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THIS DECLARATION IS BEING RERECORDED TO ADD THE EXHIBIT "C" WHICH WAS MISSING FROM THE ORIGINAL RECORDING.

NEIGHBORHOOD COVENANTS

FOR

THE GREENS

THIS DECLARATION is made this 15th day of September, 1997, by JAMES J. O'BRIEN, AS SUCCESSORSTRUSTEE UNDER LAND TRUST AGREEMENT DATED MARCH 8, 1989 ("Declarant"), and WESTBROOKE AT WINSTON TRAILS, INC., a Florida corporation, ("Developer") which declare hereby that "The Properties" described in Article II of this Declaration are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to THE GREENS NEIGHBORHOOD ASSOCIATION, INC., a Florida corporation not for profit, being a "Neighborhood Association" under the Foundation Covenants (as hereinafter defined). Copies of the Artilces of Incorporation and By-Laws of the Association are attached hereto as Exhibits "A" and "B".

(b) "Common Areas" shall mean and refer to the those portions of the Property which are declared to be Common Areas in this Declaration, plus all property designated as Common Areas in any future recorded supplemental declaration; together with the landscaping and any improvements thereon, including, without limitation, all

structures, electomic security gates, if any, gatehouses and appurtenant equipment, if any, recreational facilities, open space, private roadways, walkways, sprinkler systems and street lights, if any, but excluding any public utility installations thereon and any other property of Developer not intended to be made Common Areas; provided, however, that certain portions of the Properties (including, without limitation, applicable private roads) shall not be deemed Common Areas to the extent such portions are operated by the Foundation.

(c) "Declarant" shall mean and refer to the party holding the status of such under the Foundation Covenants, as defined below.

(d) "Developer" shall mean and refer to Westbrooke at Winston Trails, Inc., a Florida corporation, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of The Properties. In the event of such a partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

(e) "Foundation" shall mean and refer to Winston Trails Foundation, Inc., a Florida corporation not for profit, having responsibility for certain community-wide aspects of the operation of the overall "Winston Trails" community described in the Foundation Covenants.

(f) "Foundation Covenants" shall mean and refer to the DECLARATION OF COVENANTS AND RESTRICTIONS FOR WINSTON TRAILS, recorded August 3, 1993 in Official Records Book 7824, Page 1393 of the Public Records of Palm Beach County, Florida, and, unless the context prohibits, the Articles of Incorporation, By-Laws and Rules and Regulations of the Foundation, all as now or hereafter further amended, modified or supplemented.

(g) "Landscaping and Pedestrian Areas" shall mean and refer to those areas defined in the Foundation Covenants, to which specific provisions this Declaration and the Common Areas are hereby made subject.

(h) "Limited Common Areas" shall mean and refer to such portions of the Common Areas which are intended for the exclusive use (subject to the rights, if any, of Palm Beach County, the Association and the public) of the Owners of specific Lots, and shall specifically include portions of road rights of way (whether public or private platted tracts) from the edge of the paved road to the boundary line (whether front, side or rear) of the applicable Lot and the mailbox structure and sidewalks therein, if any, not located on a Lot but used by Owners of specific Lots to the exclusion of others. Unless otherwise

provided specifically to the contrary, reference to the Common Areas shall include the Limited Common Areas.

(i) "Lot" shall mean and refer to any Lot on the various plats of portions of The Properties, which plat is designated hereby or by any other recorded instrument to be subject to these covenants and restrictions, any Lot shown upon any resubdivision of any such plat, and any other property hereafter declared as a Lot by Developer and thereby made subject to this Declaration.

(j) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article III hereof.

(k) "Member's Permittee" shall mean and refer to a person described in Article VIII, Section 3 hereof.

(l) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties.

(m) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are now or hereafter made subject to this Declaration, except such as are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

(n) "Unit" shall mean and refer to the individual residential structure constructed on a Lot for which a certificate of occupancy has been issued.

ARTICLE I

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. **Legal Description**. The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Palm Beach County, Florida, and is more particularly described in Exhibit "C" attached hereto, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Properties".

Section 2. **Supplements**. Developer may from time to time bring other land being in the Winston Trails development (i.e., that which is subject to the Foundation Covenants) and owned by Developer under the provisions hereof by recorded supplemental declarations (which shall not require the consent of then existing Owners, the Association or the Foundation, or any mortgagee) and thereby add to The Properties. Units on

property added pursuant hereto shall be of comparable style, quality, size and cost with those existing prior to such addition. To the extent that such additional real property shall be made a part of The Properties as a common scheme, reference herein to The Properties shall be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate the Developer to add to the initial portion of The Properties, to develop any such future portions under such common scheme, nor to prohibit Developer (or the applicable Developer-affiliated Owner) from rezoning and changing plans with respect to such future portions of The Properties. All Owners, by acceptance of a deed to or other conveyance of their Lots, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by the Developer (or the applicable Developer-affiliated Owner thereof) and shall evidence such consent in writing if requested to do so by the Developer at any time (provided, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

Section 3. **Withdrawal**. Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity other than Declarant, for the purpose of removing certain portions of The Properties then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for The Properties desired to be effected by the Developer; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Winston Trails (as defined in the Foundation Covenants) and is approved by the County in writing. Any withdrawal of land not owned by Developer shall require the written consent or joinder of the then-owner(s) of such land.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. **Membership**. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section I, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association.

Section 2. **Voting Rights**. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section I with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Class A Members shall be entitled to one (I) vote for each

Lot in which they hold the interests required for membership by Section I. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the single vote for such Lot shall be exercised as they among themselves determine, but, subject only to the following subsection, in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Developer. The Class B member shall be entitled to one (I) vote, plus two (2) votes for each vote entitled to be cast in the aggregate at any time and from time to time by the Class A Members. The Class B membership shall cease and convert to a Class A Membership when seventy-five percent (75%) of the Lots within The Properties has been sold and conveyed by the Developer (or its affiliates), or sooner at the election of the Developer (whereupon the Class A Members shall be obligated to elect the Board and assume control of the Association).

Section 3. **General Matters**. When reference is made herein, or in the Articles, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members present at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the Members themselves or of their Lots.

ARTICLE III

COMMON AREAS: CERTAIN EASEMENTS; COMMUNITY SYSTEMS

Section 1. **Members' Easements**. Except for Limited Common Areas as above specified, each Member, and each Member's Permittee shall have a non-exclusive permanent and perpetual easement over and upon the Common Areas for the intended use and enjoyment thereof in common with all other such Members, Member's Permittees, their tenants, agents and invitees, in such manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

(a) Easements over and upon the Common Areas in favor of the Foundation and in favor of all persons having the right to use the "common areas" governed by the Foundation or any such other association; provided, however, that this subsection shall not, in itself, be deemed to grant any easements or use rights which are not specifically granted elsewhere herein or in any other document to which The Properties are now or hereafter subject.

(b) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with the restrictions on the plats of portions of The Properties from time to time recorded.

(c) The right of the Association to suspend the Member's (and his Member's Permittees') right to use the recreational facilities (if any) for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations.

(d) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities (if any) situated on the Common Areas.

(e) The right of the Association and the Foundation to adopt at any time and from time to time and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified as if originally set forth at length in this Declaration.

(f) The right to the use and enjoyment of the Common Areas and facilities thereon shall extend to all Members' Permittees, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

(g) The right of Developer to permit such persons as Developer shall designate to use the Common Areas and all recreational facilities located thereon (if any).

(h) The right of Developer and the Association to have, grant and use general ("blanket") and specific easements over, under and through the Common Areas.

(i) The right of the Association, by a 2/3rds affirmative vote of each class of membership, to dedicate or convey portions of the Common Areas to the Foundation, any other association having jurisdiction over other portions of Winston Trails, or any public or quasi-public agency, community development district or similar entity under such terms as the Association deems appropriate and to create (subject to Foundation approval) or contract with the Foundation, other associations, community development and special taxing districts for lighting, roads, recreational or other services, security, or communications and other similar purposes deemed

appropriate by the Association (to which such dedication or contract all Owners, by the acceptance of the deeds, to their Lots, shall be deemed to have consented, no consent of any other party, except the Developer, being necessary).

WITH RESPECT TO THE USE OF THE COMMON AREAS AND THE PROPERTIES GENERALLY, ALL PERSONS ARE REFERRED TO ARTICLE XI, SECTIONS 11, 12 AND 13 HEREOF, WHICH SHALL AT ALL TIMES APPLY THERETO.

Section 2. **Easements Appurtenant**. The easements provided in Section I shall be appurtenant to and shall pass with the title to each Lot, but shall not be deemed to grant or convey any ownership interest in the Common Area subject thereto.

Section 3. **Maintenance**. The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Areas and, to the extent not otherwise provided for, the paving, drainage structures, landscaping, improvements and other structures (except public utilities and Community Systems, to the extent same have not been made Common Areas) situated on the Common Areas, if any, all such work to be done as ordered by the Board of Directors of the Association. Maintenance of the aforesaid street lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Association shall assume all of Developer's and its affiliates' responsibility to Palm Beach County and its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas and shall indemnify and hold the Developer and its affiliates harmless with respect thereto.

All work pursuant to this Section and all expenses incurred or allocated to the Association pursuant to this Declaration shall be paid for by the Association through assessments (either general or special) imposed in accordance herewith. In order to effect economies of scale and for other relevant purposes, the Foundation, on behalf of itself and/or the Association and/or other affected associations, shall have the power to incur, by way of contract the provisions of the Foundation Covenants or otherwise, expenses general to all or applicable portions of Winston Trails thereof and the Foundation shall then allocate portions of such expenses among the Association and other affected associations based on such formula as may be adopted by the Foundation, or as provided in the Foundation Covenants. The portion so allocated to the Association shall be deemed a general expense (or in the case of charges applicable to only one or more specific Lots to the exclusion of others, a special expense to be allocated only among the affected Lots), collectible through assessments (either general or special) against applicable Lots.

No Owner may waive or otherwise escape liability for assessments by non-use (whether voluntary or involuntary) of the Common Areas or abandonment of the right to use the Common Areas.

Section 4. **Utility Easements**. Use of the Common Areas for utilities, as well as use of the other utility easements as shown on relevant plats, shall be in accordance with the applicable provisions of this Declaration and said plats. The Developer and its affiliates and its and their designees shall have a perpetual easement over, upon and under the Common Areas and the unimproved portions of the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of Community Systems and other utilities. As used through this Declaration, "utility" shall include, without limitation, cable television and monitoring/alarm systems.

Section 5. **Public Easements**. Fire, police, health and sanitation, park maintenance and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas in the performance of their respective duties.

Section 6. **Limited Common Areas**. At the time that title to a Lot is conveyed to an Owner thereof, there shall be deemed to have been vested in such Owner, as an appurtenance to the Lot (and not separately alienable therefrom), the exclusive right to use (but not title to or any other ownership interest in) the applicable Limited Common Areas (as defined in Article I), if any, subject always, however, to the rights, if any, of Palm Beach County, the Association and the public with respect thereto. The Developer, from time to time, may add to the Limited Common Areas by recorded supplemental declaration. Maintenance and repair of the Limited Common Areas shall be the responsibility of the Owner of the Lot(s) served by and adjacent to the applicable Limited Common Areas, except as specified in any supplemental declaration adding or otherwise applying to the Limited Common Areas.

Section 7. **Ownership**. The Common Areas are hereby dedicated non-exclusively to the joint and several use, in common, of the Developer and the Owners of all Lots that may from time to time constitute part of The Properties and all Member's Permittees and the Developer's tenants, guests and invitees, all as provided and regulated herein or otherwise by the Association and/or the Foundation. The Common Areas (or appropriate portions thereof) shall, prior to the date when the first Lot within The Properties has been conveyed to a purchaser for occupancy of a dwelling unit (or at any time and from time to time sooner at the sole election of the Developer), be conveyed by quit claim deed to the Association, which shall be deemed to have automatically accepted such conveyance. Beginning from the date these covenants are recorded, the Association shall be responsible for the maintenance, insurance and administration of such Common Areas (whether or not then conveyed or to be conveyed to the Association), all of which shall be performed in a continuous and satisfactory manner without cost to the general taxpayers of Palm Beach County. It is intended that all real estate taxes assessed against that portion of the Common Areas owned or to be owned by the Association shall be (or have been, because the purchase prices of the Lots and Units have already taken into account their proportionate shares of the values of the Common Area), proportionally assessed

against and payable as part of the taxes of the applicable Lots within The Properties. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date these covenants are recorded, and such taxes shall be prorated between Developer and the Association as of the date of such recordation.

Developer, Declarant and their affiliates and designees shall have the right from time to time to enter upon the Common Areas for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion and/or alteration of any improvements or facilities on the Common Areas or elsewhere on The Properties or within Winston Trails that such parties elect to effect, and to use, without charge, the Common Areas and other portions of The Properties for sales, displays and signs or for any other purpose during the period of construction and sale of any portion of Winston Trails. Without limiting the generality of the foregoing, the Developer and its affiliates shall have the specific right to maintain upon any portion of The Properties sales, administrative, construction or other offices and appropriate exclusive and non-exclusive easements of access and use are expressly reserved unto the Developer and its affiliates, and its and their successors, assigns, employees and contractors, for this purpose. Any obligation (which shall not be deemed to be created hereby) to complete portions of the Common Areas shall, at all times, be subject and subordinate to these rights and easements and to the above-referenced activities. Accordingly, Developer shall not be liable for delays in such completion to the extent resulting from the need to finish the above-referenced activities prior to such completion.

Section 8. **Easements**. Each of the following easements is hereby created in favor of the Association, the Developer, the Declarant, the builder and the other persons designated in the respective subsections below, which shall run with the land and, notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended uses and purposes, and each shall survive the termination of this Declaration.

(a) **Easements for Pedestrian and Vehicular Traffic**. Easements exist for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the Common Facilities and sidewalks within Lots and abutting roads or streets and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portion of the Common Facilities as may from time to time be paved and intended for such purposes, same being for the use and benefit of the Owners and the residents of the Property and their guests and invitees, the holders of any mortgage encumbering any Lot, and any permitted user.

(b) **Perpetual Nonexclusive Easement in Common Facilities**. The Common Facilities will be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement in favor of all Owners and residents of the Properties from time to time, and their guests and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended.

(c) **Service and Utility Easements**. Easements are hereby declared to exist and are granted in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance, fire and emergency vehicle services, and mail carrier companies, over and across all roads existing from time to time within the Properties, and over, under, on and across those portions of the Properties designated for such purposes by the Declarant and the Association. Also, easements as may be required for the installation, maintenance, repair, replacement and providing of utility services equipment and fixtures in order to adequately serve the Properties or any Lot, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antenna and cable television facilities, and electronic security. An Owner shall do nothing on his Lot which interferes with or impairs the utility services using these easements. The Board or its designee shall have a right of access to each Lot to inspect, maintain, repair or replace the utility service facilities contained under the Lot and to remove any improvements interfering with or impairing the utility services or easement herein reserved, provided such right of access shall not unreasonably interfere with the Owner's permitted use of the Lot.

(d) **Zero Lot Line Maintenance Easement**. When any Lot (the "Servient Lot") abuts another Lot (the "Dominant Lot") on which the exterior wall of a Unit has been or can be constructed against or immediately contiguous to the interior property (perimeter) line shared by the Dominant Lot and the Servient Lot, then the Owner of the Dominant Lot shall have an easement over the Servient Lot, which easement shall be four feet (4') in width contiguous to the interior property line and running the length of the improvements on the Dominant Lot abutting the Servient Lot and extending three feet (3') in each direction therefrom for the following purposes:

(1) For installation, maintenance, repair, replacement and the provision of utility services, equipment and fixtures to serve the Dominant Lot, including but not limited to, electricity, telephones, sewer, water, lighting, irrigation and drainage.

(2) Of support in and to all structural members, footings, and foundations of the Unit or other improvements which are necessary for support of the Unit or other improvements on the Dominant Lot. Nothing in this Declaration shall be construed to require the Owner of the Servient Lot to erect, or permit the

erection of, additional columns, bearing walls or other structures on its Lot for the support of the Dominant Lot.

(3) For entry upon, and for ingress and egress through the Servient Lot, with persons, materials and equipment, to the extent reasonably necessary in the performance of the maintenance, repair, replacement of the Unit or any improvements on the Dominant Lot.

(4) For overhanging troughs, roofs or gutters, down-apouts and the discharge therefrom of rainwater and the subsequent flow thereof over the easement area and the Common Areas.

An Owner of a Servient Lot shall have the right to install a gated fence across the easement described above and the Owner of the Dominant Lot shall have the right of access through such gate for the purposes of exercising the easement rights granted herein. The air conditioning compressor, swimming pool, screen enclosure described below and other structures for the Servient Lot may also be located within the easement area.

(e) **Encroachments**. If any portion of the Common Facilities encroaches upon any Lot; if any Dwelling Unit encroaches upon any Lot, or upon any portion of the Common Facilities; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvements; (ii) settling or shifting of any improvements; (iii) any addition, alteration or repair to the Common Facilities made by or with the consent of the Association; (iv) any repair or restoration of any improvements (or any portion thereof) or any Dwelling Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Dwelling Unit or the Common Facilities; or (v) any non-purposeful or non-negligent act of an Owner except as may be authorized by the Board, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

(f) **Additional Easements**. Declarant (so long as it owns any Lots or Parcels) and the Association, on their behalf and on behalf of all Owners, each shall have the right to (i) grant and declare additional easements over, upon, under and/or across the Common Facilities in favor of the Owners and residents of the Properties and their guests and invitees, or in favor of any other person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or terminate existing easements within or outside of the Properties in favor of the Association or the Owners and residents of the Properties and their guests and invitees or in favor of any Person, public or quasi- public authority, or utility company, as the Declarant or the Association may deem desirable for the proper operation and maintenance of the Properties, or any portion

thereof, or for the health, safety or welfare of the Owners, or for any other reason or purpose. So long as such additional easements, or the modifica- tion, relocation or abandonment of existing easements will not unreasonably and adversely interfere with the use of Lots for dwelling purposes, no joinder of any Owner or any mortgagee of any Lot shall be required or, if same would unreasonably and adversely interfere with the use of any Lots for dwelling purposes, only the joinder of the Owners and Institutional Mortgagees of the Lots so affected shall be required. To the extent required, all Owners hereby irrevocably appoint Declarant and/or the Association as their attorney-in-fact for the foregoing purposes.

Section 9. Party Walls. Each wall and fence, if any, built as part of the original construction of the Units or Lots within The Properties and placed on the dividing line between the Lots thereof and acting as a commonly shared wall or fence shall constitute a party wall. In addition to the other provisions of this Declaration applicable thereto, party walls shall also be governed by the terms and provisions of this Section 9.

(a) Each Owner shall own that portion of the party wall and fence which stands on his own Lot, with a cross-easement of support in the other portion. If a wall or fence separating two (2) Units or Lots, and extensions of such wall or fence, shall lie entirely within the boundaries of one Lot, such wall or fence, together with its extensions, shall also be a party wall and the Owner of the adjacent Lot shall have a perpetual easement to maintain the encroachment. Easements are reserved in favor in all Lots over all other Lots and the Common Areas for overhangs or other encroachments resulting from original construction and reconstruction. Anything to the contrary herein notwithstanding, where adjacent Units share only a portion of a wall (e.g., where a one-story Unit abuts a two-story Unit), only that portion of the wall actually shared by of the Units shall be deeded a party wall. That portion of the wall lying above the one-story Unit and used exclusively as a wall for the second floor of the abutting two-story Unit shall not be deemed a party wall, but shall be maintained and repaired exclusively by the Owner of the two-story Unit even if lying in whole or in part on the abutting Lot on which the one-story Unit is constructed and over the roof and other portions of such abutting one-story Unit to permit the upper portion of the wall of the two-story Unit to be maintained and repaired by the Owners of the Lot on which such two-story Unit is constructed.

(b) The costs of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore same, but shall not construct or extend same to any greater dimension than that existing prior to such fire or other casualty, without the prior written consent of the adjacent Lot Owner. The extension of a party wall used by only a two-story Unit abutting a one-story Unit shall be promptly and diligently repaired and/or replaced by the Owner of the two-story Unit at his sole cost and expense, even if lying in whole or in part on the abutting Lot. No part of any addition to the dimensions of said party wall or of any extension thereof

already built that may be made by any of said Owners, or by those claiming under any of them, respectively, shall be placed upon the Lot of the other Owner, without the written consent of the latter first obtained, except in the case of the aforesaid wall of a two-story Unit. If the other Owner thereafter makes use of the party wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, any Owner who, by his negligent or willful act, causes that part of the party wall not previously exposed to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title. Upon a conveyance or other transfer of title, the liability hereunder of the prior Owner shall cease.

(c) In the event of any dispute arising concerning a party wall, or under the provision of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be final and conclusive of the question involved. If a panel cannot be designated pursuant hereto, the matter shall be arbitrated pursuant to the rules of the American Arbitration Association, or its successors in functions, then obtaining. Any decision made pursuant to this Section shall be conclusive and may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code.

(d) Where any one or more dwellings are constructed adjacent to their respective lot lines, the owner of the Lot to which it or they are adjacent shall have the right to attach a screen enclosure directly to the exterior wall of the dwellings constructed along such owner's lot line. The owner of the Lot with the screen enclosure shall be obligated to maintain the screen enclosure attachment to the walls, but the owner(s) of the dwelling(s) to which the screen enclosure is attached shall remain responsible for the maintenance of their respective walls. Except as provided above, screen enclosures shall not be constructed within the zero-lot line maintenance easement described above.

Section 10. Declarant's and Developer's Reservation. The Declarant, Developer and their Permittees shall have blanket easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Lots, owned by Declarant or Developer for the purpose of completing construction, leasing and sale of Dwelling Units and, towards this end, Declarant reserves the right to grant and does hereby reserve easements and rights-of-way in, through, under, over and across the Lots owned by Declarant for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities and for any other materials or services necessary for the completion of the work. The Declarant, Developer and their successors, employees, assigns and purchasers, also reserve the right to share, connect with and make use of the utility lines, wires, pipes, conduits, cable

television, sewers and drainage lines which may from time to time be in or along the streets and roads of the Neighborhood.

The Declarant and Declarant's Permittees shall have an easement in, on, over and across the Lots, in connection with the development of the Neighborhood for (i) construction, installation, maintenance, ingress to and egress from and the right to use (including the right to use in common with other Dwelling Unit Owners) and share and tap into all storm drainage facilities, water, sewer and other utility lines, pipes, conduits, flues, ducts, wires and cable television and other utility lines servicing or located on the Lots, provided such easement and use does not prevent or unreasonably interfere with the use of the Lots as intended, and (ii) to erect, maintain, repair and replace from time to time one or more signs on the Lots for the purposes of adver- tising the sale of Dwelling Units and the leasing of space in any such Dwelling Unit and for the purpose of advertising the sale of Dwelling Units which may be constructed by Declarant or its successors in interest. Declarant, its successors, assigns, invitees, licensees, contractors and employees reserve the right to establish, grant and create easements for any additional under- ground electric, transformer, amplifier, gas, cable television, telephone, water, storm drainage, sewer or other utility lines and appurtenances in, under, over and/or through the Lots to relocate any existing utility, sewer and drainage easements in any portion of the Lots to hook up to, join in with or share with any and all existing utilities, pipes, wires, and lines and to dedicate any or all of such facilities to any governmental body, public benefit corporation or utility company if the Declarant shall deem it necessary or desirable for the proper operation and maintenance of the Lots or for the general health or welfare of any Owner, provided that such additional utilities or the relocation of existing utilities or the sharing of such utilities will not prevent or unreasonably interfere with the use the Dwelling Units for dwelling purposes. Any utility company or public benefit corporation furnishing services to the Lots, and the employees and agents of any such company or corporation, shall have the right of access to the Common Facilities in furtherance of such easements, provided such right of access is exercised in such a manner as not to unreasonably interfere with the use of any Dwelling Unit.

Section 11. Working Capital Fund. At the time the Declarant sells and closes each Lot to each purchaser, such purchaser shall deposit with Declarant a sum equal to two (2) times such purchaser's current monthly Association maintenance expense into a working capital fund for the purpose of initial maintenance, reserve, emergency needs, initial items, non-recurring items, capital expenses, capitalization of the Association, permits, licenses, general operating expenses and all utility deposits and advance insurance premiums for insurance policies and coverages and other advanced expenses pursuant to this Declaration and the Exhibits attached hereto. All of the foregoing expenses or items may be paid from the working capital fund. If the Declarant has paid any of the foregoing expenses or items, then any such expense or item shall be paid to or reimbursed to the Declarant from the working capital fund. The working capital fund may be commingled by the Association with any of its other funds.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation for Assessments**. Except as provided elsewhere herein, Developer (and each party joining in any supplemental declaration), for all Lots within The Properties, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual assessments and charges for the operation of, and for payment of expenses allocated or assessed to or through, the Association and the maintenance, management, operation and insurance of the Common Areas as provided herein, including such reasonable reserves as the Association may deem necessary, capital improvement assessments, as provided in Section 4 hereof, special assessments for maintenance as provided in Section 3 hereof and all other charges and assessments hereinafter referred to or lawfully imposed by or on the Association, all such assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Lots for fines, expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due and all subsequent Owners until paid. Except as provided herein with respect to special assessments which may be imposed on one or more Lots and Owners to the exclusion of others, all assessments imposed by the Association shall be imposed against all Lots subject to its jurisdiction equally.

Reference herein to assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

Section 2. **Purpose of Assessments**. The regular assessments levied by the Association shall be used exclusively for the purposes expressed in Section 1 of this Article.

Section 3. **Special Assessments**. In addition to the regular and capital improvement assessments which are or may be levied hereunder, the Association (through the Board of Directors and with the same membership approval as is required for increases in the maximum annual assessment per Section 6, below) shall have the right to levy special assessments against an Owner(s) to the exclusion of other Owners for (i) the repair

or replacement of damage to any portion of the Common Areas (including, without limitation, improvements and landscaping thereon) caused by the misuse, negligence or other action or inaction of an Owner or his Member's Permittee(s) or (ii) the costs of work performed by the Association in accordance with Article VI of this Declaration (together with any surcharges collectible thereunder). Any such special assessment shall be subject to all of the applicable provisions of this Article including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any special assessment levied hereunder shall be due within the time specified by the Board of Directors in the action imposing such assessment.

Section 4. **Capital Improvements**. Funds which, in the aggregate, exceed the lesser of $5,000 or 10% of the total amount of the current operating budget of the Association in any one fiscal year which are necessary, after the Common Areas are initially developed, for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Areas under the jurisdiction of the Association and which have not previously been collected as reserves or are not otherwise available to the Association (other than by borrowing) shall be levied by the Association as assessments only upon approval of a majority of the Board of Directors of the Association and upon approval by two-thirds (2/3) favorable vote of each class of the Members of the Association voting at a meeting or by ballot as may be provided in the By-Laws of the Association. It is the intent of this Section that any capital improvements having a cost of less than the amount provided for above be paid for by regular assessments, with an appropriate adjustment to the budget of the Association and the assessment levied in accordance therewith to be made, if necessary.

Section 5. **Date of Commencement of Annual Assessments; Maximum Amount; Due Dates**. The annual regular assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual assessment shall be imposed for the year beginning January 1 and ending December 31.

Notwithstanding any other provisions herein, until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant or the Developer, (the "First Anniversary Date"), the maximum annual general assessments shall be Sixty Five Dollars ($65.00) per Lot, plus amounts that may be assessed under Sections 3 and 9 herein. From and after the First Anniversary Date, the maximum annual general assessment may not be increased by more than ten percent (10%) above the sum of (i) the maximum annual Common Assessment for the previous year plus (ii) increases mandated by governmental agencies and/or increased costs incurred for utilities and insurance, without the affirmative vote of two-thirds (2/3) of each class of Members voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present.

The annual assessments shall be payable in advance in monthly installments, or in annual, semi- or quarter-annual installments if so determined by the Board of Directors of the Association (absent which determination they shall be payable monthly).

The assessment amount (and applicable installments) may be changed at any time by said Board from that originally stipulated or from any other assessment that is in the future adopted. The original assessment for any year shall be levied for the calendar year (to be reconsidered and amended, if necessary, every six (6) months), but the amount of any revised assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months (or other appropriate installments) remaining in such calendar year.

The due date of any special assessment or capital improvement assessment shall be fixed in the Board resolution authorizing such assessment.

Section 6. **Duties of the Board of Directors; Maximum Assessment Rate**. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to special assessments. In the event no such notice of the assessments for a new assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Developer) for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.

Section 7. **Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association**. If the assessments (or installments)

provided for herein are not paid on the date(s) when due (being the date(s) specified herein or pursuant hereto), then such assessments (or installments) shall become delinquent and shall, together with interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. Except as provided in Section 8 of this Article to the contrary, the personal obligation of the then Owner to pay such assessment shall pass to his successors in title and recourse may be had against either or both.

If any installment of an assessment is not paid within fifteen (15) days after the due date, at the option of the Association, the unpaid assessment shall accrue interest as provided herein and/or the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full. All such sums shall bear interest from the dates when due until paid at the rate of 10% per annum and the Association may bring an action at law against the Owner(s) personally obligated to pay the same, may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Lot on which the assessments and late charges are unpaid, may foreclose the lien against the Lot on which the assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs actually incurred in preparing and filing the claim of lien and the complaint, if any, and prosecuting same, in such action shall be added to the amount of such assessments, late charges and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels.

In the case of an acceleration of the next twelve (12) months' of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase and special assessments against such Lot shall be levied by the Association for such purpose.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Areas until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

If delegated to it by the Foundation pursuant to Article X hereof, it shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder. Failure of a collecting entity to send or deliver bills or notices of assessments shall not, however, relieve Owners from their obligations hereunder.

All assessments, late charges, interest, penalties, fines, attorney's fees and other sums provided for herein shall accrue to the benefit of the Association.

Section 7. **Subordination of the Lien**. The lien of the assessments provided for in this Article shall be subordinate to real property tax liens and the lien of any first mortgage (recorded prior to recordation by the Association of a claim of lien) held by an institutional mortgage lender or otherwise insured, made or held by FHA, VA, FNMA or FHLMC and which is now or hereafter placed upon any property subject to assessment; provided, however, that any such mortgage lender when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgage lender acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgage lender, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). The lien of assessments shall also be subject to the liens of the assessments for the Foundation, the overall priority of liens being: tax liens, first mortgage liens, Foundation liens and then the lien created herein. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an assessment divided equally among, payable by and a lien against all Lots subject to assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 8. **Collection of Assessments**. Assessments levied pursuant hereto shall be collected in the manner established pursuant to Article X of this Declaration. In the event that at any time said manner provides for collection of assessments levied pursuant hereto by an entity other than the Association (which, initially, shall be the case), all references herein to collection by the Association shall be deemed to refer to the other entity performing such collection duties and the obligations of Owners to pay assessments shall be satisfied by making such payments to the applicable collecting entity.

Section 9. **Developer's Assessments**. Notwithstanding anything herein to the contrary, Developer shall have the option, in its sole discretion, to (i) pay assessments on the Lots owned by it, (ii) pay assessments only on certain designated Lots (e.g., those under construction or those containing a Unit for which a certificate of occupancy has been issued) or (iii) not pay assessments on any Lots and in lieu thereof fund any resulting deficit in the Association's operating expenses not produced by assessments receivable from Owners other than Developer. The deficit to be paid under option (iii), above, shall be the difference between (i) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees) and (ii) the sum of all monies

charges, fines and incidental income) and any surplus carried forward from the preceding year(s). Developer may from time to time change the option stated above under which Developer is making payments to the Association by written notice to such effect to the Association. If Developer at any time elects option (ii), above, it shall not be deemed to have necessarily elected option (i) or (iii) as to the Lots which are not designated under option (ii). When all Lots within The Properties are sold and conveyed to purchasers, neither the Developer nor its affiliates shall have further liability of any kind to the Association for the payment of assessments, deficits or contributions. Developer's payment obligations hereunder shall be served by the assessment lien provided for in this Article.

Notwithstanding any of the foregoing to the contrary, no Lots owned by the Declarant under the Foundation Covenants shall be subject to any type of assessment hereunder unless and until the Declarant acquires the right of Developer hereunder by way of an assignment of such rights, if at all.

Section 10. **Association Funds**. The portion of all regular assessments collected by the Association for reserves for future expenses, and the entire amount of all special and capital assessments, shall be held by the Association and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions, the deposits of which are insured by an agency of the United States.

ARTICLE V

MAINTENANCE OF UNITS AND LOTS

Section 1. **Exteriors of Units**. Each Owner shall maintain all structures (including the Unit) located on his Lot in a neat, orderly and attractive manner and consistent with the general appearance of The Properties as a whole. The minimum (though not sole) standard for the foregoing shall be consistency with the general appearance of The Properties and Winston Trails as initially constructed and otherwise improved by Developer or by any other builders who build in accordance with plans approved by Developer (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the judgment of the Architectural Control Board or its equivalent having jurisdiction over The Properties). Each Owner shall repaint or restain, as appropriate, the exterior portions of his Unit (with the same colors as initially used on the Unit) as often as is necessary to comply with the foregoing standards.

Section 2. **Front and Rear Yard Maintenance**. The Association shall maintain the front and rear yards of each Lot, and the sprinkler system, if any, installed on the Lot. Landscape replacement will remain the responsibility of the Owner of the Lot.

Section 3. **Lots**. Each Owner shall maintain the trees, shrubbery, grass and other landscaping on his Lot in a neat, orderly and attractive manner and consistent with

the general appearance of The Properties and Winston Trails as a whole. The minimum (though not sole) standard for the foregoing shall be the general appearance of The Properties and Winston Trails as initially landscaped (such standard being subject to being raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly trimmed and maintained). The foregoing maintenance obligations shall also apply to the portions of adjacent Limited Common Areas up to the edge of the paved roadway surfaces within any road right of way which a Lot abuts, unless the Association assumes such maintenance responsibilities.

Section 4. **Remedies for Noncompliance**. In the event of the failure of an Owner to maintain his Unit or Lot in accordance with this Article, the Foundation or the Association (whichever at the time has the power to enforce this Article) shall have the right, upon five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or Unit, as applicable, into compliance with the standards set forth in this Article. Such work may include, but shall not necessarily be limited to, the cutting/trimming of grass, trees and shrubs; the removal (by spraying or otherwise) of weeds and other vegetation; the resodding or replanting of grass, trees or shrubs; the re-painting or restaining of exterior surfaces of a Unit; the repair of walls, fences, roofs, doors, windows and other portions of a Unit or other structures on a Lot; and such other remedial work as is judged necessary by the applicable entity. The remedies provided for herein shall be cumulative with all other remedies available under this Declaration or other applicable Covenants (including, without limitation, the imposition of fines or special assessments or the filing of legal or equitable actions).

Section 5. **Costs of Remedial Work; Surcharges**. In the event that the Foundation or the Association performs any remedial work on a Unit or Lot pursuant to this Article or any other applicable Covenants, the costs and expenses thereof shall be deemed a special assessment under Article V, Section 3 of this Declaration and may be immediately imposed by the Board of Directors. In order to discourage Owners from abandoning certain duties hereunder for the purpose of forcing one of the aforesaid entities to assume same, and, additionally, to reimburse same for administrative expenses incurred, the applicable entity may impose a surcharge of not more than thirty-five percent (35%) of the cost of the applicable remedial work, such surcharge to be a part of the aforesaid special assessment. No bids need be obtained for any of the work performed pursuant to this Article and the person(s) or company performing such work may be selected by the applicable entity in its sole discretion.

Section 6. **Right of Entry**. There is hereby created an easement in favor of the Foundation or the Association, as appropriate, and its applicable designees over each Lot for the purpose of entering onto such Lot in the performance of the work herein described, provided that the notice requirements of this Article are complied with and any such entry is during reasonable hours.

Section 6. **Limited Exemption**. To the extent that a Unit on a Lot is under construction by the Developer or a builder bound to comply with construction-related requirements or restrictions imposed by the Developer, the provisions of this Article (as well as those of Article VII, Section 11) shall not apply to such Lot until such time as the construction of the Unit is completed as evidenced by the issuance of a certificate of occupancy therefor.

ARTICLE VI

CERTAIN RULES AND REGULATIONS

Section 1. **Applicability**. The provisions of this Article VII shall be applicable to all of The Properties but shall not be applicable to the Developer or any of its designees or Lots or other property owned by the Developer or its designees, nor shall it be applicable to the Declarant, its designees or any Lots owned by it.

Section 2. **Land Use and Building Type**. No Lot shall be used except for residential purposes. No building constructed on a Lot shall be used except for residential purposes, or as a garage , if applicable. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Unit. Temporary uses by Developer, Declarant or other builders for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes place. No changes may be made in buildings without the consent of the Architectural Control Board ("Architectural Control Board") or the Development Review Board of the Foundation (the "DRB"), as appropriate and as provided herein.

Section 3. **Opening Blank Walls; Removing Fences**. Without limiting the generality of Section 11 of this Article, no Owner shall make or permit any opening to be made in any blank wall (except as such opening is initially installed) or masonry wall or fence. Further, no such building wall or masonry wall or fence shall be demolished or removed without the prior written consent of Developer and the applicable one of the Architectural Control Board or the DRB. Developer shall have the right, but not be obligated, to assign all or any portion of its rights and privileges under this Section to the Association or the Foundation.

Section 4. **Easements**. Easements for installation and maintenance of utilities are reserved as shown on the recorded plats covering The Properties and as provided herein. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, the Foundation, the Developer and the Declarant and

their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, of all underground, water lines, sanitary sewers, storm drains, and electric, telephone and Community System lines, cables and conduits, under and through the utility easements as shown on the plats.

Section 5. **Nuisances**. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question. ALL PERSONS ARE REFERRED TO ARTICLE XI, SECTION 12 HEREOF WITH RESPECT TO CERTAIN ACTIVITIES OF DEVELOPER AND DECLARANT.

Section 6. **Temporary Structures; Gas Tanks; Other Outdoor Equipment**. Except as may be approved or used by the Developer during construction and/or sales periods, no structure of a temporary character, or trailer, mobile home or recreational vehicle, shall be permitted on any Lots within The Properties at any time or used at any time as a residence, either temporarily or permanently. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Unit or on or about any ancillary building, except for one (1) gas cylinder (not to exceed 20 lbs. capacity) connected to a barbecue grill and such other tank designed and used for household purposes as shall be approved by the Architectural Control Board described in Section 11, below. Any outdoor equipment such as, but not limited to, pool pumps and water softening devices shall be completely screened from the view of anyone not standing on the Lot by the use of landscaping or other means (in any event, as approved by the Architectural Control Board); provided, however, that the use of such screening shall not obviate the requirement that the installation of any such equipment nevertheless be approved by the Architectural Control Board.

Section 7. **Signs**. No sign of any kind shall be displayed to the public view on any Lot except for those authorized by the Architectural Control Board and the DRB.

Section 8. **Oil and Mining Operation**. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions. ALL PERSONS ARE REFERRED TO ARTICLE XI, SECTION 12 WITH RESPECT TO CERTAIN ACTIVITIES OF DEVELOPER AND DECLARANT.

Section 9. **Pets, Livestock and Poultry**. No animals, reptiles, wildlife, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except no more than two (2) household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor by reason of barking or otherwise. No dogs or other pets shall be permitted to have excretions on any Common Areas, except areas designated by the Association, and Owners shall be responsible to clean-up any such improper excretions. For purposes hereof, "household pets" shall mean dogs, cats and other animals expressly permitted by the Association, if any. Pets shall also be subject to all applicable rules and regulations. Nothing contained herein shall prohibit the keeping of fish or domestic (household-type) birds, as long as the latter are kept indoors and do not become a source of annoyance to neighbors.

Section 10. **Visibility at Intersections; Off-Lot Parking**. No obstruction to visibility at street intersections or Common Area intersections shall be permitted; provided that the Association shall not be liable in any manner to any person or entity, including Owners and Members' Permittees, for any damages, injuries or deaths arising from any violation of this Section. No motor vehicles shall be parked on Common Areas or public or private streets.

Section 11. **Architectural Control**. The following provisions of this Section 11 are subject to those of Article X hereof. Accordingly, this Section shall not be operative if and to the extent that the Foundation or Developer elects to assume any or all architectural control powers or duties in accordance with Article X.

No building, wall, fence or other structure or improvement of any nature (including, but not limited to, pools, hedges, other landscaping, exterior paint or finish, play structures, hurricane protection, basketball hoops, decorative plaques or accessories, birdhouses, other pet houses, swales, asphalting or other improvements or changes of any kind, even if not permanently affixed to the land or to other improvements) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the Architectural Control Board (which shall be a committee appointed by the Board of Directors of the Association, absent such appointment the Board to serve in such capacity) have been approved, if at all, in writing by the Architectural Control Board and all necessary governmental permits are obtained. The foregoing shall also apply to conversions of garages to living space even though same are not readily apparent from the exteriors of applicable Units. Each building, wall, fence or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved and applicable governmental permits and requirements. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion

of said Architectural Control Board seem sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. A majority of the Board may take any action the Board is empowered to take, may designate a representative to act for the Board and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Board, the remaining members shall have full authority to designate a successor. The members of the Board shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Control Board shall act on submissions to it within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved.

In the event that any new improvement is added to a Unit/Lot, or any existing improvement on a Lot is altered, in violation of this Section, the Association shall have the right (and an easement and license) to enter upon the applicable Lot and remove or otherwise remedy the applicable violation after giving the Owner of the Lot at least ten (10) days' prior written notice of and opportunity to cure, the violation in question. The costs of such remedial work and a surcharge of a minimum of $25.00 (but in no event more than thirty-five percent (35%) of the aforesaid costs) shall be a special assessment against the Lot, which assessment shall be payable upon demand and secured by the lien for assessments provided for in this Declaration.

The approval of any proposed improvements or alterations by the Architectural Control Board shall not constitute a warranty or approval as to, and no member or representative of the Architectural Control Board or the Board of Directors shall be liable for, the safety, soundness, workmanship, materials or usefulness for any purpose of any such improvement or alteration nor as to its compliance with governmental or industry codes or standards. By submitting a request for the approval of any improvement or alteration, the requesting Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid members and representatives, and the Association generally, from and for any loss, claim or damages connected with the aforesaid aspects of the improvements or alterations.

No approval of the Architectural Control Board shall be required for the maintenance (including repainting and restaining of Unit exteriors with the same colors originally thereon) required by Article VI of this Declaration.

Without limiting the generality of Section 1 hereof, the foregoing provisions shall not be applicable to the Developer or Declarant or to construction activities conducted by the Developer or Declarant.

Section 12. Commercial Vehicles, Trucks, Trailers, Campers and Boats. No trucks (other than those expressly permitted by the Association) or commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on The Properties, nor in dedicated areas, except in (i) enclosed garages and (ii) spaces for some or all of the above specifically designated by Developer or the Association, if any. For purposes of this Section, "commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained in this Section shall not apply to temporary parking of trucks and commercial vehicles, such as for construction use or providing pick-up and delivery and other commercial services, nor to passenger-type vans with windows for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Developer or its affiliates. No on-street parking or parking on lawns shall be permitted.

All Owners and other occupants of Units are advised to consult with the Association prior to purchasing, or bringing onto The Properties, any type of vehicle other than a passenger car inasmuch as such vehicle may not be permitted to be kept within The Properties.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

Section 13. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority or other company or association for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Containers must be rigid plastic, no less than 20 gallons or more than 32 gallons in capacity, and well sealed. Such containers may not be placed out for collection sooner than 24 hours prior to scheduled collection and must be removed within 12 hours of collection. This provision shall also apply to recycling containers and materials to be placed therein.

Section 14. **Fences, Walls and Hedges**. No fence, wall or other structure or hedge shall be erected in the front yard, back yard, or side yard setback areas, except as originally installed by Developer or its affiliates, and except any approved by the Architectural Control Board or its equivalent as provided in the applicable document(s).

Section 15. **No Drying**. No clothing, laundry or wash shall be aired or dried on any portion of The Properties except on a portion of a Lot which is completely screened from the view of all persons other than those on the Lot itself.

Section 16. **Lakefront Property**. As to all portions of The Properties which have a boundary contiguous to any lake or other body of water, the following additional restrictions and requirements shall be applicable:

(a) No boathouse, dock, wharf or other structure of any kind shall be erected, placed, altered or maintained on the shores of the lake unless erected by the Developer or its affiliates, subject to any and all governmental approvals and permits that may be required.

(b) No boat, boat trailer or vehicular parking or use of lake slope or shore areas shall be permitted.

(c) No solid or liquid waste, litter or other materials may be discharged into/onto or thrown into/onto any lake or other body of water or the banks thereof.

(d) Each applicable Owner shall maintain his Lot to the line of the water in the adjacent lake or other water body, as such line may change from time to time by virtue of changes in water levels.

(e) All boats and related equipment stored on Lots shall be secured from view in a manner approved by the Architectural Control Board.

(f) No landscaping (other than that initially installed by the Developer), fences, structures or other improvements (regardless of whether or not same are permanently attached to the land or to other improvements) shall be placed within any lake maintenance or similar easements around lakes or other bodies of water.

WITH RESPECT TO WATER LEVELS AND QUALITY AND OTHER WATERBODY-RELATED MATTERS, ALL PERSONS ARE REFERRED TO ARTICLE XI, SECTION 13 HEREOF.

Section 17. **Unit Air Conditioners and Reflective Materials**. No air conditioning units may be mounted through windows or walls. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other

materials (except standard window treatments) placed on any glass, except such as may be approved by the Architectural Control Board or its equivalent for energy conservation purposes.

Section 18. **Exterior Antennas**. No exterior antennas, satellite dishes or similar equipment shall be permitted on any Lot or improvement thereon, except that Developer and its affiliates shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines.

Section 19. **Chain Link Fences**. No chain link fences shall be permitted on any Lot or portion thereof, unless installed by Developer or its affiliates during construction periods or as otherwise approved by Developer.

Section 20. **Renewable Resource Devices**. Nothing in this Declaration shall be deemed to prohibit the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that same shall be installed only in accordance with the reasonable standards adopted from time to time by the Architectural Control Board or the DRB, whichever then has jurisdiction over such matters. Such standards shall be reasonably calculated to maintain the aesthetic integrity of The Properties and/or Winston Trails, as appropriate, without making the cost of the aforesaid devices prohibitively expensive. Further, such standards may not be more restrictive than those permitted by applicable Florida Statute.

Section 21. **Driveway and Sidewalk Surfaces**. No Owner shall install on a Lot, and the Architectural Control Board shall not approve, any sidewalk or driveway which has a surface material and/or color which is different from the materials and colors originally used or approved by the Developer. Further, no Owner shall change any existing sidewalk or driveway in a manner inconsistent with this Section.

Section 22. **Artificial Vegetation**. No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Lot without the prior approval of the Architectural Control Board.

Section 23. **Gatehouse Procedures; Roving Patrols**. All Owners shall be responsible for complying with, and ensuring that their Members' Permitees and invitees comply with, all procedures adopted by the Association for controlling access to and upon The Properties through any gatehouse operated by the Association as well as overall Common Area roadways and other portions of the Common Areas, as such procedures and restrictions are adopted and amended from time to time.

All Owners and other occupants of Units are advised that any gatehouse staff and system, as well as any roving patrol/ surveillance personnel, serving The Properties are not law enforcement officers and are not intended to supplant same,

such persons being engaged, if at all, only for the purpose of monitoring access to The Properties and observing activities therein which are readily apparent by such persons.

Nothing herein contained shall in any manner obligate Developer to construct a gatehouse or obligate the Association to staff and/or operate any gatehouse which may be constructed.

Section 24. Additional Rules and Regulations. Attached hereto as Schedule A are certain additional rules and regulations of the Association which are incorporated herein by this reference and which, as may the foregoing, may be modified, in whole or in part, at any time by the Board without the necessity of recording an amendment hereto or thereto in the public records.

Section 25. Variances. The Board of Directors of the Association shall have the right and power to grant variances from the provisions of this Article VII and the aforesaid rules and regulations for good cause shown, as determined in the reasonable discretion of the Board. No variance granted as aforesaid shall alter, waive or impair the operation or effect of the provisions of this Article VII or such rules and regulations in any instance in which such variance is not granted.

ARTICLE VII

RESALE, LEASE AND OCCUPANCY RESTRICTIONS

Section 1. Estoppel Certificate. No Owner may sell or convey his interest in a Lot unless all sums due the Association and the Foundation shall be paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner. If all such sums shall have been paid, the Association shall deliver such certificate within ten (10) days of a written request therefor. The Owner requesting the certificate may be required by the Association to pay to the Association a reasonable sum to cover the costs of examining records and preparing the certificate.

Owners shall be obligated to deliver the documents originally received from the Developer, containing this and other declarations and documents, to any grantee of such Owner.

Section 2. Leases. No portion of a Lot and Unit (other than an entire Lot and Unit) may be rented. All leases shall be in writing, be approved by the Association and shall provide that the Association shall have the right to terminate the lease in the name of and as agent for the lessor upon default by tenant in observing any of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, applicable rules and regulations, the Foundation Covenants or other applicable provisions of any

agreement, document or instrument governing The Properties or administered by the Association or the Foundation. Leasing of Lots and Units shall also be subject to the prior written approval of the Association, which approval shall not be unreasonably withheld. No lease shall be approved for a term less than any minimum term set by the Association through a resolution of its Board of Directors, as long as such term is not less than six (6) months. Owners wishing to lease their Lots and Units may be required by the Board of Directors to place in escrow with the Association the sum of up to $1,000.00 which may be used by the Association to repair any damage to the Common Areas or other portions of The Properties or Winston Trails resulting from acts or omissions of tenants (as determined in the sole discretion of the Association or the Foundation, as applicable). The Owner will be jointly and severally liable with the tenant to the Association for any amount in excess of such sum which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant. Any balance remaining in the escrow account, less an administrative charge not to exceed $50.00, shall be returned to the Owner within ninety (90) days after the tenant and all subsequent tenants permanently move out.

Section 3. **Members' Permittees**. No Lot or Unit shall be occupied by any person other than the Owner(s) thereof or the applicable Members' Permittees and in no event other than as a residence. For purposes of this Declaration, a Member's Permittees shall be the following persons and such persons' families, provided that the Owner or other permitted occupant must reside with his/her family: (i) an individual Owner(s), (ii) an officer, director, stockholder or employee of a corporate owner, (iii) a partner in or employee of a partnership owner, (iv) a fiduciary or beneficiary of an ownership in trust, or (v) occupants named or described in a lease or sublease, but only if approved in accordance with this Declaration. Under no circumstances may more than one family reside in a Unit at one time. In no event shall occupancy (except for temporary occupancy by guests) exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The Board of Directors shall have the power to authorize occupancy of a Unit by persons in addition to those set forth above. The provisions of this Section shall not be applicable to Units used by the Developer or Declarant for model apartments, sales offices, management services or otherwise.

As used herein, "family" or words of similar import shall be deemed to include a spouse, children, parents, brothers, sisters, grandchildren and other persons permanently cohabiting the Unit as or together with the Owner or Member's Permittee. As used herein, "guest" or words of similar import shall include only those persons who have a principal residence other than the Unit. Unless otherwise determined by the Board of Directors of the Association, a person(s) occupying a Unit for more than one (1) month shall not be deemed a guest but, rather, shall be deemed a lessee for purposes of this Declaration (regardless of whether a lease exists or rent is paid) and shall be subject to the provisions of this Declaration which apply to leases and lessees. The purpose of this paragraph is

to prohibit the circumvention of the provisions and intent of this Article and the Board of Directors of the Association shall enforce, and the Owners comply with, same with due regard for such purpose.

ARTICLE VIII

ENFORCEMENT

Section 1. **Compliance by Owners**. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. **Enforcement**. Failure of an Owner to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend the rights of use of Common Areas (except for legal access) of defaulting Owners. The offending Lot Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs.

Section 3. **Fines**. In addition to all other remedies, and to the maximum extent lawful, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees or employees, to comply with any covenant, restriction, rule or regulation, provided the following procedures are substantially adhered to:

(a) Notice: The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Board of Directors at which time the Owner shall present reasons why a fine(s) should not be imposed. At least six (6) days' notice of such meeting shall be given.

(b) Hearing: The alleged non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why a fine(s) should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner by not later than twenty-one (21) days after the Board of Directors' meeting. The Owner shall have a right to be represented by counsel and to cross-examine witnesses.

(c) Amounts: The Board of Directors (if its or such panel's findings are made against the Owner) may impose special assessments against the Lot owned by the Owner as follows:

(1) First non-compliance or violation: a fine not in excess of One Hundred Dollars ($100.00).

(2) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars ($500.00).

(3) Third and subsequent non-compliance, or a violation or violations which are of a continuing nature after notice thereof is given by the Association to the applicable Owner, even if in the first instance: a fine not in excess of One Thousand Dollars ($1,000.00).

(d) Payment of Fines: Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties.

(e) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth herein.

(f) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Non-exclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

ARTICLE IX

THE FOUNDATION AND THE ASSOCIATION

Section 1. **Preamble**. In order to ensure the orderly development, operation and maintenance of The Properties as an integrated part of Winston Trails, this Article has been promulgated for the purposes of (1) giving the Foundation and the Association certain powers to effectuate such goal, (2) providing for intended (but not guaranteed) economies of scale and (3) establishing the framework of the mechanism through which the foregoing may be accomplished.

Section 2. **Cumulative Effect; Conflict**. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Foundation Covenants; provided, however, that in the event of conflict between or among such covenants, restrictions and provisions, or any Articles of Incorporation, By-Laws, rules and regulations, policies or practices adopted or carried out pursuant thereto, those of this Declaration shall be subject and subordinate to those of the Foundation Covenants. The foregoing priorities

shall apply, but not be limited, to the liens for assessments created in favor of the Foundation and the Association (as provided in Article V, Section 8 hereof).

Section 3. **Architectural Control, Maintenance and Use Restrictions**. Initially, all architectural control/development review functions related to the applicable requirements and restrictions set forth herein and in the Foundation Covenants shall be performed by the Association and the Foundation, respectively. For so long as this is the case, no Owner shall submit a request for architectural control/development review approval to the Foundation without first having received the written approval of the applicable matter from the Association and included a copy thereof with the request to the Foundation.

The Foundation and the Association shall each enforce the maintenance and use requirements and restrictions set forth in their respective declarations, provided that (i) in the event of conflict between such requirements and restrictions, the more stringent ones shall control and (ii) in the event that the Association fails to so enforce, the Foundation may do so).

As used in this Section, the terms Foundation and Association shall be deemed to refer to their respective development review boards or architectural control committees, where appropriate. In the event of a conflict between an architectural control/development review action (i.e., an approval or disapproval) of the Foundation and that of the Association, the action of the Foundation shall be final and shall control over that of the Association.

Section 4. **Collection of Assessments**. The Foundation shall, initially, act as collection agent for the Association as to all assessments payable to each of same by the Members of the Association. The Foundation will remit the assessments so collected to the respective payees pursuant to such procedure as may be adopted by the Foundation.

In the event that the assessments received by the Foundation for the Association and itself are received in a lump sum and such sum is less than sufficient to pay all three entities, the amount collected shall be applied first to the assessments of the Foundation and then to those of the Association. All capital improvement assessments, special assessments, fines, interest, late charges, recovered costs of collection and other extraordinary impositions shall be remitted to the respective entity imposing same separate and apart from the priorities established above.

The Association shall notify the Foundation, by written notice given at least thirty (30) days in advance, of any changes in the amounts of the assessments due it or the frequency at which they are to be collected. The aforesaid notice period shall also apply to capital improvement assessments, but may be as short as five (5) days before the next-

due regular assessment installment in the case of special assessments, fines and similar impositions on fewer than all Members.

The Foundation shall have the power, but shall not be required, to record liens or take any other actions with regard to delinquencies in assessments payable to the Association. In the event that the Foundation does so, then all rights of enforcement provided in Article V hereof shall be deemed to have automatically vested in the Foundation, but all costs and expenses of exercising such rights shall nevertheless be paid by the Association (which shall be entitled to receive payment of any such costs and expenses which are ultimately recovered).

The Foundation may change, from time to time by sixty (60) days' prior written notice to the Association, the procedures set forth in this Section 4 in whole or in part. Such change may include, without limitation, the delegation by the Foundation of all or some of the collection functions provided for herein to the Association or any combination of the Foundation and the Association (to which delegation the Association and its Members shall be deemed to have automatically agreed).

All fidelity bonds and insurance maintained by the Association shall reflect any duties delegated to it pursuant hereto and any amounts to be received and disbursed by it pursuant hereto and shall name the Foundation as obligees/insured parties for so long as their assessments are being collected and remitted by the Association.

The Association may delegate any duties delegated to it pursuant hereto to a management company approved by the Foundation, provided that (1) the Association shall remain ultimately liable hereunder, (2) the management company, as well as the Association, shall comply with the requirements of the foregoing paragraph and (3) the approval of the management company may be withdrawn, with or without cause, at any time upon thirty (30) days' prior written notice. Any management agreement or similar contract entered into by the Association shall be subject to the provisions of this Article and shall not require the Association to pay fees for the performance of duties which would otherwise be delegated to the company in connection with this Article if such duties are performed by the Foundation as provided above.

In the event of any change in assessment collection procedures elected to be made by the Foundation, the relative priorities of assessment remittances and liens (i.e., the Foundation first and the Association second) shall still remain in effect, as shall the Foundation's ability to modify or revoke its election from time to time.

Section 5. **Delegation of Other Duties**. The Foundation shall have the right to delegate to the Association, on an exclusive or non-exclusive basis, such additional duties not specifically described in this Article as the Foundation shall deem appropriate. Such delegation shall be made by written notice to the Association, which shall be effective

no earlier than thirty (30) days from the date it is given. Any delegation made pursuant hereto by the Foundation shall be subject to the prior written approval of the Developer, which approval may also be withdrawn at any time.

Section 6. Acceptance of Delegated Duties. Whenever the Foundation delegates any duty to the Association pursuant to Sections 3, 4 or 5 hereunder, the Association shall be deemed to have automatically accepted same and to have agreed to indemnify, defend and hold harmless the Foundation for all liabilities, losses, damages and expenses (including attorneys' fees actually incurred and court costs, through all appellate levels) arising from or connected with the Association's performance, non-performance or negligent performance thereof.

Section 7. Expense Allocations. The Foundation may, by written notice given to the Association at least thirty (30) days' prior to the end of the Association's fiscal year, allocate and assess to the Association a share of the expenses incurred by the Foundation which are reasonably allocable to The Properties or the Association, whereupon such expenses shall thereafter be deemed common expenses payable by assessments of the Owners as provided in Article V, Sections 1 and 2 of this Declaration. By way of example only, the Foundation could allocate the share of the costs of maintaining patrol services for Winston Trails attributable to The Properties (based, for instance, on the number of Lots or linear feet of roadways therein) whereupon such allocated share would become common expenses of the Owners and a sum payable by the Association.

In the event of the failure of the Association to budget or assess the Members for, or to pay, such allocated expenses, the Foundation shall be entitled to pursue all available remedies afforded same under this Declaration or, without waiving the right to do the foregoing, specially assess all Owners for the sums due.

Section 8. Conflict; Amendment. In the event of conflict between this Article X and any of the other covenants, restrictions or provisions of this Declaration or the Articles of Incorporation, By-Laws or rules and regulations of the Association, the provisions of this Article shall supersede and control. Except as to amendments made by the Developer, no amendment to this Article or this Declaration generally which affects the rights, privileges or protections afforded Developer or the Foundation hereunder shall be effective without the express written consent of Developer or the Foundation, whose determination as to whether such amendment has the aforesaid effect shall be final and conclusive.

ARTICLE X

INSURANCE

Section 1. Common Facilities. The Association shall keep the Common Facilities and all fixtures and personal property located therein or thereon insured against

loss or damage by fire for the full insurable replacement cost thereof; and (ii) flood in the maximum amount allowed by law, if necessary or required and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Associa- tion, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Facilities shall be written in the name of the Association and the proceeds thereof shall be payable to it. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses to be included in the Common Assessments made by the Association.

Section 2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Facilities, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Dwelling Units to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Dwelling Unit Owners, subject to the provisions of Article VI of this Declaration.

Section 3. Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused negligence of, or breach of, any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4. Liability and Other Insurance. The Association shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorse- ment insuring each Owner against liability to each other Owner. The policy or policies shall be written in an amount of not less than $1,000,000.00 combined single limit coverage for bodily injury and $1,000,000.00 for property damage; provided, however that, in the event the cost of a $1,000,000.00 liability policy becomes prohibitive, the Association may obtain such lesser coverage as is reasonably practical under the circumstances. The Association may also obtain Workmen's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner and the Association, and Board of Directors from liability in connection with the Common Facilities, the premiums for which shall be Common Expenses included in the Common Assessments made against the Dwelling Unit Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and be

increased or decreased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and any management company against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

ARTICLE XI

MORTGAGEE PROTECTION CLAUSE

Section 1. Additional Rights. In addition to all other rights herein set forth and with respect to Improvements upon the Lots, Institutional Mortgagees shall have the following rights (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each Institutional Mortgagee pursuant to an Institutional Mortgage encumbering any Lot upon which a Dwelling Unit is situated, at its written request, is entitled to written notification from the Association of any default by the mortgagor of such Lot and Dwelling Unit in the performance of such mort- gagor's obligations under this Declaration, the Articles of Incorporation of the Association or the By-Laws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Each Institutional Mortgagee pursuant to an Institutional Mortgage encumbering any Dwelling Unit which obtains title to such Dwelling Unit pursuant to the remedies provided in such mortgage by foreclosure of such mortgage or by deed in lieu of foreclosure shall take title to the Dwelling Unit free and clear of any claims of unpaid assessments or charges against such Dwelling Unit which accrued prior to the acquisition of title to such Dwelling Unit by the Institutional Mortgagee.

(c) Unless at least seventy-five percent (75%) of the Institutional Mortgagees (based upon one vote for each Lot upon which a mortgage is owned), and seventy-five percent (75%) of the Owners have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to sell or transfer the Common Facilities and the Improvements thereto which are owned by the Association; provided, however, that the granting of easements for utilities or for such other purposes consistent with the intended use of such property by the Association or the Declarant shall not be deemed a transfer within the meaning of this clause;

(2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Dwelling Unit;

(3) fail to maintain fire and extended coverage on insurable portions of the Common Facilities on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost) less such reasonable deductions as the Board may deem appropriate;

(4) use hazard insurance proceeds for losses to any Common Facilities for other than the repair, replacement or reconstruction of such Facilities (or for reserves for the repair, replacement or reconstruction of the Facilities); or

(5) amend this Declaration or the Articles or By-Laws of the Association in such a manner that the rights of any Institutional Mortgagee will be materially affected.

(d) Institutional Mortgagees shall at its sole cost and expense and upon written request to the Association have the right to (i) examine the books and records of the Association during normal business hours, including current copies of the Declaration and its exhibits, and current rules and regulations, if any, (ii) receive an unaudited financial statement of the Association within ninety (90) days after each of its fiscal years closes, (iii) receive from the Association written notice of any meeting of the Association's membership and to attend any such meeting and (iv) receive timely written notice of casualty damage to or condemnation of any part of any Lot on which a Dwelling Unit is situate and upon which it has a mortgage.

(e) All Institutional Mortgagees who have registered their names with the Association shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles or By-Laws of the Association and prior to the effective date of any termina- tion of any agreement for professional management of the Common Facilities following a decision of the Owners to assume self- management of the Common Facilities; and (ii) immediate notice following any damage to the Common Facilities whenever the cost of reconstruction exceeds Ten Thousand Dollars ($10,000.00), and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Common Facilities.

ARTICLE XII

GENERAL PROVISIONS

Section 1. **Duration**. The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by

the Foundation, the Association, the Architectural Control Board, the Committee, the DRB (whichever of same then has the right of enforcement), the Developer (at all times) and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of 75% of all the Lots subject hereto and of 100% of the mortgagees thereof has been recorded, agreeing to revoke said covenants and restrictions. Provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

Section 2. **Notice**. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. **Enforcement**. Enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. **Severability**. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

Section 5. **Amendment**. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed, deleted or added to at any time and from time to time upon the execution and recordation of an instrument executed by the Developer alone, for so long as it or its affiliates holds title to any Lot affected by this Declaration if such amendment is required by the County or any other governmental or quasi-governmental agency (e.g., FNMA, VA, FHA); or alternatively (subject to Article X, Section 8) by approval at a meeting of Owners holding not less than 66 2/3% vote of the membership in the Association, provided, that so long as the Developer or its affiliates is the Owner of any Lot affected by this Declaration, the Developer's consent must be obtained if such amendment, in the sole opinion of the Developer, affects its interest. Any amendment hereto shall also be subject to the approval of the Foundation, which approval shall not be unreasonably withheld.

Section 6. **Effective Date**. This Declaration shall become effective upon its recordation in the Palm Beach County Public Records.

Section 7. **Conflict**. This Declaration shall take precedence over conflicting provisions in Schedule A hereto and in the Articles of Incorporation and By-Laws of the Association and said Articles shall take precedence over the By-Laws.

Section 8. **Standards for Consent, Approval, Completion, Other Action and Interpretation**. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer or its affiliates, the Association or the Architectural Control Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Developer or its affiliates or the Association shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Developer or Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Association rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.

Notwithstanding anything in this Declaration to the contrary, the following actions shall require the assent of two-thirds (2/3rds) of the votes of each class of Members of the Association: the mortgaging, conveyance (other than to the Association by the Developer) or dedication of the Common Areas of the annexation, merger, consolidation or dissolution of the Association.

Section 9. **FHA/VA Approval**. If any mortgage encumbering any Lot is guaranteed or insured by the Federal Housing Administration or by the Veterans Administration, then upon written demand to the Association by either such agency, the following action, if made by Declarant, Developer or a participating builder or if made while there is a Class B Membership, must be approved by either such agency: (i) any annexation of additional property; (ii) any mortgage, transfer or dedication of any Common Facilities; (iii) any amendment to this Declaration, the Articles or the Bylaws, if such amendment materially and adversely affects the general scheme of development created by this Declaration; provided, however, such approval shall specifically not be required where the amendment is made to add any property specifically identified in this Declaration, or to correct errors or omissions, or is required to comply with the requirements of any Institutional Mortgagee, or is required by any governmental authority; or (iv) any merger, consolidation or dissolution of the Association. Such approval shall be deemed given if either agency fails to deliver written notice of its disapproval of any such action to Declarant, to Developer or to the Association within twenty (20) days after a request for such approval is delivered to the agency by certified mail, return receipt

requested, or equivalent delivery, and such approval may be conclusively evidenced by a certificate of Declarant, Developer or the Association that the approval was given or deemed given.

Section 10. **Easements**. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Unit Owners designate hereby the Developer and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

Section 11. **CPI**. Whenever specific dollar amounts are mentioned in this Declaration (or in the Articles or By-Laws or rules and regulations), unless limited or prohibited by law, such amounts will be increased from time to time by application of a nationally recognized consumer price index chosen by the Board, using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.

Section 12. **Notices and Disclaimers as to Telecommunications Systems**. Developer, Declarant, the Foundation or the Association, or their successors, assigns or franchisees and any applicable cable telecommunications system operator (an "Operator"), may enter into contracts for the provision of security services through any Community Systems. DEVELOPER, DECLARANT, THE FOUNDATION, THE ASSOCIATION AND THEIR FRANCHISEES, AND ANY OPERATOR, DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY SERVICED BY SUCH SYSTEMS ACKNOWLEDGES THAT DEVELOPER, THE FOUNDATION, THE ASSOCIATION OR ANY SUCCESSOR, ASSIGNEE OR FRANCHISEE OF THE DEVELOPER OR ANY OF THE OTHER AFORESAID ENTITIES AND ANY OPERATOR, ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE PREMISES AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may

proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services through the Community Systems agrees that Developer, the Declarant, the Foundation, the Association or any successor, assign or franchisee thereof and any Operator assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every owner or occupant of property obtaining security services through the Telecommunications Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees, and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officers, agents, or employees, the liability, if any, of Developer, the Declarant, the Foundation, the Association, any franchisee of the foregoing and the Operator or their successors or assigns, for loss, damage, injury or death sustained shall be limited to a sum not exceeding Two Hundred Fifty and No/100 ($250.00) U.S. Dollars, which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Developer, the Declarant, the Foundation, the Association or any franchisee, successor or assign of any of same or any Operator. Further, in no event will Developer, the Declarant, the Foundation, the Association, any Operator or any of their franchisees, successors or assigns, be liable for consequential damages, wrongful death, personal injury or commercial loss.

In recognition of the fact that interruptions in cable television and other Telecommunications Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any Community System shall be entitled to any refund, rebate, discount or offset in applicable fees, for any interruption in applicable services, regardless of whether or not same is caused by reasons within the control of the then-provider(s) of such services.

Section 13. **Blasting and Other Activities**. ALL OWNERS, OCCUPANTS AND USERS OF THE PROPERTIES ARE HEREBY PLACED ON NOTICE THAT DEVELOPER, DECLARANT AND/OR THEIR AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES WILL BE, FROM TIME TO TIME, CONDUCTING BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTIES AND/OR WINSTON TRAILS. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR

MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTIES, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO WINSTON TRAILS WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DEVELOPER AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS, FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, (iv) ANY PURCHASE OR USE OF ANY PORTION OF WINSTON TRAILS HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING AND (v) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DEVELOPER AND/OR THE DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF WINSTON TRAILS.

Section 14. **Notices and Disclaimers as to Water Bodies**. NEITHER DEVELOPER, THE DECLARANT, THE FOUNDATION, THE ASSOCIATION NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN WINSTON TRAILS, EXCEPT (i) AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY OR (ii) TO THE EXTENT THAT ARTICLE VII, SECTIONS 13 AND 19 HEREOF WOULD OTHERWISE APPLY, IF AT ALL. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF WINSTON TRAILS LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY HABITAT OR ENTER INTO WATER BODIES WITHIN WINSTON TRAILS AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST,

AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

Section 15. **Certain Reserved Rights of Developer with Respect to Community Systems**. Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Developer hereby reserves and retains to itself:

(a) the title to any Community Systems and a perpetual easement for the placement and location thereof;

(b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Developer may in its sole discretion deem appropriate including, without limitation, companies licensed to provide CATV service in Palm Beach County, Florida, for which service Developer shall have the right to charge any users a reasonable fee (which shall not exceed any maximum allowable charge provided for in the Code of Laws and Ordinances of Palm Beach County); and

(c) the right to offer from time to time security services through the Community Systems.

Section 16. **Exculpation of Association**. Neither the Association nor any officer, director, employee or agent (including management company) thereof shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the course of performing any duty or exercising any right or privilege (including, without limitation, performing maintenance work which is the duty of the Association or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Association, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law. The foregoing shall also apply to the Foundation and its respective officers, directors, employees and agents (including management companies).

Section 17. **Covenants Running With The Land**. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF SECTION 1 HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTIES. WITHOUT LIMITING THE GENERALITY OF SECTION 4 HEREOF, IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH

PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

Section 18. **Modification of Project**. Developer reserves the absolute right at any time and from time to time to modify the Project for all or any portion of the Property, and in connection therewith to develop residences upon the Property which are substantially different from the planned residences for the Property from time to time, and in the event Developer changes the type, size, or nature of the residences or other Improvements to be constructed upon the Property, Developer shall have no liability thereafter to any Owner. In addition, Developer makes no representations or warranties as to the manner in which any other property outside of the Property will be developed, and shall have no liability to any Owner as regards the development of any other property in or around the Property.

Section 19. **Master Association's and Declarant's Joinder**. The joinder in this Declaration by the Master Association and the Declarant shall not be deemed to require any further joinder and/or approval of any modification, amendment or supplement hereto, unless and to the extent such joinder(s) and/or approval(s) are otherwise required.

Section 20. **Declarant Exculpation**. It is expressly understood and agreed by any party dealing with this Declaration or the subject matter hereof, that notwithstanding anything said in, or done in connection with, this Declaration to the contrary, the party executing this instrument as Declarant is doing so solely in his capacity as trustee as so indicated and not personally or individually in any manner whatsoever. Accordingly, no personal liability is assumed by or is to be asserted against such signatory in any manner, or for any reason, whatsoever.

ARTICLE XIII

DISCLAIMER OF LIABILITY OF ASSOCIATION

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION,

RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

(a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, PALM BEACH COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

(c) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT) AND EACH OTHER PERSON HAVING AS INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE. AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS

ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DEVELOPER, THE DECLARANT, AND THE FOUNDATION WHICH SHALL BE FULLY PROTECTED HEREBY.

EXECUTED as of the date first above written.

Signed, sealed and delivered
in the presence of:

(SIGNATURE)

ENRIQUE J. LAURELIRD
(PRINT NAME)

(SIGNATURE)

ROBERT W. ISAKSON
(PRINT NAME)

WESTBROOKE AT WINSTON TRAILS, INC., a Florida corporation,

By: _____
Robert Stone, Senior Vice President

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared this day ROBERT STONE, the Senior Vice President of WESTBROOKE AT WINSTON TRAILS, INC., a Florida corporation, and he acknowledged to and before me that he executed the same under the seal of the corporation and as the act and deed of said corporation. He is personally known to me.

WITNESS my hand and seal in the County and State last aforesaid this 14th day of September, 1997.

OFFICIAL NOTARY SEAL
ROBYN HENOCH
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC578969
MY COMMISSION EXP. AUG. 22,2000

Robyn Henoch
(Signature of Notary Public)

Joined by Declarant

ORB 10730 Pg 90

ORB 10057 Pg 323

(SIGNATURE)
ROBERT W. ISAKSON
(PRINT NAME)

(SIGNATURE)
Kenneth A. Arnesen
(PRINT NAME)

JAMES J. O'BRIEN, as successors Trustee Under Land Trust Agreement dated March 8, 1989

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared this day JAMES J. O'BRIEN, as successor Trustee under Land Trust Agreement dated March 8, 1989. He is personally known to me.

WITNESS my hand and seal in the County and State last aforesaid this 15th day of September, 1997.

OFFICIAL NOTARY SEAL
ROBYN HENOCH
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC578969
MY COMMISSION EXP. AUG. 22,2000

Robyn Henoch
(Signature of Notary Public)

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