

THIS INSTRUMENT PREPARED BY (RETURN TO)  
JUSTIN M. SMITH, ESQ.  
KATZMAN CHANDLER  
1500 West Cypress Creek Road, Suite 408  
Fort Lauderdale, FL 33309

**NOTICE OF PRESERVATION OF USE RIGHTS  
UNDER THE MARKETABLE RECORD TITLE ACT  
WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC.  
(a Florida corporation non-for-profit)**

Pursuant to Chapter 712, Florida Statutes, the undersigned Claimant files herewith this Notice of Preservation of Use Rights, and in support thereof, further states as follows:

The name and address of the entity filing this Notice of Preservation of Use Rights is WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC. (the "Association"), a Florida non-for-profit corporation, c/o Associations of Florida, 10112 USA Today Way, Miramar, Florida 33351, the Articles of Incorporation of which were originally filed in the office of the Secretary of State on June 11, 1990, the Association having been organized for the purpose of operating and administering the real property pursuant to the recorded covenants and restrictions pertaining thereto which were filed in the Official Records of Broward County, Florida, as follows:

Name	OR Book	Page
Declaration of Covenants and Restrictions of Welleby Lakes	17993	414

The Association has sent a Statement of Marketable Title Action in the form set forth in Florida Statutes Section 712.06(1)(b), to all members of the Association and attaches hereto, and by this reference, makes a part hereof, an Affidavit executed by an agent Association's Board of Directors affirming that the Board of Directors has caused the Statement of Marketable Title Action to be mailed to all members of the Association and further attaches hereto, and by this reference, makes a part hereof, the original Statement of Marketable Title Action which was mailed to all members of the Association, as composite Exhibit "A".

A full and complete description of the lands affected by this Notice of Preservation of Use Rights is attached hereto, and by this reference, made a part hereof as composite Exhibit "B".

The real property interest claimed under this Notice of Preservation is the right to preserve those certain use restrictions, covenants, and agreements set forth in:

Declaration of Covenants and Restrictions of Welleby Lakes, as recorded in Official Records Book 17993 at Page 414 of the Public Records of Broward County, Florida, as may be amended from time to time,

a true and accurate copy of which is attached hereto, and by this reference, made a part hereof as Exhibit "C".

Sealed and delivered  
in the presence of:

WELLEBY LAKES HOMEOWNERS  
ASSOCIATION, INC.

Marsha Ryan

Witness

Print Name: MARSHAW RYAN

By: Tina Lekjarun

Print Name: Tina Lekjarun

Nicholas Lekjarun

Witness

Print Name: NICHOLAS LEKJARUN

Its: President

STATE OF FLORIDA

COUNTY OF BROWARD

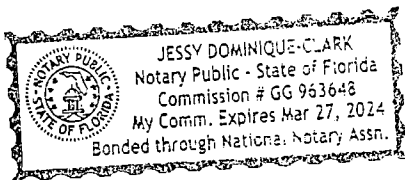
10<sup>th</sup> The foregoing instrument was sworn to, subscribed and acknowledged before me this  
NOVEMBER, 2020, by TINA LEKJARUN, as the  
PRESIDENT of WELLEBY LAKES HOMEOWNERS ASSOCIATION INC.,  
who [ ] is personally known to me or [X] produced identification, to be the persons described  
in and who executed the foregoing instrument and acknowledged before me that they executed  
same.

Jessy Dominique Clark

Notary Public

Print Name: JESSY DOMINIQUE CLARK

My Commission Expires:



**EXHIBIT A**

to

**NOTICE OF PRESERVATION OF USE RIGHTS  
UNDER THE MARKETABLE RECORD TITLE ACT**

**Affidavit affirming that the Association's Board of Directors  
has caused a Statement of Marketable Title Action  
to be mailed or hand delivered to the members of the Association**

**AFFIDAVIT OF SERVICE OF  
STATEMENT OF MARKETABLE TITLE ACTION**

I, the undersigned, Tina Lekjarun, Agent for the Association whose name appears at the bottom of this affidavit do hereby swear and affirm that a copy of the attached Statement of Marketable Title Action for WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC., has been mailed or hand delivered in accorded with Florida Statute § 723.06.

Acknowledged this 10<sup>th</sup> day of November, 2020.

**WELLEBY LAKES HOMEOWNERS  
ASSOCIATION, INC.**

By: *Tina Lekjarun*  
Agent For The Association

STATE OF FLORIDA        )

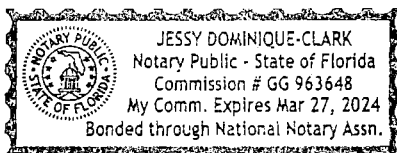
COUNTY OF BROWARD    )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, PERSONALLY APPEARED, TINA LEKJARUN who is personally known to me or \*has produced a Florida Drivers License as identification and who did take an oath and, after being duly cautioned and sworn, deposes and says that he/she has freely and voluntarily executed t his AFFIDAVIT OF SERVICE OF STATEMENT OF MARKETABLE TITLE ACTION, and that he/she has set his/her hand and seal thereto.

SWORN TO AND SUBSCRIBED before me this 10<sup>th</sup> day of NOVEMBER, 2020.

*Jessy Dominique-Clark*  
Notary Public, State of Florida at Large

My Commission Expires:  
My Commission Number:



**WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC.**

**STATEMENT OF MARKETABLE TITLE ACTION**

WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC. (the "Association"), has taken action to ensure that the Declaration of Covenants and Restrictions for Welleby Lakes as recorded in Official Records Book 17993 at Page 414 of the Public Records of Broward County, Florida, as may be amended from time to time, currently burdening the property of each and every member of the Association, retains its status as the source of marketable title with regard to the transfer of a member's residence. To this end, the Association shall cause the Notice of Preservation of Use Rights as required by Chapter 712, Florida Statutes, to be recorded in the Public Records of Broward County, Florida. Copies of the Notice of Preservation Use Rights, and its attachments, are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

**WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC.**

A Non-Profit Florida Corporation

**NOTICE OF BOARD MEETING**

NOTICE IS HEREBY GIVEN, in accordance with the By-Laws of the Association and the Florida Statutes, that a Board Meeting will be held on the following date, at the time and place as detailed below:

DATE: November 6, 2020

TIME: 9:30 AM

PLACE: via Zoom Online Videoconferencing

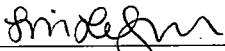
PURPOSE: The Board of Directors of WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC., will consider the approval, execution, and filling of a Notice of Preservation of the governing Declaration of Covenants and Restrictions for Welleby Lakes.

POSTING: This notice has also been posted on the community property.

**STATEMENT OF MARKETABLE TITLE ACTION**

WELLEBY LAKES HOMEOWNERS ASSOCIATION, INC. (the "Association"), has taken action to ensure that the Declaration of Covenants and Restrictions for Welleby Lakes as recorded in Official Records Book 17993 at Page 414 of the Public Records of Broward County, Florida, as may be amended from time to time, currently burdening the property of each and every member of the Association, retains its status as the source of marketable title with regard to the transfer of a member's residence. To this end, the Association shall cause the Notice of Preservation of Use Rights as required by Chapter 712, Florida Statutes, to be recorded in the Public Records of Broward County, Florida. Copies of the Notice of Preservation Use Rights, and its attachments, are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

WELLEBY LAKES HOMEOWNERS  
ASSOCIATION, INC.

By:   
Printed Name: Tina Lekjarun  
Its: President

DATED: this 10<sup>th</sup> day of November, 2020.

**EXHIBIT B**

to

**NOTICE OF PRESERVATION OF USE RIGHTS  
UNDER THE MARKETABLE RECORD TITLE ACT**

**LEGAL DESCRIPTION OF PROPERTY**

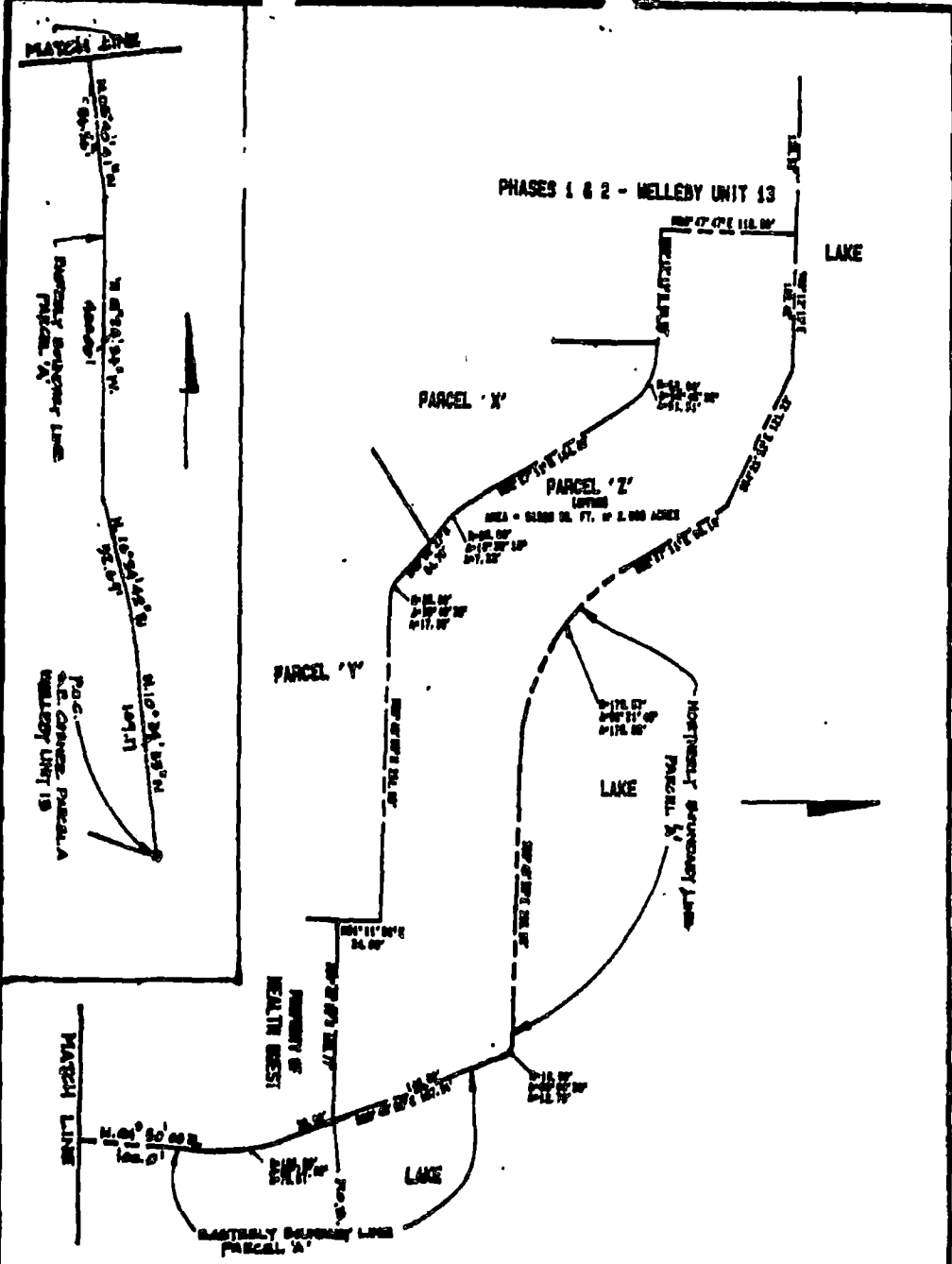
EXHIBIT "A"

Parcel "2", a portion of Parcel "A",  
"WELLEBY UNIT THIRTEEN", according to the  
Plat thereof, as recorded in Plat Book  
109, at Page 40 of the Public Records of  
Broward County, Florida.

BR 07993P60451



RELABLE REPROGRAPHED 36888



BK 07993P60452

NOTE: THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL

CLIENT:	SOUTHEAST FINANCIAL	DATE	REVISIONS	FB / PG.
TITLE:	SKETCH OF LEGAL DESCRIPTION - PARCEL "Z"			

CERTIFICATION: I HEREBY CERTIFY THAT THE HEREIN DESCRIBED SKETCH IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION AND SUPERVISION. I FURTHER CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA (CHAPTER 21HH-6 FAC) PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

DATE OF FIELD SURVEY N/A

HAROLD E. HARDMAN, P.L.S.  
FLORIDA REGISTRATION NO 3710

**Ralph B. Benuzzio & Associates, Inc.**  
Consulting Engineers, Planners, Surveyors

1001 WEST OAKLAND PARK BOULEVARD  
FT. LAUDERDALE, FLORIDA 33351  
(305) 748-3885

JOB NO: 88077  
FB: - PG: -  
SCALE: 1"=100'  
DWG DATE: 9-1-88  
DWN BY: WGM  
SHEET: 1 OF 2

LEGAL DESCRIPTION

PARCEL "2"

A PORTION OF PARCEL "A", "WELLEBY UNIT THIRTEEN", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 109, AT PAGE 40, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID PARCEL "A"; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL "A", NORTH 10° 34' 35" WEST FOR 169.17 FEET; THENCE NORTH 16° 54' 42" WEST FOR 52.69 FEET; THENCE NORTH 01° 26' 34" WEST FOR 400.00 FEET; THENCE NORTH 08° 40' 41" WEST FOR 56.36 FEET; THENCE NORTH 04° 30' 00" EAST FOR 100.00 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE WEST; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1600.00 FEET A CENTRAL ANGLE OF 25° 15' 00" AN ARC DISTANCE OF 70.51 FEET; THENCE NORTH 20° 45' 00" WEST FOR 39.89 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL (THE LAST SIX MENTIONED COURSES BEING COINCIDENT WITH THE SAID EASTERLY BOUNDARY LINE); THENCE NORTH 88° 48' 59" WEST FOR 159.77 FEET; THENCE NORTH 01° 11' 01" EAST FOR 34.00 FEET; THENCE NORTH 88° 48' 59" WEST FOR 251.08 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET A CENTRAL ANGLE OF 39° 49' 32" AN ARC DISTANCE OF 17.38 FEET; THENCE NORTH 48° 59' 27" WEST FOR 64.76 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 16° 32' 16" AN ARC DISTANCE OF 7.22 FEET; THENCE NORTH 32° 27' 11" WEST FOR 164.49 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 52.00 FEET, A CENTRAL ANGLE OF 56° 45' 02" AN ARC DISTANCE OF 51.51 FEET; THENCE NORTH 89° 12' 13" WEST FOR 98.55 FEET; THENCE NORTH 00° 47' 47" EAST FOR 110.00 FEET TO A POINT LYING ON THE NORTHERLY BOUNDARY LINE OF SAID PARCEL "A"; THENCE ALONG SAID BOUNDARY LINE SOUTH 89° 12' 13" EAST FOR 109.42 FEET; THENCE SOUTH 64° 21' 53" EAST FOR 121.23 FEET; THENCE SOUTH 32° 27' 11" EAST FOR 99.16 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 179.57 FEET, A CENTRAL ANGLE OF 56° 21' 48" AN ARC DISTANCE OF 176.65 FEET; THENCE SOUTH 88° 48' 59" EAST FOR 226.03 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 10.69 FEET, A CENTRAL ANGLE OF 68° 03' 59" AN ARC DISTANCE OF 12.70 FEET (THE LAST FIVE MENTIONED COURSES ALSO BEING COINCIDENT WITH SAID NORTHERLY BOUNDARY LINE); THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID PARCEL "A" SOUTH 20° 45' 00" EAST FOR 148.02 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING AND BEING IN THE CITY OF SUNRISE, BROWARD COUNTY, FLORIDA, AND CONTAINING 2.098 ACRES (91,308 SQUARE FEET) MORE OR LESS.

BK 17993PE0453

CLIENT:	SOUTHEAST FINANCIAL	DATE	REVISIONS
TITLE:	ATTACHMENT TO SKETCH OF LEGAL DESCRIPTION		

PARCEL "2"

**Ralph D. Benuzzio & Associates, Inc.**  
**Consulting Engineers, Planners, Surveyors**

10001 WEST OAKLAND PARK BOULEVARD  
 FT. LAUDERDALE, FLORIDA 33351  
 (305) 748-3885

JOB NO. 88072  
  
 SHEET 2 OF 2

**EXHIBIT C**

to

**NOTICE OF PRESERVATION OF USE RIGHTS  
UNDER THE MARKETABLE RECORD TITLE ACT**

	<u>OR Book</u>	<u>Page</u>
Declaration of Covenants and Restrictions of Welleby Lakes	17993	414

DECLARATION OF COVENANTS AND RESTRICTIONS

OF

90496277 WELLEBY LAKES

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF WELLEBY LAKES is made this 29<sup>th</sup> day of MAY, 1990, by GREENVALE INVESTMENTS, INC., a Florida corporation, ("DECLARANT").

1. **DEFINITIONS.** The terms used in this DECLARATION, and in the ARTICLES and the BY-LAWS, shall have the following meanings, unless the context otherwise requires:

- A. **ARTICLES**-the Articles of Incorporation of the ASSOCIATION, as same may be amended from time to time.
- B. **ASSESSMENT**-the amount of money which may be assessed against any 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 BY-LAWS.
- C. **ASSOCIATION**-"Welleby Lakes Homeowners' Association, Inc.", a Florida corporation not for profit.
- D. **BOARD**-the Board of Directors of the ASSOCIATION.
- E. **BUILDING**-any building contained within the SUBJECT PROPERTY from time to time. A BUILDING may contain one or more UNITS which may be connected by party walls, and in that event, the BUILDING shall include the UNITS within the BUILDING.
- F. **BY-LAWS**-the By-Laws of the ASSOCIATION, as same may be amended from time to time.
- G. **COMMON AREAS**-any property, whether improved or unimproved, which is owned by the ASSOCIATION or which is otherwise declared to be a COMMON AREA by this DECLARATION, and is to be used by all of the residents within the SUBJECT PROPERTY, and their guests and invitees. COMMON AREAS may include but are not limited to parks, open areas, recreational facilities, roads, entrance ways and other similar properties.
- H. **COMMON EXPENSES**-all expenses properly incurred by the ASSOCIATION which include, but are not limited to, the following:
  - 1) Expenses incurred in connection with the administration and management of the ASSOCIATION.
  - 2) Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the COMMON AREAS, or any portion of the LOTS, UNITS and BUILDINGS to be maintained by the ASSOCIATION.

Dec 14 9 26 AM '90

BR 012993PG0414

RECORD & RETURN TO: ASSOCIATED TRANSTITLE

8211 W. BROWARD BLVD, STE PH#4  
PLANTATION, FL 33324

ATTN: JANE

24.00  
130.00  
R

- 3) Expenses of obtaining, repairing or replacing personal property in connection with the performance of the ASSOCIATION duties.
  - 4) Expenses declared to be COMMON EXPENSES by the provisions of this DECLARATION and/or by the ARTICLES or BY-LAWS.
  - 5) Any expenses of prosecuting or defending any action for or against the ASSOCIATION, including attorneys' fees.
- I. COMMON SURPLUS-shall mean and refer to the excess of all receipts of the ASSOCIATION over the amount of the COMMON EXPENSES.
  - J. COUNTY-shall mean and refer to Broward County, Florida.
  - K. DECLARANT-shall mean and refer to the person or entity executing this DECLARATION, or any person or entity who may be assigned the rights of DECLARANT pursuant to a written assignment executed by the then present OWNER of the SUBJECT PROPERTY. In addition, in the event the holder of any mortgage executed by DECLARANT obtains title to all the SUBJECT PROPERTY then owned by DECLARANT, such mortgagee may elect to become the DECLARANT by a written election recorded in the Public Records of the County in which the SUBJECT PROPERTY is located, and regardless of the exercise of such election, the mortgagees may appoint as DECLARANT any third party who acquires title to all of the SUBJECT PROPERTY owned by the mortgagee by written appointment recorded in the Public Records recorded in the County in which the SUBJECT PROPERTY is located. In any event, such mortgagee or its assigns shall not be liable for any defaults or obligations incurred by any prior DECLARANTS, except as same may be expressly assumed by the mortgagee or his assigns. In any event, the term DECLARANT shall not include any person or entity acquiring title only to one or more LOTS which contain a UNIT, unless DECLARANT specifically assigns its rights as DECLARANT to such person or entity.
  - L. DECLARATION-shall mean and refer to this Declaration of Covenants and Restrictions of the Welleby Lakes, as it may be amended from time to time.
  - M. IMPROVEMENTS-shall mean and refer to all improvements, including, but not limited to, plantings, shrubs, trees, fencing around plant areas, fencing in yard, screen enclosures, ornamental decoration, exterior lighting, stepping stones, exterior shutters, and storage building or structure.
  - N. INSTITUTIONAL LENDER-the holder of a first mortgage encumbering a LOT, which holder in the ordinary course of business makes, purchases, guarantees, or insures residential mortgage loans, whether construction or permanent, and which holder is not the OWNER of the LOT and is not owned or controlled by

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the OWNER. 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, an agency of the United States or any other governmental authority, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, an INSTITUTIONAL LENDER shall also mean the holder of any mortgage executed by or in favor of DECLARANT, whether or not such holder would otherwise be considered an INSTITUTIONAL LENDER.

- O. LOT-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 from time to time.
- P. OWNER-the record owner(s) of a LOT (including DECLARANT).
- Q. SUBJECT PROPERTY-the property which is subject to this DECLARATION, which property is described in Exhibit "A" attached hereto, and includes any UNITS or improvements constructed thereon.
- R. UNIT-shall mean and refer to the residential dwelling constructed upon a 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.

- A. ARTICLES. A copy of the ARTICLES is attached hereto as Exhibit "B". 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.
- B. BY-LAWS. A copy of the BY-LAWS is attached as Exhibit "C". No amendment to the BY-LAWS shall be deemed an amendment to this DECLARATION, and this DECLARATION shall not prohibit or restrict amendments to the BY-LAWS, except as specifically provided herein.
- C. MEMBERSHIP. All OWNERS shall be members of the ASSOCIATION. Membership as to each LOT or UNIT shall be established, and transferred, as provided by the ARTICLES and BY-LAWS.
- D. 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 BY-LAWS.

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- E. 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 BY-LAWS, 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 owner members 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.
- F. VOTING. On all matters as to which the OWNERS shall be entitled to vote, there shall be one vote for each LOT, to be cast in the manner provided in the ARTICLES and BY-LAWS.

3. COMMON AREA.

- A. COMMON AREAS. All of the SUBJECT PROPERTY, except for the LOTS, is hereby declared to be a COMMON AREA. DECLARANT shall have the right to convey title to such COMMON AREA or any portion thereof free and clear of any mortgage lien to the ASSOCIATION, and any such conveyance shall be effective upon the recording of the deed or instrument of conveyance in the Public Records of the county in which the SUBJECT PROPERTY is located, without written acceptance by the ASSOCIATION. DECLARANT shall complete the proposed RECREATIONAL FACILITIES and convey them to the ASSOCIATION free of any mortgage encumbrance and other common areas, including roadways. Such conveyance shall be made before HUD insures the first mortgage within the SUBJECT PROPERTY.
- B. USE. All of the residents of the SUBJECT PROPERTY, and their guests and invitees, shall have and are hereby given the right to use all COMMON AREAS for the purposes for which same are intended, subject to the terms of this DECLARATION and reasonable nondiscriminatory rules and regulations which may be adopted by the BOARD from time to time.
- C. IMPROVEMENT OF COMMON AREAS. It is acknowledged that the COMMON AREAS are to consist of, in part, of roads, parking areas, landscaped area around the BUILDINGS, and recreational areas and facilities. Prior to the conveyance of any UNIT by DECLARANT, DECLARANT shall complete the construction and improvement of the roads, parking areas, and landscaping serving the BUILDING in which the UNIT is located.
- D. ADDITIONS, ALTERATIONS OR IMPROVEMENTS. The ASSOCIATION shall have the right to make additions, alterations or improvements to the

BK 07993PG0417

COMMON AREAS, and to purchase any personal property, as it deems necessary or desirable from time to time, provided, however, that if the cost of any additions, alterations, improvements or personal property shall in any calendar year exceed in the aggregate the sum of Two Thousand Five Hundred and no/100 (\$2,500.00) Dollars (which sum shall be increased in direct proportion to any increase in the Consumer Price Index subsequent to the date of the recording of this DECLARATION as published by the Bureau of Labor Statistics of the U.S. Department of Labor, using the U.S. City Average, all items (1967=100), or any similar index if the foregoing Index is discontinued) multiplied by the number of LOTS within the SUBJECT PROPERTY as to the time such additions, alterations, or improvements are to be made, then such additions, alterations, or improvements shall not be made without the approval of a majority of the votes of the OWNERS.

E. ASSIGNMENT OF PARKING SPACES. The ASSOCIATION may assign one (1), but no more than two (2), parking space(s) for the exclusive use of each OWNER or any resident of a UNIT, and of their guests and invitees. No OWNER or resident of any UNIT, and none of their guests and invitees, shall park in a parking space assigned to another UNIT. All unassigned parking spaces will be for the general use of the residents of the SUBJECT PROPERTY, and their guests and invitees. Any transfer of title of a LOT shall operate to transfer the exclusive use of the LOT's then assigned parking space. In addition, no OWNER shall sell, reassign or otherwise transfer his right to use his then assigned parking space without the express prior written consent of the BOARD.

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.

A. UTILITIES. Easements as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures 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 such portion of LOT as is not used for construction of UNIT, 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.

- B. SUPPORT. Every portion of a UNIT contributing to the support of a BUILDING or an adjacent UNIT shall be burdened with an easement of support for the benefit of all other UNITS in the BUILDING.
- C. PERPETUAL NONEXCLUSIVE EASEMENT IN COMMON AREAS AND THOSE PORTIONS OF ANY LOT LESS THE UNIT. The area aforereferenced shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all OWNERS and residents of the SUBJECT PROPERTY, and their guests and invitees, for all proper and normal purposes and for the furnishings of services and facilities for which the same are reasonably intended.
- D. ENCROACHMENTS. If any of the COMMON AREAS encroach upon any LOT; if any UNIT encroaches upon any other LOT or upon any portion of the COMMON AREAS; or if any encroachment shall hereafter occur as a result of:
- 1) Construction or reconstruction of any improvements;
  - 2) Settling or shifting of any improvements;
  - 3) Any addition, alteration or repair to the COMMON AREAS made by or with the consent of the ASSOCIATION; or
  - 4) Any repair or restoration of any improvements (or any portion thereof) of 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 COMMON AREAS.
- E. EASEMENTS FOR OVERHANGING. Troughs or gutters, downspouts and discharge therefrom of rainwater and the subsequent flow thereof over the LOTS and COMMON AREAS shall be permitted easements.
- F. SERVICE OF EASEMENT. 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 with 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

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provide their respective authorized services to and for the SUBJECT PROPERTY and the OWNERS.

G. 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, and their guests and invitees.

H. 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:

- 1) 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
- 2) Modify, relocate, abandon or terminate existing easements within or outside of the SUBJECT PROPERTY in favor of the ASSOCIATION and/or 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 PROPERTY, or any portion thereof, or for 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 and adversely interfere with the use of any LOT shall be required or, if same would unreasonably and adversely interfere with the use of any LOT for dwelling purposes, only the joinder of the OWNERS and INSTITUTIONAL LENDERS 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. MAINTENANCE OF THE SUBJECT PROPERTY.

A. BY THE ASSOCIATION. The ASSOCIATION shall maintain in good condition at all times and shall repair and replace as reasonably

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necessary as a COMMON EXPENSE, the following portions of the SUBJECT PROPERTY:

- 1) COMMON AREAS. The ASSOCIATION shall maintain all COMMON AREAS or other areas for which the duty to maintain has been delegated to and accepted by the ASSOCIATION, and all paving, parking areas, landscaping and improvements contained thereon from time to time.
- 2) LANDSCAPING. The ASSOCIATION shall be responsible for the maintenance and care of all landscaping throughout the SUBJECT PROPERTY and in the unpaved portion of contiguous road right-of-ways, except for any landscaping contained within fenced-in areas within any LOTS. The ASSOCIATION shall plant, remove and/or replace sod, plants, flowers, shrubbery and trees when in the sole discretion of the BOARD same is appropriate and in the best interest of the SUBJECT PROPERTY. The ASSOCIATION'S responsibility shall include mowing, trimming, pruning, edging, fertilizing, and weed, insect and disease control.
- 3) SUBDIVISION WELLS AND WATER SPRINKLER SYSTEM. The ASSOCIATION shall maintain and repair wells (if any), pipes and water sprinkler systems throughout the SUBJECT PROPERTY, except for wells, pipes and sprinkler systems serving any UNIT for the fenced-in portions of any lot.
- 4) UTILITY SERVICES. The ASSOCIATION shall maintain utility services not owned by any governmental authority or utility company, except for utility services located within any LOT, which serve only the LOT or the UNIT on the LOT.
- 5) EXTERIOR ROOFS AND WALLS. T h e ASSOCIATION shall maintain the exterior walls and roofs of all BUILDINGS, and all fences upon any LOT, except where such maintenance is required by the negligence or willful acts of any OWNER, or any OWNER'S tenants, guests or invitees, in which event such OWNER shall be responsible for the cost of such maintenance, but the work shall be done by the ASSOCIATION.
- 6) OTHER PROPERTY. The ASSOCIATION shall have the right to maintain such other areas within the SUBJECT PROPERTY as the BOARD determines from time to time is in the best interest of the OWNERS, and the cost of any such maintenance shall be a COMMON EXPENSE.
- 7) EASEMENT. The ASSOCIATION shall have an easement over all LOTS for any maintenance and repairs required to be performed by the ASSOCIATION as more further set forth herein.

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B. BY THE OWNERS. Each OWNER shall maintain his UNIT and all improvements upon his LOT in first class condition, except those portions of his UNIT and LOT which are to be maintained by the ASSOCIATION as discussed above. Included within the responsibility of the OWNER, shall be windows, screens, sliding glass doors, and doors on the exterior of his UNIT, and framing for same, and all landscaping and improvements within the fenced-in areas within the OWNER'S lot, all of which shall be maintained by the OWNER in good condition and repair and in a neat and attractive manner. In the event the OWNER fails to maintain his UNIT to standards acceptable to the ASSOCIATION, then the ASSOCIATION shall have the right to repair and maintain such UNIT and the ASSOCIATION shall have the right to file a lien in accordance with the terms hereof on such LOT for the cost thereof if the OWNER fails to pay therefor within fifteen (15) days notice.

6. A. INSURANCE. The insurance other than title insurance which shall be carried upon the SUBJECT PROPERTY and UNITS shall be governed by the following provisions:

- 1) PURCHASE. All insurance policies covering the SUBJECT PROPERTY shall be purchased by the ASSOCIATION and shall be issued by an insurance company authorized to do business in Florida which has an office or agent located in the vicinity of the SUBJECT PROPERTY.
- 2) APPROVAL BY INSTITUTIONAL LENDERS. Each INSTITUTIONAL LENDER will have the right upon reasonable notice to the ASSOCIATION to review and approve, which approval shall not be unreasonably withheld, the form, content, insurer, limits and coverage 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 INSTITUTIONAL LENDERS the decision of the INSTITUTIONAL LENDER holding mortgages encumbering LOTS which secure the largest aggregate indebtedness shall control.
- 3) NAMED INSURED. The named insured on all policies purchased by the ASSOCIATION shall be the ASSOCIATION, individually and as agent for all OWNERS covered by the policy, without naming them, and as agent for their mortgagees, without naming them.
- 4) CUSTODY OF POLICIES AND PAYMENT OF PROCEEDS. All policies shall provide that payments for losses made by the insurer on account of casualty to any portion of the SUBJECT PROPERTY shall be paid to the Insurance Trustee, and all

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policies and endorsements for casualty losses shall be deposited with the Insurance Trustee.

- 5) COPIES TO OWNERS OR INSTITUTIONAL LENDERS. One (1) copy of each insurance policy or a certificate evidencing same, and all endorsements thereon, shall be furnished by the ASSOCIATION to each OWNER and INSTITUTIONAL LENDER who holds a mortgage upon a LOT covered by the policy, and in writing requests the ASSOCIATION to provide it with such policies.
- 6) PERSONAL PROPERTY AND LIABILITY. OWNERS may obtain insurance at their own expense and at their own discretion for their personal property, personal liability, living expenses, flood damage and for improvements made to their LOT or UNIT.

B. COVERAGE.

- 1) CASUALTY. All UNITS and all improvements upon the SUBJECT PROPERTY and all personal property of the ASSOCIATION are to be insured in an amount equal to one hundred (100%) percent of the then current replacement cost, excluding foundation and excavating costs and other items normally excluded from coverage, as determined annually by the ASSOCIATION. Prior to obtaining any casualty insurance or renewal thereof, the ASSOCIATION shall obtain an appraisal from a fire insurance company or otherwise of the full replacement cost of the UNITS and improvements upon the SUBJECT PROPERTY and all personal property of the ASSOCIATION, without deduction for depreciation, for the purposes of determining the amount of casualty insurance to be obtained pursuant to this Paragraph. Such coverage shall afford protection against:
  - (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;
  - (ii) Such other risks as from time to time shall be customarily insured against with respect to buildings and improvements similar in construction, location and use, including but not limited to vandalism and malicious mischief, and all other risks normally covered by a standard "All Risk" endorsement, where available.
  - (iii) The hazard insurance policy shall cover, among other things, all of the UNITS including, but not limited to, walls, doors, stairways, kitchen cabinets and fixtures, built-in kitchen appliances, electrical fixtures, and

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bathroom cabinets and fixtures, all as originally supplied by DECLARANT or having a value not in excess of that originally supplied by DECLARANT. The hazard insurance policy shall not include any improvements made in any UNIT by an OWNER in addition to or having a value in excess of that originally supplied by DECLARANT, or any furniture, furnishing or other personal property installed or brought into a UNIT, from time to time, by the OWNER or residents of a UNIT, or their guests or invitees.

- 2) **LIABILITY.** Comprehensive general public liability insurance insuring the ASSOCIATION against loss or damage resulting from accidents or occurrences on or about or in connection with the SUBJECT PROPERTY or this DECLARATION and its exhibits, with such coverage as shall be required by the ASSOCIATION, but with a combined single liability of not less than One Million (\$1,000,000.00) Dollars for bodily injury, death or property damage, arising out of a single occurrence, and with cross liability endorsement to cover liabilities of the OWNERS as a group to an OWNER.
- 3) **WORKMEN'S COMPENSATION.** Shall be required if necessary to meet requirements of the law.
- 4) **FIDELITY BONDS.** If required by an INSTITUTIONAL LENDER, the ASSOCIATION shall obtain blanket fidelity bonds for all officers, directors, trustees and employees of the ASSOCIATION and all other persons handling or responsible for funds of or administered by the ASSOCIATION. The total amount of fidelity bond coverage, if required, shall in no event be less than a sum equal to three (3) months aggregate ASSESSMENTS on all LOTS plus reserve funds held by the ASSOCIATION, if any.
- 5) **FLOOD INSURANCE AND SUCH OTHER INSURANCE.** The ASSOCIATION shall maintain such insurance as the ASSOCIATION shall determine from time to time to be desirable or as may reasonably be required by an INSTITUTIONAL LENDER pursuant to Paragraph 6.A.2), and as is customarily obtained with respect to UNITS and improvements similar in construction, location and use to those contained within the SUBJECT PROPERTY, such as, where applicable, contractual and all-written contract insurance, employer's liability insurance and comprehensive automobile liability insurance.

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When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to:

- (i) Subrogation against the ASSOCIATION and against the OWNERS individually and as a group,
- (ii) Any prorate clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk, and
- (iii) Avoid liability for a loss that is caused by an act of one or more directors of the ASSOCIATION or by one or more OWNERS; and shall provide that such policies may not be cancelled or substantially modified (except for increases in coverage for limits of liability) without at least ten (10) days prior written notice to the ASSOCIATION and to the holder of a first mortgage encumbering any LOT which is listed as a scheduled holder of a first mortgage in the insurance policy.

C. **PREMIUMS.** Premiums for insurance policies purchased by the ASSOCIATION shall be paid by the ASSOCIATION as a COMMON EXPENSE, except that any increase in any insurance premium occasioned by misuse, occupancy or abandonment of a UNIT by a particular OWNER, or by a resident of any UNIT, or by a member of their families or their guests or invitees, shall be assessed against and paid by the OWNER.

D. **INSURANCE TRUSTEE.** All casualty insurance policies purchased by the ASSOCIATION shall provide that all proceeds covering casualty losses shall be paid to any national bank or trust company in the vicinity of the SUBJECT PROPERTY with trust powers as may be designated by the ASSOCIATION, as Trustee, which Trustee is herein referred to as the "Insurance Trustee". The Insurance Trustee shall not be liable for payment of premiums or for the renewal or sufficiency of the policies or for the failure to collect any such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and for the benefit of the OWNERS and their respective mortgagees in the following shares, which shares need not be set forth in the records of the Insurance Trustee. Notwithstanding the foregoing, unless the BOARD so determines or unless an INSTITUTIONAL LENDER otherwise requires by written notice to the ASSOCIATION, no Insurance Trustee will be required, and all references in this DECLARATION to an Insurance Trustee shall refer to the ASSOCIATION where the context requires.

1) **COMMON AREAS.** Proceeds on account of damage to COMMON AREAS shall be held in

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as many undivided shares as there are LOTS, the share of each LOT being equal.

- 2) UNITS. Proceeds on account of damage to UNITS shall be held in the following undivided shares:

(i) When the UNITS are to be repaired and restored, for the OWNERS of damaged UNITS in proportion to the cost of repairing the damage suffered by each OWNER.

(ii) When the UNITS are not to be repaired and restored as elsewhere provided, for the OWNERS of all damaged UNITS, each OWNER'S share being proportionate to purchase price.

- 3) INSTITUTIONAL LENDER. In the event a mortgagee endorsement has been issued as to a UNIT, the share of the OWNER shall be held in trust for the INSTITUTIONAL LENDER and the OWNER as their interests may appear. However, no INSTITUTIONAL LENDER shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no INSTITUTIONAL LENDER shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the OWNER and INSTITUTIONAL LENDER pursuant to the provisions of the DECLARATION.

E. DISTRIBUTION OF PROCEEDS. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to, or for the benefit of, the beneficial owners in the following manner:

- 1) EXPENSE OF THE TRUST. All expenses of the Insurance Trustee shall be first paid or provisions made therefor.

- 2) RECONSTRUCTION OR REPAIR. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, remittances to OWNERS and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a LOT and may be enforced by such mortgagee.

- 3) FAILURE TO RECONSTRUCT OR REPAIR. If it is determined in the manner elsewhere provided that the damaged UNITS for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the OWNERS of the damaged UNITS, remittances to OWNERS and their mortgagees being payable jointly to them. This is a

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covenant for the benefit of any mortgagee of a LOT and may be enforced by such mortgagee.

4) CERTIFICATE. In making distribution to OWNERS and their mortgagees, the Insurance Trustee may rely upon a certificate of the ASSOCIATION executed by the President and Secretary as to the names of the OWNERS and mortgagees together with their respective shares of the distribution.

5) LIMITATION ON USE OF PROCEEDS. In no event may any hazard insurance proceeds for losses to any portion of the SUBJECT PROPERTY be used for other than expenses of the Insurance Trustee or for repair, replacement or reconstruction of any damage, without the approval of at least eighty (80%) percent of the votes of the OWNERS.

F. ASSOCIATION AS AGENT. The ASSOCIATION is hereby irrevocably appointed agent for each OWNER and for the holder of a mortgage or other lien upon a LOT and for each owner of any other interest in the SUBJECT PROPERTY to adjust all claims arising under insurance policies purchased by the ASSOCIATION and to execute and deliver releases upon the payment of claims.

G. NOTICE OF POSSIBLE INADEQUATE INSURANCE COVERAGE. In any legal action in which the ASSOCIATION may be exposed to liability in excess of insurance coverage protecting it and the OWNERS, the ASSOCIATION shall give notice of any excess exposure within a reasonable time to all OWNERS who may be exposed to the liability, and they shall have the right to intervene and defend.

H. INSPECTION OF INSURANCE POLICIES. A copy of each insurance policy purchased by the ASSOCIATION shall be made available for inspection by any OWNER or INSTITUTIONAL LENDER at reasonable times.

7. RECONSTRUCTION OR REPAIR AFTER CASUALTY.

A. DETERMINATION TO RECONSTRUCT OR REPAIR. If any part of the SUBJECT PROPERTY is damaged or destroyed by casualty, whether or not the damage will be repaired shall be determined in the following manner:

1) COMMON AREAS. If the damaged improvement is contained within a COMMON AREA, the damaged property shall be reconstructed or repaired, unless sixty-seven percent (67%) of the OWNERS and fifty-one percent (51%) of the INSTITUTIONAL LENDERS consent to any use of insurance proceeds other than reconstruction or repair, or if there is to be any reconstruction other than in accordance with the original plans and specifications.

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- 2) **UNITS.** In the event of damage to or destruction of any UNITS as a result of fire or other casualty, except as hereinafter provided, the ASSOCIATION shall arrange for the prompt repair and restoration of the UNIT(S) (including any damaged bathroom and kitchen fixtures equivalent in value to that initially installed by the DECLARANT, but not including improvements having a value in excess of that originally installed by DECLARANT, or furniture, furnishings or other personal property supplied by any OWNER or tenant of an OWNER), and the Insurance Trustee shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Notwithstanding the foregoing, if all of the UNITS within any BUILDING are very substantially damaged or destroyed, then within sixty (60) days after such damage or destruction, a special meeting of the OWNERS shall be called to determine whether the damage or destruction will be repaired and restored. The damage or destruction shall be repaired and restored unless sixty-seven percent (67%) of the OWNERS and fifty-one percent (51%) of the INSTITUTIONAL LENDERS consent to any use of insurance proceeds other than reconstruction or repair, or if there is to be any reconstruction other than in accordance with the original plans and specifications. In the event the damaged UNITS are not to be repaired or restored, the fee title to each LOT containing a damaged UNIT which is not to be repaired or restored shall be vested in the ASSOCIATION and the insurance proceeds attributable to each UNIT be remitted to the OWNERS. By accepting a deed conveying a LOT, each OWNER covenants for himself, his heirs, personal representatives, successors and assigns to execute any and all instruments which may be reasonably required by the ASSOCIATION to carry out the terms of this Paragraph, including, without limitation, a deed conveying all of the OWNER'S right, title and interest in and to his LOT to the ASSOCIATION. In such event, the ASSOCIATION shall diligently pursue selling all of the LOTS which contain UNITS which are not be repaired or restored, and the net proceeds from such sale, together with the net proceeds of insurance resulting from damage or destruction shall be divided among all the OWNERS of such damaged UNITS, each OWNER to receive an equal amount of such net proceeds, provided, however, that no payment shall be made to an OWNER until there has first been paid off out of his share of such funds all liens on his LOT in the order of priority of such liens. The Insurance Trustee may rely upon a certificate of the ASSOCIATION made by its President and Secretary to determine

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whether or not any damaged UNITS are to be reconstructed or repaired.

- B. PLANS AND SPECIFICATIONS. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by a majority of the OWNERS, and if the damaged property is one or more UNITS by the OWNERS of all such UNITS (and their respective INSTITUTIONAL LENDERS), the plans for which are to be altered, which approval shall not be unreasonably withheld.
- C. RESPONSIBILITY. If the damage is only to those parts of a UNIT for which the responsibility of maintenance and repair is that of the OWNER, THE owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the ASSOCIATION.
- D. ESTIMATES OF COST. Immediately after a determination is made to rebuild or repair damage to property for which the ASSOCIATION has the responsibility of reconstruction and repair, the ASSOCIATION shall obtain reliable and detailed estimates of the cost to rebuild or repair from one or more reliable licensed contractors, and shall submit copies of all acceptable estimates to the Insurance Trustee.
- E. ASSESSMENTS. If the proceeds of insurance are not sufficient to defray the estimated cost of reconstruction and repair by the ASSOCIATION; or if at any time during or after the reconstruction and repair the funds for the payment of the cost thereof are insufficient, ASSESSMENTS shall be made against the OWNERS, in sufficient amounts to provide funds to pay such costs. Such ASSESSMENTS for damage to UNITS shall only be made against the OWNERS of the damaged UNITS, in proportion to the cost of reconstruction and repair of each OWNER'S respective unit.
- F. DEDUCTIBLE PROVISION. The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a COMMON EXPENSE.
- G. CONSTRUCTION FUNDS. The funds for payment for costs of reconstruction and repair after casualty which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the ASSOCIATION from ASSESSMENTS against OWNERS shall be disbursed in payment of such costs in the following manner:
- 1) ASSOCIATION. If the total ASSESSMENTS made by the ASSOCIATION in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the ASSOCIATION is more than Twenty-Five Thousand (\$25,000.00) Dollars, then the sums paid upon such

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ASSESSMENT shall be deposited by the ASSOCIATION with the Insurance Trustee. In all other cases, the ASSOCIATION shall hold the sums paid upon such ASSESSMENTS and disburse the same in payment of the costs of reconstruction and repair.

2) INSURANCE TRUSTEE. The proceeds of insurance collected on account of a casualty and the sums deposited with the Insurance Trustee by the ASSOCIATION from collections of ASSESSMENTS against OWNERS on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) ASSOCIATION - LESSER DAMAGE. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the ASSOCIATION is less than Twenty-five Thousand (\$25,000.00) Dollars, then the construction fund is to be upon the order of the ASSOCIATION; provided, however, that upon request to the Insurance Trustee by an INSTITUTIONAL LENDER which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

(ii) ASSOCIATION-MAJOR DAMAGE. If the amount of the estimated costs of reconstruction and repair which is the responsibility of the ASSOCIATION is more than Twenty-Five Thousand (\$25,000.00) Dollars, then the construction funds shall be disbursed in payment of such costs in the manner required by the ASSOCIATION and upon approval of an architect qualified to practice in the State of Florida and employed by the ASSOCIATION to supervise the work.

(iii) OWNER. If there is a balance of insurance proceeds after payment of costs of reconstruction and repair that is the responsibility of the ASSOCIATION, such balance shall next be distributed to OWNERS of damaged UNITS. The distribution shall be in the shares that estimated costs of reconstruction and repair in each damaged UNIT bears to the total of these costs in all damaged UNITS; provided, however, that no OWNER shall be paid an amount in excess of the estimated costs of reconstruction and repair for his UNIT. If there is a mortgage upon a LOT, the distribution shall be paid to the OWNER, and the mortgagee

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jointly, and they may use the proceeds as they may determine.

(iv) SURPLUS. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated.

(v) CERTIFICATE. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by OWNERS upon ASSESSMENTS shall be deposited by the ASSOCIATION with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the ASSOCIATION or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amount to be paid, nor to determine whether surplus funds to be distributed are less than the ASSESSMENTS paid by OWNERS. Instead, the Insurance Trustee may rely upon a certificate of the ASSOCIATION executed by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided, however, that when a mortgagee is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to an OWNER and further provided that when the ASSOCIATION or a mortgagee which is the beneficiary of any insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the ASSOCIATION shall first be obtained by the ASSOCIATION for disbursements in payment of costs of reconstruction and repair.

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8. ASSESSMENTS.

A. Each OWNER, except as provided in paragraph 8. D. below, regardless of how title is acquired, including without limitation a purchaser at a judicial sale, shall be liable for all ASSESSMENTS coming due while he is the OWNER, and except as provided in Paragraph 11.A.6), shall be liable for all unpaid ASSESSMENTS owed by the prior OWNER of the OWNER'S LOT,

without prejudice to any right the OWNER may have to recover from the prior OWNER any ASSESSMENTS paid by the OWNER. However, no OWNER shall be liable for any ASSESSMENTS owed by DECLARANT. Assessments for common expenses shall be paid monthly.

- B. Prior to the beginning of each calendar year, the BOARD shall adopt, a budget for such calendar year which shall estimate all of the COMMON EXPENSES to be incurred by the ASSOCIATION during the calendar year, including, in its discretion, reserves for future maintenance and repairs to the roofs and exteriors of the UNITS and to the other improvements to the SUBJECT PROPERTY, the maintenance of which is the obligation of the ASSOCIATION. 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 ASSESSMENT for COMMON EXPENSES. From time to time during the calendar year, the BOARD may modify the budget for the calendar year, 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 in equal periodic payments, as provided in the notice from the ASSOCIATION, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until:
- 1) The notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or
  - 2) The ASSOCIATION notifies the OWNER in writing of a change in 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 the notification of such ASSESSMENTS.
- C. In addition to ASSESSMENTS for COMMON EXPENSES, the first OWNER acquiring title from DECLARANT to a LOT containing a new UNIT shall pay to the ASSOCIATION a contribution to a working capital fund of the ASSOCIATION 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 or otherwise as the

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ASSOCIATION shall determine from time to time and need not be restricted or accumulated.

- D. Until such time as DECLARANT no longer owns any LOT, or until DECLARANT notifies the ASSOCIATION in writing that DECLARANT elects to pay ASSESSMENTS for COMMON EXPENSES as in the care of any other OWNER, DECLARANT shall not be liable for ASSESSMENTS for COMMON EXPENSES for any LOTS 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 amounts payable to the working capital fund. During such period when DECLARANT is not liable for ASSESSMENTS for COMMON EXPENSES for LOTS owned by DECLARANT, the budget of the ASSOCIATION shall be prepared based upon DECLARANT'S good faith 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 equal to what said ASSESSMENTS would be if the development of the SUBJECT PROPERTY was complete. Such obligation of DECLARANT shall be deemed an ASSESSMENT, and if DECLARANT fails to pay same, the ASSOCIATION shall have a lien for sale, and may record a claim of lien against all of the SUBJECT PROPERTY owned by declarant, and may foreclose same all as provided in paragraph 11 of this DECLARATION.
- E. SPECIAL ASSESSMENTS may be levied when, in the discretion of the ASSOCIATION, the costs attributable to such ASSESSMENT arises from the negligence or willful act of the OWNER against when the SPECIAL ASSESSMENT is to be levied.

9. USE RESTRICTIONS.

- A. NO TRADE OR BUSINESS. No trade, business, profession, or commercial activity, or any other non-residential use, shall be conducted upon any portion of the SUBJECT PROPERTY or within any LOT or UNIT. Each LOT and UNIT shall be used exclusively by a single family. For purposes of this restriction, family shall mean: (a) a group of natural persons related to each other by blood, by marriage or adoption, or who maintain a monogamous relationship between adults and the children of the partners to such relationship; or (b) a group of not more than two (2) persons not so related who maintain a common household in a UNIT.
- B. LEASING. All leases of a UNIT must be in writing and specifically be subject to this DECLARATION, the ARTICLES and the BY-LAWS, and copies delivered to the ASSOCIATION prior to occupancy by the tenant(s). Any person(s) occupying a UNIT in the absence of the OWNER shall be deemed occupying the UNIT pursuant to a lease, regardless of the presence of absence of consideration with respect to the occupancy. Notwithstanding the foregoing, an

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OWNER may permit members of his immediate family to occupy his UNIT as a guest in his absence for periods of less than six (6) months, provided the BOARD is given prior written notice of such occupancy.

- C. ALTERATIONS, ADDITIONS OR IMPROVEMENTS. No OWNER shall make, install, place or remove any alterations, additions, improvements or changes of any kind or nature whatsoever to, in or upon any portion of the COMMON AREAS, the OWNER'S LOT, including any fenced-in area, or the exterior of the OWNER'S UNIT, unless the OWNER first obtains the written consent of the ASSOCIATION to such addition, alteration, improvement or change. Any request by an OWNER for consent by the ASSOCIATION to any addition, alteration, improvement or change shall be in writing and shall be accompanied by plans and specifications or other details as the ASSOCIATION may deem reasonably necessary in connection with its determination as to whether or not it will approve any such addition, alteration, improvement or change. The ASSOCIATION'S approval as to same shall not be unreasonably withheld, but may be withheld based upon aesthetic considerations. All additions, alterations, improvements or changes made by an OWNER shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, and with any conditions imposed by the ASSOCIATION with respect to design, structural integrity, aesthetic appeal, construction details or otherwise. An OWNER making or causing to be made any additions, alterations, improvements or changes, agrees, and shall be deemed to have agreed, for such OWNER, and the OWNER'S heirs, personal representative, successors and assigns, as appropriate, to hold the ASSOCIATION and all other OWNERS harmless from any liability or damage to the SUBJECT PROPERTY and expenses arising therefrom. Each OWNER shall be solely responsible for and shall maintain all exterior additions, alterations, improvements or changes made by the OWNER or his predecessor in a first class condition and in good working order as originally approved by the ASSOCIATION. The foregoing shall not be deemed to prohibit repairs or replacements required to be made by the OWNER, provided such repairs or replacements are in substantial conformity, including materials and colors, with that originally installed by the DEVELOPER or last approved by the ASSOCIATION.

OWNER may erect a fence, however, such fencing may not exceed six feet (6') in height, shadowbox style, and painted to match existing privacy fences. The fences behind non-waterfront homes may be ten feet (10') out from the rear of the building, the width of the home. On waterfront lots, the fences may be twenty feet (20') out from the rear of the building, the width of the home. Erection of such a fence, however, is subject to ASSOCIATION approval and all other

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governmental authorities, including the Building Department.

- D. OUTSIDE STORAGE OF PERSONAL PROPERTY. The personal property of the OWNER shall be stored inside the OWNER'S UNIT and shall not be left outside overnight, with the exception of the OWNER'S permitted motor vehicles.
- E. NO TEMPORARY BUILDING. No out-buildings, portable buildings, temporary or accessory buildings or structures, storage buildings, or tents, shall be erected, constructed or located upon any LOT for storage or otherwise, without the prior written consent of the ASSOCIATION.
- F. 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 for periods not exceeding twelve (12) hours, and except for garden trash and rubbish to be collected, same shall be placed in appropriate trash facilities or bags. All containers are to be kept in a clean and sanitary condition and out of sight. No obnoxious or offensive odors shall be permitted.
- G. AUTOMOBILE AND VEHICLES. Only automobiles, small trucks not exceeding 2,000 pounds, vans and other vehicles commonly used as private passenger vehicles may be parked within the SUBJECT PROPERTY overnight. Other types of vehicles, recreational vehicles, campers, boats and trailers, may not be parked or stored overnight, or for more than four (4) hours in any day. No vehicle shall be parked overnight if commercial equipment or commercial lettering is exposed in or upon the vehicle. The foregoing restriction shall not be deemed to prohibit the temporary parking of commercial vehicles making delivery to or from, or used in connection with providing services to, any UNIT. No motor vehicle shall be stored within the SUBJECT PROPERTY which is not in operating condition, and no major repairs of motor vehicles are permitted within the SUBJECT PROPERTY. Motorcycles are not permitted, except with the prior written consent of the ASSOCIATION which may be withdrawn at any time, and any permitted motorcycles must be equipped with appropriate noise muffling equipment so the operation of same does not create an unreasonable annoyance to the residents of the SUBJECT PROPERTY. All allowed motorcycles must be garaged. Notwithstanding any language to the contrary, any prohibited vehicle may be kept by the OWNER if same is garaged and kept out of sight.
- H. ANIMALS AND PETS. No animals, livestock or poultry of any kind shall be permitted on any LOT or in any UNIT except for common household pets. Any household pets must not be kept or maintained for commercial purposes and must not be an unreasonable nuisance or annoyance

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to other residents of the SUBJECT PROPERTY. All household pets must be carried or kept on a leash when outside of a UNIT or in a fenced-in area. Any OWNER will be required to immediately pick up any animal waste deposited by his pet on any portion of the SUBJECT PROPERTY. No unit owner may maintain in his UNIT more than one animal, such as dogs and cats.

- I. AIR CONDITIONING UNITS. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted, except with written consent of the ASSOCIATION.
- J. CLOTHESLINES AND OUTSIDE CLOTHES DRYING. No clothesline or clothes pole shall be erected, and no clothes-drying is permitted which is visible from the exterior of the LOT.
- K. NUISANCES AND ANNOYANCES. 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 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.
- L. OUTSIDE ANTENNAS. No outside antennas or satellite dishes are permitted.
- M. SIGNS. No signs are permitted which are visible from the exterior of any LOT without the written consent of the ASSOCIATION.
- N. WINDOW TREATMENTS. Window treatments consisting of draperies, blinds, decorative panels, or other tasteful window covering treatments are required, 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.
- O. SURFACE WATER MANAGEMENT. The surface water management system for the SUBJECT PROPERTY shall be installed, operated and maintained in accordance with all permits and approvals issued by any controlling governmental authority. Furthermore, the surface water management system shall not be adversely interfered with, changed or altered, except pursuant to permits or approvals issued by the controlling governmental authority.
- P. MAINTENANCE. Except for portions of the SUBJECT PROPERTY to be maintained by the ASSOCIATION as elsewhere provided, each OWNER shall maintain, in a first class condition, his LOT and his UNIT and all other improvements existing upon his LOT from time to time.

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Q. 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 a waiver of any of the restrictions contained herein as same may be applied in the future.

R. GARAGES. Garages shall be used as parking and storage spaces. Garage Doors shall be kept closed when not in use. OWNERS who have two (2) additional parking spaces may convert the garage to living area subject, however, to ASSOCIATION approval and all necessary governmental permits, including approval of the Building Department.

S. EXCEPTIONS. The foregoing use and maintenance restrictions shall not apply with respect to the customary and usual activities in connection with the development of the SUBJECT PROPERTY, the construction of BUILDINGS, UNITS and other improvements within the SUBJECT PROPERTY, nor to the sale of UNITS within any portion of the SUBJECT PROPERTY. Specifically, and without limitation, DECLARANT and any other person or entity developing or initially constructing UNITS within any portion of the SUBJECT PROPERTY shall have the right to:

- 1) Construct any BUILDINGS, UNITS or improvements within the SUBJECT PROPERTY, and make any additions, alterations, improvements or changes thereto;
- 2) Maintain customary and usual sales, general office and construction operations within the SUBJECT PROPERTY;
- 3) Place, erect or construct portable temporary or accessory buildings or structures within the SUBJECT PROPERTY for sales construction, storage or other purposes;
- 4) Temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any portion of the SUBJECT PROPERTY; and
- 5) Post, display, inscribe or affix to the exterior of a UNIT or upon any portion of the SUBJECT PROPERTY "For Sale" or other reasonable signs used in the development or construction of any portion of the SUBJECT PROPERTY and for promotional purposes.

10. PARTY WALLS.

A. PARTY WALLS. Each common wall shared by two (2) UNITS which divides the two (2) UNITS shall be a party wall for the perpetual

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benefit of and use by the OWNERS of the two (2) UNITS, including their respective heirs, assigns, successors and grantees.

- B. EASEMENT FOR ENCROACHMENT. Each OWNER hereby grants to the OWNER of the adjacent UNIT(S) an easement for the continuance of any encroachment of the party wall on the adjoining UNIT existing as a result of the construction of the party wall, or which may come into existence thereafter as a result of settling or shifting of the party wall, or as a result of repair or reconstruction of the party wall.
- C. REPAIR AND MAINTENANCE. Except as otherwise provided herein, each OWNER shall bear the responsibility to repair and maintain the unfinished surface of the exterior portion of the party wall which is located within his UNIT. As to the structural and interior portions of the party wall, each OWNER shall share equally in the cost of the repair, maintenance and reconstruction of same. However, if any OWNER'S negligence or willful misconduct causes damage to or destruction of a party wall, such negligent or willfully mischievous OWNER shall bear the entire cost of repairing or reconstructing the party wall. If an OWNER executes a mortgage encumbering his UNIT, then the holder of the mortgage shall have the full right, at its option, to exercise the rights of its mortgagor as an OWNER hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the mortgagee for repairs of reconstruction and not reimbursed to the mortgagee by the OWNER.
- D. EASEMENT FOR REPAIRS. Each OWNER shall have the right to enter into an adjacent UNIT where necessary in connection with the repair, maintenance or reconstruction of a party wall, at reasonable times and upon reasonable notice. The foregoing right shall constitute an easement and a covenant running with the land.
- E. MATERIALS, LOCATION AND SIZE. Whenever a party wall is to be repaired, maintained or reconstructed, same shall be performed with the same or similar materials and quality as the original party wall. Whenever a party wall or any part thereof shall be reconstructed, it shall be reconstructed such that it shall be of the same size and shall be at the same location as initially constructed and shall be of the same or similar materials and quality as used to initially construct the party wall.
- F. USE. Each OWNER shall have the right to the full use of the party wall for whatever purposes he chooses, subject to the limitation that such use shall not infringe upon the rights of the owner of the adjoining UNIT, or his enjoyment of the party wall, or in any manner impair the structure of the party wall. The term "use" shall and does include normal interior usage such as paneling, plastering,

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painting, decorating and erection of tangent walls and shelving, but prohibits any form of alteration (other than a minor alteration) which would cause an aperture, hole, break or other displacement of the original structure forming the party wall. Additionally, each OWNER shall not cut windows or other openings in the party wall, nor make any hereinabove prohibited alterations, additions or structural changes to the party wall unless agreed upon by both OWNERS sharing the party wall and the ASSOCIATION.

11. DEFAULT.

A. MONETARY DEFAULTS AND COLLECTION OF ASSESSMENTS.

1) INTEREST AND LATE PAYMENT FEES.

ASSESSMENTS and installments on ASSESSMENTS not paid within ten (10) days after the date when they are due shall bear a late payment fee of \$25.00 plus interest at the then highest rate of interest, allowable by law, but not greater than eighteen (18%) percent per year, 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.

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 for all other ASSESSMENTS payable to the ASSOCIATION.

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 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 of 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 OWNER

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according to the records of the ASSOCIATION, 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, coming due after the recording of the Claim of Lien, until the Lien is satisfied. The lien is in effect until all sums secured by it have been fully paid or until the lien is barred by law. 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.

- 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 attorneys' 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'S lien. The BOARD is authorized to settle and compromise the ASSOCIATION'S lien if the BOARD deems a settlement or compromise to be in the best interest of the ASSOCIATION.
- 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 individual or entity to whom the Certificate of Title is issued is entitled to the appointment of a receiver to collect the rent.
- 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 the payment of such

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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 the 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 (other than a foreclosure 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) 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.
- 8) UNPAID ASSESSMENTS-CERTIFICATE. Any OWNER shall have the right to require from the ASSOCIATION a certificate showing the amount of unpaid ASSESSMENTS against him with respect to this LOT. The holder of a mortgage or other lien of record shall have the same right as to any LOT upon which he has a lien. Any person other than the owner who relies upon such certificate shall be protected thereby.
- 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 of 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 attorneys' fees incurred by the ASSOCIATION incidental to the collection of assessments and other monies owed to 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

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the ASSOCIATION, in the inverse order that such ASSESSMENTS were due.

B. NON-MONETARY DEFAULTS. In the event of a substantive violation by any OWNER (other than the non-payment of any ASSESSMENT or other monies) of any of the provisions of this DECLARATION, or of the ARTICLES or BY-LAWS, the ASSOCIATION shall notify 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 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, the ASSOCIATION may, at its option:

- 1) Commence an action to enforce the performance on the part of the OWNER, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
- 2) Commence an action to recover damages; and/or
- 3) 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%) percent of such expense, and all expenses incurred by the ASSOCIATION in connection with any legal proceedings commenced against any OWNER, 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 such ASSESSMENT, and may take such action to collect such ASSESSMENT or foreclose said lien as is 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.

C. 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 met by the

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proceeds of insurance carried 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. 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 such ASSESSMENT, and may take such action to collect such ASSESSMENT, or foreclose said Lien as is the case and in the manner of any other ASSESSMENTS as provided herein.

D. 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 met by the proceeds of insurance carried by the ASSOCIATION. Furthermore, any violation of any of the provisions of this DECLARATION, of the ARTICLES, or the BY-LAWS, 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.

E. RIGHT OF ASSOCIATION TO EVICT TENANTS, OCCUPANTS, GUESTS AND INVITEES.

With respect to 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 BY-LAWS, 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 compel the person to leave the SUBJECT PROPERTY and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, shall be assessed against the applicable OWNER who such person was visiting or with whose permission such person was present on the SUBJECT PROPERTY, and the ASSOCIATION may collect such ASSESSMENT and have a lien for same as elsewhere provided. The foregoing shall not be deemed to limit, modify, or affect any other rights or remedies the ASSOCIATION may have the respect to similar actions by an owner or a member of his

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immediate family residing with him in the UNIT.

F. 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 BY-LAWS, shall not constitute a waiver of the right of the ASSOCIATION to enforce such right, provision, covenant or condition in the future.

G. 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 BY-LAWS, 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.

H. 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, or 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 require compliance with the provisions contained herein, but no OWNER shall be entitled 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 reasonable attorneys' fees and costs of the litigation.

12. 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, sixty-seven percent (67%) of the OWNERS and fifty-one percent (51%) of the INSTITUTIONAL LENDERS 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

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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 DECLARANT owns any LOT, or holds any mortgage encumbering any LOT.

13. AMENDMENT.

- A. Any amendment made by DECLARANT must be approved by the INSTITUTIONAL LENDER holding the greatest number of first mortgages encumbering LOTS, and also must be approved by the Federal Housing Administration or by the Veteran's Administration if any mortgage encumbering a LOT is guaranteed or insured by either such agency, if such amendment materially adversely affects the OWNERS or materially and adversely affects the general scheme of development created by this DECLARATION. Such approval shall specifically not be required where the amendment is made to correct errors or omissions or is required to comply with the requirement of any INSTITUTIONAL LENDER so that such lender will make sure or guarantee mortgage loans for the LOTS or is required by any governmental authority. Notwithstanding any language herein to the contrary, so long as the DECLARANT owns one-fourth (1/4th) or more of the land covered by the Declaration of Covenants and Restrictions, approval of the Veterans Administration shall be required for any amendment. Approval of the Veterans Administration is also required with regard to annexation of additional lands; dedication and mortgaging of common areas; dissolution of the Association; Amendment of the Articles of Incorporation of the Association; and Amendment of the Declaration of Covenants and Restrictions.
- B. This DECLARATION may also be amended with the approval of not less than sixty-seven (67%) percent of the votes of the entire membership of the ASSOCIATION and fifty-one percent (51%) of the INSTITUTIONAL LENDERS, unless otherwise provided herein.
- C. Any amendment to this DECLARATION must be recorded in the public records of the county in which the SUBJECT PROPERTY is located, and except for amendments made by DECLARANT, the amendment shall contain a certification by the President and Secretary of the ASSOCIATION that the amendment was duly adopted.
- D. 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

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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 be made which adds or amends any material provision of this DECLARATION, the ARTICLES, or the BY-LAWS, which establish, provide for, govern or regulate voting, ASSESSMENTS, ASSESSMENTS Liens or subordination of such liens, or any provisions which are for the express benefit of INSTITUTIONAL LENDERS except for amendments granting or expanding the rights of protections of the foregoing without the approval of INSTITUTIONAL LENDERS holding first mortgages encumbering at least fifty-one (51%) percent of the LOTS. So long as DECLARANT owns any LOT, no amendments may make any changes to any right, privilege, power or option of DECLARANT, unless DECLARANT joins in the amendment.

14. SURFACE WATER MANAGEMENT. The ASSOCIATION shall specifically operate and maintain the surface water management system as permitted by the Broward County Water Management Division including all lakes, retention areas, culverts, and related appurtenances. Additionally, the ASSOCIATION shall make and enforce any and all rules governing any activities on, about, or under the surface water management system. If the ASSOCIATION is dissolved, the property consisting of the surface water management system shall be conveyed to an appropriate agency of local government. If the conveyance is not accepted, then the surface water management system must then be dedicated to a similar non-profit corporation.

- A. It is the responsibility of the ASSOCIATION to operate and maintain the surface water management system.
- B. The surface water management system shall be owned by the ASSOCIATION.
- C. The cost of operation and maintenance of the surface water management system shall be collected and assessed as common expense to the ASSOCIATION.
- D. Any amendment which would affect the surface water management system, including the water management portions of the COMMON AREAS, must have the prior approval of the Broward County Water Management Division.
- E. That this paragraph 14 of this DECLARATION shall be in effect for fifty (50) years and shall be renewed or terminated as provided elsewhere.

15. BILL OF RIGHTS. The ASSOCIATION has, by this document, been granted an extensive variety of powers to be exercised by the ASSOCIATION, its BOARD, and/or its CORPORATE OFFICERS. The use, misuse, and/or improper, unwise, unjust, or discriminatory use of such powers have choked the courts with unnecessary and needless litigation, caused ASSOCIATION members unnecessary and needless expense, and have contributed to the decline in property values of housing units governed by

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Homeowner's Associations. Accordingly, anything to the contrary notwithstanding, no act, rule, expense, or activity may be undertaken by the ASSOCIATION in any manner or form concerning or pertaining to the following without first obtaining the written consent of eighty (80%) percent of all members of the ASSOCIATION. This paragraph may not be amended without approval of at least eighty (80%) percent of the BOARD and at least eighty (80%) of all members of the ASSOCIATION;

- A. Every member has the right to sell, lease, mortgage or convey any interest in his unit, for any period of time, to any individual or entity of his choosing. The ASSOCIATION shall have no right of first refusal, no right of approval or disapproval, no right to require any application, no right to require any application fee, and no right to in any manner or form to hinder, delay or interfere with any OWNER'S right to freely alienate his UNIT by sale, lease or mortgage.
- B. Other than in pursuance of maintenance or special assessment collection, the ASSOCIATION shall have no right to levy any fine or penalty against any member.
- C. The ASSOCIATION may make no rule interfering, amending or altering the rule concerning pets described in paragraph 9. H., of this DECLARATION.
- D. The ASSOCIATION may make no rule or regulation the result of which would be discriminatory because of age. All human beings, regardless of age shall have the right to occupy units. The intent of this paragraph is not to unreasonably interfere with reasonable health and safety rules such as prohibitions of use of the swimming pool by children without adult supervision.
- E. The ASSOCIATION may undertake no litigation, the cost and expense of which may reasonably be expected to exceed \$1,000.00, whether to be reimbursed or not except to collect unpaid assessments.

16. SPECIAL PROVISIONS REGARDING INSTITUTIONAL LENDERS.

- A. NOTICE OF ACTION. Upon written request to the ASSOCIATION by an INSTITUTIONAL LENDER holding, insuring or guaranteeing a first mortgage encumbering any UNIT identifying the name and address of the holder, insurer, or guarantor and the UNIT number or address, any such holder, insurer or guarantor will be entitled to timely written notice of:
  - 1) Any condemnation loss or any casualty loss which affects a material portion of the SUBJECT PROPERTY or any LOT on which there is a first mortgage held, insured or guaranteed by such holder, insurer or guarantor, as applicable;
  - 2) Any delinquency in the payment of ASSESSMENTS or other monies owed by an

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OWNER, or any other default in the performance by the OWNER of any obligation under this DECLARATION, the ARTICLES, or the BY-LAWS, which OWNER'S UNIT is subject to a first mortgage held, insured or guaranteed by such holder, insurer or guarantor, which remains uncured for a period of sixty (60) days;

- 3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the ASSOCIATION;
- 4) Any proposed action which would require the consent of a specified percentage of INSTITUTIONAL LENDERS.

B. CONSENT OF INSTITUTIONAL LENDERS. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s) encumbering any LOTS is required by this DECLARATION, the ARTICLES, the BY-LAWS, or to any action of the ASSOCIATION, or to any other matter relating to the SUBJECT PROPERTY, 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 an 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 evidence that the applicable consent or approval was given 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.

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17. MISCELLANEOUS PROVISIONS.

- A. CONFLICT WITH ARTICLES OR BY-LAWS. In the event of any conflict between the ARTICLES and the BY-LAWS and this DECLARATION, this DECLARATION, the ARTICLES, and the BY-LAWS, in that order, shall control.
- B. 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, but not limited to, the right to exercise architectural control and to approve any deviation from any use restrictions and the BOARD is expressly authorized to so delegate any power or right granted by this DECLARATION.

- C. RIGHTS OF SUCCESSORS IN INTEREST AND ASSIGNEES OF DECLARANT. Any right, power or authority granted to or reserved by the DECLARANT pursuant to this DECLARATION, the ARTICLES or the BY-LAWS, either express or implied, may not be exercised or enforced by any successor in interest or assignee of the DECLARANT, unless the DECLARANT specifically assigns its rights hereunder to such purchaser by written document recorded in the public records of the county in which the SUBJECT PROPERTY is located.
- D. PARTIAL INVALIDITY. 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.
- E. GENDER. Unless otherwise so required, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
- F. INTERPRETATION. Provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community, and for the maintenance of community facilities, the LOTS, the UNITS, and the COMMON AREAS. The Article and Section headings have been inserted for convenience only and shall not be construed, considered or referred to in resolving questions of interpretation or construction.
- G. REAL COVENANTS. All of the restrictions, reservations, covenants, conditions and easements contained herein constitute covenants running with the land and shall rule perpetually unless terminated or amended as provided herein, and shall be binding upon all OWNERS as herein defined, and in consideration of receiving and by acceptance of any deed, grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions of this DECLARATION and the ARTICLES and BY-LAWS. Both the burdens imposed and the benefits derived from this DECLARATION shall run with each LOT, as herein defined.

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- H. PRIOR APPROVAL OF HUD/VA. So long as the Developer is entitled to elect a majority of the members of the Board of Directors of the Association, annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dissolution and amendment of the Articles, requires prior approval of HUD/VA.
- I. MORTGAGE OR CONVEYANCE. Notwithstanding any other language herein to the contrary, the COMMON AREA shall not be mortgaged or conveyed without consent of at least two-thirds (2/3) of the LOT OWNERS (excluding the Developer).

IN WITNESS WHEREOF, DECLARANT has executed this DECLARATION this 27<sup>th</sup> day of MAY, 1990.

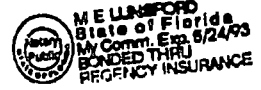
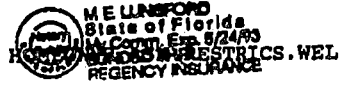
WITNESSES:  
H. Arcling  
\_\_\_\_\_

GREENVALE INVESTMENTS, INC.,  
a Florida corporation  
BY: [Signature]  
Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of MAY, 1990, by HORACE A. FONSECA, PRESIDENT, of GREENVALE INVESTMENTS INC, on behalf of the corporation.

My commission expires: \_\_\_\_\_ Notary Public  
State of Florida at Large



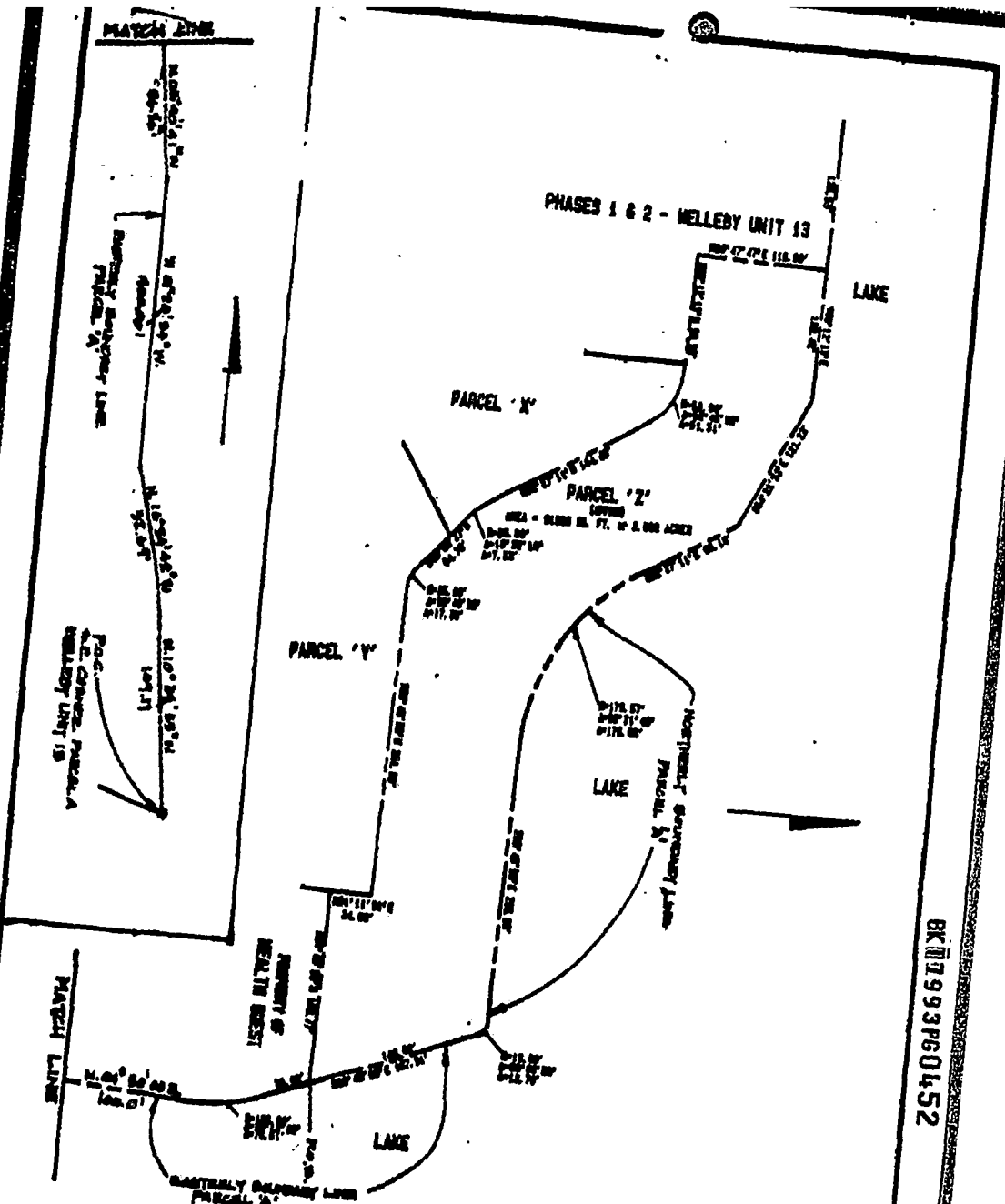
BK 1793PC0450



EXHIBIT "A"

Parcel "2", a portion of Parcel "A",  
"WELLEBY UNIT THIRTEEN", according to the  
Plat thereof, as recorded in Plat Book  
109, at Page 40 of the Public Records of  
Broward County, Florida.

BK 07993 PG 0451



BK 993P60452

NOTE: THIS DRAWING IS NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL

CLIENT: <b>SOUTHEAST FINANCIAL</b>	
TITLE: <b>SKETCH OF LEGAL DESCRIPTION - PARCEL "Z"</b>	DATE: _____
CERTIFICATION: I HEREBY CERTIFY THAT THE HEREIN DESCRIBED SKETCH IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION AND SUPERVISION. I FURTHER CERTIFY THAT THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS FOR LAND SURVEYING IN THE STATE OF FLORIDA (CHAPTER 21HH-6 FAC) PURSUANT TO SECTION 472.027, FLORIDA STATUTES.	REVISIONS
	DATE OF FIELD SURVEY: <b>N/A</b>

**Ralph B. Benuzzio & Associates, Inc.**  
**Consulting Engineers, Planners, Surveyors**  
 1001 WEST OAKLAND PARK BOULEVARD  
 FT. LAUDERDALE, FLORIDA 33351  
 (305) 748-3885

JOB NO: **BR077**  
 FB: **—** PG: **—**  
 SCALE: **1"=100'**  
 DWG DATE: **9-1-88**  
 DWN BY: **WGM**  
 SHEET: **1 OF 2**

LEGAL DESCRIPTION

PARCEL "Z"

A PORTION OF PARCEL "A". "WELLEBY UNIT THIRTEEN", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 109, AT PAGE 40, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID PARCEL "A"; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL "A", NORTH 10° 34' 35" WEST FOR 169.17 FEET; THENCE NORTH 16° 54' 42" WEST FOR 52.67 FEET; THENCE NORTH 01° 26' 34" WEST FOR 400.00 FEET; THENCE NORTH 08° 40' 41" WEST FOR 56.36 FEET; THENCE NORTH 04° 30' 00" EAST FOR 100.00 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE WEST; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 1600.00 FEET A CENTRAL ANGLE OF 25° 15' 00" AN ARC DISTANCE OF 70.51 FEET; THENCE NORTH 20° 45' 00" WEST FOR 39.89 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL (THE LAST SIX MENTIONED COURSES BEING COINCIDENT WITH THE SAID EASTERLY BOUNDARY LINE); THENCE NORTH 88° 48' 59" WEST FOR 159.77 FEET; THENCE NORTH 01° 11' 01" EAST FOR 34.00 FEET; THENCE NORTH 88° 48' 59" WEST FOR 251.08 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET A CENTRAL ANGLE OF 39° 49' 32" AN ARC DISTANCE OF 17.38 FEET; THENCE NORTH 48° 59' 27" WEST FOR 64.76 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 14° 32' 16" AN ARC DISTANCE OF 7.22 FEET; THENCE NORTH 32° 27' 11" WEST FOR 164.49 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 52.00 FEET, A CENTRAL ANGLE OF 56° 45' 02" AN ARC DISTANCE OF 51.51 FEET; THENCE NORTH 89° 12' 13" WEST FOR 98.55 FEET; THENCE NORTH 00° 47' 47" EAST FOR 110.00 FEET TO A POINT LYING ON THE NORTHERLY BOUNDARY LINE OF SAID PARCEL "A"; THENCE ALONG SAID BOUNDARY LINE SOUTH 89° 12' 13" EAST FOR 109.42 FEET; THENCE SOUTH 64° 21' 53" EAST FOR 121.23 FEET; THENCE SOUTH 32° 27' 11" EAST FOR 99.16 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST; THENCE ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 179.57 FEET, A CENTRAL ANGLE OF 56° 21' 48" AN ARC DISTANCE OF 176.65 FEET; THENCE SOUTH 88° 48' 59" EAST FOR 326.03 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST; THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 10.67 FEET, A CENTRAL ANGLE OF 68° 03' 59" AN ARC DISTANCE OF 12.70 FEET (THE LAST FIVE MENTIONED COURSES ALSO BEING COINCIDENT WITH SAID NORTHERLY BOUNDARY LINE); THENCE ALONG THE EASTERLY BOUNDARY LINE OF SAID PARCEL "A" SOUTH 20° 45' 00" EAST FOR 148.02 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING AND BEING IN THE CITY OF SUNRISE, BROWARD COUNTY, FLORIDA, AND CONTAINING 2.098 ACRES (91,388 SQUARE FEET) MORE OR LESS.

BK 17993P60453

CLIENT:	SOUTHEAST FINANCIAL	DATE	REVISIONS
TITLE:	ATTACHMENT TO SKETCH OF LEGAL DESCRIPTION		
PARCEL "Z"			

**Ralph B. Benuzzio & Associates, Inc.**  
**Consulting Engineers, Planners, Surveyors**

10001 WEST OAKLAND PARK BOULEVARD  
 FT. LAUDERDALE, FLORIDA 33351  
 (305) 748-3885

JOB NO. 88077  
  
 SHEET 2 OF 2

# State of Florida



## Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC., a corporation organized under the Laws of the State of Florida, filed on June 11, 1990, as shown by the records of this office.

The document number of this corporation is N38553.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the 12th day of June, 1990.



Jim Smith  
Secretary of State

CR2E022 (6-89)

BK 17993PG0454

EXHIBIT "B"

FILED  
1990 JAN 11 PM 11:53  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION  
OF  
WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC.  
a Florida corporation not for profit

THE UNDERSIGNED hereby associate themselves together for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and certify as follows:

ARTICLE I

NAME:

The name of the Corporation shall be WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC., and the registered office of this corporation shall be 8211 W. Broward Blvd., Penthouse Suite 3, Plantation, FL or such other place as the Board of Directors may designate. For convenience this corporation shall be referred to as the "Association".

ARTICLE II

PURPOSES:

1. The purpose for which the Association is organized is to manage, operate and maintain the project known as WELLEBY LAKES, hereinafter referred to as the "Project". Except as otherwise provided herein, the terms used in these Articles of Incorporation shall be defined in accordance with the Declaration of Restrictions.
2. This Association is organized for the purpose of providing a convenient means of administering the Project by the owners thereof.
3. The Association shall have no capital stock and shall make no distribution of income or profit to its members, Directors or Officers.

ARTICLE III

POWERS:

1. The Association shall have all of the common law and statutory powers of a corporation not for profit.
2. The Association shall have all of the powers reasonably necessary to implement the purpose of the Association, including but not limited to the following:
  - A. To adopt a budget or budgets and to make and collect assessments against members to defray the costs of the Association.

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- B. To use the proceeds of assessments in the exercise of its powers and duties.
  - C. To maintain, manage, repair, replace and operate all the Project Property, including but not limited to obtaining and maintaining adequate insurance to protect the Association and the Project Property.
  - D. To reconstruct improvements after casualty and construct further improvements to all the Project Property.
  - E. To make and amend rules and regulations governing the operation and use of all Project Property.
  - F. To enforce by legal means the provisions of the Declaration of Restrictions, these Articles, the By-Laws of the Association and the Rules and Regulations for the use of all the Project Property.
  - G. To contract for the management of the Project and to delegate to such contractor all powers and duties of the Association except such as are specifically required by any of the Association's Documents to have approval of the Board of Directors or the members of the Association.
  - H. Notwithstanding anything herein to the contrary, the Association shall exercise only such powers as are in furtherance of the exempt purposes of organizations set forth in Section 501(c) (7), of the Internal Revenue Code and its regulations as the same may now exist or as they may be hereinafter amended from time to time.
3. All funds and the titles to all property acquired by the Association and the proceeds thereof shall be held only for the benefit of the members in accordance with the provisions of the Declaration of Restrictions, these Articles of Incorporation and the By-Laws of the Association.

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ARTICLE IV

MEMBERS:

The qualifications of members, the manner of their admission, and voting by members shall be as follows:

- 1. All Owners of Units in the Project shall be members of this Association, and no other persons or entities shall be entitled to members. Each Unit shall be entitled to one vote.
- 2. Changes in membership in the Association shall be established by the recording in the Public Records of Broward County, Florida, of a deed or other instrument establishing a change of record title to a Unit in the Project and the delivery to the Association of a copy of such recorded instrument,

the new Owner designated by such instrument, thereby becoming a member of the Association. The membership of the prior Owner shall be thereby terminated.

- 3. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

ARTICLE V

**DIRECTORS:**

- 1. The affairs of the Association will be managed by a Board of not less than three (3) nor more than nine (9) Directors as shall be determined by the By-Laws, and in the absence of such determination shall consist of three (3) Directors.
- 2. Directors of the Association shall be appointed or elected at the Annual Meeting of the members in the manner determined by the By-Laws.
- 3. Until the first election of Directors, the following Persons shall serve in that capacity:

HORACE A. FONSECA

MICHAEL E. LUNSFORD

SCARLETT R. FONSECA

ARTICLE VI

**OFFICERS:**

The affairs of the Association shall be administered by a President, a Vice President, and a Secretary/Treasurer, all of whom shall be Directors, and as many Assistant Vice-Presidents, Assistant Secretaries and Assistant Treasurers as the Board of Directors shall from time to time determine, who need not be Directors. Such Officers shall be elected by the Board of Directors at its first meeting following the Annual Meeting of the members of the Association, which officers shall serve without compensation at the pleasure of the Board of Directors. The same person may hold two offices, the duties of which are not incompatible provided, however, that the office of President and Vice-President shall not be held by the same person, nor shall the office of President and Secretary/Treasurer or Assistant Secretary/Treasurer be held by the same person. The names and addresses of the Officers who shall serve until their successors are designated by the Board of Directors are as follows:

- PRESIDENT: HORACE A. FONSECA
- VICE-PRESIDENT: MICHAEL E. LUNSFORD
- SECRETARY: MICHAEL E. LUNSFORD
- TREASURER: SCARLETT R. FONSECA

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ARTICLE VII

**INDEMNIFICATION:**

Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved by reason of his being or having been a Director or Officer of the Association or any settlement thereof, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Directors has approved such settlement and reimbursement as being for the best interest of the Association. The foregoing indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled. The use of any gender shall include all genders where appropriate.

ARTICLE VIII

**BY-LAWS:**

The By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded by not less than a majority of all of the Directors or by not less than a majority of all the members of the Association and not less than a majority of all of the Directors, in the manner provided by the By-Laws.

ARTICLE IX

**AMENDMENTS:**

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
2. Until the first election of all of the members of the Board of Directors by members other than the Developer, proposal of an amendment and approval thereof shall require only the affirmative action of a majority of all of the Directors, and no meeting of the members of the Association nor any approval thereof need be had.
3. In addition to the procedure set forth above, a resolution approving a proposed amendment may be proposed by either the Board of Directors or by the members of the Association, and after being proposed and approved by one of such bodies, requires the approval of the other body. Except as otherwise provided herein, such approvals must be by not less than a majority of all the Directors and by not less than a majority of all of the

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members of the Association. Directors and the members not present at the meeting considering the amendment may express their approval in writing within ten (10) days after such meeting.

- 4. An amendment shall be effective when filed with the Secretary of State of the State of Florida and recorded in the Public Records of Broward County, Florida.
- 5. Notwithstanding any language herein to the contrary, Amendment to the Articles of Incorporation requires the approval of at least two-thirds (2/3) of the lot owners.

ARTICLE X

**TERM:**

The term of the Association shall be the life of the Project unless the Association is terminated sooner.

ARTICLE XI

**SUBSCRIBERS:**

The names and residences of the subscribers to these Articles of Incorporation who shall also constitute the first Board of Directors to hold office until successors are elected and have qualified are as follows:

<u>NAME</u>	<u>ADDRESS</u>
HORACE A. FONSECA	8116 N.W. 68TH AVENUE TAMARAC, FLORIDA 33321
MICHAEL E. LUNSFORD	3532 N.W. 98TH TERRACE SUNRISE, FLORIDA 33351
SCARLETT R. FONSECA	8116 N.W. 68TH AVENUE TAMARAC, FLORIDA 33321

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ARTICLE XII

**REGISTERED AGENT:**

The Corporation hereby appoints KENNETH P. WURTENBERGER, ESQUIRE, whose address is 8211 West Broward Boulevard, Penthouse Suite 3, Plantation, Florida 33324, as its Registered Agent to accept service of process within this State.

ARTICLE XIII

**BILL OF RIGHTS:**

The Association has, by this document, been granted an extensive variety of powers to be exercised by the Association, its Board of Directors, and/or its Corporate Officers. The use, misuse, and/or improper, unwise, unjust or discriminatory use of such powers have choked the courts with unnecessary and needless litigation, caused Homeowner's

Association members unnecessary and needless expense, and have contributed to the decline in property values of housing units governed by Homeowner's Associations. Accordingly, anything to the contrary notwithstanding, no act, rule, expense or activity may be undertaken by the Association in any manner or form concerning or pertaining to the following without first obtaining the written consent of eighty (80%) percent of all members of the Association. This Article may not be amended without approval of at least eighty (80%) percent of all Directors and at least eighty (80%) percent of all members:

1. Every member has the right to sell, lease, mortgage or convey any interest in his unit, for any period of time, to any individual or entity of his choosing. The Association shall have no right of first refusal, no right of approval or disapproval, no right to require any application, no rights to require any application fee, and no right to in any manner or form to hinder, delay or interfere with any unit owner's right to freely alienate his unit by sale, lease, or mortgage.
2. Other than in pursuance of maintenance or special assessment collection, the Association shall have no right to levy any fine or penalty, against any member.
3. The Association may make no rule interfering, amending or altering the rule concerning pets described in paragraph 9. I. of the Declaration of Restrictions for Welleby Lakes.
4. The Association may make no rule or regulation the result of which would be discriminatory because of age. All human beings, regardless of age, shall have the right to occupy units.
5. The Association may undertake no litigation, the cost and expense of which may reasonably be expected to exceed \$1,000.00, whether to be reimbursed or not.

ARTICLE XIV

PRIOR APPROVAL OF HUD/VA:

So long as the Developer is entitled to elect a majority of the members of the Board of Directors of the Association, annexation of additional properties, mergers and consolidations, mortgaging of Common Area, dissolution and amendment of the Articles, requires prior approval of HUD/VA.

ARTICLE XV

DISSOLUTION:

If the Association is dissolved, the assets shall be dedicated to a public body, or conveyed to a nonprofit organization with similar purposes as are contemplated herein.

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IN WITNESS WHEREOF, the subscribers have hereto affixed their signatures this 27<sup>th</sup> day of MAY, 1990.

[Signature]  
HORACE A. FONSECA

[Signature]  
MICHAEL E. LUNSFORD

[Signature]  
SCARLETT R. FONSECA

I hereby accept appointment as Registered Agent.

[Signature]  
KENNETH P. WURTEBERGER

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME on this day personally appeared HORACE A. FONSECA, MICHAEL E. LUNSFORD and SCARLETT R. FONSECA, to me well known and known to me to be the individuals described in and who executed the foregoing Articles of Incorporation, and acknowledged before me that they executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State named above, this 27<sup>th</sup> day of MAY, 1990.

My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
BY COMMISSION EXPIRES 12/31/91  
COMM. NO. 123456789

HOMEOWNR.ASN\ARTICLES.WEL

[Signature]  
Notary Public

State of Florida at Large

FILED  
1990 JUN 11 AM 11:53  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

BR 117993PG0461

BY-LAWS

OF

WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC.

a corporation not for profit  
under the laws of the State of Florida

I. IDENTITY

These are the By-Laws of WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, hereinafter referred to as the "Association", the Articles of Incorporation of which were filed in the Office of the Secretary of State of Florida, and subject to the Charter granted by the Secretary of State and the Declaration of Covenants and Restrictions of Welleby Lakes affecting the land and all improvements thereon known as WELLEBY LAKES, hereinafter referred to as the "Project". The Association has been organized for the purpose of administering the Project upon certain lands in Broward County, Florida.

1. The office of the Association shall be at the address set forth in the Articles of Incorporation or at such other place as may be designated by the Board of Directors from time to time.
2. The fiscal year of the Association shall be the calendar year.
3. The seal of the corporation shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.

II. MEMBERS' MEETINGS

1. The annual members' meeting shall be held at such site as may be designated by the Board of Directors on the 5<sup>th</sup> day of JANUARY each year, for the purpose of electing directors and of transacting any other business authorized to be transacted by the members, provided, however, if that day is a legal holiday, or a Saturday or Sunday, the meeting shall be held at the same hour on the next succeeding day.
2. Special members' meetings shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from twenty-five percent (25%) of the members.
3. Notice of all members' meetings stating the time and place and the objects for which the meeting is called shall be given by the President or Secretary-Treasurer, unless waived in writing. Such notice shall be in writing to each member at his address as it appears on the books of the Association and shall be sent by mail to each member not less than fourteen (14) days nor more than sixty (60) days prior to the date of the meeting, and the post office certificate of mailing shall be retained in the records of the Association as proof of such mailing. The person giving the notice shall also furnish an affidavit attesting to such mailing. In addition, a notice of the meeting shall be posted at a conspicuous place on the Project property at

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least fourteen (14) days prior to said meeting. Members may waive notice of specific meetings and may take action by written agreement without meeting. The Institutional Mortgagees holding the greatest dollar amount of mortgages on the units shall, upon written request, be entitled to receive notice of all members' meetings. Failure to provide such notice shall not invalidate any action taken at an otherwise properly noticed meeting.

4. The percentage of members of voting rights required to make decisions and to constitute a quorum shall be a majority of the owners of the units. Decisions shall be made by owners of a majority of the units represented at a meeting at which a quorum is present. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof within ten (10) days after such meeting shall constitute the presence of such member of the purpose of determining a quorum.

5. Each unit shall be entitled to one (1) vote. The vote of the owners of a unit owned by more than one (1) person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the owners of the unit and filed with the Secretary-Treasurer of the Association. Such certificate shall be valid until revoked by a subsequent certificate. If such certificate is not on file, the vote of such owners shall not be considered in determining the requirements for a quorum nor for any other purposes, provided, however, a spouse shall be entitled to cast the vote for a unit owned by husband and wife in the absence of the other spouse.

6. Votes may be cast in person or by proxy. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof and must be filed with the Secretary at or before the appointed time of the meeting. In no event shall any proxy be valid for a period of longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it.

7. Approval or disapproval of a member upon any matter, whether or not the subject of an Association meeting, shall be by the same person who would cast the vote of such member if in an Association meeting.

8. If any meeting of members cannot be organized because a quorum of unit owners has not attended, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

9. The order of business at annual members' meetings and, as far as practicable at all other members' meetings, shall be:

- A. Call to Order
- B. Election of Chairman of the meeting
- C. Calling of the roll and certifying of proxies
- D. Proof of notice of meeting or waiver of notice
- E. Reading and disposal of any unapproved minutes
- F. Report of Officers
- G. Report of Committees
- H. Election of Directors

- I. Unfinished Business
- J. New Business
- K. Adjournment

10. For so long as the Developer holds units for sale in the ordinary course of business, or until the Developer terminates its control of the Association, as provided for herein, whichever shall first occur, the proceedings of all meetings of members of the Association shall have no effect unless approved by the Board of Directors. Further, provided that for so long as the Developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

A. Assessment of the Developer as a unit owner for capital improvements.

B. Any action by the Association that would be detrimental to the sale of units by the Developer as determined by the Developer in its sole discretion. An increase in assessments for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of units.

11. The term "Developer" as used in these By-Laws shall mean GREENVALE INVESTMENTS, INC., a Florida corporation, its successors and assigns, particularly including, but in no way limited to, successors through mortgage foreclosure or grantees of deeds in lieu of foreclosure, unless the context otherwise requires.

### III. DIRECTORS

1. The affairs of the Association shall be managed by a Board of Directors who shall be members of the Association, excepting that the first Board of Directors and their successors appointed by the remaining Directors shall consist of three (3) Directors who need not be members of the Association, and thereafter the membership of the Board shall consist of not less than three (3) Directors. Within these limits, the Board of Directors may from time to time increase or decrease the number of persons to serve on the Board.

2. Election of Directors shall be conducted in the following manner:

A. Members of the Board of Directors shall be elected by a plurality of the votes cast at any annual meeting of the members of the Association. There shall be no cumulative voting. The President may appoint a nominating committee which shall nominate a minimum of one (1) member of the Association for each office coming vacant. This nominating process shall not preclude any member desiring to be a candidate for membership on the Board of Directors from being nominated from the floor.

B. Vacancies in the Board of Directors may be filled by the remaining Directors subject to the provisions of Paragraph 2.C. of this Article. A Director appointed to fill a vacancy in office shall serve the remainder of the term of the office to which he is appointed.

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C. The Directors named in the Articles of Incorporation shall serve until the first election of Directors, and any vacancies in office occurring before the first election shall be filled by the remaining Directors, and such successor Directors need not be members of the Association. In the event there are not remaining Directors, then any such vacancies shall be filled by the Developer.

(a) At such time as fifteen percent (15%) or more of the units are owned by unit owners other than the Developer, the unit owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors of the Association.

(b) Unit owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board of Directors of the Association three (3) years after sales by the Developer have been closed of fifty percent (50%) of the units that will be operated ultimately by the Association, or three (3) months after sales have been closed by the Developer of ninety percent (90%) of the units that will be operated ultimately by the Association, or when all of the units that will be operated ultimately by the Association have been completed and some of them have been sold and none of the others are being offered for sale by the Developer in the ordinary course of business, whichever shall first occur.

(c) The Developer shall be entitled to elect not less than one (1) member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the units that will be operated ultimately by the Association.

(d) As to the election of Directors pursuant to Subparagraphs (a), (b) and (c), within sixty (60) days after Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors of the Association, the Association shall call and give not less than thirty (30) days nor more than forty (40) days notice of a meeting of the Unit Owners for this purpose.

(e) Nothing in this subparagraph shall be construed so as to preclude the Developer from relinquishing control of the Board of Directors at any time the Developer may so elect.

3. At the first Election at which all of the members of the Board of Directors are elected by Unit Owners other than the Developer, the majority of those Directors receiving the most votes shall serve for a two (2) year term, and the remaining Directors shall serve for a one (1) year term. Thereafter, each Director's service shall extend for a two (2) year period and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided. Prior to the first election at which all of the members of the Board of Directors are

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elected by Unit Owners other than the Developer, the term of office of each Director elected by the members shall extend until the next annual meeting of the members and thereafter until his successor is duly elected or qualified or until he is removed in the manner elsewhere provided.

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

5. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph at least three (3) days prior to the date named for such meeting unless such notice is waived. Notice of all meetings of the Board shall be posted in a conspicuous place on the project property for the benefit of Unit Owners at least forty-eight (48) hours in advance of such meetings, except in an emergency. All meetings of the Board of Directors shall be open to all members of the Association who shall attend as observers unless called upon by the chairman of the meeting to participate.

6. Special meetings of the Directors may be called by the President and must be called by the Secretary-Treasurer at the written request of one-third (1/3) of the votes of the Board. Not less than three (3) days notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

7. Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Any Director's attendance at a meeting shall constitute a waiver of the notice of that meeting.

8. A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At an adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. A Director may join in the action of a meeting by signing a concurrence in the minutes thereof within ten (10) days after such meeting, but such concurrence shall not constitute the presence of such Director for the purpose of determining a quorum at the meeting.

9. The presiding officer of Directors' meetings shall be the President of the Association. In the absence of the President, the Vice-President shall preside.

10. Directors' fees, if any, shall be determined by the members of the Association.

11. Any member of the board of administration may be recalled and removed from office with or without cause

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by the vote or agreement in writing by a majority of all unit owners. A special meeting of all the unit owners to recall a member or members of the board of administration may be called by ten percent (10%) of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

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

All of the powers and duties of the Association shall be exercised by the Board of Directors including those existing under the common law and statutes, the Articles of Incorporation of the Association and the Declaration of Restrictions. Such powers and duties of the Directors shall be exercised in accordance with the provisions of the Declaration of Covenants and Restrictions which governs the use of the land, and shall include, but not be limited to, the following:

1. To adopt a budget and to make and collect assessments against members to defray the costs of the maintenance and administration of the project.
2. To use the proceeds of assessments in the exercise of its powers and duties.
3. To maintain, manage, repair, replace and operate the project, including but not limited to, obtaining and maintaining adequate insurance to protect the Association and the Project property.
4. To reconstruct improvements after casualty and to construct further improvements to the Project property.
5. To make and amend rules and regulations respecting the use of the Project property. Such rules and regulations may be promulgated by the Board of Directors at any duly noticed meeting of the Board or of the members.
6. To enforce by legal means the provisions of the Project Documents, the Articles of Incorporation, the By-Laws, and the Rules and Regulations of the Association.
7. To contract for management of the Project and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the Project Documents to have approval of the Board of Directors or members of the Association.
8. To pay taxes and assessments which are liens against any part of the project other than individual units and the appurtenances thereto, and to assess the same against the Unit Owner subject to such liens.
9. To pay the cost of all power, water, sewer and other utility services rendered to the Project and not billed to owners of individual units.
10. To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association, including but not limited to accountants and attorneys.
11. To bond any and all employees, Officers and Directors of the Association, for which the Association shall bear the cost.

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#### V. OFFICERS

1. The executive officers of the corporation shall be a President, a Vice President and a Secretary-Treasurer, all of whom shall be Directors who shall be elected annually by the Board of Directors at its first meeting following the annual meeting of the Association. No person may hold two or more offices. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board determines necessary to manage the affairs of the Association.

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

3. The Vice President shall in the absence of or disability of the President exercise the powers and duties of the president. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

4. The Secretary-Treasurer shall keep the minutes of the proceedings of the Directors and the members in a book available for inspection by the Directors or members, or their authorized representatives, at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years. He shall attend to the giving and serving of all notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall have custody of all property of the Association, including financial records, funds, securities and evidences of indebtedness. He shall keep the financial records of the Association and shall keep the assessment rolls, the accounts of the members, and the books of the Association in accordance with good accounting practices. He shall perform all other duties incident to the office of Secretary-Treasurer of an Association and as may be required by the Directors or the President.

5. The compensation of all employees of the Association shall be fixed by the Directors. These provisions shall not preclude the Board of Directors from employing a Director or Officer as an employee of the Association nor preclude the contracting with a Director for the management of the Project.

#### VI. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration of Covenants and Restrictions and the Articles of Incorporation shall be supplemented by the following provisions:

##### 1. Assessments.

A. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such an account shall

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designate the name and address of the owners or owner, the dates and amount in which the assessments come due, the amount paid upon the account and the balance due upon assessments. Assessments shall be made against members not less frequently than quarterly in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. In the absence of a determination by the Directors as to the frequency of assessments, assessments shall be due and payable monthly. The personal liability of a Unit Owner for assessments shall survive the termination of such Unit Owner's membership in the Association.

B. Any member shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit. The holder of a mortgage or other lien shall have the same right as to any Unit upon which he has a lien. Any person who relies upon such certificate shall be protected thereby.

C. Notice of any meeting, whether a meeting of the Board of Directors or of the members of the Association, at which assessments against members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of each assessment.

2. Budget.

A. The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the costs of performing the functions of the Association and estimates of the income of the Association. The proposed annual budget of Common Expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications. The budget shall include but not be limited to the following items:

(a) Common Expense Budget

- i. Administration of the Association
- ii. Management fees, if applicable
- iii. Maintenance
- iv. Insurance
- v. Security, if applicable
- vi. Other expenses
- vii. Operating capital
- viii. Reserves
- ix. Utilities

(b) Proposed assessment against each member, together with an annual total of assessments.

B. Copies of the proposed budget and proposed assessments shall be transmitted to each member thirty (30) days prior to the meeting of the Board of Directors at which the budget is to be considered, together with a notice of the meeting which shall state the time and place of the meeting. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member. If an adopted budget requires assessments against the members in any fiscal or calendar year exceeding

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one hundred fifteen percent (115%) of the assessments for the preceding year, the Board of Directors, upon written application of ten percent (10%) of the members of the Association to the Board of Directors, shall call a special meeting of the members of the Association within thirty (30) days, upon not less than ten (10) days written notice to each member of the Association. At the special meeting, members shall consider and enact a budget. The adoption of the budget at such a special meeting shall require a vote of a majority of all member. The Board of Directors may propose a budget which exceeds one hundred fifteen percent (115%) of the assessments for the preceding year to the members at a meeting of the members or in writing, and if the budget or proposed budget is approved by the members at the meeting or by a majority of all unit owners in writing, the budget shall be adopted. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacements of the Project property, anticipated to be incurred on a regular or annual basis, or assessments for capital improvements to the Project property shall be excluded from the computation. However, as long as the Developer is in control of the Board of Directors, the Board of Directors shall not impose an assessment for any year greater than one hundred fifteen percent (115%) of the prior fiscal or calendar year's assessment without approval of a majority of all members of the Association.

3. The depository of the Association shall be such bank or banks located in Broward County, Florida, as shall be designated from time to time by the Directors and from which the monies in such account shall be withdrawn only by checks signed by such persons who are authorized by the Directors.

4. Within sixty (60) days following the end of the Association's fiscal year, the Board of Directors shall mail or furnish by personal delivery to each member a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall also be furnished to any Institutional Mortgagee upon written request. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to the following:

- A. Cost for security
- B. Professional and management fees and expenses
- C. Taxes
- D. Cost for recreational facilities
- E. Expenses for refuse collection and utility services
- F. Expenses for lawn care
- G. Cost for building maintenance and repair
- H. Insurance cost
- I. Administrative and salary expenses
- J. General reserves, maintenance reserves and depreciation reserves

5. The Board of Directors shall obtain fidelity bonding of all Officers and Directors who control or disburse funds of the Association. The amount of such bonds shall be determined by the Directors. The

premiums on such bonds shall be paid by the Association as a common expense.

#### VII. PARLIAMENTARY RULES

Robert's Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and By-Laws of the Association or with the Statutes of the State of Florida.

#### VIII. AMENDMENTS

Amendments to the By-Laws shall be proposed and adopted in the following manner:

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

2. Until the first election of all members of the Board of Directors by members other than the Developer, proposal of an amendment and approval thereof shall require only the affirmative action of a majority of all of the Directors, and no meeting of the members of the Association nor any approval thereof need be had.

3. In addition to the procedure set forth in Section 2 above, an amendment may be proposed by either the Board of Directors or by the membership of the Association. Except as otherwise provided herein, a proposed amendment must receive approval of not less than a majority of all the Directors and not less than a majority of the members of the Association.

4. No amendment shall be permitted which shall be adverse to the rights of Institutional Mortgagees without the express consent of all Institutional Mortgagees.

5. An amendment when adopted shall become effective only after being recorded in the Public Records of Broward County, Florida.

6. These By-Laws shall be amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Covenants and Restrictions. No By-Laws shall be revised or amended by reference to its title or number only. Proposals to amend existing By-Laws shall contain the full text of the By-Laws to be amended; new words shall be inserted in the text underlined, and words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of added or deleted, but instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of By-Law. See By-Law . . . for present text." Nonmaterial errors or omissions in the By-Law amendment process shall not invalidate an otherwise properly promulgated amendment.

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**IX. SEVERABILITY AND CONFORMITY TO STATE LAW**

These By-Laws are to be governed by and construed according to the laws of the State of Florida. If it should appear that any of the provisions hereof are in conflict with the Declaration of Covenants and Restrictions or any rule of law or statutory provision of the State of Florida, then such provisions of these By-Laws shall be deemed inoperative and null and void insofar as they may be in conflict therewith, and shall be deemed modified to conform to the Declaration of Covenants and Restrictions or such rule of law.

**X. BILL OF RIGHTS**

The Association has, by this document, been granted an extensive variety of powers to be exercised by the Association, its Board of Directors, and/or its Corporate Officers. The use, misuse, and/or improper, unwise, unjust, or discriminatory use of such powers have choked the courts with unnecessary and needless litigation, caused Association members unnecessary and needless expense, and have contributed to the decline in property values of housing units governed by the Homeowners' Associations. Accordingly, anything to the contrary notwithstanding, no act, rule, expense, or activity may be undertaken by the Association in any manner or form concerning or pertaining to the following without first obtaining the written consent of eighty percent (80%) of all members of the Association. This paragraph may not be amended without approval of at least eighty percent (80%) of all Board of Directors and at least eighty percent (80%) of all members of the Association:

1. Every member has the right to sell, lease, mortgage or convey any interest in his unit, for any period of time, to any individual or entity of his choosing. The Association shall have no right of first refusal, no right of approval or disapproval, no right to require any application, no right to require any application fee, and no right to in any manner or form to hinder, delay or interfere with any unit owner's right to freely alienate his unit by sale, lease or mortgage.
2. Other than in pursuance of maintenance or special assessment collection, the Association shall have no right to levy any fine or penalty, against any member.
3. The Association may make no rule interfering, amending or altering the rule concerning pets described in paragraph 9. H. of the Declaration of Covenants and Restrictions of WELLEBY LAKES.
4. The Association may make no rule or regulation the result of which would be discriminatory because of age. All human beings, regardless of age, shall have the right to occupy units. The intent of this paragraph is not to unreasonably interfere with the reasonable health and safety rules such as prohibitions of use of the swimming pool by children without adult supervision.
5. The Association may undertake no litigation, the cost and expense of which may reasonably be expected to exceed \$1,000.00, whether to be reimbursed or not with the exception of assessment collection.


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XI. CONSISTENCY

Notwithstanding any language herein to the contrary, all provisions of these By-Laws shall be consistent with the Articles of Incorporation of WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC. and the Delcaration of Covenants and Restrictions of WELLEBY LAKES.

The foregoing were adopted as the By-Laws of WELLEBY LAKES HOMEOWNERS' ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida, at the first meeting of the Board of Directors on the 21<sup>st</sup> day of MAY, 1990.

  
SECRETARY-TREASURER

APPROVED;  
  
PRESIDENT

HOMEOWNR.ASN\BY-LAWS.WEL

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RECORDED IN THE OFFICIAL RECORDS BOOK  
OF BROWARD COUNTY, FLORIDA  
L. A. HESTER  
COUNTY ADMINISTRATOR