

**EXHIBIT "5"**

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR SMITH FARM INCLUDING ALL EXHIBITS THERETO  
(THE "MASTER COVENANTS")**

DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS FOR  
SMITH FARM

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EXHIBITS -

"A" Project

"B" Residential Property

"C" Master Common Areas

"D" Articles of Incorporation

"E" Bylaws

"F" Project Plan

**DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS  
FOR SMITH FARM**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS ("Declaration") is made this 24th day of September, 1996 by MINTO COMMUNITIES, INC., a Florida corporation, its successors and assigns (hereinafter referred to as the "Declarant").

- A. Declarant, MINTO COMMUNITIES, INC. a Florida corporation, is the owner of the "Project" (as that term is hereinafter defined).
- B. The Project is located in Palm Beach County, Florida, and is legally described on Exhibit "A" attached hereto and depicted on the "Project Plan" attached as Exhibit "F" hereto.
- C. Declarant is developing the Project as a planned, residential community and, by this Declaration, imposes the covenants, restrictions and easements set forth herein upon the Project.
- D. Declarant may impose additional covenants, restrictions and easements on all or portions of the Project by "Village Declarations" on each "Village" (as those terms are hereinafter defined) in the Project.
- E. Declarant has determined that initially only those portions of the Project described in Exhibits "B" and "C" hereto shall be committed to specific Land Use Classifications under this Declaration, which Land Use Classifications are more fully described in Article 3 hereof.
- F. Declarant has caused the Smith Farm Master Association, Inc. (f/k/a Smith Dairy West Master Property Association, Inc.), hereinafter called ("Master Association") to be formed and has and does hereby delegate and assign to it certain rights, powers, duties, or obligations of operation, administration, maintenance and repair of portions of the Project, as well as the collection and disbursement of the Operating Expenses of the Master Association, all as more particularly set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Project shall hereafter be owned, used, sold, conveyed, improved, encumbered, hypothecated, leased, demised and occupied, all subject to the covenants, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Declaration as hereinafter set forth, which shall run with, benefit and burden all of the Project, and be binding on all parties having any right, title or interest in the Project, or any portion thereof, including the parties' heirs, personal representatives, successors and assigns.

## **ARTICLE 1 DEFINITIONS**

- 1.1 "Additional Property" shall mean and refer to the property added to the Project as provided in Section 2.4 hereof.
- 1.2 "Affiliate" shall mean and refer to any "Person" (as hereinafter defined) which, directly or indirectly, has any ownership interest in Declarant or in which Declarant has any ownership interest, directly or indirectly.
- 1.3 "Architectural Review Committee" or "ARC" or "Committee" shall mean and refer to the committee created pursuant to Article 10 hereof.
- 1.4 "Articles" shall mean and refer to the Articles of Incorporation of the Master Association which have been filed in the office of the Secretary of the State of Florida, a copy of which is attached hereto as Exhibit "D," as such Articles may be amended from time to time.
- 1.5 "Assessment(s)" shall mean and refer to "Common Assessments," "Individual Assessments," and "Special Assessments" (as each is hereinafter defined) collectively, as the context may require.
- 1.6 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Master Association.
- 1.7 "Bylaws" shall mean and refer to the Bylaws of the Master Association, which have been adopted by the Board, a copy of which is attached hereto as Exhibit "E," as such Bylaws may be amended from time to time.
- 1.8 "Civic Site" shall mean and refer to that portion of the Project which Declarant may dedicate to Palm Beach County for the construction and operation of a public facility. The Civic Site is graphically depicted on Exhibit "F" to this Declaration.
- 1.9 "Common Assessment" shall mean and refer to the routine assessment for Operating Expenses described in Section 6.2 hereof.
- 1.10 "County" shall mean and refer to Palm Beach County, Florida, including all of its agencies, divisions, departments, attorneys or agents employed to act on its behalf.
- 1.11 "Declarant" shall mean and refer to Minto Communities, Inc., a Florida corporation, presently having its principal place of business in Broward County, Florida, any affiliate of Declarant and any assignee of Declarant's rights hereunder in accordance with Section 13.13 hereof.

1.12 "Declaration" shall mean and refer to this document, entitled "Declaration of Covenants, Restrictions and Easements for Smith Farm", as the same may be amended from time to time.

1.13 "Dwelling Unit" shall mean and refer to any residential dwelling unit intended as an abode for one family or one integrated household and which is constructed (as evidenced by the issuance of a certificate of occupancy) on portions of the Property more particularly described as Residential Property (as that term is hereinafter defined). Dwelling Unit shall include, without limitation, a detached single family home, an attached townhouse or patio dwelling, each portion of a duplex or other multiplex dwelling, or any apartment type unit contained in any multi-unit, multistory residential building, whether any of the foregoing are subject to fee simple, cooperative, condominium, rental or other forms of ownership or possession. Dwelling Unit also includes, in the case of detached single family houses, or fee simple (non-condominium) attached houses, the real property upon which the Dwelling Unit is constructed.

1.14 "Guaranty Period" shall mean and refer to the period during which Declarant has guaranteed to fund deficits in the Master Association's operating budget, as described in Section 6.04 hereof.

1.15 "Independent Village" shall mean and refer to any Village designated by Declarant as an Independent Village in a Supplemental Declaration recorded with respect to the Village. An Independent Village shall be a Village whose Owners and residents shall receive reduced services from the Master Association and/or shall have reduced use rights in the Master Common Areas. Declarant shall indicate at the time the Independent Village is created the services and/or rights available to Owners of Dwelling Units within the Independent Village. The Assessments with respect to such a Village shall be collected at a reduced rate, as provided in Section 6.3 of this Declaration.

1.16 "Individual Assessment" shall mean and refer to a charge against one or more Owners and their respective Dwelling Unit(s), directly attributable to such Owners' failure to duly perform their obligations hereunder, and the Master Association's enforcement of this Declaration against such Owner(s) and/or Dwelling Unit(s), as further described in Section 6.5 hereof.

1.17 "Institutional Mortgage" shall mean and refer to any bona fide first mortgage encumbering a Dwelling Unit which was made in favor of Declarant, a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, or other lender who makes residential mortgage loans in the ordinary course of its business and is generally recognized in the community as an institutional lender. Institutional Mortgage shall also mean and include a mortgage held by (i) any lender having advanced funds to the Declarant for the purpose of acquiring or developing the Project, or (ii) the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Veterans Administration and Federal Housing Administration or any other agency of the United States of America holding, guaranteeing, or issuing a first mortgage on a Dwelling Unit.

- 1.18 "Institutional Mortgagee" shall mean and refer to the holder of any Institutional Mortgage.
- 1.19 "Land Use Classification" shall mean and refer to one of the specific uses which Declarant has determined to assign to a portion or portions of the Property pursuant to the terms of this Declaration or a Supplemental Declaration, as set forth more fully in Article 3 hereof.
- 1.20 "Management Company" shall mean and refer to the person, firm, or other entity employed by the Master Association as its agent to assist it in fulfilling or carrying out certain duties, powers, obligations, or functions of the Master Association.
- 1.21 "Master Association" shall mean and refer to Smith Farm Master Association, Inc. (f/k/a Smith Dairy West Master Property Association, Inc.), a Florida corporation not-for-profit.
- 1.22 "Master Common Areas" shall mean and refer to those portions, tracts or easements of the Property to be used for Master Common Purposes and legally described in Exhibit "C" attached hereto or so designated and described in any Supplemental Declaration, as dedicated or reserved on any plat recorded in Palm Beach County or otherwise so designated herein (i.e., drainage facilities and mitigation areas pursuant to Sections 9.9 and 9.10, or neighborhood recreational and other commonly used facilities, common driveways, roadways, parking areas, community entrances and landscape buffers). The Master Common Areas are not "condominium property," as that term is defined in Chapter 718, Florida Statutes.
- 1.23 "Master Common Purposes" shall mean and refer to those purposes described in Section 3.2 hereof.
- 1.24 "Members" shall mean and refer to those Persons who are entitled to membership in the Master Association, as provided in Article 5 hereof.
- 1.25 "Notice of Lien" shall mean and refer to the notice described in Section 7.2 hereof.
- 1.26 "Operating Expenses" shall mean and refer to the actual and estimated costs of ownership, maintenance, management, operation, repair and replacement of the Master Common Areas, including reserves for the foregoing to the extent adopted as part of the Master Association's budget, as provided in the Bylaws, including, without limitation: (a) unpaid assessments; (b) the costs of any and all commonly-metered utilities, cable or master television charges, and other commonly-metered charges for the Master Common Areas; (c) costs of management, operation and administration of the Master Association, including, but not limited to, compensation paid by the Master Association to managers, accountants, attorneys and other agents, employees, or independent contractors; (d) costs of all gardening and other services benefitting the Master Common Areas, and all recreational and other commonly used facilities located thereon; (e) costs of operation and maintenance of the gatehouses and associated costs; (f) costs of fire, casualty and liability insurance, workers' compensation insurance, and other insurance covering or connected with the Master

Association or Master Common Areas; (g) costs of bonding the members of the Board and the Management Company; (h) taxes paid by the Master Association, including real property taxes for the Master Common Areas, if any; (i) amounts paid by the Master Association for the discharge of any lien or encumbrance levied against the Master Common Areas, or portions thereof; (j) the costs of the installation, operation, management and maintenance of a food and beverage service operation; (k) the costs of performing any service or obligation imposed by the County, including the obligations to install and maintain the medians on Hypoluxo Road from the Project entrance east to Jog Road and on the medians on Lantana Road from Jog Road to Hagen Ranch Road as required by Zoning Resolution 95-122 of the Palm Beach County Board of County Commissioners; and (l) the costs of any other items or expenses incurred by the Master Association for any reason whatsoever in connection with the Master Common Areas, the Master Association's rights or duties under the Project Documents, and/or for the benefit of the Owners or the Project.

1.27 "Owner" shall mean and refer to a record owner of any percentage of the fee simple interest in a Dwelling Unit, including Declarant, but excluding those Persons having an interest in a Dwelling Unit merely as security for the performance of an obligation. If a Dwelling Unit is owned by more than one Person, the term Owner shall mean each such Person, jointly and severally.

1.28 "Person" shall mean and refer to any of an individual, corporation, governmental agency, trust, estate, partnership, association, two or more persons having a joint or common interest, or any other legal entity with the legal right to hold title to real property.

1.29 "Project" shall mean and refer to the planned residential community which Declarant intends to develop upon the real property in the County legally described in Exhibit "A" attached hereto and now known as "Smith Farm," together with any Additional Property owned by Declarant and subsequently designated a part of the Project by Declarant, with the approval of the County, in a written instrument recorded in the County.

1.30 "Project Documents" shall mean and refer to this Declaration, including all Exhibits attached hereto, the "Articles", "By-Laws" and "Rules" (as hereinafter defined) of the Master Association, all as may be amended and supplemented from time to time.

1.31 "Project Plan" shall mean and refer to the graphic rendering of the Project attached hereto as Exhibit "F."

1.32 "Property" shall mean and refer to those portions of the Project committed to a Land Use Classification, whether so committed by this Declaration or any Supplemental Declaration in accordance with Article 2 hereof. The portions of the Property initially committed to a Land Use Classification are described on Exhibits "B" and "C" hereto.

1.33 "Residential Property" shall mean and refer to those portions of the Property to be used for Residential Purposes and legally described in Exhibit "B" hereto, or so designated and described in any Supplemental Declaration.

1.34 "Residential Purposes" shall mean and refer to those purposes described in Section 3.1 hereof.

1.35 "Rules" shall mean and refer to the Rules and Regulations which are duly adopted by the Association from time to time.

1.36 "Special Assessment" shall mean and refer to a charge against Owners and their Dwelling Units, representing their proportionate share of the cost incurred by the Master Association for: (i) reconstruction of a "Structure" (as hereinafter defined) located on the Master Common Areas, pursuant to the provisions of this Declaration; (ii) installation or construction of any capital improvements, including new Structures, to be located on any Master Common Areas, which the Master Association may from time to time authorize; or (iii) any other extraordinary expense of the Master Association, including, but not limited to, amounts necessary to pay shortages in Operating Expenses of the Master Association, after collections of Common Assessments, as further described in Section 6.6 hereof.

1.37 "Structure" shall mean and refer to an improvement which is constructed or joined together in some definite manner, the use of which requires more or less permanent or temporary location on the ground, or which is attached to something having a permanent or temporary location on the ground. The term shall be construed as if followed by the words "or part thereof," unless otherwise so stated.

1.38 "Supplemental Declaration" shall mean and refer to any document (including, but not limited to a quit claim deed from Declarant to the Master Association or a Village Declaration) which, among other things, when recorded by Declarant in the Public Records of the County with respect to a portion of the Project designates such property to an assigned Land Use Classification under this Declaration, as described in Article 2 hereof.

1.39 "Village" shall mean and refer to any development of Dwelling Units within portions of the Property more particularly described as Residential Property herein and which is designated as such in a "Village Declaration" (as hereinafter defined), Supplemental Declaration, condominium declaration, or other instrument executed by Declarant and recorded in the Public Records of the County.

1.40 "Village Association" shall mean and refer to any property owners' association, homeowners' association, condominium association, or other such entity, its successors and assigns, responsible for administering a single Village pursuant to a Village Declaration. The Master Association is not a Village Association.

1.41 "Village Declaration" shall mean and refer to any document (i) titled "Declaration," (ii) creating covenants, conditions, easements or restrictions, (iii) recorded in the Public Records of the County, (iv) consented to or executed by Declarant, and (v) applicable to all or part of one or more specific Villages, but not to all Villages.

The foregoing definitions shall be applicable to the Project Documents and any Supplemental Declaration, unless specifically stated to the contrary herein or therein.

## **ARTICLE 2 PLAN FOR DEVELOPMENT OF THE PROJECT**

### General Plan of Development

A. Declarant presently plans to develop all of the Project as a multi-staged planned residential community. Declarant desires to foster the development of the Project as a residential community sharing and benefiting from certain amenities and facilities which include, without limitation, the Master Common Areas. Although Declarant has no current plans to develop any portion of the Project for retail or other commercial use, nothing herein shall be deemed to prevent or preclude such development as being inconsistent with a residential development as a component thereof and Declarant may so develop portions of the Project (in accordance with Section 2.2 hereof) so long as zoning and other governmental requirements are satisfied. The Project may contain rental units and/or Villages of rental units. HAGEN RANCH ROAD AND HYPOLUXO ROAD ARE PLANNED COUNTY THOROUGHFARE ROADS.

B. All Dwelling Units to be constructed at the Project shall be located in Villages. Each Village shall be administered by a Village Association in accordance with its Village Declaration, or in Declarant's sole and absolute discretion, by the Master Association.

C. Notwithstanding that the Master Association may administer condominium developments, the Master Association is NOT a condominium association and therefore shall not be affected by the provisions of Chapter 718, Florida Statutes, in any respect. Further, the expressed intent of the Project Documents is that the substantive rights thereunder shall not be retroactively affected by the legislation enacted subsequent to the date of the execution of the Project Documents.

### 2.2

#### Residential Property, Master Common Areas and Real Property Without a Specific Land Use Classification

The real property comprising the Project is composed of Residential Property, Master Common Areas and real property which is subject to this Declaration but which has not been committed to a specific Land Use Classification by Declarant. The real property described in Exhibits "B" and "C" are those portions of the Property to which specific Land

Use Classifications have been assigned by Declarant pursuant to Article 3 hereof. Notwithstanding anything contained herein, Declarant may, in its sole discretion and by its sole act, commit portions of the Property to any land use permitted by applicable governmental regulation. Such land use may be described by an existing Land Use Classification or, in Declarant's sole and absolute discretion, Declarant may create a new Land Use Classification reflecting such land use.

### 2.3 Portions of the Property That May Have Been Withdrawn

Declarant shall have the right, by an amendment to this Declaration executed by Declarant without the consent of the Master Association or the Owners, but with the consent of the County, to withdraw portions of (i) the real property described in Exhibit "A" hereto and (ii) any Residential Property or Master Common Areas owned by Declarant from the Project, thus removing such property from the effect and encumbrance of this Declaration. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall not be required to develop any portion of the real property described in Exhibit "A" hereto.

### 2.4 Additional Property

Declarant or any designee of Declarant (with Declarant's written consent) shall have the right and power, but not the obligation, in its sole and absolute discretion and by its sole act, subject only to the consent of the County, to add "Additional Property" to the terms and conditions of this Declaration. The Additional Property is any land owned by Declarant or another party, which land is not described in Exhibit "A" hereto. The Additional Property shall be annexed to the Project by the execution and recording in the Public Records of the County of an amendment to this Declaration describing such Additional Property as being brought within the description of the Project.

## ARTICLE 3 LAND USE CLASSIFICATIONS

### 3.1 Residential Property

A. "Residential Property" shall be a Land Use Classification assigned by Declarant to that portion of the Property upon which Dwelling Units may be constructed. The initial Residential Property is shown on the Project Plan and legally described on Exhibit "B" hereto. Other portions of the Project may be designated as Residential Property in Supplemental Declarations.

B. Residential Property shall be used only for "Residential Purposes." Residential Purposes shall mean construction and use of Dwelling Units and improvements associated with Owners' use of such property as temporary or permanent habitation. Residential Purposes include, but are not limited to, construction and use of Dwelling Units,

streets, driveways, entranceways, sidewalks, open spaces, parking spaces, landscaping, recreational facilities, lakes and other amenities. No commercial sales operations of any nature may be carried on in the Residential Property except as permitted by Declarant and except for direct accessory services to the Residential Property for Residential Purposes such as the furnishing of utilities, cable television and related ancillary services, Dwelling Unit maintenance, vending machines (including laundry), and such other services as Declarant or the Board shall consent to in writing. Renting of Dwelling Units for residential occupancy shall be a permissible Residential Purpose.

C. In addition to the provisions of this Declaration, the Residential Property may also be subject to the terms of Village Declarations which may further restrict the property being made subject thereto, including, but not limited to (i) the type of Dwelling Units that may be constructed thereon and (ii) the establishment of such other amenities, benefits, covenants, easements, restrictions, or provisions as Declarant shall deem appropriate.

D. The entity primarily responsible for the administration, management, operation, and maintenance of particular Residential Property shall be the Village Association designated to perform same in the Village Declaration encumbering the Residential Property. However, (i) Declarant may assign to the Master Association the primary responsibility of maintaining portions of Residential Property within a Village pursuant to the Village Declaration or a separately recorded instrument, and (ii) the Master Association shall have all the necessary rights and easements to perform the services authorized or required pursuant to Article 8 hereof.

### 3.2

#### Master Common Areas

A. "Master Common Areas" shall be a Land Use Classification assigned by Declarant to that portion of the Property to be used for purposes benefiting Declarant, the Master Association, Members of the Master Association, and, except as may be expressly restricted by the Board or elsewhere in this Declaration, the family members, guests, invitees, and tenants of Members. The initial Master Common Areas are shown on the Project Plan and legally described on Exhibit "C" hereto. Other portions of the Project may be designated as Master Common Areas in Village Declarations or Supplemental Declarations.

B. Master Common Areas shall be used only for "Master Common Purposes." Master Common Purposes may include roadways, sidewalks, landscape buffers and landscape areas, preserve areas, lakes, canals and drainage facilities, mitigation, entry features, gatehouses and gates, signage, recreational amenities, which may include food and beverage amenities, parking, and other uses benefiting the Master Association and its Members generally.

C. The administration, management, operation and maintenance of Master Common Areas shall be the primary responsibility of the Master Association as provided in

the Project Documents. Notwithstanding the foregoing, Declarant or the Board may delegate portions of the Master Association's general rights, powers, duties and obligations to Village Associations with respect to particular areas or services affecting such Villages, and such assignments shall be binding on such Village Associations. This Section 3.2.C shall be operative in accordance with Section 8.2.1. hereof. The Master Association shall have the right to contract with a Management Company or other independent third parties to operate facilities or conduct activities on the Master Common Areas.

D. The Master Association may enter into agreements whereby it may obtain the use, possession or ownership of any real or personal property, on an exclusive or nonexclusive basis, for certain specified purposes and/or whereby it agrees to maintain and pay for the taxes, insurance, administration, upkeep, repair, replacement, maintenance, or any portion of the foregoing, with respect to such property. The aforesaid expenses shall be Operating Expenses. Prior to cessation of the Class B membership, as described in Article 5 hereof, no such agreement shall be entered into without the prior written consent of Declarant.

E. Declarant shall have the right, in its sole discretion, to alter the boundaries of any of the Master Common Areas and construct, develop, or modify the Master Common Areas and any improvements, easements and use rights thereon, or appurtenant thereto, in a manner determined appropriate by Declarant, without the consent of the Master Association, any Village Association, or the Owners, for so long as Declarant shall own any interest in the Project. Declarant shall also have the right at any time as long as Declarant owns any interest in the Project to designate additional Master Common Areas from areas which were previously designated with other Land Use Classifications or by designating portion(s) of the real property described in Exhibit "A" or Additional Property as Master Common Areas. Such rights may be exercised by an amendment to this Declaration which need be executed only by Declarant.

### 3.3 Conveyance of Master Common Areas

A. Declarant shall convey to the Master Association by quit claim deed, from time to time in Declarant's sole discretion, fee simple title to portions of the Master Common Areas and the personal property located thereon and improvements appurtenant thereto, subject to then existing title matters. Such conveyance shall be deemed to include a reservation of easement in favor of Declarant, whether or not expressly reserved in the instrument of conveyance, which easement shall be for any use, without charge, necessary or convenient for Declarant's development, management, or marketing of property within the Project. Declarant shall convey to the Master Association all portions of the Master Common Areas not previously conveyed to the Master Association not later than ninety (90) days after Declarant no longer owns any interest in the Project other than its interest in Master Common Areas. The Master Association shall be required to accept any such conveyance of the Master Common Areas or portions thereof or any easements or other interests therein and recording of such conveyance in the Public Records of the County shall be conclusive evidence of

acceptance by the Master Association. All personal property and improvements appurtenant to such realty or conveyed together with the same shall be deemed conveyed in an "AS IS" condition at the time of conveyance. All costs and expenses of such conveyance shall be paid for by the Master Association. The conveyance shall otherwise be without charge.

B. Once the Class B membership as described in Section 5.4 is terminated, Master Common Areas, or any portion thereof, shall not be mortgaged or transferred without the Master Association first obtaining the approval of not less than two-thirds (2/3) of the then existing votes of all Members. However, after termination of the Class B membership, the Board shall have the right to grant non-exclusive easements or use rights over the Master Common Areas in favor of any public utilities, local governmental authorities or other Persons for private purposes, without further consent of Members, so long as such easements do not materially and adversely affect the rights of Members to enjoy the Master Common Areas (as may be determined in the reasonable discretion of the Board). Prior to the termination of Class B membership, Declarant shall have the absolute right, without the consent of the Master Association or any other party, to grant any easements or other use rights, or otherwise transfer or mortgage Master Common Areas, to any Person. In every instance, however, any interest so conveyed shall be subject to the provisions of this Declaration.

### 3.4 Civic Site

"Civic Site" shall be a Land Use Classification for that portion of the Project dedicated by Declarant to Palm Beach County for construction and operation of a civic facility. A graphic depiction of the Civic Site is contained within Exhibit "F" to this Declaration. Notwithstanding anything in this Declaration to the contrary, should Declarant dedicate the Civic Site to Palm Beach County, and during any time that the Civic Site is owned by the County, or any local government agency, the following shall apply with respect to the Civic Site:

- A. The Civic Site shall not be deemed part of the Master Common Areas;
  - B. The Master Association shall have no right to govern or operate the Civic Site or to impose assessments or liens on the Civic Site or its Owner;  
Civic Site;
  - C. The Use Restrictions contained in this Declaration shall not apply to the
  - D. The owner of the Civic Site shall have no obligation to pay to, or be liable for, assessments to the Master Association with respect to the Civic Site.
- In the event the Civic Site is never dedicated to the County, or is dedicated but is later transferred back to private ownership, then all provisions of this Declaration shall be applicable to the Civic Site and its private Owner(s).

### 3.5. Use-Rights of Declarant

A. Except as may be specifically limited in this Declaration, Declarant shall have the right to make such uses of any portions of the Project as Declarant shall, from time to time, determine. Notwithstanding anything to the contrary contained in this Declaration, Declarant hereby reserves for itself the right to use all Master Common Areas and all such other portions of the Project described above, including improvements constructed thereon, in conjunction with and as part of any program of selling, leasing, constructing and developing the Project, including, but not limited to the right to: (i) enter and transact business; (ii) maintain models and sales offices; (iii) place signs or other advertising; (iv) employ sales personnel; (v) show Dwelling Units; (vi) store or assemble construction components; or (vii) perform other construction activity, all without any additional cost to Declarant. The foregoing activities of Declarant shall not be interfered with or obstructed by any Person, including any Owner or anyone acting through or on behalf of any Owner.

B. Notwithstanding anything to the contrary in the Project Documents or any rule or document affecting a Village Association, to the extent allowed by law, Declarant and any Person designated by the Declarant (retroactively or otherwise) shall be irrevocably empowered without any limitation at all times to sell, lease, rent or transfer Dwelling Units owned by the Declarant or such Person, as the case may be, for any period and under any terms to any purchasers, tenants or transferees without the consent of the Master Association or any Village Association being required. The provisions of this paragraph may not be amended without the written consent of Declarant.

### 3.6 Disputes as to Use

So long as there is a Class B membership, as provided in Article 5 hereof, any dispute as to whether a use (by Declarant or any other Person) of Property is permissible under this Declaration may be resolved by a determination by Declarant alone, which shall be final and binding on the parties. Declarant, however, shall not have any duty to make such determination or hear such dispute.

## ARTICLE 4 USE RESTRICTIONS

### 4.1 Restrictions

The Project shall be held, used and enjoyed subject to the following limitations and restrictions; provided, however, (i) none of the restrictions contained in this Article 4 shall apply to Declarant, Affiliates or any property owned by Declarant or Affiliates, and (ii) any of the following restrictions, or any created by Land Use Classifications under Article 3 hereof, may be modified by or added to by specific provisions of any Supplemental Declaration or amendment to this Declaration executed by Declarant:

A. Structures and Other Improvements. No Structures or Improvements of any kind, including, but not limited to, any building, wall, fence, sign, mailbox, landscaping, planting, swimming pool, tennis court, basketball structure, outdoor play equipment, screen enclosure, driveway, sidewalk, sewer, drain, water area, or outside lighting, shall be erected, placed, planted or maintained on any portion of the Property without the consent of the Architectural Review Committee pursuant to Article 10 hereof.

B. Antennas, Discs and Flagpoles. No outside antennas, discs, aerials, satellite dishes, poles, electronic devices, or flagpoles shall be permitted on any portion of the Property except as may be approved by the ARC, and further conditioned on compliance with County ordinances and the obtaining of applicable governmental approvals, if any.

C. Temporary Structures. No tents or temporary Structures shall be permitted on any portion of the Property unless their size, appearance and temporary location have first been approved in writing by the ARC, and by the County or its appropriate review committee. Any signs to be used in conjunction with any tent or temporary Structure must (i) be approved by the ARC; and (ii) be in compliance with County ordinances and, if applicable, conditioned on procuring required governmental approvals.

D. Parking. Parking shall be permitted only at such locations specifically designated by Declarant or the Board, or as otherwise permitted in the Rules.

E. Residential Purposes and Occupancy. Dwelling Units shall be used for Residential Purposes only. No trade, business, profession or other type of commercial activity may be conducted in any Dwelling Unit; provided, however, rental of Dwelling Units for residential occupancy shall not be deemed commercial activity.

F. Owners' Personal Property. Owners shall store personal property within their respective Dwelling Units and any outdoor furniture, or the like, shall be kept in a neat and clean manner at all times.

G. Factory Built Structures. No Structure of any kind of what is commonly known as "factory built," "modular," or "mobile home" type construction shall be erected anywhere on the Property without the prior written approval of the ARC.

H. Signs For The Sale Or Rent Of Single Family Homes Including Zero Lot Line Homes. One "for sale" or "for rent" sign may be displayed with respect to any Dwelling Unit which is a single family home (including zero lot line homes) under the following conditions:

- (a) The sign may identify the property, the owner or agent and the address and telephone number of the owner or agent relative to the premises upon which the sign is located;
- (b) face surface of such sign shall not be larger than 12 inches in width and 8 inches in height, provided, however, that it shall be permissible to attach thereto one of the following additional signs not exceeding 12 inches in width and 2 1/2 inches in height and containing the wording:
- (I) BY APPOINTMENT ONLY (ii) OPEN
  - (iii) POOL
  - (iv) REALTOR/ASSOCIATE NAME
  - (v) RENTAL/FOR RENT;
- (c) The sign shall be constructed of metal, plastic, wood or pressed wood and shall be fastened to a supporting member constructed of angle iron not exceeding one inch by one inch or four inches by four inches wooden post, provided that said supporting member shall be all white or all black in color and have no letters or numbers upon it;
- (d) The supporting member shall be driven into the ground to provide that the top of the face of such sign shall not be more than 4 feet above the finished grade of the ground;
- (e) All such signs shall be lettered professionally, but such signs shall not be required to be submitted to the ARC for approval;
- (f) Such sign shall be so erected or placed that its centerline is parallel or perpendicular to the front property line;
- (G) Such sign shall not be erected or placed closer than 5 feet from the front of the property line (as opposed to the adjacent street, if different);

{h) Nothing contained herein shall be construed as prohibiting the same wording from being on both the front and the back of the sign;

(I) Where such sign is suspended from an arm of the support, such arm shall not exceed a length of 16 inches;

(j) All such signs shall be erected on a temporary basis;

(k) Such sign shall be kept in good repair and shall not be illuminated or constructed of a reflective material and shall not contain any flags, streamers, movable items or like devices;

(l) Any such sign shall be removed within 5 days from the date a binding agreement is entered into for the sale, lease or rental of the Property or immediately upon the removal of the Property from the market, whichever occurs first; and

(m) No such sign shall be placed on any of the Master Common Areas or Village Common Properties.

## 2. Signs For The Sale Or Rent Of Dwelling Units In Multi-U Unit Buildings.

The Owner of a Dwelling Unit in a multi-unit or multi-story residential building may display only one "for sale" or "for rent" sign in the window of the Dwelling Unit. The sign shall not be larger than 10 inches in width or 8 inches in height. All such signs shall be lettered professionally.

## 3. Other Signs.

No other signs, advertisements, notices or other lettering (except signs indicating a Dwelling Unit's address and Owner's names in front of the Dwelling Units on signs not to exceed one square foot) shall be displayed on any portion of the Property unless the placement, content, form, size, lighting and time of placement of such sign be first approved by the ARC. No sales price may be displayed on any sign. No flashing signs or flags shall be permitted. All signs must also conform with governmental codes and regulations and with any master design plan for signs established by the ARC. None of the provisions of this Article 4.01 H shall apply to the Declarant (of Affiliate) or to Dwelling Units owned by Declarant (or Affiliate).

### I. Walls, Fences and Shutters.

The prior written approval of the ARC shall be required as a condition precedent to the: (a) construction of any wall, fence, hedge or shrubbery on the Property; (b) construction of any wall or fence on any Dwelling Unit (no wall or fence shall be constructed until its height, length, type, design, composition, material and

location is approved in writing by the ARC); and (c) storage of any hurricane, storm or weather shutters, awnings or shades on the exterior of any Structure. Replacement of improvements constructed by the Declarant or previously approved by the ARC, so long as replaced with improvements of like kind and quality, shall not be deemed "construction" or require ARC approval.

J. Automobiles, Commercial Vehicles and Boats

The use or storage of automobiles, commercial vehicles and boats shall be limited as follows:

- (1) Permitted Vehicles. Any vehicle the state registration for which contains a designation of the type of vehicle as "Automobile" shall be presumed to be permitted hereunder. Passenger mini-vans and sports utility vehicles designed for passenger use, and without commercial lettering shall be permitted.
- (2) Prohibited Vehicles and Boats. No commercial truck, commercial van, bus, mobile home, motor home, camper, trailer, recreational vehicle or similar vehicles may be parked overnight at the Project at any time unless totally enclosed in a garage and not visible from the outside. Prohibited vehicles include, but are not limited to, those (i) not designed primarily for the routine transportation of people, rather than equipment or goods, or (ii) bearing any advertising, logo, or other signs or having print or some reference to any commercial undertaking or enterprise. Except as provided below, no boat, watercraft or boat trailer shall be stored on the Project unless totally enclosed in a garage and not visible from the outside.
- (3) General Rules. No vehicles shall be repaired within the Project, except on an emergency basis. No truck or commercial vehicle of any kind shall be permitted to be parked on the Project for a period of more than four hours unless said vehicles are temporarily present and necessary in the actual construction or repair of Improvements or items therein. No vehicle shall be left within the Project for more than one business day if not capable of self-propulsion. All vehicles, including motorcycles, mopeds, etc., shall be equipped with effective sound muffling devices. The Master Association may, but shall not be obligated to, designate certain portions of the Master Common Areas, which may be relocated from time to time, for the parking of trucks, commercial vehicles, buses, recreational vehicles, mobile homes, trailers, boats, and campers. Any such area designated pursuant to this subparagraph C may, in the sole and absolute discretion of the Master Association, be terminated for such use without cause. The Master Association shall have the authority to formulate appropriate Rules concerning the use of any such parking/storage area, including reasonable charges therefor.

K. Pets and Animals.

Only pets belonging to Owners (or those occupying lots through the authority of Owners) will be allowed within the Project, subject to the following further restrictions:

- (1) Commonly accepted household pets such as dogs and cats may be kept in reasonable numbers all as determined by the Master Association in its sole discretion. All animals shall be contained at the Dwelling Unit and shall not be permitted to roam free, or to otherwise disturb the peace of other Owners;
- (2) Swine, goats, horses, cattle, sheep, chickens, and the like, are hereby specifically prohibited. Obnoxious animals, pitbulls, fowl and reptiles are prohibited. The determination of what is or what may be an obnoxious animal, fowl or reptile shall be determined by the Master Association in its sole discretion;
- (3) No animal breeding or sales as a business shall be permitted at the Project;
- (4) No pet shall be permitted outside a Dwelling Unit except on a leash or in an enclosed rear yard;
- (5) No pets shall be allowed to constitute a nuisance;
- (6) Each Owner shall promptly remove and properly dispose of any solid waste matter deposited by his pet; and
- (7) The Board of Directors shall have the right to promulgate Rules further restricting the keeping of pets.

L. Maintenance of Residential Property and Master Common Areas.

No weeds, underbrush, refuse or unsightly objects shall be permitted to remain upon Residential Property and Master Common Areas. All landscaping, sprinkler systems, Structures, improvements and appurtenances shall be kept in good, safe, clean, neat and attractive condition in accordance with all provisions of this Declaration (including architectural control). Upon the failure of the fee simple owner of any such property (or the Village Association if such property is the maintenance responsibility of a Village Association) to maintain same as aforesaid to the reasonable satisfaction of the Master Association after thirty (30) days prior written notice, the Master Association may (i) enter upon such premises and make such improvements or correction as may be necessary, the costs of which (together with an administrative fee equal to 20% of such cost) shall be paid to the Master Association by the offending property owner or Village Association, or (ii) the Master Association may bring an

action at law or in equity against such party to enforce this provision, and/or recover damages for the failure to abide by same. However, if any emergency situation arises as a result of a failure of any portion of the Residential Property and Master Common Areas to be maintained as set forth above, the Master Association shall have the foregoing remedies without having to give the aforescribed thirty (30) days prior written notice. Entry by the Master Association as described herein shall not be a trespass, and by acceptance of a deed for a Dwelling Unit, all Owners have expressly given the Master Association the continuing permission to so enter, which permission may not be revoked. If any Owner or Village Association fails to make payment as above provided, within fifteen (15) days after request, the Master Association shall have the right to convert such charge to an Individual Assessment and file a lien therefor on the Dwelling Unit of the offending Owner, or on the Dwelling Units of all members of an offending Village Association, and enforce the lien in accordance with the provisions of Article 7 hereof.

M. Nuisances.

No obnoxious, unpleasant, unsightly, or offensive activity shall be carried on, nor may anything be done on any portion of the Residential Property or Master Common Areas, which can be reasonably construed by the Board to constitute a nuisance, public or private in nature. No Owner shall make himself or permit his family, agents, visitors, tenants, or invitees to make any disturbing noises, including, without limitation, any unreasonable playing of musical instruments, television, radio, or stereo, within his Dwelling Unit, in such a manner as to disturb or annoy other Owners.

N. Mailboxes.

No Owner shall alter or replace the mailbox serving his Dwelling Unit without the prior written consent of the Board or the ARC.

O. Removal of Sod and Shrubbery.

No sod, topsoil, muck, trees or shrubbery shall be removed from any portion of the Residential Property or Master Common Areas without the prior written consent of the Board or the ARC.

P. Garbage and Trash Containers.

All garbage, trash containers and the like shall be placed in Board or ARC approved receptacles or in such manner as not to be visible from streets. If the County does not provide for the removal of refuse, the Master Association shall employ the services of a private company for the removal of all refuse.

Q. Other Activities.

All Owners, occupants and users of the Project are hereby placed on notice that Declarant and/or its agents, contractors, subcontractors, licensees and other designees will be, from time to time, conducting excavation, construction, blasting or other such activities within the Project. By the acceptance of their deed or other interest, and by using any portion of the Project, each such Person acknowledges, stipulates and agrees (i) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, hereunder or at law generally, (ii) not to enter upon, or allow their children or other persons under their control or direction to enter upon any property within or in proximity to the Project where such activity is being conducted (even if not being actively conducted at the

time of entry), (iii) that Declarant and the other aforesaid related parties shall not be liable for any and all losses, damages (compensatory, consequential, punitive, or otherwise) injuries or deaths arising from or relating to the aforesaid activities, (iv) that any purchase or use of any portion of the Project has been and will be made with full knowledge of the foregoing, and (v) that this acknowledgement and agreement is a material inducement to Declarant to sell, convey, lease and/or allow the use of the applicable portion of the Project.

R. Boating. Fishing and Swimming. Boating and fishing in any water bodies within the Residential Property or Master Common Areas may be subject to any Rules promulgated from time to time by the Board, or any governmental authority. However, (i) no vessels using combustion engines shall be allowed on any lakes, and (ii) no swimming shall be permitted in any lakes. Neither Declarant, the Master Association nor any of their officers, directors, committee members, employees, management agents, contractors or subcontractors (collectively, the "Listed Parties") shall be liable for any property damage, personal injury or death occurring in, or otherwise related to, any water body; all persons using the same do so at their own risk. All Owners and users of any portion of the Project shall be deemed, by virtue of their acceptance of the deed or use of any facility at the Project, to have agreed to release the Listed Parties from all claims for any and all changes in the quality and level of the water in such bodies. All persons are hereby notified that from time to time alligators and other wildlife may habitate or enter into water bodies within or nearby the properties and may pose a threat to persons, pets and property, but that the Listed Parties are under no duty to protect against, and do not in any manner warrant or insure against, any death, injury or damage caused by such wildlife.

S. Areas Outside Dwelling Units

No garbage cans, supplies, or other articles not designed and intended as outdoor amenities shall be placed or stored on patios, nor shall any laundry of any kind, or other articles, be shaken or hung from any portion of the exterior of walls, doors, patios, windows or roof, unless approved in writing by the Board or ARC. Notwithstanding the foregoing, laundry may be aired or dried from clotheslines as long as the clothesline is screened from the view of all persons except those within the Dwelling Unit at which the clothesline is located.

#### 4.2 Rules and Regulations

The Board, in accordance with the Bylaws, shall have the right to promulgate and impose Rules and thereafter to modify, alter, amend, or terminate any of the same with respect to the use, operation and enjoyment of the Residential Property and Master Common Areas and any improvements located thereon, including, but not limited to, establishing reasonable fees for the use of the facilities and establishing hours and the manner of operation. Neither the Residential Property nor the Master Common Areas shall be used in violation of any applicable Rule.

#### 4.3 No Implied Waiver

The failure of the Board to object to an Owner or another Person's failure to comply with the restrictions contained herein shall in no event be deemed a waiver by the Board, or any Person having an interest herein, of its right to object to the same and to seek compliance therewith in accordance with the provisions of this Declaration.

#### 4.4 Exculpation for Action

The Board or the ARC may grant, withhold or deny its consent or approval in any instance where such is permitted or required without any liability of any kind therefor so long as the Board or ARC is acting in good faith. No approval, consent or waiver of action by the Board or the ARC shall be deemed a warranty of compliance nor shall give rise to any claim against the Board or the ARC, except for their gross negligence or intentional misconduct.

#### 4.5 Extended Meaning of Owner

All restrictions in this Article 4 which refer to Owners shall be construed to include any other Person occupying an Owner's Dwelling Unit, including his family members, agents, tenants, licensees, invitees or guests. Failure of an Owner to notify any Person of the existence of the covenants, restrictions, easements and other provisions of this Declaration shall not in any way act to limit or divest the right of enforcement of these provisions against the Owner or such Person.

#### 4.6 Enforcement of Project Documents

A. In addition to any other rights herein contained, the Declarant and/or Master Association shall have the right and the power to enforce the covenants, restrictions, easements and other provisions imposed by this Declaration by any proceeding at law or in equity against any Person, including a Village Association, violating or attempting to violate any of these provisions. Failure by the Declarant and/or Master Association to enforce any of these provisions on any occasion shall in no event be deemed a waiver of its right to enforce any other provision or to enforce the same provision on any other occasions. In any enforcement action under this Declaration, the Declarant and/or Master Association, if either prevails, shall be entitled to recover all of its attorneys' fees and costs at all tribunal levels. Payment of same may be enforced by an Individual Assessment on any affected Owner, or on all members of any affected Village Association.

B. Notwithstanding the availability of the other remedies set forth in this Declaration, the Master Association shall also have the power to assess reasonable fines as provided in Section 18 of the Bylaws to enforce any of the provisions of this Declaration, the Bylaws, or the Rules. Any such fines may be charged and collected as individual Assessments.

#### 4.7 Enforcement of Village Association Documents

Each Village Association shall be required to diligently enforce all provisions of its Village Declaration and related articles, bylaws and rules, and to provide all maintenance services required thereunder or hereunder. Should a Village Association fail to diligently enforce such documents or provide such maintenance, the Master Association may, after having given notice to the Village Association, (i) bring legal action to compel the Village Association to enforce compliance and/or provide such maintenance, or (ii) enforce compliance or perform the maintenance itself. The Village Association shall be liable for immediate payment to the Master Association of all of the Master Association's costs and expenses, including but not limited to attorneys' fees and costs at all tribunal levels, incurred in (a) compelling the Village Association to enforce its documents or provide maintenance or (b) the Master Association enforcing the Village Association documents or performing maintenance itself, in each case together with an administrative surcharge of 20% of such costs and expenses. Such costs, expenses and surcharge may, at the option of the Board, be levied as individual Assessments under this Declaration with the total spread equally on all Dwelling Units subject to the jurisdiction of the subject Village Association. The fact that the Master Association has similar rights which could be directly enforced without going through a Village Association shall not be a defense to any enforcement action taken under this Section 4.7.

### ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS IN THE MASTER ASSOCIATION

#### 5.1 Membership

Every Owner of a Dwelling Unit, and Declarant, shall be a Member of the Master Association (hereinafter referred to as the "Membership"). Membership in the Master Association, except for Membership of Declarant, shall be appurtenant to and may not be separated from the Dwelling Unit. Except as to Declarant, ownership of a Dwelling Unit shall be the sole qualification for Membership in the Master Association. Declarant shall be a member of the Master Association until the date on which Declarant ceases to own any portion of the Project

#### 5.2 Co-Ownership of Dwelling Units

When more than one Person owns an interest in any Dwelling Unit (a "Co-Owner"), all such Co-Owners shall be Members, but only one such Co-Owner shall be entitled to exercise the vote to which the Dwelling Unit is entitled. All Co-Owners of each Dwelling Unit shall designate in writing to the Secretary of the Master Association one of their numbers to so vote the interests of their Dwelling Unit. Fractional votes shall not be allowed. The vote for each Dwelling Unit shall be exercised as a single vote or not at all. Where no voting Co-Owner is designated, the Dwelling Unit shall not be entitled to vote until one

individual is designated by all Co-Owners to vote the interests of the Dwelling Unit. The nonvoting Co-Owner(s) shall be jointly and severally responsible for all of the obligations imposed upon the Dwelling Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Master Association in accordance with the voting procedures established herein, or in the Bylaws, shall be binding on all Co-Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, any Supplemental Declaration, and in the Articles and Bylaws (to the extent applicable). If a Dwelling Unit is owned by a corporation or other entity, the individual entitled to vote for the Dwelling Unit shall be designated by a certificate signed by an appropriate officer or agent of the entity and filed with the Secretary of the Master Association.

### 5.3 Declarant Control of Board: Turnover

So long as there shall be a Class B membership as described in Section 5.4 hereof, wherein Declarant retains voting control of the Master Association, Declarant shall have the absolute right to appoint and replace all Directors and Officers of the Master Association; subject, however, to the following:

850 Dwelling Units Conveyed.

Upon a total of eight hundred fifty (850) Dwelling Units being obligated to pay Assessments to the Master Association, pursuant to Section 6.01 hereof, the Members, including Declarant, shall be entitled to elect, at a meeting of Members, two (2) additional Directors to the Board, resulting in a total of five (5) Directors.

This procedure is intended to give Members other than the Declarant a non-controlling voice in the operation of the Master Association so as to (i) allow direct input from non-Declarant Members and (ii) to promote the ability of non-Declarant Members to manage the Master Association, in anticipation of turnover.

### 5.4 Classes of Voting Membership

The Master Association shall have two (2) classes of Members, each with voting rights as follows:

Class A - Class A Members shall be all Dwelling Unit Owners including Declarant. Class A Members shall be entitled to one (1) vote, in accordance with the Bylaws, for each Dwelling Unit they own. The voting rights of all Class A Members shall be exercised on their collective behalf by the Village Association to which they belong; provided, however, so long as Declarant is a Class A Member it shall have the option to cast its vote directly or by and through the Village Association. Unless the Declarant, as a Class A Member, casts its vote directly, a Village Association in the

collective exercise of Class A voting rights, shall be entitled to cast the number of votes equal to the number of Dwelling Units owned by its members.

Class B - The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the sum of all Class A Members are entitled to cast at any time, thus giving the Class B Member a 2/3 majority of votes in the Master Association. The Class B Membership shall cease upon the first to occur of the following:

- (1) January 1, 2020; or,
- (2) the date on which Declarant ceases to own any portion of the Project; or,
- (3) termination of the Class B Membership by resignation of all Declarant-appointed directors and delivery to the Secretary of the Master Association of a certificate in recordable form, signed by Declarant and stating that Declarant elects to terminate the Class B Membership. Upon termination of the Class B Membership, Declarant shall retain any voting rights it may have as a Class A Member.

The foregoing creates the absolute right of Declarant to control the Master Association until January 1, 2020, unless Declarant voluntarily acts to cause turnover sooner.

#### ARTICLE 6 COVENANT FOR ASSESSMENTS

##### 6.1 Obligation for Assessments

Each Owner of any Dwelling Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association (1) annual Common Assessments for Common Expenses, (2) Individual Assessments, and (3) Special Assessments hereinafter collectively described as the "Assessments." All such Assessments are to be imposed and collected as hereinafter provided. The obligation of each Dwelling Unit and Owner thereof (except Declarant, Affiliates and Declarant and Affiliates-owned Dwelling Units) for its respective Assessments shall commence on the day on which title to the Dwelling Unit is conveyed by the Declarant (or Affiliate) to the first purchaser thereof (other than an Affiliate) and shall be prorated from that date. Neither Declarant nor any Affiliates shall have the obligation to pay Common Assessments on models or sales office during the Guaranty Period provided for in Section 6.4. After the expiration of the Guaranty Period, Declarant or an Affiliate will pay Common Assessments on models or sales offices they own, prorated from the expiration date of the

Guaranty Period. Common Assessments will be due on models or sales offices completed after the expiration of the Guaranty Period, from the latter of the recording of this Declaration, or the issuance of a certificate of occupancy on the Dwelling Unit, and shall be prorated from that date. In the event Declarant or any Affiliate offers for rent Dwelling Units they own, Common Assessments will be due on such Dwelling Units from the latter of the recording of this Declaration, or the issuance of a certificate of occupancy, and shall be prorated from that date. Common Assessments on any such rentals will be due both during and after the Guaranty Period. Neither Declarant nor any Affiliate shall be obligated to pay any Assessments on any unbuilt Dwelling Units or on Dwelling Units which are offered for sale or which have been sold.

All Assessments, together with interest, costs, late charges and reasonable attorneys' fees for the collection thereof, shall be a charge on each Dwelling Unit (except for Declarant and Affiliate-owned Dwelling Units) and shall be a continuing lien thereon as more particularly described in Article 7 hereof. Each such Assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Dwelling Unit at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting Institutional Mortgagees, the personal obligation for delinquent Assessments shall be the joint and several obligation of such Owner and the successors-in-title to such Owner. The Master Association shall be entitled to take such actions and to expend such sums as are reasonably believed by it to be necessary for the protection of its lien as to particular Dwelling Units, and to add the full cost thereof to its claim for Assessments due.

## 6.2 Common Assessments

The Common Assessments levied by the Association shall be used exclusively to pay routine Common Expenses. Disbursements shall be made by the Board for such purposes as are deemed necessary for the discharge of its responsibilities herein for the common benefit of the Owners and to reimburse Declarant for any start-up expenses advanced by Declarant.

## 6.3 Amount of Common Assessments: When Payable

At least ten (10) days prior to the beginning of each fiscal year (or within 30 days following recording of this Declaration for the balance of 1996), the Board of Directors shall prepare, adopt and distribute to the Members a written, itemized, estimated budget of the Common Expenses to be incurred by the Master Association during the coming year in performing its functions under this Declaration, which may include reasonable provision for contingencies and reserves for the periodic maintenance, repair and replacement of improvements to the Master Common Areas. The annual Common Assessment for each Dwelling Unit shall equal the amount of the estimated operating budget, as adopted pursuant to the Bylaws (less any surplus or plus any deficit from prior years), divided by the total number of Dwelling Units reasonably expected to be paying Assessments during the current

year. From time to time during the fiscal year, the Board may modify the budget for the fiscal year and, upon written notice to Members, change the amount, frequency, or due dates of Common Assessments. Subject to the right of the Master Association to accelerate Assessments for delinquencies as provided herein, annual Common Assessments shall be payable in equal quarterly installments unless determined by the Board, from time to time, to be payable more or less frequently. The budget and Assessment procedure shall be further subject to the provisions of the Bylaws.

Notwithstanding anything herein to the contrary, Owners of Dwelling Units in an Independent Village shall pay Common Assessments at a lower rate than other Dwelling Units. Common Assessments for Dwelling Units in an Independent Village shall be reduced proportionately to exclude any costs associated with services or use rights not available to Owners in the Independent Village.

#### 6.4 Declarant Guaranty of Assessments

Declarant hereby guarantees to each Owner that Common Assessments on each Dwelling Unit through December 31, 1996 will not exceed \$456.00 on an annualized basis. Such guaranty shall be in effect for the period from the date of recording hereof until December 31, 1996 (the "Guaranty Period"). However, Declarant shall have the right, in its sole discretion, to extend the Guaranty Period beyond December 31, 1996 on one or more occasions by written notice to the Master Association. Such notice shall specify the new expiration date for the Guaranty Period and the revised amount of the annualized Common Assessment guaranty. If it has not already expired, the Guaranty Period shall automatically terminate on the date upon which Declarant shall cease to control the Master Association, as provided in Section 4.15 of the Bylaws. Declarant shall pay any amount of Operating Expenses actually incurred during the Guaranty Period not produced by (a) Assessments at the guaranteed level receivable from Owners and (b) all other income of the Master Association of any kind whatsoever (including, but not limited to, interest, user fees, and income from vending machines and the provider of cable television service), but excluding (i) reserves, to the extent adopted by the Board, (ii) any costs of reconstruction or repair due to casualty and not recovered as insurance proceeds, and (iii) Operating Expenses which are made the subject of a Special Assessment. After the expiration of the Guaranty Period, Declarant agrees to make payment to the Master Association at the rate of \$100.00 per year, per acre, on the undeveloped portions of the Residential Property. For purposes of this Section, real property within a Village shall no longer be deemed "undeveloped" after the issuance of a certificate of occupancy for the first Dwelling Unit within the Village that the property is located. This Declaration is subject to any further limitations on the liability of Declarant for Assessments as are set forth in the Bylaws, including, without limitation, in paragraphs 5 and 9 thereof.

#### 6.5 Individual Assessments

Any maintenance, repair, or replacement within the Project arising out of or caused by the willful or negligent act of an Owner, including the Owner's family, tenants, guests or invitees, shall be effected at the Owner's expense and an Individual Assessment therefor shall be made against the Owner's Dwelling Unit by the Master Association to the extent proceeds of insurance are not collected with respect to such loss. Additionally, any fine imposed by the Board in accordance with the Bylaws or other expense of the Master Association incurred as a result of any Owner's failure to comply with the provisions of the Project Documents shall be charged to such Owner and his Dwelling Unit as an Individual Assessment. Individual Assessments may also be imposed on all Owners in a Village for any failure of the Village Association to comply with the Project Documents, as further described in Sections 4.11, and 4.6 hereof. Neither Declarant, nor its Affiliates, nor Dwelling Units owned by either, shall be liable for Individual Assessments.

#### 6.6 Special Assessments

In addition to the Common and Individual Assessments authorized above, the Board may levy, in any fiscal year, in accordance with the Bylaws, a Special Assessment on a one time basis for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a structure or capital improvement upon the Master Common Areas, including fixtures and personal property related thereto, or for defraying any other extraordinary Operating Expense of the Master Association, including shortfalls in Common Assessments; provided, however, any such Special Assessment in excess of Twenty-five Thousand Dollars (\$25,000.00) shall require the consent of a majority of the votes of Members present and entitled to vote, in person or by proxy, at a duly called special or annual meeting of Members. Special Assessments are not covered by Declarant's guaranty of maximum Common Assessments set forth in Section 6.04 hereof. Neither Declarant, nor its Affiliates, nor Dwelling Units owned by either, shall be liable for Special Assessments.

#### 6.7 Notice for any Special Assessment

Written notice of any meeting of Members called for the purpose of authorizing a Special Assessment shall be sent to all Members not less than ten (10) days, nor more than sixty (60) days, in advance of the meeting. If the required quorum is not present, such meeting may be rescheduled, subject to the same notice requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding scheduled meeting.

#### 6.8 Proportionate Share of Assessment

Common Assessments and Special Assessments provided for in this Article 6 shall be allocated and assessed equally among all Dwelling Units, except for Dwelling Units owned by Declarant or its Affiliates, to the extent permitted by this Article 6.

#### 6.9 Assessments on Commercial/Retail Property

In the event Declarant develops any portion of the Project as retail or commercial property, the Owner of such property shall be liable for Common, Individual or Special Assessments in the same manner as Owners of Dwelling Units. Notwithstanding anything herein to the contrary, the proportionate share of Special or Common Assessments to be apportioned to any such Owner shall be determined by a formula to be adopted by the Declarant at the time that Declarant determines to assign any portion of the Property for retail or commercial use.

#### 6.10 Financial Reports

Within sixty (60) days following the end of the fiscal year, the Board of the Master Association shall make available to each Owner (and to any Institutional Mortgagee that has made a written request) a complete annual statement of the Master Association's actual receipts and expenditures for the previous twelve (12) months, reviewed and certified by an independent certified public accountant. The report shall be audited. 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 in accordance with Section 9.8 of the Bylaws of the Master Association.

Within ninety (90) days after control of the Master Association is turned over to Owners other than Declarant, Declarant shall cause to be prepared, at the Master Association's expense, a balance sheet and operating statement reflecting income and expenditures of the Master Association for the period from the period commencing after the last audited period through to turnover, which shall be audited by an independent certified public accountant.

#### 6.11 Assessment Roster and Notices

The Master Association shall maintain a roster of the amount of all Assessments against each Dwelling Unit (determined as set forth above) which shall be kept in the office of the Master Association and shall be open to inspection by any Owner or Institutional Mortgagee. Written notice of such Assessments and the due date(s) thereof shall be sent to every Owner subject to such Assessments. The Master Association shall, upon reasonable request of any Owner, furnish to such Owner or mortgagee a certificate in writing signed by an officer of the Master Association setting forth the amount of current Assessments and whether any delinquencies exist. Such certificate may be relied upon by any prospective purchaser or mortgagee named in the certificate and, as to such purchaser or mortgagee, shall be conclusive as to the information set forth therein.

#### 6.12 Due-Dates for Special or Individual Assessments

Any Individual Assessment or Special Assessment shall be payable within thirty (30) days after the Owner shall have been notified thereof, unless any such Assessment is 'deemed by the Master Association to be of an emergency nature, in which case such Assessment shall be payable within ten (10) days after notice thereof.

#### 6.13 Working Capital Contribution

Upon the first conveyance of each Dwelling Unit and completed residence to any Person, other than (i) an Affiliate, or (ii) an Institutional Mortgagee, acquiring title by foreclosure or deed in lieu of foreclosure, the purchasing Owner shall pay to the Master Association a one-time, non-refundable sum equal to Fifty Dollars (\$50-00), as a working capital contribution ("Contribution") to the Master Association. The Contribution shall not be considered an advance payment of Assessments and shall be placed in a working capital fund so that the Master Association will have funds available to advance utility deposits and start-up expenses, including insurance premiums.

#### ARTICLE 7 EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE MASTER ASSOCIATION

A lien is hereby imposed upon each Dwelling Unit to secure the payment of all Assessments now or hereafter imposed on the Dwelling Unit by the Master Association. Such lien shall relate back to and be effective from the date hereof, and shall include all costs of collection, including reasonable attorneys' fees at all tribunal levels, late charges and interest as herein provided. Any installment of a Common Assessment, Individual Assessment, or Special Assessment not paid within ten (10) days after the due date shall bear interest from the due date of such installment at the highest rate of interest allowed to be charged under applicable law, or any greater interest which may be lawfully charged under any amendments to applicable law, or if no such rate is applicable, then at the rate of eighteen percent (18%) per annum, computed from the due date until such payment is made. If any installment of an Assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be further required by the Board to pay a late charge equal to an amount not greater than the amount of the unpaid installment. The Master Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose its lien against the Dwelling Unit of such Owner(s), or both. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Properties or abandonment of his Dwelling Unit. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each Institutional Mortgagee which has requested in writing a copy of the notice. The

notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Assessments for the then current fiscal year. If the delinquent installment(s) of Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the Assessments for the then current fiscal year to be immediately due and payable without further demand and may enforce the collection thereof and all charges thereon in the manner authorized by law and this Declaration.

Any payments made to the Master Association by any Owner shall first be applied towards any sums advanced and paid by the Master Association for taxes and payment on account of superior mortgages, liens, or encumbrances which may have been advanced by the Master Association in order to preserve and protect its lien; next toward reasonable attorneys' fees and costs incurred by the Master Association incidental to the collection of Assessments and other monies owed to the Master Association by the Owner for the enforcement of its lien; next towards interest and late charges on any Assessments or other monies due to the Master Association, as provided herein, and next towards any unpaid Assessments owed to the Master Association in the inverse order that such Assessments were due.

## 7.2 Notice of Lien

No action shall be brought to foreclose the lien for Assessments herein created unless at least thirty (30) days has expired following the date a "Notice of Lien" is deposited in the United States mail, certified or registered, postage prepaid, addressed to the Owner of the Dwelling Unit (in the event that a Dwelling Unit has Co-Owners, notice may be served solely upon the Co-Owner identified pursuant to Section 5.2 hereof) at the last address provided to the Master Association by such Owner, and a copy thereof has been recorded by the Master Association in the Public Records of the County. The Notice of Lien must recite a good and sufficient legal description of any such Dwelling Unit, the record Owner thereof, the amount claimed (which may at the Master Association's option include interest on the unpaid Assessment at the rate set forth in Section 7.1 hereof, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien and late charges), and the name and address of the Master Association as claimant. Such Notice of Lien shall be signed and acknowledged by a duly authorized officer or agent of the Master Association. Filing of the Notice of Lien shall not be a prerequisite to creating the lien (which is created by this Declaration), nor shall the lien's priority be established by such Notice of Lien (priority being based on the date of recording this Declaration, subject to the provisions of Section 7.3 hereof). The lien shall continue until fully paid or otherwise satisfied, and shall secure any and all Assessments, costs, charges, interest and reasonable attorneys' fees which accrue subsequent to filing the Notice of Lien.

### 7.3 Subordination of the Lien to Institutional Mortgages

Anything herein to the contrary notwithstanding, the lien securing Assessments provided for in this Declaration shall be subordinate to the lien of any Institutional Mortgage made in good faith and recorded prior to the date on which a Notice of Lien is recorded. The sale or transfer of any interest in any Dwelling Unit shall not affect the Assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to foreclosure of such Institutional Mortgage or deed in lieu thereof (if such Institutional Mortgage was recorded prior to the recording of a Notice of Lien) shall extinguish the lien of such Assessments as to installments and other sums which became due prior to such sale or transfer. Such sale or transfer shall also extinguish the personal liability for such Assessments as to such transferees, but not as to the Owner of the Dwelling Unit at the time the Assessments were due. However, no sale or transfer shall relieve the transferees of such Dwelling Unit from liability for any installments of Assessments thereafter becoming due or from the lien therefor.

### 7.4 Foreclosure Sale

The Assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Master Association, through a duly authorized officer or agent, shall have the power to bid on the Dwelling Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

### 7.5 Curing of Default

Upon the timely curing of any default for which a Notice of Lien was filed by the Master Association but prior to a final judgment of foreclosure thereof (including payment of all delinquent principal, interest, late charges, attorneys' fees and costs of collection), a duly authorized officer or agent of the Master Association shall record an appropriate release of lien upon payment by the defaulting Owner of a fee, to be determined by the Master Association, but not to exceed Fifty Dollars (\$50.00), to cover the cost of preparing and recording such release.

### 7.6 Cumulative Remedies

The Assessment lien and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Master Association and its assigns may have hereunder, and under law or in equity, including a suit to recover a money judgment against the defaulting Owner for unpaid Assessments, as above provided.

## ARTICLE 8 FUNCTIONS OF THE MASTER ASSOCIATION

### 8.1 through Board Action

The affairs and decisions of the Master Association shall be conducted and made by the Board; the Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

### 8.2 Required Services

In addition to those other responsibilities specified in the Articles or Bylaws, the Master Association shall be required to provide the following services as and when deemed necessary and appropriate by the Board and shall have easement rights necessary to perform same:

- A. All repair, replacement and maintenance of any kind of the Master Common Areas, including the recreational and other commonly used facilities and amenities and all improvements and all improvements and landscaping thereon, as and when deemed necessary by the Board. The Board shall be entitled to determine, in its sole discretion and without notice to any Owner, the time of day and night that various portions of the Master Common Areas will be irrigated.
- B. Maintenance of any and all streets, roads, driveways, sidewalks, paths and entry features throughout the Master Common Areas which have not been dedicated to the public, any governmental body, or a Village Association.
- C. Payment of property taxes and assessments with respect to the Master Common Areas both prior to and after conveyance of fee simple title to same by Declarant to the Master Association. This provision for payment of taxes by the Master Association prior to conveyance of legal title is predicated upon the Members' use of and benefit from the Master Common Areas by virtue of easements created herein.
- D. Management, operation and administration of the Master Common Areas in accordance with the Rules and other standards adopted by the Board from time to time both prior to and after conveyance of same by Declarant to the Master Association.
- E. Taking any and all actions necessary to enforce all covenants, restrictions and easements affecting the Project and performing any of the functions or services delegated to the Master Association in any covenants, conditions or restrictions applicable to the Project, or in the Articles or Bylaws.

F. Conducting business of the Master Association, including, but not limited to, administrative services such as legal, accounting and financial, and communication services such as informing Owners of activities, notice of meetings, and other important events.

G. Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board.

H. Acceptance of any instrument of conveyance with respect to any Master Common Areas delivered to the Master Association by Declarant.

I. Notwithstanding the foregoing, if any Village Declaration, Supplemental Declaration, this Declaration, or any amendment to this Declaration, so provides, a Village Association may be given primary responsibility for (i) maintenance of particular Master Common Areas lying adjacent to a particular Village ("Village Maintenance Areas"), or (ii) performing any of the other functions or services herein required of the Master Association as to property or services affecting the Village. The provisions of this Section 8.21. are in accordance with Section 3.2C hereof.

J. Maintenance of surface and subsurface drainage facilities and easements affecting the Residential Property and Master Common Areas, in accordance with Sections 9.9 through 9.11 hereof.

K. Installation and/or maintenance of roads or landscaping, both within and outside the Project, as mandated by the County in connection with PUD approval, including the obligation to install and maintain landscaping on the medians on Hypoluxo Road from the Project entrance east to Jog Road and on the medians on Lantana Road from Jog Road to Hagen Ranch Road as required by Zoning Resolution 95-122 of the Palm Beach County Board of County Commissioners.

### 8.3 Authorized Services

The Master Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:

A. Lighting of roads, sidewalks, walks and paths throughout the Project;

B. Fire protection and prevention;

C. Garbage and trash collection and disposal;

D. Conducting recreation, sport, craft and cultural programs of interest to Owners, including their families, tenants, guests, and invitees. **Declarant, and the Master Association, shall not be obligated to provide supervisory personnel for the Master**

**Association including, but not limited to, lifeguards. Any individual using the recreation property shall do so at his own risk and hereby holds Declarant, and the Master Association harmless from and against any claim or loss arising from such use.**

E. Protection and security, including, but not limited to, maintenance of electronic and other surveillance devices, employment of security guards within the Project, and operation of a gate house. **The Declarant has assumed no responsibility to plan, provide for, or implement any kind of security measures. Moreover, neither the Declarant, Master Association nor any of the Village Associations shall be held liable for injury, loss or damage by reason of their failure to provide adequate security or the ineffectiveness of any security measures undertaken. All Owners, including their families, tenants, guests and invitees, acknowledge that none of the Declarant, Master Association, any Village Association, or any committee established by any of the foregoing entities, shall be liable for or insure against any injury, loss or damage suffered by any Owner, including his or her family, tenants, guests and invitees. All Owners, including their families, tenants, guests and invitees, acknowledge that neither the Declarant, the Master Association nor any of the Village Associations represent or warrant that any fire protection system, burglar alarm system or other security system designated by or installed according to Declarant's guidelines will in all cases provide the detection or protection for which the system is designed or intended. All Owners, including their families, tenants, guests and invitees, assume all risk of injury, loss or damage suffered or caused, whether to their person, or Dwelling Units (including contents thereof) and acknowledge that neither Declarant nor the Master Association has made any representations or warranties, express or implied, to any Owner, including the Owner's family, tenants, guests and invitees, concerning any security measures recommended or undertaken including any warranty of merchantability or fitness for a particular purpose relative to any fire or burglar alarm systems or other security systems recommended or installed;**

**All persons are hereby notified that during the time that Declarant controls the Master Association, any gatehouse or electronic gate may not be operated at all or may be operated only during certain hours and/or on certain days. Further, during such period of time any gatehouse which is designed to accommodate staffing may, instead, be operated solely on an electronic gate basis, the ultimate decision as to when (or if at all) to staff a gatehouse to be made by the Board of Directors of the Master Association at an appropriate time;**

**Neither the Declarant nor the Master Association shall have any obligation to complete or operate the gatehouse at the Hypoluxo Road entrance until after closing of title to 1,000 Dwelling Units. After such time, the gatehouse will be operated full-time. If the Declarant or Master Association decides to operate the gatehouse prior to that time, the Declarant shall have the right, in its sole discretion, to determine the hours of operation. An electronic entrance gate will be installed at the Hagen Ranch Road**

**entrance within ninety (90) days after Declarant turns over control of the Master Association. The Hagen Ranch Road entrance may be closed to residential traffic until the electronic gate is operational.**

**All Owners and other occupants of Dwelling Units are further advised that any gatehouse staff and system serving the Project are not law enforcement officers and are not intended to supplant same, such persons being engaged, if at all, only for the purpose of monitoring access to the Project;**

F. Installation, operation and maintenance of cable television facilities, or other communication systems throughout the Project, including but not limited to, contracting with a cable operator licensed by the County to provide cable television service on a bulk rate basis to Owners;

G. Cleanup, landscaping, maintenance, dredging, water treatment or other care of canals, roads, public rights of way, or other property (public or private) adjacent to the Project to the extent such care would, in the reasonable determination of the Board, be beneficial to the Project and to the extent that the Master Association has been granted the right to so care for the affected property by the owner thereof or other person authorized to grant such right, including, but not limited to, any appropriate governmental authority;

H. All repair, replacement and maintenance of any kind whatsoever of any property, real or personal (including, without limitation, landscaping, painting, paving, and care of water or drainage systems), located on the Residential Property and Master Common Areas, so long as such maintenance is reasonably deemed by the Board to be of sufficient benefit to the Project and in the best interests of the Master Association to warrant its cost being borne by the Master Association. Such rights and authority shall exist notwithstanding any lack of consent or objection by owners of such Residential Property, or Village Association otherwise primarily responsible for such maintenance; and

I. Work on the Residential Property or Master Common Areas performed pursuant to agreement with the Person responsible for the operation of such property for reimbursement to the Master Association of costs and administration.

J. Installation, operation, management and maintenance of a food and beverage service operation including the right to contract for such services with an independent contractor (who may be an Affiliate of Declarant).

K. Such other services as are authorized in the Articles or Bylaws.

#### 8.4 Actions by the Master Association

Anything herein to the contrary notwithstanding, no general funds of the Master Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra judicial action except for (i) imposition, enforcement and collection of Assessments, including lien rights, pursuant to Article 7 hereof, (ii) collection of debts owed to the Master Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Master Association, (iv) actions brought by the Master Association to enforce the provisions of this Declaration, and (v) counterclaims brought by the Master Association in proceedings instituted against it, unless such legal action, claim or extra judicial action shall be specifically approved for such purposes by 75% of the total votes of all Members of the Master Association in existence at any time. If the Master Association's actions have been approved by the Members in accordance with this Section 8.4, all expenses incurred shall be deemed Operating Expenses. Under no circumstances shall the Declarant or any Affiliate be liable for the payment of any Assessments applicable to Dwelling Units they own which in any way relate to the payment of legal or other fees to persons or entities engaged for the purpose of suing, or making, preparing or investigating possible claims against the Declarant or its Affiliates. In any action brought by or against the Master Association, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. This Section 8.4 may not be amended.

#### ARTICLE 9 EASEMENTS

##### 9.1 Owner's Easements of Enjoyment

Every Owner shall have a non-exclusive, common right and easement of ingress and egress and of enjoyment in, to and over, and use of, the Master Common Areas, which shall be appurtenant to and shall pass with title to every Dwelling Unit, subject to the following conditions:

- A. The right of the Master Association to reasonably limit the number of guests or invitees of Owners using the Master Common Areas at any one time.
- B. The right of the Master Association to establish Rules pertaining to the use of the Master Common Areas, including, but not limited to, the right and obligation of the Master Association to enforce all parking and other restrictions within the Master Common Areas.
- C. The Master Common Areas may not be used for "private events" (i.e., functions to which all Members are not invited and in good faith encouraged to attend).

D.- The right of the Master Association to suspend the right of an Owner to use the Master Common Areas (except means of ingress and egress) for any Owner, except Declarant or an Affiliate, for: (i) any period during which any Assessment against his Dwelling Unit remains unpaid and delinquent; and (ii) a period not to exceed thirty (30) days for any other single infraction of this Declaration or the Rules of the Master Association, provided that any suspension of such rights to use the Master Common Areas based upon infractions other than non-payment of Assessments shall be made only by the Board after Notice and Hearing as provided in the Bylaws.

E. The right of Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Master Common Areas and the facilities thereof, without charge, for sales, marketing, advertising, display, signs, access, construction, ingress, egress, exhibit and any other activities or purposes.

F. The right of the Master Association to construct, replace or remove any Improvement or portion thereof upon the Master Common Areas, in accordance with the provisions of this Declaration.

G. The right of the Master Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Master Common Areas.

H. The right of Declarant to grant such other easements over the Master Common Areas as Declarant deems appropriate (which easements shall be similarly granted by the Master Association).

I. The Board shall have the right, but not the obligation, to impose reasonable user charges for any facility or event located on any portion of the Master Common Areas. Neither the operation of any such facilities or activities, nor the fact that a charge is made therefor, shall be deemed a "commercial" use or activity in violation of the provisions of this Declaration.

Anything to the contrary herein notwithstanding, no action authorized in paragraphs A, B, F, or I above shall be taken without the prior written consent of Declarant as long as Declarant owns any Dwelling Unit.

## 9.2 Delegation of Use

Any Owner may delegate his right of enjoyment to the Master Common Areas and facilities to the members of the Owner's family, in accordance with the Bylaws. Any Owner may so delegate such rights to his tenants who reside in his Dwelling Unit, subject to the Rules and other reasonable regulations imposed by the Board.

### 9.3 Access

Declarant reserves unto itself, and its designees, Affiliates, and all Owners, including their lessees, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across any private streets and access ways constructed on the Master Common Areas from time to time.

### 9.4 Utilities

The Property shall be subject to such non-exclusive easements as may be determined in the sole discretion of Declarant for utilities, including, but not limited to, water, sewer, electric and cable television, as may be reasonably required to properly and adequately serve the Project as it exists from time to time. Each of said easements, whether already in existence or hereafter created, shall constitute covenants running with the Property and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use thereof. Such easements shall survive any termination of this Declaration.

### 9.5 Declarant

Declarant hereby reserves such non-exclusive easements as are necessary (in Declarant's reasonable discretion) in order to exercise its rights and obligations hereunder and otherwise market and develop the Project. The Property shall be subject to any and all such easements deemed necessary by Declarant. All easement rights generally or specifically created by this Declaration in favor of Declarant may be assigned by Declarant, partially or otherwise, without the consent or joinder of the Association or the Owners.

### 9.6 Service

Declarant hereby grants to delivery, pick-up and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by Declarant to service the Project, and to such other persons as Declarant from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Master Common Areas for the purposes of performing their authorized services and investigation. Such easements shall survive any termination of this Declaration.

### 9.7 Encroachments

Certain Dwelling Units constructed by Declarant may be situated so that portions thereof, including, but not limited to, roof overhangs, gutters, walls, or fences may overhang, abut or encroach upon an adjoining Dwelling Unit. In all such cases, said adjoining Dwelling

Unit shall be subject to an easement and appurtenant rights, including the right of ingress and egress, in favor of the encroaching or abutting Dwelling Unit which easement and rights shall be for the purposes of (a) permitting the existence of the encroachment and (b) allowing ingress and egress for the performance of proper and normal maintenance to the encroaching or abutting Dwelling Unit, including meter reading. However, no exercise of any such easement and appurtenant rights created pursuant to this Section 9.7 shall unreasonably interfere with the use of the Dwelling Unit subject to same. Any easement and rights granted pursuant to this Section shall survive any termination of this Declaration.

#### 9.8 Master Association

Non-exclusive easements are hereby granted in favor of the Master Association throughout the Residential Property and Master Common Areas as may reasonably be necessary for the Master Association to perform its services required and authorized hereunder.

#### 9.9 Surface Water Management

The surface water management and drainage system for the lakes within the Project is one integrated system and will be owned and maintained by the Master Association. An easement is hereby created over the Project for surface water drainage and for the installation and maintenance of the surface water management and drainage system for the Project; provided, however, that such easement shall be subject to improvements constructed within the Project as permitted by controlling governmental authorities from time to time. The surface water management and drainage system of the Project shall be developed, operated, and maintained in conformance with the requirements of the South Florida Water Management District, Lake Worth Drainage District and/or any other controlling governmental authority. The Master Association may maintain the surface water management and drainage system for the Project, including, but not limited to, all lakes, canals, swale areas, retention areas, culverts, pipes, and related appurtenances, if acceptable to the appropriate governmental authorities.

#### 9.10 Mitigation

The Master Association shall be responsible for all maintenance and monitoring requirements (if any) associated with any mitigation or preserve areas constructed within the Project. These requirements shall be detailed in the applicable permits from the South Florida Water Management District, or other government agencies. The Master Association shall have the right to limit or prohibit the use of certain fertilizers and pesticides anywhere within the Project which would adversely affect the preserve or mitigation areas.

An "as constructed" conservation easement shall be recorded by the Developer upon completion of the mitigation or preserve areas.

The Master Association shall strictly adhere to all of the conditions contained within the South Florida Water Management Surface Water Permit.

#### 9.11 Drainage Easement

Declarant hereby reserves to itself and grants to the Master Association, a perpetual non-exclusive easement across the rear 4 1/2 feet (or such other dimension as specifically stated by Declarant or modified by Declarant within each Village Declaration) of each Lot to perform all services necessary to maintain and insure proper drainage, and to allow for proper drainage. Fencing, landscaping and other structures may be constructed across this easement property, as long as they do not impede drainage flow and are otherwise in conformance with the requirements of the Project Documents.

### ARTICLE 10 ARCHITECTURAL CONTROL

#### 10.1 Members of the Committee

Architectural control of the Project shall be maintained by the Architectural Review Committee which shall be governed in accordance with the Declaration and the Smith Farm Design Development Standards. The Architectural Review Committee sometimes referred to in this Declaration as the "ARC", or "Committee", shall initially consist of one person who shall be designated by Declarant from time to time, which number of Committee members may be increased by Declarant at any time. The Committee member appointed by Declarant shall hold office until the Class B membership ceases pursuant to Section 4.15 of the Bylaws. Thereafter, the Committee shall consist of three (3) members who shall be appointed by the Board and shall hold office until such time as they shall resign or be removed by the Board. Members of the Committee not appointed by Declarant may be removed by the Board at any time without cause.

#### 10.2 Review of Proposed Construction

Subject to Section 10.9 below, no Structure of any kind, including, but not limited to, a fence, wall or other addition, improvement, or equipment (including landscaping, antennas, awnings, and shutters) shall be installed, painted, erected, removed or maintained within the Residential Property or Master Common Areas, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by, the Committee. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project and that the appearance

of any Structure or other improvement affected thereby will be in harmony with surrounding Structures and improvements and is otherwise desirable. The Committee may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval. The Committee shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and if not rejected within such 30-day period, said plans shall be deemed approved. Any approval of additional landscaping by the Committee may be made on the condition that such landscaping be maintained by and at the sole cost of the Owner of the affected Dwelling Unit. All changes and alterations shall be subject independently to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. Any alteration or modification to the location and/or placement of exterior walls of any Dwelling Unit shall be further conditioned on compliance with County ordinances and the obtaining of applicable governmental approvals, if any.

### 10.3 Hurricane Shutters

Awnings and shutters or similar exterior appurtenances shall not be permitted or affixed to the exterior of the residence without the prior written approval of the Architectural Review Committee.  
following:

A. Permanent storm shutters: Permanent storm shutters may be either of the

1. accordion type colored to match the body paint of the building (or other approved color);
  2. roll up type consisting of a roll box and slats colored to match the body paint of the building (or other approved color) positioned immediately above the window or door.
- Permanent storm shutters may be closed only during official broadcast storm warnings and must be reopened within a reasonable period of time not to exceed two weeks after the storm has passed the area.

B. Temporary storm shutters: Temporary storm shutters shall not be stored on the exterior of the residence. All permanent tracks or affixtures shall be white, or shall match the color of the body paint of the building, or shall be another approved color.

Temporary storm shutters may be installed only during official broadcast storm warnings and must be removed within a reasonable period of time not to exceed two weeks after the storm has passed the area.

#### 10.4 Meetings of the Committee

The Committee shall meet from time to time as necessary to perform its duties hereunder, and shall meet as necessary to review Applications received within 30 days of receipt. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties of the Committee on its behalf. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

#### 10.5 No Waiver of Future Approvals

The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

#### 10.6 Compensation for Members

The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

#### 10.7 Liability of the Committee

No member of the Committee (or Declarant or the Board which appointed them or any representative designated by the Committee) shall be liable to any Owner or other person by reason of mistake in judgment, failure to point out deficiencies in plans, or any other act or omission in connection with the approval of any plans. Any owner submitting plans hereunder by the submitting of same, agrees (i) not to seek any damages or make any claim arising out of approval of plans hereunder, and (ii) to indemnify and hold the Committee members (and the Declarant and/or Board which appointed them and any representative designated by the Committee) harmless from any cost, claim, damage, expense or liability whatsoever, including attorneys' fees and costs at all tribunal levels, arising out of the approval of any plans regardless of the negligence of the committee members, their representative, or appointing entity.

## 10.8 Inspection of Work

Inspection of work and correction of defects therein shall proceed as follows:

- A. Upon the completion of any work for which approved plans are required under this Article 10, the applicant for such approval ("Applicant") shall give written notice of completion to the Committee. All work approved must be completed within one hundred eighty (180) days of approval unless additional time for completion is provided by the ARC.
- B. Within sixty (60) days after receipt of Applicant's notice of completion, or one hundred eighty (180) days after approval, the Committee or its duly authorized representative may inspect such work. If the Committee finds that such work was not effected in substantial compliance with the approved plans, it shall notify the Applicant in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Applicant to remedy the same.
- C. If, upon the expiration of thirty (30) days from the date of such notification, the Applicant shall have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. Upon proper notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Applicant does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance (an easement therefor being hereby created), and the Applicant shall reimburse the Master Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Master Association, the Board may levy an Individual Assessment against such Applicant for reimbursement.
- D. If for any reason the Committee fails to notify the Applicant of any noncompliance within sixty (60) days after receipt of written notice of completion from the Applicant, the improvement shall be deemed to have been made in accordance with the approved plans.
- E. Nothing herein shall preclude the Committee from inspecting work as it is being performed to insure that it is proceeding in accordance with the approved plans. If the work is not proceeding in accordance with approved plans the Committee may require the Applicant to remedy the work, by utilizing the procedure afforded by Section 10.8C hereof.

#### 10.9 Declarant's Exemption

Anything herein to the contrary notwithstanding, Declarant, Affiliates and all property owned by Declarant or Affiliates shall be exempt from the provisions of this Article 10. Declarant and Affiliates shall not be obligated to obtain Committee approval for any construction or changes in construction which Declarant may elect to make.

#### 10.10 Village Control

If any Village Declaration provides for architectural control or review, the provisions of such Village Declaration as well as this Declaration must be complied with. In such an instance, an Applicant shall be required to obtain approval of the Village Association, prior to seeking approval of the Committee. No approval by a Village Association shall be binding on the Master Association.

### ARTICLE 11 DAMAGE OR DESTRUCTION TO MASTER COMMON AREAS

Damage to or destruction of all or any portion of the improvements on Master Common Areas shall be handled in the following manner:

- A. In the event of damage to or destruction of improvements on the Master Common Areas, if insurance proceeds are sufficient to effect total restoration, then the Master Association shall cause such improvements on Master Common Areas to be repaired and reconstructed substantially as they previously existed.
- B. If the insurance proceeds are within Five Hundred Thousand Dollars (\$500,000.00) or less of being sufficient to effect total restoration to the improvements on the Master Common Areas, then the Master Association shall cause such improvements to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost incurred by the Master shall be levied as a Special Assessment against Dwelling Units in accordance with the provisions of Section 6.6 hereof, and no consent of Owners shall be required as otherwise would be the case in the event of a Special Assessment over Twenty-Five Thousand Dollars (\$25,000.00). Declarant, its Affiliates, and Dwelling Units owned by either shall be exempt from such Special Assessments, in accordance with Section 6.06 hereof.
- C. If the insurance proceeds are insufficient by more than Five Hundred Thousand Dollars (\$500,000.00) to effect total restoration to the improvements on the Master Common Areas, then the Members shall determine, by vote of two-thirds (2/3) of Member votes present in person or by proxy at a special meeting of the Members, duly called, whether (1) to rebuild and restore the improvements in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying a

Special Assessment against all Dwelling Units in accordance with Section 6.6 hereof, or (2) to rebuild and restore in a way which is less expensive than replacing those improvements in substantially the same manner as they existed prior to being damaged, or (3) to not rebuild and to retain the available insurance proceeds, or distribute the proceeds to the beneficiaries of the insurance policies. If a decision is made to rebuild in a manner which would result in a change in the improvements such new plans must receive the written approval of the ARC, which may pre-approve plans to be submitted to the Members at a special meeting of Members. Declarant, its Affiliates, and Dwelling Units owned by either, will be exempt from such Special Assessments in accordance with Section 6.6 hereof.

D. Each Owner shall be liable to the Master Association for any damage to the Master Common Areas not fully covered by collected insurance which may be sustained by reason of the negligence or willful misconduct of any Owner or of his family, tenants, guests and invitees, both minor and adult. In addition, the Master Association shall have the right to charge such Owner an Individual Assessment equal to the increase, if any, in any insurance premium due from the Master Association directly attributable to the damage caused by such Owner. The cost of correcting such damage shall be an Individual Assessment against the Dwelling Unit of such Owner and may be collected as provided herein for the collection of Assessments.

## ARTICLE 12 INSURANCE

### 12.1 Master Common Areas

The Master Association shall keep all buildings, other improvements and fixtures located on the Master Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles), and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Master Association may also insure any other property, whether real or personal, owned by the Master Association, against loss or damage by fire and such other hazards as the Master Association may deem desirable, with the Master Association as the owner and beneficiary of such insurance for and on behalf of itself, all Owners and all Institutional Mortgagees. The insurance coverage with respect to the Master Common Areas shall be written in the name of, and the proceeds thereof shall be payable to, the Master Association, or Institutional Mortgagees, if so required. Insurance proceeds shall be used by the Master Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Master Association are Operating Expenses included in the Common Assessments made by the Master Association.

## 12.2 Replacement or Repair of Project

In the event of damage to or destruction of any part of the Master Common Areas, the Master Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article 11 of this Declaration.

## 12.3 Waiver of Subrogation

As to each policy of insurance maintained by the Master Association which will not be voided or impaired thereby, the Master Association hereby waives and releases all claims against the Board, the Owners, the Management Company, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

## 12.4 Liability and Other Insurance

The Master Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Master Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each Owner against liability to each other, Owner and to the Master Association and vice versa. The Master Association may also obtain other liability insurance as it may deem desirable, insuring each Owner and the Master Association, Board of Directors and Management Company, from liability in connection with the Master Common Areas, the premiums for which shall be Operating Expenses and included in the Common Assessments made against the Owners. The Master Association shall obtain workers' compensation insurance as required by law. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board, and the Management Company against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. The Master Association may obtain blanket fidelity bonds for all officers, directors and employees of the Master Association and all other persons handling or responsible for funds of, or administered by, the Master Association in an amount not less than 25% of the aggregate annual Common Assessments payable by all Members plus reserve funds held by the Master Association.

## ARTICLE 13 GENERAL PROVISIONS

### 13.1 Enforcement

The Project Documents may be enforced by the Master Association as follows:

- A. Breach of any of the Project Documents and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by Declarant or the Master Association. Any judgment rendered in any action or proceeding to enforce the Project Documents shall include a sum for attorneys' fees, as well as the amount of any delinquent payment, interest thereon, late charges, costs of collection and court costs.
- B. The result of every act or omission whereby any of the Project Documents are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed at law or in equity with respect to nuisances, either public or private, shall be applicable and may be exercised by Declarant, or the Master Association.
- C. The remedies herein provided in this Article for breach of the Project Documents shall be deemed cumulative, and none of such remedies shall be deemed exclusive of any other remedies set forth elsewhere in the Project Documents.
- D. The failure of the Master Association to enforce any of the covenants contained in the Project Documents shall not constitute a waiver of the right to enforce any other covenants or the same thereafter.

### 13.2 Severability

Invalidation of any portion of the Project Documents by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

### 13.3 Term

Subject to the amendment provisions of Section 13.5 hereof, this Declaration shall run with and bind the Project and shall inure to the benefit of and be enforceable by the Master Association, Declarant, and their respective successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by 75% of the Members and 75% of the Institutional Mortgagees has been recorded terminating this Declaration. If terminated in any other manner while Declarant owns any portion of the Project, title to the Master Common Areas shall remain in Declarant. No prescriptive rights shall be established regardless of the nature or duration of use of the Master Common Areas or any portion thereof.

Should the Members of the Master Association vote not to renew and extend this Declaration as provided herein, all Master Common Areas shall be transferred to a Trustee appointed by the Circuit Court for the County, which Trustee shall sell the Master Common Areas free and clear of the provisions hereof, upon terms established by the Trustee and approved by the Court. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Master Common Areas, then for the payment of any obligations incurred by the Trustee in the sale, operation, maintenance, repair and upkeep of the Master Common Areas, including a Trustee's fee approved by the Court. The excess of proceeds, if any, shall be distributed among the Owners equally. Only those easements which state that they shall survive termination hereof shall so survive unless otherwise required under Florida law.

#### 13.4 Interpretation

The 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 and Master Common Areas. The article and section headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the others. The Board shall be the ultimate interpreter of this Declaration and an opinion of counsel that any such interpretation is not unreasonable shall establish the validity of any such interpretation.

#### 13.5 Amendments

This Declaration may only be amended (1) by the affirmative vote (at any duly called annual or special meeting of Members at which a quorum has been obtained) of Members holding not less than seventy-five percent (75%) of the votes of the Class A Membership present, and (so long as Declarant owns any portion of the Project) the affirmative vote of Declarant; or (2) so long as Declarant owns any portion of the Project, by act (with or without a meeting or notice) of Declarant alone. However, no amendment shall be permitted which has a material adverse affect upon rights of Declarant or an Institutional Mortgagee without the prior written consent of Declarant or such Institutional Mortgagee, as appropriate. Nothing contained herein shall affect the right of Declarant to make such amendments or Supplemental Declarations as may otherwise be permitted herein. This Section 13.5 may not be amended.

In the event any amendment is sought other than by Declarant, notice shall be given at least forty-five (45) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above, the President and Secretary of the Master Association shall execute an Amendment to this Declaration which shall set forth the amendment, the effective

date of the amendment, the date of the meeting of the Members at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Master Association, the total number of votes required to constitute a quorum at a meeting of the Members, the number of votes present, in person or by proxy at the meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast for the amendment, and the total number of votes cast against the amendment. Such amendment shall be recorded in the Official Records of the County. Amendments made by Declarant need be signed only by Declarant with no recitation of the items set forth immediately above.

#### 13.6 No Public Right or Dedication

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Master Common Areas to the public, or for any public use.

#### 13.7 Constructive Notice and Acceptance

Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Dwelling Unit or other portion of the Project shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such Person acquired an interest in such Dwelling Unit or other property.

#### 13.8 Notices

Any notice permitted or required to be delivered as provided herein shall (unless otherwise expressly set forth herein) be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address for such Person contained in the records of the Master Association. Such address may be changed from time to time by notice in writing to the Master Association.

#### 13.9 No Representations or Warranties

No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with any portion of the Project, its physical condition, zoning, compliance with applicable laws, merchantability, habitability, fitness for a particular purpose, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, or in connection with any services performed or contracted for pursuant to Article 5 hereof, except (a) as specifically and expressly set forth in this Declaration or in written documents delivered by Declarant to any Owner, and (b) as otherwise required by law.

### 13.10 Declarant Exemption

Anything in this Declaration to the contrary notwithstanding, nothing herein shall be construed to prevent, limit, or impair Declarant's right and ability to complete development of the Project in any manner determined by Declarant from time to time, including, but not limited to, Declarant's right to maintain models, gates, sales and leasing offices, construction activities, promotional activities and signs.

### 13.11 Information

The Master Association shall make available for inspection to Owners and Institutional Mortgagees, upon request during normal business hours, current copies of this Declaration, the Articles, Bylaws, or any Rules concerning the Project, together with the books, records, and financial statements of the Master Association.

### 13.12 Voidability of Contracts

After the Master Association is no longer controlled by Declarant, it shall have the right at any time to cancel any contract, lease, or management agreement entered into by the Master Association while controlled by Declarant, as long as the Master Association has a right of termination in such contract, lease, or management agreement.

### 13.13 Assignability of Declarant's Rights

The rights of Declarant under this Declaration, the Articles, and the Bylaws may be assigned any number of times, in whole or in any part, on an exclusive or non-exclusive basis by written instrument recorded in the Official Records of the County; provided, however, any such assignment to an Affiliate need not be so recorded. Any partial assignee shall not be deemed Declarant and shall have no rights other than those expressly assigned. No assignee shall have any liability for any acts of Declarant or any prior Declarant unless such assignee is assigned all of Declarant's rights and agrees to assume such liability.

### 13.14 Cable Television Rights of Declarant

Declarant shall have the right to grant exclusive or non-exclusive rights and easements over any portion of the Project to any one or more providers of cable television service. No such action shall be deemed a breach of fiduciary duty of Declarant or any member of the Board. Each provider of cable television must be properly franchised prior to any grant or easement in its favor.

### 13.15 Priority of Documents

In those instances of irreconcilable conflict among or between this Declaration and the Articles, Bylaws, Rules, or any Village Declaration (and in the absence of any express language indicating which document controls the particular subject matter), this Declaration shall be paramount, the Articles are next paramount, the Bylaws next paramount, the Rules next paramount, and a Village Declaration most subordinate.

### 13.16 Reservation of Rights

In addition to Declarant's rights contained in Section 13.14 above, and not in limitation thereof, Declarant reserves and retains to itself, its successors and assigns: (i) the right to own, install, provide and maintain a closed circuit television system, telecommunication system, master antennae system, community antennae television system (collectively the "CATV Service", which comprises part of the Central System hereinafter defined) and related ancillary services and to the equipment including but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment both active and passive (the "Central System") in and upon the Project and (ii) a perpetual easement for the placement and location of the Central System including, but not limited to conduits, wires, amplifiers, towers, antennae and related apparatus and electronic equipment, both active and passive, and (iii) a perpetual easement for ingress to and egress from the Project to service, maintain, install, repair and replace the aforesaid apparatus and equipment; and (iv) the right to connect the Central System to such receiving source as Declarant may in its sole discretion deem appropriate, including, without limitation, companies licensed to provide the CATV Service in the County, for which service Declarant, its successors and assigns or designees shall have the right to charge Village Associations and/or individual Owners and/or the Master Association, a reasonable fee not to exceed the maximum allowable charge for CATV Service to single family residences as charged within the general vicinity.

The Owners acknowledge that the Central System described above includes but is not limited to the CATV Services as well as the ancillary services which may include security; medical, smoke and fire alert; information retrieval and so forth. Such Central System is offered as part of Declarant's endeavor to provide a total environment to the Owners and enhance the "way-of-life" at the Smith Farm Development.

## ARTICLE 14 RIGHTS OF INSTITUTIONAL MORTGAGEES

### 14.1 General Lender Rights.

Upon written request to the Master Association by an Institutional Mortgagee, or the insurer or guarantor of any Institutional Mortgage encumbering any portion of the Project, such Institutional Mortgagee, insurer or guarantor, if its request specifies the name, address

and factual basis of entitlement of the requesting party, shall be entitled to prompt written notice of

- A. any condemnation or casualty loss that affects either a material portion of the Project or any lot or Dwelling Unit on a lot encumbered by its Institutional Mortgage;
- B. any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any lot or Dwelling Unit on a lot on which it holds the Institutional Mortgage;
- C. a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Master Association; and
- D. any proposed action which requires the consent of a specified percentage of Institutional Mortgagees.

#### 14.2 Financial Statement.

Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Master Association a financial report for the immediately preceding fiscal year.

#### 14.3 Amendments.

Any Institutional Mortgagee who has registered its name with the Master Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Declaration, or the Articles or Bylaws, or prior to the effective date of any termination of an agreement with the Management Company.

#### 14.4 Additional Lender Rights.

In the event that any party which has financed the construction of the Project (the "Acquiring Party") acquires title to any portion of the Project owned by Declarant (or on which Declarant held a mortgage which was assigned to the Acquiring Party) as a result of the foreclosure of a mortgage(s) thereon or the giving of a deed in lieu of foreclosure or in satisfaction of debt, such party shall automatically succeed to all rights, benefits and privileges of Declarant hereunder (and under the Articles of Incorporation, By-Laws and Rules and Regulations of the Master Association), except to the extent the Acquiring Party specifically disclaims any of such rights, benefits or privileges in a written notice to the Master Association. Notwithstanding the foregoing or anything to the contrary contained in this Declaration (or in the aforesaid Articles of Incorporation, By-Laws or Rules and Regulations), the Acquiring Party shall in no manner be obligated or liable for any duties, obligations, warranties, liabilities, acts or omissions of Declarant (i) occurring or arising from facts existing (regardless of when same became known or should have become known) prior to the date the

Acquiring Party-succeeds to the rights, benefits and privileges of Declarant, including the obligation to fund budget deficits, or (ii) otherwise not directly attributable to the Acquiring Party solely in its own right. The foregoing shall be in addition to, and not in derogation of, the Acquiring Party's rights, benefits and privileges (i) as same may exist elsewhere in, under or in connection with this Declaration (or the aforesaid Articles of Incorporation, By-Laws or Rules and Regulations) and (ii) in its construction loan documents. Any holder, insurer or guarantor of a Mortgage on a Lot shall have the right to pay, singly or jointly, taxes or other charges that are delinquent and have resulted or may result in a lien against any portion of the Master Common Areas and receive immediate reimbursement from the Master Association. Any holder, insurer or guarantor of a Mortgage on a Lot shall have the right to pay, singly or jointly, any overdue premiums on any hazard insurance policy covering the Master Common Areas or obtain, singly or jointly, new hazard insurance coverage on the Master Common Areas upon the lapse of a policy and, in either case, receive immediate reimbursement from the Master Association.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed as of the date first written above.

Signed

Declarant:

MINTO COMMUNITIES, INC., a Florida corporation

By.

Michael Greenberg, President (Corporate Seal)