



# DECLARATION OF CONDITIONS, COVENANTS, EASEMENTS AND RESTRICTIONS FOR PHILLIPS OAKS

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*Timothy D. Blevins*

## Page Numbering

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2. This Instrument Prepared By and  
Should Be Returned To:

Harold L. Downing, Esquire, of  
GILES & ROBINSON, P.A.  
Post office Drawer 2631  
Suite 800  
390 North Orange Avenue  
Orlando, Florida 32802-2361  
407425 3591

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**DECLARATION OF CONDITIONS, COVENANTS,  
EASEMENTS AND RESTRICTIONS  
FOR  
PHILLIPS OAKS**

THIS DECLARATION is made this 13<sup>th</sup> day of July, 1998, by CENTEX HOMES, a Nevada general partnership, whose address is 151 Southhall Lane, Suite 230, Maitland, Florida 32751, which declares hereby that the "Properties" described in Article II of this Declaration are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restriction, easements, charges and liens hereinafter set forth.

ARTICLE I  
DEFINITIONS

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

1.1 "*Additional Properties*" shall mean and refer to that portion of the lands being more particularly described on Exhibit "A" attached hereto not initially included among the Properties encumbered hereby but which may be included among the Properties in the future upon Declarant's execution and recordation of a supplemental declaration herein according with Article II below.

1.2. "*Assessment*" means and refers to a share of the funds required for payment of the expenses of the Association, which funds shall be assessed against a Lot Owner from time to time.

1.3 "*Association*" means and refers to the PHILLIPS OAKS HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, which is to be incorporated. A

copy of the form of the Articles of Incorporation of the Association is attached to this Declaration as Exhibit "B." A copy of the form of the Bylaws of the Association is attached to this Declaration as Exhibit "C."

1.4 "*Board of Directors*" means and refers to the board of directors of the Association.

1.5 "*Common Area*" means and refers to all real property (including the improvements thereto) and all personal property owned by the Association (including the Retention Areas and the rights to drainage and other easements over the Properties) and tracts of land, if any, shown or drawn on a Plat as owned or to be owned by the Association for the common use, enjoyment and benefit of the Owners and all property designated as common areas in any future recorded supplemental declaration (but not including any tract dedicated on a Plat to the City of Orlando or another public utility provider); together with the landscaping and any improvements thereon, including, without limitation, all structures, open space, conservation areas, retention areas, masonry walls, walkways, entrance markers, signs, and street lights, if any, but excluding any public utility installations thereon.

1.6 "*Declaration*" means and refers to this Declaration of Conditions, Covenants, Easements, and Restrictions for Phillips Oaks as recorded in the Public Records of Orange County, Florida, and as the same may be amended from time to time.

1.7 "*Declarant*" refers to Centex Homes, a Nevada general partnership, and its successors virtue of such written instruments assigning the rights and obligations of Declarant hereunder which are recorded in the Public Records of Orange County, Florida. Upon recordation of any such assignment, the initial Declarant shall be released and absolved from any obligation on the part of the Declarant as may arise by or through this Declaration. A lot purchaser or lot Owner or lot mortgagee shall not be deemed to be the Declarant by the mere act of purchase or mortgage of a lot.

1.7A "*District*" shall mean and refer to the South Florida Water Management District, an agency created pursuant to Chapter 373, Florida Statutes.

1.8 "*Drainage Easements*" means and refers to the drainage easements declared and reserved on a Plat.

1.9 "*Entitled To Vote*" means and refers to that Lot Owner Who shall cast a vote for a Lot at an Association meeting. If more than one person or legal entity shall own any lot, the Owners thereof shall determine among themselves who shall be the Member Entitled To Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said lot, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary, all lot Owners whether Entitled To Vote or not are assured of all other privileges, rights, and obligations of Association membership' and shall be Members of the Association. In no

event shall any mortgagee or other party holding any type of security interest in a lot or the Residence constructed thereon be Entitled To Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such lot.

1.10 "*Institutional Lender*" or "*institutional Mortgage*" means and refers to a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan correspondent, the Federal Home Loan Mortgage Corporation (FHIMC), the Federal National Mortgage Association (FNMA), the Federal Housing Administration (FHA) or the Veteran's Administration (VA) and to any successor or assignee thereof.

1.11 "*Lot*" means and refers to any Lot on a Plat of portions of the Properties, and any other property hereafter declared as a lot by the Declarant and thereby made subject to this Declaration.

1.12 "*Member*" means and refers to all those Owners who are Members of the Association as provided in Article III hereof.

1.13 "*Owner*" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties.

1.14 "*Plat*" means and refers to the plat of Phillips Oaks, as recorded in Plat Book 40, Pages 110 and 111, Public Records of Orange County, Florida, together with any plat of additional land made subject to this Declaration and to the jurisdiction of the Association.

1.15 "*Properties*" means and refers to all of the properties as described in Section 2.1 of this Declaration, and additions thereto, as are now or hereafter made subject to this Declaration and to the jurisdiction of the Association, except such as are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

1.15A "*Retention Area*" shall mean that portion of the Properties which is identified on the Plat as Tract "A" and Tract "D" and which is an integral part of the Surface Water Management System.

1.16 "*Residence*" means and refers to any residential building constructed on a Lot for which a certificate of occupancy has been duly issued.

1.16A "*Surface Water Management System*" means the system designed, constructed and implemented upon the Properties to control discharges which are necessitated by rainfall events, and incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water in order to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quality and quantity

of discharges from the system, as permitted by the District pursuant to Chapter 40C-4, 40C-40, 40C-42, Florida Administrative Code and Permit Number [blank]. Such system shall include, but not be limited to, Tract "A" Tract "D" and the drainage easements shown on the Plat.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION;  
ADDITIONS THERETO

2.1 *Legal Description of the Properties.* The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Orange County, Florida, and is more particularly described as follows:

All of PHILLIPS OAKS, according to the plat thereof, as recorded in Plat Book 40, Pages 110 through 111, of the Public Records of Orange County, Florida all of which real property, and all addition thereto, is herein referred to collectively as the "Properties."

2.2 *Supplements.* So long as the Class B membership (as herein defined) shall exist and without the prior approval of the Federal Housing Administration or Veteran's Administration, Declarant may from time to time bring all or any portions of the Additional Properties under the provisions hereof by recorded supplemental declarations (which shall not require the consent of the then existing Owner of the Association, or any mortgagee) and thereby add to and include all or such portions of the Additional Properties as part of the Properties subject to this Declaration. To the extent that additional real property shall be made a part of the Properties as a common scheme, reference herein to the Properties should be deemed to be a reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate the Declarant to add to the initial portion of the Properties, to develop any such future portions under such common scheme, nor to prohibit the Declarant from rezoning and/or changing the development plans with respect to such future portions and/or the Declarant from adding additional or other property to the Properties under such common scheme. All Owners, by acceptance of a deed to their Lots, thereby automatically consent to any such rezoning, change, addition or deletion thereafter made by Declarant and shall evidence such consent in writing if requested to do so by the Declarant at any time.

ARTICLE III  
THE ASSOCIATION

3.0 *The Association.* The Association is a not-for-profit corporation charged with the duties and vested with the powers prescribed by law or set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) a Member of the Association, or (2) an officer, director or agent of Declarant. The Board, and such officers as the Board may appoint, shall conduct the affairs of the Association.

3.1 *Membership.* Every person or entity who is a record Owner of a fee or undivided fee interest in any lot shall be a Member of the Association. Notwithstanding anything else to the contrary set forth in this Section 3.1, any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership in the Association shall be appurtenant to each Lot and may not be separated from ownership of said Lot. The record title holder to each Lot shall automatically become a member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photostatically or otherwise reproduced copy of said Owner's deed to the Association Secretary for placement in the records of the Association. To the extent that such deed shall pass title to a new Lot Owner from an existing lot Owner, membership in the Association shall be transferred from the existing lot Owner to the new lot Owner. In no event shall any mortgagee or other party holding any type of security interest in a lot or the Residence constructed thereon be a Member of the Association unless and until any of in or receive fee simple title to such Lot.

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

- (a) *Class A.* Class A Membership shall be all Owners of Lots (except the Declarant and its successors and assigns as long as the Class B membership shall exist, and thereafter, the Declarant" and its successors and assigns shall be Class A Members to the extent each would otherwise qualify). Class A Members shall be entitled to one (1) vote for each lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any lot, all such persons shall be Members, but the vote for such Lot shall be exercised only by that one person who is Entitled To Vote. In no event shall more than one vote be cast with respect to any such lot.



(b) *Class B.* The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each lot owned by the Class B Member. All voting rights of Class B Membership shall be freely transferable, subject to this Declaration, to third parties. The Class B membership shall cease and terminate upon the earlier to occur of the following: (i) December 31, 2004; (ii) at such time as seventy-five percent (75) of the maximum number of Residences allowed for the Properties and Additional Properties have been conveyed to Class A Members, or (iii) sooner at the election of the Declarant, whereupon the Class A Members shall be obligated to elect the Board of Directors and assume control of the Association. Upon termination of the Class B membership as provided for herein, the Class B membership shall convert to Class A membership with voting strength as set forth above for Class A membership.

3.3 *General Matters.* When reference is made herein, or in the Articles of Incorporation, Bylaws, Rules and regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage votes of Members Entitled To Vote and not of the Members themselves.

3.4 *Duties, Powers and Authority of the Association.* The Association shall have all the powers of a non-profit corporation organized under the laws of Florida, subject only to such limitations as are set forth In the Articles, the Bylaws, or this Declaration. The Association shall have the power to all things lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, the Articles, or the Bylaws, and to do and perform any and all acts *which* may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of the Properties.

#### ARTICLE III-A ASSOCIATION TURNOVER

3A.1 *Time of Turnover.* The Turnover of the Neighborhood Association by the Declarant shall occur at the Association Turnover Meeting described in Section 2 below, which meeting shall take place within sixty (GO) days of the occurrence of the following events, whichever occurs earliest:

(a) December 31, 2004;

- (b) Upon voluntary conversion to Class A membership by the Declarant; or,
- (c) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

The Declarant, or its successors or assigns, shall remain a member so long as it owns a Lot subject to this Declaration.

*3A.2 Procedure of Calling Association Turnover Meeting.* The purpose of the Association Turnover Meeting shall be to elect directors to the Association. No more than sixty (60) days and no less than thirty (30) days prior to the Turnover meeting, the Association shall notify in writing all Members of the date, location, and purpose of the Turnover meeting.

- (a) Procedure at the Association Turnover Meeting. At the Association Turnover Meeting (whereupon the Class A Members are obligated to elect the Board of Directors and assume control of the association), a special meeting (the "Association Turnover Meeting") of the membership shall be called in accordance with the provisions of the By-Laws for the calling of a special of the membership. For the purpose of convening the Association Turnover Meeting, a quorum shall consist of at least 30% of the members of each class of the membership. Among any other business to be presented at such meeting, nominations for places on the Board of Directors shall be taken from the floor and election of the Board of Directors shall be made therefrom. Each Member shall have one (1) vote for every place on the Board of Directors to be filled but shall be able to cast only one (1) vote for each position to be filled (by way of example, if three (3) positions on the Board of Directors are to be filled, and five (5) persons are nominated for the three (3) positions, then each Member shall have the ability to cast one (1) vote for any three (3) candidates).
- (b) By Written Nomination and Written Ballot If The Association Turnover Meeting Fails For Lack Of Quorum. If a quorum is not present at the Association Turnover Meeting, then, within, fourteen (14) days after the time for the Association Turnover Meeting, the Association shall send written notice to, each Member that a quorum was not present and that election of Directors shall proceed by written nomination and later by written ballot. In such notice, the Association shall solicit nominations for positions on the Board of Directors and shall

require that such written nominations be received by the Association within fourteen (14) days of such notice. Thereafter, the Association shall prepare a written ballot of all persons nominated and shall send such ballot to each Member with notice that the ballot must be returned to and received by the Association within fourteen (14) days of the mailing of such ballot. Those candidates receiving the most votes shall be elected to the Board of Directors and shall take office within thirty (30) days thereafter (at which time all Declarant-appointed Directors shall resign). Such an election shall be valid and effective notwithstanding the receipt by the Association of votes of less Members than required for a quorum at any duly called and authorized meeting, provided, however, that this provision shall apply to the election of Directors at the time the Declarant turns control of the Neighborhood Association over to the Class A Members.

*3A.3 Procedure for Association Turnover Meeting.* The Association Turnover Meeting shall be conducted in accordance with the most recent revision of Robert's Rules of Order.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON AREAS; OTHER EASEMENTS

*4.1 Members Easements.* Each Member, and each tenant, agent and invitee of such Member or tenant, shall have a nonexclusive permanent and perpetual easement over and upon the Common Area for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, in such manner as may be regulated by the Association. Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

A. The right and duty of the Association to levy Assessments against each lot for the purpose of maintaining the Common Area and facilities in compliance with the provisions of this Declaration and with the restrictions on the Plats of portions of the Properties from time to time recorded;

B. The right of the Association to suspend the Owner's voting rights for any period during which any Assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of lawfully adopted and published rules and regulations;

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

D. The right to the use and enjoyment of the Common Area and facilities thereon shall extend to all permitted user's immediate family who reside with him subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

4.2 *Easements Appurtenant.* The easements provided in Section 4.1 shall be appurtenant to and shall pass with the title to each lot.

4.3 *Maintenance.* The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as required, the Common Area, together with the paving, drainage fixtures, masonry walls, lighting fixtures and appurtenances, landscaping, sprinkler systems, entrance markers, signs, improvements and other structures installed by the Declarant or the Association situated on the Common Area, if any, with all such work to be done as directed by the Board of Directors of the Association. In order to maintain, manage and operate the common Area, and such appurtenances as are described above, the Association shall have the right and authority to enter into such contracts or agreements as the Board of Directors of the Association deem appropriate. Maintenance of any lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's responsibility to the City of Orlando of any kind with respect to the Common Area and shall indemnify and hold the Declarant harmless with respect thereto.

Each Owner shall be responsible for the maintenance, replacement, and repair of all walls, gates, paving, structures and improvements located on his lot, other than those specifically provided to be maintained by the Association.

The Association shall be responsible for the maintenance, operation and repair of the Surface Water Management System. Maintenance of the Surface Water Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other storm water management capabilities as permitted by the District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the Surface Water Management System shall be as permitted, or if modified as approved by the District.

All work pursuant to this Section and all expenses incurred hereunder shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. No Owner may waive or otherwise escape liability for Assessments

by non-use of the Common Area or Lots or abandonment of the right to use the Common Area.

*4.4 Utility Easements.* The Association shall have the right to grant permits, licenses, and easements over the Common Area for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Properties. In addition, easements over, upon, under, through and across the Common Area are reserved to the Association and the Declarant, and may be declared or granted from time to time by the Declarant during any period that the Declarant shall own at least one (1) lot, for such further utility, egress, ingress, or drainage easements over and across the Properties as may be required from time to time to serve any other or additional lands during the course of development of same, whether such additional lands become subject to the jurisdiction of the Association and part of the Properties or not. Regarding any easement declared by the Declarant, the joinder of the Association or any lot Owner or lot Owner's mortgagee shall not be required.

*4.5 Drainage Easements.* Drainage Easements have been declared and reserved as shown on and created by the Plat. Each Owner of any lot encumbered by a Drainage Easement upon which a drainage swale is located shall be solely responsible for the repair, replacement, and maintenance of such drainage swale. Alteration, obstruction or removal of any drainage or removal of any drainage swales or drainage control facilities or structures is expressly prohibited. In the event any Owner fails to repair, replace and maintain any drainage swales, or alters or obstructs any piping, drainage swales, facilities or structures, the Association may repair, replace and maintain such drainage swales, facilities and structures and assess such Owner for the costs and expenses incurred in order to accomplish the foregoing. Each Owner hereby grants an easement and license to the Declarant and the Association over, upon and across such Owner's lot in order to facilitate and accomplish the foregoing. Further, no Owner shall place, erect or construct any improvements or otherwise permit anything to occur within any Drainage Easement area which would in any way effect said Drainage Easement or any swale, pipe or drainage control facility or structure located therein or thereon, unless, in the event of construction of any improvements, such improvements have been approved by Declarant or the ARB (as hereinafter defined).

*4.6 Ownership.* As shown on the Plat, certain of the Common Area is hereby dedicated non-exclusively to the joint and several use, in common, of the Owners of all lots that may from time to time constitute part of the Properties and such Owners' tenants, guests and invitees. Prior to conveyance of any lot to a Class A Member, which is financed by a mortgage insured by HUD, FHA and/or VA, the Common Area shall be conveyed to the Association free of all liens and encumbrances except taxes for the year of conveyance and those exceptions common to Phillips Oaks, which shall accept such conveyance. Beginning on the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Area (whether or not then conveyed or to be conveyed to the Association), such maintenance to be performed in a continuous and satisfactory manner. It is intended that all real estate taxes and assessments, if any, assessed

against that portion of the Common Area owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Lots within the Properties. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Area, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded.

The Common Area cannot be mortgaged or conveyed without the approval of two-thirds (2/3) of each class of Members voting at an annual or special meeting of the membership of the Association.

*4.7 Conservation Easements.* Declarant reserves the right to grant conservation easements and development rights to qualified grantees, including without limitation the South Florida Water Management District, over, upon and across the common Area.

*4.8 Surface Water Management System.* A copy of the surface water management permit and its conditions are attached hereto as Exhibit "D".

*4.9 Declarant Offices.* Notwithstanding anything herein to the contrary, but subject to approval by the City of Orlando if required by its laws and ordinances, the Declarant shall have the specific right to maintain upon any portion of the Properties sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved to the Declarant and its successors, assigns, employees and contractors, for this purpose.

ARTICLE V  
ASSOCIATION-COVENANT  
FOR MAINTENANCE ASSESSMENTS

*5.1 Creation of the Lien and Personal Obligations of the Assessments.* Except as provided elsewhere herein, the Declarant (and each party joining in this Declaration or in any supplemental declaration), for all Lots within the Properties, hereby covenant and agree, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association annual Assessments or charges. for the maintenance, management, operation and insurance of the Common Areas and other properties that may be otherwise used for the benefit of the Properties as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, capital improvement Assessments, as provided elsewhere herein and all other charges and Assessments hereinafter referred to, all such Assessments to be fixed, established and collected from time to time as herein provided. In addition, individual assessments may be

levied against particular Owners and Lots for expenses incurred against particular lots and/or Owners to the exclusion of others and other charges against specific lots or Owners as contemplated in this Declaration. The annual, special and other Assessments, together with such interest thereon, attorney's fees and other costs of collection thereof, and any applicable late fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the Assessment fell due. Except as provided herein with respect to individual Assessments which may be imposed on one or more lots and Owners to the exclusion of others, all Assessments imposed by the Association shall be imposed against all Lots subject to its jurisdiction equally. Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

5.2 *Purpose of Assessments.* The regular Assessments levied by the Association shall be used exclusively for maintenance, repair, renovation, and construction upon the Common Areas, an maintenance and repair of such other properties as may be used for the benefit of Properties, as specifically provided herein, capital improvements, reserves, operating costs of the Association, to promote the health, safety, welfare and aesthetics of the of the Association and their families residing with them, their guests and tenants, all as provided for herein and, to the extent not performed by the City of Orlando, and subject to prior approval as required by the City of Orlando, to operate, maintain and manage the Surface Water Management System for the Properties in accordance with the terms of this Declaration and the permits, rules and requirements of the District.

5.3 *Reserves for Replacement.* The Association shall be required to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area. The reserve fund shall be maintained from annual Assessments. Notwithstanding the foregoing, if the Declarant elects to pay the amount of any deficits incurred by the Association for expenses in excess of the amounts collected as Assessments, in accordance with the provisions of Section 5.14 of this Declaration, then the Declarant shall not be required to contribute to a reserve fund.

5.4 *Working Capital.* Upon the initial closing of the sale or the occupation of a Residence, the buyer (or Owner) of such Residence shall pay to the Association an amount equal to one-half (1/2) of the annual assessment of the Association for such Lot, which amount shall be maintained in an account by the Association as working capital for the use and benefit of the Association. Said amount shall not be considered as advance payment of annual Assessments.

5.5 *Maximum Annual Assessment.* Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual assessment shall be ONE HUNDRED EIGHTY AND NO/100 DOLLARS (\$180.00) per lot.

A. 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, upon approval by a majority of the Board of Directors without a vote of the Membership, by an amount not greater than fifteen percent (15) above the maximum assessment for the previous year.

B. 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 by an amount greater than fifteen percent (15) above the maximum assessment for the previous year, as hereinabove provided, upon approval of two-thirds (2/3) of each class of Members voting in person or by proxy at a meeting duly called for such purpose.

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

*5.6 Exterior Maintenance.* The Owner of each Lot shall maintain the exterior of the Residence and the Lot at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, the Association may at its option, after giving the Owner thirty (30) days' written notice sent to his last known address, or to the address of the subject premises, perform such reasonable maintenance and make such repairs as may be required to restore the neat and attractive appearance of the Lot and the exterior of the Residence located thereon, The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the lot and shall constitute an individual Assessment against the Lot on which the work was performed, collectible in a lump sum and secured by the lien against the lot as herein provided. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole discretion.

*5.7 Capital Improvements.* Funds which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Area or other properties used for the benefit of the Properties and which have not previously been collected as reserves or are otherwise available to the Association shall be levied by the Association as special Assessments only upon approval by two-thirds (2/3) of each class of Members voting in person or by proxy at a meeting duly called for such purpose. Notwithstanding the foregoing, if the Declarant elects to pay the amount of any deficits incurred by the Association for expenses in excess of the amounts collected as Assessments, as provided in Section 5.14 of this Declaration, then the Declarant shall not be required to pay any special Assessments (except Declarant shall pay special Assessments for any Lot owned by Declarant on which a Residence, such payment to be in an amount equal to the special Assessment on each Owner of a Residence on a Lot within the Properties).



5.8 *Notice and Quorum for Any Action Authorized Under Sections 5.5 and 5.7.* Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.5 or 5.7 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called the presence of Members or of proxies entitled to cast sixty percent (60) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be 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.

5.9 *Date of Commencement of Annual Assessments, Due Dates.* The annual Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The annual Assessments shall be payable in advance by one (1) annual payment, or by monthly, quarterly or biannual installments in the discretion of the Board of Directors of the Association. At the time of the closing of the sale of any lot, the purchaser thereof shall pay to the Association an amount equal to the lesser of: (i) the full annual Assessment multiplied by a fraction the numerator of which is the number of days remaining in the year of closing (including the date of closing) and the denominator of which is 365 or (ii) the portion of the full annual Assessment otherwise due and owing for the remainder of the year. The due date of any special Assessment shall be fixed in the Board resolution authorizing such assessment.

5.10 *Certain Duties of the Board of Directors.* The Board of Directors of the Association shall fix the date of the commencement and the amount of the Assessment against each Lot subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period and shall, at that time prepare a roster of the lots and Assessments applicable thereto which shall be kept in the *office* of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to emergency Assessments. Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association may charge a reasonable fee for such certificate. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Declarant) for management services or for other services beneficial to the Association or the proper operation and maintenance of the Properties. The Association shall have all other powers provided elsewhere herein, in its Articles of Incorporation and its Bylaws.

*5.11 Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association.* If the Assessments (or installments), whether general or special, are not paid on the dates when due, then such Assessments (or installments) shall become delinquent (and, at the option of the Declarant, all general Assessments attributable to the lot for the existing fiscal year shall be accelerated and shall become immediately due and payable) and shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the lot which shall bind such property. Each Assessment against a lot shall also be the personal obligation of the Owner at the time the Assessment fell due.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than FIFTY AND NO/100 DOLLARS (\$50.00) may be imposed and all such sums shall bear interest from the dates when due until paid at the highest lawful rate and the Association may bring an action at law against the Owner(s) personally obligated to pay the same or may record a claim of lien against the lot on which the assessments and late charges are unpaid and may foreclose the lien against the lot on which the assessments and late charges are unpaid, or may pursue one or more of such remedies at the same time or successively. The Association shall also have the right to recover its attorneys' fees (including paralegal fees) and costs, including without limitation costs and expenses for consultation with an attorney because any such sums have not been paid, and costs and expenses charged by such attorney for services related in any way to the failure by an Owner to pay such sums (such as without limitation fees for telephone calls, preparation of correspondence, attendance at meetings, etc.), whether or not suit is filed. Further in addition to the foregoing, in the event suit is filed, the Association shall have the right to recover all attorneys' fees, paralegals' fees and costs incurred before trial, at trial and upon all appellate levels.

In addition to the rights of collection stated above, if any installment of an Assessment is not paid within fifteen days after the due date, the Board of Directors of the Association may impose a fine on the lot for which the Assessment was not paid (and the fine shall also be the personal obligation of the Owner). The fine shall be imposed by the Board of Directors at a duly called meeting in accordance with the Bylaws of the Association, and notice of the fine shall be sent to the Owner by certified mail, return receipt requested, postage prepaid. The Owner may appeal the fine to the Board of Directors in accordance with reasonable procedures prescribed by the Board of Directors from time to time. The determination of the Board of Directors with respect to any such appeal shall be final.

If any such fine is not timely paid, then the fine, together with reasonable costs of collection thereof as provided herein, shall, at the option of the Association, become a continuing lien on the lot which shall bind such Lot. Additionally, the fine shall also be the personal obligation of the Owner at the time the fine is assessed.

The Association may, at its option, bring an action at law against the Owner personally obligated to pay the fine or may record a claim of lien against the Lot for which the fine is unpaid, and may foreclose the lien against the Lot on which the fine is unpaid, or may pursue one or more such remedies at the same time or successfully.

In addition to the rights of collection of Assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Area until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid and no sale or other disposition of lots shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 5.12 of this Article.

It shall be the legal right of the Association to enforce payment of the Assessments hereunder. Failure the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

*5.12 Subordination of the Lien.* The lien of the assessments provided for in this Article shall be subordinate to the lien of any first mortgage to any Institutional lender and which is now or hereafter placed upon any property subject to Assessment; provided, however, that any such mortgagee when in possession of any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid Assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by and a lien against all Lots subject to Assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

*5.13 Collection of Assessments.* The Association shall collect the Assessments of the Association.

*5.14 Effect on Declarant.* Notwithstanding any provision that may be contained to the contrary in this Declaration, or the Articles of Incorporation or Bylaws of the Association, for as long as Declarant or its successors or assignees, from time to time, is the Owner of any Lot on which a Residence has not yet been constructed, the Declarant shall be liable for the full Assessments against each Lot so owned; provided, however, the Declarant, in its sole discretion, may elect in any given assessment year, in lieu of payment of the full Assessments for each such lot, to pay the amount of any deficits incurred by the Association for expenses incurred in excess of the amounts collected as Assessments. For

purposes hereof, the existence, or nonexistence of a deficit for the Association shall be determined on cash basis accounting instead of accrual basis. When Declarant has sold and conveyed all its lots in the Properties, Declarant shall not have further liability of any kind to the Association for the payment of Assessments or for funding any deficits of the Association.

*5.15 Association Management Company Sign-Up Fee.* At the discretion of the Association, the Association may engage a third-party entity to provide management services to the Association. In that event, a management company or entity may charge a reasonable one-time "sign-up" or registration fee for each new Member and such fee shall be payable by such new Member to the management company or, in the event that the management company charges the Association such fee, such new Member shall reimburse the Association the cost of such fee. Any failure by the Member to pay such fee shall be treated as a failure to pay an assessment hereunder and shall entitle the Association to the same rights and remedies as any other failure to pay an assessment.

## ARTICLE VI

### CERTAIN RULES AND REGULATIONS

*6.1 Land Use and Building Type.* No lot shall be used except for residential purposes. No business, commercial, industrial, trade, professional or other non-residential activity or use of any nature or kind shall be constructed on any Lot. No building shall be erected, altered, placed or permitted to remain on any lot other than one Residence. Temporary uses by Declarant for model homes, sales displays, parking lots, sales offices, construction offices and other offices, or any one or combination of such uses, shall be permitted. No changes may be made in buildings erected by the Declarant (except if such changes are made by the Declarant) without the consent of the Architectural Review Board as provided herein.

*6.2 Opening Walls, Removing Fences or Landscaping.* No Owner shall make or permit any opening to be made in any Declarant or Association erected wall, except as such opening is installed by Declarant or the Association. No such building wall or masonry wall or fence, or any associated landscaping or buffer improvements shall be demolished or removed without the prior written consent of the Declarant and the Architectural Review Board. Declarant shall have the right but not the obligation to assign all or any portion of its rights and privileges under this Section to the Association.

*6.3 Easements.* Easements for installation, replacement, connection to, disconnection from, and maintenance of utilities are reserved as shown on the recorded Plats covering the Properties and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or

prevent the maintenance of utilities, unless said structure, planting or other material has been so placed by the Declarant or the Association or has been so placed with the permission of the Architectural Review Board. The area of each lot *covered* by an easement and all improvements in the area shall be maintained continuously by the Owner of the lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric and gas utility company, telephone company, the Association, and Declarant and their respective successors and assigns, shall have a perpetual easement for the installation of, replacement of, connection to, disconnection from, and maintenance *of*, all underground, water lines, sanitary sewers, storm drains, gas and electric, telephone and security lines, cables and conduits, under and through the utility and drainage easements, as the case may be, as shown on the Plats. Declarant and its designees, successors and assigns, shall have a perpetual easement for the installation and maintenance of cable, radio, television and security lines within utility easement areas shown on the Plat. All utility lines within the Properties, whether in street rights-of-way or utility easements, shall be installed and maintained underground.

6.4 *Nuisances.* No noxious, offensive or unlawful activity shall be carried on upon or about the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.

6.5 *Temporary Structures.* No structure of a temporary character, or storage shed, utility shed or similar structure, green house, trailer, tent, mobile home, motor home, or recreational vehicle permitted on the Properties at any time or used at any time as a residence, either temporarily or permanently, except by the Declarant during construction. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Residence or on or about any ancillary building, unless approved by the Architectural Review Board, and if approved must be buried or enclosed by a structure approved by the Architectural Review Board.

6.6 *Signs.* No sign of any kind shall be displayed to the public view on the Properties, except any sign used by the Declarant to advertise the company or builder, project, sales or other matters during the construction and sales period. No sign of any kind shall be permitted to be placed inside a home or on the outside walls of the home so as to be visible from the exterior or on any fences on the Properties, nor on the Common Area, nor on dedicated areas, if any, nor on entryways or any vehicles within the Properties, except such as are placed by the Declarant. Provided, however, one (1) discreet, professionally prepared "For Sale" sign of not more than three (3) square feet may be placed on the street side of the lot, subject to prior approval by the Architectural Review Board.

6.7 *Oil and Mining Operation.* No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the *Properties*, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in the Properties. No derrick or other structure designed for use

in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

6.8 *Animals and Pets.* No reptiles, livestock, poultry or animals of any kind, nature or description shall be kept, bred or raised upon the Properties, except for dogs, cats, aquarium kept fish or birds which may be kept, raised and maintained upon the Properties, provided that the same are not kept, raised or maintained thereon for business or commercial purposes or in number deemed unreasonable by the Declarant or the Association, in the exercise of their reasonable discretion. Numbers in excess of two (2) of each type of household pet (other than aquarium-kept fish) shall prima facie be considered unreasonable. Notwithstanding the foregoing, no such reptiles, animals, birds or other pets may be kept, raised or maintained on the Properties under circumstances, which, in the good faith judgment of the Declarant or the Association, shall constitute an unreasonable annoyance, hazard, or nuisance to residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation and enjoyment of other lots or portions of the Properties.

6.9 *Architectural Control.* No building, addition, wall, addition, fence or other structure or improvement of any nature or kind (including mailboxes, landscaping and exterior paint and finish) shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure and landscaping, or composition of the materials used therefor, as may be required by the Architectural Review Board (sometimes referred to herein as the "ARB") have been approved in writing by the Architectural Review Board named below and all necessary governmental permits are obtained. Each building, addition, mailbox or other structure or improvement of any nature, together with the landscaping shall be erected, placed or altered upon the premises only in accordance with specifications and plot plan so approved and applicable governmental permits and requirements. The Architectural Review Board shall have the right, in its sole and absolute discretion, to refuse approval of plans, specifications and plot plans, or any of them, based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any building, wall, fence, mailbox or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Review Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section.

So long as the Class B Membership exists, the ARB shall be appointed by the Declarant. Thereafter, the Architectural Review Board shall be a committee composed of or appointed by the Board of Directors of the Association. During the period in which the Declarant appoints the membership of the ARB, the ARB shall have three (3) members. At such time as the Board of Directors appoints the ARB members, the ARB shall have any number of members, but never less than three (3), as deemed appropriate by the Board of Directors.

The address of the Architectural Review Board shall be the address of the Declarant or the Association, depending on which party appoints its membership. The Board of Directors of the Association and the ARB may employ personnel and consultants to assist the ARB at the expense of the Association. The members of the ARB shall not be entitled to any compensation for services performed pursuant to this Declaration. The Architectural Review Board shall act on submissions to it, or request further information thereon, within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved. The foregoing provisions regarding ARB approval shall not be applicable to the Declarant or to construction activities conducted by the Declarant.

Notwithstanding anything herein to the contrary, the ARB, in its sole and absolute discretion, may grant a variance as to any of the restrictions, conditions and requirements set forth in this Article so long as, in the judgment of the ARB, the noncompliance for which the variance is granted is not of a substantial nature and the granting of the variance shall not unreasonably detract from the use and enjoyment of adjoining lots and the Properties. In no event shall the granting of a variance in one instance require the ARB to grant a similar or other type of variance in any other instance, it being understood that the granting of variances from the restrictions, conditions and requirements of this Article shall be in the sole and absolute discretion of the ARB.

Notwithstanding herein to the contrary, prior to commencing construction of improvements approved by the ARB, the Owner of the lot upon which such improvements shall be installed shall obtain any and all appropriate governmental permits and approvals and shall construct the improvements in compliance with all terms and conditions of such permits and approvals.

The Architectural Review Board and any and all officers, directors, employees, agents and Members of the Association shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever, by reason of or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to provisions of this Section of this Declaration, or for any mistake in judgment, negligence, misfeasance, or nonfeasance related to or in connection with any such decision, approval or disapproval, and each Owner by acquiring title to any lot or interest therein, shall be deemed to have agreed that he or it shall not be entitled to and shall not bring any action, proceeding or suit against such parties.

It shall be the responsibility of each Owner at the time of construction of the Dwelling on that Owner's lot to comply with the approved construction plans for the Surface Water Management System on file with the District pursuant to Chapter 40D-4, F.A.C.

*6.10 Exterior Appearances and Landscaping.* The paint, coating, stain and other exterior finishing colors on all Residences and masonry walls may be maintained as that originally installed, without prior approval of the Architectural Review Board, but prior approval of the Architectural Review Board shall be necessary before any such exterior finishing color is changed.

*6.11 Commercial Trucks, Trailers, Campers and Boats.* No trucks except trucks which (1) have one-half ton capacity or less, (2) have no lettering, (3) have no roof racks or similar racks and (4) do not appear to be commercial trucks (the determination about appearance shall be made by the ARB in its sole discretion) or commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Properties, nor in dedicated areas, unless same shall be parked or stored entirely within and fully enclosed by a garage. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to non-commercial vans for personal use which are in acceptable condition in the sole opinion of the Board of Directors (which favorable opinion may be changed at any time), nor to any vehicles of the Declarant or those required by any builder during construction on any Lot. No on-street parking shall be permitted. In the event that any condition of this covenant is breached, the Declarant or the Association may have said such truck, commercial vehicle, camper, mobile home, motorhome, house trailer, other trailer, recreational vehicle, boat, boat trailer, or horse trailer towed from the Properties at the Lot Owner's so cost and expense, and an individual Assessment may be levied therefor against such Owner.

*6.12 Garbage and Trash Disposal.* No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage and trash containers and their storage areas and the like shall be kept within a garage, placed inside an enclosure approved by the Architectural Review Board, or behind opaque walls attached to and made a part of the Residence on each Lot, and otherwise in conformity with applicable rules, regulations and approvals. Such containers may not be placed out for collection sooner than the night prior to scheduled collection and must be removed within the night of collection.

*6.13 Fences.* No fence, wall or other similar structure shall be erected on any Lot unless the materials therefor and color thereof are in accordance with such standards as may be adopted by the ARB and the location and dimensions thereof are approved by the ARB. The ARB shall have the right to adopt such standards as it deems advisable in regard to the location and height of and colors and materials for any fences installed within the Properties. In no event shall any wall or fence exceed six (6) feet in height.



*6.14 Mailboxes.* No mailboxes or similar improvement shall be installed on any Lot unless the location thereof has been approved by the ARB and the materials therefor and color thereof have been approved by the ARB and are in accordance with such standards for materials and colors as may be adopted by the ARB.

*6.15 No Drying.* To the extent lawful, no clothing, laundry-or wash shall be aired or dried on any portion of the Properties which is visible from the adjacent lots, or the streets, or any other adjoining portion of the Properties.

*6.16 Unit Air Conditioners and Reflective Materials.* No air conditioning units may be mounted through windows or walls or on any roof. Central air conditioning units shall be screened from view by such walls and/or landscaping as may be approved by the ARB. No building shall have any aluminum foil placed in any window or glass door or any reflective substance or other materials (as determined by the ARB in its sole discretion) placed on any glass, except such as may be approved by the Architectural Review Board for energy conservation purposes.

*6.17 Exterior Antennas.* No exterior antennas, microwave antennas, satellite antennas, microwave dish satellite dish, transducers, or signal amplification systems for use in connection with television equipment or the like shall be permitted on any lot or improvement thereon without the prior written approval of the ARB which may be granted or denied in the sole discretion of the ARB, except that Declarant shall have the right to install and maintain community antenna, microwave antenna, dishes, satellite antenna and radio, television and security lines. Notwithstanding anything in this Declaration to the contrary, in the event a provision(s) set out above in this Section 6.17 are inconsistent with any applicable state or federal law, rule or regulation, then the provision(s) set out above shall be automatically modified so that they are consistent with any such applicable state or federal law, rule or regulation.

*6.18 Chain Link Fences.* No chain link fences shall be permitted on any lot or portion thereof, unless installed by Declarant during construction periods or around any retention or detention areas as required by the City of Orlando.

*6.19 Recreational Facilities.* No tree houses, or skate board or bicycle ramps shall be constructed or placed upon the Properties. Basketball goals may be permitted, subject to the approval of the ARB as to the type of equipment to be installed and the location thereof.

*6.20 Garage.* Each Residence shall have a garage large enough to accommodate at least two (2) cars. Garage doors shall remain in operating condition.

*6.21 Residence.* Each Residence constructed on a lot shall have a minimum 900 square feet of heating and cooled living area.

*6.22 Roofs.* The roofs of the main body of all buildings and other structures, including the Residence, shall be pitched. No flat roofs shall be permitted without the approval of the Declarant and the Architectural Review Board. The Declarant and Architectural Review Board may, in their discretion, approve flat roofs on part of the main body of a building if architecturally compatible with the remainder of the roof structure, the particular building on which it is to be constructed and all adjacent residences and other structures. The pitch of all roofs shall be not less than six inches (6") in twelve inches (12") (6/12 vertical/horizontal). All roofs shall be constructed of clay, tile, cement tile, slate, fiberglass, standing seam copper, cedar shake shingle, architectural shingle, or other materials approved by the Architectural Review Board. All roof colors must be approved by the Architectural Review Board in its sole discretion. No pure white, pure black or pure primary colored roofs shall be permitted.

*6.23 Precedence Over Less Stringent Governmental Regulations.* In those instances where the covenants, conditions and restrictions set forth in this Article set or establish minimum standards in excess of the ordinances, regulations and requirements of the City of Orlando and other applicable government authorities, including without limitation, building and regulations, the covenants, conditions and restrictions set forth in this Article shall take precedence and prevail over any such less stringent ordinances, regulations and requirements.

*6.24 Solar Panels.* Solar panels may only be constructed on the roof of a Residence so as not to be visible from the adjacent street (or configured so as to minimize visibly in the case of corner lots) and only after review and approval by the ARB, in its sole and absolute discretion. The ARB reserves the right to promulgate such performance standards and requirements as it may deem desirable in regard to the installation of solar panels. To the extent applicable laws require otherwise, then the terms and conditions of applicable laws shall control.

*6.25 Construction Time.* Unless otherwise approved by the Architectural Review Board in writing, construction of Residences and other improvements must be commenced not later than six (6) months from the date that the Architectural Review Board issues its written approval of the final plans and specifications therefor. If construction does not commence within such six (6) month period the plans and specifications for any proposed construction must once again be reviewed and approved by the Architectural Review Board in accordance with the provisions of this Article and any prior approval of the same by the Architectural Review Board shall no longer be binding on the Architectural Review Board. Upon commencement of construction, such construction shall be prosecuted diligently, continuously and without interruption to completion within a reasonable time; but in no event more than one (1) year from the date of the commencement of such construction, however, the Architectural Review Board shall have the power and authority to extend the period permitted for construction, as aforesaid; provided that the Owner and general contractor involved make written application for such extension stating the reasons for the requested extension of time and provided further that the Architectural Review Board,

in the exercise of its discretion, determines that the request is reasonable and the extension is warranted.

*6.26 Additional Rules and Regulations.* In addition to the foregoing, the Association shall have the right, power and authority, subject to the prior written consent and approval of Declarant, to promulgate and impose rules and regulations governing and/or restricting the use of the Properties and lots, including without limitation rules and regulations relating to the placement or installation of any type of improvement on any lot, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no rules and regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such rules and regulations so promulgated by the Association shall be applicable to and binding upon all the Properties and the Owners thereof and their successors and assigns, as well as all guests and invitees of and all parties claiming by, through or under such Owners.

#### ARTICLE VII ENFORCEMENT

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

*7.2 Enforcement.* The Declarant, the Association, the Association Board of Directors, the Architectural Review Board, each Owner, or any other party as provided herein shall have the right to enforce this Declaration and the covenants, restrictions and provisions hereof including without limitation bringing the actions and filing and foreclosing the liens described in Article V hereto. In addition, the South Florida Water Management District shall have the right to enforce this Declaration with respect to the operation and maintenance of the storm water management system for the Properties. Enforcement of this Declaration and the covenants, restrictions and provisions hereof may be accomplished by any proceeding at law or in equity, including without limitation, an action for damages and injunctive relief. The Association shall have the right to suspend the voting rights and use of the Common Area of any defaulting Owner. Failure to enforce any covenant, restriction or provision hereof shall not be deemed a waiver to do so thereafter. The defaulting and/or offending Owner shall be responsible for all costs incurred in enforcement of this Declaration, including but not limited to, attorney, paralegal and legal assistant fees, costs and expenses, related fees, costs and expense, court costs and witness and expert fees and costs, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

The District shall also have the right to enforce, by a proceeding at law or in equity, the provisions of this Declaration which relate to the maintenance, operation, repair,

and management of the Surface Water Management System for the Properties pursuant to the rules, requirements and permit promulgated by the District.

#### ARTICLE VIII DRAINAGE SYSTEM

*8.1 Drainage Easements.* Drainage flow shall not be obstructed or diverted from drainage easements. The Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to the Association to be necessary to maintain reasonable standards of health, safety and appearance. The rights reserved hereunder shall extend to reasonable use of drainways on a Residence. These easements include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other action reasonably necessary to install utilities and to maintain reasonable standards of health and appearance but shall not include the right to disturb any improvements erected within the Properties that are not located within the specific easement areas designated on the Plat of the Properties or in this Declaration. Except as provided herein, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. The Association shall have the sole control over elevations and slopes within drainage easements and no Owner may alter such elevations except upon written consent of the Association. No person shall alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the South Florida Water Management District and the Association.

*8.2 Maintenance, Operation and Repair of Surface Water or Stormwater Management System.* The Association shall maintain the surface water or stormwater management system within the Properties. Maintenance of the surface water or stormwater management system shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or stormwater management capabilities as permitted by the South Florida Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the South Florida Water Management District. The Association shall operate, maintain, and manage the surface water or stormwater management system in a manner consistent with the South Florida Water Management District Permit No. 48-00992 P requirements and applicable South Florida Water Management District rules, and shall assist in the enforcement of that portion of this Declaration relating to the surface water or stormwater management system. The Association shall adopt standards of maintenance and operation for the surface water or stormwater management system required by this Declaration.

ARTICLE IX  
GENERAL PROVISIONS

9.1 *Municipal Service Taxing Units.* Upon acceptance of any deed or other instrument conveying title to any lot, each Owner thereof acknowledges that each such lot is or may be located in one or more municipal service taxing units (each is an "MSTU") for the purpose of providing street lighting or any other purposes for which an MSTU may be established under Florida law. Each Owner agrees to be subject to and bound by such MSTUs and to pay all fees, charges, surcharges, levies and assessments, in whatsoever nature or form, relating to said districts and/or to the Owner's lot. Further, each Owner agrees that it shall cooperate fully with Declarant or the Association (including joining in any applications for MSTUs) in connection with any efforts of Declarant or the Association to include the Properties in any MSTUs, and to execute any documents or instruments which may be required to do so.

9.2 *Insurance and Fidelity Bonds.* The Association shall obtain and maintain *in effect* casualty and liability insurance and fidelity bond coverage in form and amounts as may be deemed advisable by the Board of Directors of the Association. Additionally, the Association shall obtain and maintain *in effect* "directors and officers insurance" in form and amount as be deemed advisable by the Board of Directors of the Association.

9.3 *Duration; Amendment.* The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years; unless during the last year of its applicability during the initial term or any extension period no less than seventy-five percent (75) of each class of Members at a duly noticed meeting of the Association vote in person or by proxy to terminate this Declaration. Provided, however, no such termination shall void the duty of the Association to maintain the stormwater management system unless specifically allowed by the South Florida Water Management District. Further, no such termination shall have the effect of terminating any easements herein provided or reserved. Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75) of the lot Owners, (provided, however, this Declaration may be amended by Declarant to clarify ambiguities and scrivener's errors). Any such amendment must be recorded in the Public Records of Orange County, Florida.

Notwithstanding any provision to the contrary herein contained, the Declarant shall have the right to amend this Declaration without the consent, approval or joinder of any other person or Owner, except the federal Housing Administration (FHA) or the Veterans Administration (VA), or the Federal National Mortgage Association (FNMA), or the

Federal Home Loan Mortgage Corporation (FHLMC), if such amendment is required in order to cause this Declaration to comply with applicable FHA, VA, FNMA and/or FHIMC requirements. Such an amendment to this Declaration, the Articles of Incorporation or Bylaws of the Association needs to be signed and acknowledged *only* by the Declarant and need not be approved by the Association, lot Owners or Lienors or mortgagees of lots, whether or not elsewhere required for an amendment.

Any amendment to this Declaration which would alter the Surface Water Management System for the Properties beyond maintenance in its original condition, including the water management portions of the Common Area, must have the prior approval of the District. Notwithstanding any provisions hereof to the contrary, the Declarant may, at its sale discretion and without consent being required of anyone, modify, amend, or repeal this Declaration at any time prior to the dosing of the sale of the first lot, provided said amendment modification, or repeal is in writing and properly recorded in Orange County, Florida.

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

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

*9.6 Transferability of Declarant's Rights and Interests.* It is specifically understood and agreed that Declarant might (but will not necessarily) sell all or a portion of the Properties, and in connection therewith, Declarant might assign to a third party all rights and obligations of Declarant hereunder. In such event, the successor declarant shall be the Declarant under this Declaration and shall have all of the rights, and all of the obligations of a Declarant which are set forth herein.

*9.7 Annexation of Additional Land.* Other than annexation of the Additional Properties while Declarant is a Class B Member as provided in and governed by Section 2.2 above, additional residential property and common area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members.

*9.8 Effective Date.* This Declaration shall become effective upon its recordation in the Public Records of Orange County, Florida.

*9.9 FHA/VA Approval.* Notwithstanding anything herein to the contrary, as long as there is a Class B Membership in the Association, the following actions will

require the prior approval of the FHA or the VA: annexation of additional properties; mergers and consolidation; mortgaging and/or dedication of Common Areas; dissolution; and amendment of this Declaration of Conditions, Covenants, Easements and Restrictions (except amendments by Declarant to clarify ambiguities and scrivener's errors).

*9.10 Conflict.* This Declaration shall take precedence *over* conflicting provisions in the Articles of Incorporation and Bylaws of the Association and the Articles shall take precedence over the Bylaws.

*9.11 Standards for Consent, Approval, Completion, Other Action and Interpretation.* Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant, the Association or the Architectural Review Board, such consent, approval or action may be withheld in the sole and absolute discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Declarant or the Association shall be deemed completed or substantially completed when so determined, in the discretion of the Declarant or Association, as appropriate.

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

*9.13 Covenants Running With The Land.* ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF SECTION 9.3 HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTIES. IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR

APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

*9.14 Dissolution of Association.* In the event of a permanent dissolution of the Association, (i) all assets of the Association shall be conveyed to a non-profit Organization with similar purposes and acceptable to the South Florida Water Management District, or (ii) all Association assets may be dedicated to the city government of the City of Orlando, Florida or any applicable municipal or other governmental authority. Said successor non-profit organization or governmental entity shall pursuant to this Declaration provide for the continued maintenance and upkeep of the Common Area, including without limitation the stormwater management system, the Properties and such other property as may be contemplated herein.

#### ARTICLE XVIII

##### DISCLAIMER OF LIABILITY OF ASSOCIATION

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS") THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

- (a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;
- (b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, SEMINOLE COUNTY



AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

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

EACH OWNER (BY VIRTUE OF ACCEPTANCE OF TITLE TO SUCH OWNER'S LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL ALSO INURE TO THE BENEFIT OF THE DECLARANT AND ALL PARTIES RELATED THERETO, ALL OF WHICH SHALL BE FULLY PROTECTED HEREBY.

EXECUTED as of the date first above written.

CENTEX HOMES, a Nevada general partnership

Print Name: Patrick Knight

Patrick Knight

Print Name:

S. Woodworth  
2002

By: Centex Real Estate Corporation a Nevada corporation, its managing general partner

estate Corporation, corporation, its managing partner

By: Ralph E. Smith  
Development Manager

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 13th day of July, 1998, by Ralph E. Smith, Jr., as Development Manager of Centex Real Estate Corporation, a Nevada corporation, on behalf of the corporation, in its role as managing general partner of Centex Homes, a Nevada general partnership. He is personally known to me and did not take an oath.

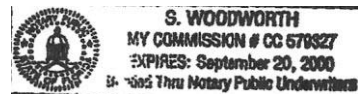
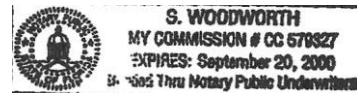
S. Woodworth

Print Name:

Notary Public, State of Florida

Commission No.:

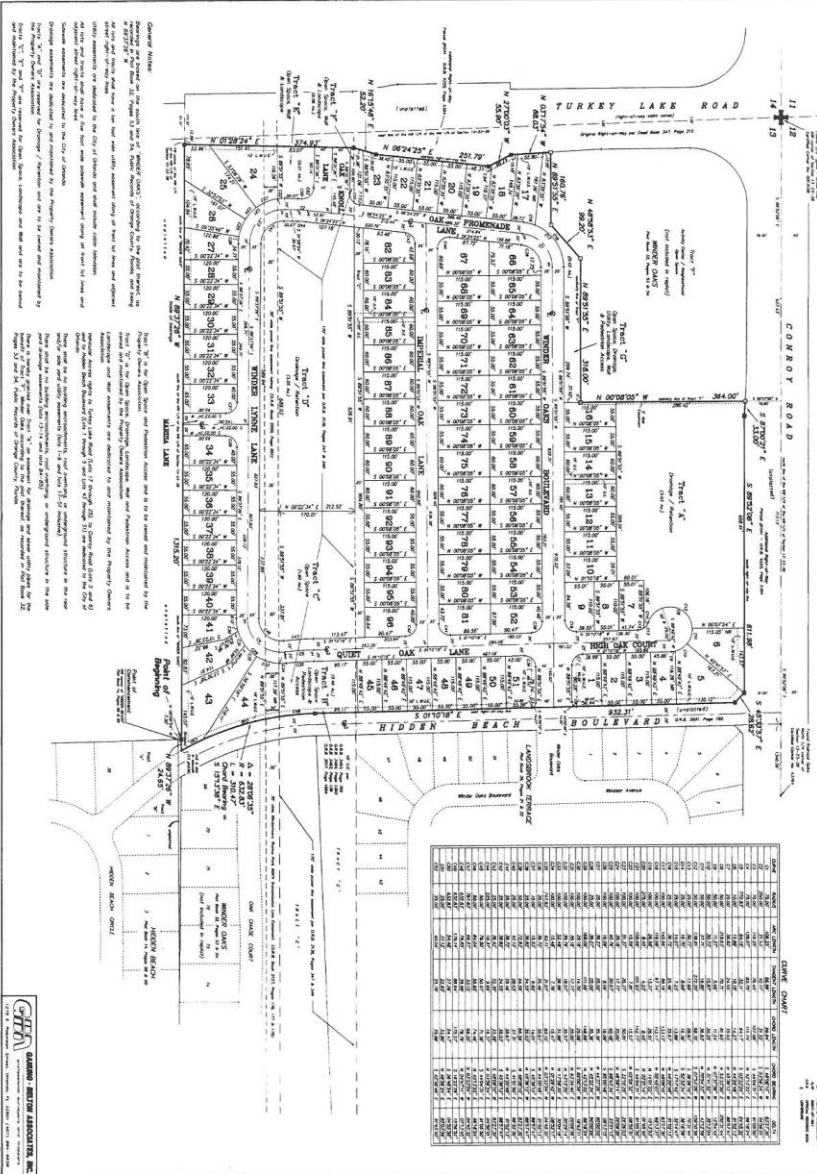
My Commission Expires:



# PHILLIPS OAKS

A partial replat of "WINDER OAKS" according to the plat thereof,  
as recorded in Plat Book 32, Pages 53 and 54, Public Records of Orange County, Florida  
Section 13, Township 23 South, Range 28 East  
City of Orlando, Orange County, Florida

Sheet 2 of 2    **PLAT 40**    PAGE 111



TRACT	LOT	OWNER	AREA	REMARKS
TRACT 1	1	...	...	...
	2	...	...	...
	3	...	...	...
	4	...	...	...
	5	...	...	...
	6	...	...	...
	7	...	...	...
	8	...	...	...
	9	...	...	...
	10	...	...	...
TRACT 2	11	...	...	...
	12	...	...	...
	13	...	...	...
	14	...	...	...
	15	...	...	...
	16	...	...	...
	17	...	...	...
	18	...	...	...
	19	...	...	...
	20	...	...	...

**Owner's Notice**

The undersigned, the owners of the above described property, hereby certify that the information herein is true and correct and that the same is in accordance with the laws of the State of Florida and the rules and regulations of the City of Orlando. The undersigned further certify that the same is in accordance with the laws of the State of Florida and the rules and regulations of the City of Orlando. The undersigned further certify that the same is in accordance with the laws of the State of Florida and the rules and regulations of the City of Orlando.

**City of Orlando, Orange County, Florida**