

Covenant controlled  
Community

**THE TRAILS SOUTH FORTY  
HOMEOWNERS ASSOCIATION, INC.**

*A Covenant-controlled Community  
75 South Forty Trail  
Ormond Beach, FL 32174-5990  
(386) 677-1381*

**HOMEOWNERS ASSOCIATION  
CONTROLLING DOCUMENTS**

The attached documents state the By-Laws and Covenants that the Board of Directors and homeowners are obligated to follow to maintain the safety and appearance of this community.

Please retain this manual and, in accordance with existing statutes, it must be transferred to the new owner when selling your home.

7/1/2009

THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

CONTENTS

This file contains a complete set of Trails South Forty Homeowner Association's governing documents issued by the Association. These documents have been registered and are on file with the offices of Volusia County in DeLand.

| DOCUMENT TITLE   | DATE     | PAGE |
|--|----------|------|
| Articles of Incorporation  | 12/04/81 | 1    |
| Bylaws (original)  | 12/04/81 | 9    |
| First Amendment to Bylaws  | 10/31/89 | 15   |
| Declarations of Covenants and Restrictions                       | 05/04/82 | 27   |
| Amendment to Declaration of<br>Covenants and Restrictions        | 04/15/83 | 49   |
| Amendment to Declaration of<br>Covenants and Restrictions        | 07/27/83 | 53   |
| Second Amendment to Declaration of<br>Covenants and Restrictions | 01/19/84 | 55   |
| Third Amendment to Declaration of<br>Covenants and Restrictions  | 03/15/84 | 61   |

**NOTICE**

Policies and Rules as prepared and approved by the Board of Directors of the Association are available at the H.O.A. office.

Owner/Resident Handbook provides a condensed version of the "Policies and Rules" and is furnished to all Owners and Residents.

7/1/2009

ARTICLES OF INCORPORATION  
OF  
THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.  
A Non-profit Florida Corporation

We, the undersigned, hereby associate ourselves together for the purpose of becoming incorporated under the laws of the State of Florida, in accordance with the provisions of the Statutes of said state, providing for the formation, liabilities, rights, privileges, and immunities of corporations not for profit.

ARTICLE I

The name of this corporation shall be: THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

ARTICLE II

A general nature of the business to be transacted is as follows:

a. To enforce the terms, covenants, conditions and restrictions appertaining to The Trails South Forty in Volusia County as recorded in the Public Records of Volusia County, Florida (hereinafter "the Subdivision").

b. To accomplish the foregoing purposes, the corporation shall have all corporate powers permitted under Florida law, including the power to mortgage and borrow monies.

ARTICLE III

QUALIFICATION OF MEMBERS AND MANNER OF THEIR ADMISSION

Any person, firm, corporation, or other business entity coming within the following categories shall automatically become members of this association:

a. The record title holder of a present vested fee simple interest in any lot or dwelling unit of the Subdivision in Volusia County, Florida; including lots added at a later date.

b. If the record title holder described in Paragraph a, designates in writing to the secretary of the association, the tenant shall be a member of this association. However the

12-4-81

owner's membership privileges during the period of such tenancy shall abate and shall be exercisable only by the tenant. When the tenancy ceases to exist, the owner of such dwelling unit shall so certify to the secretary of this association and the owner shall be entitled to resumption of all membership privileges unless a new tenant is in possession of the dwelling unit.

c. The membership of any tenant or record owner shall automatically terminate when such person is no longer entitled to immediate possession and enjoyment of a dwelling unit in The Trails South Forty Subdivision, filed in the Public Records of Volusia County, Florida.

d. When a corporation or partnership is an owner or tenant of a dwelling unit or lot, only the president of the corporation or its designate or the senior partner shall be entitled to exercise membership privileges.

#### ARTICLE IV

This corporation shall have perpetual existence.

#### ARTICLE V

The names and addresses of subscribers of this corporation are as follows:

|                      |   |
|----------------------|---|
| Gerald E. Upson      | 1001 Old Tomoka Road<br>Ormond Beach, Florida 32074 |
| T. J. Cloar, III     | 1001 Old Tomoka Road<br>Ormond Beach, Florida 32074 |
| Dorothy J. Alexander | 1001 Old Tomoka Road<br>Ormond Beach, Florida 32074 |

#### ARTICLE VI

The management of this corporation and time for elections shall be as follows:



a. The affairs and property of this corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than nine (9) members.

b. Directors shall be elected by the voting membership at the regular annual meeting of the membership of the corporation. The first annual meeting shall be held within ninety (90) days after the total number of subdivision lots held in the name of either The Trails, Inc. or any builders who have purchased lots with the intent to construct dwelling units thereon for resale, constitutes less than 75% of the total lots in the subdivision. Directors shall be elected for a term of two (2) years. Except, however, the maximum voting minority of the Board elected at the first regular annual meeting of the corporation or 50% of said Board, whichever is applicable, shall have terms of only one (1) year. For example, if said Board has four (4) members, then two (2) of the members (50%) will have terms of only one (1) year, but in the event such Board has seven (7) members, then three (3) of the members (maximum voting minority) shall have terms of only one (1) year. At the second regular annual meeting elections shall be held for those Directorships with one (1) year initial terms. The Directors elected at the second regular annual meeting shall have terms of two (2) years, and all Directors elected thereafter shall have terms of two (2) years. It is the intent of this provision for the Directors to have staggered terms such that there will, if possible, always be at least one (1) Director on the Board with experience from the prior year.

c. All officers shall be elected by the Board of

Directors in accordance with the By-Laws at the regular annual meeting of the Board of Directors to be held within ten (10) days of the annual meeting of the membership. The Board of Directors shall elect from among the members of the corporation, president, a vice-president, a secretary, treasurer, assistant secretary and assistant treasurer and such other officers as it may deem desirable.

d. All officers may hold more than one office as set forth above, except that the President shall not also be the Secretary, Assistant Secretary or Vice-President.

#### ARTICLE VII

The names of the officers who shall serve until the first election are as follows:

|                              |                      |
|------------------------------|----------------------|
| President                    | T. J. Cloar, III     |
| Vice-President and Treasurer | James M. Sweet       |
| Secretary                    | Dorothy J. Alexander |

#### ARTICLE VIII

The following three (3) persons shall constitute the first Board of Directors. Said First Board of Directors may appoint three (3) successors to serve as an interim Board of Directors until the first election of the Board of Directors at the first regular annual meeting of the members.

|                      |   |
|----------------------|---|
| Gerald E. Upson      | 1001 Old Tomoka Road<br>Ormond Beach, Florida 32074 |
| T. J. Cloar, III     | 1001 Old Tomoka Road<br>Ormond Beach, Florida 32074 |
| Dorothy J. Alexander | 1001 Old Tomoka Road<br>Ormond Beach, Florida 32074 |

#### ARTICLE IX

The By-Laws of this corporation may be amended, altered, amended or rescinded by such modification adopted in the following manner:

Notice of subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approval must be either by:

a. Not less than sixty-five (65%) percent of the entire membership of the Board of Directors and by not less than sixty-five (65%) percent of the votes of the entire membership of the Association;

or

b. By not less than seventy-five (75%) percent of the votes of the entire membership of the Association.

Proviso. Provided, however, that no amendment shall discriminate against any owner nor against any class or group of owners unless the owner so affected shall consent. No amendment shall be made that is in conflict with the Articles of Incorporation or restrictions.

#### ARTICLE X

An affirmative vote of sixty-five percent (65%) of the membership and Board of Directors or by not less than seventy-five percent (75%) of the votes of the entire membership of the association shall be necessary to amend these Articles of Incorporation.

#### ARTICLE XI

No dividend shall be paid and no part of the income shall be distributed to its members, directors or officers. The corporation may, however, pay a reasonable amount to its members, directors and officers for services rendered and may confer benefits upon its members in conformity with the purposes set forth in Article II, and upon dissolution or final liquidation, may make distribution to its members, as permitted by the Court having jurisdiction thereof and no such payment, benefit or distribution shall be determined to be a dividend or a disbursement of income.

WITNESS THE HANDS AND SEALS of the incorporators and subscribers in Volusia County, State of Florida, this 4th day of December, 1981.

Signed, Sealed and delivered in the presence of:

Laurie J. Posey

Frederic D. Bryan

Anthony K. Grant

Gerald E. Upson (Seal)  
Gerald E. Upson

T. J. Cloar, III (Seal)  
T. J. Cloar, III

Dorothy J. Alexander (Seal)  
Dorothy J. Alexander

STATE OF FLORIDA  
COUNTY OF VOLUSIA

BEFORE ME, the undersigned authority, personally appeared Gerald E. Upson, T. J. Cloar, III and Dorothy J. Alexander to me well known to be the incorporators and subscribers to the foregoing Articles of Incorporation of THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC. who being by me first duly sworn, acknowledged that they signed the same for the purposes therein expressed.

WITNESS MY hand and official seal in the State and County aforesaid this 4th day of December, 1981.

James A. Chung  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JAN. 20 1985  
BONDED THRU GENERAL INS. UNDERWRITERS



CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR  
THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT  
UPON WHOM PROCESS MAY BE SERVED.

The Trails South Forty Homeowners Association, Inc.  
desiring to organize under the laws of the State of Florida  
with its principal office, as indicated in the Articles of  
Incorporation at Ormond Beach, Volusia County, Florida, has named  
Gerald E. Upson, 1001 Old Tomoka Road, Ormond Beach, Florida, 32074  
as its agent to accept service of process within this State.

ACKNOWLEDGMENT

Having been named to accept service of process for the  
above named corporation, at place designated in this Certificate,  
I hereby accept to act in this capacity, and agree to comply  
with the provision of said Act to keeping said office open.

  
Registered Agent

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BY-LAWS

OF

THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

a corporation not-for-profit

1. GENERAL.

1.1 These are the By-Laws of THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC., a Florida non-profit corporation, (hereinafter "the Association").

1.2 The fiscal year of the Association shall be the calendar year.

1.3 The seal of the corporation shall bear the name of the corporation, the word "Florida", and the words "corporation not-for-profit", and the year of the incorporation.

1.4 The Trails South Forty subdivision shall hereinafter be referred to as the "Subdivision".

2. MEMBERSHIP, VOTING QUORUM, PROXIES.

2.1 There shall be one vote for each lot. In no event, shall the total units exceed the number of lots in the Subdivision. One vote shall pass automatically with the title to each lot. The Trails, Inc. reserves for itself and designated successor Developers, the right to exercise all votes not so automatically conveyed. As used herein, the term "majority of owners" or similar phrase means the owners of lots, including The Trails, Inc. who owns 51% or more of the votes.

2.2 A quorum at members' meetings shall consist of the owners of a majority of the lots, and decisions shall be made by the owners of a majority of the lots represented at a meeting at which a quorum is present, except where approval by a greater number is required by the Articles of Incorporation, the By-Laws or restriction.

2.3 Proxies. At meetings of the membership, votes may be cast in person or proxy. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the secretary before the appointed time of the meetings. A member may withdraw his proxy at any time before it is voted.

3. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP.

3.1 The first Annual Members' Meeting shall be held within ninety (90) days after the total number of subdivision lots held in the name of either The Trails, Inc. or in the name of any other builder who has purchased lots with the intent to construct dwelling units thereon for purposes of resale, constitutes less than 75% of the total lots in the subdivision. The purpose of the first annual meeting shall be for electing Directors and transacting any other business authorized to be transacted by the members. Thereafter, the Annual Members' Meeting shall be held annually on the same day of the same month as the first Annual Members' Meeting, for the purpose of electing Directors and transacting any other business authorized to be transacted by the members; provided, however, if that date is a legal holiday, the meeting shall be held at the same hour on the next day that is not a holiday.

3.2 Special Members' Meeting shall be held whenever called by the president or vice-president or by a majority of the Board of Directors and must be called by such officers upon

12-4-81

receipt of a written request of one-third of the members.

3.3 Written notice of all members' meetings, including annual meetings, stating a time and place and the object for which the meeting is called shall be given by the president, vice-president or secretary unless waived in writing. Such note shall be delivered or mailed by first class mail to each member at his address as it appears on the books of the Association, not less than ten (10) days nor more than thirty (30) days prior to the date of the meeting. Notice of meetings may be waived before or after meetings.

3.4 Voting.

a. In case a lot is owned by more than one person or by a corporation or other entity, its vote may be cast by any person designated in writing by all owners of the lot, or by the president in the case of a corporation, and filed with the secretary. Such designation shall be valid until revoked in writing.

3.5 Adjourned Meetings. In the absence of a quorum at any meeting, the members present may adjourn the meeting from time to time until a quorum is present.

3.6 The Order of Business. At Annual Members' Meetings and as far as practical at other members' meetings, the order of business shall be:

- a. Calling of the roll and certifying proxies.
- b. Proof of notice of meeting.
- c. Reading and approval of minutes.
- d. Reports of officers and committees.
- e. Election of inspectors of election.
- f. Election of directors.
- g. Unfinished business.
- h. New business.

3.7 Written minutes of all meetings of the lot owners shall be kept and be available for inspection by owners and board members at all reasonable times.

4. BOARD OF DIRECTORS.

4.1 The Board of Directors of the Association shall consist of not less than three nor more than nine directors, the exact number to be determined at the time of the election.

4.2 Election of directors shall be conducted in the following manner:

a. Election of directors shall be conducted at the Annual Members' Meeting.

b. A Nominating Committee of five (5) members shall be appointed by the Board of Directors not less than thirty (30) days prior to the Annual Members' Meeting. The Committee shall nominate one person for each director to be elected. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

c. The elections shall be by ballot (unless dispensed by unanimous consent) and by a plurality of the votes.



4.3 Except for those Directors having a one year term per Article VI(b) of the Articles of Incorporation, the term of each Director's service shall extend until the second annual meeting of the members following the election of said Director and shall continue subsequently until a successor is duly executed and qualified, or until said Director is removed in the manner elsewhere provided herein or in the Articles of Incorporation.

4.4 The Organizational Meeting of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

4.5 Regular Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each director personally or by mail, telephone or telegraph, at least three (3) days prior to the date named for such a meeting, unless notice is waived.

4.6 Special Meetings of the directors may be called by the president, and must be called by the secretary at the written request of one-third of the directors. Not less than three (3) days' written notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

4.7 Any director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

4.8 A quorum at directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting in which a quorum is present shall constitute the acts of the Board of Directors, except where approval by a greater number of directors is required by the Articles of Incorporation or by these By-Laws.

4.9 The Presiding Officer of directors meetings shall be the president. In the absence of the presiding officer, the directors present shall designate one of their number to preside.

5.0 Meetings of the Board of Directors shall be open to all lot owners and notice of meeting shall be posted conspicuously, forty-eight (48) hours in advance for the attention of owners except in an emergency. Minutes of all Board meetings shall be kept in a businesslike manner and available for inspection by lot owners at all reasonable times.

## 5. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.

5.1 All of the powers and duties of the Association shall be exercised by the Board of Directors, including those existing under common law and the statutes, the Articles of Incorporation and these By-Laws, without limiting the generality of the foregoing, the following:

a. To make, levy and collect assessments against members and members' lots to defray the costs of the Association and to use the proceeds of said assessments in the exercise of the powers and duties of the Association.

b. To make and amend regulations governing the use of the property, real and personal, of the Association so long as its regulations do not conflict with the restrictions, the Certificate of Incorporation and these By-Laws.

c. To employ such personnel as may be required for proper operation of the Association.

## 6. OFFICERS.

6.1 The executive officers of the Association shall be a president, a vice-president, a treasurer, a secretary and an assistant secretary, all of whom shall be elected annually by the Board of Directors at its organizational meeting and who may be preemptorily removed by vote of the directors at any meeting. Any person may hold two or more offices except that the president shall not also be the secretary, an assistant secretary or the vice-president. The Board of Directors may from time to time elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

6.2 The president shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an association including but not limited to, the power to appoint committees from among the members of the Association from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.

6.3 The vice-president shall in the absence or disability of the president exercise the powers and perform the duties of the president. He shall also generally assist the president and exercise such other powers and perform such other duties as shall be prescribed by the directors.

6.4 The secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and other notices required by law. He shall keep the records of the Association, except those of the treasurer, and shall perform all other duties incident to the office of secretary of an association required by the directors or the assistant secretary when the secretary is absent.

7. FISCAL MANAGEMENT. The provisions for fiscal management of the Association set forth in the Restrictions, and the Articles of Incorporation shall be supplemented by the following provisions:

7.1 The assessment roll shall be maintained in a set of account books in which there shall be an account for each lot. Such an account shall designate the name and address of the owner or owners, the amount of each assessment against the owners, the dates and amounts in which assessments come due, the amounts paid upon the account and the balance due upon assessments.



7.2 Budget. The Board of Directors shall adopt a budget for each calendar year which shall include the estimated funds required to defray the common expense and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Copies of the proposed annual budget, together with a notice of the meeting at which such budget will be considered, shall be transmitted to each member not less than thirty (30) days prior to the meeting. Failure to do so shall not affect the liability of any member for payment of his proportionate share of the budget.

7.3 Assessments. Assessments against the lot owners of their share of the items of the budget shall be made for the calendar year annually in advance on or before December 1 preceding the year for which the assessments are made. Such assessments shall be due in twelve (12) equal installments on the first day of each month of the year for which the assessments are made. If an annual assessment is not made as required, assessments shall be presumed to have been made in the amount of the last prior assessment and monthly installments on such assessment shall be due upon each installment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors and the unpaid assessments for the remaining portion of the calendar year for which the amended assessment is made shall be due and payable in equal installments on the first day of each month remaining in the calendar year.

7.4 Acceleration of Assessment Installments Upon Default. If an owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice to the owner, and then the unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than ten (10) days after delivery of the notice to the owners, or not less than twenty(20) days after the mailing of such notice to him by certified mail, whichever shall first occur.

7.5 Assessments for Emergencies. Assessments for common expenses for emergencies that cannot be paid from the annual assessments for common expense shall be made only after notice of the need for such is given to the owners. After such notice and upon approval in writing by persons entitled to cast more than one-half (1/2) of the votes of the owners, the assessment shall become effective, and it shall be due after thirty (30) days notice in such manner as the Board of Directors may require.

7.6 The depository of the Association shall be such bank or banks as shall be designated by the directors from time to time and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by check signed by such persons as are authorized by the directors.

7.7 An audit of accounts of the Association shall be made annually and a copy of the audit report shall be available to each member not later than the second Monday in February of the year following the year for which the report is made.

7.8 Written summaries of the accounting records of the Association shall be supplied at least annually to each member.

8. PARLIAMENTARY RULES.

8.1 Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Articles of Incorporation or these By-Laws.

9. AMENDMENTS. These By-Laws may be amended in the following manner:

9.1 Notice of subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

9.2 A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approval must be either by:

a. Not less than sixty-five percent (65%) of the entire membership of the Board of Directors and by not less than sixty-five (65%) percent of the votes of the entire membership of the Association; or

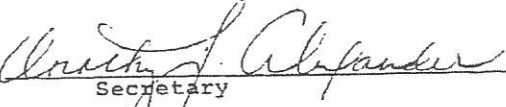
b. By not less than seventy-five percent (75%) of the votes of the entire membership of the Association.

9.3 Proviso. Provided, however, that no amendment shall discriminate against any owner nor against any class or group of owners unless the owner so affected shall consent. No amendment shall be made that is in conflict with the Articles of Incorporation or restrictions.

10. RECORDS OF ASSOCIATION.

10.1 All of the books and records of the Association shall be kept in a businesslike manner and shall be available for inspection by any member at reasonable times.

The foregoing were adopted as the By-Laws of THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, at the first meeting of the Directors and/or by written action on the 4<sup>th</sup> day of December, 1981.

  
Secretary



FIRST AMENDMENT TO BY-LAWS OF THE TRAILS SOUTH  
FORTY HOMEOWNERS ASSOCIATION, INC.,  
A CORPORATION NOT FOR PROFIT

This Amendment to By-Laws of The Trails South Forty Homeowners Association, Inc., a corporation not for profit (hereinafter "Association") being duly and lawfully executed this 31st day of October, 1989, having been approved in accordance with paragraph 9 of the By-Laws as further delineated on attached Certificate;

W I T N E S S E T H:

WHEREAS, The Trails Inc., a Florida corporation, was the Developer of The Trails South Forty Subdivision (hereinafter "The Subdivision") the legal description of which is duly recorded on subdivision plats filed in the office of the Clerk of the Circuit Court, Volusia County, Florida, on June 15, 1982, and recorded in Map Book 38, Pages 134 through 135 of the Public Records of Volusia County, Florida; and further supplemented by additions to said Subdivision recorded at Map Book 39, Page 107, Public Records of Volusia County, Florida; and

WHEREAS, The Trails Inc. (hereinafter "Developer") caused to be recorded that certain Declaration of Covenants and Restrictions The Trails South Forth Subdivision Volusia County, Florida and Notice of Provisions of The Trails South Forty Homeowners Association, Inc., dated May 4, 1982, and recorded at Official Record Book 2363, Page 1705, Public Records of Volusia County, Florida; having further been amended as follows:

A. By Amendment to Declaration of Covenants and Restrictions of The Trails South Forty dated April 15, 1983 and recorded at Official Record Book 2443, Page 1089, Public Records of Volusia County, Florida;

B. By Amendment to Declaration of Covenants and Restrictions of South Forty dated July 27, 1983, and recorded at Official Record Book 2526, Page 1615, Public Records of Volusia unty, Florida; and

C. By Second Amendment to Declaration of Covenants and Restrictions of The Trails South Forty dated January 19, 1984, and

CLERK CIRCUIT COURT  
VOLUSIA CO., FL

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RECORD VERIFIED

recorded at Official Record Book 2529, page 1263, Public Records of Volusia County, Florida; and

D. By Third Amendment and Clarification to Declaration of Covenants and Restrictions of The Trails South Forty Subdivision, as amended dated March 15, 1984, and recorded at Official Record Book 2548, Page 1402, Public Records of Volusia County, Florida; and

WHEREAS, the Developer further caused to be incorporated The Trails South Forty Homeowners Association, Inc. bearing Corporate Charter Number 761146; and

WHEREAS, the Developer further promulgated By-Laws incident to said corporation; and

WHEREAS, the Developer has completed all construction of single family residential units contemplated by the subdivision plats referenced above and has sold all units and a majority of the lots to third party purchasers; and

WHEREAS, turnover of association control from the developer to the unit owners has subsequently occurred; and

WHEREAS, certain provisions of the Declaration of Covenants and Restrictions having been subsequently amended require clarification due to the multiple amendments referenced above; and

WHEREAS, other provisions of the Declaration of Covenants and Restrictions authorizing further Association rules and regulations now require implementation; and

WHEREAS, the Association desires to clarify certain sections of the existing ownership documents and further desires to promulgate certain rules and regulations all as permitted pursuant to The Declaration of Covenants and Restrictions; and

WHEREAS, the Association has determined that an amendment to the By-Laws of the Association is the most expeditious method of accomplishing the goals of the Association as set forth above; and

WHEREAS, the parties have completed said amendment and wish to reduce these recitals to writing.

NOW THEREFORE, for good and valuable consideration, the

Association hereby adopts, confirms, ratifies and approves the following addition to the existing By-Laws by adopting paragraph 11, entitled Declaration of Use Restrictions in compliance with Declaration of Covenants and Restrictions, as amended, originally recorded at Official Record Book 2363, Page 1705, Public Records of Volusia County, Florida, more particularly detailed below:

11. Declaration of Use Restrictions.

11.1 Definitions and Preamble.

a. The subdivision is now complete and all single family homes and a majority of the lots have been sold to third party purchasers. References to the Developer are now moot excepting all occasions where there may be continued developer liabilities or responsibilities as provided by Florida Law.

b. The Architectural Control Committee referenced in the Declaration of Covenants and Restrictions shall be appointed by the Board of Directors of the Association. Members of the Board of Directors may also serve on said Committee.

c. Property subject to the Covenants and Restrictions, Articles of Incorporation and By-Laws are deemed to include all property originally encumbered by said Declaration of Covenants and Restrictions described in the subdivision plats referenced above.

11.2 Clarification of Restrictive Covenants.

a. Lots may be used for residential purposes only, each with a one family dwelling and attached garage.

b. The Architectural Control Committee may prohibit any structures or plantings from being erected and/or planted and or maintained on common property. Such structures or plantings impede access, maintenance and the proper functioning of the sprinkler system.

c. A recreational vehicle is defined as any coach, motor coach or other such vehicle containing sleeping, and/or cooking, and/or kitchen or food preparation facilities. No separate boathouse, carport, or other structure may be erected to store any vehicle, trailer, boat, or boat trailer or other



other prohibited vehicle. Recreational vehicles (coaches with sleeping and/or cooking and/or bathroom facilities) boat and boat trailer, boat alone, or trailer alone shall not be parked or stored or otherwise permitted to remain on any lot except for a period of time not to exceed twenty four (24) consecutive hours. The purpose for the exception is to allow the owners of such vehicles, trailers, or boats to load and/or unload after trips and/or outings. Any recreational vehicle, boat alone, trailer alone, or boat and boat trailer which can be permanently housed in an attached garage, with the garage door closed is permitted. No discharge of any waste or other material shall be permitted from a recreational vehicle while it is located within the Subdivision. Abuse of this restriction may be reported by any resident to the Board of Directors who may initiate corrective action with the offending party(ies).

d. No vehicle or trailer may be parked on grass.

e. Any proposed change to the original exterior architectural appearance of a unit or its attached garage must be submitted in writing to the Architectural Control Committee and the Board of Directors of the Association. Such proposal must include sufficient plans and specifications and other details as may be required by the Committee and/or Board such that a fair and accurate determination of the effect of the change to the original exterior appearance can be determined. Any such change must be approved by both the Architectural Control Committee and the Board of Directors of the Association and absent the approval of both, said change may not be implemented.

f. The maintenance of grounds, landscaping and grass mowing is clarified as follows:

1. The Association shall (a) maintain all original contractor or developer plantings on common property except ground plantings and/or shrubs adjacent to any residence or attached garage (defined as being within 5 feet), (b) mow all grass in the subdivision, (c) maintain all trees in the subdivision, (d) remove all diseased or damaged trees on common property.



2. Individual unit owners shall be responsible for (a) all ground plantings and/or shrubs within 5 feet of their residence or attached garage, (b) all foliage or other plantings (except grass) on either owner's property or planted by the owner on common property after original developer and/or contractor plantings, (c) remove all diseased or damaged trees from owner's property.

g. Owners shall be required to furnish to the Board of Directors proof of any insurance which owners may be required to procure as further delineated in the Declaration of Covenants and Restrictions, Articles of Incorporation and/or By-Laws. Any requirement to furnish proof of insurance must be uniformly applied to all owners. In the event of a fire or other casualty loss, repairs to said unit shall be commenced within thirty (30) days of the destruction. If repairs are not commenced within thirty (30) days after the destruction, the Association may undertake said repairs and collect any expenses from the owner. After any destruction, plans and specifications for repair and/or reconstruction must be submitted to the Architectural Control Committee and the Board of Directors. Said plans and specifications must show that the unit and or attached garage will be restored to its same exterior architectural appearance that existed prior to the destruction. The Architectural Control Committee and Board of Directors shall forthwith approve said plans and specifications provided they exhibit a plan of reconstruction substantially identical to the exterior architectural appearance of the unit or attached garage prior to the destruction.

h. No permanent or temporary dog runs or other fenced in areas or enclosures shall be permitted on common property. Pet feces must be removed by the owner from all common property and/or property of other owners and disposed of.

i. Neither the Architectural Control Committee nor the Board of Directors shall approve any additions or modifications to existing units which would result in an encroachment on an adjoining owner's property or common element property. At the

discretion of the Board of Directors, the Board may appoint either three (3) Board members or alternatively, the entire Board to act as the Architectural Control Committee. If the entire Board is deemed to act as the Architectural Control Committee, then the number of members of said Architectural Control Committee shall be deemed to have increased from three (3) to the actual number of members of the Board of Directors. At the first Board of Directors meeting held after the annual meeting each year, the Board shall be required to appoint the Architectural Control Committee and publish in the minutes the members of said committee. Thereafter, any and all actions of either the Architectural Control Committee and/or the Board of Directors acting as said Committee must only take place after notice to the applicant and all adjoining property owners. The notice must be given at least five (5) days prior to the date of the meeting.

j. The number of four legged domesticated pets which an owner may have at any one time is limited to a maximum of two.

k. The only signs to be displayed on common property are to be Real Estate and/or Garage Sale signs placed directly in front of the unit. Signs shall not exceed four (4) square feet. The Board of Directors may place reasonable restrictions on the length of time a sign may remain. The unit owner is responsible for moving and discarding the sign when its use is complete.

l. No trash, garbage or other items may be burned in the subdivision. All open burning of any form of debris is prohibited. This section shall not effect the use of customary residential outdoor charcoal or gas grills.

m. No fence, sign, hedge or other planting or any other item whatsoever may be kept or maintained, either temporarily or permanently, within the subdivision, that obscures the view regarding vehicular or bicycle traffic in and about the subdivision.

n. No additions or modifications to a driveway

shall be permitted without first obtaining the approval of the Architectural Control Committee and Board of Directors as otherwise provided for herein and in the Declaration of Covenants and Restrictions.

o. Any previously defined recreational vehicle, boat and boat trailer, boat alone or trailer alone cannot be parked either on the streets or off street parking areas at any time. These vehicles, boats or trailers may only be parked in an owner's driveway and only for the time period specified in paragraph 11.2(c) above. (unless permanently stored in a garage as further provided in paragraph 11.2(c) above).

p. Passenger car parking is restricted to driveways, garages and off street parking plots. No parking is permitted in any other portion of the subdivision.

#### 11.3 Association.

a. The Association is responsible for the maintenance and management of common areas located within the subdivision only, and no other property. True and accurate copies of the Articles of Incorporation and By-Laws for the Association are on file with the County and the Homeowner's Association office.

b. In the event a lot or dwelling unit is owned by more than one individual, the Board of Directors may require a voting certificate designating the owner which is authorized to vote at all annual or special owner's meetings.

#### 11.4 Maintenance Assessments, Fiscal Management and Budgeting.

a. Section 4.3 of Article IV, Covenants for Maintenance Assessments originally recorded at Official Record Book 2363, Pages 1717 and 1718, Public Records of Volusia County, Florida, have been amended several times. As revised, the consolidated, presently enacted section reads as follows:

SECTION 4.3. The initial regular monthly assessment was originally set at the rate of \$40.00 per lot or dwelling unit. A monthly charge of \$40.00 per lot or dwelling unit is hereby established as the minimum monthly amount. Out of each monthly



assessment received by the association from members, at least \$20.00 shall be placed in a separate interest bearing account in the name of the Association, which account shall be known as the "Repair and Maintenance Account". The funds placed in the Repair and Maintenance Account shall only be used for the purposes of maintenance and repairs of the common areas of dwelling units in The Trails South Forty Subdivision.

Any repair and maintenance funded by the above referenced Repair and Maintenance Account shall be limited to repair and maintenance of the common areas of the buildings themselves, including but not limited to the painting, repair and maintenance of exterior trim, exterior walls, and roofs. No funds in the above referenced Repair and Maintenance Accounts shall be available for landscaping or repair and maintenance of other amenities. The funds in the above referenced Repair and Maintenance Account shall only be spent for the purposes set forth herein, and then only upon resolution adopted by the Association's Board of Directors.

Thereafter, regular monthly assessments shall be determined at any regular meeting of the directors of the Association. The regular assessment may be increased beyond that set at the annual meeting upon approval of two-thirds of the membership in attendance at any regular or special meeting of the Association, but only after notice of the recommendation is given to all members at least ten (10) days prior to the date of said meeting; provided, however, that nothing herein shall be construed to preclude the Board of Directors of the Association from fixing and levying an emergency assessment not to exceed \$300.00, which emergency assessment may be levied without notice to the membership and without the holding of any special or regular meeting of said membership of the Association.

b. Any distinction or differentiation between repair and maintenance accounts originally established by the Developer among lots or dwellings in the Subdivision is eliminated. All fiscal and/or budgetary matters are hereby consolidated and each unit owner and/or unit and/or dwelling in the subdivision is,

and with no exceptions, treated identically.

c. The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for all common expenses as provided in the Declaration of Covenants and Restrictions. Specifically, and not by way of limitation, the Board may budget for items as follows: (A) Repair and maintenance for amenities shared by all residential owners in the subdivision which include the clubhouse, swimming pool and tennis courts. (B) Maintenance and repair for landscaping and other similar items of common expense. (C) Professional expenses, including attorneys fees and accountants. (D) Repair and maintenance of offsite parking. (F) Capital reserves for roof replacements, building painting, club house parking area, walkways, pool expenses, tennis court expenses, and clubhouse expenses.

d. Capital Reserve Expenses:

The Board of Directors shall determine items requiring capital reserves and shall compute the estimated remaining useful life and the estimated replacement costs. Thereafter, a per unit capital reserve fee will be assessed to insure that funds are available for capital expenditures as and when needed.

e. Association funds shall be held in a commercial bank or savings and loan association insured by an agency of the Federal Government. Funds collected may be maintained in one association account with separate journal entries. At the option of the Board of Directors, separate accounts may be maintained for purposes of maximizing interest collected on Association funds or as the Board may otherwise decide. The Board of Directors shall at all times adopt and follow prudent accounting standards and shall properly distinguish between funds collected for repair and maintenance of units, repair and maintenance of amenities, capital reserves, operational expenses, and such other line item categories as the Board of Directors may deem appropriate.

11.5 Enforcement.

a. The Association, through its Board of Directors,

may enforce the Declaration of Covenants and Restrictions, Articles of Incorporation and By-Laws by:

(1) Application for relief and assistance by any governmental agency having jurisdiction over the nonconforming unit owner or other individual.

(2) Application for assistance by any governmental agency having jurisdiction over zoning matters involved in any noncompliance.

(3) Filing a written complaint with the Ormond Beach Police Department and/or the Volusia County Sheriff's Department where applicable.

(4) Filing suit in a court of competent jurisdiction for declaratory relief, injunction, accounting, lien foreclosure, damages or such other relief as may be available to the Association provided by Florida law.

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association have affixed their hands and seals this 31<sup>st</sup> day of OCTOBER, 1989, acknowledging that said Amendment to By-Laws was duly and properly enacted by the Association as more particularly described on Certificate attached hereto and incorporated herein.

WITNESSES:

[Signature]  
[Signature]

TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

By: [Signature]  
President

Attest: [Signature]  
Secretary

STATE OF FLORIDA  
COUNTY OF VOLUSIA

Before me personally appeared Arthur L. Nustad and Annette Sirkin as the President and Secretary respectively of The Trails South Forty Homeowners Association, Inc., and they acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 31st day of October, A.D., 1989.

[Signature]  
Notary Public, State of Florida  
at Large  
My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES: MAY 19, 1993.  
BONDED THRU ROTARY PUBLIC UNDERWRITERS.



CERTIFICATE OF AMENDMENT TO BY-LAWS FOR THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

Notice is hereby given that at a duly called meeting of the members on 17 JULY, 1989, by a vote of not less than two-thirds of the voting interest of the Association and after the unanimous adoption of a resolution proposing said Amendments by the Board of Directors, the By-Laws of The Trails South Forty Homeowners Association, Inc., a corporation not for profit, as originally promulgated and attached as an exhibit to the Declaration of Covenants and Restrictions originally recorded in Official Record Book 2363, Page 1705, Public Records of Volusia County, Florida, be and the same is hereby amended as follows:

- 1. The By-Laws of The Trails South Forty Homeowners Association, a corporation not for profit, is hereby amended in accordance with the Amendment attached hereto and expressly incorporated herein.

IN WITNESS WHEREOF, The Trails South Forty Homeowners Association, Inc. has caused this Certificate of Amendment to be executed in accordance with the authority hereinabove expressed this 31 day of OCTOBER, 1989.

[Handwritten signature]

THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

By: Arthur L. Nustad President

STATE OF FLORIDA COUNTY OF VOLUSIA

Before me personally appeared Arthur L. Nustad as the President of The Trails South Forty Homeowners Association, Inc., and he acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this 31st day of October, A.D., 1989.



[Handwritten signature] Notary Public, State of Florida at Large My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA MY COMMISSION EXPIRES: OCT 12, 1993. SHOULD SHOW NOTARY PUBLIC UNDERWRITERS.

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DECLARATION OF COVENANTS AND RESTRICTIONS  
THE TRAILS SOUTH FORTY SUBDIVISION  
VOLUSIA COUNTY, FLORIDA  
AND  
NOTICE OF PROVISIONS OF  
THE TRAILS SOUTH FORTY HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, made this 4<sup>th</sup> day of may,  
1982 by THE TRAILS, INC., a Florida Corporation, with its  
principal place of business at U. S. #1, North, Ormond Beach,  
Volusia County, Florida, (hereinafter sometimes referred to as  
the "Developer").

- W I T N E S S E T H -

WHEREAS, the Developer is the record owner in fee simple  
absolute of certain real property located in Volusia County,  
Florida, and more particularly described in the "Schedule of  
Legal Description" which is attached hereto as Exhibit "A"  
and made a part hereof; and

WHEREAS, in accordance with the applicable provisions of  
State law and local ordinance, the Developer caused the above  
described real property to be subdivided into platted subdivisions  
known as The Trails South Forty Subdivision, (hereinafter "the  
subdivision") and subdivision plats thereof duly filed in the  
Office of the Clerk of the Circuit Court, Volusia County, Florida,  
on JUNE 15,, 1982, and recorded in Map Book 38,  
Pages 134-135 of the Public Records of Volusia County,  
Florida; and

WHEREAS, it is the intention of the Developer to develop  
the subdivision as high quality medium-low density, zero lot  
line dwellings, with common areas and recreational amenities  
as shown on the above referenced plat, but not including  
Tract B and C shown on the plat which are reserved  
for commercial development; and

048404

JUN 15 12 03 PM '82

RECORDED  
INDEXED  
JUN 15 1982  
VOLUSIA COUNTY, FLORIDA

5-4-82



WHEREAS, there is a need to specify, make and impose covenants, and to grant necessary easements for the use of the subdivisions, and to provide for an effective administration of the common areas in the subdivision; and

WHEREAS, the Developer has caused to be incorporated in Florida a non-profit corporation known as The Trails South Forty Homeowners Association, Inc. which has been formed to manage the common areas, collect assessments, and generally provide for the orderly enjoyment of the subdivision and any future units of the subdivision hereafter filed by Developers;

NOW, THEREFORE, this Declaration is made, filed and recorded by the Developer so that from the effective date hereof, the real property described in the Schedule of Legal Description which is attached hereto as Exhibit "A", is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the restrictions, conditions, easements, charges, burdens, assessments, affirmative obligations, and liens (all hereinafter sometimes referred to as the "covenants") hereinafter set forth. This Declaration shall become effective on the date and at the time it is filed and recorded in the Public Records of Volusia County, Florida.

#### ARTICLE I

##### DEFINITIONS AND DESCRIPTION OF PROPERTY

Section 1.1 Definitions. The following words and terms when used in this Declaration and any supplemental declaration, unless the context shall clearly indicate otherwise, shall have the following meanings:

a) "Association" shall mean and refer to The Trails South Forty Homeowners Association, Inc., a Florida Corporation not for profit, and its successors and assigns, the memberships of which will be owners of "dwelling units" or "lots" in the subdivision, and future units of the subdivision hereafter filed by Developer.

b) "Developer" shall mean and refer to The Trails, Inc., a Florida Corporation, its successors and assigns.

c) "Lot" shall mean any parcel of land located within any unit of the subdivision, which is intended for use as a site for a zero lot line dwelling. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are substantially complete or are subject to ad valorem tax as improved property.

d) "Dwelling Unit" shall mean one building constructed primarily for use as zoned for residential dwelling.

e) "Subdivision" shall mean any unit of the subdivision, recorded in the Public Records of Volusia County, Florida.

f) "Architectural Control Committee" shall mean a committee appointed by the Developer in accordance with Section 2.3.

g) "Zero lot line" shall mean a concept of development without any sideyard set backs. A structure can be a zero lot line structure regardless of whether it sits on a lot line.

Section 1.2 Property subject to Covenants and Restrictions.

The property subject to the Declaration of Covenants and Restrictions is that property described in the Schedule of Legal Description which is attached hereto as Exhibit "A".

ARTICLE II

RESTRICTIVE COVENANTS

Section 2.1 No lot shall be used for any purpose other than a one family dwelling, garage or carport, and grounds. The areas included within the lot line of each individual lot, but not included within the dwelling constructed on such lot, such areas being hereinafter referred to as "grounds", shall be used for normal and customary yard purposes.

Section 2.2 No building structure, including an addition to a dwelling, shall be erected on, placed on, altered, or permitted to remain on any lot unless and until the owner submits the site

plan, floor plan, elevation, landscaping plan, and abbreviated specifications, and such plans, etc., have been reviewed and approved by the Architectural Control Committee, as hereinafter provided. The Architectural Control Committee shall review the proposed building or structure (including plans and specifications for same) as to the harmony of the external design and location of the building or structure compared to existing buildings and structures, the location of the building or structure with respect to topography, vegetation, and the finished grade of elevation of the lot, and any other relevant considerations which are based upon acceptable standards of planning, zoning, and construction, including considerations which are exclusively on aesthetic factors. The term "structure" as used herein shall include, but is not limited to swimming pools, fences, walls, barbeque pits, television or radio antennae, clotheslines, garages, sheds, outbuildings, porches, balconies, patios, driveways, walks, lighting apparatus, window barriers, window awnings, recreational facilities such as basketball courts or goals, tennis courts, shuffleboard courts, and lawn decorative objects such as statutes, tables, etc, basements, tents, shacks, barns, sheds or other temporary storage or residence facilities. All garages built shall be and remain garages and shall not be converted to any other use at any time other than the storage of vehicles. The driveway to said garage is to be for the exclusive use of said garage owner. Developer hereby creates easements for ingress and egress over those parts of the Common Area used as driveways, with each lot owner having an exclusive easement over the driveway serving his lot, which easement shall run with the land.

Section 2.3 No recreational vehicle, boat, boat and trailer, or trailer alone shall be parked (for any period of time in excess of ten consecutive hours) or stored or otherwise permitted to remain on any lot except in an approved boathouse, garage, or carport attached to the residence. No automobile, truck or other