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RICHARD AKE CLERK OF COURT
HILLSBOROUGH COUNTY
DEPUTY CLERK J. Anglin

THIS DECLARATION is made this 18th day of December, 1998, by KIMBALL HILL HOMES FLORIDA, INC., a Florida corporation (hereinafter referred to as "Declarant").

WHEREAS, Declarant is the owner of certain real property located in Hillsborough County, Florida, which is more particularly described as:

and

NOW, THEREFORE, Declarant hereby declares that all of the real property described in the previous paragraphs shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in such real property or

any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof

ARTICLE I
DEFINITIONS AND CONSTRUCTION

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration

Section 1. "Association" means The Enclave at Westchase Homeowners Association, Inc., a Florida corporation, its successors and assigns

Section 2. "Board" or "Board of Directors" means the Association's Board of Directors.

Section 3. "Common Property" means all property from time to time owned by the Association for the common use or enjoyment of all Owners. The Common Property initially consists of the lands designated as Tracts "A", "L-1", "L-2", "L-3", "L-4", "L-5", "L-6", "L-7" and "L-8" as shown on the Plat, together with all improvements, fixtures and tangible personal property now or hereafter situated thereon and the benefit of any and all appurtenant easements. The Common Property shall also include easements under each Lot for the benefit of each respective Lot Owner serviced by said easements, for all conduits, pipes, ducts, plumbing, wiring and all other facilities necessary for the furnishing of utility services to Lots, which easements shall be maintained exclusively by the Association.

Section 4. "Declarant" means Kimball Hill Homes Florida, Inc., a Florida corporation, its successors and assigns, if such successors and assigns are designated in writing by the Declarant as the successors and assigns of the Declarant's rights hereunder.

Section 5. "FHA" means the Federal Housing Administration of the Department of Housing and Urban Development of the United States of America and its successors.

Section 6. "Supplemental Declaration" means any declaration hereafter recorded for the purpose of extending the provisions of this Declaration to any lands other than the Property

Section 7. "Law" includes, without limitation, any statute, ordinance, rule, regulation or order validly created, promulgated or adopted by the United States, or any agency, officer, or instrumentality thereof, or by the State of Florida, or any agency, officer, municipality or political subdivision thereof, or by any officer, agency or instrumentality of such municipality or subdivision, and from time to time applicable to the Property or to any and all activities thereon.

Section 8. "Lot" means any plot of ground shown on any recorded subdivision plat of the Property, other than the Common Property and streets or other areas dedicated to public use.

Section 9. "Master Association" means Westchase Community Association, Inc., its successors and assigns.

Section 10. "Master Declaration" means the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Westchase recorded in Official Records Book 6406, page 149, of the Public Records of Hillsborough County, Florida, as amended from time to time.

Section 11. "Mortgage" means any mortgage, deed of trust, or other instrument transferring any interest in a Lot as security for performance of an obligation. "First Mortgage" means any Mortgage constituting a lien prior in dignity to all other Mortgages encumbering the same property.

Section 12. "Mortgages" means any person named as the obligee under any Mortgage, or the successor in interest to such person.

Section 13. "Owner" means the record Owner, whether one or more persons, of the fee simple title to any Lot, including contract sellers, but excluding any other person holding such fee simple title merely as security for the performance of an obligation.

Section 14. "Person" means any natural person or artificial legal entity, unless the context expressly requires otherwise.

Section 15. "Plat" means the recorded plat of Westchase Section "211" per Plat Book 83, Page 55, Public Records of Hillsborough County, Florida.

Section 16. "Property" means the real property that is subject to this Declaration, as described on Page 1 hereof, and such additional lands to which this Declaration may be extended from time to time as provided in Article VII.

Section 17. "Recorded" means filed for record in the public records of Hillsborough County, Florida.

Section 18. "The Work" means the initial construction of improvements, including dwelling units, common area amenities, landscaping and hardscaping upon all or any portion of the Property for a single family residential community and the sale and/or leasing thereof by Declarant.

Section 19. "VA" means the Veterans Administration of the United States of America and its successors.

Section 20. Documentation. The legal documentation for The Enclave at Westchase consists of this Declaration, all Supplemental Declarations, the Association's Articles of Incorporation, a copy of which is attached hereto as Exhibit "A", the Association's By-Laws, a copy of which is attached hereto as Exhibit "B", and all amendments to any of the foregoing now or hereafter made. Unless the context expressly requires otherwise, the following terms mean as follows wherever used in any of the foregoing, in any corporate resolutions and other instruments of the Association, and in any deeds, mortgages, assignments and other instruments relating to all or any portion of the Property:

(a) "Declaration" means this Declaration and all applicable Supplemental Declarations, as from time to time amended.

(b) "Articles" means the Articles of Incorporation of the Association, and its successors, as from time to time amended.

(c) "By-Laws" means the By-Laws of the Association, and its successors, as from time to time amended.

Section 21. Interpretation. Unless the context expressly requires otherwise, the use of the singular includes the plural, and vice versa; the use of one gender includes all genders; and the use of the terms "including" or "include" is without limitation. Wherever any time period in this Declaration, the Articles or the By-Laws is measured in days, "days" means consecutive calendar days; and if such time period expires on a Saturday, Sunday or Legal Holiday, it shall be extended to the next succeeding calendar day that is not a Saturday, Sunday or Legal Holiday. Unless the context expressly requires otherwise, the terms "Common Property," "Lot," and "Property" include any portion applicable to the context and include any and all improvements, fixtures, trees, vegetation and other property from time to time situated thereon. This Declaration shall be construed liberally in favor of the party seeking to enforce its provisions to effectuate its purpose of protecting and enhancing the value, marketability and desirability of the Property as a residential community by providing a common plan for the development and enjoyment thereof. The headings used in this Declaration or any other document described in the preceding Sections of this Article are for indexing purposes only and are not to be used to interpret, construe or apply its substantive provisions.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner has a non-exclusive right and easement of enjoyment in and to the Common Property that is appurtenant to, and shall pass with, the title to every Lot, subject to the following:

(a) Eas. The Association's right to charge reasonable admission and

other fees for the use of any recreational facility situated upon the Common Property.

(b) Suspension; Fines. The Association's right: (i) to suspend any Owner's right to use the Common Property and any such recreational or other facilities for a period not to exceed sixty (60) days for any infraction of the Association's rules and regulations; and (ii) to fine an Owner, tenant, guest or invitee of an Owner, not to exceed \$100.00 per violation of this Declaration, the Articles, By-laws or any duly adopted rule of the Association. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000.00 in the aggregate.

(c) Dedication. The Association's right to dedicate, transfer or mortgage all or any part of the Common Property to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by its members. Such dedication, transfer or mortgage shall be approved by at least seventy-five percent (75%) of each class of voting members of the Association.

(d) Rules and Regulations. The Association's right to adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Common Property. As hereinafter provided.

Section 2. Delegation of Use. Any Owner may delegate his right of enjoyment and other rights in the Common Property to: (i) all family or household members of such Owner, or (ii) such Owner's tenants or contract purchasers; and (iii) all family or household members of such tenants or purchasers, provided the foregoing actually reside upon such Owner's Lot. Any delegation to tenants or invitees of any of the foregoing is subject to the Association's rules and regulations.

Section 3. Right of Access. As shown on the Plat, Tract "A" is improved as a private street maintained by the Association for the use of the Owners. To the extent that any Owner of any Lot lacks legal access to a dedicated public street, such Owner has an easement for pedestrian and vehicular ingress and egress over, across and through the Common Property to a dedicated public street. Such easement is exclusive as to any driveway situated in whole or in part upon the Common Property and servicing such Owner's Lot exclusively, but it otherwise is non-exclusive. The extent of such easement is that reasonably necessary to provide convenient access to such Owner's Lot. Access by Persons other than Owners to the streets located on Tract "A" from Countryway Boulevard may be restricted by an automated entry gate and/or security guard station operated and maintained by the Association as part of the Common Property. NOTHING HEREIN SHALL BE DEEMED TO REQUIRE THE ASSOCIATION OR THE DECLARANT TO PROVIDE EITHER AN AUTOMATIC GATE OR SECURITY GUARD STATION. NEITHER THE ASSOCIATION NOR THE

DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND THE DECLARANT ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, AND TO ANY IMPROVEMENTS LOCATED ON THE LOTS, AND TO THE CONTENTS OF SUCH IMPROVEMENTS, AND FURTHER ACKNOWLEDGE THAT DECLARANT HAS MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

Section 4. Rights of Use. The Association additionally may assign to any Lot or Lots an exclusive right of use for any postal, refuse storage and collection, and other facilities from time to time maintained by the Association upon the Common Property, for the use of any or all Owners severally. If any such facility is not available for use by all Owners, then all costs of installing, maintaining, repairing, servicing and replacing the same shall be assessed against the Lots granted such exclusive right of use as provided in Article V, Section 6, of this Declaration.

Section 5. Reciprocal Easements. There are reciprocal appurtenant easements between each Lot and such portion or portions of the Common Property adjacent thereto, and between adjacent Lots, for lateral and subjacent support; for overhanging roofs, eaves and trees, if any, installed by Declarant as part of the Work, and for replacements thereof; for encroachments caused by the initial placement, settling or shifting of any improvements constructed, reconstructed or altered therein in accordance with the provisions of this Declaration; and for the drainage of ground and surface waters in the manner established by Declarant as part of the Work. To the extent not inconsistent with this Declaration, the general rules of common law apply to the foregoing easements. The extent of such easements for drainage, lateral and subjacent support and overhangs is that reasonably necessary to effectuate their respective purposes; and such easements of encroachment extend to a distance of not more than five feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point. There is no easement for overhangs or encroachments caused by willful or intentional misconduct by any Owner, tenant or the Association.

If any portion of the Common Property by virtue of the Work performed by the Declarant encroaches upon a Lot, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Lot by virtue of the Work performed by Declarant encroaches upon the Common Property or upon an adjoining Lot or Lots, a valid easement for the encroachment and

for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Property or on the Lots for the purposes of marketability of title. In the event a building on the Common Property or a Lot or any portion thereof is destroyed and then rebuilt, the Owners of the Lot or Lots agree that minor encroachments of parts of the Common Property, or other Lots, because of such reconstruction shall be permitted and that an easement for such encroachment and the maintenance and repair of the same shall exist.

Section 6. All Rights and Easements Appurtenances. The benefit of all rights and easements granted by this Article, or by any Supplemental Declaration, constitute a permanent appurtenance to, and shall pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as non-exclusive by this Article or by any Supplemental Declaration, its benefit nevertheless is exclusive to all Lots granted such benefit by this Article, or by such Supplemental Declaration, unless this Article, or such Supplemental Declaration expressly grants such benefit to additional Persons. In no event shall the benefit of any such easement extend to the general public.

Section 7. Utility Easements. Declarant hereby dedicates those portions of the Common Property where utility facilities may be installed for use by all utilities including water, sewer, stormwater drainage, electricity, telephone and cable television for the construction and maintenance of their respective facilities servicing the Property; and Declarant hereby grants to such utilities, jointly and severally, easements for such purpose. The location and extent of such easements is as shown on any recorded subdivision plat of the Property or other Recorded instrument defining the same. In the absence of such express designation, such easements are located and extend seven and one-half (7½) feet on either side of the centerline of each facility respectively installed by each utility within the Common Property as part of the Work prior to the conveyance of such portion of the Common Property by Declarant to the Association; however, no portion of the Common Property occupied by any building installed by Declarant as part of the Work is included within any easement area. Subsequent to Declarant's conveyance, additional easements may be granted by the Association for utility purposes only as provided in Section 1(c) of this Article. In the event the City of Tampa, Hillsborough County or any utility fails to repair any damage to the Common Property caused by the installation or repair of its facilities, then the Association shall make such repairs.

The Common Property as provided in Article I, Section 3, is defined to include easements under each Lot for the benefit of each respective Lot Owner serviced by said easements, for all conduits, pipes, ducts, plumbing, wiring and all other facilities necessary for the furnishing of utility services to Lots, which easements shall be maintained exclusively by the Association.

Section 8. Drainage Easements. Easements for drainage are hereby granted

to the Association, as private easements, subject to being dedicated to the public as may be delineated on the Plat. The use of such easements is limited strictly to drainage and utility purposes or both. No rights are granted to the general public with respect to any body of water, natural or artificial, from time to time existing within such easement areas, as all riparian rights in and to such bodies of water are hereby reserved exclusively for the private benefit of the Association and the persons entitled to make such use under the applicable provisions of this Declaration.

Section 9. Use of Lots.

(a) Antennas. No television or radio masts, towers, poles, antennas, aerials or appurtenances shall be erected, constructed, maintained or allowed to remain on any Lot in such a manner as to be visible from the exterior of such Lot if a master television and radio antenna system or cable system is available or becomes available to such Lot. Microwave antennas for television reception having a diameter not greater than eighteen (18) inches are permitted, provided that they are completely screened from view and can not be seen from outside the Lot.

(b) Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling not to exceed thirty-five (35) feet in height.

(c) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(d) Temporary Structures, Outbuildings, Athletic Equipment. No temporary structure, storage shed, basketball goal, baseball or tennis pitching machines, nets or batting cages, trailer, tent, shack, mobile home, boat or recreational vehicle shall be permitted on any Lot at any time, or used on any Lot at any time as a residence, either temporarily or permanently, except as permitted by Section 17 of this Article. With the exception of household barbecue grills containing propane tanks, no gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any residential structures built on the Property or any ancillary buildings, and except for household barbecue grills containing propane tanks, all gas tanks, gas containers and gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative wall approved by the Architectural Control Committee referred to in Article VI hereof.

(e) Damage to Buildings. In the event a dwelling unit located on a Lot is damaged, through an act of God or other casualty, the Lot Owner upon which

If a dwelling unit is located shall promptly cause his dwelling unit to be repaired and rebuilt substantially in accordance with the original architectural plans and specifications. It shall be the duty of the Association to enforce this provision so that each Lot Owner complies with this responsibility to repair and rebuild. To accomplish the requirements of this Section, each Owner shall insure his dwelling unit at the highest insurable value.

(f) Commercial Trucks, Trailers, Campers and Boats. No trucks in excess of three-quarters (3/4) ton, vehicles containing commercial lettering, vehicles including vans used for commercial purposes, campers, mobile homes, motor homes, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages or behind patio walls or in designated areas if not visible from the streets or roadways and other Lots or property. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other commercial services. Non-commercial vans used for personal purposes shall not be prohibited.

(g) Fences. No fence, wall, or other structure shall be erected in the front yard, back yard, or side yard setback areas, except as originally installed by Declarant or its assignee, or except any fence approved by the Architectural Control Committee.

(h) Garbage and Trash Disposal. No garbage, refuse, trash, or rubbish shall be deposited on any Lot except in areas designated for such purpose; provided, however, that the requirements from time to time of the City of Tampa or County of Hillsborough for disposal or collection of same shall be complied with. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage, refuse, trash or rubbish containers must be screened from view from all sides at all times except during pick-up, and shall not be set outside for more than twelve (12) hours before any scheduled pick-up.

(i) Drying Areas. Drying areas for clothing, laundry, or wash will be permitted only in locations approved by the Architectural Control Committee and only when protected from view by screening or fencing approved by the Committee.

(j) Lawful Conduct. No immoral, improper, offensive or unlawful use shall be made of any Lot or other improvements. All valid Laws shall be strictly observed.

(k) Window Treatments. No Lot Owner may display any drapes,

curtains or other window treatment which when viewed from the outside of a dwelling unit is of a color other than white or beige. No windows within a dwelling unit may be tinted without the consent of the Architectural Control Committee.

(l) Violations. In the event of a violation of these covenants and restrictions, or of any rule properly promulgated by the Board of Directors of the Association, the Association may, as an additional remedy, provide written notice of the violation to the Owner of record and, if the said violation shall continue for a period of seven (7) days from the receipt of the written notice, the Owner may be assessed an amount up to One Hundred Dollars (\$100.00) per violation or the maximum amount allowed by law, if such amount is greater. This assessment shall be considered in the same manner as specific assessments as defined in Article V, Section 6, and those terms of this Declaration providing for the recording of the assessment lien, enforcement and collection shall also apply.

Section 10. Animals. No animals, livestock or poultry shall be raised, bred or kept anywhere within the Property, except a maximum of two (2) dogs, a maximum of two (2) cats, and other customary household pets may be kept on Lots subject to rules and regulations adopted by the Association, provided such animals are not kept, bred or maintained for any commercial purpose. The Association shall designate an area for walking of dogs.

Section 11. Parking Rights, Vehicle Repairs. There shall be no parking on any grass or landscaped area, sidewalks, Common Property, or any portion of a Lot other than the driveways and garages constructed for such purpose. No motor vehicle, motor home, boat or other equipment shall be repaired, serviced, painted, dismantled, rebuilt, or constructed upon the Property, unless such activities are conducted within an enclosed garage and are completely screened from view. While the Declarant still owns Lots for sale, or under construction on the Property, Declarant shall have the right to use any parking area within the Property (except for parking areas on Lots sold to third party owners) for business and customer parking from time to time.

Section 12. Architectural Restrictions

(a) Dwelling size. Each dwelling unit constructed on a Lot shall contain a minimum of at least 1,200 square feet of air-conditioned space.

(b) Height and Character. No dwelling unit shall be erected, altered, or permitted to remain on any Lot other than one dwelling unit used for single family residential purposes only, not to exceed two (2) stories in height, and a fully functioning garage capable of serving at least two (2) vehicles.

(c) Drainage. No Owner of a Lot shall be permitted to construct

improvements on such Lot or grade such Lot or permit such Lot to remain in or be placed in such condition that surface water on such Lots drains to any other Lot or the Common Area, unless such drainage is part of a drainage easement constructed by Declarant pursuant to the Work.

(d) Driveways. Unless the Architectural Control Committee agrees otherwise, each Lot shall have drive-way access to the street on which the Dwelling Unit constructed thereon faces. Subject to the foregoing limitations, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street.

(e) Roofs. The roof of all buildings on the lot shall be covered with wood shingles, aluminum shingles, tile or fiberglass composition shingles with a life of twenty (20) years or better. The color of any composition shingles shall be of wood tone, earthtone, or in harmony with earthtones and shall be subject to written approval by the Architectural Control Committee prior to installation. Any other type roofing material may be used only if approved in writing prior to installation. Additionally, to further maintain exterior harmony, all chimneys must be finished with a masonry or wood material.

(f) Sidewalks. Before the construction of any residence is complete, the Declarant shall construct such concrete sidewalks as shall be required by Hillsborough County, Florida. Sidewalks may not be removed. The maintenance, repair and replacement of all sidewalks shall be part of the Annual Assessment. Any Owner who damages a sidewalk shall be liable to the Association for the cost of repairs or replacement.

(g) Flagpoles. No free standing flagpole shall be permanently erected on any Lot. A temporary flagpole approved by the Architectural Control Committee may be erected on a Lot with a model home until such time as that Lot has been sold as a private residence.

(h) Private Utility Lines. All electrical, telephone and other utility lines and facilities which are located on a Lot and which are not owned and maintained by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Architectural Control Committee, and shall be maintained at all times by the Owner of the Lot upon which it is located.

(i) Exterior Lighting. All exterior lighting must first be approved by the Architectural Control Committee. No exterior lighting may shed light onto other properties or into residential dwellings in such a manner that creates a nuisance.

(j) Sound Devices. No external horns, whistles, bells, or other sound devices, except for security systems used exclusively to protect a dwelling unit,

shall be installed, placed or used upon any Lot or improvements. This restriction shall not preclude the temporary use of outdoor speakers for hi-fis, stereos, radios or televisions if the sound level is maintained at a reasonably low level with respect to adjoining property.

(k) Artificial Vegetation. No artificial vegetation shall be permitted on the exterior of any portion of the Property or any Lot or residence thereon. No exterior sculpture, fountains, flags, and temporary flagpoles, birdhouses, birdbaths, or other decorative embellishments shall be permitted unless approved by the Architectural Control Committee.

(l) Playground. No jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Lot without prior written approval of the Architectural Control Committee. Under all circumstances, such items shall be positioned on the Lot so as not be visible from any street.

Section 13. General Restrictions. Except as expressly provided in this Declaration or with the Association's prior written consent or in accordance with the Association's rules and regulations:

(a) Obstructions. There shall be no obstruction of the Common Property nor shall anything be kept or stored on the Common Property.

(b) Alterations. Nothing shall be altered on, constructed upon, or removed from the Common Property.

(c) Activities. No activity shall be permitted in or upon the Common Property.

(d) Signs. No sign of any kind, including Lot "For Sale" signs shall be displayed to the public view within the Property except those as may be allowed upon application to and approval of the Architectural Control Committee.

(e) Waterbodies. The Board of Directors from time to time may regulate and/or prohibit any and all uses and activities in, upon and about any waterbody situated in whole or in part on the Common Property.

Section 13. Master Association Restrictions. The covenants contained in the Master Declaration, the "Community-Wide Standards" (as defined therein), and any additional use restrictions from time to time adopted by the Master Association which are applicable to the Property (collectively, the "Master Association Restrictions") are incorporated herein by reference and shall govern the use of the Property. In the event of a conflict between the provisions of this Declaration and the Master Association Restrictions incorporated herein by reference, the more restrictive restriction shall control for purposes of this Declaration.

Section 14. General Prohibitions and Indemnity. No activity is permitted, nor shall any object or substance be kept, stored or emitted, anywhere within the Property in violation of law. No noxious, destructive or offensive activity is permitted anywhere within the Property, nor shall anything be done therein that may constitute an annoyance or nuisance to any Owner or to any other Person at any time lawfully residing within the Property. Each Owner shall defend, indemnify and hold the Association and all other Owners harmless against all loss from any such damage or waste caused by such Owner, or by any family or household member residing on such Owner's Lot. Notwithstanding the foregoing, or any other provision of this Declaration to the contrary, an Owner's liability to the Association for unintentional acts or omissions shall be limited to the available proceeds of any and all insurance maintained by such Owner but only if, at the time of such act or omission, such Owner has insurance in force to cover such liability in form and amounts complying with such reasonable requirements as the Association from time to time may establish. Collectability of such proceeds is at the Association's risk. To the extent from time to time available, the Association's insurance must provide for waiver of subrogation by the Association's insurer against any Owner because of any unintentional act or omission for which such Owner is responsible under this Section. The indemnification provisions of this Section shall in no way be construed to make an Owner an insurer of the Association or the Common Property. The Association shall be responsible for insuring itself and the Common Property all in accordance with Article VIII of this Declaration.

Section 15. Rules and Regulations. No Owner or other Person residing within the Property or invitees shall violate the Association's rules and regulations for the use of the Lots or the Common Property, and all Owners and other Persons residing within the Property, and their invitees, at all times shall do all things reasonably necessary to comply with the same. Wherever any provision of this Declaration, or any Supplemental Declaration, prohibits any activity, condition or structure within the Property except as permitted by the Association's rules and regulations, such restriction or prohibition is self-executing until the Association promulgates rules and regulations expressly permitting such activities. Without limitation, any rule or regulation shall be deemed "promulgated" when posted conspicuously at such convenient location within the Property as the Association from time to time may designate for such purpose.

Section 16. Ownership Rights Limited to those Enumerated. No transfer of title to any Lot shall pass any rights in and to the Common Property except as expressly enumerated in this Declaration or any applicable Supplemental Declaration. No provision in any deed or other instrument of conveyance of any interest in any Lot shall be construed as passing any such right, title and interest except as expressly provided in this Declaration or applicable Supplemental Declaration. The conveyance of the Common Property to the Association shall vest in the Association exclusively all riparian rights in and to any stream, pond, lake or other waterbody situated thereon, in whole or in part, notwithstanding the fact that any Lot is shown or described as abutting

the same. Such conveyance additionally shall vest in the Association the underlying fee simple title or right of reverter, as the case may be, to any street, utility easement or other area dedicated to public use and situated upon, or abutting, the Common Property, notwithstanding the fact that any Lot also is shown or described as abutting the same.

Section 17. Provisions Inoperative as to the Work. Nothing contained in this Declaration shall be interpreted, construed or applied to prevent Declarant, its transferees, or its or their contractors, subcontractors, agents and employees, from doing or performing on all or any part of the Property owned or controlled by the Declarant, or its transferees, whatever they determine to be reasonably necessary or convenient to complete the Work, including:

- (a) Erecting, constructing and maintaining such structures as may be reasonably necessary or convenient for the conduct of Declarant's business of completing the Work, establishing the Property as a residential community, and disposing of the same in parcels by sale, lease or otherwise; or
- (b) Conducting thereon its or their business of completing the Work, establishing the Property as a residential community, and disposing of the same in parcels by sale, lease or otherwise; or
- (c) Maintaining such sign or signs as may be reasonably necessary or convenient in connection with the sale, lease or other transfer of the Property in parcels.

As used in this Section, the term "its transferees" specifically does not include purchasers of Lots improved as completed residences. Declarant hereby reserves temporary easements over, across and through the Common Property for all uses and activities necessary or convenient for completing the Work, such easements to be exercised so as not to cause any material damage to the Common Property, or to interfere unreasonably with any use of the Common Property, from time to time authorized by the Association. Such easements shall continue so long as Declarant prosecutes the Work with due diligence and until Declarant no longer offers any Lot within the Property for sale or lease in the ordinary course of Declarant's business.

Section 18. Access by Certain Parties. The United States Postal Service, the Master Association and any Westchase Community Development District, and their successors, and all other public and quasi-public agencies and utilities furnishing any service to the Association or to any Lot within the Property, are hereby granted a non-exclusive easement of vehicular and pedestrian ingress and egress for the purpose of providing such service in a reasonable manner over, across and through such portions of the Common Property that from time to time are improved or maintained for such purpose. Every public or private agency furnishing police, security, fire, ambulance and other emergency services and any public or private agency furnishing trash and/or

garbage removal services to any Lot within the Property, or to any Person within the Property, is hereby granted a non-exclusive easement for pedestrian and vehicular ingress and egress over, across and through the Common Property to the extent reasonably necessary to provide such service.

Section 19. Access by Association. The Association has a right of entry onto the exterior of each Lot to the extent reasonably necessary to discharge its duties of landscape maintenance, if any, and into the interior of each Lot for the purpose of servicing the utility easements described in Article II, Section 7, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercise of any right granted, by this Declaration. Such right of entry shall be exercised in a reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit. Entry into any improvement upon any Lot shall not be made without the consent of its Owner or occupant for any purpose, except pursuant to Court order or other authority granted by law. No Owner shall withhold consent arbitrarily to entry by the Association for the purpose of discharging any duty or right of exterior maintenance if such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner. The Association's right of entry may be exercised by its agents, employees and contractors.

Section 20. Enforcement. All of the restrictions contained herein shall be enforceable by specific performance and injunctive relief. Additionally, any commercial, recreational or other vehicle parked, stored, repaired, serviced, painted, dismantled, rebuilt, constructed or operated in violation of the restrictions provided in this Declaration or in violation of any reasonable rules and regulations adopted by the Association from time to time may be towed away or otherwise removed by or at the request of the Association, and the Owner of the Lot to whom such vehicle belongs or to whom the operation of such vehicle is a family member, guest or invitee shall reimburse the Association for any costs incurred by the Association and the Association shall have a lien right against such Lot to enforce collection of such reimbursement. Any cost or expense not incurred by, or the responsibility of, the Association but necessary to recover of the towed or removed vehicle shall be borne solely by the Owner or the operator of the towed or removed vehicle.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot is a member of the Association. If title to a Lot is held by more than one Person, each such Person is a member. An Owner of more than one Lot is entitled to one membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by record conveyance of title to that Lot. No Person other

than an Owner may be a member of the Association, and a membership in the Association may not be transferred except by the transfer of title to a Lot; provided, however, the foregoing shall not be construed to prohibit the assignment of membership and voting rights by an Owner who is a contract seller to his vendee in possession

Section 2. Voting. The Association has two (2) classes of membership, Class "A" Members and Class "B" Members, as follows:

(a) Class "A" Class A Members shall be all Owners with the exception of the Class "B" Member, if any.

Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership under Section 1 hereof; provided, however, there shall be only one (1) vote per Lot. In any situation where a Person is entitled personally to exercise the vote for his Lot and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it

(b) Class "B" The Class "B" Member shall be the Declarant. The Class "B" Member shall have three (3) votes for each Lot which it owns until the end of the Class "B" Control Period, as hereafter defined. Thereafter, the Class "B" Member shall have one (1) vote for each Lot which it owns. Other rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere herein and the By-Laws.

The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as hereafter defined; provided, however, in the event the Class "B" Member fails to exercise this power within thirty (30) days after a vacancy occurs on the Board for which the Class "B" Member would be entitled to appoint a successor, the Class "B" Member shall be deemed to have waived its right to appoint such a successor. In such case, the voting members representing the Class "A" Members may act to call a special meeting of the Association (in accordance with Article III of the By-Laws) for the purpose of electing a successor to serve the remainder of the unexpired term of the vacating director. Thereafter, the voting members representing the Class "A" Members shall be entitled to elect a successor to the director who filled the vacancy in accordance with the By-Laws in addition to those directors the voting members may be entitled to elect under Article IV of the By-Laws.

After termination of the Class "B" Control Period, the Class "B" Member shall have the right to disapprove actions of the Board of Directors and any committee appointed in accordance with Article IX of the By-Laws.

Section 3 Definition of Class "B" Control Period. The Class "B" Control Period shall commence with the execution of this Declaration by Declarant and expire upon the first to occur of the following:

(a) three months after ninety per cent (90%) of the Lots shown on the Plat (the Declarant having reserved the right to annex additional lands for future phases pursuant to Article VII) have been conveyed to Owners other than the Declarant, any builders, contractors or other parties who purchased a Lot for the purpose of constructing improvements thereon for resale,

(b) twenty (20) years after the date this Declaration is recorded in the public records of Hillsborough County, Florida, or

(c) when, in its discretion, the Class "B" Member so determines

This Section 3 cannot be amended without the express written consent of Owners representing one hundred percent (100%) of the total Class "B" Members in the Association.

Section 4 Amplification. The provisions of this Declaration are amplified by the Association's Articles of Incorporation and By-Laws, but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in this Declaration or any Supplemental Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and By-Laws on the other, be interpreted, construed and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration or any Supplemental Declaration control anything in the Articles of Incorporation or By-Laws to the contrary.

ARTICLE IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. The Common Property. Subject to the rights of Owners set forth in this Declaration and any Supplemental Declaration, the Association has exclusive management and control of the Common Property and all improvements thereon and all furnishings, equipment and other personal property related thereto. The Association shall keep the foregoing in good, clean, substantial, attractive, sanitary and serviceable condition, order and repair. The Association's duties with respect to the Common Property include the management, operation, maintenance, repair, servicing, replacement and renewal of all streets, roads, improvements, equipment and personal property installed thereon by Declarant as part of the Work. The Association's duties also include the duty to repair under the circumstances outlined in Section 2(c) of this Article.

Section 2 Maintenance

(a) Responsibility of Association. The Association shall provide landscape maintenance upon each Lot and each Lot is subject to assessment for such maintenance as provided in Article V, Section 2(b), and Section 6 of this Declaration, as the case may be, as follows: (i) the exclusive right to repair, replace and maintain all lawns, trees, shrubs and other landscaped areas of all Lots, including any partially enclosed front yards of Lots, the subdivision entry security gate, the Common Property and other exterior improvements installed by Declarant as part of the Work, and their replacements; (ii) repair, replacement, and maintenance of the utility easements located under each Lot as described in Article II, Section 7, and (iii) the right to install and maintain irrigation systems located within those portions of the Lots not occupied by an improvement. The Association's duty of landscape maintenance does not include: any trees, shrubs, lawns or landscaped areas within an enclosed yard, patio or fully enclosed entry area including the enclosed rear patios of Lots, except that the Association will maintain and replace any hedge or other landscaping, if any, installed by Declarant as part of the Work along the boundary between any Lot and the Common Property. The Association also is not responsible for any maintenance, repair or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty; and each Owner will promptly correct any and all such casualty damage to such Owner's Lot within a reasonable time as specified below. Where it is stated herein that the Association has "exclusive control", it means the Owners of Lots shall not be required, or entitled, to conduct such activities, it being the intent of the Association to control such activities for purpose of maintaining uniformity within the Property. All maintenance performed by the Association shall be at least up to the Community-Wide Standards, as defined in the Master Declaration.

(b) Responsibility of Owner. The Owner shall provide exterior maintenance as follows, the cost for which each Owner shall be individually responsible: (i) repair, replacement and maintenance of all buildings and other structures located on the Owner's Lot in good condition and repair including, without limitation, painting at least every five years the exterior of the buildings and other improvements located on the Owner's Lot; (ii) replacement of any trees, shrubs, lawns or landscaped areas within a fully enclosed yard, patio, or entry area including the rear patios of an Owner's respective Lot; (iii) maintenance, repair, or replacement resulting from any fire, wind, flood, tornado, hurricane or other casualty damage within the Lot of an Owner; (iv) repair or replace any property whether upon such Owner's Lot or any other Lot, or the Common Property, which repair or replacement is required because of any gross negligence or the willful act of such Owner or any member of such Owner's family or household, or any invitee of such Owner; (v) washing of lead walks, driveways and exterior building surfaces. All landscape maintenance performed by the Owner shall be at least up to the Community-Wide Standards, as defined

in the Master Declaration

(c) Failure of Owner to Repair and Maintain. The Association may perform maintenance or make repairs and assess the costs of any required exterior maintenance or repairs to the Owner of any Lot under the following circumstances: (i) such Owner does not repair, replace and maintain all buildings and other structures located on the Owner's Lot in good condition and repair; (ii) such Owner does not maintain in a reasonable condition any lawn or landscaped area on such Owner's Lot that the Association is not required to maintain; or (iii) any maintenance, repair or replacement, whether upon such Owner's Lot, or any other Lot or Common Property, is required because of any willful act of such Owner or any member of such Owner's family or household or any invitee of such Owner; or (iv) any Owner fails promptly to repair or replace, as the case may be, any casualty damage to such Owner's Lot; and (v) such Owner has failed to undertake the necessary maintenance or replacement within a reasonable period of time following written notice from the Association. Upon the occurrence of the foregoing, and after reasonable prior notice to such Owner, and a reasonable opportunity to be heard, the Association's Board of Directors by a vote of not less than sixty-seven percent (67%) of the full Board may undertake such maintenance, replacement or repairs and may assess by specific assessment the costs of such maintenance, replacement or repairs, as the case may be, against such Owner's Lot in the manner provided by Article V, Section 6, of this Declaration.

Section 3. Services. The Association may obtain and pay for the services of any person to manage its affairs to the extent it deems advisable, as well as such other personnel as the Association determines are necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person with whom it contracts. Without limitation, the Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, or the enforcement of this Declaration, any Supplemental Declaration, or its Articles, By-Laws, rules and regulations. The Association may contract with others to furnish trash collection, lawn and landscape care, Common Property parking maintenance, and any other services or materials, or both, to all Lots, or to any group of Lots; provided, however, if such services or materials, or both, are furnished to less than all Lots, then: (i) only those Lots enjoying the benefit thereof shall be assessed for the cost thereof, as provided in Article V, Section 6, of this Declaration; and (ii) provided further, each such Owner's consent shall be required.

Section 4. Personal Property. The Association may acquire, hold and dispose of tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Association's By-Laws.

Section 5. Rules and Regulations. The Association from time to time may

adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Lots, the Common Property, or any combination thereof, which rules and regulations shall be consistent with the rights and duties established by this Declaration, and any applicable Supplemental Declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a residential community. All rules and regulations initially may be promulgated by the Board of Directors, subject to amendment or rescission by a majority of both classes of membership present and voting at any regular or special meeting convened for such purposes. The Association's procedures for enforcing its rules and regulations at all times shall provide the affected Owner with reasonable prior notice and a reasonable opportunity to be heard, in person and through representatives of such Owner's choosing.

Section 6. Implied Rights. The Association may exercise any other right, power or privilege given to it expressly by this Declaration, any Supplemental Declaration, its Articles or By-Laws, and every other right, power or privilege reasonably to be implied from the existence of any right, power or privilege so granted or reasonably necessary to effectuate the exercise of any right, power or privilege so granted.

Section 7. Restriction on Capital Improvements. Except for replacement or repair of items installed by Declarant as part of the Work, and except for personal property related to the Common Property, the Association may not authorize capital improvements to the Common Property without Declarant's consent until termination of the Class "B" Control Period as described in Article III, Section 2. At all times hereafter, all capital improvements to the Common Property, except for replacement or repair of those items installed by Declarant as part of the Work and except for personal property related to the Common Property shall be approved by sixty-seven percent (67%) of each class of members who are present in person or by proxy and voting at a meeting duly convened for such purpose, as provided in Article X, Section 3, of this Declaration.

Section 8. Litigation. The Association shall have the power to initiate or defend litigation on behalf of the Association, subject to the following limitations: No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of each class of Members. In the case of such a vote, and notwithstanding anything contained in this Declaration, the Articles or the By-Laws to the contrary, if any member is a representative of a neighborhood or other sub-association which is subject to this Declaration, such representative shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five (75%) percent of all members of the neighborhood or sub-association represented by such voting representative. This paragraph shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation,

the foreclosure of liens and enforcement of restrictive covenants against Owners), (b) the imposition and collection of assessments as provided in Article V hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section 8 shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures necessary to institute proceedings as provided above.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 1 Assessments Established For each Lot owned within the Property, Declarant hereby covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association

(a) An Annual General Assessment, as defined in Section 2 of this Article;

(b) An Annual Landscape Maintenance Assessment as defined in Section 2 of this Article;

(c) Special Assessments for property taxes levied and assessed against the Common Property as defined in Section 4 of this Article;

(d) Special Assessments for Capital Improvements, as defined in Section 5 of this Article;

(e) Specific assessments against any particular Lot that are established pursuant to any provision of this Declaration or applicable Supplemental Declaration as provided in Section 6 of this Article; and

(f) All excise taxes, if any, that from time to time may be imposed upon all or any portion of the assessments established by this Article.

All of the foregoing, together with interest at eighteen percent (18%) per annum as computed from the date the delinquency first occurs and all costs and expenses of collection, including reasonable attorneys' fees, are a continuing charge on the land secured by a continuing lien upon the Lot against which each assessment is made; provided, however, in no event shall this interest rate exceed the maximum allowable by law. Each such assessment, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the Person who was the Owner of such Lot when such assessment arose. Such personal obligation for delinquent assessments shall not pass to an Owner's successors in title who are not affiliated with the Owner or related to the Owner by marriage, blood, or

adoption, unless assumed expressly in writing, however, the above referred to lien shall continue to be enforceable against the Lot. No First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgagee's mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Section 2. Purpose of Assessments: Annual Budget. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents within the Property and for the operation, management, maintenance, repair, servicing, renewal, replacement and improvement of the Common Property and the lawn and landscaping on the Lots. Each Lot shall be assessed for this purpose by an "Annual Assessment" composed of the Annual General Assessment and Annual Landscape Maintenance Assessment and which shall be based upon the annual costs necessary to provide the service for which the assessment is made.

The Association shall prepare an annual budget, which must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget may contain reserves for capital improvements. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Declarant, or another party. The Association shall provide each Owner with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Owner. The copy must be provided within ten (10) days after written request.

Assessments shall be in an equal amount for each Lot, with the exception of any specific assessments described in Section 2 (e) above, which shall be specific to the Lot being assessed. The assessment shall be made on a calendar year basis, collected monthly as provided in Section 3 below.

To effectuate the foregoing, the Association shall levy the Annual Assessment composed of the following:

(a) Annual General Assessment. An Annual General Assessment to provide and be used for (i) the operation, management, maintenance, painting, repair and servicing of the property, services and facilities related to the use and enjoyment of the Common Property, including the payment of taxes and insurance on the Common Property and the cost of labor, equipment, materials, management and supervision thereof, (ii) the payment of all water and sewer charges for the Common Property and the Lots, there being a single water meter serving the Common Property and all of the Lots collectively, and (iii) all other general activities and expenses of the Association (including reserves for any and all of the foregoing) except lawn and landscape maintenance upon any Lot.

(b) Landscape Maintenance Assessment. An Annual Landscape Maintenance Assessment to provide and be used for the maintenance, repair and replacement of the trees, shrubs, lawns or landscaped areas on each Lot.

(other than trees, shrubs, lawns or landscaped areas within an enclosed yard, patio or fully enclosed entry area including the enclosed rear patios of Lots which are the responsibility of the Owner), including reserves for any and all of the foregoing

Section 3. Maximum Annual Assessment. The amount of the Annual Assessment, as determined in accordance with the foregoing Section 2, shall be fixed by the Board of Directors at least thirty (30) days in advance of each annual assessment period, which period shall be the calendar year. Written notice of the assessment shall be given to every Owner. Initially, the Annual Assessment shall be payable in one annual installment. The Board of Directors of the Association may in its own discretion amend the manner in which assessments are collected to quarterly, semi-annually, annually, or any other manner as may be required to fit the needs of the Association. If any Owner defaults in payment of any installment for a period of thirty (30) days, the Association, at the option of its Board of Directors, may declare the unpaid balance immediately due and payable.

Until January 1 of the year immediately following the recording of this Declaration, the Annual Assessment will not exceed One Thousand and no/100 Dollars (\$1,000.00) per Lot.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above ten percent (10%) by a vote of sixty-seven percent (67%) of each class of members who are voting in person or by proxy, at a meeting duly convened for this purpose as provided in Article X, Section 3, of this Declaration.

The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum.

In the event of any shortfall between assessments actually collected and permissible expenditures of the Association, the Association shall have the right and authority to borrow funds from the Declarant to cover such shortfall.

Section 4. Property Taxes. Because the interest of each Owner in the Common Property is an interest in real property appurtenant to each Lot, and because no person other than an Owner has the right to the beneficial use and enjoyment of the Common Property, Declarant intends that the value of the interest of each Owner in the Common Property entitled to its use be included in the assessment of each such Lot for local property tax purposes. Declarant further intends that any assessment for such

purposes against the Common Property shall be for a nominal amount only, reflecting that the full value thereof is included in the several assessments of the various Lots. If the local taxing authorities refuse to so assess the Common Property with the result that local real property taxes in any given year are assessed to the Association with respect to the Common Property in excess of Five Hundred Dollars (\$500.00), then the amount of such excess may be specially assessed by the Board of Directors, in its discretion, in the following manner: the amount of such excess with respect to the Common Property shall be divided by the number of Lots within the Property, and the quotient shall be the amount of such special assessment against each Lot. In the Board's discretion, such special assessment may be payable in a lump sum within thirty (30) days after notice or may be amortized without interest over such number of months as the Board deems advisable. Each year the Board shall determine whether such assessment shall be levied, and its amount, within forty-five (45) days after receiving notice of the amount of taxes due. Such special assessment is not an increase in the Annual Assessment subject to the limitations of the preceding section of this Article.

Section 5 Special Assessments for Capital Improvements In addition to the Annual Assessment, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, renewal, repair, or replacement of a capital improvement upon the Common Property undertaken in accordance with Article IV, Section 7 hereof, including related fixtures and personal property, provided that any such assessment with respect to the Common Property is approved by sixty-seven percent (67%) of each class of members who are present in person or by proxy, and voting at a meeting duly convened for such purpose, as provided in Article X, Section 3, of this Declaration.

Section 6 Specific Assessments Any cost or expense required to be paid by an Owner related solely to such Owner or its Lot and any and all other accrued, liquidated indebtedness of any Owner to the Association arising under any provision of this Declaration or any applicable Supplemental Declaration, including any indemnity contained herein, or by contract express or implied, or because of any act or omission of any Owner or of any Owner's family, household members or invitees, also shall be assessed by the Association against such Owner's Lot after such Owner fails to pay the same when due and such default continues for thirty (30) days after written notice.

Section 7 Uniformity of Assessments The Annual Assessment and any Special Assessment for Capital Improvements shall be uniform throughout the Property. All monies received from any Annual Landscape Maintenance Assessment shall be allocated by the Board of Directors to separate budgetary accounts and may not be used for any other purposes without the approval of sixty-seven percent (67%) of the Owners who are present in person or by proxy and voting at a meeting duly convened for such purpose, as provided in Article X, Section 3, of this Declaration.

Section 8 Declarant's Assessment Notwithstanding the foregoing

requirement of uniformity, or any other provision of this Declaration, or of the Association's Articles of Incorporation or By-Laws, to the contrary, the Declarant shall be excused from the payment of its share of operating expenses and assessments (including, without limitation, the assessments described in Article V, Section 1 hereof) during the Class "B" Control Period, provided that Declarant shall advance as a loan to the Association any operating expenses incurred by the Association that exceed the assessments receivable from other Owners and other income of the Association. Upon transfer of title of a Declarant-owned Lot other than for purposes of development, such Lot shall be assessed in the applicable amount established against Lots owned by the Class "A" members of the Association, prorated as of, and commencing with, the month following the date of transfer of title. Notwithstanding the foregoing, those Lots from which Declarant derives any rental income, or holds an interest as Mortgagee or contract seller, shall be assessed at the same amount from time to time established for similar Lots owned by Class "A" members of the Association, prorated as of, and commencing with, the month following the execution of the rental agreement or Mortgage, or the contract purchaser's entry into possession, as the case may be.

Section 9. Commencement of Annual Assessment. The Annual Assessment commences as to all Lots on the first day of the month following the recording of the transfer of title by Declarant of the first Lot to an Owner other than Declarant. The first Annual Assessment against any Lot shall be prorated according to the number of months then remaining in the calendar year. Regardless of when the Annual Assessment commences as to any Lot, such Lot shall be deemed "subject to assessment" within the provisions of this Declaration, the Association's Articles of Incorporation and By-Laws, from and after the date this Declaration has been Recorded. Upon demand, and for a reasonable charge, the Association shall furnish to any interested Person a certificate signed by an officer of the Association setting forth whether the Annual Assessment against a specific Lot has been paid and, if not, its unpaid balance. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10. Lien for Assessment. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments, together with interest and all costs and expenses of collection, including reasonable attorneys' fees for negotiation, trial and appellate representation, which lien shall be prior and superior to all other liens, except (i) all taxes, bonds, assessments, and other levies which by law would be superior thereto, (ii) the lien or charge of any First Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and (iii) any lien permitted by the Master Declaration.

Section 11. Remedies of the Association. Any assessment not paid within thirty (30) days after its due date bears interest at the rate of eighteen percent (18%) per annum from the due date; provided, however, in no event shall this interest rate exceed the maximum allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose its lien against

such Owner's Lot. No Owner may waive or otherwise escape liability for the Association's assessments by nonuse of the Common Property or by abandonment of such Owner's Lot. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving or otherwise impairing the security of the Association's lien, or its priority.

Section 12. Foreclosure. The lien for sums assessed pursuant to this Article may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Owner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees for negotiation, trial and appellate representation. All such costs and expenses are secured by the lien foreclosed. The Owner also is required to pay to the Association any assessments against the Lot that become due during the period of foreclosure, which also are secured by the lien foreclosed and shall be accounted and paid as of the date the Owner's title is divested by foreclosure. The Association has the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, or to acquire such Lot by deed or other proceeding in lieu of foreclosure, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with such Lot as its owner for purposes of resale only. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in its addition to its usual assessment, its pro-rata share of the assessment that would have been charged to such Lot had it not been acquired by the Association as a result of foreclosure. If any foreclosure sale results in a deficiency, the Court having jurisdiction of the foreclosure may enter a personal judgment against the Owner for such deficiency.

Section 13. Homesteads. By acceptance of a deed thereto, the Owner of each Lot is deemed to acknowledge conclusively that the Annual Assessment established by this Article is for the improving and maintenance of any homestead thereon and that the Association's lien has priority over any such homestead as provided in Article X, Section 4, of the Constitution of the State of Florida, or any successor provision.

Section 14. Subordination of Lien. The lien for the assessments provided in this Article is subordinate to the lien of any First Mortgage and any assessment lien arising pursuant to the Master Declaration. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer of any Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, extinguishes the assessment lien as to payments that became due prior to such sale or transfer. No such sale or transfer relieves such Lot from liability for assessments thereafter becoming due, or from the lien thereof, nor does it relieve the Owner who incurred the liability of any personal liability therefrom. The Association shall report to any holder of an encumbrance on a Lot any assessments remaining unpaid for more than thirty (30) days and shall give such party thirty (30) days in which to cure such delinquency before instituting foreclosure proceedings against the Lot; provided such encumbrancer first

shall furnish the Association with written notice of the encumbrance, designating the Lot encumbered by a proper legal description and stating the address to which notices shall be given. Any encumbrancer holding a lien on a Lot may pay, but is not required to pay, any amounts secured by the lien created by this Article; and, upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

Section 15. Collection and Remittance of Master Association Assessments. Purely as an accommodation to the Owners, the Association may, at its discretion, direct the Owners to pay to the Association the assessments assessed against the Owners by the Master Association pursuant to the Master Declaration, and the Association shall remit such payments to the Master Association. The Association's performance of this function shall not, however, impose any obligation or duty upon the Association to collect such assessments or to pay such assessments on behalf of any Owner in the event an Owner fails to pay the assessments.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. The Board of Directors shall appoint as a standing committee an Architectural Control Committee (sometimes referred to herein as the "Committee"), composed of three (3) or more persons appointed by the Board, or, in the Board's discretion, the Board from time to time may constitute itself the Architectural Control Committee. No member of the Committee shall be entitled to compensation for services performed; but the Board may employ independent professional advisors to the Committee and allow reasonable compensation to such advisors from Association funds. Committee members need not be Owners.

Section 2. Committee Authority. The Committee has full authority to regulate the use and appearance of the landscaping and exterior of the Property to: (i) assure harmony of external design and location in relation to surrounding buildings and topography; and (ii) to protect and conserve the value and desirability of the Property as a residential community. The power to regulate includes the power to prohibit those exterior uses or activities inconsistent with the provisions of this Declaration or any Supplemental Declaration or contrary to the best interests of other Owners in maintaining the value and desirability of the Property as a residential community. The Committee may adopt, promulgate, rescind, amend and revise reasonable rules and regulations in connection with the foregoing; provided, however, such rules and regulations are: (i) consistent with the provisions of this Declaration and any applicable Supplemental Declaration; and, (ii) if the Board has not constituted itself as the Committee, approved by the Board prior to taking effect. Violations of the Committee's rules and regulations shall be enforced by the Board in the name of the Association. Notwithstanding the foregoing, any architectural control review required by the Declaration shall be undertaken by the Owner in connection with any improvements

and approval of any action by the Committee hereunder shall not be deemed approval under the Declaration.

Section 3. Committee Approval No changes, alterations, additions, reconstruction, attachments or color change of any nature may be made to the exterior of any Lot, including that portion of any Lot not actually occupied by its improvements, and no lawns, trees, plants or landscaping shall be installed on or removed from a Lot, unless approved by the Architectural Control Committee. The Committee's approval is not required for any changes, alterations or additions within an enclosed yard, fully enclosed rear entry patio, or entry area and screened from view; provided, however, any trees or shrubs capable of attaining a height in excess of the walls, fencing or shrubbery as the case may be, not installed by Declarant as part of the Work are subject to Committee approval. No Owner may undertake any landscaping maintenance of his Lot that is the duty of the Association, as provided by this Declaration, without the Committee's prior approval. No exterior door or glass surface may be replaced by any Owner without the Committee's prior approval unless the replacement is identical to that utilized by Declarant as part of the Work. Nothing may be kept, placed, stored or maintained upon the exterior of any Lot, including any portion of any Lot not enclosed by its improvements thereon without the Committee's prior approval unless it is within an enclosed yard, fully enclosed rear entry patio, or entry area and screened from view. Notwithstanding any provision of this Declaration to the contrary, the Committee's approval is not required for any structure, use or activity expressly permitted by the Committee's promulgated rules and regulations.

Section 4. Procedure All applications to the Committee for approval of any structure, use, activity, alteration, addition, color change or landscaping change required by the preceding section must be accompanied by detailed plans and specifications showing its nature, kind, shape, height, materials, location, color, approximate cost and estimated maintenance cost, together with such other drawings, documentation, models and information as the Committee reasonably may require. If the Committee does not approve or disapprove any application within the thirty (30) days after receipt, the Committee's approval will be deemed given. In all other events, the Committee's approval must be in writing. If no application has been made to the Committee, an appropriate proceeding may be instituted at any time to enjoin or remove any structure, use, activity, alteration, addition, color change or landscaping change in violation of the prohibitions contained in the preceding section of this Article. The Association or any Owner additionally may resort immediately to any other lawful remedy for such violation. The Committee may deny any application upon the ground that the proposed structure, use, activity, alteration, addition, change or attachment will create an unreasonable maintenance burden upon the Association or, such being the case, may condition its approval upon the Owner's assuming responsibility for its repair, maintenance and replacement. The Committee additionally may condition the approval of any application upon the Owner's providing reasonable security that the contemplated work will be completed substantially in accordance with the plans and specifications submitted to the Committee. At the request of any Owner, the

Association from time to time will issue without charge a written certification that the improvement and other exterior items situated upon such Owner's Lot have been approved by the Committee, if such is the case. The Committee from time to time may adopt, promulgate, rescind, amend and review rules and regulations governing procedure in all matters within its jurisdiction. If the Board of Directors does not constitute itself the Architectural Control Committee, then provision must be made for review by the Board of decisions of the Architectural Control Committee, or any subcommittee, at the request of the affected Owner, subject to such reasonable limitations and procedures as the Board deems advisable. The Board of Directors, or Architectural Control Committee, may appoint one or more persons to make preliminary review of all applications to the Committee and report such applications to the Committee with such person's recommendation for Committee action thereon. Such preliminary review shall be subject to such regulations and limitations as the Board of Directors or the Architectural Control Committee deems advisable. In all events, the Association's procedures for review and enforcement of the architectural control provisions of this Declaration at all times shall provide any affected Owner with reasonable prior notice and a reasonable opportunity to be heard in person and by a representative of such Owner's choosing.

Section 5. Standards. All actions by the Board of Directors or Architectural Control Committee with respect to architectural control shall: (i) assure harmony of external design, materials, and location in relation to surrounding buildings and topography within the Property; and (ii) protect and conserve the value and desirability of the Property as a residential community; and (iii) be consistent with the provisions of this Declaration; and (iv) be in the best interests of all Owners in maintaining the value and desirability of the Property as a residential community.

Section 6. Declarant Consent. So long as Declarant is a Class "B" Member of the Association, all actions of the Architectural Control Committee require Declarant's written approval.

ARTICLE VII OPERATION AND EXTENSION

Section 1. Effect Upon Platted Property. From and after the date this Declaration is Recorded, all of the Property shall be held, sold and conveyed subject to the provisions of this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding upon all parties having any right, title or interest therein, or any part thereof, their respective heirs, successors, and assigns, and shall inure to the benefit of the Association and each Owner.

Section 2. Annexation Without Approval of Class "A" Members. So long as

Declarant owns any of the Property, Declarant shall have the unilateral right, privilege and option, but not the obligation, from time to time, to subject to the provisions of this Declaration and the jurisdiction of the Association any lands other than the Property. Such annexation shall be accomplished by filing a Supplemental Declaration in the public records of Hillsborough County, Florida, annexing such lands. Such Supplemental Declaration shall not require the consent of the Owners but shall require the consent of the owner of such lands, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Property or the lands to be annexed and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 3. Other Extensions. Except for the annexation of lands initiated by the Declarant as provided in Section 2 hereof, the extension of the provisions of this Declaration to any lands other than the Property requires the approval of the Association and the Declarant, so long as the Declarant owns any of the Property. Any such extension shall first be approved by sixty-seven percent (67%) of the Class "A" Members of the Association present in person or by proxy voting at a meeting duly convened for such purpose as provided in Article X, Section 3, of this Declaration. Such extension shall become effective upon recording an amendment to this Declaration, executed by the Association, the Declarant (if the Declarant's approval is required by this Section 3) and the owners of all interests in the lands to which the provisions of this Declaration are extended.

Section 4. Acquisition of Additional Common Property. Declarant may convey to the Association additional real property, improved or unimproved, located within the Property which, upon conveyance or dedication to the Association, shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all of the Owners.

Section 5. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired right to unilaterally annex additional lands as provided in this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Property then owned by Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or to remove certain portions of the Property then owned by the Declarant or its affiliates, but not property owned by the Association, as a result of any changes whatsoever in the plans for the Property desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

Section 6. Amendment. This Article shall not be amended without the prior written consent of Declarant.

ARTICLE VIII
INSURANCE AND CASUALTY LOSSES, CONDEMNATION

Section 1. Insurance. Insurance, other than title insurance, which shall be carried upon the Common Property, shall be covered by the following provisions.

(a) Authority to Purchase. All insurance policies upon the Common Property shall be purchased by the Association for the benefit of the Association. It shall not be the responsibility or the duty of the Association to obtain insurance coverage upon the personal liability, personal dwelling unit, personal property or living expenses of any Owner but the Owner may obtain such insurance at his own expense provided such insurance may not be of a nature to affect policies purchased by the Association.

(b) Coverage.

(i) Casualty. All buildings and improvements in the Common Property and all personal property included in the Common Property shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

(1) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(2) Such other risks as from time to time shall be customarily covered with respect to building similar in construction, location and use as the buildings on the land, including but not limited to vandalism and malicious mischief.

(ii) Public Liability. In such amounts and such coverage as may be required by the Board of Directors of the Association.

(iii) Worker's Compensation Policy. To meet the requirements of Law.

(iv) Other. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

(c) Premiums. Premiums for the described insurance shall be a common expense, collected from Owners as part of the Annual General Assessment. Premiums shall be paid by the Association.

(d) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and its mortgagees as their interests bear, and shall provide that all proceeds covering property losses shall be paid to

the Association.

(e) Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed and used by the Association as the Board of Directors may determine.

Section 2. Reconstruction or Repair After Casualty. The Board of Directors, in its sole discretion, shall determine whether or not any damaged portion of the Common Property shall be repaired or replaced.

Section 3. Condemnation. In the event that any portion of the Common Property shall be made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the taking of any portion of the Common Property by condemnation shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Association and shall be distributed to the Association and to any Owner who is directly, adversely affected by the condemnation, as their respective interests may appear.

Section 4. Insurance on Lots. The Association shall have no obligation or responsibility to maintain insurance on any lot.

ARTICLE IX CONVEYANCES, LEASES AND TRANSFERS

In order to insure a community of congenial residents and occupants of the Lots and to protect the value of the Lots and further continuous harmonious development of the Property, the sale, leasing and other transfer of a Lot by any Owner other than the Declarant shall be subject to the following provisions:

Section 1. Conveyances, Sales and Transfers. There shall be no requirement that the Association approve any sale, conveyance or transfer in the event of death, of title to any Lot and there shall be no approval or transfer fee. However, every owner shall notify the Association, in writing, of the transfer of ownership in a Lot, on such form or forms as may be required by the Association.

Section 2. Judicial Sale. No judicial sale of a Lot or any interest therein shall be valid unless:

(a) The sale is to a purchaser approved by the Association, which approval shall be in recordable form; or

(b) The sale is a result of a public sale with open bidding, held pursuant to an order of a court of competent jurisdiction.

Section 3. Leases. Lots may only be leased for single family residential purposes. No Owner shall be permitted to lease his Lot for hotel or transient purposes, which for purposes of this Section is defined as a period of less than thirty (30) days. No Owner shall be permitted to lease less than the entire Lot. Every such lease shall be in writing. Every lease shall provide that the tenant shall be bound by and subject to all of the obligations of the Owner under this Declaration. The Owner making such lease shall not be relieved from any of such obligations. Upon the execution of a lease, the Owner shall notify the Association in writing of the Owner's designated address and the name of Owner's tenant. No tenant shall be entitled to use the recreational facilities or Common Area of the Association until the information specified in this Section is provided to the Association in writing and authority to use the recreational facilities and Common Area by such Owner. The use of the Common Areas and any recreational facilities is limited to the benefit of one (1) family per residence and grant of such rights to a tenant excludes the right of the Owner to use such Common Areas and recreational facilities during the period of the lease.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, has the right to enforce, by any appropriate proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by, or pursuant to, the provisions of this Declaration or any Supplemental Declaration or both. The party enforcing the same additionally has the right to recover all costs and expenses incurred, including reasonable attorneys' fees for all negotiations and trial and appellate proceedings, if any. If the Association enforces the provisions of this Declaration against any Owner, the costs and expenses of such enforcement, including such reasonable attorneys' fees, may be assessed against such Owner's Lot, as provided in Article V, Section 6, of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so at any time. If these restrictions are enforced by any Owner or class of Owners, such Owner or Owners may be reimbursed by the Association for all or any part of the costs and expenses incurred, including reasonable attorneys' fees, in the discretion of the Board of Directors.

Section 2. Provisions Run with the Land. The provisions of this Declaration shall run with and bind the Property and all other lands to which it is extended as provided in Article VII, and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective heirs, successors and assigns, until the fiftieth (50th) anniversary of the date hereof; whereupon they automatically shall be extended for successive periods of ten (10) years each; provided, however, if in the sole event the foregoing is construed by a Court of competent jurisdiction to render the provisions of this Declaration unenforceable after such fiftieth (50th) anniversary date, then, in such event only, the provisions of this Declaration shall run with and bind all lands now or hereafter subject to its provisions for a period of ninety-nine (99) years

from the date this Declaration is recorded, whereupon it shall cease and expire and be without further legal force and effect unless prior thereto a majority of the members present in person or by proxy and voting at a meeting duly convened for such purpose elect to reimpose its provisions.

Section 3. Meeting Requirement. Wherever any provision of this Declaration requires any action to be approved by the membership at a meeting duly convened for such purpose, written notice of such meeting must be given to all members not less than fifteen (15) days, nor more than thirty (30) days, in advance of such meeting, setting forth its purpose. Notice of such meeting shall also be posted in a conspicuous place at least 48 hours in advance of the meeting. At such meeting, the presence of members or proxies entitled to cast at least thirty percent (30%) of the votes of each ~~class of membership constitutes a quorum, if the action must be approved by both~~ classes of membership, or of the Class "A" Members, if it must be approved by the Class "A" Members only, or of the affected Owners, if it must be approved by the affected Owners only. If the required quorum is not forthcoming, another meeting may be called subject to the same notice requirement; and the required quorum at any such subsequent meeting will be reduced to one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4. Severability. Invalidation of any particular provision of this Declaration, or any Supplemental Declaration, by judgment or court order shall not affect any other provision, all of which shall remain in full force and effect.

Section 5. Joinder. Residential Funding Corporation, as mortgagee, joins in this Declaration for the purpose of subordinating whatever right, title and interest it may have in the Property to its provisions.

ARTICLE XI AMENDMENTS

Section 1. Prior to the conveyance of the first Lot to an Owner other than Declarant, Declarant and the Association may unilaterally amend this Declaration. After such conveyance, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lot; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Veterans Administration, or the Department of Housing and Urban Development, to enable such lender or purchaser to make, guaranty or purchase mortgage loans on a Lot; (d) necessary to enable any governmental agency or reputable title insurance company to insure mortgage loans on the Lot, or (e) to correct any scrivener's error or

inconsistency contained herein; provided, however, any amendment in any such case shall not adversely affect the title to any Lot unless the Owner shall consent thereto in writing. Until the expiration of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner, in which event the joinder of the affected Owner(s) is required.

Section 2. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of voting members representing seventy-five percent (75%) of the total Class "A" Members and the consent of the Class "B" Member, so long as such membership exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be Recorded in the public records of Hillsborough County, Florida and shall contain a certificate of the Association that the requisite approval has been obtained.

Section 3. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Section 4. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

ARTICLE XII DECLARANT'S RIGHTS

Section 1. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation or enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the public records of Hillsborough County, Florida.

Section 2. Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction of improvements to and sale of Lots by Declarant (or its assignee) shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Property such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Lots owned by

Declarant and any clubhouse or community center which may be owned by the Association, as models and sales offices, respectively.

Section 3. So long as Declarant continues to have rights under this Article, no person shall record any declaration of covenants, conditions, and restrictions or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions, and restrictions or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

Section 4. This Article may not be amended without the express written consent of Declarant; provided, however, the rights contained in this Article shall terminate upon the end of the Class "B" Control Period.

ARTICLE XIII
SPECIAL RIGHTS OF HOLDERS, INSURERS OR
GUARANTORS OF FIRST MORTGAGES

Section 1. Notice. Any holder, insurer or guarantor of a First Mortgage has the following rights in connection with the Property as said entity's interest may appear:

(a) Notice of Action. Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the Lot number and address, any such mortgage holder, insurer or guarantor will be entitled to timely written notice of (i) any condemnation loss or any casualty loss which affects a material portion of the Property or any lot upon which a First Mortgage is held, insured or guaranteed by such mortgage holder, insurer or guarantor as applicable; (ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to First Mortgage held, insured or guaranteed by such holder, insurer or guarantor which remains uncured for a period of sixty (60) days; (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (iv) any proposed action which would require the consent of a specified percentage of eligible mortgage holders as may be specified in this Declaration.

(b) Books and Records. During normal business hours and upon reasonable notice and in a reasonable manner, such eligible mortgage holder, insurers or guarantors shall be afforded the right to inspect the books, records and papers of the Association including this Declaration, Articles and By-Laws, and upon written request to the secretary of the Association to receive copies of the annual financial statements of the Association. The Association may make a reasonable charge to defray its costs incurred in complying with this section.

Section 2. Eligible Holder, Insurer or Guarantor Defined. For purposes of this

Declaration an eligible holder, insurer or guarantor means a holder, insurer or guarantor of a First Mortgage on a Lot who has requested notice in writing to the Association of any matter, which notice shall state the name and address of such holder, insurer or guarantor and the Lot number involved. Included hereunder are the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and FHA and VA, and any Mortgagee as defined in Article I Section 11 of this Declaration.

ARTICLE XIV
LIABILITY

~~NEITHER DECLARANT, THE DECLARANT UNDER THE MASTER DECLARATION~~ (THE "MASTER DECLARANT"), THE ASSOCIATION NOR THE MASTER ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION AND DETENTION LAKES AND DRAINAGE EASEMENTS OR ANY PART OF THE STORMWATER MANAGEMENT SYSTEM LOCATED ON THE PROPERTY. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, AND INVITEES, RELEASES DECLARANT, MASTER DECLARANT, THE ASSOCIATION AND THE MASTER ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

NEITHER DECLARANT, MASTER DECLARANT, THE ASSOCIATION NOR THE MASTER ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, 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, RETENTION AND DETENTION AREA, CANAL, CREEK, MARSH AREA, STREAM OR OTHER WATER BODY WITHIN OR ADJACENT TO THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR ENTITY AS REFERENCED HEREIN. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY RELATED TO ANY 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 INHABIT OR ENTER INTO WATER BODIES CONTAINED WITHIN OR ADJACENT TO THE PROPERTY 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 AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH


WILDLIFE.

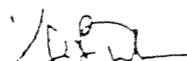
ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY THEIR ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT WITHIN THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES OR BOTTOMS.


IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed the date stated above.

Signed, sealed, and delivered

KIMBALL HILL HOMES FLORIDA, INC.,
a Florida corporation


Print Name: RICHARD A. SCHLOSSER

By: 
Its: VICE PRESIDENT
Print Name: KIRK BREITENWISCHER


Print Name: KIRK BREITENWISCHER


Address: 9534 Katy Freeway
Suite 200
Houston, Texas 77024
"DECLARANT"

As to the Declarant

STATE OF FLORIDA TEXAS
COUNTY OF HARRIS

The foregoing instrument was acknowledged, before me this 18th day of December, 1998, by Kirk Breitenwischer as VICE PRESIDENT of Kimball Hill Homes Florida, Inc., a Florida corporation, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

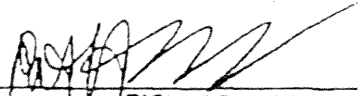
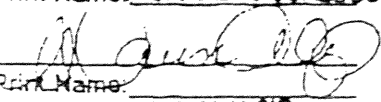



Notary Public
Print Name: MARY J. ALLBRITTON
My Commission Expires: 05-28-2002
Commission No. _____

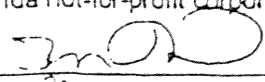
JOINDER AND CONSENT OF ASSOCIATION

The Enclave at Westchase Homeowners Association, Inc., hereby joins in and consents to the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for the Enclave at Westchase (the "Declaration"), accepts the obligations imposed upon it by the Declaration, and agrees to be bound by the terms and conditions thereof.

Signed, sealed and delivered
in the presence of:


Print Name: RICHARD A. SCHLOSSER

Print Name: DAWN ALSIP

THE ENCLAVE AT WESTCHASE
HOMEOWNERS ASSOCIATION, INC.,
a Florida not-for-profit corporation

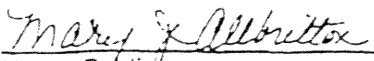
By: 
Its: President
Print Name: JON MORRIS

Address: 2701 Donatello Blvd. Unit
Suite 301
Tampa, FL 33629

STATE OF FLORIDA ~~TEXAS~~
COUNTY OF HARRIS

The foregoing instrument was acknowledged before me this 10th day of December, 1998, by Jon Morris, as President of The Enclave at Westchase Homeowners Association, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

(NOTAR )
MARY J. ALBRITTON
NOTARY PUBLIC
State of Texas
Comm. Exp. 08-28-2002


Notary Public
Print Name: MARY J. ALBRITTON
My Commission Expires: 08-28-2002
Commission No. _____

OR BK 09447 PG 0403

JOINDER AND CONSENT OF MORTGAGEE

The undersigned hereby certifies that it is the holder of a Mortgage upon the Property (as that term is defined in the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for The Enclave at Westchase), and that the undersigned hereby joins in and consents to the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for The Enclave at Westchase.

Signed, sealed and delivered
in the presence of:

RESIDENTIAL FUNDING
CORPORATION, a Delaware
corporation

Print Name: Jeanne E. Skinner

Print Name: DAVID PETRILLO

By: Mark A. Smith

its: Director

Print Name: MARK A. SMITH

Address: 4800 Montclair Lane #300
Bethesda MD
20814

STATE OF Maryland
COUNTY OF Montgomery

The foregoing instrument was acknowledged before me this 21 day of December, 1998, by Mark A. Smith as Director of Residential Funding Corporation, a Delaware corporation, on behalf of the corporation. He/She is personally known to me or has produced as identification.

(NOTARIAL SEAL)

Jeanne Skinner
Notary Public

Print Name: Jeanne Skinner

My Commission Expires: _____

Commission No. _____

JEANNE SKINNER
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires September 15, 2001