets" means (i) all of "Oak Trail Court," as delineated on the Plat, and (ii) any other roads or streets from time to time within or serving the Properties that are owned by the Association and not dedicated to use by the general public.

(h) "Community Wall" means any wall or similar structure from time to time situated on or along any of the perimeter boundaries of and entrances to the Properties, together with any footings, related equipment (including wiring or irrigation systems), landscaping, and other appurtenances.

(i) "Declaration" means this "Declaration of Restrictions: Oak Trail," as from time to time amended.

(j) "Developer" means Oak Trail Developers, Inc., a Florida Corporation, its corporate successors, and such of its assigns as from time to time (i) acquire an interest in the Properties to complete the Work; and (ii) are designated as such in a recorded instrument.

(k) "Entitled User" means any Resident and any guest.

(l) "First Mortgage" means a mortgage having priority under Applicable Law over all other mortgages on the same property.

(m) "Homeowner" means the person(s) who from time to time hold(s) record fee simple title to any Lot. Any co-owner is a "Homeowner" for all purposes, except (i) unless the Association is notified otherwise in writing, either spouse has apparent authority to give and receive any notice, and exercise the vote, with respect to any Lot held in a tenancy by the entireties; and (ii) a co-owner not in possession is not entitled to receive any notice with respect to any Lot, unless such co-owner gives the Association written notice specifying such co-owner's address for purposes of notice. Any Developer is a "Homeowner" to the extent of each Lot to which such Developer from time to time holds record title.

(n) "Legal Documents" means this Declaration, the Articles, and the By-laws, in any applicable combination.

(o) "Lot" means each residential subdivision lot from time to time shown as such on the Plat.

(p) "Plat" means the recorded subdivision plat of Oak Trail identified above, as from time to time amended.

(q) "Properties" means the lands encompassed by and described on the Plat.

(r) "Resident" means any tenant, contract purchaser, or family or household member.

(s) "Required Percentage" means as from time to time provided in the Articles. At the time this Declaration is recorded, such term means members eligible to cast at least ninety percent (90%) of the total votes eligible to be cast by each class of membership and voting as classes. Upon termination of Class B membership, as provided in the Articles, such term means members eligible to cast at least ninety percent (90%) of the total votes eligible to be cast.

(t) "Special Approval" means as from time to time provided in the Articles. At the time this Declaration is recorded, such term means a two-thirds (2/3) vote of those members eligible to vote and present and voting as classes at a

meeting duly called and convened. Upon termination of Class B membership, as provided in the Articles, such term means a two-thirds (2/3) vote of those members eligible to vote and present and voting at a meeting duly called and convened. Special Approval also may be obtained by written action, as provided in the Articles.

(u) "the Work" means the development of the Properties as a residential community by, among other things, the construction and installation of streets, buildings, and other improvements, including residential dwellings, and the sale, lease, or other disposition of any of the Properties as completed Lots, with or without residential dwellings.

Express reference is made to the "Schedule of Defined Terms" attached to this Declaration for the respective meanings and interpretation of certain other terms used in the Legal Documents, unless the context expressly or necessarily requires otherwise.

Section 2. INTERPRETATION. Unless the context expressly or necessarily requires otherwise, the following provisions apply to the interpretation of the Legal Documents.

(a) Number and Gender. The use of the singular includes the plural, and vice versa; and the use of any gender includes all genders.

(b) Expense. Any action is at the expense of the person required to take it, whether taken by or for the account of such person.

(c) Headings. Headings are for indexing and organization only and may not be used to interpret any substantive provisions.

(d) Inclusion. Each use of the terms "Common Properties," "Lot," "Properties," "Community Streets," and "Community Wall" includes (i) any portions applicable to the context, with the same effect as if the words "all or any applicable portion of the" immediately preceded each use of such term, and (ii) any improvements, structures, fixtures, attachments, trees, vegetation, and other appurtenant property, together with the benefit of any easements and other appurtenant rights. Any listing or enumeration of items refers to such items individually or collectively, as the case may be, in any combination that may be applicable.

(e) Time. Each provision of the Legal Documents applies from time to time and at any time. Without limitation, any right or remedy may be exercised from time to time and at any time, as often as the person entitled to exercise it considers necessary, convenient, desirable, or expedient.

The Legal Documents should be interpreted to avoid inconsistent results and otherwise in a reasonable, practical manner to effect their purpose of protecting and enhancing the value, marketability, and desirability of the Properties by providing a common plan for the development and enjoyment of the Properties as a residential community. Without limitation, the Legal Documents may not be more strictly construed against Developer because they were prepared by Developer.

### ARTICLE III: Common Properties

Section 1. EASEMENT OF ENJOYMENT. Every Homeowner has a non-exclusive right and easement of enjoyment in and to the Common Properties that is appurtenant to, and passes with, the title to every Lot, subject to: (i) the provisions of the Legal Documents; (ii) the Association's right to adopt, amend, and enforce reasonable, uniform rules and regulations governing the use of the Common Properties; and (iii) any action properly taken pursuant to any of the foregoing, including the imposition of reasonable, uniform fines or penalties, or both, for any violation of the Association's rules and regulations.

Section 2. EXTENT. As more particularly provided in this Declaration, the extent of the foregoing easement of enjoyment is (i) to have the Common Properties maintained for their respective intended purposes, and (ii) to use and enjoy the Common Properties in any manner that is not inconsistent with their respective intended purposes, and (iii) to prevent any use of the Common Properties that is inconsistent with their respective intended purposes. Without limitation, the foregoing easement includes:

**(a) Community Wall.** The right to have the Community Wall maintained and restored, unless the Required Percentage determines otherwise.

**(b) Community Streets.** A permanent, non-exclusive easement for reasonable pedestrian and vehicular ingress and egress over, across, and through the part of the Community Streets improved for such use by Developer as part of the Work (hereafter, the "Access Easement"), and the rights (i) to have such part suitably maintained and restored for such uses for so long as is required to provide convenient vehicular access to any Lot, and (ii) unless the Required Percentage decides otherwise, to have maintained and restored for their respective intended purposes any other improvements installed within the Community Streets by Developer as part of the Work, including any landscaping, lighting, or security installations.

**(c) Sidewalks.** A permanent, non-exclusive easement of reasonable pedestrian ingress and egress over any sidewalks, and their replacements, installed by Developer as part of the Work (i) on any Lot along its boundary with any Community Street, or (ii) anywhere else within the Properties for common use. The foregoing easement does not extend to any sidewalks serving a particular Lot or Lots exclusively.

**(d) Parking.** The right to the exclusive use of one vehicular parking space for each Lot, as designated by the Association from time to time, to be situated as conveniently as practical to the Lot it serves.

**(e) Common Facilities.** The right to have streetlights and other common facilities that may be situated on any Lots maintained and restored.

**(f) Recreation.** The right to reasonable use of the swimming pool and any other recreational facilities from time to time part of the Common Properties, subject to the Association's right to suspend such use (i) for a period of not exceeding 80 days for any violation of its rules and regulations applicable to such facility, and (ii) during any period in which any installment of the annual assessment, or any other proper assessment, remains unpaid for more than 30 days.

The benefit of such rights and easements over, across, and through the Common Properties may be subdivided among not more than 42 Lots. If any right or easement is described as non-exclusive by this Declaration, its benefit nevertheless is exclusive to all Lots, unless this Declaration or the Plat expressly grants such benefit to the Association or other persons. In no event does the benefit of any such easement extend to the general public or grant any right of access or entry to the general public. The benefit of all rights and easements granted by this Declaration is a permanent appurtenance to, and passes with, the title to every Lot.

**Section 3. RIGHTS OF USE.** The Association also may assign to any Lot or Lots an exclusive right of use for any postal, refuse collection, or other facilities from time to time maintained by the Association upon or as part of the Common Properties. If any such facility is not available for use by all Lots, then any costs of its installation, maintenance, restoration, and removal must be assessed specifically against only the Lots granted such exclusive right of use, as provided below in this Declaration.

**Section 4. DELEGATION OF USE.** Any Homeowner may delegate any right of enjoyment and other rights in and to the Common Properties to any Resident of such Homeowner's Lot, subject to the provisions of the Legal Documents and the Association's rules and regulations. Any delegation to guests by any Homeowner or Resident may be restricted by the Association's rules and regulations.

**Section 5. RESTITUTION.** Each Homeowner must reimburse the Association for any damage or waste to any of the Common Properties caused by such Homeowner or any Entitled User of such Homeowner. Any tenant or contract purchaser, as the case may be, of any Lot will so reimburse the Association for any such damage or waste caused by such tenant or contract purchaser, or any Entitled User of such tenant or contract purchaser. Notwithstanding the foregoing, or any other provision of the Legal Documents, a Homeowner's, tenant's, or contract purchaser's liability to the Association under this Section for any unintentional acts or omissions of any person is limited to the available proceeds of any insurance maintained by such Homeowner, tenant, or contract purchaser, plus any applicable deductible amount, if, at the time of such act or omission, such Homeowner, tenant, or contract purchaser, as the case may be, has insurance in force complying with such reasonable requirements as the Association from time to time may establish. Collectability of such proceeds is at the Association's risk. To the extent from time to time available at reasonable cost, the Association's insurance for the Common Properties must provide for waiver of subrogation by the

Association's insurer against any Homeowner, tenant, or contract purchaser because of any unintentional acts or omissions.

**Section 6. GENERAL RESTRICTIONS.** Except (i) with the Association's advance written consent, or (ii) as from time to time may be permitted by the Association's rules and regulations, or (iii) for any uses and activities expressly permitted by this Declaration:

(a) **Obstructions.** The Common Properties may not be obstructed, nor may anything be installed, maintained, restored, or permitted to remain on the Common Properties, except the improvements and other property installed by Developer as part of the Work and their replacements. The foregoing prohibition applies, without limitation, to the drainage easement areas shown on the Plat.

(b) **Alterations.** Nothing may be altered on, or removed from, the Common Properties.

(c) **Activities.** No activity is permitted upon the Common Properties, except those activities for which the Common Properties are suitably improved by Developer as part of the Work. All such permitted activities are subject to the Association's rules and regulations.

Any capital improvements to the Common Properties, except maintenance and restoration of items installed by Developer as part of the Work, require Special Approval. Any conveyance, encumbering, dedication, or other voluntary disposition of the Common Properties must be approved by the Required Percentage.

**Section 7. UTILITY EASEMENTS.** The Common Properties are dedicated for use by any utilities for installation, maintenance, restoration, and removal of their respective facilities serving the Properties and installed as part of the Work. Developer grants to each such utility an easement for such purposes, but no disturbance of any building, wall, or other permanent structure installed by Developer as part of the Work is authorized. The foregoing grant supplements and is cumulative to any utility easements established by the Plat. No such easement, whether granted by this Declaration, the Plat, or any other instrument, authorizes any utility to extend any right of access or use to the general public. After conveyance of the Common Properties to the Association, additional easements for utility purposes may be granted over the Common Properties by the Required Percentage.

**Section 8. RESTORATION.** The Association must restore any damage to any of the Common Properties, as promptly as the circumstances permit, unless the Required Percentage decides otherwise. Any insurance, condemnation, and other proceeds that may be payable with respect to any damage or taking with respect to the Common Properties will be paid to the Association, to be held and applied by the Association to the costs of restoration. Any surplus remaining after completion of restoration may be used by the Association for any purpose. By Special Approval, the Association may levy a special assessment to pay the unreimbursed costs of any restoration. No Homeowner or mortgagee has any claim or right or remedy with respect to any insurance proceeds payable or paid to the Association pursuant to any insurance maintained by the Association. Without limitation, if the Required Percentage decides that restoration will not be required, any such proceeds may be used by the Association for any purpose.

**Section 9. TAKING.** Any proceeds payable in connection with any taking of the Common Properties must be paid to the Association, to the extent they are applied to restoration, and to the person or persons otherwise entitled under Applicable Law, to the extent they are not so applied. Without limitation, no Homeowner or mortgagee has any claim or right or remedy with respect to any such proceeds to the extent they are so applied, and the Association has no claim or right or remedy with respect to any such proceeds not so applied. Any proceeds to which the Association is entitled that are received by any Homeowner or mortgagee must be paid to the Association and, if not so paid, may be assessed specifically against such Homeowner's Lot, as provided below in this Declaration. Any such proceeds to which any Homeowner or mortgagee is entitled that are received by the Association must be paid to such Homeowner or mortgagee. The foregoing provisions apply only to the apportionment of the proceeds that are payable as compensation for any Common Properties taken. They do not apply to any amounts that may be separately awarded for severance damages to any Lot, or as compensation for expenses incurred as a result of any taking, such as moving or relocation expense, so long as such separate award does not reduce the proceeds otherwise payable as compensation for any Common Properties taken.

**Section 10. IMPLIED RIGHTS.** No transfer of title to any Lot passes any rights in and to the Common Properties, and no provision in any deed or other instrument of

THIS IS NOT A

conveyance of any interest in any Lot may be interpreted as passing any such rights, except as expressly granted by this Declaration or the Plat, or both. The conveyance to the Association of the Common Properties vests in the Association the underlying fee simple title or right of reverter, as the case may be, to any street, utility easement, or other dedicated area from time to time situated on, or abutting, any of the Common Properties from time to time owned by the Association in fee simple, notwithstanding the fact that any Lot also is from time to time shown or described as abutting any such dedicated area. The fact that any Lot from time to time may be shown or described as bounded by any artificial or natural monument on or constituting part of the Common Properties does not pass to the Homeowner of such Lot any rights to such monument, except as expressly granted by this Declaration or the Plat, or both. Such monument instead is and will remain part of the Common Properties, with all appurtenant rights inuring to the exclusive benefit of the Association as part of the Common Properties, except as may be expressly stated otherwise in this Declaration or the Plat, or both.

**Section 11. THE WORK.** Nothing contained in the Legal Documents, or any of the Association's rules and regulations, may be interpreted to prevent or restrict Developer or its contractors, subcontractors, agents, employees, and guests, from doing or performing on any part of the Properties owned or controlled by Developer whatever Developer from time to time determines to be necessary, convenient, or desirable to develop the Properties and otherwise complete the Work, including:

(a) Improvements. Installing, maintaining, restoring, and removing, in any applicable combination, any structures, improvements, and other property in any manner not prohibited by Applicable Law as may be necessary, convenient, or desirable to complete the Work, establish the Properties as a residential community, and dispose of the Properties in parcels by sale, lease, or otherwise, including the installation, maintenance, restoration, and removal of model homes, sales offices, and construction offices; or

(b) Development. Performing any activities permitted or required by Applicable Law that are necessary, convenient, or desirable to complete the Work, establish the Properties as a residential community, and dispose of the Properties in parcels by sale, lease, or otherwise; or

(c) Signs. Installing, maintaining, restoring, and removing such signs and other displays, and conducting such activities not prohibited by Applicable Law, as may be necessary, convenient, or desirable in connection with the sale, lease, or other disposition of the Properties.

**Section 12. TEMPORARY EASEMENTS.** Temporary easements are reserved for the benefit of Developer over, across, and through the Common Properties (i) for any uses, structures, and activities necessary, convenient, or desirable to complete the Work, and (ii) to use the Community Streets for such purposes, notwithstanding the provisions of the following Article. Such easements must be exercised so as not to cause any permanent, material damage to any completed portion of the Common Properties, or to obstruct any of the Common Properties unnecessarily. Developer promptly will restore any damage that Developer causes any completed Common Properties by the exercise of the foregoing easements or will reimburse the Association for any expenses of restoration. Such easements include the right to maintain signs and displays and to conduct sales and promotional activities that do not interfere unreasonably with the use of the Common Properties by Homeowners and Residents for their intended purposes. Such easements continue so long as Developer prosecutes the Work with reasonable diligence and until Developer no longer offers any Lot within the Properties for sale, lease, or other disposition in the ordinary course of Developer's business.

#### ARTICLE IV: Community Streets

**Section 1. COMMUNITY STREETS.** The benefit of the Access Easement is extended to any sovereign to make any reasonable or necessary use of the Community Streets for furnishing fire, police, and other emergency services; making inspections, collections, and deliveries; and otherwise exercising sovereign authority in a manner consistent with any requirements of Applicable Law. Such benefit also extends to the United States Postal Service, its successors and assigns, and other public, private, or quasi-public utilities (including private delivery or communication services) to furnish services to the Properties in a reasonable manner. The foregoing does not, however, authorize the installation of any facility within the Community Streets without the

Association's consent. The Association may limit or prohibit use of the Community Streets to anyone who does or may cause a disturbance or nuisance within the Properties, including solicitors, pamphleteers, and persons purporting to exercise First Amendment rights. The Access Easement also is subject to all of the following rights in favor of the Association, any of which may be exercised from time to time as often as the Board considers necessary, convenient, desirable, or expedient:

(a) Obstructions. To install, restore, maintain, and remove speed bumps or other devices and obstructions to control vehicular traffic within the Properties.

(b) Security. To install, restore, maintain, and remove security systems, or devices or obstructions, to prevent any unauthorized entry into, or exit from, the Properties.

(c) Regulations. To adopt, amend, and enforce reasonable, uniform rules and regulations (i) controlling vehicular traffic or parking, or both, or (ii) regulating or prohibiting various types or classes of vehicles from operating on the Community Streets that are not consistent with the enjoyment of the Properties as a residential community, or (iii) regulating or prohibiting any other activities in, on, or affecting the Community Streets that are inconsistent with their intended use, or (iv) any combination of the foregoing.

As used in this Declaration, the term "vehicle" should be interpreted in its broadest sense to include any vehicular means of transport now or hereafter devised, including bicycles and children's vehicles.

**Section 2. PARKING.** No vehicle may be parked, stored, kept, maintained, or restored on the Community Streets, except (i) within the spaces from time to time designated for such use by the Association; (ii) as from time to time may be expressly permitted by the Association's rules and regulations or otherwise with the Association's advance written consent; (iii) for emergency repairs to a temporarily disabled vehicle; (iv) for reasonable deliveries, loading, unloading, and construction operations and activities with respect to any Lot; (v) as a result of police, fire, or other emergency; or (vi) in connection with reasonable social gatherings, unless the Association determines that parking on the Community Streets as a result of such gatherings is creating a nuisance, when it from time to time may adopt, amend, and enforce uniform rules and regulations limiting such parking, or such gatherings, or both. Any vehicle parked in violation of the provisions of this Section, or the Association's rules and regulations (individually and collectively, the "Parking Restrictions"), may be removed by the Association at the expense of its registered owner at the instance of any officer or director of the Association, or any other person from time to time expressly authorized by the Board (collectively, an "Authorized Person").

**Section 3. ENFORCEMENT.** Each Homeowner and Resident of any Lot has a non-delegable duty to the Association to advise their respective Entitled Users of the Parking Restrictions and to enforce their compliance by any reasonable means. If any vehicle owned or controlled by any Homeowner, or any Entitled User of any Homeowner, is properly removed from the Properties pursuant to this Article and the Association's costs of such removal, including reasonable attorneys fees, are not recovered from such Entitled User, then the unrecovered portion may be assessed specifically against such Homeowner's Lot, as provided below in this Declaration. Without limiting any other right or remedy, the willful refusal to remove, or permit the removal of, any vehicle parked, kept, stored, maintained, or restored in violation of the Parking Restrictions, in either event after proper demand by an Authorized Person, may be prosecuted as a trespass after warning under Applicable Law.

**Section 4. TRAFFIC CONTROL.** Without limiting the preceding Sections of this Article, the Association from time to time may establish reasonable speed limits or other rules and regulations for vehicular traffic and any other activities in, upon, or about the Community Streets. If (i) any Homeowner, Entitled User, or any other person having a right of ingress and egress over the Community Streets willfully and persistently disregards any of the Association's rules and regulations applicable to the operation of vehicles on or about the Community Streets, with the result that the conduct of such person is, or reasonably may tend to become, a hazard or nuisance to any Resident or any other person properly using the Community Streets, and (ii) at least two-thirds of the members of the Board of Directors so find after formal notice to, and reasonable opportunity to be heard by, the person affected in a reasonably impartial manner; then, upon the occurrence of both of the foregoing, the Association may suspend such person's right to operate a vehicle upon the Community Streets for a reasonable period of time not exceeding fifteen days for the first such suspension. Any operation of a vehicle on the Community Streets by such person during any period of suspension may be prosecuted as a trespass after warning under Applicable Law.



**Section 5. BASEMENT LIMITATION.** No action properly taken by the Association pursuant to this Article impairs, limits, or interferes with the Access Easement. By the Plat, this Declaration, and the conveyance of the Common Properties to the Association, Developer intends to vest in the Association a sufficient right of possession in and to the Community Streets to enable the Association, acting by and through any Authorized Person, to prosecute actions for trespass under Applicable Law for violation of the Parking Restrictions or, under the conditions stated in the preceding Section, for violation of the Association's other rules and regulations with respect to the operation of vehicles on or about the Community Streets. No such person initiating any such action, nor the Association, is liable for malicious prosecution, defamation, other wrongful misconduct, or for any resulting loss or damage, if such person (i) has personal knowledge, or has been reliably informed, of sufficient facts to form a reasonable conclusion that a violation has occurred, and (ii) in the case of a violation of the Parking Restrictions only, attempts to notify the person apparently owning or controlling the applicable vehicle before undertaking, demanding, or authorizing its removal, as the case may be. A single attempted inquiry at the front door of the residential dwelling in front of which the vehicle apparently is parked in violation of the Parking Restrictions is sufficient compliance with the foregoing notice provision, as is posting a written notice of violation at a conspicuous place on the vehicle for a continuous period of at least one hour.

**Section 6. LIABILITY.** Any use of the Community Streets is at the sole risk of the person making, permitting, or authorizing such use. Without limitation:

(a) **Maintenance.** Neither the Association, nor any of its officers, directors, members, or employees (including volunteer employees), is or are liable to any person for any loss, injury, damage, or death caused by, or resulting from, any failure to maintain or restore the Community Streets, or any defect or condition in the Community Streets, whether obvious or hidden, unless such defect or condition is intentionally created by or on behalf of the Association. For any failure by the Association to maintain or restore the Community Streets, the Association, and not any of its officers, directors, members, or employees (including volunteer employees), is liable only for damages for impairment of the Access Easement, and not for any resulting or consequential loss, damage, injury, or death. The foregoing limitation does not impair any right or remedy of any Homeowner to seek injunctive or other appropriate relief, coercing the Association to maintain or restore the Community Streets as required by this Declaration.

(b) **Dominion.** No exercise of dominion, ownership, possession, or control over the Community Streets by or on behalf of the Association, including the adoption or enforcement, or both, of rules and regulations, or the provision or operation of security systems, or devices, subjects the Association or any of its officers, directors, members, agents, contractors, or employees (including volunteer employees) to any liability, unless such exercise is maliciously intended to cause loss, damage, injury, or death to any person. No failure by the Association to adopt or enforce, or both, any rules and regulations controlling the use of the Community Streets, or to take any other action with respect to the Community Streets, including the provision or operation of security devices or systems, imposes any liability on the Association for any damage, loss, death, or injury to any person.

(c) **Title.** The Association is not liable, solely because of its ownership, possession, or control of the Community Streets, for any act or omission of any person using or otherwise on or about the Community Streets, unless the Association otherwise is liable under general principles of respondeat superior, without regard to the ownership, possession, dominion, or control of the Community Streets.

(d) **Children.** Each Homeowner and Resident of any Lot has a non-delegable duty to the Association to warn and prevent any children or other persons of immature, diminished, or impaired capacity that are subject to such Homeowner's or Resident's right of control from entering or using the Community Streets in a manner hazardous to any such child's or other person's safety, regardless of whether such entry or use is induced by any condition or activity on or about any of the Community Streets that is attractive to a child or other person of immature, diminished, or impaired capacity.

(e) **Property.** The Association has no duty of care with respect to any property of any person at any time located, used, or operated on or about the Community Streets, except the duty not to damage any such property maliciously.



Section 7. DEVELOPER. As a Developer Prerogative defined below in this Declaration, Developer may veto any of the Association's rules and regulations relating to the Community Streets; and Developer's consent also is required for any installation upon or affecting the Community Streets, including speed bumps and security systems, or removal of any such installation made by Developer as part of the Work.

#### ARTICLE V: Community Wall

Section 1. COMMUNITY WALL. Any Lot on or along which the Community Wall from time to time is situated is burdened, to a depth of five feet on either side of the centerline of the Community Wall, with an easement for the installation, maintenance, restoration, and removal of the Community Wall. The Homeowner of such Lot may make any use of the foregoing easement area that is not inconsistent with the foregoing easement; but no attachment (including climbing vines or other vegetation) may be made to the Community Wall, and no permanent wall, building, or other structure may be installed, maintained, restored, or permitted to remain on any Lot within five feet of the Community Wall, unless (i) installed by Developer as part of the Work, or (ii) in conformity with plans and specifications approved by the Association, as provided below in this Declaration, or (iii) as may be permitted by the Association's rules and regulations. In addition to the easement for the Community Wall established by this Section, the Association also has a right of entry, as provided below in this Declaration, to each Lot on or along which the Community Wall is situated to install, maintain, restore, and remove the Community Wall.

Section 2. RECONSTRUCTION. The easements established by this Declaration with respect to the Community Wall expressly extend to the Community Wall, as it from time to time exists, including any replacement or restoration of the Community Wall substantially in the location installed by Developer as part of the Work. Such easements accordingly are not terminated, impaired, or discharged by any damage to the Community Wall; and the Association, promptly following any damage to the Community Wall, must undertake its restoration, unless the Required Percentage determines that the Community Wall will not be restored.

Section 3. DEVELOPER. As a Developer Prerogative defined below in this Declaration, Developer's advance written consent is required for (i) any material change to the appearance of any part of the Community Wall, or (ii) any decision not to restore the Community Wall.

#### ARTICLE VI: General Servitudes

Section 1. SUPPORT EASEMENTS. Each Lot and the Common Properties are benefited and burdened with mutual, reciprocal easements for drainage and lateral and subjacent support as established by Developer as part of the Work. No part of the Properties may be excavated, filled, improved or otherwise altered if any such activity materially alters the drainage patterns or surface elevations and grades established by Developer as part of the Work. The easement established by this Section does not authorize the installation, maintenance, or restoration of any drainage structures, facilities, or installations, except within the areas designated as an easement for drainage on the Plat. Any structures, facilities, and installations made within such designated easement areas by Developer as part of the Work are common facilities, subject to the provisions of Section 3 of this Article. No other improvements, structures, or facilities may be installed, maintained, or permitted to remain within such designated easement areas, except drainage facilities approved by the Association.

Section 2. ENCROACHMENT EASEMENTS. There is an easement to the extent of not more than one foot for maintaining any unintentional encroachment of any improvement or structure from time to time installed anywhere within the Properties. The foregoing easement continues only so long as the original improvement or structure creating the encroachment remains in existence and does not extend to any restoration, replacement, or substitution of such improvement or structure. The foregoing easement includes encroachments over boundary and setback lines and onto easement areas. No maintenance or other continuation of any encroachment, intentional or unintentional, otherwise establishes any prescriptive or adverse rights anywhere within the Properties, except as expressly provided in this Section.

**Section 3. COMMON FACILITIES.** Sidewalks, retention areas, street lights, mailboxes, utility service lines and facilities, and other common facilities may be installed, in whole or in part, within the yards of certain Lots by Developer as part of the Work. Each Lot upon which any such common facility is so installed is burdened with permanent, non-exclusive easements (i) in favor of the Association and each Homeowner and Entitled User to use or otherwise enjoy each such facility, and any replacements, in a reasonable manner for its intended purposes, and to prevent any interference with such use or enjoyment, and (ii) in favor of the Association for its maintenance, restoration, and removal. No entry is authorized by any Homeowner or Entitled User onto any Lot, except with respect to any common sidewalks or mailboxes installed by Developer as part of the Work. The Association may exercise its right of entry provided by this Article into the yard of any Lot to maintain or restore any such facility, but the easement established by this Section does not permit or authorize any disturbance of, or entry into, any improvement on any Lot. No Homeowner or Resident has any duty of maintenance or restoration with respect to any such common facility, nor is any Homeowner or Resident liable to any person for any condition that from time to time may exist in, on, or with respect to any such facility, unless such condition is created by such Homeowner or Resident. For purposes of this Section, the water and sewer lines serving each Lot are a "common facility" from and including the meter box to the applicable boundary of the Common Properties owned by the Association in fee simple.

**Section 4. OVERHANGS AND TREES.** There are reciprocal easements between adjacent Lots, and between each Lot and any adjoining Common Properties, for maintaining and restoring any overhanging eaves, gutters, and other items installed by Developer as part of the Work, and their respective replacements. The extent of each such easement is that reasonably necessary to effect its purpose. Each mature shade tree installed or preserved on any Lot by Developer as part of the Work, or installed by the Association with the consent of the applicable Homeowner, also is burdened with an easement in favor of the Association for its maintenance as a common facility, as provided in Section 3 of this Article; but the foregoing easement terminates upon the death or destruction of each such tree.

**Section 5. RIGHT OF ENTRY.** In addition to the easements established by this Declaration, the Association has a reasonable right of entry onto the exterior of each Lot to the extent necessary to discharge any duty imposed, or exercise any right or remedy provided by or available with respect to, the Legal Documents or Applicable Law. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable advance notice whenever circumstances permit. Except pursuant to court order or other authority conferred by Applicable Law, entry into any improvement on any Lot is not authorized by this Declaration for any purpose without the consent of the Homeowner or Resident of such Lot. Such consent will not be unreasonably withheld or delayed. The Association's right of entry may be exercised by its officers, agents, employees, contractors, and other persons from time to time authorized by the Association. The Association also has a reasonable right of entry onto the exterior of any Lot at any reasonable time to give any notice, or make any demand, required by, pursuant to, or in connection with the Legal Documents, the Association's rules and regulations, or Applicable Law.

**Section 6. RULES AND REGULATIONS.** The easements and restrictions established by, and the other provisions of, the Legal Documents from time to time may be supplemented, interpreted, or implemented by the Association's rules and regulations. As and when from time to time properly adopted in compliance with any applicable requirements of the Legal Documents, any such rules and regulations, to the extent they relate to the Properties, are servitudes upon the Properties, with the same force and effect as if set forth in this Declaration, and bind each Homeowner, Resident, Entitled User, or other person having or claiming any right, title, or interest in or to the Properties by, through, or under Developer from and after the date this Declaration is recorded. Such rules and regulations should be interpreted in a reasonable, practical manner to effect the purposes of this Declaration and to avoid conflict with the provisions of the Legal Documents. Without limitation:

(a) **Permissive Regulations.** Wherever any provision of this Declaration prohibits any use, activity, condition, installation, or structure unless or except as permitted by the Association's rules and regulations, such prohibition is self-executing unless the Association adopts rules and regulations expressly permitting such matter, subject to such restrictions and prohibitions as the Association considers appropriate. No such provision of this Declaration imposes or implies any duty on the Association to adopt any such rules and regulations or otherwise grant or authorize any such permission. The power of the Association to regulate in such cases includes the power to prohibit.

**(b) Restrictive Regulations.** Wherever any provision of this Declaration permits, authorizes, or makes any use, activity, condition, installation, or structure subject to the Association's rules and regulations, the use, activity, condition, installation, or structure, as the case may be, is permitted upon compliance with any express requirements of this Declaration, unless the Association adopts rules and regulations further restricting or regulating the matter authorized. The power of the Association to regulate or further restrict any matter expressly permitted by this Declaration does not include the power to prohibit such matter, unless the Required Percentage decides otherwise.

**(c) Other.** If any provision of this Declaration makes no express reference to the Association's rules and regulations, the Association nevertheless has the power to restrict the subject matter of such provision by reasonable rules and regulations to effect the stated purposes of this Declaration and, to the extent strictly necessary to effect such purposes, to prohibit any use, activity, condition, installation, or structure.

**(d) Compliance.** No person has or may acquire any right or remedy to continue any pre-existing use, activity, condition, installation, or structure in violation of the Association's rules and regulations except (i) as expressly provided in this Declaration, or (ii) by a written agreement with the Association, executed by an authorized officer.

**(e) Consent.** Unless expressly stated that the Association's consent may not be unreasonably withheld, any provision of this Declaration requiring the Association's consent means that such consent may be granted, withheld, or conditionally granted, in the Association's discretion. Such consent may be granted by appropriate rules and regulations.

The validity of the Association's rules, regulations, fines, and penalties, and their enforcement, is determined by a standard of reasonableness to protect the value, desirability, and marketability of the Properties as a residential community. Any rules, regulations, fines, and penalties are adopted or approved by the Board of Directors, subject to amendment by the membership. The Association's procedures for enforcing its rules, regulations, fines, and penalties at all times must provide any affected person with reasonable advance notice and a reasonable opportunity to be heard in person and through appropriate representatives of such person's choosing, in a reasonably impartial manner.

#### ARTICLE VII: Lot Servitudes

**Section 1. USE.** Each Lot must be improved, maintained, and otherwise used exclusively as and for a single residential dwelling for a single family or household. A household may consist of a reasonable number of persons unrelated by blood or marriage and includes domestic or other household help or employees who reside, temporarily or permanently, on a Lot. Transient occupancy of any Lot, except for a reasonable number of guests on reasonable occasions, is prohibited; and the rental or leasing of any Lot for a period of less than one month is prohibited.

**Section 2. HOME OCCUPATIONS.** No trade, business, or profession of any kind that is open to the general public at large may be conducted on any Lot. Trades, businesses, or professions not open to the public at large may be conducted on, and any trade, business, or profession may be conducted from, any Lot so long as it: (i) is confined exclusively to the interior of the improvements on such Lot; (ii) does not require the use of hazardous, dangerous, or objectionable substances, machinery, or equipment; (iii) does not result in any vehicular congestion on the Properties; (iv) does not require or permit access by the general public; (v) does not cause any vibration, noise, or other emissions objectionable to any Resident; and (vi) is not prohibited by, and is conducted in compliance with, any requirements of Applicable Law. The Association from time to time may adopt reasonable, uniform rules and regulations regulating the conduct of any trade, business, or profession otherwise permitted under this Section.

**Section 3. GENERAL RESTRICTIONS.** No activity is permitted, nor may any object, substance, or condition, be kept, stored, installed, maintained, emitted, or permitted to remain anywhere within the Properties in violation of Applicable Law, except encroachments for which an easement is established by this Declaration. Each Resident at all times will comply with any requirements of Applicable Law. No noxious,

destructive, or offensive activity or emission is permitted anywhere within the Properties, nor may anything be done in the Properties that is an actionable nuisance to any Homeowner or Resident. Without limitation:

(a) Animals. No animals, livestock, or poultry may be raised, bred, kept, maintained, kennelled, quartered, or permitted to remain anywhere within the Properties, except a reasonable number of dogs, cats, and other customary household pets that are kept within the buildings on any Lot and in compliance with the Association's rules and regulations, if any. No dogs or other pets may run loose within the Properties.

(b) Waste. Except for regular collection and disposal at the locations from time to time designated by the Association, no rubbish, trash, garbage, or other waste material or accumulations may be kept, stored, maintained, deposited, created, or permitted to remain anywhere within the Properties, except inside the improvements on each Lot, or in sanitary containers concealed from view, and in compliance with the Association's rules and regulations, if any.

(c) Fill. Except as necessary, convenient, or desirable in connection with the installation, maintenance, or restoration of a residential dwelling or other structure or improvement approved by the Association, no fill, earth, sod, or other material may be excavated or removed from the Properties, unless approved by the Association.

(d) Trees. Unless dead or diseased, no tree having a trunk diameter of two inches or more, as measured one foot above ground, may be severed or otherwise removed from within the Properties, intentionally damaged or destroyed, or permitted to waste, unless approved by the Association or in compliance with the Association's rules and regulations.

(e) Signs. No sign or other informational display may be displayed to general view from any Lot except a name and address sign approved by the Association as to size, design, and materials, or complying with the Association's rules and regulations, and one dignified lawn sign not exceeding five square feet in surface area advertising a Lot for sale, lease, or other disposition.

(f) Energy Devices. Solar collectors, clotheslines, or other energy devices based on renewable resources may not be prohibited by the Association, nor may any action taken by the Association have the effect of prohibiting them. Unless concealed from view, the Association's consent is required for the installation, maintenance, and restoration of all such devices, which will not be unreasonably withheld or delayed so long as each such device is screened from view, to the extent reasonably practical and consistent with its operation for its intended purposes. This Subsection is included in this Declaration for the sole purpose of complying with Section 163.04, Florida Statutes (1981), and automatically will terminate and be without further force and effect as and when such statute for any reason becomes or is determined to be inapplicable, in whole or in part, to the Properties. Without limitation, Developer would have prohibited all such devices, but for the existence of such statute.

(g) Other. Except for those installed by Developer as part of the Work, and their respective replacements, any garbage or trash containers or receptacles, oil tanks, bottle gas tanks, soft water tanks, hot water tanks, air conditioning compressors, utility meters, utility connections, antennas, and other appurtenances and attachments must be (i) concealed below ground; or (ii) confined to the interior of the building on any Lot; or (iii) concealed from view, either by a substantial enclosure that conforms in design and materials to the dwelling on such Lot or otherwise. No well or septic tank may be installed, maintained, or permitted to remain on any Lot.

The Association may not approve or permit by its rules and regulations any action, condition, or structure that impairs the reciprocal easements for drainage and support established by this Declaration.

Section 4. VEHICLES. Except for passenger automobiles, motorcycles, trucks of one-ton capacity or less, and such other vehicles as the Association from time to time expressly may permit by its rules and regulations ("permitted vehicles"), no boat, trailer, or vehicle of any nature may be parked, stored, kept, maintained, or restored anywhere within the Properties. Any permitted vehicles owned or controlled by any Homeowner or Resident at all times must be parked within the areas designated by the Association. Except for emergency repairs, no permitted vehicle may be maintained or restored within the Properties. The foregoing does not prevent the temporary, non-

recurring parking of any vehicle, boat, or trailer for a period not exceeding 24 consecutive hours within the space assigned to a particular Lot, nor the routine servicing or repair of any permitted vehicle within such space, so long as each such servicing or repair is completed within 24 consecutive hours.

**Section 5. UTILITY INSTALLATIONS.** Unless expressly permitted by the Association's rules and regulations with respect to utility services not available to the Properties on the date this Declaration is recorded, and except for items installed by Developer as part of the Work, and their respective replacements, no utility cable, line, or other connection or facility may be installed, maintained, restored, or permitted to remain on any Lot unless concealed from view. The foregoing restriction does not prohibit reasonable surface markers denoting subsurface installations or at-grade electrical transformers that may be installed or permitted by Developer as part of the Work. If any such electrical transformers are installed on any Lot, an easement exists, to the extent of five feet around the perimeter of each such facility, in favor of the utility from time to time furnishing electrical service for the installation, maintenance, restoration, and removal of such facilities.

**Section 6. EXTERIOR MAINTENANCE.** The Association maintains the lawns and landscaping on each Lot, except for those situated within an enclosed or semi-enclosed patio or similar area. Each Homeowner otherwise maintains and restores all other exterior items on that Homeowner's Lot, including roofs, building surfaces, glass surfaces, exterior doors, fencing, gutters, and lawns and landscaping within any enclosed or semi-enclosed patio or similar area. Each Homeowner must perform all such maintenance and restoration necessary to maintain such Homeowner's Lot, its improvements, vegetation, and exterior attachments and appurtenances in a safe, sanitary, and reasonably attractive condition. If:

(a) any Homeowner refuses or fails to make any required maintenance or restoration; and

(b) as a result, any condition on or adjoining such Homeowner's Lot becomes a hazard or nuisance to any other Resident, or diminishes or impairs the value, desirability, or marketability of any other Lots within the Properties; and

(c) at least two-thirds (2/3) of the members of the Board of Directors so find after formal notice to, and reasonable opportunity to be heard by, the affected Homeowner is a reasonably impartial manner;

then, upon the occurrence of all of the foregoing, the Association may make or perform such maintenance or restoration, or both, as reasonably is or are necessary to correct such condition and assess the cost specifically against such Homeowner's Lot, as provided below in this Declaration. The Association, its agents, employees, and contractors have a reasonable right of entry for the foregoing purposes, as provided in this Declaration. Notwithstanding the foregoing, no total restoration of any dwelling destroyed by any casualty may be undertaken unless at least one year has elapsed without the Homeowner having begun restoration.

**Section 7. PARTY WALLS.** Each wall or fence installed as part of the Work and placed on or along the dividing line between adjoining Lots is a party wall. To the extent not inconsistent with the provisions of this Declaration, the general rules of the law regarding party walls and liability for property damage caused by negligent or willful acts or omissions apply. Without limitation:

(a) **Maintenance.** The cost of reasonable maintenance and restoration of a party wall is shared by the Homeowners who make use of the wall in proportion to such use. Each Homeowner has a reasonable right of entry onto the exterior of the adjoining Lot for such maintenance and restoration, to be exercised upon reasonable advance notice whenever the circumstances permit.

(b) **Casualty.** If a party wall is damaged by fire or other casualty, any Homeowner who has used the wall may restore it. If the other Homeowner thereafter makes use of the wall, such Homeowner must contribute to the costs of restoration in proportion to use. The foregoing is without prejudice to the right of any Homeowner to require a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions.

(c) **Protection.** Notwithstanding the foregoing, any Homeowner who negligently or willfully causes any party wall to be exposed to the elements, or to infestation by termites or other injurious agencies, bears the whole cost of

furnishing the necessary protection against such elements or agencies and of repairing all resulting damage.

(d) Contribution. The right of any Homeowner to contribution from any other Homeowner is appurtenant to the Lots affected, binds and benefits each such Homeowner's successors in title, and is secured by an equitable lien upon each such Lot. The foregoing lien takes priority as to any mortgagee only from and after a lis pendens or other notice of pendency of an action to enforce such lien is recorded.

The provisions of this Section apply to each common entrance walkway installed as part of the Work to serve more than one Lot, and its replacement.

#### ARTICLE VIII: Architectural Control

Section 1. COMMITTEE ESTABLISHED. The Association at all times has as a standing committee an architectural control committee (the "Committee"), comprised of at least three persons. Committee members are appointed by, and serve at the pleasure of, the Board, unless the Board from time to time constitutes itself as the Committee. The Board from time to time may designate alternate members, to serve in the absence of any regular member. Absent Board action to the contrary, the Board is deemed to have constituted itself as the Committee. Committee members need not be directors or Association members. No Committee member is entitled to compensation for services performed; but the Board may employ independent professional advisors to the Committee and allow reasonable compensation to such advisors from Association funds. Any Committee action may be taken by a simple majority of its members, with or without a formal meeting or joint deliberation, so long as each member is informed in advance of the action proposed.

Section 2. COMMITTEE AUTHORITY. The Committee has full authority to regulate the exterior appearance of the Lots to: (i) assure harmony of external design and location in relation to surrounding buildings and topography as established by the Work; and (ii) to protect and conserve the value and desirability of the Properties as a residential community. The power to regulate includes the power to prohibit those exterior uses, structures, conditions, or activities inconsistent with the provisions of this Declaration or otherwise contrary to the best interests of all Homeowners in maintaining the value and desirability of the Properties as a residential community. The Committee's authority includes any matter affecting the exterior appearance of Lots and requiring approval by the Association under this Declaration.

Section 3. COMMITTEE APPROVAL. No building, out building, improvement, structure, fence, addition, wall, landscaping, attachment, condition, excavation, alteration, or change (including any color change) may be made, installed, maintained, restored, or permitted to remain on or to the exterior of any Lot, unless it is (i) an equivalent replacement of an item installed by Developer as part of the Work, or (ii) made, installed, maintained, or restored, as the case may be, substantially in compliance with plans and specifications reviewed and approved by the Committee in advance. Notwithstanding the foregoing, the Committee's approval is not required for any item that is concealed from view from the Community Streets and any adjoining Lots by improvements, structures, fencing, vegetation, or other items installed by Developer as part of the Work or previously approved by the Committee, or their respective replacements.

Section 4. APPLICATIONS. Each application for Committee approval must be accompanied by two sets of plans and specifications, together with such renderings, samples, models, and other information as the Committee reasonably may require. Any application submitted other than by a Homeowner must attach the Homeowner's written consent to the approval requested. Any application for installation of any permanent structure must include a landscaping plan and detailed plot. If requested, the Committee may require the preliminary staking of such improvements and structures according to such plan for Committee inspection. Any costs of filing and processing an application pursuant to this Article are at the expense of the applicant; and the Association may impose a reasonable, uniform application fee to defray its costs.

Section 5. PROCEDURE. Within 30 days after receiving an application, the Committee either must approve the application as submitted or notify the applicant of (i) the Committee's intent to deny the application, or (ii) any additional plans, specifications, drawings, or other items that the Committee will require to act upon

THIS IS NOT A  
the application, or (iii) both of the foregoing. The Committee's failure to so notify the applicant is an approval of the application as submitted. Upon receiving the foregoing notice, the applicant may request a hearing before the Committee, at which the applicant, personally and through representatives of the applicant's choosing, is entitled to a reasonable opportunity to be heard in a reasonably impartial manner, after reasonable advance notice. No particular formality is required for any of the Committee's proceedings, including any hearing, nor is any record required other than a written statement fairly summarizing the material features of any Committee action. Unless the applicant agrees otherwise, the Committee must approve or disapprove any application within 60 days after receipt.

**Section 6. APPROVAL.** The Committee's approval is deemed given under any of the following circumstances: (i) the Committee fails to deny any application within 60 days after receipt, unless the applicant agrees to a longer period of time; or (ii) the Committee fails to notify the applicant of its intent to deny an application, or that further information is required, within 30 days after receipt of an application, as provided in the preceding Section; or (iii) no suit, action, or other proceeding is instituted by the Association within one year after substantial completion with respect to any use, activity, structure, installation, condition, or other item installed, maintained, or restored without application to the Committee. In all other events, the Committee's approval must be in writing.

**Section 7. NOTICE OF ACTION.** No suit, proceeding, or other action to enforce the provisions of this Article may be commenced or continued, nor may any of the provisions of this Article be enforced, against any person who acquires any interest in a Lot without actual knowledge that a building or other structure (including walls and fencing) was installed, maintained, or restored, as the case may be, in violation of the requirements of this Article unless such suit, action, or other proceeding is begun within one year after such building or other structure was substantially complete and a lis pendens or other notice of the pendency of such action is recorded within such time period. No such action may be commenced, continued, or otherwise enforced against any purchaser or creditor who acquires an interest in, or a lien upon, any Lot for value, other than pre-existing indebtedness, and without actual knowledge of any such violation, if such purchaser or creditor obtained a statement under oath from the applicable Homeowner that no violation existed on such Lot at the time value was given or paid. Upon payment of any reasonable, uniform charge that the Association from time to time may impose to defray its costs, the Association within ten days after request will issue an appropriate certificate of compliance or noncompliance, as the case may be, with the provisions of this Article that is binding and conclusive as to the information it sets forth upon both the Association and any person without actual knowledge to the contrary.

**Section 8. DEVELOPER ACTION.** Notwithstanding any provision of this Article, no Committee approval is required or authorized for any residential dwelling or any of its appurtenances constructed by Developer on any Lot as part of the Work. The foregoing exemption is for the exclusive benefit of a Developer and may not be extended by Developer to any Homeowner who is not a Developer. As a Developer Prerogative, Developer also retains the right to veto any committee action that Developer decides is inconsistent with Developer's plan for the Properties.

#### ARTICLE IX: The Association

**Section 1. MEMBERSHIP AND VOTING.** Membership and voting rights in the Association, and the requirements for membership action, are as from time to time set forth in the Articles and, as so set forth, are here incorporated by reference into this Declaration.

**Section 2. COMMON PROPERTIES.** As and to the extent provided in this Declaration, the Association has exclusive management and control of the Common Properties and any related improvements, equipment, fixtures, furnishings, and other tangible personal property. The Association must maintain the Common Properties, including any common facilities from time to time installed on any Lot, and otherwise keep them in good, clean, substantial, attractive, sanitary, and serviceable condition, order, and repair for their respective intended purposes. Without limitation, the Association must maintain any such improvements, fixtures, equipment, and tangible personal property installed or furnished by Developer as part of the Work. Unless the Required Percentage decides otherwise, the Association also must restore the Common Properties after any damage.



**Section 3. SERVICES.** The Association may obtain and pay for the services of any persons to manage its affairs to the extent it deems advisable, as well as such other personnel as the Association determines are necessary or desirable for the proper maintenance and restoration of the Properties, whether such personnel are furnished or employed directly by the Association or by any person with whom it contracts. The Association may contract with others to furnish security services, utility services, refuse collection, and any other services or materials, or both, to any Lots. If any such common services are furnished to all Lots, their cost must be assessed specifically to each Lot on the basis of actual use, consumption, or other benefit, if separately metered or otherwise reasonably determinable. Otherwise, such costs must be so assessed equally to all Lots. The Association may impose a reasonable, uniform charge to defray its costs in determining the actual use, consumption, or other benefit of such services to each Lot, such as meter reading fees. If any such services or materials are furnished to less than all Lots, however, and unless the Required Percentage agrees to assess such costs to all Lots, (i) any costs of such services must be assessed specifically against only those Lots enjoying their benefit, as provided below in this Declaration, and (ii) the advance consent of the Homeowner of each such Lot is required.

#### **ARTICLE X: Assessments**

**Section 1. ASSESSMENTS ESTABLISHED.** Developer, as the fee simple record title holder of each Lot on the date this Declaration is recorded, covenants and agrees, on behalf of itself and its successors and assigns in and to each Lot, to pay to the Association any assessments properly made by the Association against each Lot as provided in, or otherwise pursuant to, the Legal Documents, together with (i) any reasonable interest and late charges that may be imposed pursuant to this Article; (ii) any costs and expenses of collection or other enforcement, including reasonable attorneys' fees; and (iii) any excise taxes that may be imposed by Applicable Law. The foregoing is called the "Assessment Covenant" in this Article, is a continuing charge on the land, and is secured by a continuing lien upon each Lot, as provided in this Article. The foregoing lien is called the "Assessment Lien" in this Article and binds Developer and any person now or hereafter having or claiming any right, title, or interest in or to any Lot by, through, or under Developer, including any mortgagee or Homeowner, to the extent and otherwise as provided in this Article.

**Section 2. PERSONAL DEBT.** Every assessment properly made by the Association as provided in, or otherwise pursuant to, the Legal Documents also is the joint and several obligation of the person or persons who was or were the Homeowner(s) of such Lot when such assessment fell due, unless a Homeowner who acquires any interest in any Lot by operation of law, and not by acceptance of a consensual conveyance, completely disclaims such interest by an appropriate recorded instrument within six months after it is acquired. Without limitation, any of the following is a ratification, acceptance, and assumption by any Homeowner of the Assessment Covenant to the foregoing extent: (i) the consensual acceptance of a deed or other conveyance of any interest in any Lot, regardless of whether so expressed in such deed or other conveyance; (ii) the consensual acceptance of, or assertion of any claim to, any rents, issues, incomes, profits, proceeds, or revenues of, from, or with respect to any Lot; or (iii) entry into possession of any Lot under a claim of right. Notwithstanding the foregoing, no personal liability for delinquent assessments passes to a Homeowner's successors in title unless assumed expressly in writing. No person not a Homeowner is personally liable on the Assessment Covenant. Without limitation, no mortgagee is so liable unless such mortgagee acquires record title to a Lot pursuant to or in lieu of the foreclosure or other enforcement of a mortgage; and such personal liability then is limited to assessments thereafter becoming due, as provided below in this Article.

**Section 3. PROPERTY CHARACTERISTICS.** Although each assessment due the Association is an interest in, charge upon, and revenue arising from each Lot against which such assessment properly is made, Developer intends, to the maximum extent from time to time not inconsistent with Applicable Law, that the right to receive, collect, and enforce any such assessment also is an "account" or "general intangible" of the Association, as such terms from time to time are defined in The Florida Uniform Commercial Code, or any similar successor law, at the option of any consensual creditor or transferee of the Association. Without limitation, Developer intends that (i) the Association may pledge, hypothecate, anticipate, assign, and otherwise transfer its assessment revenues, either absolutely or as security for the performance of any obligation of the Association, as intangible personal property, separate from the real estate from which they respectively arise; and (ii) any consensual transferee or consensual creditor, as the case may be, may have and exercise any right or remedy from time

THIS IS NOT A  
COPY

to time available under Applicable Law for the preservation, protection, enforcement, and other realization of or upon such assessments as intangible personal property, at such transferee's or creditor's option, in addition to, and not in limitation of, the benefit of the Assessment Lien, to the extent of any such transferee's or creditor's interest. The provisions of this Section do not extend to or benefit any person acquiring any interest in the Association's assessments by operation of law, except the Association's corporate successors, or as a non-consensual transferee or creditor of the Association.

**Section 4. GENERAL ASSESSMENT.** The Association must levy an annual assessment for the management, maintenance, restoration, and improvement of the Properties, including the payment of taxes and insurance on the Common Properties and any costs of labor, equipment, materials, management, and supervision, and any of the Association's other general activities and expenses. All revenues derived from the general assessment otherwise must be used to promote the recreation, safety, and general welfare of Homeowners and Residents and to enhance the value, desirability, and marketability of the Properties.

**Section 5. ANNUAL ASSESSMENT.** The annual assessment is made, and its amount fixed, by the Board of Directors at least 30 days before the end of each fiscal year of the Association. Until the end of the fiscal year in which this Declaration is recorded, the annual assessment will not exceed \$420.00. Thereafter, the annual assessment may be increased by the Board of Directors each fiscal year by any dollar amount not exceeding the lesser of (i) fifteen percent (15%) of the amount of the annual assessment then in effect, or (ii) any increase in the cost of living, as measured by the Consumer Price Index For All Items published by the Bureau of Labor Statistics of the United Department of Labor, or any other generally accepted and reliable index that from time to time may be specified in the By-laws. The maximum amount determined according to the foregoing is called the "Permitted Increase" in this Article. Any other increase in the annual assessment requires Special Approval. Absent valid action by the Board or membership to the contrary before the close of any fiscal year, the annual assessment then in effect automatically continues in effect for the next ensuing fiscal year. The maximum cost of living increase permitted by this Section is determined by (i) multiplying the amount of the annual assessment then in effect by the monthly average of the index for the most recent 12-month period available at the time of calculation and (ii) dividing the resulting product by the index for the month beginning such 12-month period.

**Section 6. COMMENCEMENT.** The annual assessment begins as to each Lot on the first day of the first calendar month following the month in which Developer either transfers title, or gives possession, to that Lot to a Homeowner who is not a Developer. Such initial assessment is prorated on a monthly basis for the remainder of the fiscal year then in effect.

**Section 7. EXTRAORDINARY ASSESSMENTS.** The Association at any time may levy an extraordinary assessment applicable to the remainder of the fiscal year then in effect. Any extraordinary assessment requires Special Approval, unless the total amount of the annual assessment, as increased by the total amount of such extraordinary assessment, could have been established by the Board as a Permitted Increase at the beginning of the fiscal year then in effect. Any extraordinary assessment is disregarded in determining any Permitted Increase in the annual assessment for the following fiscal year. Any extraordinary assessment must be payable in equal monthly installments over the remainder of the fiscal year then in effect, unless Special Approval is obtained for accelerated payment.

**Section 8. PAYMENT.** The annual assessment is payable in equal monthly installments. Each installment is due and payable in advance and without demand on the first day of each month. The Board from time to time may establish uniform, commercially reasonable discounts for full prepayment of an annual assessment within the first month of a fiscal year. No installment of any assessment bears interest unless (i) it remains unpaid on the first day of the first calendar month following the month in which it fell due, and (ii) at least five days before such date, the Homeowner of the Lot against which such assessment is made is notified of the delinquency. Such installment then bears reasonable interest from its original due date through the date payment is received. If any installment is not received by the Association within ten days after its due date, the Association may impose a reasonable, uniform late charge not exceeding such amount as from time to time is specified in the By-laws and assess such amount specifically against the applicable Lot, all without notice or demand. Any late charges must be credited against any interest that otherwise may become payable to the Association with respect to such installment.

**Section 9. INTEREST DEFINED.** As used in this Article, "reasonable interest" means such reasonable rate of interest as the Association from time to time may

THIS IS NOT A  
CLEAR TITLE COPY

establish by its rules and regulations, giving due regard to the Association's actual or anticipated costs of borrowing and to rates generally prevailing among recognized lending institutions in the area of Hillsborough County, Florida, for unsecured consumer credit transactions in the amount of the annual assessment, but not exceeding any maximum rate that from time to time may be established by Applicable Law. Unless the Association determines otherwise, "reasonable interest" means twelve percent (12%) simple annual interest, calculated on the basis of a 360-day year of twelve 30-day months.

**Section 10. NOTICE.** The Association should notify each Homeowner of the amount of each annual assessment before the beginning of each fiscal year. Notice of any extraordinary assessment made by the Board must be given at least 15 days before the first installment of such extraordinary assessment is due. Meeting notice of any annual or extraordinary assessment requiring Special Approval complies with the foregoing requirements if it contains such information and the assessment is approved as proposed. No failure to give any notice pursuant to this Section invalidates, impairs, or discharges any assessment otherwise properly made, except that no late charge or interest may be imposed with respect to such assessment unless at least ten days advance notice of the amount is given to an affected Homeowner.

**Section 11. PROPERTY TAXES.** Because the interest of each Homeowner in any of the Common Properties owned in fee simple by the Association is an interest in real property appurtenant to each Lot, and because no person other than a Homeowner or an Entitled User of a Homeowner has the right to the beneficial use and enjoyment of such Common Properties, Developer intends that the value of the interest of each Homeowner in such Common Properties be included in the assessment of each such Lot for property tax purposes. Developer further intends that any assessment for such purpose against such Common Properties be for a nominal amount only, reflecting that their full value is included in the several assessments of the various Lots. If any taxing authority refuses to so assess any such Common Properties, with the result that the property taxes in any given year assessed to the Association with respect to all such Common Properties exceed \$500.00, the amount of such excess may be specially assessed by the Board, in its discretion, equally to all Lots. Such special assessment may be payable in a lump sum within 30 days after notice or may be amortized with or without reasonable interest over such number of months as the Board determines. Any special assessment pursuant to this Section is not an increase in the annual assessment subject to the limitations of this Article and is disregarded in determining any subsequent Permitted Increase.

**Section 12. SPECIFIC ASSESSMENTS.** Any accrued, liquidated indebtedness of any Homeowner due the Association also may be assessed by the Association specifically against such Homeowner's Lot if it remains unpaid for 30 days after written notice or demand, except that no demand is required to assess late charges otherwise properly imposed pursuant to this Article. Demand for any single amount exceeding one-twelfth of the annual assessment then in effect must be by formal notice. Assessments made pursuant to this Section sometimes are called "specific assessments" in the Legal Documents; and the amount so assessed is sometimes so referred to as being "assessed specifically" against a Homeowner's Lot. Indebtedness that may be assessed specifically includes that arising (i) under any provision of the Legal Documents, including any express indemnity; or (ii) by any contract, express or implied; or (iii) because of any act or omission of any Homeowner or of any Homeowner's Entitled Users; or (iv) by operation of law; or (v) as a fine, penalty, or late charge properly made or otherwise imposed by the Association pursuant to the Legal Documents; or (vi) as a Homeowner's share of any utility or other common services furnished to such Homeowner's Lot pursuant to a contract between the Association and the applicable utility or other provider. Any amount assessed specifically that from time to time remains unpaid bears reasonable interest from its original due date through the date payment is received, unless paid in full within 30 days after the demand required by this Section.

**Section 13. GENERAL.** Except for specific assessments pursuant to this Article, any assessments must be uniform as to each Lot. No Developer, Homeowner, or other person having or claiming any interest in a Lot may defeat, discharge, or otherwise impair the Assessment Lien by disclaiming such person's interest or by non-user or abandonment of any Lot or any Common Properties. No Homeowner, including a Developer, personally liable on the Assessment Covenant may defeat, discharge, or otherwise impair such liability by abandonment or non-user of any Lot or any Common Properties, except that a Homeowner who acquires any interest in any Lot by operation of law, and not by a consensual conveyance, may discharge such personal liability in full by completely disclaiming such interest by an appropriate recorded instrument within six months after it is acquired. No sale or other transfer of any interest in any Lot otherwise alters, impairs, or discharges the Assessment Covenant or the Assessment Lien except pursuant to, or in lieu of, the foreclosure or other enforcement of a First Mortgage, as expressly provided below in this Article.

**Section 14. PRIORITY.** The Assessment Lien is established by this Declaration and is a continuing lien against each Lot, prior in dignity to any other liens or encumbrances securing any obligation, except (i) liens perfected on the date this Declaration is recorded; (ii) any lien for taxes and assessments due any sovereign, but only to the extent such lien is given priority over the Assessment Lien by Applicable Law; and (iii) the lien for any sums validly secured by any First Mortgage from time to time encumbering such Lot, as and to the extent the Assessment Lien is subordinated by this Declaration. Recording this Declaration is constructive notice to any subsequent purchasers and creditors, or either, of the existence of the Assessment Lien and its priority, as established by this Section. Except with respect to transfers of title by a Developer for value in the ordinary course of completing the Work, such recording also places upon each such person the duty to inquire of the Association of the amount from time to time secured by the Assessment Lien and the existence of any delinquency in the payment of such amount. Any lienors acquiring any liens, whether consensual, non-consensual, or otherwise arising by operation of law, against any Lot after this Declaration is recorded, except the holder of a First Mortgage, are deemed to consent that such liens are inferior to the Assessment Lien, regardless of whether such consent is set forth specifically in the instrument creating such lien or in the provision of Applicable Law establishing such lien.

**Section 15. NOTICE.** The Association from time to time may record a notice of lien to evidence the amount secured by the Assessment Lien against a particular Lot; but neither recording, nor failure to record, any such notice will alter, discharge, or otherwise impair the existence or priority of the Assessment Lien, as established by this Declaration. Upon payment of such reasonable, uniform charge as the Association from time to time may impose to defray its costs, the Association will issue to any interested person a written certificate of the amount secured by the Assessment Lien against any Lot, together with such other information relating to the Assessment Lien as reasonably may be requested. Each such certificate binds the Association and the person to whom it is directed as to the information it contains, unless such person has actual knowledge to the contrary.

**Section 16. SUBORDINATION.** The Assessment Lien is subordinate to the lien of any First Mortgage, as provided in this Section. The sale or transfer of any Lot pursuant to the valid foreclosure or other enforcement of any First Mortgage, or by any valid consensual conveyance or other proceeding in lieu of any such foreclosure or other enforcement, extinguishes any amounts secured by the Assessment Lien that became due before such sale or transfer, without prejudice, however, to any right or remedy of the Association to (i) collect such amounts from any Homeowner personally liable for their payment by the acceptance, ratification, and assumption of the Assessment Covenant, as provided above in this Article, or (ii) share in any proceeds of any such foreclosure or other enforcement remaining after full payment of all amounts properly secured by such First Mortgage. No such sale or transfer alters, impairs, or discharges the Assessment Lien or Assessment Covenant as to any assessments thereafter becoming due.

**Section 17. SUBROGATION.** Any encumbrancer holding a lien on any Lot may pay, but is not required to pay, any amounts secured by the Assessment Lien. Upon any such payment, such encumbrancer is subrogated to all rights of the Association with respect to the Assessment Lien, including priority, to the extent of the amounts so paid. Within ten days after demand, and upon payment of such reasonable, uniform charge as the Association from time to time may impose to defray its costs, the Association will execute, deliver, and record such further assurances of the foregoing subrogation as reasonably may be required. At any time that a default exists in the payment or other performance of any lien having priority over the Assessment Lien, the Association may pay any amounts required to maintain any such prior lien in good standing or otherwise prevent its acceleration, foreclosure, or other enforcement, in any combination. Upon the acceleration, foreclosure, or other enforcement of any such prior lien, the Association also may pay any amounts required to redeem any Lot, or acquire such lien by assignment. Any costs and expenses so incurred by the Association, together with reasonable interest and reasonable attorneys' fees, are secured by the Assessment Lien. The Association also is entitled to be subrogated to the rights of the holder of any such prior lien to the extent of any amounts so paid, except the Association may not be subrogated to the rights any mortgagee without such mortgagee's consent.

**Section 18. ENFORCEMENT.** The Assessment Lien may be enforced by judicial procedure in the same manner in which mortgages of real property from time to time may be enforced by judicial procedure under Applicable Law. Any costs and expenses of foreclosure or other enforcement, including reasonable attorneys' fees, are secured by the Assessment Lien, as are assessments that become due during the period of foreclosure or other enforcement. Such assessments, together with reasonable interest

as provided in this Article, are accounted on a prorated basis and payable as of the date title is divested by such foreclosure or other enforcement. The Association may bid to acquire any Lot at any sale that may be conducted pursuant to the foreclosure or other enforcement of the Assessment Lien. The Association also may acquire such Lot by consensual conveyance or other proceeding in lieu of foreclosure or other enforcement. Any Lot so acquired thereafter may be held, conveyed, leased, rented, encumbered, improved, restored, used, and otherwise dealt with by the Association as its owner for purposes of resale or other disposition only. If any sale or other enforcement of the Assessment Lien results in a deficiency, the court having jurisdiction may enter a personal judgment against any Homeowners personally liable under the Assessment Covenant.

**Section 19. HOMESTEADS.** By acceptance, ratification, and assumption of the Assessment Covenant, as provided above in this Article, each Homeowner is deemed to acknowledge, consent, and agree that (i) any amounts secured by the Assessment Lien are for the improvement, maintenance, and restoration of any homestead from time to time established or maintained on such Lot, and (ii) the Assessment Lien, as established by this Declaration, has priority over any such homestead.

**Section 20. EXEMPT PROPERTY.** Notwithstanding any provision of this Article to the contrary, any Lots from time to time owned by the Association are exempt from the Assessment Covenant for the period of such ownership.

**Section 21. FRAUDULENT TRANSFERS.** No title transaction made, directly or indirectly, to delay, hinder, discharge, or otherwise impair the Assessment Covenant is effective as to the Association, except as expressly provided in this Article (i) with respect to disclaimer of interests acquired by operation of law, or (ii) pursuant to the foreclosure or other enforcement of any First Mortgage. The Association may enforce the Assessment Covenant against any person otherwise properly liable notwithstanding any such transaction.

#### ARTICLE XI: Operation

**Section 1. SERVITUDES.** Each provision of this Declaration is a permanent servitude upon the Properties, and each part of the Properties, and binds Developer, its successors and assigns, and any person acquiring any interest in or to any of the Properties from and after the date this Declaration is recorded, including any Homeowners, mortgagees, co-owners, contingent remaindermen, holders of executory interests or rights of reverter, and beneficial owners, their respective heirs, successors, and assigns. The benefit of each such provision inures to Developer, the Association, and each Homeowner, their respective heirs, successors, and assigns. The benefit of certain provisions of this Declaration is extended to First Mortgagees and other mortgagees, and may be extended to Entitled Users and other persons, all to the extent expressly provided in this Declaration.

**Section 2. ENFORCEMENT.** Without limiting the preceding Section, and unless expressly provided otherwise, the Association or any Homeowner has the right to enforce, by any appropriate proceedings, any restrictions, conditions, covenants, easements, reservations, liens, charges, rules, and regulations now or hereafter imposed by, or pursuant to, the provisions of this Declaration. Notwithstanding the foregoing, the Association's rules and regulations must be enforced only by the Association or Developer, unless the Board decides otherwise. So long as Developer's Prerogatives continue, as provided below in this Article, Developer (i) also may enforce any of the foregoing, either directly, for Developer's use and benefit, or in the name of the Association, for the Association's use and benefit, as appropriate and as Developer in each instance may elect, and (ii) will be subrogated to any rights and remedies of the Association to the extent of Developer's interest and as necessary, convenient, or desirable to implement, protect, or further Developer's comprehensive plan for the Properties.

**Section 3. COSTS.** If any person entitled to enforce any of the provisions of this Declaration, or any of the Association's rules and regulations, is the prevailing party in any litigation involving this Declaration, or any such rule or regulation, such party may recover any costs and expenses incurred, including reasonable attorneys' fees, for any arbitration, dispute settlement, administrative, trial, appellate, and other proceedings, except that such attorneys' fees may not be recovered against the Association or any Developer unless so provided by Applicable Law. If the Association is such a prevailing party against any Homeowner, such costs and expenses, including reasonable attorneys' fees, may be assessed specifically against such Homeowner's Lot.

THIS IS NOT A  
CLEAR-COPIED COPY

If any Homeowner or class of Homeowners is such a prevailing party against any person except the Association or Developer, then such Homeowner(s) may be reimbursed by the Association for any such costs and expenses incurred, including reasonable attorneys' fees, in the discretion of the Board. Notwithstanding the foregoing, the Association is entitled to recover any costs and expenses incurred, including reasonable attorneys' fees, if it is the prevailing party in any proceedings to enforce the Assessment Covenant or the Assessment Lien against Developer.

**Section 4. WAIVER.** No delay or failure by the Association, Developer, or any Homeowner to enforce any covenant, restriction, rule, or regulation by itself is a waiver of the right to do so at any time, unless such waiver is set forth in writing and signed by the party to be charged. No such waiver is a waiver of any future event, unless it expressly so states and is supported by an independent consideration.

**Section 5. DEVELOPER PREROGATIVES.** Unless expressly limited by the Legal Documents, any right or remedy provided Developer with respect to the Properties (individually and collectively, "Developer Prerogatives") is an interest in real property reserved to Developer, as owner of any part of the Properties, that Developer may exercise as often as Developer considers necessary, convenient, desirable, or expedient to implement, further, and protect Developer's comprehensive plan for the Properties and the value, desirability, and marketability of the Properties. Any Developer Prerogatives from time to time may be released, terminated, discharged, extinguished, or limited, in whole or in part, by a recorded instrument properly executed by Developer, without otherwise amending the Legal Documents. If such instrument is properly executed by Developer, it is an amendment of the applicable provision(s) of the Legal Documents, so that such provision(s) then are obsolete and without further force and effect to the extent so released, terminated, discharged, extinguished, or limited. Any Developer Prerogatives otherwise continue for such period of time as reasonably is required to complete Developer's comprehensive plan for the Properties, but in no event later than January 1, 1986.

**Section 6. DURATION.** Except as expressly provided otherwise in this Declaration with respect to Developer Prerogatives, the provisions of this Declaration run with and bind the Properties until January 1, 2023 (the "Renewal Date"), unless sooner amended by the Required Percentage. Unless the Required Percentage determines otherwise within the six-month period preceding the Renewal Date, or any subsequent decennial anniversary of the Renewal Date, the provisions of this Declaration automatically are renewed for successive periods of ten years each on the Renewal Date and on each subsequent decennial anniversary of the Renewal Date, unless sooner amended by the Required Percentage. Notice of non-renewal must be recorded to be effective against persons without actual knowledge.

**Section 7. AMENDMENT.** This Declaration may be amended at any time by the Required Percentage. Notwithstanding the foregoing, or any other provision of the Legal Documents, no action may be taken without the advance written consent of each Homeowner affected, and of any mortgagees of each such Homeowner's Lot, if, as a result of such action, any of the following will result:

(a) Access. Any Lot will be deprived of legal access, or of reasonably practical access, or both, to a dedicated public street, road, or highway.

(b) Voting. Except as expressly provided in the Articles with respect to Class B members, the uniformity of voting rights among all Lots is altered.

(c) Assessments. The uniformity of the burden of any assessment among all Lots is altered, except as expressly provided in this Declaration with respect to specific assessments.

(d) Use. No reasonable use may be made of any Lot for or as a residential dwelling for a single family.

Unless it expressly provides a later effective date, any amendment to this Declaration is effective when a written certification of such amendment, executed by the Association with the formalities required for a deed under Applicable Law, is recorded. So long as Developer's Prerogatives continue, any amendment to the Legal Documents also requires Developer's written consent if it will (i) lessen any restriction on the use of any Lots, (ii) alter the benefit or burden of any easements established by this Declaration, (iii) extend the jurisdiction of the Association to lands other than the Properties, (iv) delete any part of the Properties from the Association's jurisdiction, (v) conflict with Developer's comprehensive plan for the Properties, or (vi) impair any right or remedy expressly reserved or granted to Developer by the Legal Documents. Under certain



THIS IS NOT A

circumstances as set forth in Article XIV of the Articles, certain "Reviewable Actions" also may require the approval of certain "Lending Agencies" or "First Mortgagees," in any combination, as provided in such Article.

**Section 8. SEVERABILITY.** Invalidation of any particular provision of the Legal Documents, or any of the Association's rules or regulations, by judgment or other judicial action will not affect any other provision, all of which remain in full force and effect. Notwithstanding the foregoing, any court or other judicial tribunal of competent jurisdiction is empowered, to the extent practical, to reform any otherwise invalid provision (i) when necessary to avoid a determination of invalidity while effecting Developer's intent of providing a comprehensive plan for the use, development, sale, and beneficial enjoyment of the Properties as a residential community, and (ii) so long as the Association and Developer (if Developer's Prerogatives then continue) consent to such reformation.

**Section 9. CERTIFICATION.** An instrument signed by any executive officer of the Association, and attested by the Association's secretary or any assistant secretary under this Association's seal, is conclusive, as to persons without actual knowledge to the contrary, that (i) any approval, vote, consent, or other action specified in the Legal Documents or the Association's rules and regulations is not required with respect to any particular matter; and (ii) any such approval, vote, or consent has been obtained in the manner required by the Legal Documents and the Association's rules and regulations; and (iii) any other action properly has been taken in conformity with all applicable requirements of the Legal Documents and the Association's rules and regulations.

**Section 10. ATTACHMENTS.** Any schedules, attachments, and exhibits that are attached to this Declaration and expressly incorporated into this Declaration are part of this Declaration for all purposes. Any provision of this Declaration incorporating any provisions of the Articles into this Declaration incorporates such provisions as they from time to time are set forth in the Articles. Without limitation, the provisions of the Articles may be amended in the manner set forth in the Articles, without complying with the requirements for amending this Declaration.

**Section 11. PRIVATE AGREEMENTS.** The provisions of the Legal Documents, and any of the Association's rules and regulations, are a part of any consensual agreement, written or oral, affecting the title, possession, use, occupation, or disposition of any of the Properties, including any purchase contract, mortgage, or lease affecting any Lot. As between themselves, the parties to any such private agreements may determine the responsibility for compliance with the provisions of the Legal Documents, and any of the Association's rules or regulations; but no such agreement binds the Association, or any other party entitled to enforce the provisions of the Legal Documents, or any of the Association's rules and regulations, unless the Association, pursuant to proper action, expressly so agrees. Unless such private agreement expressly provides otherwise, any material violation of any provision of the Legal Documents, or any of the Association's rules and regulations by the tenant or other party under any lease granted by any Homeowner or Resident is a default under, and grounds for termination of, such lease, at the option of the applicable Homeowner, if such Homeowner, or such Homeowner's Lot, will be exposed to any material liability under the Legal Documents, or any of the Association's rules and regulations, because of such violation. Unless the private agreement expressly provides otherwise, any such violation also is such a default and grounds for termination under any purchase contract with respect to any Lot if, with respect to violations that can be cured by the payment of money, such default continues for a period of thirty days after written demand or, with respect to any other violation, such reasonable period of time as may be required to correct the violation, so long as the contract purchaser diligently and continuously pursues any measures reasonably required to correct such violation, indemnifies the Homeowner, and secures such indemnity in a reasonable manner.

To WITNESS the foregoing, Developer has executed this Declaration the date stated above.

SIGNATURE WITNESSED BY:

*Joseph Costello*  
*Joseph Costello*

(CORPORATE SEAL)

OAK TRAIL DEVELOPERS, INC.

By: *Colleen E. H. Carlton*  
Colleen E. H. Carlton, President



OFF. REC. 4163 PG 266

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The execution of the foregoing instrument was acknowledged before me August 10, 1983, by COLLIE E. H. CARLTON, the President of OAK TRAIL DEVELOPERS, INC., a Florida corporation, on behalf of the corporation.

(AFFIX NOTARIAL SEAL)

*Joseph Castella*  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES DEC 1 1983  
BONDED THRU GENERAL INS UNDERWRITERS

## SCHEDULE OF DEFINED TERMS

(a) "amend" and "amendment" respectively mean, in referring to a written provision or instrument, to amend, alter, change, revise, rescind, terminate, or restate, in any applicable combination and in whole or in part, and amendment, alteration, change, revision, rescission, termination, or restatement, in any applicable combination and in whole or in part.

(b) "any" means "any and all."

(c) "contract purchaser" means any person who from time to time is a vendee in possession under Applicable Law.

(d) "casualty" includes (i) fire, wind, flood, and other acts of God, (ii) theft, vandalism, and other criminal or civilly actionable acts or omissions of any person, (iii) riot, civil commotion, and other acts of any public enemy, (iv) expropriation and other paramount acts of any sovereign not constituting a taking, and (v) any occurrence of undeterminable or undetermined origin.

(e) "consensual" means any agreement, instrument, or other operative act or conduct made or taken with the voluntary consent or assent of the party sought to be charged; and no consideration, formality, or symbolic act or token is required to complete, perfect, or evidence the operative effect of any such agreement, instrument, act, or conduct. Consent or assent for such purpose may be express, implied in fact, or implied by Applicable Law, so long as it is voluntary under Applicable Law.

(f) "co-owner" means any tenant by the entireties, joint tenant, tenant in common, or other co-tenant of any vested freehold estate in any Lot, except a term of years, unless the term is equivalent to fee simple ownership under Applicable Law. "Co-owner" includes life tenants and vested remaindermen. Contingent remaindermen, holders of executory interests or rights of reverter, and beneficial owners other than contract purchasers are not "co-owners" for any purpose, except that such right, title, or interest as they may have, claim, or acquire in any Lot is subject to, and bound by, the provisions of the Legal Documents and any action properly taken pursuant to the Legal Documents, including any of the Association's valid rules and regulations.

(g) "corporate successors" means the successor(s) by merger, consolidation, reorganization, or transfer of all or substantially all of the assets of a corporation, partnership, or other legal entity.

(h) "damage" means damage, injury, destruction, or devaluation to or of property, in any applicable combination, including that caused by, or otherwise resulting from, any casualty or taking.

(i) "days" means consecutive calendar days, unless the expiration of any time period measured in days falls on a Saturday, Sunday, or legal holiday at the place where performance must be tendered, when such expiration automatically is extended to the next day that is not a Saturday, Sunday, or legal holiday.

(j) "development" has the same meaning as defined in Section 380.04, Florida Statutes (1981), and also includes the offering of developed Lots for sale, lease, or other disposition in the ordinary course of business.

(k) "execute" means to sign, seal, attest, certify, acknowledge, or subscribe, in any applicable combination, as necessary or appropriate under Applicable Law to validate, perfect, or authenticate a written instrument, in any applicable combination.

(l) "family or household member" means any family or household member of any Homeowner, contract purchaser, or tenant who from time to time resides, permanently or temporarily, on any Lot. Domestic or household employees in residence are "household members" for all purposes.

(m) "formal notice" means notice given in such manner as from time to time reasonably is calculated to impart actual knowledge. The method of giving formal notice from time to time may be provided in the By-laws. Unless the By-laws provide otherwise, "formal notice" means written notice given (i) by certified or registered mail, return receipt requested, with sufficient postage

affixed, or (ii) in the manner from time to time provided by Florida law for service of process, except that service may be made, returned, and proven by any person.

(n) "guest" means any person who from time to time has any right of entry to any of the Properties by a consensual agreement with any Resident. The term "guest" specifically includes any invitees (social or business), licensees, and concessionaires. Such term also includes any person exercising any right of entry or other rights under any easement granted by any Resident, to the extent such person's conduct while on or about the Properties is subject to the actual control of such Resident.

(o) "include" and "including" each are without limitation.

(p) "indemnify" means the indemnitor will defend, indemnify, and hold the indemnitee harmless against any claims, losses, or liabilities asserted against the indemnitee by, or incurred by the indemnitee to, any third party because of any matters covered by the indemnity. The scope of any indemnity includes any costs and expenses, including reasonable attorneys' fees, incurred in defending any indemnified claim, or in enforcing the indemnity, or both.

(q) "install" and "installation" respectively mean, in referring to tangible property, to construct, place, plant, erect, fabricate, and otherwise install, in any applicable combination, and construction, erection, placing, planting, fabrication, and other installation, in any applicable combination.

(r) "interpret" and "interpretation" respectively mean, in referring to a written instrument, to interpret, construe, apply, or enforce its provisions, in any applicable combination, and the interpretation, construction, application, or enforcement of such provisions, in any applicable combination.

(s) "lease" means, in referring to any Lot, any consensual agreement, written or oral, by which any person, other than a Homeowner, contract purchaser, or a family or household member, from time to time holds possession of, or otherwise occupies, any Lot. The term "lease" specifically includes any sublease or rental agreement granted by any Resident.

(t) "maintain" and "maintenance" respectively mean, in referring to property, to operate, use, repair, service, protect, inspect, maintain, renew, and replace, in any applicable combination, and operation, use, repair, servicing, protection, inspection, maintenance, renewal, and replacement, in any applicable combination.

(u) "may not" and other negative forms of the verb "may" each are prohibitory.

(v) "mortgage" means any mortgage, deed of trust, or other recorded consensual instrument from time to time validly transferring any interest in a Lot, or creating a lien upon a Lot, in either case as security for the performance of an obligation, except an executory sales contract. The term "mortgage" does not include judgments, involuntary liens, or liens arising by operation of law.

(w) "mortgagee" means the record owner of a mortgage.

(x) "person" means any natural person or artificial entity having legal capacity under Applicable Law.

(y) "possession" means actual possession or other actual occupancy, unless no person holds actual possession, when "possession" means the present right to exclusive possession under Applicable Law.

(z) "record" or "recorded" means properly filed for record in such place as from time to time is designated under Applicable Law for providing constructive notice of instruments affecting title to any of the Properties.

(aa) "restore" and "restoration" respectively mean, in referring to any damage to property, to repair, replace, reconstruct, substitute, and otherwise restore, as nearly as practicable, the property damaged, and any other property affected by the damage, to the same or better class, character, value, and utility as existed before the damage, and repair, replacement, reconstruction, substitution, and other restoration in the foregoing manner, all in any applicable combination.

(bb) "right or remedy" means any rights, powers, privileges, immunities, remedies, elections, or options expressly provided or otherwise available under Applicable Law and not expressly precluded. Each right or remedy is cumulative and in addition to any other right or remedy; and no exercise or non-exercise of any right or remedy precludes or waives its subsequent exercise or the exercise of any other right or remedy.

(cc) "should" is directory.

(dd) "sovereign" means any duly constituted government or any authorized agency, officer, or instrumentality of any such government, or any other person duly authorized to exercise sovereign powers under Applicable Law, including (i) the United States of America, or any of its agencies, officers, or instrumentalities; or (ii) the State of Florida, or any of its agencies, officers, municipalities, or political subdivisions; or (iii) any officer, agency, or instrumentality of any such municipality or political subdivision; or (iv) any utility or other person duly authorized to exercise the power of eminent domain; or (v) any agency duly authorized to exercise the police power on behalf of any duly constituted government.

(ee) "taking" means any condemnation, requisitioning, conversion, or other taking or acquisition of property pursuant to, or in lieu of, the exercise of the power of eminent domain, or any damage to property caused by any sovereign that constitutes a taking under Applicable Law.

(ff) "tenant" means any person, other than a Homeowner, contract purchaser, or family or household member, who from time to time holds possession of any Lot by a consensual agreement with the person who, but for such agreement, otherwise would have the present right to exclusive possession under Applicable Law. The term "tenant" specifically includes any subtenant.

(gg) "unless" means "unless and until."

(hh) "will" and "must" each are mandatory.