

**DECLARATION OF COVENANTS AND RESTRICTIONS
OF
THE FAIRWAYS OF PALM-AIRE, INC.**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF THE FAIRWAYS OF PALM-AIRE, INC., a Florida corporation not-for-profit (the "ASSOCIATION"), is made this 6th day of June, 1997, by MISTY OAKS ESTATES PARTNERSHIP, a Florida General Partnership ("DECLARANT").

PURPOSE

DECLARANT owns the real property described herein (the SUBJECT PROPERTY"), and intends to develop the SUBJECT PROPERTY as a residential town home community. The purpose of this DECLARATION is to provide various use and maintenance requirements and restrictions in the best interest of the future owners of dwellings within the SUBJECT PROPERTY and to protect and preserve the values of the SUBJECT PROPERTY. This DECLARATION will also establish an association which will own, operate and/or maintain various portions of the SUBJECT PROPERTY and improvements constructed within the SUBJECT PROPERTY, 'will have the right to enforce the provisions of this DECLARATION, and will be given various other rights and responsibilities. The expenses of the association will be shared by the owners of the SUBJECT PROPERTY, who will be members of the association.

NOW, THEREFORE, DECLARANT hereby declares that the SUBJECT PROPERTY, as herein defined, and such additions as may hereafter be made pursuant to the terms of this DECLARATION, shall be held, sold, conveyed, leased, mortgaged, and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens, and charges set forth herein, all of which are created in the best interest of the owners and residents of the SUBJECT PROPERTY, and which shall run with the SUBJECT PROPERTY and shall be binding upon all persons having and/or acquiring any right, title or interest in the SUBJECT PROPERTY or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the SUBJECT PROPERTY, or any portion thereof.

1. DEFINITIONS The terms used in this DECLARATION, and in the ARTICLES and the BYLAWS, shall have the following meanings, unless the context otherwise requires:
 - 1.01 ARTICLES means the Articles of Incorporation of the ASSOCIATION, as same may be amended from time to time.
 - 1.02 ASSESSMENT means the amount of money which may be assessed against an OWNER for the payment of the OWNER's share of COMMON EXPENSES, and/or any other funds which an OWNER may be required to pay to the ASSOCIATION as provided by this DECLARATION, the ARTICLES or the BYLAWS.
 - 1.03 ASSOCIATION means the corporation established pursuant to the Articles of incorporation attached hereto as an exhibit.
 - 1.04 BOARD means the Board of Directors of the ASSOCIATION.
 - 1.05 BYLAWS means the Bylaws of the ASSOCIATION, as same may be amended from time to time.
 - 1.06 COMMON AREAS means any property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the ASSOCIATION or which is declared to be a COMMON AREA by this DECLARATION. COMMON AREAS may include, but are not limited open areas, roads, entranceways, parking areas, Lind other similar properties, provided that the foregoing shall not be deemed a representation or warranty that any or all of the foregoing types of COMMON AREAS will be provided.
 - 1.07 COMMON EXPENSES means all expenses of any kind or nature whatsoever incurred by the ASSOCIATION, including but not limited to, the following:

- 1.07.1 Expenses Incurred In connection with the ownership, maintenance, repair, improvement or operation of the COMMON AREAS, or any other property to be maintained by the ASSOCIATION as provided in this DECLARATION, including, but not limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements and alterations.
- 1.07.2 Expenses of obtaining, repairing or replacing personal property in connection with any COMMON AREA or the performance of the ASSOCIATIONS's duties.
- 1.07.3 Expenses incurred in connection with the administration and management of the ASSOCIATION
- 1.07.4 Expenses declared to be COMMON EXPENSES by the provisions of the DECLARATION or by the ARTICLES or BYLAWS.
- 1.08 COMMON SURPLUS means the excess of the receipts of the ASSOCIATION over the amount of COMMON Expenses.
- 1.09 DECLARANT means MISTY OAKS ESTATES PARTNERSHIP, a Florida General Partnership.
- 1.10 DECLARATION means this document as it may be amended from time to time.
- 1.11 INSTITUTIONAL LENDER means the holder of a mortgage encumbering a LOT (as hereinafter defined), which holder In the ordinary course of business makes, purchases, guarantees, or Insures mortgage loans, and which Is not owned or controlled by the OWNER of the LOT encumbered. An INSTITUTIONAL LENDER may include, but is not limited to, a bank, savings and loan association, Insurance company, real estate or mortgage Investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States of America or any other governmental authority, or any other similar type of lender generally recognized as a institutional-type lender. For the purpose of defining terms herein, an INSTITUTIONAL LENDER shall also mean the holder of any mortgage executed by or In favor of DECLARANT, whether or not such holder would otherwise be considered an INSTITUTIONAL LENDER.
- 1.12 LOT means any parcel of land located within the SUBJECT PROPERTY, which has been or is intended to be conveyed by DECLARANT to an OWNER and which contains or is intended to contain a UNIT, and shall include any UNIT constructed upon the LOT.
- 1.13 OWNER means the record owner(s) of the fee simple title to a LOT.
- 1.14 PERSON means an individual, corporation, partnership, trust or any other legal entity.
- 1.15 SUBJECT PROPERTY means all of the property subject to this DECLARATION from time to time, and includes any UNIT or Improvements constructed thereon, as more particularly described in Exhibit "C" attached hereto.
- 1.16 UNIT means the residential dwelling constructed upon one LOT, which may be connected to one or more UNITS by a common party wall.
- 2. ASSOCIATION In order to provide for the administration of the SUBJECT PROPERTY and this DECLARATION, the ASSOCIATION has been organized under the Laws of the State of Florida.
 - 2.01 ARTICLES OF INCORPORATION A copy of the Articles of Incorporation of the ASSOCIATION (the "ARTICLES") is attached hereto as Exhibit "A". No amendment to the ARTICLES shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the ARTICLES, except as specifically provided herein.

- 2.02 BYLAWS A copy of the BYLAWS is attached as Exhibit "B". No amendment to the BYLAWS shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the BYLAWS, except as specifically provided herein.
- 2.03 Powers of the ASSOCIATION The ASSOCIATION shall have all of the powers indicated or incidental to those contained in its ARTICLES and BYLAWS. In addition, the ASSOCIATION shall have the power to enforce this DECLARATION and shall have the powers granted to it by this DECLARATION. By this DECLARATION, the SUBJECT PROPERTY is hereby submitted to the jurisdiction of the ASSOCIATION.
- 2.04 Approval or Disapproval of Matters Whenever the decision of the OWNERS is required upon any matter, whether or not the subject of an ASSOCIATION meeting, such decisions shall be expressed in accordance with the ARTICLES and the BYLAWS, except as otherwise provided herein.
- 2.05 Acts of the ASSOCIATION: Unless the approval or action of the OWNERS and/or a certain specific percentage of the BOARD is specifically required by this DECLARATION, the ARTICLES or BYLAWS, or by applicable law, all approvals or actions required or permitted to be given or taken by the ASSOCIATION shall be given or taken by the BOARD, without the consent of the OWNERS, and the BOARD may so approve an act through the proper officers of the ASSOCIATION without a specific resolution. When an approval or action of the ASSOCIATION is permitted to be given or taken, such action or approval may be conditioned in any manner the ASSOCIATION deems appropriate, or the ASSOCIATION may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.
- 2.06 Management and Service Contracts The ASSOCIATION shall have the right to contract for professional management or services on such terms and conditions as the BOARD deems desirable in its sole discretion, provided, however, that any such contract shall not exceed three (3) years and shall be terminable by either party without cause and without payment of a termination or penalty fee on ninety (90) days or less written notice.
- 2.07 Membership All OWNERS shall be members of the ASSOCIATION. Membership as to each LOT shall be established, and transferred, as provided by the ARTICLES and the BYLAWS.
- 2.08 OWNERS Voting Rights The votes of the OWNERS shall be established and exercised as provided in the ARTICLES and BYLAWS.
3. COMMON AREAS. DUTIES AND OBLIGATIONS OF THE ASSOCIATION
- 3.01 Conveyance of COMMON AREAS to ASSOCIATION.
- 3.01.1 By DECLARANT. DECLARANT shall have the right to convey title to any property owned by it, or any easement or interest therein, to the ASSOCIATION as a COMMON AREA, and the ASSOCIATION shall be required to accept such conveyance. Any such conveyance shall be effective upon recording the deed or Instrument of conveyance in the public records of the county where the SUBJECT PROPERTY is located.
- 3.01.2 By Any Other PERSON. Any other PERSON may also convey title to any property owned by such PERSON, or any easement or interest therein, to the ASSOCIATION as a COMMON AREA, but the ASSOCIATION shall not be required to accept any such conveyance, and no such conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the ASSOCIATION, unless the BOARD expressly accepts the conveyance by executing the deed or other instrument of conveyance or by recording a written acceptance of such conveyance in the public records of the county in which the SUBJECT PROPERTY is located.

- 3.02 Use and Benefit. ALL COMMON AREAS shall be held by the ASSOCIATION for the use and benefit of the ASSOCIATION and the OWNERS, the residents of the SUBJECT PROPERTY, and their respective guests and invitees, any other persons authorized to use the COMMON AREAS or any portion thereof by DECLARANT or the ASSOCIATION, for all proper and reasonable purposes and uses for which the same are reasonably intended, subject to the terms of this DECLARATION, subject to the terms of any easement, restriction, reservation or limitation of record affecting the COMMON AREA or containment and right for such use is hereby created In favor of all OWNERS, appurtenant to the title to their property.
- 3.03 Grant and Modification of Easements. The ASSOCIATION shall have the right to grant, modify or terminate easements over, under, upon, and/or across any property owned by the ASSOCIATION, and shall have the further right to modify, relocate, or terminate existing easements In favor of the ASSOCIATION.
- 3.04 Additions, Alterations or Improvements.
- 3.04.1 The ASSOCIATION shall have the right to make additions, alterations or improvements to the COMMON AREAS, and to purchase any personal property, as it deems necessary or desirable from time to time, provided, however that the approval of two-thirds (2/3) of the votes of the OWNERS shall be required if any recreational facility is removed or substantially and adversely affected, or for any addition, alteration, or Improvement or any purchase of personal property, exceeding a sum equal to one (1) month's total ASSESSMENTS for COMMON EXPENSES payable by all of the members, or if the cost of the foregoing shall In any fiscal year exceed In the aggregate a sum equal to two (2) months' ASSESSMENTS for COMMON EXPENSES payable by all of the OWNERS. The foregoing approval shall in no event be required with respect to expenses Incurred in connection with the maintenance, repair or replacement of existing COMMON AREAS, or any existing improvements or personal property associated therewith. The cost and expense of any such additions, alterations or Improvements to the COMMON AREAS, or the purchase of any personal property, shall be a COMMON EXPENSE. In addition, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, DECLARANT shall have the right to make any additions, alterations or improvements to the COMMON AREAS as may be desired by DECLARANT in its sole discretion from time to time, at DECLARANTs expense.
- 3.04.2 Any additions, alterations or improvements to the COMMON AREAS must be approved by the City of Pompano Beach, its legal department, or by its appropriate review committee.
- 3.05 Utilities. The ASSOCIATION shall pay for all utility services for the COMMON AREAS, or for any other property to be maintained by the ASSOCIATION, as a COMMON EXPENSE.
- 3.06 Taxes. The ASSOCIATION shall pay all real and personal property taxes and assessments for any property owned by the ASSOCIATION, as a COMMON
- 3.07 Insurance. The ASSOCIATION shall purchase insurance as a COMMON EXPENSE, as follows:
- 3.07.1 Hazard Insurance protecting against loss or damage by fire and all other hazards that are normally 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, covering 100% of the current replacement cost of all COMMON AREAS and property owned by the ASSOCIATION, excluding land, foundations, excavations, and other Items normally excluded from Insurance coverage. The ASSOCIATION shall not use hazard insurance proceeds for any

- purpose other than repair, replacement, or reconstruction of any damaged or destroyed property without the approval of at least two-thirds (2/3) of the votes of the OWNERS.
- 3.07.2 Comprehensive General Liability insurance protecting the ASSOCIATION from claims for bodily Injury, death or property damage providing for coverage of at least \$1,000,000 for any single occurrence.
- 3.07.3 Blanket Fidelity Bonds for anyone who handles or is responsible for funds held or administered by the ASSOCIATION, covering the maximum funds that will be in the custody or acontrol of the ASSOCIATION or any managing agent, which coverage shall be at least the sum of three (3) months assessments on all units plus reserve funds.
- 3.07.4 Such other insurance as may be desired by the ASSOCIATION, such as flood Insurance, errors and omissions insurance, workmen's compensation insurance, or any other insurance.
- 3.07.5 All insurance purchased by the ASSOCIATION must include a provision requiring at least ten (10) days written notice to the ASSOCIATION before the insurance can be cancelled or the coverage reduced for any reason.
- 3.07.6 Any deductible or exclusion under the policies shall be a COMMON EXPENSE and shall not exceed \$2,500 or such other sum as is approved by the OWNERS.
- 3.07.7 Upon request, each INSTITUTIONAL LENDER shall have the right to receive a copy or certificate of the Insurance purchased by the ASSOCIATION, and shall have the right to require at least ten (10) days written notice to the INSTITUTIONAL LENDER before any insurance can be cancelled or the coverage reduced for any reason. Each INSTITUTIONAL LENDER shall have the right upon notice to the ASSOCIATION to review and approve, which approval shall not be unreasonably withheld, the form, content, issuer, coverage and deductibles of all insurance purchased by the ASSOCIATION, and to require the ASSOCIATION to purchase Insurance complying with the reasonable and customary requirements of the INSTITUTIONAL LENDER. In the event of a conflict between the INSTITUTIONAL LENDERS, the requirements of the INSTITUTIONAL LENDER holding mortgages encumbering UNITS which secure the largest aggregate indebtedness of the Subject Property shall control.
- 3.08 Default. Any OWNER or INSTITUTIONAL LENDER may pay for any utilities, taxes or assessments, or Insurance premiums which are not paid by the ASSOCIATION when due, or may secure new insurance upon the lapse of an Insurance policy, and shall be owed Immediate reimbursement therefore from the ASSOCIATION, plus interest and any costs of collection, including attorney's fees.
- 3.09 Damage or Destruction, in the event any improvement within any COMMON AREA Is damaged or destroyed due to fire, flood, wind, or other casualty or reason, the ASSOCIATION shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged Improvement to the condition the improvement was in Immediately prior to such damage or destruction, unless otherwise approved by two-thirds (2/3) of the votes of the OWNERS. Any excess cost of repairing any improvement over insurance proceeds payable on account of any damage or destruction shall be a COMMON EXPENSE, and the ASSOCIATION shall have the right to make a special ASSESSMENT for any such expense.
- 3.10 Mortgage and Sale of COMMON AREAS. The ASSOCIATION shall not abandon, partition, subdivide, encumber, sell or transfer any COMMON AREA owned by the ASSOCIATION without the approval of at least 2/3 of the votes of the OWNERS. If Ingress or egress to any property is through any COMMON AREA, any conveyance or encumbrance of such COMMON

AREA shall be subject to an appurtenant easement for Ingress and egress In favor of the OWNER(S) of such property, unless alternative ingress and egress is provided to the OWNER(S)

3.11 Maintenance of COMMON AREAS and other Property. The ASSOCIATION shall maintain all COMMON AREAS and property owned by the ASSOCIATION, and all improvements thereon, in good condition at all times. If pursuant to any easement the ASSOCIATION is to maintain any improvement within any property, then the ASSOCIATION shall maintain such improvement in good condition at all times. In addition, the ASSOCIATION shall have the right to assume the obligation to operate and/or maintain any property which Is not owned by the ASSOCIATION if the BOARD, in its sole discretion, determines that the operation and/or maintenance of such property by the ASSOCIATION would be in the best Interests of the residents of the SUBJECT PROPERTY. Such assumption by the ASSOCIATION of the obligation to operate and/or maintain any property which Is not owned by the ASSOCIATION may be evidenced by a supplement to this DECLARATION, or by a written document recorded in the public records of the county In which the SUBJECT PROPERTY Is located, and may be made in connection with an agreement with any OWNER, the DECLARANT, or any governmental authority otherwise responsible for the operation and/or maintenance of any property and may be made a permanent obligation of the ASSOCIATION. The ASSOCIATION may also enter into agreements with any other person, or any governmental authority, to share in the maintenance responsibility of any property if the BOARD, in its sole and absolute discretion, determines this would be in the best interest of the OWNER. Notwithstanding the foregoing, If any UNIT OWNER or any resident of any UNIT or their guest or invitees, damages any COMMON AREA or any improvement thereon, the UNIT OWNER of such UNIT shall be liable to the ASSOCIATION for the cost of repair or restoration to the extent not covered by the ASSOCIATION's Insurance.

3.12 Specific Maintenance Responsibility. In addition to the foregoing, the ASSOCIATION shall be specifically responsible for the maintenance of the following portions of the SUBJECT PROPERTY:

3.12.1 Landscape Maintenance.

3.12.1(1) The ASSOCIATION shall maintain (i) the banks (non-landscaped areas which are above the mean-water line) of any lakes, canals or other waterways situated upon the COMMON AREAS, (ii) all landscaping within the COMMON AREAS, and (iii) all landscaping on the LOTS in front of each UNIT from the pavement edge of the road In front of the UNIT to the front of each UNIT and to the front of any fence or wall between the UNIT and any contiguous UNIT, or If on any LOT there is no wall connecting the UNIT to a contiguous UNIT, then the ASSOCIATION shall maintain the landscaping on the side of the UNIT within ten (10) feet of the front of the UNIT. The ASSOCIATION shall also maintain the sprinkler serving the areas of the LOT within which the ASSOCIATION is to maintain the landscaping.

3.12.1(2) Should the ASSOCIATION fail to adequately maintain the landscaping requirements imposed by the City of Pompano Beach City Commission after thirty (30) clays notice to do so by the City of Pompano Beach, the City of Pompano Beach shall have and Is hereby given the same rights and powers that are provided to the ASSOCIATION concerning the right to assess each OWNER for the maintenance of the landscaping, Including the creation and enforcement of assessments and liens.

3.12.2 Road. The ASSOCIATION shall maintain all roads within the SUBJECT PROPERTY and any street lighting within the SUBJECT PROPERTY, including any utilities used In connection with the street lighting.

3.12.3 Sidewalks. The ASSOCIATION shall maintain the common sidewalks within the SUBJECT PROPERTY, but not any sidewalk exclusively serving one UNIT.

4. Easements. Each of the following easements are hereby created, which shall run with the land and, notwithstanding any of the other provisions of this DECLARATION, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended uses and purposes, and each shall survive the termination of this DECLARATION.

4.01 Easements for Pedestrian and Vehicular Traffic. Easements for pedestrian traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to time exist upon the COMMON AREAS and be intended for such purpose; and for pedestrian and vehicular traffic and parking over, through, across and upon such portion of the COMMON AREAS as may from time to time be paved and intended for such purposes, same being for the use and benefit of the OWNERS and the residents of the SUBJECT PROPERTY, the holders of any mortgage encumbering any LOT, and their guests and invitees.

4.02 Perpetual Nonexclusive Easement in COMMON AREAS. The COMMON AREAS shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement in favor of all OWNERS and residents of the SUBJECT PROPERTY from time to time, and their guests and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended.

4.03 Service and Utility Easements. Easements in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, and mail carrier companies, over and across all roads existing from time to time within the SUBJECT PROPERTY, and over, under, on and across the COMMON AREAS, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the SUBJECT PROPERTY and the OWNERS. Also, easements as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the SUBJECT PROPERTY or any LOT, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antenna and cable television facilities, and electronic security. However, easements affecting any LOT which serve any other portion of the SUBJECT PROPERTY shall only be under the LOT, and shall only be for utility services actually constructed, or reconstructed, and for the maintenance thereof, unless otherwise approved in writing by the OWNER of the LOT. An OWNER shall do nothing on his LOT, which interferes with or impairs the utility services using these easements. The BOARD or its designee shall have a right of access to each LOT and UNIT to inspect, maintain, repair, or replace the utility service facilities contained under the LOT and to remove any improvements interfering with or impairing the utility services or easement herein reserved; provided such right of access shall not unreasonably interfere with the OWNER's permitted use of the LOT, and except in the event of an emergency, entry into any UNIT shall be made with reasonable notice to the OWNER.

4.04 Encroachments. If any portion of the COMMON AREAS encroaches upon any LOT, or if any UNIT encroaches upon any LOT or upon any portion of the COMMON AREAS; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvements; (ii) any addition, alteration or repair to the COMMON AREAS made by or with the consent of the ASSOCIATION, (iii) any repair or restoration of any improvements (or any kind thereof) or any UNIT after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any UNIT or the COMMON AREAS; or (iv) any non-purposeful or non-negligent act of an OWNER except as may be authorized by the BOARD, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand.

- 4.05 Easements for overhanging troughs or gutters, downspouts and the discharge there from of rainwater and the subsequent flow thereof is hereby granted over the LOTS and COMMON AREAS.
- 4.06 Easements & Restrictions of Record. The SUBJECT PROPERTY Is subject to any and all other restrictions, reservations and easements which have been placed of record prior to the recording of this DECLARATION.
- 4.07 Additional Easements. DECLARANT (so long as it owns any LOTS) and the ASSOCIATION, on their behalf and on behalf of 'all OWNERS, each shall have the right to (I) grant and declare additional easements over, upon, under and/or across the COMMON AREAS In favor of the OWNERS and residents of the SUBJECT PROPERTY and their guests and invitees, or in favor of any other person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or terminate existing easements within or outside of the SUBJECT PROPERTY in favor of the ASSOCIATION and/or the OWNERS and residents of the SUBJECT PROPERTY and their guests and invitees or in favor of any person, entity, public or quasi-public authority , or utility company, as the DECLARANT or the ASSOCIATION may deem desirable for the proper operation and maintenance of the SUBJECT conversion PROPERTY, or any portion thereof, or for the health, safety or welfare of the OWNERS, or for any other reason or purpose. So long as such additional easements, or the modification, relocation or abandonment of existing easements will not unreasonably and adversely Interfere with the use of LOTS for dwelling purposes, no joinder of any OWNER or any mortgagee of any LOT shall be required or, If same would unreasonably adversely interfere with the use of any LOT for dwelling purposes, only the joinder of the OWNERS and INSTITUTIONAL LENDER of LOTS so affected shall be required. To the extent required, all OWNERS hereby Irrevocably appoint DECLARANT and/or the ASSOCIATION as their attorney-in-fact for the foregoing purposes.

5. USE RESTRICTIONS.

- 5.01 Garages. No garage shall be erected which is separate from a UNIT. However, an OWNER may convert a UNITs garage into a living space or storage area, provided said conversion is approved by the City of Pompano Beach, and complies with all ordinances of the City of Pompano Beach, including proper zoning for such conversion. All garage doors shall remain closed when not in use.
- 5.02 No Trade or Business. No trade, business, profession, or commercial activity, or any other nonresidential use, shall be conducted upon any portion of the SUBJECT PROPERTY or within any LOT or UNIT.
- 5.03 Leases. Au leases of a UNIT must be in writing and shall be specifically subject to this DECLARATION, the ARTICLES and the BYLAWS, and a copy of said leases shall be delivered to and approved by the ASSOCIATION prior to occupancy by the tenant(s). No lease shall be for a period of less than six (6) months. In addition, each prospective tenant shall be subject to BOARD approval based on the prospective tenant's completion of an application for occupancy, credit report and payment of a \$50.00 application fee payable to the ASSOCIATION and all of which will be delivered to the BOARD.
- 5.04 Outside Storage of Personal Property. The personal property of any resident of SUBJECT PROPERTY shall be kept inside the resident's UNIT, except for tasteful, as determined by the BOARD, patio furniture and other personal property commonly kept outside.
- 5.05 Portable Buildings. No portable, storage, temporary or accessory buildings or structures, or tents, shall be erected, constructed or located upon any LOT for storage or otherwise.
- 5.06 Garbage and Trash. Each OWNER shall regularly pick up all garbage, trash, refuse or rubbish on the OWNER's LOT. Garbage, trash, refuse or rubbish that Is required to be placed at the front of the LOT In order to be collected may be placed and kept at the front of the LOT after 5:00 p.m. on the day

before the scheduled day for trash collection. No noxious or offensive odors shall be permitted.

- 5.07 Vehicles. Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, and other vehicles manufactured and used as private passenger vehicles, may be parked within the SUBJECT PROPERTY overnight without the prior written consent of the ASSOCIATION. In particular and without limitation, no vehicle shall be parked outside of a UNIT overnight if commercial lettering or signs are painted to or affixed to the vehicle, or if commercial equipment is placed upon the vehicle, or if the vehicle is a truck, recreational vehicle, camper, trailer, or other than a private passenger vehicle as specified above. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the SUBJECT PROPERTY. All vehicles parked within the SUBJECT PROPERTY must be in good condition, no vehicle which is unlicensed or which cannot operate on its own power shall remain within the SUBJECT PROPERTY for more than 24 hours, and no major repair of any vehicle shall be made on the SUBJECT PROPERTY. Motorcycles are (i) not permitted except with the prior written consent of the ASSOCIATION which may be withdrawn at any time (ii) permitted only if equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to the residents of the SUBJECT PROPERTY, and (iii) may not be parked in such a way as to cause damage to COMMON AREAS in any way through ingress or egress.

Amended 2/27/1998 by First Amendment to Declaration of Covenants

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- 5.08 Pets. No animals, livestock or poultry of any kind shall be permitted within the SUBJECT PROPERTY except for common household domestic pets. Any pet must be carried or kept on a leash when outside of a UNIT or fenced-in area. No pet shall be kept outside of a UNIT unless someone is present in the UNIT. Any pet must not be an unreasonable nuisance or annoyance to other residents of the SUBJECT PROPERTY. Residents shall pick up and remove any solid animal waste deposited by his or her pet on the SUBJECT PROPERTY, except for designated pet-walk areas, if any. No commercial breeding of pets is permitted within the SUBJECT PROPERTY. The ASSOCIATION may require any pet to be immediately and permanently removed from the SUBJECT PROPERTY due to a violation of this paragraph.
- 5.09 Landscaping. No OWNER shall install any landscaping within the portion of his LOT to be maintained by the ASSOCIATION as provided in Paragraph 3.12.1, without the prior written consent of the ASSOCIATION.

- 5.10 Maintenance. Each OWNER shall maintain his UNIT, Including windows and patio areas, and all improvement upon his LOT In first-class condition at all times, except any portions thereof to be maintained by the ASSOCIATION as provided in this DECLARATION The exterior of all UNITS Including but not limited to roofs and walls shall be maintained In first class condition and repair and In a neat and attractive manner by the ASSOCIATION. No OWNER shall change the exterior color of his UNIT. All sidewalks, driveways and parking areas within the OWNER's LOT or serving the OWNER's UNIT shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas shall be repaired, replaced and/or resurfaced as necessary by the ASSOCIATION.
- 5.11 Air Conditioning Units. No window, wall, or portable air conditioning units are permitted.
- 5.12 Clotheslines and Outside Clothes Drying. No clotheslines or clothes poles shall be erected, and no outside clothes drying is permitted.
- 5.13 Nuisances. No nuisances shall be permitted within the SUBJECT PROPERTY, and no use or practice which is an unreasonable source of annoyance to the residents within the SUBJECT PROPERTY or which shall interfere with the peaceful possession and proper use of the SUBJECT PROPERTY by Its residents shall be permitted. No unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and regulations of all controlling governmental authorities shall be complied with at all times by the OWNERS.
- 5.14 Outside Antennas. No outside signal receiving or sending antennas, dishes or devices are permitted. However, small satellite dishes (not exceeding 18 Inches in diameter) may be installed on a UNIT by its OWNER only, or by a person(s) and/or an entity employed by the OWNER for the Installation of said satellite dishes. The foregoing shall not prohibit any antenna or signal-receiving dish (a/k/a satellite dish) owned by the ASSOCIATION, which services the entire SUBJECT PROPERTY. Notwithstanding the foregoing, any antenna or signal-receiving dish owned by the ASSOCIATION or an OWNER must be approved by the City of Pompano Beach and must comply with all ordinances of the City of Pompano Beach, Including proper zoning for such antenna or dish.
- 5.15 Lakes and Canals. No swimming or motorized boating is allowed in any lake or canal within or contiguous to the SUBJECT PROPERTY.
- 5.16 Garbage Containers, Oil and Gas Tanks, Air Conditioners. All garbage and refuse containers shall be placed in an enclosed area as required by the ASSOCIATION so that they shall be substantially concealed or hidden from eye-level view from any street or adjacent property.
- 5.17 Signs. No signs shall be placed upon any LOT, and no signs shall be placed in or upon any UNIT, which are visible from the exterior of the UNIT, without the prior written consent of the ASSOCIATION.
- 5.18 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an OWNER or tenant first moves into a UNIT or when permanent window treatments are being cleaned or repaired.
- 5.19 Architectural Control for Exterior Changes
- 5.19.1 OWNER to Obtain Approval. No OWNER shall make, Install, place, or remove any building, fence, wall, patio area, pool, landscaping (except an above-ground/portable spa), or any other alteration, addition, Improvement, or change of any kind or nature to, in or upon any portion of the COMMON AREAS the OWNER's LOT, or the exterior of the OWNER's UNIT.
- 5.19.2 Remedy for Violations. In the event this section is violated in that any alteration, addition, Improvement, or change is made, the

ASSOCIATION shall specifically have the right to injunctive relief to require the OWNER to stop, remove and/or alter any alteration, addition, Improvement, or change in a manner which complies with the requirements of the ASSOCIATION, or the ASSOCIATION may pursue any other remedy available to It. Any action to enforce this section must be commenced within 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.

- 5.20 Rues and Regulations. The ASSOCIATION may adopt additional reasonable rules and regulations relating to the use and maintenance of the SUBJECT PROPERTY and uses and regulations relating to the recreational facilities within the SUBJECT PROPERTY may be posted at such recreational facilities. Copies of such rules and regulations and amendments shall be furnished by the ASSOCIATION to any OWNER upon request.
- 5.21 Waiver. The ASSOCIATION shall have the right to waive the application of one or more of these restrictions, or to permit a deviation from these restrictions, as to any LOT where, in the discretion of the BOARD, circumstances exist which justify such waiver or deviation. In the event of any such waiver or permitted deviation, or in the event any party fails to enforce any violation of these restrictions, such actions or Inactions shall not be deemed to prohibit or restricts the right of the ASSOCIATION, or any other person having the right to enforce these restrictions, from insisting upon strict compliance with respect to all other LOTS, nor shall any such actions be deemed a waiver of any of the restrictions contained herein as same may be applied in the future. Notwithstanding the foregoing, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, including any LOT(S), If any waiver or deviation of any restriction requires the consent of the ASSOCIATION, such consent shall be obtained from DECLARANT and not from the ASSOCIATION, unless DECLARANT voluntarily relinquished this right at an earlier date.
- 5.22 Exceptions: The foregoing use and maintenance restrictions shall not apply to DECLARANT or to any lot & the SUBJECT PROPERTY while owned by DECLARANT, or to any undeveloped property, and shall not be applied in a manner which would prohibit or restrict the development of any portion of the SUBJECT PROPERTY and the construction of any UNITS, buildings and other Improvements thereon, or any activity associated with the sale of any new UNITS, by DECLARANT or by the developer of any portion of the SUBJECT PROPERTY so long as such activities are In accordance with the approved plan or are otherwise approved by all appropriate governmental agencies, including the City of Pompano Beach. Specifically, and without limitation, DECLARANT and any developer(s) of any portion of the SUBJECT PROPERTY shall have the right to: (i) construct any buildings or Improvements within the SUBJECT PROPERTY, and make any additions, alterations, Improvements, Or changes thereto; (ii) maintain customary, and usual sales, general office and construction operations on any property; (iii) place, erect or construct portable, temporary or accessory buildings or structures upon any property for sales, construction, storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and ,publish in connection with the development or construction of any property; (v) post, display, inscribe or affix to the exterior of a UNIT or any property, signs and cither materials used In developing, constructing selling or prompting any property (vi) excavate fill from any lakes within and/or contiguous to the subject property by dredge or dragline, store fill on the SUBJECT PROPERTY and sell excess fill from the SUBJECT PROPERTY; and (vii) grow plants and trees upon the SUBJECT PROPERTY for later use, and sell excess plants and trees.

6. ASSESSMENT FOR COMMON EXPENSES.

- 6.01 Each OWNER of a LOT shall be responsible for the payment to the ASSOCIATION of ASSESSMENT for COMMON EXPENSES for each LOT owned by the OWNER which amount shall assessed to the OWNER as described below. In addition, each OWNER shall be responsible for the payment to ASSOCIATION of any ASSESSMENTS owed by the prior

OWNER except any ASSESSMENTS owed by DECLARANT, and except as provided in Paragraph 7.01.6 of this DECLARATION.

- 6.02 Prior to the beginning of each fiscal year, the BOARD shall adopt a budget for such fiscal year, which shall estimate all of the COMMON EXPENSES to be incurred by the ASSOCIATION during the fiscal year. The BOARD shall then establish the ASSESSMENT for COMMON EXPENSES for each LOT, and shall notify each OWNER in writing of the amount, frequency, and due dates of the ASSESSMENTS for COMMON EXPENSES. From time to time during the fiscal year, the BOARD may modify the budget, and pursuant to the revised budget or otherwise, the BOARD may, upon written notice to the OWNERS, change the amount, frequency and/or due dates of the ASSESSMENTS for COMMON EXPENSES. If the expenditure of funds for COMMON EXPENSES is required in addition to funds produced by ASSESSMENTS for COMMON EXPENSES, the BOARD may make special ASSESSMENTS for COMMON EXPENSES, which shall be levied in the same manner as hereinbefore provided for regular ASSESSMENTS, and shall be payable in the manner determined by the BOARD, as stated in the notice of any special ASSESSMENTS for COMMON EXPENSES. In the event any ASSESSMENTS for COMMON EXPENSES are made payable as provided in the notice from the ASSOCIATION, such payments shall automatically continue to be due and payable in same amount and frequency unless and until (i) the notice specially provides that the periodic payments will terminate or change upon the occurrence of specified event or date or the payment of a specified amount, or (ii) the ASSOCIATION notifies the OWNER in writing of the amount and/or frequency of the periodic payments. In no event shall any ASSESSMENTS for COMMON EXPENSES be due less than ten (10) days from the date of notification of such ASSESSMENTS
- 6.03 In addition to ASSESSMENTS for COMMON EXPENSES, the first OWNER of each individual UNIT acquiring title from DECLARANT to such UNIT shall pay to the ASSOCIATION a contribution to a working capital fund of the ASSOCIATION in an amount equal to two (2) months' ASSESSMENTS for COMMON EXPENSES, which shall be in addition to the OWNER'S responsibility for ASSESSMENTS for COMMON EXPENSES. The working capital fund shall be used by the ASSOCIATION for start-up expenses, insurance reserves, or otherwise as the ASSOCIATION shall determine from time to time and need not be restricted or accumulated. Such first OWNER may also be required to deposit funds, which represent a prepayment of the applicable portion of prepaid insurance premiums from the date of closing on the LOT through the end of the calendar year in
- 6.04 Notwithstanding the foregoing and such time of DECLARANT no longer owns any unit, or until DECLARANT notifies the ASSOCIATION in writing that DECLARANT elects to pay ASSESSMENTS for COMMON EXPENSES as in the case of any other OWNER, DECLARANT shall not be liable for ASSESSMENTS for COMMON EXPENSES for any UNITS owned by DECLARANT, but in lieu thereof, DECLARANT shall be responsible for all COMMON EXPENSES in excess of the ASSESSMENTS for COMMON EXPENSES receivable from the other OWNERS (including working capital contributions), and other income received by the ASSOCIATION. During such period when DECLARANT is not liable for ASSESSMENTS for COMMON EXPENSES for UNITS owned, by DECLARANT, the ASSESSMENTS for COMMON EXPENSES shall be established by DECLARANT based upon DECLARANT'S estimate of what the expenses of the ASSOCIATION would be if all UNITS and improvements contemplated within the SUBJECT PROPERTY were completed, so that ASSESSMENTS for COMMON EXPENSES during such period will be approximately what said ASSESSMENTS would be if the development of the SUBJECT PROPERTY as contemplated by DECLARANT was complete. In any event, DECLARANT shall not be required to fund reserves allocated to any UNITS not built or any UNITS owned by DECLARANT.

7. DEFAULT.

7.01 Monetary Defaults and Collection of Assessments.

- 7.01.1 Late Fees and Interest if any ASSESSMENT is not paid within ten (10) days after the due date, the ASSOCIATION shall have the right to charge the defaulting OWNER a late fee of ten (10%) percent of the amount of the ASSESSMENT or Ten 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.
- 7.01.2 Acceleration of ASSESSMENTS. 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 to the ASSOCIATION ASSESSMENTS for COMMON EXPENSES for the next twelve (12) month period, based upon the then existing amount and frequency of ASSESSMENTS for COMMON EXPENSES. In the event of such acceleration, the defaulting OWNER shall continue to be liable for any increases in the regular ASSESSMENTS for COMMON EXPENSES, for all special ASSESSMENTS for COMMON EXPENSES, and/or all other ASSESSMENTS payable to the ASSOCIATION.
- 7.01.3 Lien For ASSESSMENTS. The ASSOCIATION has a lien on each LOT for unpaid ASSESSMENTS owed to the ASSOCIATION by the OWNER of such LOT, and for late fees and interest, and for reasonable attorneys' fees Incurred by the ASSOCIATION. Incident to the collection of the ASSESSMENT or enforcement of the lien, and all sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior mortgages, liens or encumbrances in order to preserve and protect the ASSOCIATION's lien. The lien is effective from and after recording a claim of lien in the Public Records in the county in which the LOT is located, stating the description of the LOT, the name of the record OWNER, and the amount due as of the recording of the claim of lien. A recorded claim of lien shall secure all sums set forth in the claim of lien, together with all ASSESSMENTS or other monies owed to the ASSOCIATION by the OWNER until the lien is satisfied. The lien is in effect until all sums secured by it are paid in full. The claim of lien must be signed and acknowledged by an officer or agent of the ASSOCIATION. Upon payment in full of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the lien.
- 7.01.4 Collection and Foreclosure. The ASSOCIATION may bring an action in its name to foreclose a lien for ASSESSMENTS in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid ASSESSMENTS without waiving any claim of lien, and the applicable OWNER shall be liable to the ASSOCIATION for all costs and expenses incurred by the ASSOCIATION in connection with the collection of any unpaid ASSESSMENTS, and the filing, enforcement, and/or foreclosure of the ASSOCIATION's lien, including reasonable attorney's fees, and all sums paid by the ASSOCIATION for taxes and on account of any other mortgage, lien, or encumbrance in order to preserve and protect the ASSOCIATION lien. The BOARD is authorized to settle or compromise the ASSOCIATION's lien if the BOARD deems a settlement or compromise to be in the best interest of the ASSOCIATION.
- 7.01.5 Rental and Receiver. If an OWNER remains in possession of his UNIT and the claim of lien of the ASSOCIATION against his UNIT is foreclosed, the court, in its discretion, may require the OWNER to pay a reasonable rental for the UNIT, and the ASSOCIATION is entitled to the appointment of a receiver to collect the rent, or the

ASSOCIATION may apply to the court for a writ of possession to evict the OWNER.

- 7.01.6 Subordination of Lien. Where any person obtains title to a LOT pursuant to the foreclosure of a first mortgage of record of an INSTITUTIONAL LENDER, or where an INSTITUTIONAL LENDER accepts a deed to a LOT in lieu of foreclosure of the first mortgage of record of such lender, such acquirer of title its successors and assigns, shall not be liable for any ASSESSMENTS or for other monies owed to the ASSOCIATION which are chargeable to the former OWNER of the LOT and which became due prior to acquisition of title as a result of the foreclosure or deed In lieu thereof, unless payment of such funds is secured by a claim of lien recorded prior to the recording of the foreclosed or underlying mortgage. The unpaid ASSESSMENTS or other monies are COMMON EXPENSES collectable from all of the OWNERS, including such acquirer and his successors and assigns. The new OWNER, from and after the time of acquiring such title, shall be liable for payment of all future ASSESSMENTS for COMMON EXPENSES and such other expenses as may be assessed to the OWNER'S LOT. Any person who acquires a LOT, except through foreclosure of a first mortgage of record of an INSTITUTIONAL LENDER, or deed In lieu thereof, Including, without limitation, persons acquiring title by sale, gift, devise, operation of law or by purchase at a judicial or tax sale, shall be liable for all unpaid ASSESSMENTS and other monies due and owing by the former OWNER to the ASSOCIATION, and shall not be entitled to occupancy of the UNIT or enjoyment of the COMMON AREAS, or of the recreational facilities, as same may exist from time to time, until such time as all unpaid ASSESSMENTS and other monies have been paid in full.
- 7.01.7 Assignment of Claim and Lien Rights. The ASSOCIATION, acting through its BOARD, shall have the right to assign its claim and lien rights for the recovery of any unpaid ASSESSMENTS and any other monies owed to the ASSOCIATION, to any third party.
- 7.01.8 Certificate. Within 15 days after written request by an OWNER or any INSTITUTIONAL LENDER holding or making a mortgage encumbering any LOT, the ASSOCIATION shall provide the OWNER or INSTITUTIONAL LENDER a written certificate as to whether or not the OWNER of the LOT is in default with respect to the payment of ASSESSMENTS or with respect to compliance with the terms and provisions of this DECLARATION, and any person or entity who relies on such certificate In purchasing or In making a mortgage loan encumbering any LOT shall be protected thereby.
- 7.01.9 Application of Payments. Any payments made to the ASSOCIATION by any OWNER shall first be applied towards any sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the ASSOCIATION In order to preserve and protect its lien; next toward reasonable attorney's fees incurred by the ASSOCIATION incidental to the collection of assessments and other monies owed to the ASSOCIATION by the OWNER and/or for the enforcement of its lien; next towards Interest on any ASSESSMENTS or other monies due to the ASSOCIATION, as provided herein; and next towards any unpaid ASSESSMENTS owed to the ASSOCIATION, In Inverse order that such ASSESSMENTS were due.
- 7.02 Non-Monetary Defaults. In the event of a violation by any OWNER or any tenant of an OWNER, or any person residing with them, or their guests or invitees, (other than the non-payment of any ASSESSMENT or other monies) of any of the provisions of this DECLARATION, the ARTICLES, the BYLAWS or the Rules and Regulations of the ASSOCIATION, the ASSOCIATION shall notify the OWNER and any tenant of the OWNER of

the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the OWNER or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the ASSOCIATION, or if any similar violation is thereafter repeated, the ASSOCIATION may, at its option:

- 7.02.1 Impose a fine against the OWNER or tenant as provided in Paragraph 7.03; and/or
- 7.02.2 Commence an action to enforce the performance on the part of the OWNER or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
- 7.02.3 Commence an action to recover damages; and/or
- 7.02.4 Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or change which has not been approved by the ASSOCIATION, or performing any maintenance required to be performed by this DECLARATION.

All expenses incurred by the ASSOCIATION in connection with the correction of any failure, plus a service charge of ten (10%) of such expenses, and all expenses incurred by the ASSOCIATION in connection with any legal proceedings to enforce this DECLARATION, including reasonable attorneys' fees, shall be assessed against the applicable OWNER, and shall be due upon written demand by the ASSOCIATION. The ASSOCIATION shall have a lien for any such ASSESSMENT and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with the ASSESSMENT, and may take such action to collect such ASSESSMENT or foreclose said lien as in the case and in the manner of any other ASSESSMENT as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the county in which the SUBJECT PROPERTY is located.

- 7.03 Fines. The amount of any fine shall be determined by the BOARD, and shall not exceed one-third of one month's ASSESSMENT for COMMON EXPENSES for the first offense, two-thirds of one month's ASSESSMENT for COMMON EXPENSES for a second similar offense, and one month's ASSESSMENT for COMMON EXPENSES for a third or subsequent offense. Any fine shall be imposed by written notice to the OWNER or tenant, signed by an officer of the ASSOCIATION, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the OWNER or tenant has the right to contest the fine by delivering written notice to the ASSOCIATION with 10 days after receipt of the notice imposing the fine. If the OWNER or tenant timely and properly objects to the fine, the BOARD shall conduct a hearing within 30 days after receipt of the OWNER's or tenant's objection, and shall give the OWNER or tenant not less than 10 days' written notice of the hearing date. At the hearing, the BOARD shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The OWNER or tenant shall have the right to attend the hearing and to produce evidence on his behalf. At the hearing the BOARD shall ratify, reduce or eliminate the fine and shall give the OWNER or tenant written notice of the imposition of the fine, or if a hearing is timely requested within 10 days after written notice of the BOARD's decision at the hearing. Any fine levied against an OWNER shall be deemed an ASSESSMENT, and if not paid when due all of the provisions of this DECLARATION relating to the late payment of ASSESSMENTS shall be applicable. If any fine is levied against a tenant and is not paid within 10 days after same is due, the ASSOCIATION shall have the right to evict the tenant pursuant to paragraph 7.06.
- 7.04 Negligence. An OWNER shall be liable and may be assessed by the ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, but only to the

extent that such expense is not covered by the proceeds of the Insurance policy held by the ASSOCIATION. Such liability shall include any increase in fire Insurance rates occasioned by use, misuse, occupancy or abandonment of a LOT or UNIT, or the COMMON AREAS.

- 7.05 Responsibility of an OWNER for Occupants, Tenants, Guests and Invitees. Each OWNER shall be responsible for the acts and omissions, whether negligent or willful, of any person residing In his UNIT, 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 covered by the proceeds of the Insurance policy held by the ASSOCIATION. Furthermore, any violation of any of the provisions of this DECLARATION, of the ARTICLES, or the BYLAWS, by any resident of any UNIT, or any guest or invitee of an OWNER or any resident of a UNIT, 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.
- 7.06 Right of ASSOCIATION to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present In any UNIT or any portion of the SUBJECT PROPERTY, other than an OWNER and the members of his immediate family permanently residing with him in the UNIT, If such person shall materially violate any provision of this DECLARATION, the ARTICLES, or the BYLAWS, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the SUBJECT PROPERTY, 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 SUBJECT PROPERTY 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 SUBJECT PROPERTY and, where necessary, to enjoin such person from returning. The expense of 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 in this DECLARATION. The foregoing shall be In addition to any other remedy of the ASSOCIATION.
- 7.07 No Waiver. The failure of the ASSOCIATION to enforce any right, provision, covenant or condition which may be granted by this DECLARATION, the ARTICLES, or the BYLAWS, shall not constitute a waiver of the right of the ASSOCIATION to enforce such right, provision, covenant or condition in the future.
- 7.08 Rights Cumulative. All rights, remedies and privileges granted to the ASSOCIATION pursuant to any terms, provisions, covenants or conditions of this DECLARATION, the ARTICLES or the BYLAWS, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the ASSOCIATION thus exercising the same from executing such additional remedies, rights or privileges as may be granted or as it might have by law.
- 7.09 Enforcement By or Against other Persons. In addition to the foregoing, this DECLARATION may be enforced by DECLARANT, or the ASSOCIATION, by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this DECLARATION shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this DECLARATION. In addition to the foregoing, any OWNER shall have the right to bring an action to enforce this DECLARATION against any person violating or attempting to violate any provision herein, to restrain such violation or to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any person, and the prevailing party in any such action shall be entitled to recover its court costs and reasonable attorneys' fees.

8. TERM OF DECLARATION. All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as against all OWNERS, their successors, heirs or assigns, regardless of how the OWNERS acquire title, for a period of fifty (50) years from the date of this DECLARATION, unless within such time, one hundred (100%) percent of the OWNERS execute a written instrument declaring a termination of this DECLARATION (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, these covenants, conditions, reservations and restrictions shall be automatically extended for successive periods of ten (10) years each, until a majority of the votes of the entire membership of the ASSOCIATION execute a written instrument declaring a termination of this DECLARATION (as it may have been amended from time to time). Any termination of this DECLARATION shall be effective on the date the instrument of termination is recorded in the public records of the county in which the SUBJECT PROPERTY is located; provided, however, that any such instrument, in order to be effective, must be approved in writing and signed by the DECLARANT so long as the DECLARANT owns any LOT, or holds any mortgage encumbering any LOT.
9. AMENDMENT.
- 9.01 This DECLARATION may be amended upon the approval of not less than 2/3 of the OWNERS, in addition, so long as DECLARANT owns any portion of the SUBJECT PROPERTY, this DECLARATION may be amended from time to time, by DECLARANT and without the consent of the ASSOCIATION or any OWNER, and no amendment may be made by the OWNERS without the written joinder of DECLARANT. Such rights of DECLARANT to amend this DECLARATION shall specifically include amendments adding any property to the SUBJECT PROPERTY or deleting any property from the SUBJECT PROPERTY, provided that any such amendment shall require the joinder of the owners of such property or any portion thereof if different than DECLARANT. In order to be effective, any amendment to this DECLARATION must first be recorded in the public records of the county in which the SUBJECT PROPERTY is located, and in the case of an amendment made by the OWNERS, such amendment shall contain a certification by the President and Secretary of the ASSOCIATION that the amendment was duly adopted.
- 9.02 No amendment shall discriminate against any OWNER or class or group of OWNERS unless the OWNERS so affected join in the execution of the amendment. No amendment shall change the number of votes of any OWNER or increase any OWNER's proportionate share of the COMMON EXPENSES, unless the OWNERS affected by such amendment join in the execution of the amendment. 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, DECLARANT, unless DECLARANT joins in the execution of the amendment.
- 9.03 Notwithstanding anything contained herein to the contrary, any amendment to this DECLARATION which would adversely affect the surface water management system, including the water management portions of the COMMON AREAS, must have the prior approval of the South Florida Water Management District.
- 9.04 Notwithstanding anything contained herein to the contrary, any amendment to this DECLARATION which affects (i) the easements granted herein or the maintenance obligations imposed hereby, or (ii) the construction or alteration of any building or structure upon SUBJECT PROPERTY, or (iii) add or remove property subject to this

DECLARATION, must be approved by the City of Pompano Beach or by its legal department. Such approval shall be deemed given if no notice of disapproval is delivered to DECLARANT or to the ASSOCIATION within thirty (30) days after request for such approval is delivered to the City of Pompano Beach by certified mail, return receipt requested, or by equivalent delivery, and such approval may be conclusively evidenced by certificate of DECLARANT or the ASSOCIATION that the approval was given or deemed given.

10. SPECIAL PROVISIONS REGARDING INSTITUTIONAL LENDERS.

10.01 Notice of Action. Upon written request to the ASSOCIATION by an INSTITUTIONAL LENDER holding, insuring or guaranteeing a first mortgage encumbering any LOT, identifying the name and address of the holder, insurer or guarantor and the LOT number or address, any such holder, insurer or guarantor will be entitled to timely written notice of:

- 10.01.1 Any condemnation or casualty loss which affects a material portion of the SUBJECT PROPERTY or the LOT;
- 10.01.2 Any sixty (60)-day defaults in the payment of ASSESSMENTS or charges owed to the ASSOCIATION or in the performance of any obligation hereunder by the OWNER of the LOT;
- 10.01.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the ASSOCIATION;
- 10.01.4 Any proposed action which would require the consent of a specified percentage of INSTITUTIONAL LENDERS.

10.02 Consent of INSTITUTIONAL LENDERS. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgages(s) encumbering any LOTS is required by this DECLARATION, the ARTICLES, the BYLAWS or any applicable statute or law, to any amendment of the DECLARATION, the ARTICLES, or the BYLAWS, or to any action of the ASSOCIATION, or to any other matter relating to the SUBJECT PROPERTY, the ASSOCIATION may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by such holders). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the ASSOCIATION), which response must be received by the ASSOCIATION within thirty (30) days after the holder receives such request, and if such response is not timely received by the ASSOCIATION, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by a affidavit signed by all of the directors of the ASSOCIATION, which affidavit, where necessary, may be recorded in the public records of the county where the SUBJECT PROPERTY is located, and which affidavit shall be conclusive as to the matters therein contained. The foregoing shall not apply where an INSTITUTIONAL LENDER is otherwise required to specifically join in an amendment to this DECLARATION.

10.03 Payment of Taxes and Insurance. With respect to any LOTS owned by the ASSOCIATION, any INSTITUTIONAL LENDER may pay any taxes or assessments,

which are in default, or any overdue insurance premiums, or may secure new insurance upon the lapse of a policy, and shall be owed Immediate reimbursement therefore from the ASSOCIATION plus Interest at the highest rate permitted by law and any cost of collection, including attorneys' fees, excluding any LOTS and/or UNITS owned by PERSON(S) other than the ASSOCIATION.

11. MISCELLANEOUS.

- 11.01 Conflict with ARTICLES or BYLAWS. In the event of any conflict between the ARTICLES and the BYLAWS and this DECLARATION, this DECLARATION, the ARTICLES, and the BYLAWS, in that order shall control.
- 11.02 Authority of ASSOCIATION and Delegation. Nothing contained in this DECLARATION shall be deemed to prohibit the BOARD from delegating to any one of its members, or to any officer, or to any committee or any other person, any power or right granted to the BOARD by this DECLARATION including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the BOARD is expressly authorized to so delegate any power or right granted by this DECLARATION.
- 11.03 Severability. The invalidation in whole or in part of any of these covenants, conditions, reservations and restrictions, or any section, subsection, sentence, clause, phrase, word or other provision of this DECLARATION shall not affect the validity of the remaining portions which shall remain In full force and effect.
- 11.04 Validity. In the event any court shall hereafter determine that any provisions as originally drafted herein all be reduced to the maximum period allowed under such rules of law, said provision shall be so reduced, but shall thereafter remain valid and in full force and effect.
- 11.05 Assignments of DECLARANT's Rights. Any or all of the rights, privileges, or options provided to or reserved by DECLARANT In this DECLARATION, the ARTICLES, or the BYLAWS, may be assigned by DECLARANT, In whole or In part, as to all or any portion of the SUBJECT PROPERTY, to any person or entity pursuant to an assignment recorded in the public records of the county in which the SUBJECT PROPERTY is located. Any partial assignee of any of the rights of DECLARANT shall not be deemed the DECLARANT, and shall have no other rights, privileges or options other than as are specifically assigned. No assignee of DECLARANT shall have any liability for any acts of DECLARANT or any prior DECLARANT unless such assignee is assigned and agrees to assume such liability.
- 11.06 Performance of ASSOCIATION's Duties by DECLARANT. DECLARANT shall have the right from time to time, at its sole discretion, to perform at DECLARANTs expense, the duties and obligations required hereunder to be performed by the ASSOCIATION, and in connection therewith to reduce the budget of the ASSOCIATION and the ASSESSMENTS for COMMON EXPENSES payable by the OWNERS, provided however that any such performance on the part of DECLARANT may be discontinued by DECLARANT at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of DECLARANT.
- 11.07 Inapplicability of Condominium Act. It is acknowledged that the ASSOCIATION is not intended to be a condominium association, and is not intended to and shall not be governed by the provisions of Florida Statutes, Chapter 718.

- 11.08 Actions Against DECLARANT. The ASSOCIATION shall not institute any legal proceedings against DECLARANT without the unanimous consent of 100% of the votes of the OWNERS.
- 11.09 FHA/VA Approval. If any mortgage encumbering any UNIT is guaranteed or insured by the Federal Housing Administration or by the Veterans Administration, then upon written demand to the ASSOCIATION by either such agency, the following action, If made by the DECLARANT or if made prior to the completion of 75% of the UNITS which may be built within the SUBJECT PROPERTY, must be approved by either such agency: (i) any annexation of additional property; (ii) any mortgage, transfer or dedication of any COMMON AREA; (iii) any amendment to this DECLARATION, the ARTICLES or the BYLAWS, If such amendment materially and adversely affects the OWNERS or materially and adversely affects the general scheme of development created by this DECLARATION, provided however, such approval shall specifically not be required where the amendment is made to add any property specifically identified in this DECLARATION, or to correct errors or omissions, or is required to comply with the requirements of any INSTITUTIONAL LENDER, or is required by any governmental authority; or (iv) any merger, consolidation or dissolution of the ASSOCIATION. Such approval shall be deemed given if either agency fails to deliver written notice of its disapproval of any such action to DECLARANT or to the ASSOCIATION within twenty (20) days after a request for such approval is delivered to the agency by certified mail, return receipt requested, or equivalent delivery, and such approval may be conclusively evidenced by a certificate of DECLARANT or the ASSOCIATION that the approval was given or deemed given.
- 11.10 Roads. DECLARANT acknowledges that the roads in the SUBJECT PROPERTY were designed in accordance with the criteria established by the City of Pompano Beach, the County of Broward and the State of Florida, and accepted by the City of Pompano Beach, National Flood Insurance Co., Broward County Water Management, the South Florida Water Management District and the Sunshine Water Control District. As part of this criteria the minimum elevation for the outside edge of the pavement is set at the pre-established elevation of 11.00 MLS for protection from the ten (10)-year storm. Should the water rise in the drainage system and canals to the elevation of 12.00 MLS there may be standing water on portions of the roadway.
- 11.11 Single family residence located at 830 W. Oaks Drive, Pompano Beach, Florida. The fee simple owner of that certain single family residence located at 830 W. Oaks Drive, Pompano Beach, Florida, more particularly described in Exhibit D attached hereto and made a part hereof (the "Residence") shall be a member of the ASSOCIATION and shall have all of the rights, privileges, and obligations as the other OWNER members of the ASSOCIATION, including ingress and egress to the SUBJECT PROPERTY and the Residence. Said owner shall pay the ASSESSMENT for the Residence in a similar fashion as the OWNERS pay for the ASSESSMENT of their UNITS. Furthermore, the fee simple owner of the Residence shall maintain the Residence and the foliage thereon in a clean and aesthetic condition so as to provide a pleasant appearance and not appear unsightly to the OWNERS, the ASSOCIATION, or the DECLARANT; Failure to pay the ASSESSMENT, to maintain the Residence, or to comply with all of the conditions and terms of this DECLARATION shall subject the owner to the same penalties and remedies for said failure as applicable to the other OWNERS under this DECLARATION. This restrictive covenant affecting the Residence shall run with the land and shall inure to the benefit of the fee simple owner of the Residence and all successors in interest thereto.

Exhibit B

Legal description of the Property

Exhibit C

Legal description of property excluded

Exhibit D

Legal description of the property referred to in Item 11.1

FIRST AMENDMENT TO
DECLARATION OF COVENANTS
AND RESTRICTIONS
OF THE
FAIRWAYS OF PALM-AIRE, INC.

Section 5.07 of the Declaration shall now read;

5.07 Vehicles. Only automobiles, vans constructed as private passenger vehicles with permanent rear seats and side windows, and other vehicles manufactures and used as private passenger vehicles, may be parked within the SUBJECT PROPERTY overnight without the prior written consent of the ASSOCIATION. In particular and without limitation, no vehicle shall be parked outside of a UNIT overnight if commercial lettering or signs are painted to or affixed to the vehicle, or if commercial equipment is placed upon the vehicle, or if the vehicle is a truck, recreational vehicle, camper, trailer, or other than a private passenger vehicle as specific above. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from, or while used in connection with providing services to, the SUBJECT PROPERTY. All vehicles parked within the SUBJECT PROPERTY must be in good condition, and no vehicle which is unlicensed or which cannot operate on its own power shall remain within the SUBJECT PROPERTY for more than 24 hours, and no major repair of any vehicle shall be made on the SUBJECT PROPERTY. Motorcycles are permitted only if equipped with appropriate noise muffling equipment so that the operation of same does not create an unreasonable annoyance to residents of the SUBJECT PROPERTY, and (ii) may not be parked in such a way as to cause damage to COMMON AREAS in any way through ingress or egress.

Executed this 27th day of February, 1998