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DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS  
FOR WHITTIER OAKS

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**DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS  
FOR WHITTIER OAKS**

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THIS DECLARATION is made this 14<sup>th</sup> day of February, 1990, by THE KENNEDY GROUP, LTD., a Florida limited partnership, which declares that the real property described in Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") set forth below.

The Association, as hereinafter defined, is not a condominium association and therefore shall not be affected by the provisions of Chapter 718, Florida Statutes. Further, the expressed intent of this Declaration is that the substantive rights hereunder shall not be retroactively affected by legislation subsequent to the date of execution.

**ARTICLE I**

**DEFINITIONS**

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

- (a) "Assessments" shall mean those payments due pursuant to Article V, whether General or Special (as hereinafter defined), or a combination thereof.
- (b) "Association" shall mean and refer to WHITTIER OAKS HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit, which is to be incorporated.
- (c) "Common Areas" shall mean and refer to the real property legally described in Exhibit "B" attached hereto and incorporated herein by reference, and any other interest in real property acquired by the Association and deemed Common Area either in this Declaration or in the instrument of conveyance, together with any improvements on such tracts including without limitation all structures, recreational facilities, offstreet parking areas, private streets, sidewalks, street lights, and entrance features, but excluding any public utility installations thereon.

- (d) "Community Association" shall mean and refer to Terramar Community Association, Inc., a Florida corporation not-for-profit.
- (e) "Developer" shall mean and refer to THE KENNEDY GROUP, LTD., a Florida limited partnership, its successors and assigns, if such successor or assignee acquires the undeveloped portion of the Properties and is designated as such by THE KENNEDY GROUP, LTD., a Florida limited partnership. The Developer may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Developer as to those rights which may have been assigned to them.
- (f) "General Assessments" shall mean and refer to Assessments levied to fund expenses applicable to all Members of the Association, but shall not include Assessments collected for the Community Association.
- (g) "Institutional Lender" shall mean and refer to any person or entity (i) holding a mortgage encumbering a Lot, which (ii) in the ordinary course of business makes purchases, guarantees or insures mortgage loans, which (iii) is not owned or controlled by the Owner of the Lot encumbered, and which (iv) notifies the Association of same by written notice sent, certified mail, return receipt requested, to the Association's office. An Institutional Lender may include, but is not limited to, a federal or state chartered bank or savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company; the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Developer, whether or not such holder would otherwise be considered an Institutional Lender.
- (h) "Lot" shall mean and refer to any Lot and any improvements thereon in the Properties and any Lot and any improvements thereon shown upon any resubdivision of any plat of the Properties or any portion thereof.

- (i) "Owner" or "Member" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot.
- (j) "Properties" shall mean and refer to all such Properties, and additions thereto (which additional Properties may or may not be contiguous to the real property described in Article II herein), as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (k) "Special Assessment" shall mean and refer to Assessments levied in accordance with Article V, Section 4 of this Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Broward County, Florida and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. Developer's Right to Add Additional Property to or Withdraw Property. Developer shall have the right, in its sole discretion, to add additional property (which may or may not be contiguous to the real property described in Section 1) to the scheme of this Declaration. Developer shall also have the right to withdraw property from the scheme of this Declaration subject to the approval of Broward County. The addition or withdrawal by Developer shall not require the consent or joinder of the Association, or any Owner or mortgagee of any of the Properties. Upon addition of any property to the scheme of this Declaration, the owners of such additional property shall be and become subject to this Declaration, including assessment by the Association for their prorata share of the Association expenses. The addition of lands as aforesaid shall be made and evidenced by filing in the Public Records of Broward County, Florida, a supplemental declaration with respect to the lands to be added.

## ARTICLE III

### WHITTIER OAKS HOMEOWNERS' ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot in the



Properties shall be a Member of the Association. Notwithstanding anything to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of said Association.

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

Class A Class A Members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised by one such Member as specified in the Articles of Incorporation of the Association but in no event shall more than one vote be cast with respect to any such Lot.

Class B The Class B Member shall be the Developer. The Class B Member shall be entitled to one vote for each Lot in which it holds the interest required for membership by Section 1; provided, however, that notwithstanding any provision to the contrary, the Developer shall have the right to elect the entire board of directors of the Association until such time as Developer no longer holds the title to seventy-five percent (75%) of the Lots, including Lots on any additional property which may have been brought under the provisions hereof by recorded supplemental declarations, as set forth in Article II hereof, or until May 1, 1999, whichever occurs first. Thereafter, Developer shall have the right to appoint one director so long as the Developer owns any Lot in the Properties. The Developer may waive its right to elect one or more directors by written notice to the Association, and thereafter such directors shall be elected by the Members. When the Developer no longer owns any Lot within the Properties, all of the directors shall be elected by the Members in the manner provided in the Bylaws.

Within 120 days after the date the Developer no longer holds title to seventy-five percent (75%) of the Lots, Developer shall call a meeting, as provided in the Bylaws for Special Meetings, to advise the membership of the termination of Class B status and to provide for the turnover of control of the board of directors to the Owners.

Section 3. Merger or Consolidation. Upon a merger or consolidation of any association referred to herein with any other association, the Properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the Properties rights and obligations of another association may, by operation of law, be added to the Properties, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration.

Section 4. Termination of the Association. In the event the Association is terminated or shall no longer continue to exist for any reason whatsoever, the Terramar Community Association, Inc. will maintain all Common Areas and is hereby authorized to assess all Owners for the costs of such maintenance. In the event of dissolution of the Association, for whatever reason other than merger or consolidation as provided for herein and the inability of the Terramar Community Association, Inc., to assume responsibility for the maintenance of the Common Areas, any Owner may petition the Circuit Court of the Seventeenth Judicial Circuit of the State of Florida for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved association, the Property, and Common Areas.

Section 5. Common Areas.

A. Ownership. On or before conveyance by Developer of the first Lot which it owns in the Properties (or sooner at the Developer's option), the Developer or its successors and assigns shall convey and transfer the record fee simple title to the Common Areas to the Association and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record.

B. Maintenance. Commencing with the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas and any improvements or personal property in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas, if any, and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. Taxes, if any, shall be prorated between Developer and the Association as of the

date of such recordation. The Association shall at all times maintain in good repair, and shall replace as scheduled any and all improvements situated on the Common Areas (upon completion of construction by Developer), including, but not limited to, all recreational facilities, landscaping, paving, drainage structures, street lighting fixtures, signs, irrigation systems, sidewalks, and other structures, except public utilities, all such work to be done as ordered by the board of directors of the Association acting on a majority vote of the board members. In addition, the Association shall maintain Common Areas to the edge of the pavement of any collector or arterial street that is adjacent to Terramar Community Association, Inc. property or public land or roads. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article V hereof. Such assessments shall be against all Lots as set forth in Article V, Section 1; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted rules and regulations of the Association shall be levied as a special assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas.

C. Developer's Right to Common Areas. Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent Properties and for the purpose of construction of any facilities on the Common Areas that Developer elects to build.

D. Street Lighting. The Association shall have the obligation for maintenance of any street lighting facilities from the date of recording this Declaration or from the date of installation of the street lighting, whichever occurs first. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. In the event the Developer, in its sole discretion, elects to install such street lighting, Developer shall be entitled to all rebates or refunds of the installation charges and the Association hereby assigns such rebates or refunds to Developer and the Association shall forthwith pay same to the Developer.

#### Section 6. Lot Maintenance.

Lawn and Exterior Maintenance. The Association shall provide maintenance of all lawn areas located within the Properties, including the Lots. Lot irrigation systems, except the

individual Lot irrigation system pumps, shut off valves and timers, shall be maintained by the Association. The Association may assess individual Lot Owners for the expenses related to their Lot's irrigation system. The obligations of the Association as described herein shall extend only to the landscaping as originally installed by the Developer, or its in kind replacement. Each individual Lot Owner shall provide exterior maintenance for their building as follows: paint, repair, replace and care for garage doors, fences and exterior building surfaces. In addition, each individual Lot Owner shall maintain and repair his front residence door, windows, screening, driveway, entrance walk, patio deck, light fixtures, mail box, swimming pool, pool deck, roof, gutters and downspouts; provided, however, that the Association reserves the right to maintain such areas if, in its sole discretion, the Association deems it desirable. If requested by an Owner, the Association may, at its option, provide exterior maintenance on Owner installed improvements including landscaping, fences, sprinkler systems, swimming pools and pool decks, and levy upon the Owner on whose lot such work is performed a special assessment equal to the cost of such additional work. The board of directors of the Association shall estimate the cost of any such exterior maintenance for each year and shall fix the assessments for each year, but said board shall, thereafter, make such adjustment with the Owners as is necessary to reflect the actual cost of such exterior maintenance. Such assessments for exterior maintenance shall be against all Lots as set forth in Article V hereof (except for the exterior maintenance specifically requested by an Owner); provided, however, that the cost of any exterior maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted rules and regulations of the Association, shall be levied as a special assessment against such Owner. In addition, an Owner may be specially assessed for any damage or injury caused by the negligent conduct of such Owner to any easement areas granted to provide access to perform the exterior maintenance. Nothing contained herein shall obligate the Association to make repairs or replacements of improvements damaged by fire, windstorm, hail or other casualty; such repairs or replacements shall be made by the Owner of the Lot which suffers damage. The Association shall not be obligated to repair any mechanical equipment (e.g., air conditioning unit) which is part of any residence located on any Lot, nor shall it be responsible for any repairs which could be made pursuant to the terms of any warranty covering a residence.

Section 7. Powers. In addition to the powers provided in its Articles of Incorporation, the Association, through the action of its board of directors, shall have the power, but not the obligation, to acquire, by purchase, lease or otherwise, one or more dwelling units for occupancy by its employees or indepen-

dent contractors, and to enter into an agreement or agreements from time to time with one or more person, firms or corporations for management services.

Section 8. Rules and Regulations. The Association, through its board of directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines, which shall be levied as a Special Assessments as provided in Article V, Section 4, of this Declaration, and suspension of the right to vote and the right to use the recreational facilities. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association. In addition, the Association, through the Board, may, by contract or other agreement, enforce court ordinances or permit the City of Parkland to enforce ordinances on the Properties for the benefit of the Association and its Members.

#### ARTICLE IV

#### ARCHITECTURAL CONTROL BOARD

Section 1. Architectural Control Board. The Architectural Control Board ("ACB") shall be a standing committee of the Association. The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section and other provisions of this Declaration. The initial rules and regulations of the Architectural Control Board are set forth on Exhibit "C" attached hereto and made a part hereof, and any amendment or modification of such rules and regulations shall not be deemed an amendment to this Declaration and need not be recorded in the Public Records. The initial Architectural Control Board shall be composed of: Timothy R. Kelly and Donald Moss, and the address of the Board shall be 2001 West Sample Road, Suite 415, Pompano Beach, Florida 33064. When all residential dwelling units proposed to be constructed within the Properties have been conveyed to Owners, the Board shall be increased to three members and such members shall be designated by the Directors of the Association. In the event of death, disability or resignation of any member of the Board, the remaining Members shall have full authority to designate a successor. The members of the Board need not be members of the Association and shall not be entitled to any compensation for services performed pursuant to this Section. A majority of the Board may take any action the Board is empowered to take, may designate a representative to act for the Board, and may employ personnel and consultants to act for it. This Section 1 shall not apply to the Developer or any other entity acquiring one (1) or more Lots in the Properties for the purpose of constructing residences.

Section 2. Owner to Obtain Approval. No Owner shall make, install, place, or remove any building, fence, screen enclosure, porch, wall, patio area, pool, spa, landscaping or any other alteration, addition, improvement, or change of any kind or nature to, in or upon any portion of the Common Areas or the Owner's Lot, unless the Owner first obtains the written approval of the Association to same, except that such approval shall not be required for any maintenance or repair which does not result in a material change in any improvement including the color of same.

Section 3. Association's Consent. Any request by an Owner for approval by the ACB to any addition, alteration, improvement, or change shall be in writing and shall be accompanied by plans and specifications or other details as the ACB may deem reasonably necessary in connection with its determination as to whether or not it will approve same. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable development of any Lot but may be withheld due to aesthetic considerations. Notwithstanding the foregoing, the ACB may withhold approval for upgraded landscaping to be installed by an Owner within that portion of his Lot to be maintained by the ACB solely due to maintenance and related considerations, and the ACB may withhold approval for construction of swimming pools due to nuisance and related considerations (such as the likelihood of interference with other residents of the Properties during construction). The ACB shall notify the Owner of its approval or disapproval by written notice within thirty (30) days after request for such consent is made in writing to the ACB, and in the event the ACB fails to disapprove any request within such thirty (30) day period, the consent shall be deemed approved and upon request the ACB shall give written notice of such approval. In consenting to any plans or specifications, the ACB may condition such consent upon changes being made. If the ACB consents to any plan and specifications, the Owner may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the ACB, and subject to any conditions of the ACB's approval.

Section 4. No Liability. The ACB shall not be liable to any Owner in connection with the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the ACB shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the ACB, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the ACB shall not be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

Section 5. Remedy for Violations. In the event this section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the ACB, or is not made in strict conformance with any approval granted by the ACB, the ACB shall specifically have the right to demand that an Owner stop, remove and/or alter any alteration, addition, improvement or change in a manner which complies with the requirements of the ACB, and the ACB may pursue injunctive relief or any other legal or equitable remedy available to the ACB in order to accomplish such purposes. Any action to enforce this Section must be commenced within one (1) year after the date of the violation. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration.

Section 6. ACB and the Community Association. Notwithstanding anything to the contrary herein, nothing contained in this Article IV of this Declaration shall be construed in such a manner as to limit the rights of the Community Association more particularly described in the Community Association Declaration, and the ACB shall accept any right and/or responsibilities delegated to it by the Community Association as required by the Community Association Declaration.

## ARTICLE V

### ASSOCIATION-- COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for the Assessments. The Developer, for each Lot owned by it within the Properties, hereby covenants, and 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, shall be deemed to covenant and agree to pay to the Association annual, General Assessments for general expenses as outlined in Section 2 hereof, and Special Assessments as provided in Section 4 hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. The General and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Assessments as to any Lot not containing an improvement shall be twenty-five percent (25%) of the Assessments for a Lot containing an improvement (excluding that portion of the Assessments due the Community Association) plus the amount due the Community Association that is attributable to such Lot. Assessments shall be assessed against the Lots as follows:

Lots 1 - 72, Block A, Terramar One: .647% per Lot

Lots 1 - 22, Block B, Terramar One: .647% per Lot

Lots 1 - 9, Block C, Terramar One: .647% per Lot

Lots 73 - 131, Block A, Terramar One: .565% per Lot

The full Assessment as to each Lot upon which an improvement is constructed shall commence on the first day of the full calendar month after a certificate of occupancy for the improvement is issued, or upon the conveyance of the Lot by the Developer or upon the first occupancy of the improvement, whichever occurs first.

Section 2. Purpose of Assessments. The General Assessments levied by the Association shall be used exclusively for the general expenses of the Association. General expenses are any and all charges for the maintenance of the Common Areas and exterior maintenance (except that specifically requested by an Owner) as provided in Article III, and expenses related with operating the Association for the Members of the Association and their families residing with them, and their guests and tenants, including, but not limited to: (1) expenses of administration, maintenance, repair or replacement of the Common Areas; (2) reasonable reserves deemed necessary by the Board of Directors for repair, replacement or addition to the Common Area; and, expenses agreed upon as General Expenses by the Association. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met.

Section 3. Date of Commencement of General Assessments; Due Dates. The General Assessments shall commence on the first day of the month next following the recordation of this Declaration. Thereafter, the Board of Directors shall fix the date of commencement and amount of the Assessment against each Lot at least thirty (30) days in advance of the commencement period. The General Assessments shall be payable in advance in quarterly installments, or as otherwise determined by the Board of Directors of the Association.

The amount of the General Assessment may be changed at any time by the Board from that originally adopted or that which is adopted in the future. The Assessment shall be for the calendar year, but the amount of the General Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.



Section 4. Special Assessments. A Special Assessment may be levied against one or more Lots for the following:

(a) special services to a specific unit or units which services are requested by the Owner(s) thereof pursuant to Section 6 of Article III.

(b) charges for expenses of the Association which are not general expenses but which are attributable to a specific unit or units and which are designated as a special charge.

(c) reimbursement for damages caused by an Owner, Owners, their family members, guests, invitees or tenants.

(d) capital improvements relating to the Common Area.

(e) late charges, user fees, fines and penalties.

(f) any other charge which is not a general expense.

(g) any general expense, which exceeds the amount budgeted, or any emergency expense which exceeds the amount of any reserves or other Association funds.

The Board of Directors shall fix the amount and due date of any Special Assessment by resolution, which resolution shall also set forth the Lot or Lots subject to such Assessment.

Section 5. Trust Funds. The portion of all General Assessments collected by the Association as reserves for future expenses, and the entire amount of all Special Assessments collected for capital improvements shall be held by the Association in trust for the owners of all Lots, as their interest may appear.

Section 6. Developer Payment of Assessments. Notwithstanding any provision that may be contained to the contrary in this instrument, for so long as Developer is the owner of any Lot, the Developer shall not be liable for Assessments against such Lot, provided that Developer shall be responsible for all Association expenses in excess of the Assessments received from other Owners (such amounts received from other Owners shall include, but shall not be limited to, working capital contributions paid by such other Owner), and other income received by the Association. In no event shall Developer be required to fund reserves allocated to any Lot owned by the Developer. Developer may, at any time, commence paying such Assessments as to all Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association.

Section 7. Working Capital Fund. Developer shall establish a Working Capital Fund for the initial months of operation of the

Association, which shall be collected by the Developer from each Lot purchaser at the time of conveyance of each Lot to such purchaser in an amount equal to two (2) months of the annual assessment for each Lot. Each Lot's share of the Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale of each Lot. The purpose of this fund is to assure that the Association's board of directors will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the board of directors. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

Section 8. Roster; Notice; Certificate. 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.

The Association shall, upon demand at any time, furnish to any Owner liable for an Assessment a certificate in writing signed by an officer or agent of the Association, setting forth whether such Assessment has been paid as to the Lot owned by the Owner making request therefor. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid.

Section 9. Collection of Assessment; Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of the Association. If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the default Owner a late fee of ten percent (10%) of the amount of the Assessment, or Ten and No/100 Dollars (\$10.00), whichever is greater, plus interest at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay Assessments to the Association for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the regular Assessments, for all special Assessments, and/or for all other Assessments payable to the Association. If the Assessments and any late fees and interest are not paid on the date when due, then such Assessments and any late fees and interest shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such

property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for unpaid Assessments and late fees with respect to such Lot. In any voluntary conveyance, the Grantee shall be jointly and severally liable with the Grantor for all unpaid Assessments made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property on which the Assessment and late fees are unpaid, or may foreclose the lien against the property on which the Assessment and late fee are unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such Assessment and late fee, attorney's fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and late fee as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorney's fees in connection with any appeal of any such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the Assessments and late fees hereunder.

Section 10. Subordination of the Lien to Mortgages. The lien of the Assessment provided for in this Article IV shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid Assessments. An institutional lender is defined as a state or federal bank or savings and loan association, an insurance company, trust company, savings bank, credit union, real estate or mortgage investment trust, mortgage broker, mortgage banker, private mortgage insurance company, the United States Veterans' Administration, United States Federal Housing Administration or a lender generally recognized in the community as an institutional lender. Any assignee of a mortgage originated by an institutional lender shall be deemed an institutional lender for the purposes of said mortgage. The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and any similar institutions created in the future shall be deemed institutional lenders, regardless of where any mortgage held by any of them originated. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by 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 lien of any Assessment becoming 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 10, shall be deemed to be an Assessment divided equally among, payable by, and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 11. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from the Assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

A. Any easement or other interest therein dedicated and accepted by a public authority and devoted to public use or to Terramar Community Association, Inc.

B. All Common Areas as defined in Article I hereof.

C. All Properties exempt from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

## ARTICLE VI

### EASEMENTS

Section 1. Members' Easements. Each Member of the Association and each tenant, agent and invitee of such Member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, driveways and roads from time to time laid out on the Common Areas, for use in common with all such Members, their tenants, agents and invitees. The portion of the Common Areas not used, from time to time, for walkways and/or driveways shall be for the common use and enjoyment of the Members of the Association and each Member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts and for the use of same in such manner as may be regulated by the Association. The foregoing easements are 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 Areas and facilities in compliance with the provisions of this Declaration and with any restrictions on the various plats of the Properties from time to time recorded.

- (b) The right of the Association to suspend the voting rights and right to use the Common Areas and facilities by an Owner 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 its lawfully adopted and published rules and regulations.
- (c) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon.

The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, subject to regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations.

Section 2. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Utility Easements. Public utilities may be installed underground in the Common Areas when necessary for the service of the Properties or additional lands for which Developer holds an option to purchase, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 4. Public Easements. Firefighters, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

Section 5. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Area or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; Provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Association.

Section 6. Zero-Lot-Line Easement. If a residence is constructed within one foot of the side lot line of any Lot, the owner of the adjoining lot shall have the right to use the face of the wall facing said adjoining lot for purposes approved by

the Association. Said approval shall be in writing and shall be in the form approved by the Association. In order to allow the owner of any residence which is located within one foot of the side lot line of any Lot to maintain the wall facing the adjoining Lot, said Owner shall have an easement over such adjoining Lot, with the right to ingress and egress during reasonable times of day, for the purpose of maintaining and repairing the wall facing said adjoining Lot. There shall also be a three foot (3') easement for underground footings, roof eaves, overhangs, gutters, other protrusions, and underground pipelines and for water run-off over said adjoining lot. Said roof eaves, overhangs shall be guttered and may not project more than eighteen inches onto said adjoining lot. The easements created in this section shall be permanent, perpetual and exclusive to the Owners involved.

Section 7. Additional Easement. The Developer (during any period in which the Developer has any ownership interest in the Properties) and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Properties and to grant access easements and to relocate any existing access easements in any portion of the Properties as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Properties, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

Section 8. Association Easement. For the purpose solely of performing its obligations under the provisions of this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the rights, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day except Sunday. In the event of an emergency, such right of entry shall exist without notice on any day, including Sunday. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the exterior maintenance aforementioned. In addition, the owner of the adjoining property (not within the Properties) may grant the Association, its duly authorized agents, employees or independent contractors, such easements for ingress and egress across its Properties to effect and perform its duties. In such event, the Association shall indemnify the adjoining property owner for any damage or injury to the easement areas caused by the use thereof or access to perform the exterior maintenance.

Section 9. Construction Easement. Each Lot and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, including roof structures which overhang and encroach upon the servient Lot or Common Area, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to construct improvements, and to maintain, repair and restore any improvements located on the dominant tenement, provided, however that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvements, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvement, material or other obstacle was placed in or over the easement area. In the event an Owner fails to move such improvement, material or obstacle, then the Association may remove same and the expense of such removal shall be charged to the Owner as an assessment.

## ARTICLE VII

### GENERAL RESTRICTIVE COVENANTS

Section 1. Applicability. The provisions of this Article VI shall be applicable to all Lots situated within the Properties.

Section 2. Land Use. No Lot shall be used except for residential purposes. Temporary uses for model homes, parking lots, construction trailer, construction storage areas and/or sales offices shall be permitted for the Developer.

Section 3. Change in Buildings. No Owner shall make or permit any structural modification or alteration of any building except with the prior written consent of the Architectural Control Board or its successor, and such consent may be withheld if, in the sole discretion of the party denying the same, it appears

that such structural modification or alteration would adversely affect or in any manner endanger other dwelling units. No building shall be demolished or removed without the prior written consent of both the Board of Directors of the Association and Owner(s) of the immediately adjoining building(s). In the event any building is demolished or removed, if replaced said building shall be replaced with a unit of similar size and type within twelve (12) months. In the event the building is not replaced, then the Lot shall be sodded and maintained as a landscaped Lot.

Section 4. Building Location. Buildings shall be located in conformance with the Zoning Code of the City of Parkland, Florida and any specific zoning approvals thereunder, or as originally constructed on a Lot by Developer or its successor or assignee. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so under the Zoning Code, said variance or special exception is hereby adopted as an amendment to this Section and any future variance of special exception as to building location or other item shall constitute an amendment of this Section.

Section 5. Landscaping of Easements. In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the recorded plat(s) of the Properties. Within these easements no structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Properties and the Association, and their successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots and/or the Common Areas under and through the utility easements as shown on the plat(s) and under and through such portions of the rear of each Lot beyond the building, as such buildings may from time to time be located. Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the subdivisions, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

Section 6. Nuisances. No noxious or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon



which may be or may become an annoyance or nuisance to the neighborhood or any other Lot Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted to the Association for a decision in writing, which decision shall be final. In addition, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot. Owner is responsible to operate the Lot irrigation system in order to maintain the landscaping. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the adjoining Properties. Provided, however, any portion of the Properties not yet developed by Developer, shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition.

Section 7. Temporary Structures. No structure of a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot either temporarily or permanently, except that the Developer may park a trailer on the Properties during periods of construction.

Section 8. Signs. Except for one sign of not more than one square foot used to indicate the name of the resident, no "for rent", "for sale" or other sign of any kind shall be displayed to the public view on the Properties, without the prior consent of the Board of Directors of the Association and thereafter the Terramar Community Association, Inc. or Architectural Control Committee thereof; provided that the Developer, so long as it has not sold all of its Lots in the Properties, shall retain the right to disapprove any signs displayed to the public view. Notwithstanding the foregoing, this Section shall not apply to the Developer for as long as it holds title to any portion of the Properties.

Section 9. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

Section 10. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lots except that dogs, cats, or other household pets may be kept, but no more than a total of two (2); provided, however, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any property located adjacent to the Properties, may be expelled and removed from the Properties by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall be confined to a leash whenever they are outside a Unit.

Section 11. Visibility at Intersections. No obstruction to visibility at street intersections shall be permitted.

Section 12. Commercial Trucks, Trailers, Campers and Boats. No trucks or commercial vehicles, campers, mobile homes, motor-homes, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment, including station wagons, which bear signs or shall have printed on same some reference to any commercial undertaking or enterprise, or vehicles of more than six feet (6') in height. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services.

Section 13. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard except as originally installed by Developer or its assignee.

Section 14. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in a walled in area; provided, however, that the requirements from time to time of the County of Broward for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 15. Drying Areas. No clothing, laundry or wash shall be aired or dried on any portion of any Lot in an area exposed to view from any other Lot. Drying areas will be permitted only in locations approved by the Architectural Control Board and only when protected from view by screening or fencing approved by the Architectural Control Board. No prohibition of outside clotheslines or drying areas shall be permitted; provided that nothing herein shall prohibit the Architectural Control Board

from enacting reasonable regulations that do not have the effect of prohibiting such drying areas or clotheslines as to any Lot.

Section 16. Gas Containers. No gas tank, gas container, or gas cylinder (except those placed by the Developer or approved by the ACB in connection with the installation of swimming pools and/or barbecues) shall be permitted to be placed on or about the outside of any house or any ancillary building, and all such items (except those placed by the Developer in connection with the installation of swimming pools and/or barbecues) shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the Architectural Control Board.

Section 17. Communication Equipment. Except as may be installed by the Developer or as may be permitted by the Architectural Control Board, no antennas, satellite dishes, aerials, or lines, wires or other devices for communication or transmission of current shall be placed on any portion of the Properties. In no event, however, shall lines or wires for communication or the transmission of current be constructed placed, or permitted to be placed within the Common Areas unless the same shall be installed by the Association for the common use of all Members, and shall be protected cables, and any of said lines or wires which are not located in buildings shall be constructed or placed and maintained underground. Any line or wire installations permitted by the Architectural Control Board pursuant to this Section shall be protected cable and shall only be installed underground.

Section 18. Drainage. No change in any drainage pattern of any Lot, after issuance of a certificate of occupancy for the dwelling thereon, or of any portion of the Properties, after all contemplated improvements have been completed, shall be made which will cause undue hardship to an adjoining Lot or adjoining property with respect to natural runoff of rain water.

Section 19. Leasing. No lease may be made for less than a six (6) month period, nor shall a Lot be leased more than two (2) times during any twelve (12) month period. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing on his Lot, and for all guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of

the provisions of this Declaration, of the Articles, or the By-laws, by and resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and the Owner shall be subject to the same liability as if such violation was that of the Owner.

With respect to to any tenant or any person present on any Lot or any portion the Properties other than an Owner and the members of his immediate family permanently residing with him on the Lot, if such person materially violates any provision of this Declaration, the Articles or Bylaws, or if such person is the source of annoyance to the residents of the Properties, or willfully damages or destroys any Common Areas or personal property of the Association, then upon written notice by the Association, such person shall be required to immediately leave the Properties and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Properties and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

## ARTICLE VIII

### OWNERSHIP IN TERRAMAR

Section 1. Ownership in Terramar. By taking title to a Lot, each Owner becomes subject to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions for Terramar. Among other things, that document provides that an Owner shall become a Member of the Terramar Community Association, Inc., the master association at Terramar; shall acquire certain property rights to Common Areas within Terramar; shall become subject to the assessments of the Terramar Community Association, Inc., which assessments, except special assessments, may be collected by Whittier Oaks Homeowners' Association upon the request of the Terramar Community Association, Inc.

Section 2. Membership in Terramar Community Association, Inc. In accordance with the provisions of the Articles of Incorporation of Terramar Community Association, Inc., all Owners shall be Members in that Association.

Section 3. Notice to Terramar Community Association, Inc. Copies of all amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, and any easements or

conveyances affecting the Common Areas, shall be promptly forwarded to Terramar Community Association, Inc. prior to enactment. The Association shall also provide a current list of the names and mailing addresses of all Owners within fifteen (15) days after receiving a written notice from the Terramar Community Association.

## ARTICLE IX

### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000.00) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Areas shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Areas shall be included in the General Assessment, as provided in Article IV.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as

Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Florida which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Areas shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Broward County, Florida, area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

i. a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

ii. a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;

iii. that no policy may be canceled, invalidated or suspended on account of any one or more individual Owners;

iv. that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

v. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

vi. that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

g. The Association's Board of Directors may, in their discretion, obtain such other types of insurance for the Association as they deem necessary.

In addition to the other insurance required by this section, the Board of Directors shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on Directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Directors best business judgment but may not be less than three (3) months assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon as provided for in Section 1 of this Article X. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction, and the Owner shall pay the costs of any repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which

it existed prior to the beginning of construction and the Owner shall continue to maintain the Lot in a neat and attractive condition.

Section 3. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Areas or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in the capital reserves account. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(b) If it is determined, that the damage or destruction to the Common Areas for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in subsection (a) above.

Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall



not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Areas damage or destruction shall be repaired or reconstructed.

Section 5. Repair and Reconstruction. If the damage or destruction to the Common Areas for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE X

### SALES ACTIVITY AND DEVELOPER'S RIGHTS

Notwithstanding any provision herein to the contrary, until the Developer has completed, sold and conveyed all of the Lots within the Properties, neither the Owners, nor the Association nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of Lots and any other sales activity of the Developer, whether related to the Properties or other developments of the Developer. The Developer (or its duly authorized agents or assigns) may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices, construction trailers, model homes, and/or parking lots for the showing of the property, and the display of signs, billboards, flags, placards and visual promotional materials. The Developer shall have the right to use unimproved Lots for temporary parking, if any, for prospective purchasers and such other parties as Developer determines. Each Lot and the Common Area is hereby subjected to an easement for the purposes set forth herein.

## ARTICLE XI

### MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Properties. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the Bylaws of Terramar Community Association, Inc.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the unit number), therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(1) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(2) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(3) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(4) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not:

(1) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer);

(2) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(3) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Areas;

(4) fail to maintain fire and extended coverage insurance, as required by this Declaration; or

(5) use hazard insurance proceeds for any Common Areas losses for other than the repair, replacement, or reconstruction of such Properties.

The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Members where a larger percentage vote is otherwise required for any of the actions contained in this Section.

First mortgagees may, jointly or single, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Areas, and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Section 5. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provision of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Florida law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to our consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association or the Owner of any Lot subject to this Declaration, and their assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of two-thirds of the Lots has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

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

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Control Board. The Association is hereby empowered to adopt reasonable rules and regulations for the imposition of fines to be levied against any Owner for failure to comply with the terms of this Declaration or rules and regulations of the Association. Any rule or regulation subjecting any Owner to fines shall include provisions for notice, hearing, appeal and fines. Fines shall constitute an assessment due to the Association and upon failure to pay such fine within the period prescribed by the Association shall become a charge and continuing lien upon the Owner's Lot.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. Prior to the closing of the first Unit, Developer may amend this Declaration. After such closing, the Developer may amend this Declaration so long as it still owns property described in Exhibit "A" for development as part of the Properties and so long as the amendment has no material and adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of Members other than the Developer. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Public Records of Broward County, Florida. No amendment shall discriminate against any Owner or class or group or Owners, unless the Owners so affected join in the execution of the amendment. No amendment shall change the number of votes of any Owner or increase any Owner's proportionate share of the common expense, unless the Owners and Institutional Lenders of such Lots so affected by such amendment join in the execution of the amendment. No amendment may prejudice or impair the priorities of Institutional Lenders granted hereunder unless all Institutional Lenders join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Developer, unless Developer joins in the execution of the amendment.

Section 6. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Board of Directors. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or Bylaws of the Association to the contrary, a Board member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Members representing seventy-five (75%) percent of the total vote of the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments, (c)

proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 7. Effective Date. This Declaration shall become effective upon its recordation in the Broward County Public Records.

EXECUTED the date first above written.

Signed, sealed and delivered in the presence of:

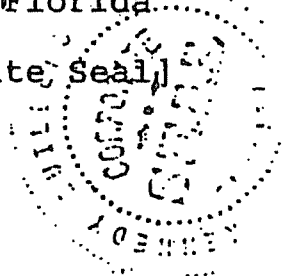
THE KENNEDY GROUP, LTD., a Florida limited partnership

By: KENNEDY BUILDERS CORP., a Florida corporation

Cynda Chelbo  
Donald A. Moore

By: Timothy R. Kelly  
Timothy R. Kelly,  
Chief Executive Officer - Florida

[Corporate Seal]



STATE OF FLORIDA )  
  ) SS:  
COUNTY OF Broward )

The foregoing instrument was acknowledged before me, this 14<sup>th</sup> day of February, 1990, by Timothy R. Kelly, as Chief Executive Officer - Florida of Kennedy Builders Corp., a Florida corporation, as general partner of The Kennedy Group, Ltd., a Florida limited partnership, on behalf of the partnership.

Josephine Hansen  
Notary Public  
My Commission Expires:  
MY COMMISSION EXPIRES: MAY 11, 1991;  
BONDED THRU NOTARY PUBLIC UNDERWRITER

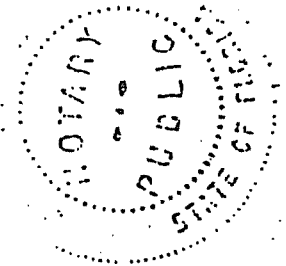


EXHIBIT "A"  
TO  
DECLARATION OF RESTRICTIONS AND  
PROTECTIVE COVENANTS FOR WHITTIER OAKS

Property Subject to Declaration

Lots 1-131, Block A; Lots 1-22, Block B; Lots 1-9, Block C; Tracts A, D, F and Drainage Easement #1 of Terramar One, according to the plat thereof, recorded in Plat Book 140, Page 30, Public Records of Broward County, Florida.

EXHIBIT "B"  
TO  
DECLARATION OF RESTRICTIONS AND  
PROTECTIVE COVENANTS FOR WHITTIER OAKS

Description of Common Areas

Tracts A, D, F and Drainage Easement #1 of  
Terramar One, according to the plat thereof,  
recorded in Plat Book 140, Page 30, Public  
Records of Broward County, Florida.