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**RESOLUTION NO. R2004-153**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA APPROVING A DEVELOPMENT AGREEMENT BETWEEN BINKS, LLC, PENINSULA PROPERTY HOLDINGS, INC. AND THE VILLAGE OF WELLINGTON TO ; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Local Government Agreement Act, Section 163.3221, et seq., Florida Statutes, and Article 12, "Development Agreements" of the Unified Land Development Code of the Village ("ULDC"), authorizes Development Agreements between property owners/developers and the Village to ensure adequacy of public facilities and sound capital planning, while providing certainty in the development review process and reducing the economic cost of development; and

**WHEREAS**, a Development Agreement between Binks, LLC, Peninsula Property Holdings, Inc. and the Village of Wellington has been prepared and is attached hereto;

**WHEREAS**, the Village has determined that the execution of the Development Agreement would be beneficial to the Parties; and

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WELLINGTON, FLORIDA, that:**

**SECTION 1.** The foregoing recitals are hereby affirmed and ratified.

**SECTION 2.** The Village Council hereby accepts and approves Development Agreement between Binks, LLC, Peninsula Property Holdings, Inc. and the Village of Wellington (attached hereto as Exhibit "A") and hereby authorizes the Mayor and Village Clerk to execute the Agreement.

**SECTION 3.** This Resolution shall become effective immediately upon adoption.

**PASSED AND ADOPTED** this 23<sup>rd</sup> day of November, 2004.

**ATTEST:**

**VILLAGE OF WELLINGTON, FLORIDA**

BY: Awilda Rodriguez

Awilda Rodriguez, Village Clerk

BY: Thomas M. Wenham

Thomas M. Wenham, Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

BY: Jeffrey S. Kurtz

Jeffrey S. Kurtz, Village Attorney

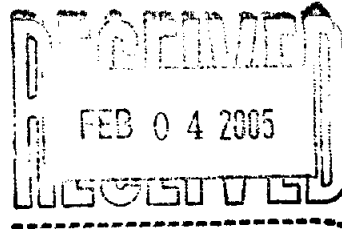
Name

Address:



CFN 20050047105  
OR BK 18057 PG 0359  
RECORDED 01/25/2005 16:59:49  
Palm Beach County, Florida  
Sharon R. Bock, CLERK & COMPTROLLER  
Pgs 0359 - 379; (21pgs)

Record and return to:  
Village of Wellington  
Village Clerk  
14000 Greenbriar Boulevard  
Wellington, FL 33414



**DEVELOPMENT AGREEMENT BETWEEN THE VILLAGE OF WELLINGTON,  
BINKS, LLC AND PENINSULA PROPERTY HOLDINGS, INC.**

THIS DEVELOPERS'S AGREEMENT (the "Development Agreement" or the "Agreement") made and entered into this 24<sup>th</sup> day of January, 2004, by and between the VILLAGE OF WELLINGTON, FLORIDA, a municipal corporation organized pursuant to the laws of the State of Florida, hereinafter called the "Village", BINKS, LLC, a Florida limited liability company hereinafter called the "Binks", and Peninsula Property Holdings, Inc., which joins in the execution hereof as the record title holder of the Property ("PPH"). "Village" and "Binks" are hereinafter collectively referred to as the "Parties" hereto.

WHEREAS, the Florida Local Government Agreement Act, Section 163.3221, et seq., Florida Statutes, and Article 12, "Development Agreements" of the Unified Land Development Code of the Village ("ULDC"), authorizes Development Agreements between property owners/developers and the Village to ensure adequacy of public facilities and sound capital planning, while providing certainty in the development review process and reducing the economic cost of development; and

WHEREAS, a Development Agreement is determined to be a legislative act of the Village in the furtherance of its powers to plan and regulate development and, as such, shall be superior to the rights of existing mortgagees, lien holders or other persons with a legal or equitable interest in the land subject to the Development Agreement, and the obligations and responsibilities arising thereunder on the property owner shall be superior to the rights of said mortgagees or lien holders and shall not be subject to foreclosure under the terms of mortgages or liens entered into or recorded prior to the execution and recordation of the Agreement; and

WHEREAS, Binks represents that it is the contract purchaser of the real property described in Exhibit "A" attached hereto from PPH (hereinafter referred to as "Property"), and that Binks has the authority to enter into this Agreement; and

WHEREAS, the Parties have determined that the execution of this Agreement would be beneficial to both Parties; and

WHEREAS, Binks intends to construct ninety (90) golf villas and related facilities on approximately 15 acres on the west side of Binks Forest Drive on the site of the former driving range of the Binks Forest Golf Course (the "residential element" or the "Project"). In order for the Project to be approved by the Village, it requires a change to the Future Land Use Map of the Village and a modification to the Binks Forest of the Landings At Wellington, P.U.D. (the "PUD") and the Village has the authority to approve such changes and modifications; and

WHEREAS, in conjunction with the Project, Binks will reconstruct the Binks Forest golf course, install a new driving range and practice facility, and construct a new clubhouse on the site of the existing clubhouse (the "golf element"). Binks will substantially complete construction of a

new, permanent clubhouse prior to the issuance of the Certificate of Occupancy for the first (1<sup>st</sup>) residential unit in the Project. Substantial completion shall be defined as the issuance of the Certificate of Occupancy for the building. The clubhouse will be a minimum of 30,000 sq. ft in size. Until such time as construction on the new, permanent clubhouse commences, Binks will leave the existing clubhouse in place and refurbish the existing clubhouse annex only for use as a temporary facility. The reconstruction of the golf course and the driving range and the construction of the new clubhouse do not require a modification to the PUD. The residential element and the golf element are dependent upon each other for the success of the overall transaction; and

WHEREAS, the Village desires to impose certain conditions on the approval of the Project which will include the establishment of a phasing plan for the construction of the golf element and the Project; and

WHEREAS, the Village finds that the proposed development is consistent with the Village's Comprehensive Plan.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged by both Parties, it is hereby agreed by and between the Parties as follows:

1. Recitations: All of the above recitals are incorporated herein and made a part hereof.
2. Village: The Village of Wellington is a municipality organized and existing under the laws of the State of Florida exercising governmental functions and powers pursuant to its Charter and is hereinafter referred to as the "Village". The principal office of the Village is located at 14000 Greenbriar Boulevard, Wellington, Florida 33414.
3. Binks: Binks, LLC is a limited liability company organized and existing under the laws of the State of Florida. The principal office of Binks is in care of William P. Jacobson P.A., 105 S. Narcissus, Suite 200, West Palm Beach, Florida 33401. Any reference hereafter to "Binks" shall be deemed to include any successors and/or assigns.
4. Peninsular Property Holdings, Inc., ("PPH") is the owner of the Property which is the subject of this Agreement and which is more particularly described in Exhibit "A" attached hereto and made a part hereof by reference.
5. The duration of this Agreement shall be the earlier of the completion of the Project or the passage of ten (10) years from the Effective Date of this Agreement. The term may be extended by mutual consent of the Village Council and Binks or their successors in interest, subject to a public hearing.
6. Public Hearing: The Village will conduct two public hearings prior to entering into this Agreement to comply with the requirements of Florida Law and Article 12 of the ULDC.
7. Purpose: This Agreement sets forth the terms and conditions under which the Property described in Exhibit "A" shall be developed. The goal of Village and Binks is to cause the development of the Project in a commercially viable manner that is consistent with, and furthers

the goals of, Village and its residents. PPH joins in the execution of the Agreement as the record title holder of the Property and to indicate its understanding of the commitments which the Parties will make to each other to insure the development of the Property in accordance with the objectives of each. PPH understands and acknowledges that a Land Use Restriction (the "Restriction") will be placed of record to govern the future of the golf course and that PPH will be required to execute the Restriction. A copy of the Restriction is attached hereto as Exhibit "B" and made a part hereof by reference.

8. The Project: The Project will consist of ninety (90) golf villas and related facilities on approximately 15 acres on the west side of Binks Forest Drive on the site of the former driving range of the Binks Forest Golf Course (the "residential element" or the "Project"). A conceptual site plan for the residential element is attached hereto as Exhibit "C". In conjunction with the Project, Binks will reconstruct the Binks Forest Golf Course and related facilities including the construction of a new clubhouse (the "golf element"). The maximum height of any building shall not exceed thirty five (35) feet. The golf element and the residential element shall jointly be known as the "Development" The Development shall be approved and completed as further defined herein.

9. The Applications: In order to construct the Project, Binks shall forthwith execute and deliver to the Village an Application for amendment to the Development Order (DOA) for Binks Forest of the Landings At Wellington, P.U.D. Plat 2 (the PUD), an Application for Site Plan Approval and an Application for approval by the Architectural Review Board (collectively, the "Applications"), such Applications to be in accordance with the requirements of the ULDC. The Applications for amendment to the Development Order and for Site Plan Approval shall be submitted to the Village and processed by the Village concurrently with each other. The Village shall, upon receipt of the Applications, commence the appropriate regulatory proceedings all in accordance with the terms and conditions agreed upon herein and the requirements of the ULDC, Code of Ordinances and applicable state statutes.

10. Future Land Use and Zoning: The Village agrees to consider changing the existing Village zoning of Planned Unit Development and Future Land Use classification of CR (Commercial Recreational) to the Village zoning of Planned Unit Development and Future Land Use classification of Residential "E" which permits 5-8 dwelling units per acre upon demonstration that the technical requirements of the ULDC and the Comprehensive Plan, together with the understandings of transmittal governing the current application for an amendment to the Future Land Use Map have been met. If the land use amendment is granted and if either the golf course or clubhouse have not been completed within nine (9) years of the date of execution of this Agreement, such failure to complete those improvements shall be deemed to be an irrevocable request and an application by the owner (its successors or assigns) to revert the land use classification from Residential "E" to "CR" or its then existing equivalent classification. Such inaction will further authorize the Village and its staff to process and complete such application on behalf of the owner, its successors and assigns.

11. Project Approval: Pursuant to the Applications, the Village may approve Binks' Site Plan for the Project which permits the construction of ninety (90) golf villas and related facilities, as shown on Exhibit "C", attached hereto, made a part hereof and incorporated herein by reference

at such time as Binks demonstrates that the technical requirements for site plan approval enumerated in the ULDC (including concurrency) have been met.

12. Commencement of the Development:

- a. Binks may proceed with the plans for the reconstruction of the golf course and related facilities, including but not limited to the new driving range and practice, without any further planning or zoning approvals from the Village. The driving range and practice facility will be located generally on the east side of Binks Forest Drive and north of the existing clubhouse. The new clubhouse will generally be on the site of the existing clubhouse. The new clubhouse will go through the appropriate approval processes as set forth in the ULDC.
- b. It is agreed upon by Binks and the Village that the Project shall commence within two (2) years of the issuance of the final, unappealable order amending the Development Order for the PUD. Failure to obtain a Development Order Amendment shall not constitute grounds for extension for this Agreement

13. Public Facilities: The Village or Acme Improvement District will provide the water, sewer, drainage and waste management facilities to service the development; there are no new facilities needed to service the development; and all necessary public facilities to support the impact of the development are currently in place. Binks shall be responsible for any offsite roadway improvements as determined through the Development Order provisions. Binks shall be responsible for all connection and hook-up charges related to be above-referenced public facilities. It shall be Binks' responsibility to construct the on-site water and sewer lines necessary to connect to the public system.

14. Compliance with Governmental Regulations: The Parties understand and agree that, for the Development, drainage requirements, building code issues, life safety matters, and all other issues not specifically set forth herein, will be subject to all applicable governmental and administrative requirements. Nothing herein shall be construed to excuse or release Binks from compliance with the applicable laws, rules, and regulations of the Village.

15. Development Schedule: The Parties understand and agree that the approval of the Project by the Village is conditioned upon compliance with the following schedule.

- a. The reconstruction of the golf course shall be the initial element of the Development on which construction shall commence. The construction of the Project shall commence subsequently to the reconstruction of the golf course.
- b. In order to insure the completion of the reconstruction of the golf course, Binks understands and agrees that, without regard for the time of commencement of the construction of the Project or the time of completion of the first residential unit in the Project, the Village will not issue a Certificate of Occupancy for any residential unit until such time as the golf course is completed, open and playable and the new clubhouse is substantially complete (the "completion date"). Written certification of the completion date for the golf course shall be in the form of a letter to the Village from

Gene Bates (the "Bates letter") who is the architect in charge of the reconstruction of the golf course with independent verification by the Village Planning, Zoning and Building Department, the Village Attorney and an independent third party agreed upon by Bates and the Village, (the "Village Approval"). The cost of the third party shall be borne by Binks. The Village shall have fifteen (15) calendar days (the "verification period") from receipt of the Bates letter to complete its independent verification. If the Village does not issue its independent verification of completion, or a letter denying verification of completion with explicit reasons therefore, within the verification period, the golf course shall be deemed to be "complete". The clubhouse shall be deemed substantially complete when the Village issues a Certificate of Occupancy for the clubhouse. Upon receipt of such certification, and upon completion of the first and subsequent residential units to a level usually required for issuance thereof, the Village shall issue such Certificates of Occupancy as may be required for the occupancy of the units. The foregoing notwithstanding, if work on the golf course and clubhouse was proceeding in a timely fashion and the completion date of the golf course and/or clubhouse is extended due to unanticipated weather conditions or acts of God, Binks may make a request to the Village Council for certificates of occupancy to be issued for the residential element. After reviewing the reasons for the requested extension of time to complete the golf course and/or the clubhouse, the Village Council, in its sole and absolute discretion, may authorize the issuance of certificates of occupancy or deny the request. If the Village Council authorizes the issuance of certificates of occupancy, such authorization may be subject to such further conditions as the Village Council in its sole and absolute discretion deems advisable.

- c. Binks shall commence construction on a new clubhouse with a minimum size of 30,000 sq. ft. prior to the issuance of the Certificate of Occupancy for the first (1<sup>st</sup>) residential unit in the Project. In order to insure the construction of the new clubhouse, Binks and the Village agree that the Village shall not issue building permits for any of the residential units until such time as the new clubhouse has received site plan and Architectural Review Board approvals. The Village shall not issue Certificates of Occupancy for any residential units until the construction on the clubhouse has received a Certificate of Occupancy from the Village. In order to insure the completion of the construction and the issuance for the Certificate of Occupancy for the clubhouse, upon the closing of its construction loan for the clubhouse, Binks shall require its General Contractor to post a performance bond and Binks shall secure a completion guarantee which shall run in favor of the Village and Binks' construction lender. The performance bond and guarantee shall be in acceptable form to the Village Attorney. Once having commenced construction, Binks shall continue construction of the clubhouse until such time as its Certificate of Occupancy has been issued and it is open. If at any time during the period of construction, there is a cessation of construction on the clubhouse for a period in excess of sixty (60) days, the Village shall no longer issue any further building permits or Certificates of Occupancy for the Project until such time as construction on the clubhouse has recommenced and confirmation of recommencement is confirmed as provided herein. All of the foregoing notwithstanding, Binks agrees that the clubhouse will be finished within four (4) years from the commencement of reconstruction of the golf course as certified by a letter

from Gene Bates. The architect of record on the clubhouse shall certify to the Village that the clubhouse is finished.

Until such time as construction on the new, permanent clubhouse commences as provided herein, Binks will refurbish the existing clubhouse annex only for use as a temporary facility. Binks will maintain or demolish the existing clubhouse.

16. Restrictive Covenants: The Parties understand and agree that the approval of the Project is conditioned upon the recording of a Land Use Restriction Agreement (the "Restriction") which limits the future use of the existing Binks Forest Golf Course to golf facilities and prohibits the use of the same for housing or non-recreational commercial development. The form and content of the Restriction shall be as set forth in Exhibit "B". The Restriction shall be executed by the Parties and PPH in recordable form and delivered to the Village Attorney prior to the first public hearing related to this Agreement. The Village Attorney shall hold the Restriction in Trust until the Village Council considers adoption of the land use plan amendment for the Property. If the land use plan amendment is denied, the Village Attorney shall return the Restriction unrecorded to Binks, within seven (7) days of such denial. If the land use plan amendment is adopted by the Village, the Village Attorney shall record the Restriction. If there is a challenge pursuant to the provisions of Chapter 163, Florida Statutes, to the land use plan amendment that results in Binks, PPH, or their successors and assigns not being able to move forward with the Project, the owner of the Property may request that the Village lift the restriction related to the golf element. The only basis upon which the restriction shall be lifted would be a corresponding return of the land use plan designation for the residential element to Commercial Recreational.

17. Recordation: Within fourteen (14) calendar days after the Effective Date the Clerk to the Village Council shall record the executed Agreement in the public records of Palm Beach County. A copy of the recorded and executed Agreement shall be submitted to the Department of Community Affairs ("DCA") within fourteen (14) calendar days after the Agreement is recorded. If the Agreement is amended, cancelled, modified, extended, or revoked, the Clerk shall have notice of such action recorded in the public records and such recorded notice shall be submitted to DCA.

18. Successors and Assigns: This Agreement shall be binding upon the Parties, their successors, assigns, and legal representatives; provided however, that nothing herein shall be construed to prevent the sale or other transfer of the Development by Binks or any of its successors in title subject to the provisions hereof.

19. Entire Agreement: This document embodies the whole agreement of the Parties. There are no promises, terms, conditions, or allegations by either Party other than those contained herein; and this document shall supersede all previous communications, representations, and or agreements, whether written or verbal between the Parties hereto. This Agreement may be modified only in writing executed by the Parties and/or their successors in title, as the case may be.

20. Notices, Demands and Communications: Formal notices, demands and communications between Village and Binks shall be sufficiently given if and shall not be deemed given unless

dispatched by certified mail, postage prepaid, return receipt requested, or delivered personally, to the principal offices of Village and Binks as follows:

Village Manager  
Village of Wellington  
14000 Greenbriar Boulevard  
Wellington, Florida 33414

With a copy to:  
Village Attorney  
Jeffrey S. Kurtz, Esq.  
Brinkley, McNerney, Morgan, Solomon & Tatum  
200 East Las Olas Boulevard, Suite 1900  
Fort Lauderdale, Florida 33301  
Binks:  
Binks LLC  
C/o Mr. Frank Leo  
44 Minebrook Road  
Colts Neck, New Jersey 07722

With a copy to:  
William P. Jacobson, Esq.  
105 S. Narcissus Avenue Suite 200  
West Palm Beach, Florida 33401

PPH:  
Peninsula Property Holdings, Inc.  
c/o Peninsula Bank  
1520 Ringling Boulevard  
Sarasota, Florida 34236

With a copy to:  
Drake Batchelder, Esq.  
Akerman Senterfitt  
350 East Las Olas Boulevard  
Suite 1600  
Fort Lauderdale, Florida 33301

Written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail.

21. Conflict of Interests: No member, official or employee of Village shall make any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.



Binks warrants that it has not paid or given, and shall not pay or give, any third person any money or other consideration for obtaining this Agreement.

22. Non-Liability of Village, Officials, Employees, and Agents: No member, official, employee or agent of the Village of Wellington shall be personally liable to Binks, or any successor in interest, in the event of any default or breach by Village or for any amount which may become due to Binks or successor as a result of a default or breach by the Village.

23. Enforced Delay: Performance by either party under this Agreement shall not be deemed to be in default where delays or defaults are due to war; insurrection; terrorist attacks; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; acts or failure to act of any public or governmental authority or entity (other than the acts or failure to act of Village which shall not excuse performance by Village), or any other causes (other than lack of funds of Binks) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for a period of the enforced delay and shall commence to run from the commencement of the cause, if notice by the party claiming such extension is sent to the other party within fifteen (15) calendar days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by agreement of Village's Manager and Binks.

24. Periodic Review:

- a. Annual review. The Village Council may review the development in order to determine whether there is compliance with the Development Agreement annually, commencing one (1) year after the Effective Date of this Agreement
- b. Initiation. The annual review shall be initiated by Binks submitting a report to the Zoning Director. The initial annual report shall be submitted by Binks eleven (11) months after the Effective Date of this Agreement, and every twelve (12) months thereafter.
- c. Compliance. If the Zoning Director finds and determines that Binks has complied in good faith with the terms and conditions of this Agreement during the period under review, the review for that period is concluded.
- d. Failure to comply. If the Zoning Director makes a preliminary finding that there has been a failure to comply with the terms of this Agreement, the findings shall be referred to the Village Council, who shall conduct two (2) public hearings pursuant to the requirements of Article 12 of the ULDC at which the developer may demonstrate good faith compliance with the terms of this Agreement. The first public hearing shall be held by the Local Planning Agency. If the Village Council finds and determines during the public hearings, on the basis of substantial competent evidence, that Binks has not complied in good faith with the terms and conditions of this Agreement during the period under review, the Village Council may negotiate modifications to the Agreement

with Binks or declare Binks to be in breach of the Agreement and terminate this Agreement.

- e. **Advertisement.** The advertisement cost for the Village Council Annual Review of this Agreement shall be the responsibility of Binks.

25. **Title of Parts and Sections:** Any titles of the Parts, Sections or Subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provisions.

26. **Governmental Approvals:** Should Binks at any time require the approval of any governmental body or board, whether of local, regional, state or federal jurisdiction, Binks shall bear the sole cost and responsibility for obtaining the approval. All local development permits shall be obtained at the sole cost of Binks. No development of the Property shall be allowed until such time as the applicable development orders and permits have been received by Binks.

27. **Time of Essence:** Time is of the essence in the performance of this Agreement.

28. **Applicable Law:** This Agreement shall be governed by, construed and enforced under and pursuant, to the laws of the State of Florida, and venue of any action shall lie exclusively in Palm Beach County, Florida.

29. **Severability:** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

30. **Legal Actions:** In the event any legal action (including arbitration) is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of the Agreement, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorney fees and costs incurred in the action at both the trial and appellate levels.

31. **Renegotiation of the Agreement:** The Parties acknowledge and agree in the event it is necessary to renegotiate any of the provisions contained in this Agreement, the Parties shall do so reasonably and in a timely and expeditious fashion such that the Development shall not be unreasonably delayed. Any modification to the Agreement pursuant to this provision shall be approved by the Village Council at a public hearing.

32. **Execution of Other Documentation:** Village and Binks agree to cooperate with each other and execute any further documentation that may be reasonably necessary to carry out the intent and the obligations of either Party under this Agreement. This paragraph shall not be construed to eliminate or reduce the Village's discretion in reviewing the various development Applications contemplated by this Agreement.

33. Amendments: No amendment or waiver of any provision of this Agreement shall be effective unless the amendment or waiver of any provision to this Agreement be in writing and signed by Village and by Binks. Any waiver or consent shall be effective only in the specific instance and for the specific instance for which given and shall not be construed as a continuing waiver. All amendments of this Agreement shall comply with all then existing and applicable local, state and federal laws, including, but not limited to, the provisions of Article 12 Development Agreements of the ULDC.

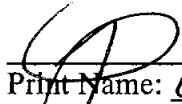
34. Effective Date: The Effective Date shall be the date on which the last of the Parties hereto shall have signed this Agreement.

35. Complete Understanding of the Parties: This Agreement is executed in two {2} duplicate originals each of which is deemed to be an original.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.


DATED this 24 day of January, 2004.

Witnesses:

  
Print Name: WILLIAM JACOBSON

  
Print Name: MICHAEL DANIELS

  
Print Name: Penny G. Edwards

  
Print Name: KARL RILEY

Attest:

  
Awilda Rodriguez, Village Clerk

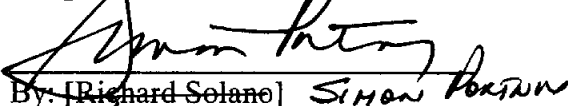
Approved as to form and  
legal sufficiency:

  
Jeffrey S. Kurtz, Village Attorney

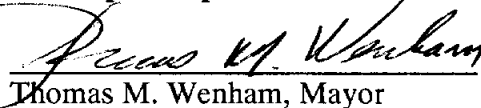
Binks, LLC, a Florida limited liability  
company

  
By: Frank A. Leo  
Its Managing Member

Peninsula Property Holdings, Inc., a Florida  
Corporation

  
By: [Richard Solano] Simon Porcino  
Its: PRESIDENT

Village of Wellington, Florida, a Florida  
municipal corporation

  
Thomas M. Wenham, Mayor

STATE OF FLORIDA  
COUNTY OF PALM BEACH

ACKNOWLEDGED and subscribed before me this 15<sup>th</sup> day of November, 2004,  
by Frank A. Leo, as the Managing Member of Binks, LLC, who is personally known to me or  
has produced \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public, State of Florida

Print Name

Commission No.:

My Commission Expires:



William P. Jacobson

My Commission DD311913

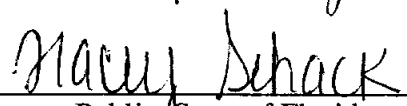
Expires June 15, 2008

STATE OF FLORIDA  
COUNTY OF PALM BEACH

ACKNOWLEDGED and subscribed before me this 15<sup>th</sup> day of November, 2004,  
by Sumen Partmely, as the President of Peninsula Property  
Holdings, Inc., who is personally known to me or has produced personally known to me  
as identification.



Tracey Schack  
MY COMMISSION # DD180443 EXPIRES  
January 27, 2007  
BONDED THRU TROY FAIN INSURANCE, INC.

  
\_\_\_\_\_  
Notary Public, State of Florida

Print Name

Commission No.:

My Commission Expires:

Tracey Schack  
DD180443

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF THE PROPERTY**

PARCEL "H", PARCEL "K" AND PARCEL "L", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 67, PAGE 56, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**TOGETHER WITH** PARCEL "B", PARCEL "C" AND PARCEL "F", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 73, PAGE 101, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**TOGETHER WITH** PARCEL "B" AND PARCEL "M", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 4, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 73, PAGE 132, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**TOGETHER WITH** PARCEL "J", PARCEL "K", PARCEL "L" AND PARCEL "N", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 70, PAGE 162, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

SUBJECT TO, AND TOGETHER WITH, EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY OF RECORD.

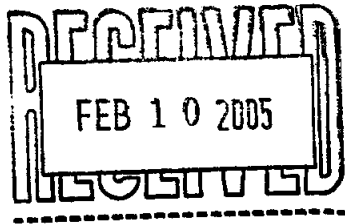
### **LEGAL DESCRIPTION OF TOWNHOME PARCEL – RESIDENTIAL ELEMENT**

**EXCEPTING HOWEVER**, A PARCEL OF LAND BEING A PART OF PARCEL "J", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 70, PAGE 162, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A BOUNDARY CORNER OF SAID PARCEL "J"; SAID BOUNDARY CORNER ALSO BEING THE NORTHEAST CORNER OF THAT CERTAIN PARCEL SHOWN ON SAID PLAT AS "NOT A PART OF THIS PLAT"; THENCE, SOUTH 01°19'52" WEST, ALONG THE BOUNDARY COMMON WITH SAID PARCEL "J" AND SAID PARCEL SHOWN ON SAID PLAT AS "NOT A PART OF THIS PLAT", A DISTANCE OF 520.01 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL SHOWN ON SAID PLAT AS "NOT A PART OF THIS PLAT"; THENCE, SOUTH 86°09'16" EAST, DEPARTING SAID BOUNDARY LINE, A DISTANCE OF 657.54 FEET; THENCE, NORTH 83°32'27" EAST, A DISTANCE OF 517.25 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID PARCEL "J"; SAID POINT BEING A POINT ON A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1410.00 FEET AND WHOSE RADIUS POINT BEARS NORTH 75°08'11" EAST; THENCE, NORTHERLY ALONG SAID EASTERLY BOUNDARY LINE AND ALONG THE WESTERLY RIGHT-OF-WAY LINE OF BINK'S FOREST DRIVE, AS SHOWN ON SAID PLAT, THROUGH A CENTRAL ANGLE OF 22°46'13", A DISTANCE OF 560.36 FEET TO THE END OF SAID CURVE; THENCE, NORTH 88°58'25" WEST, DEPARTING SAID EASTERLY BOUNDARY LINE AND SAID WESTERLY RIGHT-OF-WAY LINE, AND ALONG A LINE 50.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH BOUNDARY LINE OF SAID PARCEL "J", A DISTANCE OF 1122.73 FEET; THENCE, SOUTH 01°19'52" WEST, A DISTANCE OF 70.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO, AND TOGETHER WITH, EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY OF RECORD.

**EXHIBIT "B"**  
**RESTRICTIVE COVENANT**



This Instrument Prepared by and Return to:  
Jeffrey S. Kurtz, Esq.  
c/o Brinkley, McNerney, Morgan, Solomon & Tatum, LLP  
200 East Las Olas Boulevard  
Suite 1900  
Fort Lauderdale, Florida 33301

### RESTRICTIVE COVENANT

This RESTRICTIVE COVENANT is made and entered into as of the 24 day of January 2005, by Peninsula Property Holdings, Inc. ("Owner"), who address is c/o Peninsula Bank, 1526 Ringling Boulevard, Sarasota, Florida 34236, and Binks, LLC ("Binks") whose address is c/o Mr. Frank Leo, 44 Minebrook Road, Colts Neck, New Jersey 07722 for the benefit of the Village of Wellington, Florida, a municipal corporation ("Wellington") whose address is 14000 Greenbriar Boulevard, Wellington, Florida 33414.

#### RECITALS

- A. Owner holds title to certain real property ("Property") located in the Village of Wellington, Florida more particularly described on Exhibit "A" attached hereto and made a part hereof. The Property was previously approved as a golf course pursuant to the approval of the Binks Forest of the Landings At Wellington, P.U.D. Plat 1, Plat 2, Plat 3, and Plat 4 (the PUD), recorded in Official Records of the Public Records of Palm Beach County, Florida.
- B. Binks holds a contract to purchase the Property and additional property described in Exhibit "B" (the "Exhibit B property") attached hereto and made a part hereof by reference. Binks has submitted an application (the "Application") to Wellington for a change of the Exhibit B property in Wellington's Future Land Use Map so that the Exhibit B property will have a designation as residential all in accordance with the Village of Wellington Ordinance 2004-30.
- C. Wellington and Binks have executed a Development Agreement (the "Agreement") and the Owner has joined in its execution. One of the terms of the Agreement requires the execution and recording of a Restrictive Covenant limiting and restricting the lands described in Exhibit "A" to a golf course or some other approved recreational use.
- D. In order for Wellington to consider approval of the Application, Wellington must be assured that the Property described in Exhibit "A" is restricted as required in the Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the Owner, Binks and Wellington hereby declare as follows:

1. Recitals. The foregoing recitals set forth above are true and correct and incorporated herein by reference.

2. This Restrictive Covenant established by the Agreement shall run with the land and is for the benefit of Wellington.

3. The Parties to the Agreement agree that this Restrictive Covenant is binding on the Owner, Binks and all subsequent owners and mortgagees of the Property. The Owner represents and warrants that there are no mortgages of record encumbering the Property as of the date of execution hereof.

4. Restrictive Covenant. Upon and after the designation of the Exhibit B property as Residential on the Future Land Use Map of the Village of Wellington, the Property described in Exhibit "A" shall thereafter have the following development rights and limitation under the Plan:

Until such time as the Village of Wellington shall designate otherwise as provided herein and in the Development Agreement, the future land use of the Property described as the existing Binks Forest Golf Course and more specifically described in Exhibit "A" attached hereto shall be used only for golf and related facilities, including a club house, and the Property may not be used for housing or non-recreational commercial development.

5. Enforcement. Wellington may enforce these restrictions in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm, or entity violating or attempting to violate the covenant or restriction herein. The failure by Wellington to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or the right of Wellington to thereafter enforce such covenant or restriction. Only Wellington will have the right to enforce this Restrictive Covenant. No other party will be deemed a third-party beneficiary for any purpose. This Restrictive Covenant may only be modified, amended or released by a document executed by Wellington and the Owner and recorded in the Public Records of Palm Beach County, Florida. The parties acknowledge that Wellington will be irreparably damaged if this Restrictive Covenant is not specifically enforced. Therefore, in the event of a breach or threatened breach by Owner, its successors and/or assigns, as to any provision of this Restrictive Covenant, Wellington shall be entitled to all the rights and remedies, including injunctive relief, restraining such breach without being required to show any actual damage, irreparable harm, or to post any bond or other security. All parties agree that any dispute shall be determined by a judge and not a jury, and waive their right to a jury trial in any litigation arising out of this.

6. Amendment. Wellington specifically reserves the absolute and unconditional right to amend this Restrictive Covenant without the consent or joinder of any party. However, in order to release or modify this Restrictive Covenant, the amendment must be presented to the citizens of the Village of Wellington through a referendum question and approved by the affirmative vote



of a majority of electors, voting in a Village wide referendum, on the question. The costs and expenses associated with the referendum shall be borne by the party seeking the amendment.

7. Entire Agreement. This Restrictive Covenant sets forth the entire understanding and agreement between Wellington, the Owner and Binks. No other agreements or obligations will be created or implied by virtue of this Restrictive Covenant. This instrument does not grant Wellington any use, possessory, right, easement or other rights with respect to the Property.

8. Validity. This Restrictive Covenant shall become valid and effective immediately upon its recordation in the Public Records of Palm Beach County, Florida.

9. Governing Law. This Restrictive Covenant shall be governed by and construed in accordance with the laws of the State of Florida.

10. Attorney's fees. If any legal or equitable action or other proceeding is brought for the enforcement of the Restrictive Covenant, the successful and prevailing party shall be entitled to recover reasonable attorney's fees, court costs, and all expenses incurred in that action or proceeding in addition to any other relief to which such party may be entitled.

11. Captions and Statement of Purpose. Captions inserted throughout this Restrictive Covenant are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit or in any way affect any of the terms or provisions of this Restrictive Covenant.

12. Gender and Plural Terms. Whenever the context so requires, any pronoun used in this Restrictive Covenant may be deemed to mean the corresponding masculine, feminine, or neuter form of the pronoun, and the singular form of any noun or pronoun may be deemed to mean the corresponding plural form of the pronoun and vice versa.

13. Severability; Amendments to Laws. If any one of the provisions of this Restrictive Covenant shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions of this Restrictive Covenant, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms or conditions of this Restrictive Covenant, or reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of time as may be permitted by law. Any amendment to applicable law that has the effect of reducing the rights of Wellington, increasing the liabilities of or duties imposed on Wellington, or making void or voidable Wellington's rights hereunder will not be incorporated into this Restrictive Covenant by reference. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

14. Duration and Renewal. This Restrictive Covenant and the terms provisions, conditions, covenants, restrictions, reservations, regulations, burdens contained in this Restrictive Covenant shall run with and bind all of the lands described in Exhibit "A" and inure to the benefit of Wellington, its respective legal successor or assign, for the term of 90 years from the date of this

Restrictive Covenant, after which time this Restrictive Covenant shall be automatically renewed and extended for successive periods of 10 years each unless at least one year before the termination of the 90-year period or before each such 10-year extension, as the case may be, there is recorded in the Public Records an instrument agreeing to terminate this Restrictive Covenant, which instrument is signed by all then acting members of the Village Council, or its legal successor, upon which event this Restrictive Covenant shall be terminated upon the expiration of the 90-year term or the 10-year extension during which such instrument was recorded, as the case may be.

IN WITNESS WHEREOF, the parties have executed their hands and seals on the day and year first above written.

**Witnesses:**

Print Name: William P. Jackson

Print Name: Malcom Daniels

Print Name: Penny G. Edwards

Print Name: Kara Riley

**Attest:**

Awilda Rodriguez  
Awilda Rodriguez, Village Clerk

**Approved as to form and  
legal sufficiency:**

Jeffrey S. Kurtz  
Jeffrey S. Kurtz, Village Attorney

**Binks, LLC, a Florida limited liability  
company**

By: Frank A. Leo  
Its Managing Member

**Peninsula Property Holdings, Inc., a Florida  
Corporation**

By: [Richard Solano] Simon Portnoy  
Its: PRESIDENT

**Village of Wellington, Florida, a Florida  
municipal corporation**

Thomas M. Wenham  
Thomas M. Wenham, Mayor

STATE OF FLORIDA  
COUNTY OF PALM BEACH

ACKNOWLEDGED and subscribed before me this 15<sup>th</sup> day of March, 2004,  
by Frank A. Leo, as the Managing Member of Binks, LLC, who is personally known to me or  
has produced \_\_\_\_\_ as identification.

  
\_\_\_\_\_  
Notary Public, State of Florida

Print Name

Commission No.:

My Commission Expires:



William P. Jacobson

My Commission DD311913

Expires June 15, 2008

STATE OF FLORIDA  
COUNTY OF PALM BEACH

ACKNOWLEDGED and subscribed before me this 15<sup>th</sup> day of November, 2004,  
by Simon Portnogy, as the President of Peninsula Property  
Holdings, Inc., who is personally known to me or has produced personally known to me.  
as identification.



Tracey Schack

MY COMMISSION # DD180443 EXPIRES

January 27, 2007

BONDED THRU TROY FAIR INSURANCE, INC.

Tracey Schack  
\_\_\_\_\_  
Notary Public, State of Florida

Print Name Tracey Schack

Commission No.: DD180443

My Commission Expires: 1/27/07

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION OF BINK'S FOREST GOLF COURSE LANDS**

PARCEL "H", PARCEL "K" AND PARCEL "L", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 67, PAGE 56, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**TOGETHER WITH** PARCEL "B", PARCEL "C" AND PARCEL "F", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 73, PAGE 101, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**TOGETHER WITH** PARCEL "B" AND PARCEL "M", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 4, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 73, PAGE 132, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**TOGETHER WITH** PARCEL "J", PARCEL "K", PARCEL "L" AND PARCEL "N", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 70, PAGE 162, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA.

**EXCEPTING HOWEVER**, A PARCEL OF LAND BEING A PART OF PARCEL "J", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 70, PAGE 162, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A BOUNDARY CORNER OF SAID PARCEL "J"; SAID BOUNDARY CORNER ALSO BEING THE NORTHEAST CORNER OF THAT CERTAIN PARCEL SHOWN ON SAID PLAT AS "NOT A PART OF THIS PLAT"; THENCE, SOUTH 01°19'52" WEST, ALONG THE BOUNDARY COMMON WITH SAID PARCEL "J" AND SAID PARCEL SHOWN ON SAID PLAT AS "NOT A PART OF THIS PLAT", A DISTANCE OF 520.01 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL SHOWN ON SAID PLAT AS "NOT A PART OF THIS PLAT"; THENCE, SOUTH 86°09'16" EAST, DEPARTING SAID BOUNDARY LINE, A DISTANCE OF 657.54 FEET; THENCE, NORTH 83°32'27" EAST, A DISTANCE OF 517.25 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID PARCEL "J"; SAID POINT BEING A POINT ON A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 1410.00 FEET AND WHOSE RADIUS POINT BEARS NORTH 75°08'11" EAST; THENCE, NORTHERLY ALONG SAID EASTERLY BOUNDARY LINE AND ALONG THE WESTERLY RIGHT-OF-WAY LINE OF BINK'S FOREST DRIVE, AS SHOWN ON SAID PLAT, THROUGH A CENTRAL ANGLE OF 22°46'13", A DISTANCE OF 560.36 FEET TO THE END OF SAID CURVE; THENCE, NORTH 88°58'25" WEST, DEPARTING SAID EASTERLY BOUNDARY LINE AND SAID WESTERLY RIGHT-OF-WAY LINE, AND ALONG A LINE 50.00 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE NORTH BOUNDARY LINE OF SAID PARCEL "J", A DISTANCE OF 1122.73 FEET; THENCE, SOUTH 01°19'52" WEST, A DISTANCE OF 70.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO, AND TOGETHER WITH, EASEMENTS, RESERVATIONS AND/OR RIGHTS-OF-WAY OF RECORD.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF BINK'S FOREST TOWNHOME PARCEL  
RESIDENTIAL ELEMENT**

A PARCEL OF LAND BEING A PART OF PARCEL "J", BINK'S FOREST OF THE LANDINGS AT WELLINGTON P.U.D. PLAT 2, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 70, PAGE 162, PUBLIC RECORDS, PALM BEACH COUNTY, FLORIDA; SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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