

## ARTICLE IV

### PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. MEMBERS' Easement of Enjoyment. Subject to the provisions of Section 3 and Section 4 of this Article IV, every MEMBER shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot. If ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area is subject to lot owner's easement.

Section 2. Title to Common Property. Title to the Common Property shall be subject to the terms of this Declaration and matters shown or referred to on the Plat of Thousand Oaks including, without limitation, a drainage easement in favor of the County Commissioners of Polk County. Title to the common property shall be conveyed to association free and clear of all encumbrances prior to HUD issuing the first mortgage. The common property cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Members.

Section 3. Extent of MEMBERS' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the DEVELOPER and of the ASSOCIATION, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Property and in aid thereof; and

(b) the right of the ASSOCIATION to take such steps as are reasonably necessary to protect the Common Property against foreclosure; and

(c) the right of the ASSOCIATION to charge reasonable admission and other fees for the use of the Common Property; and

(d) the right of the ASSOCIATION to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the MEMBERS, provided, however, that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by MEMBERS entitled to cast two-thirds (2/3) of the votes irrespective of class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every MEMBER at least ninety (90) days in advance of any action taken and unless approved by HUD.

(e) absolute liability is not imposed on lot owners for damage to common property or lots in THOUSAND OAKS.

Section 4. Restriction on Use of Conservation and Drainage Areas. The Conservation and Drainage Areas are part of the Common Property and shall be the perpetual responsibility of the ASSOCIATION. In accordance with approvals obtained from governmental agencies having jurisdiction of the Conservation and Drainage Areas, portions of the Conservation and Drainage Areas shall not be altered from their natural state in any way. Activities which are prohibited within such portions of the Conservation and Drainage Areas include, but are not limited to, construction or placing of buildings on or above ground; dumping or placing soil or other substances such as trash; removal or destruction of trees, shrubs or other vegetation; excavation, dredging or removal of soil material; diking or fencing; and any other activity detrimental to drainage, flood control, water conservation, erosion control or to fish and wildlife habitat conservation or preservation.

#### ARTICLE V

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each OWNER of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, hereby covenants and agrees to pay to the ASSOCIATION: (1) the Initiation Fee; (2) Annual Assessments for Common Expenses; and (3) Special Assessments for Capital Improvements, such Assessments and Initiation Fee to be fixed, established, and collected from time to time as hereinafter provided. The Initiation Fee, Annual, and Special Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or Initiation Fee is made. Each such Assessment and Initiation Fee, together with such interest thereon and cost of collection thereof as are hereinafter provided, shall also be the personal obligation of the person who was the OWNER of such Lot at the time when the Assessment fell due.

Section 2. Purpose of Assessments. The Assessments and Initiation fee levied by the ASSOCIATION shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Property and in particular for the improvement and maintenance of properties, services, and facilities which are devoted to the purpose and related to the use and enjoyment of the Common Property and of the homes situated upon the Property, including, but not limited to:

- (a) Payment of operating expenses of the ASSOCIATION;
- (b) Construction and improvement of the Common Property;

(c) Management, maintenance, improvement and beautification of the Common Property;

(d) Garbage collection and trash and rubbish removal but only when and to the extent specifically authorized by the ASSOCIATION;

(e) Repayment of deficits previously incurred by the ASSOCIATION (or the DEVELOPER), if any, in making capital improvements to or upon the Common Property, and/or in furnishing the services and facilities provided herein to or for the OWNERS and the MEMBERS of the ASSOCIATION;

(f) Providing police protection and/or night watchmen, but only when and to the extent specifically authorized by the ASSOCIATION;

(g) Doing any other thing necessary or desirable, in the judgment of the ASSOCIATION, to keep the Property neat and attractive or to preserve or enhance the value of the Property, or to eliminate fire, health or safety hazards, or which, in the judgment of the ASSOCIATION, may be of general benefit to the OWNERS and/or Residents of lands included in the Property;

(h) Repayment of funds and interest thereon, borrowed by the ASSOCIATION;

(i) Maintenance and repair of easements shown on any recorded subdivision plat; and

(j) Repayment of the total sum the DEVELOPER has paid to the ASSOCIATION in accordance with the requirements of the Developer's Agreement.

### Section 3. Initiation Fee and Annual Assessments.

(a) Initiation Fee. The Initiation Fee shall be One Hundred Fifty and No/100 Dollars (\$150.00) per Lot to be paid at the time of closing on the purchase of the Lot by a person who (i) purchases a Lot to have a residence or (ii) purchases or occupies a Lot and the Improvements thereon during or after completion of construction. The DEVELOPER or the ASSOCIATION may use any part or all of said sum for the purposes set forth in Article V, Section 2.

(b) Annual Assessment. Until changed by the BOARD in accordance with the terms hereof, the Annual Assessment shall be One Hundred Fifty and No/100 Dollars (\$150.00) per Lot, payable annually, in advance, on January 1 of each year. This Annual Assessment shall be in addition to the above mentioned Initiation Fee and shall be prorated in the year of initial purchase of the Lot by a person who (i) purchases a Lot to have a residence built for them or (ii) purchases or occupies a Lot and the Improvements



thereon during or after completion of construction. The Annual Assessment shall be paid directly to the ASSOCIATION to be held in accordance with the above provisions. The DEVELOPER shall not be required to pay Annual Assessments for Lots owned by the DEVELOPER.

(c) Adjustment to Annual Assessment. Prior to the beginning of each fiscal year, the BOARD shall adopt a budget for such fiscal year which shall estimate all of the Common Expenses to be incurred by the ASSOCIATION during the fiscal year. The total Common Expenses shall be divided by the number of Lots to establish the Annual Assessment for Common Expenses per Lot. The ASSOCIATION shall then promptly notify all OWNERS in writing of the amount of the Annual Assessment for Common Expenses for each Lot. From time to time during the fiscal year, the BOARD may revise the budget for the fiscal year. Pursuant to the revised budget the BOARD may, upon written notice to the OWNERS, change the amount, frequency and/or due dates of the Annual Assessments for Common Expenses for each Lot. If the expenditure of funds is required by the ASSOCIATION in addition to funds produced by the Annual Assessments for Common Expenses, the BOARD may make Special Assessments for Common Expenses, which shall be levied in the same manner as provided for regular Annual Assessments for Common Expenses and shall be payable in the manner determined by the BOARD as stated in the notice of any Special Assessment for Common Expenses.

Section 4. Special Assessments for Capital Improvements. In addition to the Assessments for Common Expenses authorized by Section 3 hereof, the BOARD may levy in any assessment year a Special Assessment for Capital Improvements, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of the MEMBERS, other than the DEVELOPER and the votes attributable to the DEVELOPER, who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all MEMBERS at least thirty (30) days in advance and shall set forth the purpose of the meeting. The Special Assessment for Capital Improvements shall be levied against all Lots.

Notwithstanding the above-required approval by two-thirds (2/3) of the votes of the MEMBERS, if the unexpected repair or replacement of a described capital improvement within the Common Property is necessary, in the reasonable judgment of the BOARD, to protect the health, safety or welfare of the OWNERS or is required by any governmental authority having jurisdiction over the Property, the BOARD can levy the Special Assessment of Capital Improvements without approval of the MEMBERS.

Section 5. Certificate of Payment. The ASSOCIATION shall upon demand at any time, furnish to any OWNER liable for any Assessment a certificate in writing signed by an officer of the ASSOCIATION, setting forth whether the Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 6. Payment of Assessments for Common Expenses. Each MEMBER shall be required to and shall pay to the ASSOCIATION an amount equal to the Assessment, or installment, for each Lot within the Property then owned by and/or under the jurisdiction of such OWNER on or before the date each Assessment, or installment, is due. In the event any Assessments are made payable in equal periodic payments as provided in the notice from the ASSOCIATION, such periodic payments shall automatically continue to be due and payable in the same amount and frequency as indicated in the notice, unless and/or until: (1) the notice specifically provides that the periodic payments will terminate upon the occurrence of a specified event or the payment of a specified amount; or (2) the ASSOCIATION notifies the OWNER in writing of a change in the amount and/or frequency of the periodic payments. Notwithstanding the foregoing, in no event shall any Assessment payable by any OWNER be due less than ten (10) days from the date of the notification of such Assessment.

Section 7. Assessments for Common Expenses For Lots Owned by the DEVELOPER. Notwithstanding anything contained in this Article V to the contrary, the DEVELOPER shall not be required to pay Assessments or Initiation Fees for any Lots owned by the DEVELOPER. However, DEVELOPER may elect to make a loan to the ASSOCIATION to assist the ASSOCIATION with its financial needs. In such event the ASSOCIATION shall be required to repay the DEVELOPER the full loan amount, plus a reasonable interest rate, within a reasonable period of time.

Section 8. Monetary Defaults and Collection of Assessments.

(a) Interest. If any OWNER is in default in the payment of any Assessment for more than ten (10) days after same is due, or in the payment of any other monies owed to the ASSOCIATION for a period of more than ten (10) days after written demand by the ASSOCIATION, the ASSOCIATION may charge such OWNER interest at the highest rate permitted by the laws of Florida, on the amount owed to the ASSOCIATION. Such interest shall accrue from the due date of the Assessment, or the monies owed.

(b) Acceleration of Assessments. If any OWNER is in default in the payment of any Assessment or any other monies owed to the ASSOCIATION for more than ten (10) days after written demand by the ASSOCIATION, the ASSOCIATION shall have the right to accelerate and require such defaulting OWNER to pay to the ASSOCIATION Assessments for Common Expenses for the next twelve (12) month period, based

upon the then existing amount and frequency of Assessments for Common Expenses. In the event of such acceleration, the defaulting OWNER shall continue to be liable for any increases in the regular Assessments for Common Expenses, for all Special Assessments, and/or all other Assessments and monies payable to the ASSOCIATION.

(c) Collection. In the event any OWNER fails to pay any Assessment, Special Assessment or other monies due to the ASSOCIATION within ten (10) days after written demand, the ASSOCIATION may take any action deemed necessary in order to collect such Assessments, Special Assessments, Initiation Fee or monies including, but not limited to, retaining the services of a collection agency or attorney to collect such Assessments, Special Assessments or monies, initiating legal proceedings for the collection of such Assessments, Special Assessments or monies, recording a claim of lien as hereinafter provided, and foreclosing same in the same fashion as mortgage liens are foreclosed, or any other appropriate action. The OWNER shall be liable to the ASSOCIATION for all costs and expenses incurred by the ASSOCIATION incident to the collection of any Assessment, Special Assessment or other monies owed to it, and the enforcement and/or foreclosure of any lien for same, including, but not limited to, reasonable attorneys' fees, and attorneys' fees and costs incurred on the appeal of any lower court decision, reasonable administrative fees of the DEVELOPER and/or the ASSOCIATION, and all sums paid by the ASSOCIATION for taxes and on account of any mortgage lien and encumbrance in order to preserve and protect the ASSOCIATION's lien. The ASSOCIATION shall have the right to bid in the foreclosure sale of any lien foreclosed by it for the payment of any Assessments, Special Assessments or monies owned to it; and if the ASSOCIATION becomes the OWNER of any Lot by reason of such foreclosure, it shall offer such Lot for sale within a reasonable time and shall deduct from the proceeds of such sale all Assessments, Special Assessments or monies due it. All payments received by the ASSOCIATION on account of any Assessments, Special Assessments or monies owed to it by any OWNER shall be first applied to payments and expenses incurred by the ASSOCIATION, then to interest, then to any unpaid Assessments, Special Assessments or monies owed to the ASSOCIATION in the inverse order that the same were due. Mortgages are not required to collect assessments.

(d) Lien for Assessment, Special Assessment and Monies Owed to ASSOCIATION. The ASSOCIATION shall have a lien on all property owned by an OWNER for any unpaid Assessments (including any Assessments which are accelerated pursuant to this Declaration), Special Assessments or other monies owed to the ASSOCIATION by such OWNER, and for interest, reasonable attorneys' fees incurred by the ASSOCIATION incident to the collection of the Assessments, Special Assessments and other monies, or enforcement of the lien, for reasonable administrative fees incurred by the DEVELOPER and/or the ASSOCIATION, and for all sums advanced and paid by the ASSOCIATION for taxes and on account of superior mortgages, liens or



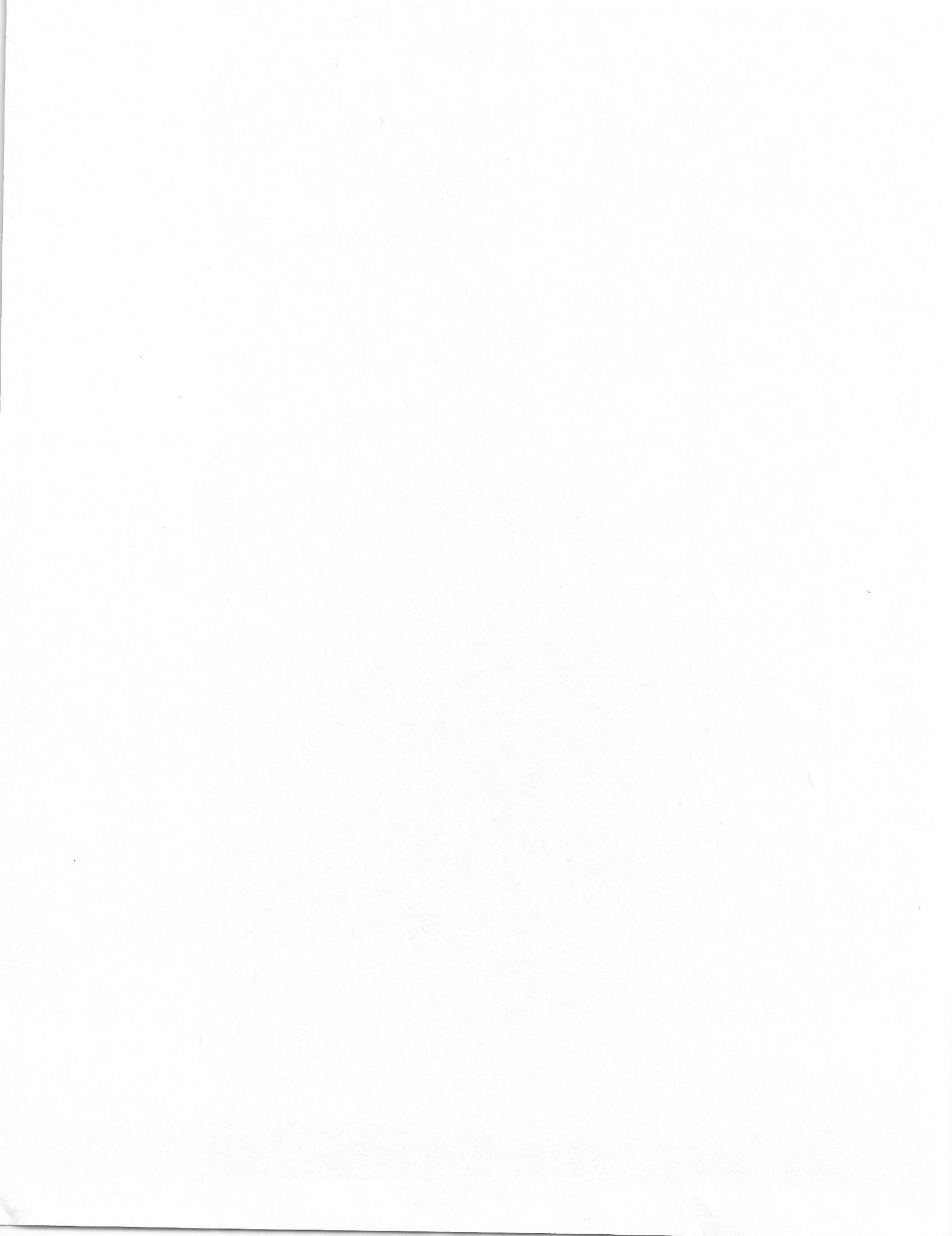
encumbrances in order to protect and preserve the ASSOCIATION's lien. To give public notice of the unpaid Assessment, Special Assessment or other monies owed, the ASSOCIATION may record a Claim of Lien in the Public Records of Polk County, Florida, stating the description of the Lot(s), and name of the OWNER, the amount then due, and the due dates. The lien is in effect until all sums secured by it (including sums which became due after the recording of the Claim of Lien) have been fully paid. The Claim of Lien must be signed and acknowledged by an officer or agent of the ASSOCIATION. Upon payment in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien.

(e) Transfer of a Lot after Assessment. The ASSOCIATION's lien shall not be affected by the sale or transfer of any Lot. In the event of any such sale or transfer, both the new OWNER and the prior OWNER shall be jointly and severally liable for all Assessments, Special Assessments, interest, and other costs and expenses owed to the ASSOCIATION which are attributable to any Lot purchased by or transferred to such new OWNER.

(f) Subordination of the Lien to Mortgages. The lien of the ASSOCIATION for Assessments or other monies shall be subordinate and inferior to the lien of any first mortgage recorded prior to the recording of a Claim of Lien by the ASSOCIATION. If the ASSOCIATION's lien or its rights to any lien for any such Assessments, Special Assessments, interest, expenses or other monies owed to the ASSOCIATION by any OWNER is extinguished by foreclosure of a mortgage held by a first mortgage Lender, such sums shall thereafter be Common Expenses, collectible from all OWNERS including such acquirer, and its successors and assigns. Failure to pay assessments does not constitute a default under an insured mortgage.

Section 9. Certificate as to Unpaid Assessments or Default. Upon request by any OWNER, or an Institutional Lender holding a mortgage encumbering any Lot, the ASSOCIATION shall execute and deliver a written certificate as to whether or not such OWNER is in default with respect to the payment of any Assessments, Special Assessments or any monies owed in accordance with the terms of this Declaration.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Property; and (c) all properties exempted from taxation by the laws of the State of Florida, upon the terms and to the extent of such legal exemption.





Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from Assessments, charges or liens except as set forth in Article V Section 7.

## ARTICLE VI

### ARCHITECTURAL REVIEW BOARD

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Board as hereinafter defined.

Section 1. Composition. The DEVELOPER, upon the recording of this Declaration, shall form a committee known as the "Architectural Review Board", hereinafter referred to as the "ARB", which shall initially consist of three (3) persons. The ARB shall maintain this composition until the first meeting of the MEMBERS of the ASSOCIATION after the DEVELOPER is no longer able to appoint all Members of the BOARD. At such meeting, the ARB shall be appointed by the BOARD and shall serve at the pleasure of the BOARD. that in its selection, the Provided, however, BOARD shall be obligated to appoint the DEVELOPER or his designated representative, to the ARB for so long as the DEVELOPER owns any Lots in the Property. The BOARD shall also be obligated to appoint at least one (1) MEMBER of the ASSOCIATION. Neither the ASSOCIATION, the BOARD, nor the MEMBERS of the ASSOCIATION, shall have the authority to amend or alter the number of members of the ARB which is irrevocably herein set forth as three (3). No decision of the ARB shall be binding without at least a 2/3 affirmative approval by the members of the ARB.

Section 2. Planning Criteria. The DEVELOPER, in order to give guidelines to the OWNERS concerning construction and maintenance of Lots and Improvements, hereby promulgates the ARCHITECTURAL REVIEW BOARD PLANNING CRITERIA ("Planning Criteria") for the Property, set forth as Section 9 of this Article VI. The DEVELOPER declares that the Property, and additions thereto, shall be held, transferred, sold, conveyed and occupied subject to the Planning Criteria, as amended from time to time by the ARB.

Section 3. Duties. The ARB shall have the following duties and powers:

(a) to amend from time to time the Planning Criteria. Any amendments shall be set forth in writing, shall be made known to all MEMBERS and shall be recorded in the Public Records of Polk

County, Florida. Any amendment shall include any and all matters considered appropriate by the ARB not inconsistent with the provisions of this Declaration;

(b) to approve all buildings, fences, walls or other structures which shall be commenced, erected or maintained upon the Property and to approve any exterior additions to or changes or alterations therein. For any of the above, the ARB shall be furnished plans and specifications showing the nature, type, shape, height, materials, and location of the same and shall approve in writing as to the harmony of the external design and location in relation to surrounding structures and topography;

(c) to approve any such building plans and specifications and Lot grading and landscaping plans, and the conclusion and opinion of the ARB shall be binding, if in its opinion, for any reason, including purely aesthetic reasons, the ARB should determine that said improvement, alteration, etc. is not consistent with the planned development of the Property;

(d) to require each builder to submit two (2) sets of plans and specifications to the ARB prior to obtaining a building permit, which set of plans and specifications shall become the property of the ARB. The work contemplated must be performed substantially in accordance with the plans and specifications as approved. All approvals of plans or specifications must be evidenced by the signatures of at least two (2) members of the ARB on the plans and on the specifications furnished. The existence of the signatures of at least two (2) members of the ARB on any plans or specifications shall be conclusive proof of the approval by the ARB of such plans and/or specifications.

Section 4. Initial Construction of an Improvement. The OWNER who initially constructs the Improvement must complete such construction in a timely manner and substantially in accordance with all plans and specifications approved by the ARB, including plans for Lot grading, building plans and specifications, landscaping plans, pool plans and any other plans for construction of any Improvement on the Lot (the "Construction").

Should the ARB or the DEVELOPER determine that the Construction has not been completed in accordance with the approved plans and specifications, either the ARB or the DEVELOPER shall notify the OWNER in writing citing deficiencies and the OWNER shall within fifteen (15) days after receipt of notice commence correction of the deficiencies and continue in an expeditious manner until all deficiencies have been corrected.

Should any Construction not be completed in a timely manner as determined by the ARB or the DEVELOPER, or not be completed in accordance with the plans and specifications approved by the ARB, the ARB or the DEVELOPER shall have the right to seek specific

performance of the OWNER's obligation to complete the Construction as approved by the ARB; or in the alternative, to enter upon the Lot and complete the Construction as approved at the expense of the OWNER, subject, however, to the following provisions. Prior to commencement of any work on a Lot, the ARB or the DEVELOPER must furnish written notice to the OWNER at the last address listed in the records of the ASSOCIATION for the OWNER, notifying the OWNER that unless the specified deficiencies are corrected within thirty (30) days, the ARB or the DEVELOPER shall correct the deficiencies and charge all cost thereof to the OWNER. Upon the failure of the OWNER to act within said period of time, the ARB or the DEVELOPER shall have the right to enter in or upon the Lot or to hire personnel to do so to complete the Construction as approved by the ARB. The cost of the work, including labor and materials, shall be assessed against the Lot upon which the work is performed. ASSOCIATION or the DEVELOPER shall record a The Claim of Lien (upon commencement of the work required or anytime thereafter) against the Lot for the work performed (or to be performed), and it shall be a lien and obligation of the OWNER and shall become due and payable upon the recording of the Claim of Lien and shall be enforced and collected as provided in Article V hereof.

The obligation to complete the Construction as approved and the Claim of Lien provided above shall be binding upon and enforceable against all current and any future OWNERS of the Lot.

Any attorneys' fees or costs and any administrative costs incurred by the ARB, the DEVELOPER and/or the ASSOCIATION in enforcing the provisions hereof, including attorneys' fees and costs on appeal of any lower court decision, shall be payable by the OWNER, and the Claim of Lien shall further secure the payment of such sums.

Section 5. Certificate of Approval. Upon completion of the Construction, or upon correction of deficiencies cited by the ARB or the DEVELOPER, the OWNER shall notify the ARB and the DEVELOPER in writing to inspect the Lot. If the ARB and the DEVELOPER determine that the Construction has been completed in accordance with the approved plans and specifications, the ARB shall issue to the OWNER a "Certificate of Approval" in recordable form, executed by a majority of the members of the ARB with the corporate seal of the ASSOCIATION fixed.

Until such time as a Certificate of Approval is issued, the current OWNER and all future OWNERS of the Lot shall be obligated to complete the Construction as approved by the ARB. The recording of a Certificate of Approval shall be conclusive evidence that the Construction as approved by the ARB has been completed, but shall not excuse the OWNER from the requirement that plans and specifications for subsequent changes to the Improvement be submitted to and approved by the ARB prior to the commencement of any work.