

FROM: JAMES W. BROWNE  
7777 W. GLADES ROAD  
BOCA RATON, FL 33434

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**DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS  
FOR LEXINGTON HOMES ESTATES**

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THIS DECLARATION is made this 15<sup>th</sup> day of May, 1991, by LEXINGTON HOMES, INC., an Illinois corporation, which declares that the real property described in Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") set forth below.

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

**ARTICLE I**

**DEFINITIONS**

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

- (a) "Assessments" - those payments due pursuant to Article V, whether General or Special (as hereinafter defined), or a combination thereof.
- (b) "Association" - LEXINGTON HOMES ESTATES HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit, which is to be incorporated.
- (c) "Common Areas" - the real property legally described in Exhibit "B" attached hereto and incorporated herein by reference, and any other interest in real property acquired by the Association and deemed Common Area either in this Declaration or in the instrument of conveyance, together with any improvements on such tracts including without limitation any structures, recreational facilities, offstreet parking areas, private streets, sidewalks, street lights, and entrance features, but excluding any public utility installations thereon.
- (d) "Developer" - LEXINGTON HOMES, INC., an Illinois corporation, its successors and assigns, if such successor or assignee acquires the undeveloped portion of the Properties and is designated as such by LEXINGTON HOMES, INC., an Illinois corporation. The Developer may make partial or multiple assignments of its rights under this Declaration. All such assignees

shall be deemed to be the Developer as to those rights which may have been assigned to them.

- (e) "General Assessments" - Assessments levied to fund expenses applicable to all Members of the Association.
- (f) "Institutional Lender" - any person or entity (i) holding a mortgage encumbering a Lot, which (ii) in the ordinary course of business makes purchases, guarantees or insures mortgage loans, which (iii) is not owned or controlled by the Owner of the Lot encumbered, and which (iv) notifies the Association of same by written notice sent, certified mail, return receipt requested, to the Association's office. An Institutional Lender may include, but is not limited to, a federal or state chartered bank or savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company; the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Developer, whether or not such holder would otherwise be considered an Institutional Lender.
- (g) "Lot" - any lot as shown on the plat of Lexington Homes Estates P.R.D., and any lot shown upon any resubdivision of said plat or any portion thereof.
- (h) "Owner" or "Member" - the record owner, whether one or more persons or entities, of the fee simple title to any Lot.
- (i) "Properties" - all property and additions thereto (which additional property may or may not be contiguous to the real property described in Article II herein), as is subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (j) "Special Assessment" - Assessments levied in accordance with Article V, Section 4 of this Declaration.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

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

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

ARTICLE III

LEXINGTON HOMES ESTATES HOMEOWNER'S ASSOCIATION

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

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

Class A Class A Members shall be all those Owners as defined in Section 1, with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot in which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be

Members, and the vote for such Lot shall be exercised by one such Member as specified in the Articles of Incorporation of the Association but in no event shall more than one vote be cast with respect to any such Lot.

Class B The Class B Member shall be the Developer. The Class B Member shall be entitled to one vote for each Lot in which it holds the interest required for membership by Section 1; provided, however, that notwithstanding any provision to the contrary, the Developer shall have the right to elect the entire Board of Directors of the Association until the first to occur of the following:

- (a) 120 days after 75% of the Lots have been conveyed to Purchasers; or
- (b) Three years after the first Lot has been conveyed.

The Developer shall call a meeting, as provided in the Bylaws for Special Meetings, to provide for the turnover of control of the Board of Directors to the Owners at this time. The Developer shall have the right to appoint one member to the Board of Directors for so long as the Developer owns any portion of the Properties.

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

Section 4. Termination of the Association. In the event of dissolution of the Association, for whatever reason other than merger or consolidation as provided for herein, any Owner may petition the Circuit Court of the Fifteenth Judicial Circuit of the State of Florida for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, the Properties and Common Areas.

Section 5. Termination of Project. In the event of termination of the legal status of Lexington Homes Estates by the Owners for reasons other than substantial destruction or condemnation of the Properties, consent must be obtained from at least 67% of the Institutional Lenders holding mortgages on Lots. Said consent shall be implied in the event an Institutional Lender fails to respond to any written proposal for such an amendment within 30 days of receipt of proper written notice thereof.

Section 6. Common Areas.

A. Ownership. Developer may retain legal title to the Common Areas so long as it owns fee simple title to at least one Lot in the Properties. Within 120 days after the conveyance by the Developer of the last Lot which it owns in the Properties (or sooner at the Developer's option), the Developer or its successors and assigns shall convey and transfer the record fee simple title to the Common Areas to the Association and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record.

B. Maintenance. Commencing with the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas and any improvements or personal property in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas, if any, and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. Taxes, if any, shall be prorated between Developer and the Association as of the date of such recordation. The Association shall at all times maintain in good repair, and shall replace as scheduled any and all improvements situated on the Common Areas (upon completion of construction by Developer), including, but not limited to, all recreational parcels or facilities, reception stations, landscaping, paving, drainage structures, street lighting fixtures, television and radio antennae and cable for common use, signs, irrigation systems, sidewalks, and other structures, except public utilities, all such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. Maintenance of the recreation facilities shall include the payment for all water consumed in the irrigation of said facilities. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments as provided in this Declaration. Such assessments shall be against all Lots equally; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted rules and regulations of the Association shall be

levied as a special assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas.

C. Developer's Right to Common Areas. Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent Properties and for the purpose of construction of any facilities on the Common Areas that Developer elects to build. Developer may grant easements to Lot Owners adjacent to Common Areas for overhangs, protrusions and encroachments of any portion of the improvements to a Lot which are constructed by Developer. The Developer shall have the right to dedicate the Common Areas or a portion thereof to any governmental authority or utility company, or to grant an easement over the Common Areas in favor of any governmental authority or utility company, without requiring the joinder or consent of any other Owner or mortgagee holding a mortgage on any Lot. See Article X herein for additional Developer rights regarding the Common Areas.

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

E. Reception Station. There shall be a reception station located at the front entrance of Lexington Homes Estates. As provided in Article III, Section 6, B herein, the Association shall maintain the reception station. In addition, payment for the personnel hired to staff the reception station shall be an expense of the Association. The reception station shall not be staffed with personnel until the first 125 lots have been sold and closed by the Developer. At that time, the Association shall provide sufficient personnel to properly staff and operate the reception station.

F. Recreation Parcel. Tract C of the Plat of Lexington Homes Estates P.R.D. is designated as a recreation parcel. This recreation parcel shall include two tennis courts. The Association shall be responsible for maintaining the recreation parcel and all improvements or amenities thereon. The Developer and the Association shall have the right to add additional recreational improvements and amenities to the recreation parcel.

Section 7. Lot Maintenance. The Association shall be responsible for maintaining that portion of each Lot in front of a line perpendicular to each respective side boundary line of each Lot that begins at the outermost rear corner on each side of each residence constructed on each Lot, outward to the side boundary lines of each Lot (the "Frontyard"). The Association's maintenance responsibility with respect to the Frontyard shall include, but not be limited to, care of all lawns, landscaping (inclusive of hedge and shrub trimming), irrigation pumps and sprinkler systems. All maintenance required for that portion of each Lot behind these lines (the "Backyard") shall be the responsibility of Owner. The Owner's maintenance responsibilities with respect to the Backyard shall include, but not be limited to, care of the lawn, all landscaping, irrigation pumps and sprinkler systems.

Section 8. Maintenance of Residence. The maintenance of the residence and related improvements constructed on the Lot shall be the complete maintenance responsibility of the Owner(s) thereof.

Section 9. Powers. In addition to the powers provided in its Articles of Incorporation, the Association, through the action of its board of directors, shall have the power, but not the obligation, to acquire, by purchase, lease or otherwise, one or more dwelling units for occupancy by its employees or independent contractors, and to enter into an agreement or agreements from time to time with one or more person, firms or corporations for management services.

Section 10. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines, which shall be levied as a Special Assessments as provided in this Declaration, and suspension of the right to vote and the right to use the recreation facilities. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association. In addition, the Association, through the Board, may, by contract or other agreement, enforce court ordinances or permit Palm Beach County to enforce ordinances on the Properties for the benefit of the Association and its Members.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 1. Developer Architectural Control. For so long as the Developer owns any portion of the Properties, the Developer shall have all powers of the Architectural Control Board as hereinafter set forth.

Section 2. Architectural Control Board. At such time as the Developer no longer owns any portion of the Properties, the Architectural Control Board ("ACB") shall become a standing committee of the Association. The ACB shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section and other provisions of this Declaration. The ACB shall consist of three members and such members shall be designated by the Directors of the Association. In the event of death, disability or resignation of any member of the ACB the remaining members shall have full authority to designate a successor. The members of the ACB need not be members of the Association and shall not be entitled to any compensation for services performed pursuant to this Section. A majority of the ACB may take any action the ACB is empowered to take, may designate a representative to act for the ACB and may employ personnel and consultants to act for it.

Section 3. Owner to Obtain Approval. No Owner shall make, install, place, or remove any building, fence, screen enclosure, porch, wall, patio area, pool, spa, landscaping and planting or any other alteration, addition, improvement, or change of any kind or nature to, in or upon any portion of the Common Areas or the Owner's Lot, unless the Owner first obtains the written approval of the ACB to do same, except that such approval shall not be required for any maintenance or repair which does not result in a material change in any improvement including the color of same.

Section 4. ACB's Consent. Any request by an Owner for approval by the ACB to any addition, alteration, improvement, or change shall be in writing and shall be accompanied by plans and specifications or other details as the ACB may deem reasonably necessary in connection with its determination as to whether or not it will approve same. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable development of any Lot but may be withheld due to aesthetic considerations. Notwithstanding the foregoing, the ACB may withhold approval for upgraded landscaping to be installed by an Owner within that portion of his Lot to be maintained by the ACB solely due to maintenance and related considerations, and the ACB may withhold approval for construction of swimming pools due to



nuisance and related considerations (such as the likelihood of interference with other residents of the Properties during construction). The ACB shall notify the Owner of its approval or disapproval by written notice within thirty (30) days after request for such consent is made in writing to the ACB, and in the event the ACB fails to disapprove any request within such thirty (30) day period, the consent shall be deemed approved and upon request the ACB shall give written notice of such approval. In consenting to any plans or specifications, the ACB may condition such consent upon changes being made. If the ACB consents to any plan and specifications, the Owner may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the ACB, and subject to any conditions of the ACB's approval.

Section 5. No Liability. The ACB or the Developer shall not be liable to any Owner in connection with the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the ACB or the Developer shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the ACB or the Developer, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the ACB or the Developer shall not be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

Section 6. Remedy for Violations. In the event this section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the ACB or the Developer, as the case may be, or is not made in strict conformance with any approval granted by the ACB or the Developer, the ACB or the Developer shall specifically have the right to demand that an Owner stop, remove and/or alter any alteration, addition, improvement or change in a manner which complies with the requirements of the ACB or the Developer, and the ACB or the Developer may pursue injunctive relief or any other legal or equitable remedy available to the ACB or the Developer in order to accomplish such purposes. Any action to enforce this Section must be commenced within one (1) year after the date of the violation. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration.

#### ARTICLE V

##### ASSOCIATION-- COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for the Assessments. The Developer, for each Lot owned by it within

the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual, General Assessments for general expenses as outlined in Section 2 hereof, and Special Assessments as provided in Section 4 hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. The General and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Assessments as to any Lot not containing an improvement shall be twenty-five percent (25%) of the Assessments for a Lot containing an improvement and, except for the foregoing, the Assessments assessed against each Lot shall be equal. The full Assessment as to each Lot upon which an improvement is constructed shall commence on the first day of the full calendar month after a certificate of occupancy for the improvement is issued, or upon the conveyance of the Lot by the Developer or upon the first occupancy of the improvement, whichever occurs first. The lien rights provided herein shall not apply to any portion of the Properties owned by the Developer.

Section 2. Purpose of Assessments. The General Assessments levied by the Association shall be used exclusively for the general expenses of the Association. General expenses are any and all charges for the maintenance of the Common Areas and exterior maintenance (except that specifically requested by an Owner) as provided in Article III, and expenses related with operating the Association for the Members of the Association and their families residing with them, and their guests and tenants, including, but not limited to: (1) expenses of administration, maintenance, repair or replacement of the Common Areas; (2) reasonable reserves deemed necessary by the Board of Directors for repair, replacement or addition to the Common Area; and, expenses agreed upon as general expenses by the Association. The Association may obtain the following services and include expenses related thereto as general expenses of the Association: pest control for each residence, cable television and property and homeowners' association management. The Developer shall establish the initial budget, which shall be based on a fully developed community. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. In the event the community is not fully developed at the time the budget is adopted by the Board, the Board may nevertheless base the budget on a fully developed community. In instances where the Developer or the Board base budgets on a fully developed community when in fact the community is not so developed, then the budget (and therefore the

assessments) shall be reduced by the amount allocated for incomplete amenities or facilities.

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

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

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

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

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

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

(d) capital improvements relating to the Common Area.

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

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

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

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

Section 5. Reserves. The budget may reflect reserve funds for deferred maintenance and capital expenditures.

Section 6. Trust Funds. The portion of all General Assessments collected by the Association as reserves for future expenses, and the entire amount of all Special Assessments collected for capital improvements shall be held by the Association in trust for the owners of all Lots, as their interest may appear.

Section 7. Developer Payment of Assessments. Notwithstanding any provision that may be contained to the contrary in this instrument, for so long as Developer is the owner of any Lot, the Developer shall not be liable for Assessments against such Lot, provided that Developer shall be responsible for all Association expenses in excess of the Assessments received from other Owners (such amounts received from other Owners shall include, but shall not be limited to, working capital contributions paid by such other Owner), and other income received by the Association. In no event shall Developer be required to fund reserves allocated to any Lot owned by the Developer. Developer may, at any time, commence paying such Assessments as to all Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association. In addition, the Developer's obligation to fund deficits in the operating expenses of the Association shall terminate at such time as the Developer no longer owns any portion of the Properties. Developer's payment of Assessments may be by payment of funds, delivery of goods or provision of services to the Association, or any combination thereof.

Section 8. Working Capital Fund. Developer shall establish a Working Capital Fund for the initial months of operation of the Association, which shall be collected by the Developer from each Lot purchaser at the time of conveyance of each Lot to such purchaser in an amount equal to two (2) months of the annual assessment for each Lot. Each Lot's share of the Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale of each Lot. Amounts paid into the fund are not to be considered as advance payment of regular assessments. Notwithstanding the foregoing, the Developer, for so long as it controls the Board of Directors, shall have the right to use the Working Capital Fund to pay for ordinary expenses of the Association.

Section 9. Roster; Notice; Certificate. A roster of the Lots and Assessments applicable thereto shall be kept in the office of the Association and shall be open to inspection by any Owner.

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

Section 10. Collection of Assessment; Effect of Non Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of the Association. If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the default Owner a late fee of ten percent (10%) of the amount of the Assessment, or Ten and No/100 Dollars (\$10.00), whichever is greater, plus interest at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay Assessments to the Association for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the regular Assessments, for all special Assessments, and/or for all other Assessments payable to the Association. If the Assessments and any late fees and interest are not paid on the date when due, then such Assessments and any late fees and interest shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for unpaid Assessments and late fees with respect to such Lot. In any voluntary conveyance, the Grantee shall be jointly and severally liable with the Grantor for all unpaid Assessments made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

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

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

The provisions set forth in this section shall not apply to the Developer for so long as the Developer owns any portion of the Properties.

Section 11. Subordination of the Lien to First Mortgages.

The lien of Assessments, including interest, late charges (subject to the limitations of Florida laws), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first mortgage of an Institutional Lender upon any Lot. In addition, the lien of assessments, including interest, late charges (subject to the limitation of Florida laws), and costs (including attorneys' fees) provided for herein, shall be subordinate to a mortgage held by Developer upon the Properties, or any portion thereof, or any interest therein. The sale or transfer of any Lot or parcel of land shall not affect the Assessment lien. However, the sale or transfer of any Lot or parcel pursuant to judicial or non judicial foreclosure of a first mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or parcel from lien rights for any Assessments thereafter becoming due. Where the Institutional Lender of a first mortgage of record or other purchaser of such a Lot obtains title, its successors and assigns shall not be liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid Assessments shall be deemed to be an Assessment divided equally among, payable by and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Likewise, where a mortgage is held by the Developer upon the Properties, or a portion thereof, and the Developer or other purchaser obtains title, its successors and assigns shall not be liable for the Assessments by the Association chargeable to the Properties, or a portion thereof, which become due prior to the acquisition of title to the Properties, or portion thereof, by such acquirer. Such unpaid Assessments shall be deemed to be an Assessment divided equally among, payable by and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 12. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from the Assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

A. Any easement or other interest therein dedicated and accepted by a public authority and devoted to public use.

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

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

#### ARTICLE VI

##### EASEMENTS

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

- (a) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with any restrictions on the various plats of the Properties from time to time recorded.
- (b) The right of the Association to suspend the voting rights and right to use the Common Areas and facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its lawfully adopted and published rules and regulations.
- (c) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon.

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

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

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

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

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

Section 6. Additional Easement. The Developer (during any period in which the Developer has any ownership interest in the Properties) and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Properties and to grant access easements and to relocate any existing access easements in any portion of the Properties as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Properties, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

Section 7. Association Easement. For the purpose solely of performing its obligations under the provisions of this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the rights, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day. In the event of an emergency, such right of entry shall exist without notice on any day. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress,



across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the exterior maintenance aforementioned. In addition, the owner of the adjoining property (not within the Properties) may grant the Association, its duly authorized agents, employees or independent contractors, such easements for ingress and egress across its Properties to effect and perform its duties. In such event, the Association shall indemnify the adjoining property owner for any damage or injury to the easement areas caused by the use thereof or access to perform the exterior maintenance.

Section 8. Construction Easement. Each Lot and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to construct improvements, and to maintain, repair and restore any improvements located on the dominant tenement, provided, however that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvements, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvement, material or other obstacle was placed in or over the easement area. In the event an Owner fails to move such improvement, material or obstacle, then the Association may remove same and the expense of such removal shall be charged to the Owner as an assessment.

#### ARTICLE VII

##### GENERAL RESTRICTIVE COVENANTS

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

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

Section 3. Change in Buildings. No Owner shall make or permit any structural modification or alteration of any building except as per Article IV herein, and such consent may be withheld if, in the sole discretion of the party denying the same, it appears that such structural modification or alteration would adversely affect or in any manner endanger other dwelling units. No building shall be demolished or removed without the prior written consent of both the Board of Directors of the Association and Owner(s) of the immediately adjoining building(s). In the event any building is demolished or removed, if replaced, said building shall be replaced with a unit of similar size and type within twelve (12) months. In the event the building is not replaced, then the Lot shall be sodded and maintained as a landscaped Lot.

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

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

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

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

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

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

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

Section 10. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in a reasonable number. The keeping of a dog or other domestic pet is not a right of an Owner, but is a conditional license. This conditional license is subject to termination at any time by the Board of Directors upon a finding that a dog or other pet is vicious, is annoying to other residents, or has in any way

become a nuisance. The owner of a pet assumes liability for all damage to persons or property caused by the pet or resulting from its presence at the Properties.

This license is subject to the following conditions:

(a) Pets shall be kept on a leash at all times when outside a building and not enclosed within a fenced-in area.

(b) Pets are permitted to have excrements upon the Common Areas provided that the Owner shall immediately remove such excrement from the Common Areas with a "Pooper-Scooper" or other appropriate tool and deposit said waste in an approved trash receptacle.

(c) The owner of a pet shall be responsible, and by virtue of ownership, assumes responsibility for any damage to persons or property caused by his pet(s).

(d) Any pet whose owner violates the provisions and intent of these rules shall be deemed a nuisance and subject to removal in accordance with the provisions of this Declaration.

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

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

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

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

All garbage placed out for collection must be in sealed garbage bags, covered plastic garbage cans, or such other containers supplied or approved by the garbage collecting authority.

Section 15. Drying Areas. Drying areas will be permitted only in locations approved by the Architectural Control Board and only when protected from view by screening or fencing approved by the Architectural Control Board. The Architectural Control Board may enact reasonable regulations that do not have the effect of prohibiting drying areas or clotheslines on any Lot. No absolute prohibition of outside clotheslines or drying areas shall be permitted.

Section 16. Gas Containers. No gas tank, gas container, or gas cylinder (except those placed by the Developer or approved by the ACB in connection with the installation of swimming pools and/or permanent barbecues, and except those used for portable barbecues) shall be permitted to be placed on or about the outside of any house or any ancillary building, and all such items (except those placed by the Developer in connection with the installation of swimming pools and/or permanent barbecues, and except those used for portable barbecues) shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the ACB. Portable barbecues must be located or screened so as to be concealed from view of neighboring lots, streets and property located adjacent to the Lot.

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

Section 18. County Requirement. Any plat or replat of the Properties subject to this Declaration must conform with the master plan as approved by Palm Beach County as well as the applicable site plan as approved by any Site Plan Review Committee thereof.

Section 19. Drainage. No change in any drainage pattern of any Lot, after issuance of a certificate of occupancy for the dwelling thereon, or of any portion of the Properties, after all contemplated improvements have been completed, shall be made which

will cause undue hardship to an adjoining Lot or adjoining property with respect to natural runoff of rain water. Streets, swales, and any other areas designated as retention areas pursuant to the engineer's drainage plans will retain water during certain storm periods that may extend for a period of time beyond the engineer's design estimate.

Section 20. Leasing. No lease may be made for less than a six (6) month period, nor shall a Lot be leased more than two (2) times during any twelve (12) month period. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing on his Lot, and for all guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by and resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

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

#### ARTICLE VIII

##### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If

blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

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

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

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

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

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

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

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

from participating in the settlement negotiations, if any, related thereto.

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

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

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

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

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

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

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

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

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

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

In addition to the other insurance required by this section, the Board of Directors shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary,



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

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

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

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

Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the

filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Areas damage or destruction shall be repaired or reconstructed.

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

#### ARTICLE IX

##### CENTRAL CABLE TELECOMMUNICATIONS AND ELECTRONIC MONITORING SYSTEMS

Section 1. Ownership and Use. Developer reserves and retains to itself, its successors and assigns:

(a) The title to any central cable telecommunication receiving and distribution system and any electronic monitoring system which Developer installs or causes to be installed within Lexington Homes Estates, together with a perpetual easement for the placement and location thereof, including, without limitation, conduits, wires, amplifiers, towers, antennae and related apparatus and equipment; and

(b) A perpetual easement for ingress and egress from Lexington Homes Estates Homeowner's Association, Inc. to service, maintain, install, repair and replace the aforesaid apparatus and equipment; and

(c) The right to connect the central telecommunications and electronic monitoring system to such receiving sources as Developer may in its sole discretion deem appropriate, including without limitation, companies licensed to provide the cable TV, security and/or electronic monitoring service in Palm Beach County, Florida, for which service Developer, its successors and assigns shall have the right to charge every Owner a reasonable fee, not to exceed the maximum allowable charge for such services as from time to time may be defined by the laws and ordinances of Palm Beach County, Florida. The provisions of this subsection (c) shall not, however, be applicable to any property which is the subject of this Declaration which is hereinafter owned in fee simple by any cable TV or monitoring company or any of its subsidiary corporations, or any successor in title to any such property; and

(d) The right to empower a licensee or franchisee to provide exclusive cable telecommunication, security and/or electronic monitoring services within Lexington Homes Estates, to enter into an exclusive agreement with such licensee or franchisee, and to collect such license or franchise fees in connection therewith as the Developer may, in its sole discretion, deem appropriate. A specified monthly charge (the "Base Assessment") shall be assessed to each Lot for the fees charged to the Association pursuant to any such exclusive agreement, whether or not any Owner elects to use such services. Subsequent to turnover, the Association shall assume all obligations under such exclusive agreements for cable TV and/or electronic monitoring services, and all payments from such date forward shall belong to the Association. The Association recognizes that such agreements benefit Lexington Homes Estates and the Owners and that beneficial terms and conditions were obtained through the execution of such agreement, and that notwithstanding any future statutory provisions under Florida law allowing cancellation of such agreements, that the Association will not unreasonably cancel such agreements.

Section 2. Security Services. Developer, the Association, their successors or assigns or licensees or franchisees, and the cable TV or security system operator may enter into contracts for the provision of cable TV and security systems through the central cable tele-communication systems or through other providers of cable TV or security systems. DEVELOPER OR THE ASSOCIATION AND THEIR LICENSEES AND FRANCHISEES, AND THE CABLE TV AND/OR SECURITY SYSTEMS OPERATORS OR PROVIDERS, DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIED, THE MERCHANTABILITY OR FITNESS OF USE OF ANY SUCH SYSTEMS OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES OR OTHER OCCURRENCES OR THE CONSEQUENCES OF SUCH OCCURRENCES, WHICH THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR; AND EVERY OWNER OR OCCUPANT OF THE PROPERTY SERVICED BY THE CABLE TV AND ELECTRONIC MONITORING SYSTEMS ACKNOWLEDGES THAT DEVELOPER, THE ASSOCIATION OR ANY SUCCESSOR, ANY ASSIGNEE OF A LICENSEE OR FRANCHISEE OR THE DEVELOPER OR THE ASSOCIATION AND THE CABLE TV OR SECURITY SYSTEM OPERATORS OR PROVIDERS, WILL NOT BE

RESPONSIBLE OR LIABLE FOR LOSSES OR INJURIES RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a monitoring service provider to perform any of its obligations with respect to electronic monitoring services, and therefore every Owner or occupant of property receiving security or cable TV services through the central system, through independent cable TV or security systems, through telephone or radio systems or any combination thereof agrees that Developer, the Association or any successor, assignee, licensee or franchisee of Developer or the Association and the communications system operator assume no liability for loss or damage to property or for personal injury or death to persons due to failure in transmission of an alarm, interruption of electronic monitoring service or failure to respond to an alarm because of (a) any failure of the Owner's security system; (b) any defective or damaged equipment, device, line or circuit; (c) negligence of the electronic monitoring service provider or independent service provider or its officers, agents or employees; or (d) fire, flood, riot, war, act of God or other similar causes beyond the control of the electronic monitoring service provider. EVERY OWNER OR OCCUPANT OF PROPERTY OBTAINING SECURITY SERVICES THROUGH THE CENTRAL SYSTEM FURTHER AGREES FOR HIMSELF, HIS GUESTS, INVITEES AND LICENSEES THAT IF ANY LOSS OR DAMAGE SHOULD RESULT FROM A FAILURE OF PERFORMANCE OR OPERATION, OR FROM DEFECTIVE PERFORMANCE OR OPERATION, OR FROM IMPROPER INSTALLATION, MONITORING OR SERVICING OF THE SYSTEM, THE LIABILITY, IF ANY, OF THE DEVELOPER, THE ASSOCIATION, ANY LICENSEE OR FRANCHISEE OF DEVELOPER, ANY INDEPENDENT SERVICE PROVIDER, OR THE ASSOCIATION AND THE CABLE SYSTEM OR SECURITY SYSTEM OPERATORS OR PROVIDERS OR THEIR SUCCESSORS OR ASSIGNS, FOR LOSS OR DAMAGE SUSTAINED SHALL BE LIMITED TO A SUM NOT EXCEEDING \$250.00, WHICH LIMITATION SHALL APPLY NOTWITHSTANDING THAT THE LOSS OR DAMAGE RESULTS DIRECTLY OR INDIRECTLY FROM NEGLIGENT PERFORMANCE OR NON-PERFORMANCE BY ANY OFFICER, AGENT OR EMPLOYEE OF THE DEVELOPER, THE ASSOCIATION OR ANY LICENSEE OR FRANCHISEE, SUCCESSOR OR ASSIGN OF THE DEVELOPER, ASSOCIATION OR THE CABLE SYSTEM OR SECURITY SYSTEM OPERATORS. FURTHER, IN NO EVENT WILL DEVELOPER, THE ASSOCIATION, THE CABLE SYSTEM OR SECURITY SYSTEM OPERATORS OR PROVIDERS OR THEIR SUCCESSORS OR ASSIGNS BE LIABLE FOR CONSEQUENTIAL DAMAGES, WRONGFUL DEATH, PERSONAL INJURY OR COMMERCIAL LOSS.

#### ARTICLE X

##### DEVELOPER'S RIGHTS

Section 1. Sales Activity. Notwithstanding any provision herein to the contrary, until the Developer has completed, sold and conveyed all of the Lots within the Properties, neither the Owners, nor the Association nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and

the sale of Lots and any other sales activity of the Developer, whether related to the Properties or other developments of the Developer. The Developers (or its duly authorized agents or assigns) may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices, construction trailers, storage areas, model homes, and/or parking lots for the showing of the property, and the display of signs, billboards, flags, placards and visual promotional materials. The Developer shall have the right to use unimproved Lots for temporary parking for prospective purchasers and such other parties as Developer determines. Each Lot and the Common Area is hereby subjected to an easement for the purposes set forth herein.

Section 2. Replatting. It may be necessary for the Developer to re-plot a portion of the Properties. The Developer shall have the right to re-plot unsold portions of the Properties without requiring the joinder or consent of any Owner or mortgagee holding a mortgage on any Lot.

Section 3. Utility and Construction Payments and/or Deposits. In the event a utility company or governmental authority requires a deposit to be made by the Developer, and such deposit shall be refunded at some time in the future, then the Developer (and not the Association) shall be entitled to receipt of the refunded funds. In addition, should construction payments made by the Developer be refunded by a utility company or governmental authority at some time in the future, then the Developer (and not the Association) shall be entitled to receipt of the refunded funds or the Association shall reimburse the Developer for such payments prior to the time that Owners other than the Developer elect a majority of the members of the Board of Directors of the Association.

Section 4. Assignment of Developer Rights. The Developer shall have the right to assign to any other person or entity any or all of the Developer's rights reserved in this Declaration, in whole or in part, with respect to all or any portion of the Properties. In the event of an assignment, the assignee shall not be liable for any action of a prior developer. Acquisition, development or construction lenders acquiring title to the Properties or any portion thereof by foreclosure or deed in lieu of foreclosure shall have the right, but not the obligation, to assume the Developer's rights. Such acquisition, development or construction lender shall have the right to assign the Developer's rights to a subsequent purchaser, regardless of whether or not the Developer's rights were assumed by the lender.

Section 5. Developer Approval of Board Action. In the event the Developer no longer controls the Board of Directors but continues to own a portion of the Properties, then the Developer shall have the right to veto any action taken by the Board if the

Developer determines that such action materially and adversely affects the Developer's interest in the community. Action of the Board shall be submitted to the Developer within ten (10) days of adoption of such action. In the event a written veto is not delivered by the Developer to the Board within ten (10) days of actual receipt of the action, then the action shall be deemed approved.

ARTICLE XI

MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Properties.

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

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

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

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

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

Section 2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Section 4. Applicability of Article XI. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Florida law for any of the acts set out in this Article.

Section 5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

## ARTICLE XII

### GENERAL PROVISIONS

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

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

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Control Board. The Association is hereby empowered to adopt reasonable rules and regulations for the imposition of fines to be levied

against any Owner for failure to comply with the terms of this Declaration or rules and regulations of the Association. Any rule or regulation subjecting any Owner to fines shall include provisions for notice, hearing, appeal and fines. Fines shall constitute an assessment due to the Association and upon failure to pay such fine within the period prescribed by the Association shall become a charge and continuing lien upon the Owner's Lot.

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

Section 5. Amendment. The Developer may amend this Declaration so long as it owns any portion of the Properties or holds a mortgage on any portion of the Properties. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total votes of the Association, including seventy-five (75%) percent of Members other than the Developer. Every amendment must have the written joinder and consent of the Developer for so long as the Developer owns any portion of the Properties. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Public Records of Palm Beach County, Florida. No amendment may prejudice or impair the priorities of Institutional Lenders granted hereunder unless all Institutional Lenders join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Developer, unless Developer joins in the execution of the amendment.

Section 6. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five (75%) percent of the Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.





ORB 6824 Pg 1540

**EXHIBIT "A"**  
**TO**  
**DECLARATION OF RESTRICTIONS AND**  
**PROTECTIVE COVENANTS FOR LEXINGTON HOMES ESTATES**

Property Subject to Declaration

All of the Plat of Lexington Homes Estates  
P.R.D. as recorded in Plat Book 65, Page 78, of  
the Public Records of Palm Beach County,  
Florida.

ORB 6824 Pg 1541

**EXHIBIT "B"**  
**TO**  
**DECLARATION OF RESTRICTIONS AND**  
**PROTECTIVE COVENANTS FOR LEXINGTON HOMES ESTATES**

**Description of Common Areas**

Tracts A, C, D, E, F and G, as shown on the Plat of Lexington Homes Estates P.R.D., as recorded in Plat Book 65, Page 78 of the Public Records of Palm Beach County, Florida.

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