

- (c) "Common Areas" - all or any Parcels, Tracts, Access Areas, Open Space Areas, Roadways and Streets, Recreation Areas, Drainage Areas, Buffer Areas, Buffer Easements, Landscape Areas, as identified as being reserved or dedicated or transferred to the Association by Special Warranty Deed as recorded in Official Records Book 12208, at Pages 230 of the Public Records of Palm Beach County, Florida.
- (d) "Owner" - the record owner, whether one or more persons or entities, of the fee simple title to any Unit.
- (e) "Member" - all those Owners who are members of the Association as provided in Article III, Section 1 hereof.
- (f) "Developer" - Fifth Avenue Place, LLC, a Florida limited liability company organized under the laws of the State of Florida, its successors and assigns, if such successor or assignee acquires an underdeveloped portion of the Properties and is designated as such by Fifth Avenue Place, LLC. 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 and accepted by them.
- (g) "Unit" - any "Lot" shown on a Plat of the Properties, or any replat thereof, which is intended for a single-family residence. As used herein, the term Unit includes the single-family residence ("residence" or "dwelling") constructed or to be constructed thereon, together with any appurtenances thereto.
- (h) "Governing Documents" - this Declaration, the Articles of Incorporation for the Association and its Bylaws and any rules and regulations promulgated and adopted by the Association shall comprise the Governing Documents.

ARTICLE II

PROPERTY SUBJECT TO THE 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. County Requirement. Any plat or replat of the Properties must conform with the plan of Fifth Avenue Place as approved by the Board of County Commissioners of Palm Beach County and the City of Boca Raton, and as amended from time to time, as well as the applicable site plan for the Properties, as approved by the County Development Review Committee and Boca Raton Community Redevelopment Agency thereof and as may be amended by the Developer from time to time.

ARTICLE III

FIFTH AVENUE PLACE HOMEOWNERS ASSOCIATION, INC.

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Unit in the Properties shall be a member of the Association and shall be bound by the provisions of this Declaration. 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. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Unit.

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

Class A: Class A members shall be all those Owners as defined in Section 1 above, with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Unit in which they hold the interests required for membership by Section 1 above. When more than one (1) person holds such interest or interests in any Unit, all such persons shall be members, and the vote for such Unit shall be exercised by one (1) such member as specified in the Articles of Incorporation of the Association but in no event shall more than one (1) vote be cast with respect to any such Unit.

Class B: The Class B member shall be the Developer. The Class B member shall be entitled to one (1) vote for each Unit in which it holds the interests required for membership by Section 1 above; 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 such time as Developer no longer holds the title to any portion of the Properties or the title to any additional property which may have been brought under the provisions of this Declaration by recorded supplemental declarations, as set forth in Article II hereof, or until five (5) years after this Declaration is recorded in the Public Records of Palm Beach County, Florida, whichever occurs first.

Section 3. Merger or Consolidation. Upon a merger or consolidation of the Association with any other association as provided in its Articles of Incorporation, 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 the Association as the 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 within the Properties.

Section 4. Termination of the Association. In the event the Association is terminated or shall no longer continue to exist for any reason whatsoever, or 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. Common Areas.

A. Ownership. Developer may retain the legal title to the Common Areas so long as it owns fee simple title to at least one (1) Lot in the Properties. On or before conveyance by 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 in "as is" condition and the Association shall accept such conveyance, subject to all of the terms hereof, the standard exceptions contained in an ALTA form of title insurance policy, and all other matters of record, other than mortgages or liens other than those provided for hereunder. Notwithstanding any other provision in this Declaration, or the Articles of Incorporation or the Bylaws of the Association, unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each first mortgage owned) or two-thirds (2/3) of the Owners of the Units (other than the Developer) have given their prior written approval, the Association shall not take any of the following actions:

1. by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Units. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this clause;

2. change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner;

3. by act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, the maintenance of the Common Areas, and the upkeep of lawns, plantings and irrigation systems on the Properties;

4. fail to maintain fire and extended coverage insurance on insurable improvements and personal property on the Common Areas on a current replacement cost basis in an amount at least one hundred (100%) percent of the insurable value (based on current replacement cost); or

5. use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of the Common Areas.

B. Maintenance. Commencing with the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas (which include, but are not limited to, streets and street lighting, recreation areas and landscape areas), any improvements and any personal property thereon (except any improvements or personal property associated with a Unit with the exceptions specifically provided herein), in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas accruing from and after the date this Declaration is recorded. Such taxes 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 often as necessary, any and all improvements situated on the Common Areas (upon completion of construction of them by Developer) including, but not limited to, landscaping, paving, drainage structures, street lighting fixtures and appurtenances, signage, perimeter walls, irrigation systems, common mail boxes, sidewalks located within the Common Areas which are either for use by individual Owners or for common use, telecommunication and security and surveillance systems and appurtenances installed by the Developer or the Association for common use, if any, and other structures, except public utilities, all such work to be done as ordered by the Board of Directors of the Association acting on the majority vote of the Board members. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article IV hereof. Such assessments shall be against all Units equally; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member, his family members, guests, invitees, tenants, or licensees or by the failure of a Member, his family members, guests, invitees, tenants or licensees to comply with the lawfully adopted rules and regulations of the Association shall be levied as a special assessment against such Member and his Unit. 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 as well as upon adjacent properties for the

purpose of constructing or maintaining any facilities on the Common Areas that Developer elects to build or maintain.

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 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. The Association hereby assigns such rebates or refunds to Developer, and shall forthwith pay same to the Developer.

E. Other Areas. The Association shall also maintain other areas, as so determined by Developer or the Board of Directors, which are not within the Properties but are in the same vicinity and are owned by a utility, governmental authority, quasi governmental entity or Developer, so as to enhance the appearance of the Properties, such as swale areas, roads or areas within any water management tracts, landscape buffer areas, entry features, feature walls and signs. All costs and expenses of the foregoing shall be a general expense and a portion of the annual assessment of the Association.

F. Storage. Nothing shall be stored, constructed within, or removed from the Common Areas other than by the Developer, except with the prior written approval of the Association.

Section 6. Unit Maintenance.

A. By the Association. The Association shall provide the routine maintenance of all lawn and landscaped areas located within the Properties, including irrigation. The obligations of the Association as described herein shall extend only to the landscaping and irrigation as were originally installed by the Developer, or landscaping and irrigation which were approved and accepted for maintenance in accordance with the provisions of this Declaration.

B. By Owners. Each owner shall keep and maintain his Unit in a good, safe, clean, neat and attractive condition in accordance with this Declaration and in good condition and repair at all

times. In particular, the exterior of each residence building including but not limited to, roof, walls, windows, patio areas, pools, screening, awnings, outdoor lighting, walks, driveways, landscaping (including shrubs, sod, and trees), mailboxes and newspaper boxes shall be maintained in good and functional condition and repair and in a neat and attractive manner, in accordance with rules or specifications promulgated from time to time by the Association and/or the Architectural Control Board. All painted areas on the exterior of a residence shall be painted as reasonably necessary with colors which are harmonious with other residences within the Properties, and no excessive rust or other mineral deposits on the exterior of any residence from the irrigation system, peeling of paint or discoloration of same shall be permitted. In the event that any Owner fails to maintain his Unit or fails to restore any improvements on his Unit within sixty (60) days of any casualty which damages or destroys such improvements, the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice, to correct such condition and to enter upon such Unit to make such repairs or to perform such maintenance or restoration. The cost thereof shall be charged to the appropriate Unit and shall be an Assessment thereupon. The Owner of such Unit shall pay promptly all amounts due for such work, and the costs for collection may be added, at the option of the Board, to the Assessment as provided in Article IV hereof.

Section 7. Architectural Control Board.

A. The Architectural Control Board shall be a standing committee of the Association; provided, however that until all residences as to Units proposed by the Developer to be constructed within the Properties are conveyed to Owners, the Developer shall have the sole and exclusive right to appoint the Architectural Control Board. The Architectural Control Board shall have the power to promulgate, amend and delete, such rules and regulations as it deems necessary to carry out the provisions and intent of this Section and other provisions of this Declaration. When all dwellings as to Units proposed by the Developer to be constructed within the Properties have been conveyed to Owners, the Architectural Control Board shall consist of no less than three (3) 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 Architectural Control Board, the remaining members shall have full authority to designate a successor except

that the Developer shall have full authority to designate a successor to any member of the Architectural Control Board appointed by it until all residences as to Units to be constructed by it are conveyed to Owners. The members of the Architectural Control Board need not be members of the Association.

B. A majority of the members of the Architectural Control Board may take any action the Architectural Control Board is empowered to take, may designate a representative to act for the Architectural Control Board, and may employ personnel and consultants to act for it. The Architectural Control Board shall have the right to disapprove any plans and specifications which are not suitable or desirable, in its sole and absolute discretion, based on any grounds or reason whatsoever, including purely aesthetic grounds. Upon approval or disapproval of any plans and specifications, the Architectural Control Board shall notify the Owner/applicant in writing, which notification shall set forth any qualifications and/or conditions of approval, or the grounds upon which such disapproval is based. The Architectural Control Board is hereby specifically empowered to require, as a condition of any approval hereunder, the posting of a security deposit in an amount deemed appropriate by the Architectural Control Board to ensure that the approved construction is done in a good and workmanlike manner and in a manner so as not to damage any Common Areas and any areas required to be maintained by the Association pursuant to this Declaration. Upon completion of the construction, the Architectural Control Board shall inspect same. If the construction has been performed in a good and workmanlike manner and in accordance with the approved plans and specifications and the Common Areas and any areas required to be maintained by the Association are not damaged, the Association shall return the Owner's deposit, without interest. If the construction is not performed in a good and workmanlike manner and in accordance with the approved plans and specifications and/or the Common Areas or any area to be maintained by the Association has been damaged, the Architectural Control Board shall retain the deposit and use so much thereof as is necessary for the purpose of repairing the damage(s) and shall return any excess not needed for such purpose to the Owner. If the amount of the security deposit is insufficient to cover the actual cost of repairing the damage(s), the Architectural Control Board shall refer the matter to the Board of Directors who may then levy a special assessment for the balance of such expense against the applicable Unit. Notwithstanding any provision to the contrary, for so long as the Developer is the owner of any portion of the Properties, any

approval of the Architectural Control Board shall not be final until approved by the Developer.

C. The Association, though the Architectural Control Board, may charge a reasonable fee as part of its approval process hereunder to offset its expenses involved therein.

D. Notwithstanding anything contained in this Declaration to the contrary, Developer shall be exempted from the provisions of this Section 7. Developer shall not be obligated to obtain approval for any construction or changes in construction which Developer may elect to make to any portion of the Properties owned by Developer including improvements made to the Commons Areas.

E. Neither the Association nor the members of the Architectural Control Board shall have any duty, responsibility, or liability to any Owner or other person in respect to the exercise of its powers, or the failure to exercise its powers under this Declaration. The Association and the members of its Board of Directors and its members of the Architectural Control Board shall be indemnified and held harmless from any and all damage resulting therefrom including, but not limited to, court costs and reasonable attorney's fees.

Section 8. Powers. 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 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 persons, firms or corporations for management services. The Association, by its Board of Directors, shall have the right to promulgate and impose rules and regulations and thereafter modify, alter, amend, rescind, and augment any of the same with respect to the use, operation, and enjoyment of the Common Areas and the Units and any improvements located thereon. The Association, through the action of its Board of Directors (unless otherwise indicated herein), shall have all other powers as provided in its Articles of Incorporation, its Bylaws and by law. In addition to all other remedies provided for in this Declaration, the Association, through its Board of Directors, is hereby empowered to impose a fine on any Owner for failure of an Owner, his family members, guests, invitees, tenants, and licensees to comply with any provision of this Declaration; provided, however, that the Association grants reasonable notice and opportunity to be heard. The decisions of the Association shall be final. Fines may not exceed a maximum of Five

Hundred (\$500.00) Dollars per occurrence for initial violations and One Thousand (\$1,000.00) Dollars per occurrence for second and subsequent violations. Fines shall be considered a special assessment against the Owner's Unit and collectible as such in accordance with the provisions of Article IV hereof. Fines may not be imposed against the Developer without Developer's prior written consent.

Section 9. Duty of Owners. An Owner's membership shall be established effective immediately upon such person becoming an Owner; however, such new Member's rights shall not be effective until the new Member presents the Association with a copy of the recorded deed or other instrument of title to the Unit and pays a contribution to the Association's working capital in an amount equal to one sixth (1/6) of the annual Assessment then established and in effect at the time an Owner becomes a Member. It shall be the obligation of each Owner to provide the Association with a copy of such instrument as well as the name and address of the mortgagee(s) holding a mortgage against his Unit. The requirement to provide a copy of the recorded deed or other instrument of conveyance shall not apply to the Initial Owners (those Owners who were conveyed title by the Developer); however, Initial Owners shall still be required to provide the Association with the name and address of any mortgagee acquiring an interest in the Unit and to pay the aforescribed contribution to the Association's working capital. The working capital contribution may be used by the Board (or the Developer as the case may be) for any purpose it deems necessary or appropriate including the funding of day-to-day operational expenses of the Association or the acquisition of additional equipment and/or services. Amounts paid into working capital are not Assessments and shall not be considered as an advance payment of Assessments, and shall be collected in the manner provided in Article IV hereof.

Section 10. Subsequent Legislation. The Association is not a condominium association and, therefore, shall not be affected by the provisions of Chapter 718, Florida Statutes. Further, the expressed intent of the Governing Documents of the Association is that the substantive rights thereunder shall not be retroactively affected by legislation which may be enacted subsequent to the date of execution of such Governing Documents unless the provisions of or a reference to such legislation is specifically included in an amendment to the Governing Documents and approved in writing by the Association.

Section 11. Articles and Bylaws. The Articles of Incorporation ("Articles") and Bylaws ("Bylaws") of the Association are attached hereto as Exhibits "B" and "C", respectively, and made a part hereof. The Declaration, the Articles, the Bylaws and any Rules and Regulations collectively comprise the Governing Documents.

ARTICLE IV

ASSOCIATION COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Developer, for each Unit owned by it within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, 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 assessments for general expenses as provided in Article III, 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 annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Unit against which such assessment is made and shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. Except as otherwise provided, all assessments shall be equally assessed against all Units within the Properties.

Section 2. Purposes of Assessments. The annual assessments levied by the Association shall be used exclusively for the general expenses of the Association. General expenses are any and all charges for maintenance of the Common Areas and landscape maintenance as provided in Article III and for the promotion of the health, safety, welfare, and recreational opportunities of 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, including but not limited to, any and all taxes and special assessments levied or assessed upon the Common Areas or any improvements thereon and against all personal property owned by the Association, including any interest, penalties and other charges which may accrue thereon and all charges levied by utilities or utility service districts providing services for the

Common Areas, and expenses of administration of the duties required by this Declaration; (2) reasonable reserves deemed necessary by the Board of Directors for repair, replacement or addition to the Common Areas; and (3) expenses agreed upon as general expenses by the Association. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for each fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. Developer shall not be obligated to establish or fund any reserves.

Section 3. Date of Commencement of Annual Assessments; Due Dates.

The annual assessments shall commence on the date or dates, which shall be the first (1st) day of a month, fixed by the Board of Directors of the Association to be the date of commencement. Thereafter, the Board of Directors shall fix the date of commencement and amount of the assessment against each Unit at least thirty (30) days in advance of the commencement period. The annual 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 annual assessment may be changed, at any time, by said Board from that originally adopted or that which is adopted in the future. The 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. The Association shall notify each Owner of any change in assessments at least fifteen (15) days in advance of the commencement period of the new assessment.

Section 4. Special Assessments. A special assessment may be levied against one or more Units for the following:

- (a) 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;
- (b) reimbursement for damages caused by a Unit Owner or Owners, their family members, guests, invitees, tenants, or licensees;
- (c) capital improvements relating to the Common Areas;
- (d) late charges, user fees, fines and penalties;
- (e) any other charge which is not a general expense; or

(f) any general expense, except reserves, 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 Unit or Units subject to such assessment; provided, however, that any resolution of special assessments shall not be effective until approved by the affirmative vote of a majority of all Members entitled to vote at a meeting called for such purposes.

Section 5. Trust Funds. The portion of all annual assessments collected by the Association as reserves for future expenses, if any, 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 Units, as their interests may appear.

Section 6. Effect on Developer. Notwithstanding any provision that may be contained to the contrary in this Declaration for so long as Developer is the owner of any Unit, the Developer shall not be liable for assessments against such Unit, provided that Developer funds any deficit in operating expenses of the Association. Developer's payment of said deficit may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these. Notwithstanding anything herein contained to the contrary, Developer shall have no obligation to pay any Assessments or fund said deficit when it no longer owns any portion of the Properties. Developer may, at any time, commence paying such assessments as to all Units that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association. Further, in the event any Owner shall fail to pay any assessment due the Association, or any installment thereof, Developer shall have the right, but not the obligation, to advance such sums to the Association on behalf of the Owner in default and thereafter treat such advance as a loan to the Association, which such loan shall bear interest at an annual rate equal to the Prime Rate plus 2.00 points.

Section 7. Roster; Notice; Certificate. A roster of the Units and assessments applicable thereto shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner

subject thereto, which notice shall specify the date or dates when the assessments covered thereby are due.

The Association shall, upon demand at any time, furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to the Unit 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 8. Collection of Assessments; Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of the Association. If assessments are not paid on the date when due, then such assessments 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 Unit which shall bind such Unit in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Unit upon the death of an Owner or by operation of law shall be personally liable for unpaid assessments with respect to such Unit. 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.

If an assessment is not paid within ten (10) days after its due date, the Association may impose a late charge of \$25.00 and the assessment shall bear interest from the date when due at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the individuals personally obligated to pay the same or may record a claim of lien against the Unit on which the assessment is unpaid, or may foreclose the lien against the Unit on which the assessment is unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more such remedies at the same time successively, and there shall be added to the amount of such assessment, 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 administrative costs of the Association of pursuing the collection of the assessment, interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the cost of the action, and the Association shall be entitled to attorney's fees in connection with any appeal of such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder. If an assessment is past due for more than sixty (60) days, then the Association shall commence collection procedures with respect thereto. However, the foregoing requirement shall not preclude the Association from commencing collection procedures either before or after such date and the failure to commence collection procedures after sixty (60) days have expired shall not act as a waiver or otherwise bar the Association from collecting the amounts owed or impose any liability on the officers or directors of the Association.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessment provided for in this Article IV shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid assessment. An institutional lender is defined as a state or federal bank or savings and loan association, an insurance company, trust company, savings bank, credit union, real estate or mortgage investment trust, mortgage broker, mortgage banker, private mortgage insurance company, the United States Veterans' Administration, United States Federal Housing Administration or a lender generally recognized in the community as an institutional lender. Any assignee of a mortgage originated by an institutional lender shall be deemed an institutional lender for the purpose of said mortgage, including the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and any similar institutional lenders, regardless of where any mortgage held by any of them originated. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any Unit by reason of the provisions of this Section 9, shall be deemed to be an assessment divided equally among, payable by, and assessed against all Units, including the Unit as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

Section 10. 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.

Notwithstanding any provisions herein, no land devoted to dwelling use shall ever be exempt from said assessments, charges or liens.

Section 11. Insurance. The premiums on the policy or policies of insurance which the Association, in its sole discretion determines to obtain, shall be a general expense to be paid by the Association, provided, however, that the Association shall obtain and maintain the following insurance coverage:

(1) Hazard insurance in an amount equal to one hundred (100%) percent of the current replacement cost, exclusive of land, foundation, excavation, and other items normally excluded from such coverage, of all structures located upon the Common Areas and all personal property and supplies and fixtures and building service equipment that are considered part of the Common Areas affording protection against at least loss or damage by fire and all other hazards covered by the standard extended coverage endorsement, all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement, and for sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. The maximum deductible, unless mandated as higher by state law, shall be the lesser of \$10,000.00 or one (1%) percent of the policy face amount. Funds to cover these deductibles shall be kept in the Association's operating reserve account. The property hazard insurance policy shall also include an Inflation Guard Endorsement (if available), a Construction Code Endorsement (if there is a construction code provision that would require changes to undamaged portions of improvements even when only a part of such improvement is destroyed by an insured hazard), a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement, an Increased Cost of Construction Endorsement, a Steam Boiler and Machinery Coverage Endorsement (if there shall be central heating or cooling), and a Standard Mortgage Clause. Hazard insurance shall be written by a company which has a "Best's" B general policy holder's rating and III financial size category; or if not, by a carrier who is covered by reinsurance with a company that does meet

such requirements; or if neither, by Lloyd's of London regardless of London's Best's or other rating. Hazard insurance shall not be changed or cancelled unless thirty (30) days' written notice thereof has been provided to the Association. The loss payee or named insured shall be the Association or an insurance trustee or a trustee for each Unit Owner and the holder of each Unit's mortgage.

(2) A comprehensive policy of public liability insurance and, if appropriate, owners, landlord and tenant policies naming the Association and, until the date of conveyance of the Common Areas to the Association by the Developer, the Developer as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for bodily injuries or property damage received in connection with, or arising from, the operation, maintenance, and use of the entire project, including the Common Areas and any improvements and buildings located thereon, and public ways, and any other areas that are under the Association's supervision, and for any other risks insured against by such policies with limits of not less than One Million (\$1,000,000.00) Dollars for damages incurred or claimed by any one person for any one occurrence and not less than Five Million (\$5,000,000.00) Dollars for damages incurred or claimed for any one occurrence and for not less than One Million (\$1,000,000.00) Dollars property damage per occurrence with no separate limits stated for the number of claims. Such coverage shall include as appropriate, without limitation, protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, liability for false arrests, liability for electronic monitoring systems, libel and slander liability, host liquor liability, and such other risks as are customarily covered with respect to areas similar to the Common Areas in developments similar in construction, location, and use. Such policy shall also include either a severability of interest clause in its terms, or if not in its terms, then an endorsement to the policy to preclude the insurer's denial of a Unit Owner's claim because of negligent acts of the Association or other Unit Owners. Such policy shall not change or be cancelled absent thirty (30) days' written notice to the Association thereof.

(3) Adequate fidelity coverage to protect against dishonest acts on the part of officers, agents, and employees of the Association and all others who handle or are responsible for handling funds of the Association or to whom such responsibility is delegated, whether or not such party is compensated for services

rendered, such coverage to be in the form of fidelity bonds which meet the following requirements: (a) such bonds shall name the Association as the obligee; (b) such bonds shall be written in an amount equal to at least three (3) times the sum of one (1) month's assessments on all of the Units; (c) such bonds shall be contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar term. Premiums for such fidelity bonds shall be paid by the Association as a general expense.

(4) Officer and Director liability insurance and liability insurance for Members of the Association, if available, as shall be determined by the Board to be required or beneficial for the protection of the agents and officers of the Association and the Members of the Association.

(5) Each Owner shall maintain in full force and effect at all times hazard insurance in an amount equal to one hundred (100%) percent of the current replacement cost, exclusive of land, foundation, excavation, and other items normally excluded from such coverage, of all structures located upon his Unit affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement, and for sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage. The maximum deductible under such policy shall be the lesser of \$1,000.00 or one (1%) percent of the Unit's replacement cost. Each Owner shall provide the Association with a certificate of insurance or other appropriate evidence that such coverage is in effect at or prior to the date which such Owner acquires title to his Unit. Thereafter, each Owner shall provide such evidence of insurance to the Association annually and on demand from the Association. Such insurance shall show the Association as an additional insured and shall not be cancelled or materially modified without at least thirty (30) days' prior notice to the Association. Should any Owner fail to maintain in full force and effect the required insurance coverage pursuant to this provision, the Association may purchase such insurance and all costs and expenses in connection therewith shall be treated as a special assessment against such Unit in accordance with the provisions of Article IV hereof. The proceeds of the property insurance with respect to any casualty covered thereby shall be used to rebuild the improvements damaged in such casualty. Such rebuilding shall commence within sixty (60) days of

the date of the casualty and shall be prosecuted with diligence until completed.

(6) The Association is irrevocably appointed agent for each Owner, for each owner of a mortgage encumbering a Unit and for each owner of any other interest in a Unit or Lot to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

Section 12. Indemnification. The Association covenants and agrees that it will indemnify, defend, and hold harmless Developer, and any related corporations, including but not limited to, parent and subsidiary corporations (including the general contractor for the Properties) and their employees from and against any and all claims, suits, actions, causes of action and/or damages arising from any personal injury, loss of life, and/or damage to property sustained on or about the Properties or other property serving the Association, or resulting or arising out of the operation of the Association and improvements thereof and thereon, or resulting from or arising out of activities or operation of the Association, and from and against all costs, expenses, counsel fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred by Developer arising from any such claim, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon. The cost and expenses of fulfilling this covenant of indemnification set forth in this Section shall be a general expense to the extent such matters are not covered by the Association's insurance.

ARTICLE V

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, streets, and common access ways 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, streets, and/or common access ways shall be for 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 Unit 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 which are recorded from time to time.

(b) The right of the Association to suspend the voting rights and right to use the Common Areas and facilities of an Owner for any period during which any assessment against his Unit 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 Common Areas and all facilities at any time situated thereon.

(d) The right of the Developer and the Association to dedicate or transfer all or any part of the Common Areas for such purposes and upon such conditions as may be approved by two-thirds (2/3) of the votes of each class of Members, at a regular or special meeting of the Members duly called for such purpose; provided, however, that as long as the Developer owns any portion of the property affected by this Declaration, such action shall only be effective upon the joinder and consent of the Developer, notwithstanding any other provision regarding Developer's consent.

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. Screened Enclosure/Fence Easement. Each Member of the Association and each tenant and agent of such Member shall have a permanent and perpetual easement for ingress and egress upon any Common Area adjoining such Member's Unit for purposes of constructing and maintaining screened enclosures that and/or fences on such Member's Unit provided that the construction of such screened enclosure and/or fence was previously approved by the Architectural Control Board.

Section 3. Easements Appurtenant. The easements provided in Sections 1 and 2 above and Section 6 below shall be appurtenant to and shall pass with the title to each Unit.

Section 4. 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. Public utility easements are hereby granted over, across, through and under any Unit to electrical, cable television, security surveillance or communication services providers for the installation, construction, maintenance repair and replacement of wires, conduits and cables for the provision of such services to Units, wherever same shall be installed by such providers during initial construction of the dwellings by the Developer.

Section 5. Public Easements. Fire, 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 6. Easement for Encroachments. If any building, equipment or mechanical device, or improvement, including but not limited to air conditioner equipment, electrical meter boxes, and walkways, shall encroach upon or overhang any portion of a Unit, the Common Areas or upon an easement by reason of original construction or by an act of Developer or the non-purposeful or unintentional act of any other Owner of such building or improvement, then a reciprocal appurtenant easement for such encroachment shall exist so long as the encroachment exists.

Section 7. Additional Easements. 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 easements 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, maintenance and development of the Properties, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out of 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 Units for dwelling purposes.

Section 8. Association Easement. For the purpose of performing its duties and responsibilities required and authorized by this Declaration, the Association, through its duly authorized agents, employees or independent contractors shall have the right, after reasonable notice to the Owner, to enter upon the Unit at reasonable hours of any day except Sunday. In the event of an emergency, such right of entry shall exist without notice and on any day, including Sunday. No notice is required for any entry on any portion of the Unit which is outside of the exterior walls of the residence located on such Unit. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Unit and through improvements constructed upon the Units, as may be reasonably necessary to effect and perform its duties and responsibilities under this Declaration. 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 and responsibilities under this Declaration. 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 its duties and responsibilities under this Declaration.

Section 9. Cable Television Easement. In order to permit the installation of cable television, telecommunications and security surveillance services, if any, in accordance with Article VII of this Declaration, there is hereby reserved to the Developer, its successors, assigns, agents, licensees and designees, an easement within the utility easements shown on the plat(s) of the Properties and upon the Units for the installation, construction, operation, maintenance and repair of one or more transmission cables, all attachments and equipment associated therewith, including but not limited to, lead wire, other cable and conduits, and all equipment for the transmission of electronic signals of any kind (the "facilities"). The use of this Cable Television Easement shall be non-exclusive and shall be shared in common and subordinate to the use of the easement by electrical, gas and telephone services and providers. All such facilities shall be installed underground unless the nature of the facilities is such that underground installation is not possible then, in such event, the facilities may be installed above ground with the prior, and sole approval of

the Developer for as long as the Developer owns any portion of the Properties affected by this Declaration. The Developer, for itself and the Association, further reserves the right to grant additional easements over, across and through the Properties for such telecommunications and surveillance services.

Section 10. Developer's Easements. The Developer, its designees and agents, shall have the right to enter upon the Properties from time to time and to take all actions necessary or convenient for the purpose of [i] completing the construction of the Units and other improvements on the Properties, or any part thereof; [ii] constructing any and all improvements on properties adjacent to the Properties; and [iii] repairing, replacing and maintaining the Common Areas where the Association fails to do so, or for any other purpose, provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the Properties by the Owners.

Section 11. Zero-Lot-Line Maintenance Easement. In order to allow the Owner of any Unit which is located within one foot (1') of the side Lot line of any Lot to maintain the wall facing the adjoining Lot, said Owner shall have a five foot (5') easement over such adjoining Lot, with the right to ingress and egress during reasonable times of day, for the purpose of maintaining and repairing the wall facing said adjoining Lot.

There shall also be a three foot (3') easement for underground footings, roof eaves, overhangs, gutters, other protrusions, and underground pipelines over said adjoining Lot. The easements created in this Section 11 shall be permanent, perpetual and exclusive to the Owners involved.

In addition, the zero lot line maintenance easements, as shown on the plat(s) of the Properties, are dedicated in perpetuity to the Owner of the Lot adjoining each easement, and to the utility companies providing service to such adjoining Lot, for the maintenance of the abutting residence, as well as construction and maintenance of equipment, plumbing and utility facilities serving the adjoining Lot.

ARTICLE VI

GENERAL RESTRICTIVE COVENANTS

Section 1. Applicability. The provisions of this Article VI shall be applicable to all Units, and the Common Areas, as the case may be, situated within the Properties.

Section 2. Land Use. No Unit shall be used except for residential purposes as a single family residence. Temporary uses of Units and Common Areas for model homes, parking lots, and/or sales offices shall be permitted for the Developer. No person shall use a Unit or any parts thereof in any manner contrary to the provisions of this Declaration.

Section 3. Change in Buildings. No Owner shall make or permit any structural modification or alteration of any Unit or any modification or alteration of any type which can be seen from the exterior of a Unit, except with the prior written consent of the Architectural Control Board, or its successor, and such consent may be withheld if, in the sole discretion of the party denying the same, it appears that such modification or alteration would adversely affect or in any manner endanger other Units or would create an appearance which is not harmonious with the overall appearance of the Properties, as determined by the Architectural Control Board in its sole and absolute discretion. No dwelling shall be demolished or removed without prior written consent of the Board of Directors of the Association. In the event any dwelling is demolished or removed, if replaced said dwelling shall be replaced with a Unit of similar size and type and having an appearance consistent with other Units. Any building permit required by the applicable governmental authority for any alteration, modification, reconstruction, or repair shall be applied for within thirty (30) days of the earliest occurrence of the casualty or of the final approval of the plans by the Architectural Control Board. All work shall be substantially completed within ninety (90) days of the issuance of said building permit or, if no permit is required, within ninety (90) days of the Architectural Control Board's final approval of the plans for such work, unless such time is extended by the Architectural Control Board in writing.

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 Unit by Developer or its successor or

assignee. 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 or special exception as to building location or other item shall constitute an amendment of this Section; provided, however, the Architectural Control Board shall have approved the plans and specifications for any such variance or special exception request prior to submittal to the applicable governing authority.

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 reserved as shown on the recorded plat(s) of the Properties. Within such platted 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 Units and/or the Common Areas, under and through the utility easements as shown on the plat(s) and under and through such portions of each Unit as are required to efficiently provide such services. Any damage caused to dwellings, pavement, curbs, 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 Properties, 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 offensive activity shall be carried on upon any Unit, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or any other Unit 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 Unit, and no

refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse to keep his Unit 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. Provided however, any portion of the Properties not yet developed by the Developer, shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition. No obnoxious, unpleasant, unsightly, or offensive thing shall be maintained, nor activity carried on, nor may anything be done, which can be reasonably construed to constitute a nuisance, public or private in nature. Any questions with regard to the interpretation of this Section shall be decided by the Developer until conveyance of the common areas to the Association or Turnover (as such term is described in the Articles of Incorporation) and thereafter by the Association, whose decision shall be final.

Section 7. Temporary Structures. Except as to any required by the Developer, no structure of a temporary character, or trailer, tent, shed, out building, storage building, mobile home, or recreational vehicle shall be permitted on any Unit or the Common Areas either temporarily or permanently.

Section 8. Gas Tanks, Containers, and Cylinders. No gas tank, gas container, or gas cylinder, except gas tanks, gas containers, or gas cylinders as placed by the Developer in connection with the installation of swimming pools and barbecues, and portable barbecues, shall be permitted to be placed on or about the outside of any Unit or any ancillary building, and all gas tanks, gas containers, and gas cylinders, except those permitted hereinabove, 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, in its sole discretion, by the Architectural Control Board.

Section 9. Signs. Except for one sign which indicates the address number of the Unit, no sign, placard, or billboard of any kind shall be displayed to the public view on the Properties upon or from within any Unit. 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 10. 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 11. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Unit, except in accordance with this Section.

A. The keeping of a dog or other domestic pet within the Properties is not a right of a Unit 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 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 upon the Properties. Only dogs weighing less than thirty (30) pounds, cats or other typical and domestic household pets may be kept, subject to rules and regulations, and license of the Association. Unless otherwise approved in writing, only one (1) such permitted pet shall be allowed to be maintained on or within a Unit at any one time.

B. This license is subject to the following conditions:

(i) The execution of a pet permission agreement in a form prescribed by the Association.

(ii) No pet shall be kept, bred or maintained for any commercial purpose.

(iii) A pet must either be on a leash or within a pet carrier or cage or fenced or walled-in area at all times when outside of the Owner's dwelling.

(iv) No pet shall be permitted to have excretions on any Unit or anywhere within the Properties except in locations designated by the Association, if any, in its rules and regulations.

(v) No Owner shall permit his pet to become a nuisance or annoyance to any neighbor.

(vi) Pets may be walked and exercised only in the rear portion to the Owner's Unit, or within exterior areas designated by the Association, if any.

(vii) No pet shall be kept outside of a Unit unless someone is present within the Unit or upon the Lot.

Section 12. Visibility at Intersections. No obstruction to visibility at street intersections shall be permitted.

Section 13. Architectural Control. No building, wall, fence, patio, landscaping, spa, spa deck, pool, screen enclosure, or other structure or improvement of any nature shall be erected, placed or altered on any Unit until the construction plans and specifications and a plan showing the location of the structure, improvement, and/or landscaping as may be required by the Architectural Control Board have been finally approved in writing by the Architectural Control Board in accordance with Section 7 of Article III of this Declaration. Each building, wall, fence, landscaping, or other structure or improvement of any nature shall be erected, placed or altered upon any Unit only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Board seem sufficient. Any change in the exterior appearance of any building, wall, fence, or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. This Section 13 shall not apply to the Developer or any assignee of the Developer's rights under this Declaration.

Section 14. Exterior Appearances and Landscaping. The paint, coating, stain and other exterior finishing colors on all Units shall be maintained as originally installed by Developer in accordance with the provisions of this Declaration and prior approval of the Architectural Control Board shall be necessary before any such exterior finishing color is changed. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained in accordance with this Declaration, as originally installed by Developer, unless the prior approval for any substantial change is obtained from the Architectural Control Board. Any landscaping located upon a Unit which is diseased or has

died shall be replaced by the Owner with equivalent landscaping acceptable to the Association within fifteen (15) days of written notification by the Association to the Owner thereof of the need to replace the diseased or dead landscaping. No trees or shrubs shall be cut down, destroyed or removed from a Unit without the prior express written consent of the Architectural Control Board. No artificial grass, plants or other artificial vegetation shall be installed on any Unit, unless approved by the Architectural Control Board, which such approval may be arbitrarily withheld.

Section 15. Motor Vehicles and Boats. No trucks, commercial vehicles, vans, motorcycles, motor bikes, motor scooters, all terrain vehicles, go carts, golf carts, campers, mobile homes, motor homes, boats, or other water vessels, house trailers, boat trailers, or trailers of every other nature, shall be permitted to be parked or to be stored at any place on any Unit, except in accordance with this Section. All vehicles shall be kept upon the Properties completely enclosed within garages, except only during temporary periods of active service in connection with approved construction on said Unit or pick-up, delivery and other commercial or personal services to a Unit, and except that parking of vehicles belonging to guests of an Owner shall be temporarily allowed only within the driveway of a Unit during the period(s) of visitation, which shall not exceed two (2) days, unless approved for a longer period by Association, in its sole discretion. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment, including station wagons, which bear signs or shall have printed on the same some reference to any commercial undertaking or enterprise, or vehicles of more than six feet (6') in height. No car or other motorized vehicle, trailer of any nature, or boat or other water vessel shall be parked, stored, or kept upon any street, accessway, or grassed area of a Unit or a Common Area. No maintenance or repairs shall be performed upon such vehicles, trailers, or vessels upon any portion of the Properties except that work which may be done by an Owner, or lessee thereof, upon his own vehicle, or that of his family residing with him, within the completely enclosed garage of the Unit owned or leased by him. This Section shall not apply to any trucks, commercial vehicles, or other equipment provided by or on behalf of the Developer with reference to the development of any portion of the Properties or the construction of any Unit.

Section 16. Fences. No fences, walls or other structures shall be erected anywhere upon the front yard, back yard, or side yard of any Unit except as may be originally installed by Developer or its assignee, and except any approved by the Architectural Control Board as provided herein. Any fence installed pursuant to this

Section shall contain a gate which shall not be equipped with any locking device or be installed or altered so as to prevent the uninhibited use of such gate. In no event shall metal cyclone fences be permitted, except as approved by the Architectural Control Board if entirely enclosed with landscaping.

Section 17. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Unit except in receptacles stored in the garage of the Unit or otherwise completely screened from view of any Unit or Common Areas; 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. This Section shall not apply to the Developer during periods of construction of improvements to any portion of the Properties.

Section 18. Drying Areas. No clothing, laundry or wash shall be aired or dried on any portion of any Unit or any other portion of the Properties.

Section 19. Communication Equipment and Security Devices. Except as may be originally installed by the Developer, no antennas, television or radio masts, satellite dishes, towers, aerials, or lines or wires shall be placed on any portion of the Properties. In no event shall lines or wires for communication or the transmission of current or security and surveillance devices be constructed, placed, or permitted to be placed within the Common Areas unless the same shall be installed or caused to be installed by the Developer, or the Association for the common use of all Members.

Section 20. Garages. Garages shall be used primarily for storage of vehicles and no use of a garage or any portion thereof shall be made which excludes or interferes with the storage of operative vehicles within the space originally intended for same. No boat or trailer shall be stored in any garage or on any Unit. Garage doors shall be kept closed at all times except during temporary periods of use to permit ingress and egress of vehicles. No ventilation grills or other openings shall be made in garage doors. Garages shall have automatic garage door openers, which such garage door openers shall remain operable.

Section 21. Drainage. No change in any elevation of any Unit after issuance of a certificate of occupancy for the residence 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 Unit, Common Area or adjoining property with respect to natural runoff of rain water.

Section 22. Rental or Leasing of Units. Upon application to the Association and payment of an administrative fee in an amount set by the Association, which such fee shall not exceed One Hundred (\$100.00) Dollars, Units may be leased or rented by an Owner during any period of extended absence in accordance with this Section and with the prior written approval of the Association, which such approval shall not be unreasonably withheld. The Association shall have the right to require that a substantially uniform form of lease be used. Any approval of a rental or lease pursuant to this Section shall not release the Owner from any liability or obligation under this Declaration and all rentals and leases shall be subject to the terms of this Declaration, and the rules and regulations which may, from time to time, be promulgated by the Association. No Unit shall be leased or rented more than twice in any calendar year. The tenant's or lessee's failure to comply with the terms hereof shall be deemed a default under said rental or lease. Each rental or lease shall further provide that same may not be altered, modified or amended without the prior written consent of the Board. This Section shall not apply to the rental or leasing of any Unit owned by the Developer or as to which Developer has assigned his rights.

Section 23. Air Conditioning Units. No window or wall air conditioning units are permitted.

Section 24. Mailboxes. Except as may be originally installed by the Developer, no individual mailboxes or other receptacles for the delivery of newspapers, magazines or mail shall be placed on any Unit without the prior written approval by the Architectural Control Board.

Section 25. Storage. No storage of any materials or items of any kind shall be permitted in any area outside of the perimeter walls of the residences located on the Units.

Section 26. Newspapers. All newspapers delivered to a Unit shall be brought inside daily and shall not be permitted to accumulate on any Unit.

Section 27. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of any or all of the Properties, and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 28. Pools. No above-ground pools shall be erected, constructed or installed on any Unit. Hot tubs or other jacuzzi type pool/spas/tubs shall not be constructed, erected or maintained on any Unit such that it is visible from any street.

Section 29. No Subdividing. No Unit shall be divided or sold except as a whole without the prior written approval of the Developer or the Association.

Section 30. Wells. No Owner shall install a well in any portion of the Properties, or draw any ground water for any purpose whatsoever. For purposes of this Section, water which is piped to the Properties from any governmental entity having jurisdiction over the Properties shall not be considered to be "ground water". The provisions of this Section shall not apply to the Developer.

Section 31. Excessive Speed. No vehicle shall be operated on the Streets or Roadways at a speed in excess of posted limits or at a speed which is unreasonable for the conditions present.

Section 32. Business. No trade or business operation shall be conducted, nor any commercial use made of any Unit.

Section 33. Interference with Completion. No Owner nor the Architectural Control Board, nor their use of any Units, shall interfere with the Developer's completion and sale of the Units.

Section 34. Flagpoles/Other Structures. Except as may be permitted by the prior written consent of the Architectural Control Board, no flagpole or other structure, including, but not limited to, basketball hoops/backboards, shall be placed or erected on the Properties.

Section 35. Radio Equipment. No ham radios or radio transmission equipment shall be operated or permitted to be operated in or on the Properties without the prior written consent of the Association.

Section 36. Solar Collectors. Solar collectors or other similar water heating devices, other than those installed by the Developer, shall only be permitted with prior written consent of the Architectural Review Board which such consent may be arbitrarily withheld.

Section 37. Compliance with Governing Documents. Each Owner and his family members, guests, invitees, and lessees and their family members, guests and invitees shall be bound by and abide by the Governing Documents. The conduct of the foregoing parties shall be considered to be the conduct of the Owner responsible for, or connected in any manner with, such individual's presence within Fifth Avenue Place. Such Owner shall be liable to the Association for any damages to the Association or the Common Areas resulting from the act of any of the foregoing parties which shall be paid for by the Owner. If the Owner fails to make payment, the Association may levy an assessment against Owner's Unit and proceed with the collection thereof as provided in Article IV hereof. Failure of an Owner to notify any person of the existence of the provision of this Declaration shall not act to limit the right of enforcement of the provisions of this Declaration against the Owner or such person and, in addition, the Owner shall be responsible for any and all violations of these provisions by his tenants, delegates, licensees, invitees or guests, and by guests, licensees and invitees of his tenants at any time.

Section 38. Driveways. Except as provided elsewhere in this Declaration, nothing shall be parked or stored upon any driveway, nor shall any driveway be obstructed at anytime.

ARTICLE VII

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, and the Association or the Owner of any Unit subject to this Declaration and their respective legal representatives, heirs, successors and 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 (2/3) of the Units has been recorded, agreeing to change or terminate said covenants and restriction in whole or in part.

Section 2. Notices.

A. **To Owners:** 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 via first class mail, postage prepaid, 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 delivery or mailing.

B. To Institutional Mortgagees. Upon receipt by the Association from any institutional first mortgagee of a copy of the mortgage held by such mortgagee on a Unit, together with written request therefor from such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee the following (until the Association receives a written request from such mortgagee to discontinue sending the following items or until the mortgage is discharged of record):

(i) A copy of any notice of a meeting of the Association or of the Board which is thereafter sent to the Owner of such Unit; and

(ii) A copy of any financial statement of the Association which is thereafter sent to the Owner of such Unit; and

(iii) Written notice of any termination by the Association of any professional management of the Common Areas, and the assumption by the Association of the self-management of the Common Areas; provided, however, such assumption by the Association of the self-management of the Common Areas shall not occur unless approved by the Owners of sixty-seven (67%) percent of the Units and the institutional mortgagees holding first mortgages encumbering fifty-one (51%) percent of the Units encumbered by such first mortgages, if such professional management has previously been required by such institutional mortgagees; and

(iv) Thirty (30) days' prior written notice of the cancellation, lapse or termination by the Association or material modification of any policies of insurance covering Common Areas or any improvements thereon, or any fidelity bonds of the Association, as well as copies of any notices of cancellation by others, received by the Association with respect thereto; and

(v) Written notice of any damage or destruction to the improvements located on the Common Areas which affects a material portion of the Common Areas; and

(vi) Written notice of any condemnation or eminent domain proceeding or proposed acquisition arising therefrom with respect to the Common Areas; and