

AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF THE WINTERGREEN PROPERTY OWNERS ASSOCIATION

[Incorporating First Addendum to Amended and Restated Declaration of Covenants and Restrictions of the Wintergreen Property Owners Association dated November 29, 2008]

THIS DECLARATION, made this 1st day of February 2000, by Wintergreen Property Owners Association, Inc. a Virginia non-profit corporation, hereinafter called "Association".

INTRODUCTION:

The Association, along with Wintergreen, a Virginia Limited Partnership, recorded a Declaration of Covenants and Restrictions ("Original Declaration") dated September 26th, 1974 governing the real property known as Wintergreen in order to create a planned development community with a balanced representation of residential, commercial and recreational uses. The Original Declaration was recorded in the Clerk's Office of Nelson County in Deed Book 137 at page number 589.

The Association desires to amend and restate the Original Declaration to reflect changes necessitated by the transition to homeowner control of the Association and other changes in the operation and development of the Property.

At a meeting of the Association held on November 27th, 1999, pursuant to notice dated October 22nd, 1999, at which a quorum was present, the members voting in person and by proxy approved this Amendment by casting 3247 votes in favor of the Amendment out of 3327 present, which represent 752 more votes than the 2495 required by Article VIII, Section 2 of the Declaration for approval.

This Amendment and Restatement was thereby approved and shall become effective on February 1, 2000.

THEREFORE, the Association declares that the real property previously subjected to the Original Declaration and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to these Amended and Restated Covenants and Restrictions ("the Declaration").

(As recorded in Nelson County and Augusta County, Virginia on February 13, 2009)

ARTICLE I - DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to Wintergreen Property Owners Association, Inc., a Virginia non-profit corporation, its successors and assigns.

(b) "Wintergreen" shall mean and refer to the lands in Augusta and Nelson Counties, Virginia, which are subject to this Declaration.

(c) "Developer" shall mean Wintergreen, A Virginia Limited Partnership, its successors and assigns.

(d) The "Properties" shall mean and refer to the Existing Wintergreen Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Article II hereof.

(e) "Lot" or "Residential Lot" shall mean any subdivided but unimproved parcel of land located within the Properties which is intended for use as a site for a single family detached dwelling, townhouse, or garden home (Patio or Zero lot line) as shown upon any recorded final subdivision map of any part of the Properties. "Residential Lot" shall also include a "Back Country Parcel" on which more than one (1) single family dwelling may be permitted. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessments as improved properties.

(f) "Multiple-Family Tract" shall mean any unimproved parcel of land located within the Properties, intended for development of attached residential units including townhouse lots, condominiums and apartments. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multiple-Family Tract" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property for multiple-family use is recorded in the Offices of the Clerks of Circuit Court of Augusta or Nelson County, Virginia, and further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties. Townhouse lots shall become "Residential Lots" at such time as they appear on a plat recorded in said Clerk's Offices.

(g) "Back Country Parcel" shall mean and refer to parcels in Wintergreen generally containing five (5) acres or more which are designated as "Back Country Parcels" on plats of subdivisions filed in the Office of the Clerks of Circuit Court of Augusta or Nelson County, Virginia.

(h) "Public or Commercial Site" shall mean any unimproved parcel of land within the Properties, intended for use as a site for improvements designed to accommodate commercial or business enterprises to serve residents of Wintergreen and/or the public, including but not limited to: business and professional offices facilities for the retail sale of goods and services; banks and other financial institutions; social clubs; restaurants; hotels, motels, inns; theaters; lounges; indoor recreational facilities; transportation terminals or stations; automobile parking facilities, fuel stations, and condominium regimes designed for mixed commercial and residential uses, provided, however, that a "Public or Commercial Site" shall not include property upon which improvements are to be built which also qualifies as a Multiple-Family Tract. For the purposes of this Declaration, a parcel of land shall not be deemed a "Public or Commercial Site" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a public or commercial site is recorded in the Office of the Clerks of Circuit Court of Augusta or Nelson County, Virginia, and further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.

(i) "Development Unit Parcel" shall mean and refer to those parcels or tracts of land which have been made subject to covenants and restrictions permitting the division of such parcel or tract into smaller land units such as Residential Lots, Multiple-Family Residential Tracts, or Public or Commercial Sites.

(j) "Unsubdivided Land" shall mean and refer to all land in the Existing Wintergreen Property described in Article II hereof and all land contiguous to or near the Properties, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Article II hereof which has not been subdivided into Residential Lots, Back Country Parcels, Multiple-Family Tracts, Public or Commercial Sites, or Development Unit Parcels, through metes and bounds subdivision plats filed for record in the Office of the Clerks of Circuit Court of Augusta or Nelson County, Virginia. For the purposes of this Declaration, the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof:

(1) All lands committed to the Association through express, written notification to the Association of intent to convey to the Association.

(2) All lands designated on the Master Plan for intended use or by actual use if applicable, for outdoor recreation facilities; woodland, marsh and swamp conservancies; places of worship; community, civic, and cultural clubs; libraries; nursery and other schools and instructional centers, and charitable institutions.

(3) All lands designated, in any way, as Common Properties.

(k) "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family dwelling, including without limitation any single-family detached dwelling, garden home (Patio or Zero lot line), condominium unit, townhouse unit, cooperative apartment unit, or apartment unit located within the Properties. A parcel of land shall not be deemed to be improved until the improvements being constructed on said parcel are sufficiently complete to be subject to assessment as improved properties.

(l) "Public or Commercial Unit" shall mean and include any improved parcel of land within the Properties which is intended and designated to accommodate public, commercial or business enterprises to serve residents and/or the public, including but not limited to all those enterprises enumerated in subparagraph (h). A parcel of land shall not be deemed to be improved until the improvements being constructed on said parcel are sufficiently complete to be subject to assessment as improved properties.

(m) "Owner" shall mean and refer to the Owner as shown by the real estate records in the Offices of the Clerks of Circuit Court of Augusta or Nelson County, Virginia, whether it be one or more persons, firms, associations, corporations or other legal entities, of fee simple title to any Residential Lot, Back Country Parcel, Family Dwelling Unit, Multiple-Family Tract, Public or Commercial site, Public or Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee or holder of a deed of trust, its successors or assigns, unless and until such mortgagee or holder of a deed of trust has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Offices of the Clerks of the Circuit Court of Augusta or Nelson County, Virginia, a long-term contract of sale covering any lot or parcel

of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made although the purchaser is given the use of said property.

(n) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Dwelling Unit or Public or Commercial Unit in Wintergreen.

(o) "Resident" shall mean and refer to each Owner and Tenant of a Dwelling Unit.

(p) "Member" shall mean and refer to all those Owners who are Members of the Association as defined in Section 1 of Article III.

(q) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Wintergreen. Since the concept of the future development of Wintergreen may be subject to revision and change, present and future references to the "Master Plan" shall be references to the latest revision thereof.

(r) "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Plan of Wintergreen as the same may be revised from time to time, or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds which conveyed the property.

(s) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are owned by or leased to the Association and designated in said deed or lease as "Common Properties." The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated a "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners, residents, and their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association, provided, however, that any lands which are leased by the

Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such Lease.

(t) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association.

(u) "Wintergreen Partners, Inc." or "Partners" shall mean and refer to Wintergreen Partners, Inc., a Virginia non-stock corporation, its successors and assigns.

ARTICLE II

Section 1. Existing Wintergreen Property. The real property which is, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Nelson County and Augusta County, Virginia, which is more particularly described in Exhibit "B" to the Original Declaration.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Wintergreen Property."

Section 2. Additions to Existing Wintergreen Property. Additional lands may become subject to this Declaration in the following manner.

(a) *Additions.* During the period of development, which shall by definition extend from date to January 1, 2005, the Developer, its successors, and assigns, shall have the right, without further consent of the Association to bring within the plan and operation of this Declaration the additional property described in Exhibit "B" to the Original Declaration, any property for which such additional property is exchanged if the property acquired by exchange is contiguous or nearly contiguous to the "Properties" or any other property contiguous to properties described in Exhibit "B". Such property may be subjected to this Declaration as one parcel or as smaller parcels at different times. The additions authorized under this and the succeeding subsection, shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the

operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration, but such modifications shall have no effect on the property described in Section 1, Article II above.

(b) *Other Additions.* Upon approval in writing of the Association pursuant to simple majority of the vote of those present at a duly called meeting and if prior to January 1, 2005, the written approval of the Developer, the Owner of any property who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Association to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration, but such modification shall have no effect on the property described in Section 1, Article II above.

(c) *Mergers.* Upon merger or consolidation of the Association with another association, as provided for in the by-laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the Existing Wintergreen Property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change, or addition to the covenants established by this Declaration within the Existing Wintergreen Property, including, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

(d) Additional lands which become subject to this Declaration under the provisions of this Section II may in the future be referred to as a part of Wintergreen.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner shall be a Member of the Association.

Section 2. Voting Rights.

(a) The Association shall have the following two types of regular voting membership and one type of special voting membership:

(1) TYPE "A": Type "A" Members shall be all Owners of Residential Lots and Family Dwelling Units. A Type "A" Member shall be entitled to one vote for each Residential Lot or Family Dwelling Unit which he owns.

(2) TYPE "B": Type "B" Members shall be all those Owners of Public or Commercial Units exclusive of the Resort Owner (as hereinafter defined). Type "B" Members shall be entitled to one vote for each 1,000 square feet of enclosed public or commercial space; provided, however, that the Type "B" Owners shall not be permitted to vote for the at-large Directors of the Association, which Directors shall be elected only by the Type "A" Members. In computing the number of votes to which a Type "B" Members shall be entitled, any such unit containing less than 1,000 square feet shall entitle its owner to one vote. In computing the number of vote attributable to Public or Commercial Units, all fractions shall be rounded to the nearest whole number.

(3) TYPE "D": The owner of the Resort, its successors and assigns (collectively, the "Resort Owner"), shall be the Type "D" Member and shall be entitled to one (1) vote for each Residential Lot or Family Dwelling Unit owned by the Resort Owner, and one (1) vote for each 1,000 square feet of enclosed public or commercial space owned by the Resort Owner, as the case may be; provided, however, that the Resort Owner shall not be permitted to vote for the at-large Directors of the Association, which Directors shall be elected only by the Type "A" Members.

(b) When any property entitling the Owner to membership as a Type "A" or Type "B" Member of the Association is owned of record in the name of two or

more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property or if property is owned by a corporation or other business entity, then such owners shall file with the Secretary of the Association an instrument in writing signed by all such Owners and designating one Owner (or in the case of a corporation, one of its officers) to cast the vote or votes which are attributable to such property.

(c) The principles of this Section shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

Section 3. Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The size and composition of the Board of Directors, and the term of each Director, shall be as set forth in the Bylaws; provided, however, that (i) the size of the Board of Directors shall not be less than five (5) directors; (ii) two (2) Directors shall be appointed by the Type "D" Member and the remainder of the Directors shall be elected by the Type "A" Members at the Annual Meeting of the Association; (iii) at least one (1) at-large Director shall be the Owner of either a Lot or Dwelling Unit located in the Valley Village portion of Wintergreen, as depicted on the Master Plan; and (iv) at least one (1) at-large Director shall be the Owner of either a Lot or Dwelling Unit located in the Mountain Village portion of Wintergreen, as depicted on the Master Plan.

Section 4. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum including, without limitation, an increase of maximum assessments by the Association in excess of that provided for herein, and the addition of functions or services which the Association is authorized to perform. In the event fifty-one percent (51%), or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions therefor. The Members may require a Referendum on any action of the Board of Directors by presenting to the secretary of the Board within sixty (60) days of the taking of such action or

ratification by the Board of its intent to take such action a petition signed by not less than twenty percent (20%) of the Members.

Section 5. Quorum Required for any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members shall be as provided in the Bylaws, except with respect to proposed amendments of this Declaration, which shall be governed by the quorum requirement established in Article VIII, Section 2 (Amendments) of this Declaration.

Section 6. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by Proxy authorized in writing, provided, however, that Proxies shall not be required for any action which is subject to a Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots mailed or delivered to the Association.

Section 7. Ballots By Mail. When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against each motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 6 of this Article III. Such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

ARTICLE IV - PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment in Common Properties. Subject to the provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Type "A", "B" and "D" Member (except in the case when the property entitling the Owner to membership as a Type "A" or "B" Member of the Association is owned of record in the name of two or more persons or entities then the Owner as designated to vote for the owners of said property according to Article III, Section 2 hereof shall be the sole member for said property except as provided for herein) and every guest or tenant of such Type "A", "B" and "D" Member shall have an easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Back Country Parcel, Family Dwelling Unit, Multiple Family Tract, Public or Commercial Site, Public or Commercial Unit, or Development Unit Parcel.

A Member's spouse and dependent children shall have the same easement of enjoyment hereunder as a Member.

In those instances where a Lot or Dwelling Unit or other property in Wintergreen owned or occupied as a tenant by two (2) or more persons having an equal interest in said property (who do not have the relationship of spouse or child one to the other) or by a corporation, such joint owners of an equal interest in said property or such corporation may appoint up to three (3) persons as "Primary Members". Each such Primary Member shall have the same easement of enjoyment in the Common Properties as Members who own or occupy such property singularly, provided that each property having two (2) Primary Members only, shall pay the same assessment as though the property had only one Primary Member and further provided, that each property having three (3) Primary Members shall pay an assessment 1 ½ times the assessment that would be levied against the property were it owned by an individual alone. Primary Members appointed from a lot owned by a corporation must be officers, directors, or employees of said corporation. The remaining part owners of property at Wintergreen, not designated Primary Members, and the principal officers of a corporation owning property at Wintergreen, not designated Primary Members, shall be entitled to an easement of enjoyment in the Common Properties only as guests of a Primary Member.

Section 2. Purchase or Sale of Common Properties. Common Properties may be acquired by the Association if approved by a vote of sixty percent (60%) of the total votes in a Referendum of Type "A" Members.

Common Properties may be sold or transferred by the Association if approved by a vote of seventy-five percent (75%) of the total votes actually cast in a Referendum of the Residential Owners; provided, however, that if Common Properties are proposed to be sold or transferred to (i) a nonprofit entity whose sole or primary purpose is to serve Wintergreen, or (ii) a public service company serving Wintergreen, or (iii) a political subdivision of the Commonwealth of Virginia, the Association may approve such sale or transfer by a vote of fifty-one percent (51%) of the total votes actually cast in a Referendum of Type "A" Members.

Section 3. Extent of Members Easements. The easements of enjoyment created hereby shall be subject to the following, in addition to being subject to the provisions of the Virginia Property Owners' Association Act, § 55-508 et seq., Code of Virginia (1950), as amended (the "Act"), including the due process provisions of § 55-513:

(a) The right of the Association to assume and pay any liens or encumbrances against the Common Property at the time of conveyance; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and

(c) The right of the Association, to suspend the rights and easements of enjoyment of any Member or Tenant or Guest of any Member for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, and provided that the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties, and any facilities included therein, including the right of the Association to charge a reasonable toll for the use of any roadways belonging to the Association, provided, however, that such rights of the Association shall not be construed to impair or qualify an Owner's rights of ingress and egress to his property.

(e) For so long as a Member's assessments payable to the Association are not in arrears, there shall be no fee or toll assessable against such Member, his family, guests, tenants, suppliers, or other business invitees. This paragraph shall be construed to mean that for so long as each Type "D" Member is current in the payment of its assessments due the Association, that its respective suppliers, material men, contractors, agents, guests, prospects and other business invitees, including skiers, shall be exempt from the payment of road tolls and/or use fees. Subject to the payment of Association assessments, Partners shall have the right to park the vehicles of skiers and other resort guests along the road rights-of-way in accordance with any rules and regulations adopted by the Board of Directors to ensure that such parking shall not unreasonably hinder traffic on such roads. Subject to the above limitations, the Board of Directors of the Association shall have the power to place any reasonable restrictions upon the use of the Association's roadways, including, but not limited to the types and sizes of vehicles permitted to use such roads, the maximum and minimum speeds of vehicles using said roads,

all other necessary traffic and parking regulations and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of the Commonwealth of Virginia or of Nelson or Augusta Counties, Virginia, shall not make such restrictions unreasonable.

(f) The right of the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties.

(g) The right of the Association to give or sell all or any part of the Common Properties, including lease-hold interests, to any public or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gifts or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized pursuant to Article IV, Section 2, and subject to the quorum requirements established by Article III, Section 5, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

(h) The rights of reversion of the Lessor of any Common Properties leased by the Association upon expiration of the lease.

ARTICLE V - COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations of Assessments. Each Owner covenants, and each Owner of any Residential Lot, Back Country Parcel, Family Dwelling Unit, Multiple Family Tract, Public or Commercial Site, Public or Commercial Unit, Development Unit Parcel, or Unsubdivided Land, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and to pay to the Association: (1) Annual assessments or charges; (2) Special assessments or charges for the purposes set forth in this Article; and (3) Individual

assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The Annual, Special and Individual assessments, together with such interest at the judgment rate used by the Circuit Courts of Augusta and Nelson Counties, a late payment penalty of fifteen percent (15%) and, costs of collection therefor (including reasonable attorneys' fees) as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon against which each such assessment is levied. Each such assessment, together with such interest thereon, late payment penalties and cost of collection (including reasonable attorneys' fees) as hereinafter provided, shall also be the personal obligation of the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Back Country Parcel, Family Dwelling Unit, Multiple Family Tract, Public or Commercial Site, Public or Commercial Unit, Development Unit Parcel, or any Unsubdivided Land, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The annual assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement and operation of the Common Properties, and to provide services which the Association is authorized to provide. In carrying out these duties, the Association may expend funds derived from the assessments to make payments of principal and interest as consideration for the conveyance to the Association of Common Properties.

Section 3. Application of "Maximum" Assessment. The maximum annual assessment, as set forth in the schedule below, and as is annually increased pursuant to the provisions of subparagraph (g) below, may be levied by the Association. If, however, the Board of the Association, by majority vote, determines that the functions of the Association may be properly funded by an assessment less than that set forth below, it may levy such lesser assessment. The levy of an assessment less than the maximum regular assessment in one year shall not affect the Board's right to levy the maximum assessment in subsequent years. If the Board of Directors shall levy less than the regular assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by majority vote, levy a supplemental assessment. In no event shall the sum of the initial and supplemental regular annual assessments for that year exceed the applicable maximum regular assessments.

If the Board of the Association, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year by the Maximum Regular Annual Assessment, it may call a Referendum requesting approval of a specified increase in such assessment. Should sixty percent (60%) of the votes cast in such Referendum be in favor of such Referendum, the proposed increased assessment shall be levied. An increase in assessments in any year pursuant to a Referendum taken shall in no way affect assessments for subsequent years.

(a) The maximum annual assessment shall be the sums calculated in accordance with the following schedules as shall be increased in each instance, with the exception of the Amenity Fee (as hereinafter defined), by an inflation adjuster as set forth in this Article V, Section 3(g).

PROPERTY TYPE	MAXIMUM ANNUAL ASSESSMENT
Residential Lots	One (1) Assessment Unit each.
Family Dwelling Units	One and one-half (1.5) Assessment Units each.
Lots or Dwelling Units with Three (3) Primary Members	One and one-Half (1.5) Assessment Units each.
Public & Commercial Units	One (1) Assessment Unit for each vote authorized pursuant to Article III, Section 2 of this Declaration.
Resort	1% of the audited gross revenues of the Resort each year (the "Amenity Fee").

(b) The Assessment unit for 2008 shall be \$740.00.

(c) Property shall not be classified for purposes of these covenants and these Annual Assessments as a Residential Lot until the first day of the Quarter immediately following the date that the property has been conveyed to the initial purchaser.

(d) The Annual Assessments shall be billed annually commencing on the first day of January of each year. The Resort Owner, its successors and assigns, shall permit the Association or its designated Agent to examine its records to the extent reasonably necessary to determine that the proper assessments are being paid. All Assessments shall be due and payable sixty (60) days from the date of mailing the same.

(e) The Owner of any assessable property which changes from one category to another during an assessment year shall be billed for the remaining full quarters of such year to reflect the category change. Upon the initial sale by a developer, "Development Unit Parcels" shall change category to the category of "Residential Lots", "Family Dwelling Units", or "Public or Commercial Units", as the case may be. The date for any category change for a piece of property shall be the date the property was conveyed from a developer or the Type "D" Member to a Type "A" or Type "B" Member. The date for the change in assessment from an undeveloped homesite to a family dwelling unit for a Type "A" Member shall be the date of the occupancy permit therefor. No owner of Type "B" Member property shall be billed for any assessment thereon until a certificate of occupancy shall have been issued for said property.

(f) All assessments charged by the Association shall be rounded off to the nearest dollar.

(g) The maximum annual assessment, with the exception of the Amenity Fee, shall be increased each year by the Board of Directors by an amount not in excess of ten percent (10%) per year over the previous year, or the percentage increase between the first month and the last month on an annual assessment period in the *Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100* (hereafter "C.P.I."), as published by the U.S. Bureau of Labor Statistics, over the twelve (12)-month period ending with the next-to- last month of the immediately preceding annual assessment period, whichever is larger. However, the Board of Directors may suspend such automatic increase for any one (1) year in its own discretion and may institute such lesser increase as it may determine in the best interests of the Association. In the event that the C.P.I. referred to above shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

Any increase in the fixed amount of the maximum Regular Annual Assessment shall be made in such a manner that the proportionate increase in such assessment is the same for Owners of Residential Lots, Back Country Parcels, Family Dwelling Units, Public or Commercial Units, and Development Unit Parcels. Any time the actual assessment levied by the Board of Directors of the Association is less than the Maximum Regular Annual Assessment such decrease of the actual assessment shall be proportionate among the Owners of Residential Lots, Back

Country Parcels, Family Dwelling Units, Public or Commercial Units, and Development Unit Parcels.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual regular assessments authorized by Section 3 hereof, the Board of Directors shall have the power to levy a special assessment against its members if the purpose of doing so is found by the Board to be in the best interests of the Association and the proceeds of the assessment are used primarily for the maintenance and upkeep of the common area and such other areas of responsibility expressly provided in this Declaration, including capital expenditures. A majority of votes cast, in person or by proxy, at a meeting of the membership convened in accordance with the provisions of the Association's bylaws within sixty days of promulgation of the notice of the assessment shall rescind or reduce the special assessment.

This provision shall be interpreted to mean that the Association may make in any one year an annual assessment up to the maximum set forth in Section 3 of this article plus an additional special assessment or assessments. Such special assessment(s) in any one year may not exceed a sum equal to the amount of the maximum regular annual assessment for such year except for emergency or repairs required as a result of storm, fire, natural disaster or other casualty loss. The fact that the Association has made an annual assessment for an amount up to the permitted maximum shall not affect its right to make a special assessment during the year.

The proportion of each special assessment to be paid by the owners of the various classifications of assessable property shall be equal to the proportion of the regular assessments made for the assessment year during which such special assessments are made.

Section 5. Special Assessments for Construction. In addition to the regular annual assessments authorized by Section 3 hereof and the special assessments for improvements and additions authorized by Section 4 hereof, the Association shall levy a special assessment for construction, the amount of which shall be determined by the Board of Directors and which shall be levied on the following classifications of properties:

<u>PROPERTY TYPE</u>	<u>BASIS OF SPECIAL ASSESSMENT</u>
Detached Single-Family Dwelling	per unit
Attached Multi-Family Dwelling & Condominium Units	per unit
Public & Commercial Units	per 1,000 sq.ft. of enclosed commercial space

In computing the construction assessment attributable to Public or Commercial units, the assessment shall in no case be less than \$150.00 and in the event that a unit contains a fraction of 1,000 square feet, the assessment for the fraction shall be prorated according to the size of said unit.

This construction assessment shall be levied at the time that the plans for the construction are submitted for approval to the Wintergreen Architectural Review Board. This construction assessment shall be levied against all Type “A”, Type “B” and Type “D” members of the Association. All assessments for construction shall be used for the same purposes as the annual assessments levied by the Association.

Section 6. Reserve Funds. The Association may establish reserve funds from its regular annual assessments to be held in reserve in an interest drawing account or investments as a reserve for (a) major rehabilitation or major repairs, (b) for emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss, and (c) initial costs of any new service to be performed by the Association.

Section 7. Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall apply to any merger or consolidation in which the Association is authorized to participate under Article II, Section 2, hereof, and under the Bylaws of the Association.

Section 8. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessment is not paid on or before past-due date specified in Section 3 hereof, then such assessment shall

become delinquent and shall (together with interest thereon at the maximum annual rate permitted by law from the due date, late payment penalties and cost of collection thereof as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, and assigns.

If the assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the Owner personally and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee together with the costs of the action.

Section 10. Subordination of the Lien to Deeds of Trust. The lien of the assessments provided for herein shall be subordinate to the lien of any deed or deeds of trust now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to foreclosure, or any other proceeding or deed in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by the creditor to a subsequent owner, provided, however, that the creditor shall not be liable for assessments until it has held title to the property for more than one (1) year. Sums collected by foreclosure of said Deed of Trust shall be applied first to the indebtedness secured thereby and all cost of collection, second to past due assessment and third to assessments which have accrued but have not become due and payable.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee in conveyances made for the purpose of granting utility easements;
- (b) All Common Properties;
- (c) Property which is used for any of the following purposes:
 - (1) In the maintenance and service of facilities within Common properties;

- (2) Places of worship;
- (3) Schools;
- (4) Non-profit, governmental, and charitable institutions.

Section 12. Annual Statements. The President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually, within ninety days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$1,000.00. Such officer shall furnish to each Member of the Association who may make request therefor in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

Section 13. Annual Budget. The Board of Directors shall prepare and make available to all Members at least thirty (30) days prior to the first day of the following fiscal year, a budget outlining anticipated receipts and expenses for the following fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

Section 14. Individual Assessment. The Board of Directors shall have the power to assess an Owner's Lot or Dwelling Unit or other property individually: (i) for the amount of any charges imposed on that Owner pursuant to Article VII (Architectural Review of Common Properties); (ii) for any costs incurred by the Association for which that Owner is responsible under Article VIII, Section 10 (Additional Liability); and (iii) for contractual charges levied pursuant to Section 15 hereof (Optional Expenses) and Article VI, Section 3 (Services). Each such Individual assessment shall be due within thirty (30) days after notice thereof is given to the Owner unless the notice specifies a later date.

Section 15. Optional Expenses. Upon request, the Association may provide certain services, as specified in Article VI, Section 3, to Owners on a contractual basis; provided, however, that the charge for such services shall be assessed against such Owner's Lot(s) or Dwelling Unit(s) or other property within Wintergreen in accordance with the terms of the contract.

Section 16. Transfer Fee. The developer of each unit or lot located within those areas of the Master Plan labeled as "Future Development" shall pay to the Association, unless expressly waived in writing by the Board of Directors, the Transfer Fee (as hereinafter defined) upon the first sale of a newly constructed dwelling or unit. The Transfer Fee shall be paid to the Association at closing upon such transfer and, unless otherwise determined by the Board of Directors, used by the Association to maintain the Common Properties. Payment of the Transfer Fee shall be the joint and several obligation of both the selling and the purchasing Owners. In the event of non-payment of such Transfer Fee, the amount due shall bear interest as set forth in Article V, Section 1, of the Declaration, shall constitute a lien on the developer's property in Wintergreen, and shall be collectible as an Assessment. The Transfer Fee for 2008 shall be equal to \$2467.00 and shall be subject to annual increase pursuant to the inflation adjuster specified in subsection (g) of Article V, Section 3.

ARTICLE VI - FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Common Properties. The Association shall be authorized to own, lease and/or maintain common properties and equipment, furnishings, and improvements devoted to the following uses:

- (a) For roads or roadways, and parkways along said roads or roadways throughout the Properties;
- (b) For sidewalks, walking paths or trails, bicycle paths, jeep trails, equestrian centers, and bridle paths throughout the properties;
- (c) For transportation facilities throughout the Properties other than privately owned automobiles, e.g. buses, electric vehicles, etc., paid for by special assessment as provided for in Article V, Section 4 hereof.
- (d) For security and fire protection services including security stations, maintenance building and/or guardhouses, police equipment and fire stations and fire fighting equipment; and buildings used in maintenance functions.
- (e) For emergency health care including ambulances and emergency care medical facilities and the equipment necessary to operate such facilities;
- (f) For providing any of the services which the Association is authorized to offer under Section 3 of this Article;

(g) For purposes set out in deeds or long-term leases by which Common Properties are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association as set out in Section 4 of this Article;

(h) For lakes, play fields, camps and campgrounds, lookout stations, historic parks, wildlife areas, fishing facilities, other recreational facilities of any nature, and community meeting facilities serving the Properties; and

(i) For water and sewage facilities and any other utilities, if not adequately provided by a private utility, Nelson County or Augusta County, or some other public body.

Section 2. Authority to Purchase Common Properties. The Association shall be authorized to purchase or lease properties following approval of the Members pursuant to the requirements of Section 2 of Article IV hereof. The purchase price may be financed, in whole or in part. The general terms of the financing must also be approved by the Members pursuant to the requirements of Section 2 of Article IV hereof.

Section 3. Services. The Association shall be authorized but not required to provide the following services:

(a) The Association shall be responsible for the management, maintenance and upkeep of all of the Common Properties, including without limitation: (i) open areas; (ii) roadways; and (iii) all other improvements located on the Common Properties. The cost of such management, maintenance and upkeep shall be charged to Owners as a Common Expense. If the Board of Directors determines that certain maintenance or upkeep was necessitated by the negligence, misuse or willful misconduct of an Owner or for which an Owner is responsible pursuant to Article VIII, Section 10, the cost of such maintenance or upkeep shall be assessed against such Owner's property at Wintergreen pursuant to Article V, Section 2(e). The Board of Directors shall establish the standards for maintenance and upkeep of the Common Properties in its sole discretion.

(b) The Association shall be authorized but not required to provide the following services:

(1) Landscaping of roads and parkways, sidewalks and walking paths and any Common Properties;

- (2) Transportation facilities other than privately owned automobiles, e.g., buses, electric vehicles, etc., paid for by special assessment as provided for in Article V, Section 4 hereof.
- (3) Lighting of roads, sidewalks and walking paths throughout the Properties;
- (4) Police protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the Existing Wintergreen Property, and assistance in the apprehension and prosecution of persons who violate the laws of Virginia within the Properties;
- (5) Fire protection and prevention;
- (6) Garbage and trash collection and disposal;
- (7) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;
- (8) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;
- (9) Maintenance of all lakes, streams and creeks located within the properties, including the stocking of such lakes, streams and creeks;
- (10) To take any and all actions necessary to enforce all covenants and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Properties;
- (11) To set up and operate an Architectural Review Board;
- (12) Improvement of fishing available to Members within the Properties;
- (13) To conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;

(14) To provide legal and scientific resources for the improvement of air and water quality within the Properties;

(15) To maintain water search and rescue boats for the protection and safety of those in the waters located on or adjacent to the Properties;

(16) To provide safety equipment for storm emergencies;

(17) To support the operation of transportation services between key points of the Properties and the airports, other public transportation terminals and public centers serving the area surrounding the Properties with special assessment on the resort area as provided for in Article V, Section 4 hereof;

(18) To construct improvements on Common Properties for use for any of the purposes or as may be required to provide the services as authorized in this Article;

(19) To provide administrative services including but not limited to: legal, accounting and financial; and communication services informing Members of Activities, Notice of Meeting, Referendums, etc., incident to the above listed services;

(20) To provide liability and hazard insurance covering improvements and activities on the Common Properties;

(21) To provide water, sewage and any necessary utility services not provided by a public body or private utility.

(22) To provide, conduct, or maintain water pollution and shoreline erosion abatement measures including, without limitation, maintenance and repair of shore revetments and groins.

(23) To provide emergency, general and technical rescue services, including necessary and appropriate personnel, vehicles, equipment and facilities related thereto.

(24) To provide any or all of the above-listed services under a written contract, the terms of which must be approved by the Board of

Directors, to another association of owners of real property or to a political subdivision of the Commonwealth of Virginia.

Section 4. Obligation of the Association. With the exception of the duties imposed upon the Association by this Declaration and the Act, the Board of Directors shall determine which of the functions and services specified by the provisions of this Article shall be provided. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. Special assessments shall be submitted for referendum as herein provided.

Section 5. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions.

ARTICLE VII ARCHITECTURAL REVIEW OF COMMON PROPERTIES

Section 1. Architectural Review. No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon the Common Properties, nor shall any landscaping be done, nor shall any exterior addition to any existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Architectural Review Board. This paragraph shall not apply to any property utilized by a governmental entity or institution.

The Architectural Review Board shall be composed of at least three (3) but not more than five (5) Members, all of whom shall be appointed by the Board of Directors of the Association.

ARTICLE VIII. GENERAL PROVISIONS

Section 1. Duration. The Covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association, the holder of any approval rights pursuant to assignment or transfer from the Developer, and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of

twenty-five (25) years from the date this Declaration is recorded. Upon the expiration of said twenty-five (25) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial twenty-five (25) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Offices of the Clerks of Circuit Court of Augusta and Nelson Counties, Virginia and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. The procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if three-fourths (3/4) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given to each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of the meeting of the Association at which such amendment was adopted), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes necessary to adopt the amendment, and the total number of votes cast against the

amendment. Such Addendum shall be recorded in the Offices of the Clerks of the Circuit Court of Augusta and Nelson Counties, Virginia.

The quorum required for any action authorized to be taken by the Association under this Section 2 shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this Section 2 the presence at the meeting of the Members or proxies entitled to cast sixty percent (60%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast fifty percent (50%) of the total vote of the Association.

Section 3. Notices. Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed, to the address appearing on the Association's Membership list. Notice to one of two or more co-owners or co-tenants of real property in Wintergreen shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person, persons, or entity violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Member or any holder of any approval rights pursuant to assignment or transfer from the Developer to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 5. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other

provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 7. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the Bylaws of the Association, unless the terms of this instrument provide otherwise.

Section 8. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals contemplated under this Declaration, neither the Association nor the holder of any approval rights pursuant to assignment or transfer from the Developer shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

Section 9. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Circuit Court of Augusta or of Nelson County, Virginia which Trustee shall own and operate said Common Properties for the use and benefit of Owners within the Properties as set forth below:

- (a) Each lot or parcel of land located within the Properties shall be subject to an annual assessment which shall be paid by the Owner of each such lot or parcel to the Trustee. The amount of such annual assessment and its due

date shall be determined solely by the Trustee, as the case may be, but the amount of such annual assessment on any particular lot or parcel shall not exceed the amount actually assessed against that lot or parcel in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph

(b) immediately below.

(b) The rate of the minimum and maximum annual assessment which may be charged by the Trustee hereunder on any particular lot or parcel may be automatically increased each year by either ten percent (10%) or the percentage increase between the first month and the last month of the annual assessment period in the Consumer Price Index, U.S. City Average, All Items (1967-100) (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas", whichever of these two percentage figures is larger. The actual amount of such increase in the regular maximum annual assessment on a lot or parcel shall equal the regular maximum annual assessments on such lot or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due annual assessment together with interest thereon at the maximum rate of interest permitted by law from the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the annual assessment became past due, and it shall also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Trustee shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the Common Properties. The Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. The Trustee shall not have the obligation to provide for operation, maintenance, repair and upkeep of the Common Properties, once the funds provided by the annual assessment have been exhausted.

(e) The Trustee shall have the power to dispose of the Common Properties free and clear of the limitations imposed hereby; provided, however, that such

disposition shall first be approved in writing by fifty-one percent (51%) of the Owners of property within the Properties or in the alternative shall be found to be in the best interest of the Owners of property within the Properties by the Circuit Courts of Nelson and Augusta Counties, Virginia. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, second for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such Properties, third for the payment of any obligations distributed among the Owners of property within the Properties, exclusive of the Trustees, in a proportion equal to the portion that the maximum annual assessment on property owned by a particular Owner bears to the total maximum annual assessments for all property located within the Properties.

Section 10. Additional Liability. Each Owner shall be liable to the Association for any costs incurred by the Association and the expenses of all upkeep and maintenance rendered necessary by such Owner's act or omission or the act or omission of such Owner's tenant and such Owner's (or tenant's) household members, guests, employees, agents or invitees, regardless of neglect or culpability, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse or occupancy of the Common Properties. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including without limitation legal fees, incurred as a result of a failure to comply with the Declaration, Articles, Bylaws and such rules and regulations as the Board may enact by any Owner may be assessed against such Owner's property in Wintergreen as an Individual assessment.