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**CERTIFICATE OF AMENDMENT
TO THE
DECLARATION OF RESTRICTIVE COVENANTS
KINGS GATE SUBDIVISION**

THIS AMENDMENT is made this 10th day of OCTOBER, 2008, to the Declaration of Restrictive Covenants, Kings Gate Subdivision ("Declaration") by VICTORIA ESTATES, LTD., a New York limited partnership (the "Declarant"), with the joinder of NB/85 ASSOCIATES, a New York general partnership ("NB/85"), KINGSGATE ASSOCIATES II, LTD., a Florida limited partnership ("Kingsgate II"), WR-I ASSOCIATES LTD., a Florida limited partnership ("WR-I"), KGH DEVELOPMENT, LLC, a Florida limited liability company, and KINGS GATE HOMES, LLC, a Florida limited liability company.

WHEREAS, On January 20, 1998, Declarant recorded the Declaration of Restrictive Covenants Kings Gate Subdivision (the "Declaration") in Official Records Book 1584, Page 1067 of the Public Records of Charlotte County, Florida; and

WHEREAS, pursuant to Article 2, Section 2 of the Declaration, the Declarant may amend the Declaration in its sole discretion until such time as the "Community Completion Date," as that term is defined in the Declaration, has been reached; and

WHEREAS, The Community Completion Date has not been reached as of the date of this Amendment; and

WHEREAS, The Declarant desires to further amend the Declaration in certain respects and to evidence such amendments by this writing.

NOW, THEREFORE, the Declaration is amended as follows:

(NOTE: Underlined language is added and ~~cross-through~~ language is deleted)

1. ARTICLE 8, USE RESTRICTIONS

(b) ~~Kings Gate Subdivision is an adult community under Section 760.29(4)(b)3, Florida Statutes. Each Home must be occupied by at least one (1) person fifty five (55) years of age or older. Persons more than eighteen (18) years of age may occupy and reside in a Home as~~

~~long as at least one of the occupants is fifty five (55) years of age or older. No person under the age of eighteen (18) may be a permanent occupant of any Home, except that persons under the age of eighteen (18) may be permitted to visit and temporarily reside for periods not to exceed thirty (30) days in total in any calendar year. Notwithstanding the above, if a Home is transferred by inheritance, the requirement of the Home being occupied by a person fifty five (55) years of age or older is waived as to the occupancy by the heirs so long as no permanent occupant is under the age of eighteen and at least eighty (80) percent of the Homes in the Community are occupied by at least one person who is fifty five (55) years of age or older. Policies and procedures related to the status of Kings Gate Subdivision as an adult community are available at the office of the Association.~~

(b) **Statement of Intent.** It is hereby declared that Kings Gate Subdivision is intended to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995 (hereinafter referred to as the "Acts") and the Federal Rules and Regulations (hereinafter referred to as the "Federal Regulations") as promulgated by the Department of Housing and Urban Development (hereinafter sometimes referred to as "HUD"). It is more specifically the desire and intention of the Association to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.304 (hereinafter referred to as the "55 or Over Housing Exemption"). Section 100.304 implements Section 807(b)(2)(c) of the Acts which exempts housing communities intended and operated for occupancy by at least one (1) person 55 years of age or over per home that satisfy certain criteria. In this endeavor, the following occupancy restrictions and procedures shall govern. Further, the Association shall do whatever is required by the Acts and Federal Regulations to publish its intention to comply with, and adhere to, policies and procedures which demonstrate an intent to provide housing for persons 55 year of age or over. The Acts and Federal Regulations, as amended from time to time, are hereby incorporated by reference into this document. Reference to the Acts and to the Federal Regulations in this document shall mean the Acts and the Federal Regulations as they are amended from time to time.

(1) **Fair Housing Definitions:**

(A) "Acts" shall mean and refer to the (Federal) Fair Housing Amendments Act of 1988 (Pub.L. 100-430, approved September 13, 1988; 102 STAT.1619 and the Housing for Older Persons Act of 1995.)

(B) "FEDERAL REGULATIONS" shall mean and refer to the Federal rules and regulations promulgated by the Department of Housing and Urban Development, which became effective on March 12, 1989 and May 3, 1999.

(C) "55 OR OVER HOUSING EXEMPTION" shall mean and refer to the exemption for housing for older persons (55 or over housing) as is originally provided for in Section 807(b)(2)(c) of the Acts.

(2) **Minimum Age Restrictions.** Permanent occupancy of a Home shall be restricted as

follows provided that the restrictions contained in the remaining provisions of this Section are met:

(A) No persons under the age of eighteen (18) years shall be permitted to permanently reside in a Home.

(B) However, a person under the age of eighteen (18) years may be permitted to visit and temporarily reside in a Home for a period of time not to exceed thirty (30) days in the aggregate in any calendar year. The visitation time periods shall not be cumulative from year to year. Only overnight visitation shall be considered in the computation. So by way of example, if an under-aged person visits overnight, two (2) days of visitation shall be computed. If an under-aged person visits during the day only and does not stay overnight, no days of visitation shall be computed.

(3) **Age Restriction.** At least eighty percent (80%) of the occupied Homes shall be occupied by at least one permanent occupant who is 55 years of age or older, and all permanent occupants must be at least eighteen (18) years of age or older. A "permanent occupant" shall be defined in these restrictions as a person who occupies a residential structure on a Lot or Parcel for more than eight (8) weeks in any calendar year. A surviving or divorced spouse who is a permanent occupant under the age of 55 years and who was the spouse of a permanent occupant 55 years of age or older will be allowed to remain as a permanent occupant. The Board shall have the right to require prior age verification from all prospective occupants. The Declarant or the Board shall have the right to promulgate, from time to time, reasonable rules and regulations governing the visitation and temporary residence of, or use of the Common Area and facilities by, persons under eighteen (18) years of age.

(4) **Exceptions to Section**

(A) **Surviving Spouse or Cohabitant.** In the case of the death of the designated occupant whose surviving spouse or cohabitant is under 55 years of age, provided that the surviving spouse or cohabitant resided with the designated occupant at the time of the designated occupant's death, the surviving spouse or cohabitant shall be allowed to continue to occupy the Home irrespective of age so as to prevent disruption of the lives of surviving spouses and cohabitants under age 55, when the over 55 designated occupant dies. Notwithstanding however, no persons under the age of eighteen (18) years shall be permitted to permanently reside in any Home.

(B) **Recipient of Legacy.** The Federal Regulations recognize that the 20% requirement is not intended to exclude all incoming households, therefore, the recipient of legacy and his or her household shall be allowed to occupy the Home. Notwithstanding however, no persons under the age of eighteen (18) years shall be permitted to permanently reside in the Homes.

(5) **Contract/Covenant.** Every Owner and lessee shall be deemed to have a contract with the Association to ensure that the occupancy requirement is met at all times. Even though this occupancy requirement is a contract between the Association and the Owner or lessee, as applicable, this amendment shall be deemed to be a covenant running with the land. Furthermore, the Owner shall be responsible to ensure that his/her lessee(s) comply with this occupancy requirement.

(6) **Proof of Age.**

(A) All persons occupying a Home shall deliver to the Association, a completed Association form demonstrating proof of age and any other documentation required by the Association.

(B) Any person(s) not providing such documentation, when and as requested by the Board of Administration, shall be validly presumed by the Association and by a Court of law to be under the age of 55 years, even though the persons may actually be 55 years of age or over.

(7) **Remedies for Non-Compliance.** The Association concurrently shall have any one or more of the following remedies for non-compliance in addition to those provided elsewhere in the constituent documents.

(A) Lease of a Home.

(i) In the event of a lease of a Home, and the occupancy and other requirements of this amendment are not met, the Association shall be entitled to file for and obtain an injunction against the Owner of the Home and lessee(s) and/or other occupants in the Home, removing the unauthorized lessee(s) and/or other unauthorized occupants.

(ii) The Association shall also be entitled to evict the unauthorized lessee(s) and other unauthorized occupants from the Home, as agent for the Owner(s). This right of eviction by the Association shall apply only:

(a) After the expiration of seven (7) working days from the date on which the Association mails notice to the Owner(s) by certified mail, return receipt requested, or provides notice by hand delivery; and

(b) Provided that the Owner(s) fail(s) to commence eviction proceedings on his/her/their own and fails to so notify the Association, within the seven (7) day period.

(iii) The lease shall specify, and if it fails to so specify, the lease shall be

deemed to specify that the lessee(s) and all other occupants shall abide by the governing documents and the Rules and Regulations of the Association; and shall specify that the Association has the remedies provided for in this Section. Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies under this Section, provided that the Association prevails, shall be the responsibility of the Owner(s) of the Home, and shall to the extent awarded by a Court under Chapter 83, Florida Statutes, shall also be the responsibility of the lessee(s).

(B) Other Occupancies (other than Leases). In the event of an existing Ownership; in the event of use by guests; or in the event of a sale, gift, or other transfer of title; and the occupancy requirements of this amendment are not met, the Association may disapprove the transfer and shall be entitled to file for and obtain an injunction against the Owner(s) of the Home and all occupants in the Home, removing the unauthorized occupants (including the Owner(s). In that event, if the Association prevails, the Owner(s) shall be responsible for costs and attorney's fees incurred by the Association in connection with its enforcement of this Section.

(8) Registration Required. All Owners, lessees and occupants must register with the Association at the time of becoming a member of the Association or, in the case of a non-Owner, at the time of the commencement of the lease agreement, by delivery of the items referred to below. Furthermore, no persons shall attain grandfathered status under Section 8(b)(4)(A) above unless the person registers with the Association by delivery of the items referred to below. These items are as follows:

(A) A fully completed and signed Association form to be provided by the Association;
and

(B) Documentation demonstrating proof of age; and

(C) In the event of a lease, a fully executed copy of the lease must also be delivered (if not already on file with the Association). It shall be the responsibility of the particular Owner, not the Association, to provide the lessee(s) and/or other occupants of the Home with the registration form for the lessee(s) occupant(s) to complete and return to the Association within five (5) days from the date of receipt.

(9) Additional Occupants. Even though a person under the age of 55 years is given grandfathered status under Section 8(b)(4)(A) above or is provided with an exception under 8(b)(4)(B) above, this shall not entitle additional persons to occupy the Home, unless:

(A) That additional person is 55 years of age or older; or

(B) That additional person is also accorded grandfathered status under Section 8(b)(4)(A)

above; or

(C) That additional person is legally married to the surviving spouse or cohabitant mentioned in Section 8(b)(4)(B) above.

(10) Non-Occupancy Status. Each Owner or lessee, as applicable, shall notify the Association of any periods of time during which the Home becomes unoccupied. As used in this Section, "unoccupied" is defined to mean any intended absence of all permanent residents of the Home, for a period in excess of six (6) months. It is understood that this is a necessary requirement because the Federal Regulations require record keeping of occupied and unoccupied Homes.

2. ARTICLE 13, ARCHITECTURAL CONTROL

~~Section 20. Fines. In the event of a violation of the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ACC, the Association shall also have the right to levy a fine against the non-complying party of up to \$25.00 per day until the violation is cured. The fine shall be a Special Assessment and enforceable pursuant to the provisions of this Declaration.~~

(a) In addition to the means of enforcement provided elsewhere herein, the Association shall have the right to assess fines against a homesite, an owner, or his guests, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, these Bylaws, and Rules and Regulations, including any Architectural Review Guidelines, of the Association regarding the use of homesites, common area, or Association property. The amount of such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence, or the maximum permissible by law, whichever is greater, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing, such not to exceed the maximum permissible by law. The payment of fines shall be the ultimate responsibility of the owner, even when the violations for which fines have levied arise out of the conduct of family members, guests or tenants. Any action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees.

(b) Collection of fines. A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may itself be the subject of a late payment fee.

(c) Application. All monies received from fines shall become part of the common surplus.

(d) Nonexclusive remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset

against any damages that the Association may otherwise be entitled to recover at law from such owner.

(e) Suspension of Use Rights. To the extent lawful, the Board of Directors may suspend the right of any owner, or his guests, tenants, or family members, to use of the Common Areas during any period of time the owner shall have failed to pay any fine levied, or for a reasonable time as punishment for one or more infractions of Association governing documents by the owner, his family, guests or tenants. Suspension of Common Area use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(f) A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws, Rules or Architectural Review Guidelines which have been allegedly violated; and a short and plain statement of the matters asserted by the Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(g) The requirements of the previous paragraph do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the Governing Documents.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, we have hereunto affixed our hands and seal of the said corporation, this 10 day of OCTOBER, 2008.

Witnesses:

Declarant:

Victoria Estates, Ltd.
By Benderson-Victoria, L.C., its general partner

Kevin M. Kinney
Printed Name: **Kevin M. Kinney**

By: DAH
David H. Baldauf, its Manager

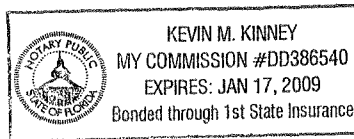
Julie Ann Sorliero
Printed Name: **JULIE ANN SORLIERO**

icall

STATE OF Florida
COUNTY OF Manatee

BEFORE ME, the undersigned authority, appeared this 10th day of October, 2008, David H. Baldauf, as Manager of Benderson-Victoria, L.C., the general partner of Victoria Estates, Ltd., who is personally known to me or who has produced for me _____ as identification, and who acknowledged voluntarily and knowingly executing the foregoing FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS KINGS GATE SUBDIVISION for the purposes and consideration therein expressed, and who did not take an oath.

Kevin M. Kinney
Notary Signature
My Commission Expires:



JOINDER AND CONSENT

The undersigned owner of an interest in the Properties described in the Declaration, hereby ratifies, consents to and joins in this First Amendment to Declaration and further agrees that the undersigned will be bound by this First Amendment to Declaration as a covenant encumbering and running with the Properties described therein.

Dated as of the 10th day of October, 2008.

Witnesses:

Kevin M. Kinney
Printed Name: Kevin M. Kinney

Julie Ann Soriero
Printed Name: JULIE ANN SORIERO

STATE OF Florida
COUNTY OF Manatee

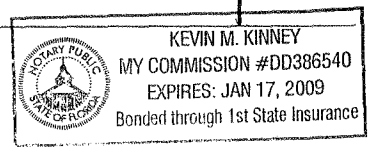
NB/85 ASSOCIATES
a New York general partnership

By: David H. Baldauf
David H. Baldauf, Trustee
Benderson 85-1 Trust
a New York Trust, a general partner

KAW

The foregoing instrument was acknowledged before me this 10th day of October, 2008, by David H. Baldauf as Trustee of Benderson 85-1 Trust, a General Partner of NB/85 Associates. He is personally known to me or produced _____ as identification.

Kevin M. Kinney
Notary Public
Print Name:
Notary Seal



JOINER AND CONSENT

The undersigned owner of an interest in the Properties described in this Declaration, hereby ratifies, consents to and joins in this First Amendment to Declaration and further agree that the undersigned will be bound by the First Amendment to Declaration as a covenant encumbering and running with the Properties described therein.

Dated as of the 10th day of October, 2008.

Witnesses:

KINGSGATE ASSOCIATES II, LTD
a Florida limited partnership

By: Post Falls Management Associates, L.L.C.
a Florida limited liability company, its
general partner

Kevin M. Kinney
Printed Name: **Kevin M. Kinney**

By: David H. Baldauf
David H. Baldauf, its Manager

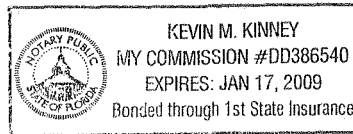
Julie Ann Siziero
Printed Name: **JULIE ANN SIZIERO**

KNW

STATE OF Florida
COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 10th day of October, 2008, by David H. Baldauf, as Manager of Post Falls Outlets, Inc., the general partner of Kingsgate Associates II, Ltd. He is personally known to me or produced _____ as identification.

Kevin M. Kinney
Notary Public
Print Name: _____
Notary Seal



JOINDER AND CONSENT

The undersigned owner of an interest in the Properties described in this Declaration, hereby ratifies, consents to and joins in this First Amendment to Declaration and further agree that the undersigned will be bound by the First Amendment to Declaration as a covenant encumbering and running with the Properties described therein.

Dated as of the 10 day of October, 2008.

Witnesses:

WR-I ASSOCIATES, LTD
A Florida limited partnership

By: BG The Village, LLC, a Florida limited
Liability company, its general partner

By: *DAVID H. BALDAUF*
David H. Baldauf, its Manager

Kevin M. Kinney
Printed Name: Kevin M. Kinney

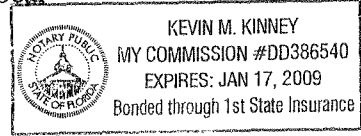
Julie Ann Sorliero
Printed Name: JULIE ANN SORLIERO

KMM

STATE OF Florida
COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 10th day of October, 2008, by David H. Baldauf, as manager of BG The Village, LLC, a Florida limited liability company, the general partner of WR-I Associates, Ltd. He is personally known to me or produced _____ as identification.

Kevin M. Kinney
Notary Public
Print Name: _____
Notary Seal



JOINDER AND CONSENT

The undersigned owner of an interest in the Properties described in this Declaration, hereby ratifies, consents to and joins in this First Amendment to Declaration and further agree that the undersigned will be bound by the First Amendment to Declaration as a covenant encumbering and running with the Properties described therein.

Dated as of the 10th day of OCTOBER, 2008.

Witnesses:

KGH DEVELOPMENT, LLC
A Florida limited liability company

Kevin M. Kinney
Printed Name: Kevin M. Kinney

By: David H. Baldauf
David H. Baldauf, its Manager

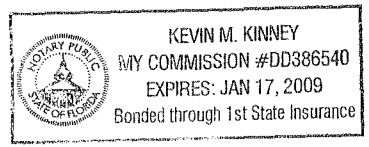
KPH

Julie Ann Soriero
Printed Name: JULIE ANN SORIERO

STATE OF Florida
COUNTY OF Maratee

The foregoing instrument was acknowledged before me this 10th day of OCTOBER, 2008, by David H. Baldauf, as manager of KGH Development, LLC. He is personally known to me or produced _____ as identification.

Kevin M. Kinney
Notary Public
Print Name: _____
Notary Seal



JOINDER AND CONSENT

The undersigned owner of an interest in the Properties described in this Declaration, hereby ratifies, consents to and joins in this First Amendment to Declaration and further agree that the undersigned will be bound by the First Amendment to Declaration as a covenant encumbering and running with the Properties described therein.

Dated as of the 10TH day of OCTOBER, 2008.

Witnesses:

KINGS GATE HOMES, LLC
A Florida limited liability company

Kevin M. Kinney
Printed Name: Kevin M. Kinney

By: DAH
David H. Baldauf, Manager

KM

Julie Ann Soriero
Printed Name: JULIE ANN SORIERO

STATE OF Florida
COUNTY OF Maratee

The foregoing instrument was acknowledged before me this 10th day of OCTOBER, 2008, by David H. Baldauf, as manager of Kings Gate Homes, LLC. He is personally known to me or produced as identification.

Kevin M. Kinney
Notary Public
Print Name:
Notary Seal

