

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION**

**FAIRMONT PLACE HOMEOWNERS ASSOCIATION, INC.**

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**NOTE:** This document is a substantial rewording of the Articles of Incorporation attached as Exhibit B to the Declaration of Covenants, Restrictions and Easements executed by Developer on June 24, 1987, recorded on July 2, 1987, at Official Records Book 5339, Page 606, of the Public Records of Palm Beach County, and filed with the Florida Secretary of State on January 13, 1987.

The Incorporator, by these Articles, does so for the purpose of forming a not-for-profit corporation pursuant to the laws of the State of Florida (Chapter 617, Florida Statutes), and hereby adopts the following Articles of Incorporation:

**ARTICLE 1**

**NAME**

The name of the Corporation shall be FAIRMONT PLACE HOMEOWNERS ASSOCIATION, INC. For convenience, the Corporation shall be referred to in this instrument as the "Association" or the "Corporation," these Articles of Incorporation as the "Articles," and the By-Laws of the Association as the "By-Laws."

**ARTICLE 2**

**PURPOSE**

The purpose for which the Association is organized is to provide an entity pursuant to Chapter 720, Florida Statutes (the "Act") for the operation of that certain community to be known as Fairmont Place (the "Community").

**ARTICLE 3**

**DEFINITIONS**

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Covenants, Restrictions and Easements for Fairmont Place ("Declaration"), and the By-Laws of the Association, unless herein provided to the contrary, or unless the context otherwise requires.

## ARTICLE 4

### POWERS

The powers of the Association shall include and be governed by the following:

4.1 General. The Association shall have all of the common law and statutory powers of a not-for-profit corporation under the laws of Florida that are not in conflict with the provisions of these Articles or of the Act.

4.2 Enumeration. The Association shall have all the powers and duties set forth in the Act (except as to variances in these Articles and the Declaration which are permitted by the Act), and all of the powers and duties reasonably necessary to operate the Community pursuant to its Declaration, and as they may be amended from time to time, including, but not limited to, the following:

A. To make and collect regular and Special Assessments and other charges against Members as Owners, and to use the proceeds thereof in the exercise of its powers and duties.

B. To buy, own, operate, lease, sell and trade both real and personal property as may be necessary or convenient in the administration of the Community.

C. To maintain, repair, replace, reconstruct, add to, and operate the Community and other property acquired or leased by the Association for use by Owners.

D. To purchase insurance upon the Community and insurance for the protection of the Association, its officers, directors, and Members as Owners, and such other parties as the Association may determine in the best interest of the Association.

E. To make and amend reasonable rules and regulations for the maintenance, operation and use of the Property and for all other lawful purposes.

F. To approve or disapprove the transfer, mortgaging, ownership and possession of Homes as may be provided by the Declaration.

G. To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations for the use of the Property.

H. To contract for the management of the Property, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association, except (1) those which require specific approval of the Board of Directors or the membership of the Association; (2) those which are incapable of being delegated as same may be contrary to the Declaration or the By-Laws; (3) those which are contrary to the Statutes of the State of Florida; and (4) wherein a delegation is a power and duty

which by its very nature is a decision or fiduciary responsibility to be made by the Board of Directors and is therefore not susceptible of delegation.

I. To employ personnel and contract with independent contractors to perform the services required for proper operation of the Community.

J. To enter into agreements with other parties for easements or sharing arrangements or recreational facilities as the Board of Directors may deem in the best interests of the Community.

4.3 Assets of the Association. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the Members in accordance with the provisions of the Declaration, these Articles, and the By-Laws.

4.4 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration and the By-Laws.

## ARTICLE 5

### MEMBERS

5.1 Membership. The Members of the Association shall consist of all of the record Owners of Lots in the Community. Membership shall be established by the acquisition of ownership of fee title to, or fee interest in, a Lot in the Community, whether by conveyance, devise, judicial decree, or otherwise subject to the provisions of the Declaration, and by the recordation amongst the Public Records of Palm Beach County, Florida, of the deed or other instrument establishing the acquisition and designating the Lot affected thereby, and by the delivery to the Association of a true copy of such deed or other instrument. The new Owner designated in such deed or other instrument shall thereupon become a Member of the Association, and the membership of the prior owner as to the Lot designated shall be terminated.

5.2 Assignment. The share of a Member in the funds and assets of the Association, in its Common Property, and membership in this Association, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot for which that share is held.

5.3 Voting. On all matters upon which the membership shall be entitled to vote, the vote for each Lot shall be as specified in the Declaration. Said votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one (1) Lot shall be entitled to the cumulative total of votes allocated to Lots owned.

5.4 Meetings. The By-Laws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

## **ARTICLE 6**

### **TERM OF EXISTENCE**

The Association shall have perpetual existence.

## **ARTICLE 7**

### **INCORPORATOR**

The names and addresses of the subscribers to these Articles of Incorporation are as follows:

Jeffrey Miller

Township Center, 2400 Lyons Road  
Coconut Creek, Florida 33063

Carol Stephens

Township Center, 2400 Lyons Road  
Coconut Creek, Florida 33063

Frank Rodgers

Township Center, 2400 Lyons Road  
Coconut Creek, Florida 33063

## **ARTICLE 8**

### **OFFICERS**

The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association within ten (10) days following the annual meeting of the members of the Association, and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers.

## **ARTICLE 9**

### **DIRECTORS**

9.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a Board consisting of not less than three (3) nor more than nine (9) Directors, the exact number to be determined from time to time by the Membership. All Directors must be Members of the Association.

9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Members when that is specifically required.

9.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

## ARTICLE 10

### INDEMNIFICATION

10.1 Indemnity. To the fullest extent permitted by Florida law:

(A) The Association shall indemnify any person who is or was a party to any proceeding by reason of the fact that he or she is or was a Director, officer, committee member or employee of the Association against any liability incurred in connection with such proceeding.

(B) The Association shall indemnify any person who is a party to any proceeding brought by or in the right of the corporation, by reason of the fact that he or she is or was a Director, officer, committee member or employee of the Association against any liability incurred in connection with such proceeding.

(C) The foregoing indemnity shall also include, without limitation, costs and attorney's fees incurred and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the actual and reasonable expenses incurred in connection with the defense or settlement of such proceeding, including appeal thereof.

10.2 Limitations. The foregoing indemnity obligations shall be subject to such limitations and restrictions as are now or hereafter set forth in the applicable Statutes.

10.3 Inclusions. The indemnification provided for herein shall include any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, any appeal in any such action, suit or proceeding, and any inquiry or investigation that might lead to such an action, suit or proceeding.

10.4 Recovery of Expenses. Expenses incurred by any person entitled to indemnification hereby shall be paid in advance of the final disposition of the proceeding upon receipt of any undertaking acceptable to the Association, by or on behalf of such person to repay such amount if he or she is ultimately found not to be entitled to indemnification pursuant to law.

10.5 Non-exclusive. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and, to the extent permitted by law, the Association may make any other or further indemnification or advancement of expenses if approved by a majority of the disinterested Directors or vote of the Members, or as permitted under any By-Law or agreement, to the extent permitted by

law.

10.6. Application for Indemnity. Nothing herein is intended to restrict a party's authority, as provided by law, to apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction.

## ARTICLE 11

### AMENDMENTS

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

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

11.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-fourth (1/4) of the Members of the Association. A proposed amendment must be approved by not less than two-thirds (2/3) of the votes of the members present and participating, in person or by proxy, at a meeting at which a quorum is established or by written agreement provided that a quorum participates, provided, however, that all amendments must be approved by at least a majority of the total votes of the entire membership of the Association.

11.3 Limitation. No amendment shall make any changes in the qualifications for membership or in the voting rights or property rights of Members.

11.4 Recording. A copy of each amendment shall be filed with and certified by the Secretary of State pursuant to the provisions of the applicable Florida Statutes, and a copy shall be recorded in the Public Records of Palm Beach County, Florida.

## ARTICLE 12

### ADDRESS

The principal place of business of the Corporation shall be located at 4662 Boxwood Circle, Boynton Beach, Florida 33436, but the Corporation may maintain offices and transact business in such other places within or without the State of Florida as may from time to time be designated by the Board of Directors.

## ARTICLE 13

### INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The registered agent of this Corporation shall be Becker & Poliakoff, P.A., 625 North Flagler Drive 7<sup>th</sup> Floor, West Palm Beach, Florida 33401.

**AMENDED AND RESTATED  
BY-LAWS**

**OF**

**FAIRMONT PLACE HOMEOWNERS ASSOCIATION, INC.**

**A FLORIDA NOT-FOR-PROFIT CORPORATION**

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**NOTE:** This document is a substantial rewording of the original text of the By-Laws attached as Exhibit C to the Declaration of Covenants, Restrictions and Easements executed by Developer on June 24, 1987, recorded on July 2, 1987, at Official Records Book 5339, Page 606, of the Public Records of Palm Beach County.

**ARTICLE 1**

**GENERAL**

1.1 **The Name.** The name of the Corporation shall be FAIRMONT PLACE HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association."

1.2 **Principal Office.** The principal office of the Corporation shall be at 4662 Boxwood Circle, Boynton Beach, Florida 33436, or at such other place as may be subsequently designated by the Board of Directors.

1.3 **Identity.** In addition to the within By-Laws being the By-Laws of the Association, these By-Laws are established pursuant to Chapter 720, Florida Statutes ("Act") for the purpose of administering, operating and managing Fairmont Place (the "Community").

1.4 **Definition.** As used herein, the term "Corporation" shall be the equivalent of "Association," and all other words as used herein shall have the same definitions as attributed to them in the Declaration of Covenants, Restrictions and Easements for Fairmont Place ("Declaration"). Any terms not defined in the Declaration shall have those definitions established by the Act.

**ARTICLE 2**

**MEMBERSHIP AND VOTING PROVISIONS**

2.1 **Membership.** Membership in this Association shall be limited to record owners of Lots in the Community. Transfer of Lot ownership, either voluntarily or by operation of law, shall automatically terminate membership, and the transferee shall automatically become a Member of this Association. If Lot ownership is vested in more

than one person, all of the persons owning a Lot shall be authorized to attend meetings. If Lot ownership is vested in a trust or, to the extent permitted by the Declaration, any other entity, the entity must designate a representative to exercise its rights as a Member.

2.2 **Voting Rights.** On all matters upon which the membership shall be entitled to vote, the vote for each Parcel shall be as specified in the Declaration and the Articles of Incorporation. Said votes shall be exercised or cast in the manner provided by the Declaration and these By-Laws. Any person or entity owning more than one (1) Parcel shall be entitled to the cumulative total of votes allocated to Parcels owned. The vote of a Parcel shall not be divisible. Unless otherwise set forth in the Declaration, the Articles of Incorporation, herein or in the Act, matters shall be voted on by the membership of the Association and shall be determined by a vote of a majority of the voting interests ("Voting Interests") present and voting, in person or by proxy, at any meeting at which a quorum is established, or by written agreement.

2.3 **Quorum.** Unless otherwise provided in these By-Laws, the presence in person or by proxy of thirty percent (30%) of the Voting Interests of the Association shall constitute a quorum. A quorum is not required for elections pursuant to Section 4.2 hereof.

2.4 **Voting Procedure.** Votes may be cast in person, by written agreement or by proxy. All proxies shall be in writing, signed by the person entitled to vote, shall be filed with the Secretary of the Association prior to or at the meeting at which they are to be used, or prior to or at any lawful adjournment thereof, and shall be effective only for the specific meeting for which originally given and any lawful adjournment thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the Owner executing it.

2.5 **Designation of Voting Member.** If a Parcel is owned by one or more persons, their right to vote shall be established by the record title to the Lot and any one of them may cast the vote for the Parcel. If a Parcel is owned by a trust or, to the extent permitted by the Declaration, another entity, it shall designate the representative, officer, employee or agent entitled to cast the vote by executing a certificate to be filed with the Secretary of the Association, signed by its authorized representative. The person designated in any such certificate shall be known as the Voting Member. If, for a Parcel owned by a trust or other permitted entity, such certificate is not on file with the Secretary of the Association, the vote of the Parcel shall not be counted in determining the presence of a quorum, or for any purpose requiring the approval of the person entitled to cast the vote for the Parcel. Such certificate shall be valid until revoked or superseded by a subsequent certificate, or until a change occurs in the ownership of the Parcel.

## ARTICLE 3

### MEMBERSHIP MEETINGS

3.1 **Place.** All meetings of Members shall be held at the principal office of the Association or at such other place and at such time as shall be designated by the Board and stated in the notice of meeting.

3.2 **Notices.** It shall be the duty of the Secretary to send by regular mail, hand delivery or electronic transmission a notice of each annual or special meeting to each Lot Owner and to post a copy of said notice in a conspicuous place on the property at least fourteen (14) continuous days but not more than sixty (60) days prior to such meeting. The Board may adopt a rule to provide that, in lieu of posting notice of a members' meeting on the Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting shall list the time, place and purpose thereof and shall incorporate an identification of agenda items. All notices shall be mailed, hand delivered or sent by electronic transmission to the address last furnished to the Association by the Owner as it appears on the books of the Association to each Owner. Proof of posting, delivery or mailing of the notice (if required) shall be given by the affidavit of the person serving the notice, or a United States Postal Service Certificate of mailing, shall be included in the official records of the Association affirming that the notice was mailed, hand delivered or sent by electronic transmission in accordance with Florida law. Notice of specific meetings may be waived in writing before or after the meeting.

3.3 **Annual Meeting.** The annual meeting for the purpose of electing directors and transacting any other authorized business shall be held during the month of December at a date and time determined by the Board of Directors. At the annual meeting, the Members shall elect a Board by plurality vote (cumulative voting is prohibited), and shall transact such other business as may be properly brought before the meeting. The Board may adopt reasonable rules governing the frequency, duration and manner of Owner participation.

3.4 **Special Meeting.** Special meetings of the Members for any purpose, unless otherwise prescribed by statute, may be called by the President, or shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors or at the request, in writing, of Members representing twenty percent (20%) of the total voting interests in the Association. Such requests shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting. The Board may adopt reasonable rules governing the frequency, duration and manner of Owner participation.

3.5 **Action by Members Without a Meeting.** Notwithstanding anything herein to the contrary, any action required or permitted to be taken at any annual or special meeting of Members may be taken by written agreement without a meeting, signed by the Members (or persons authorized to cast the vote of any such Members as elsewhere

herein set forth), so long as at least a quorum of the members participates and so long as the number of votes required to authorize or approve such action is obtained. Voting by written agreement shall be done in accordance with the provisions of the applicable Statute, as same may be amended from time to time.

3.6 **Adjourned Meeting.** If any meeting of Members cannot be organized because a quorum is not present, either in person or by proxy, the meeting shall be adjourned from time to time until a quorum is present. If any agenda item at a meeting of the members cannot be approved because approval of more than a quorum of the members is required but such required percentage is not present or is not achieved, the meeting may be adjourned from time to time until the requisite vote is achieved.

3.7 **Order of Business.** The order of business at annual Members' meetings, and as far as practical at other Members' meetings, shall be:

- A. Calling to order by President, Vice President in the absence of the President, or Chairman;
- B. Appointment of chairman of the meeting by the President or, in his absence, by a majority of the Board of Directors. The chairman may be the attorney for the Association or a representative of the Association's management company who will conduct the meeting without vote;
- C. Appointment of inspectors of election;
- D. Election of directors;
- E. Calling of the roll and certifying of proxies;
- F. Proof of notice of the meeting or waiver of notice;
- G. Reading and disposal of any unapproved minutes;
- H. Reports of officers;
- I. Reports of committees;
- J. Unfinished business;
- K. New business;
- L. Adjournment.

## ARTICLE 4

### DIRECTORS

4.1 **Membership.** The affairs of the Association shall be managed by a Board consisting of not less than three (3) nor more than nine (9) Directors, the exact number to be determined from time to time by the Membership. All Directors shall be Members of the Association.

4.2 **Election of Directors.** Election of directors shall be conducted in the following manner:

- A. Election of directors shall be held at the annual Members' meeting.
- B. The Board of Directors shall be elected by written ballot or voting machine. Proxies shall not be used in the election of the Board of Directors, either in general elections or elections to fill vacancies, except for vacancies caused by the recall of a majority of the Board. No Owner shall permit any other person to vote his or her ballot, and any such ballots improperly cast shall be deemed invalid. Elections shall be decided by a plurality of those ballots cast. Cumulative voting is prohibited. There shall be no quorum requirement; provided, however, at least twenty percent (20%) of the eligible votes must cast a ballot in order to have a valid election.
- C. Written notice of the scheduled election shall be mailed, hand delivered or electronically transmitted to each Member at his or her last known address as it appears on the books of the Association. The first notice of the date of the election shall be mailed, hand delivered or electronically transmitted to each Member not less than sixty (60) days before the scheduled election. The first notice must contain the name and correct mailing address of the Association.
- D. Any Owner or other eligible person desiring to be a candidate for the Board shall give written notice to the Association not less than forty (40) days before the scheduled election. Written notice shall be effective when received by the Association. Nominations may not be accepted unless submitted in accordance herewith.
- E. Not less than fourteen (14) days before the scheduled election, the Association shall mail, deliver or electronically transmit to the eligible voters at the addresses listed in the official records of the Association a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. Each Lot shall receive one (1) ballot. The second notice and accompanying documents shall not contain any communication by the Board which endorses, disapproves or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter and the Lot number or address being voted and shall contain a signature space for the voter. Once the ballot is completed, the voter shall place

the completed ballot in the inner smaller envelope and seal that envelope. The inner envelope shall then be placed within the larger outer envelope and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person owns more than one Lot and is, therefore, entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for his or her signature. The outer envelope shall either be mailed or hand delivered to the Association. Upon receipt by the Association, no ballot may be rescinded or changed.

F. The written ballot shall indicate in alphabetical order by surname, each and every Owner or other eligible person who desires to be a candidate for the Board and who gave written notice to the Association not less than forty (40) days before a scheduled election, unless such person has, prior to the mailing of the ballot, withdrawn his or her candidacy in writing. No ballot shall indicate which candidates are incumbents on the Board. No write-in candidates shall be permitted. No ballot shall contain a section providing for the signature of a voter. Envelopes containing ballots received by the Association shall be retained and collected by the Association and shall not be opened except in the manner hereinafter provided and in accordance with these By-Laws.

G. All envelopes containing ballots shall be collected by the Association and shall be transported to the location of the election. An impartial committee of persons appointed by the Board shall validate and process the ballots. The Association shall have available additional blank ballots and envelopes at the meeting for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope as provided in subsection 4.2(E) hereof. At the meeting, as the first order of business, ballots not yet cast shall be collected. Next, the signatures and Lot identifications on the outer envelopes shall be checked against the list of qualified voters. Any exterior envelope not signed by the eligible voter shall be marked "disregarded" and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any Members in attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed in a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. Inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of any Members. Any inner envelopes containing more than one ballot shall be marked "disregarded" and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained as part of the official records of the Association for such time period as may be required by the Act. Board members whose terms expire and who are not reelected shall relinquish their Board positions, and those positions shall be assumed by the duly elected Board members.

H. The Board shall not create or appoint any committee for the purpose of nominating a candidate or candidates for election to the Board. However, the Board may create or appoint a search committee which shall not have the authority to nominate

any candidate, but may encourage eligible and qualified persons to become candidates for the Board.

I. Notwithstanding anything contained herein to the contrary, an election is not necessary unless there are more eligible candidates than vacancies. In such case, not later than the date of the scheduled election, the Association shall call and hold a meeting of the membership to announce the names of the new Board members, or shall notify the Members that one or more Board member positions remain unfilled, as appropriate under the circumstances. In the alternative, the announcement may be made at the annual meeting.

J. If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, or otherwise, a majority of the remaining directors, though less than a quorum, shall choose a successor who shall hold office for the balance of the unexpired term of office. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board.

4.3 **Organizational Meeting.** The organizational meeting of a newly elected Board shall be held after their selection within ten (10) days of their election, at such place and time as shall be fixed by the directors at the meeting at which they were elected. Notice of such organizational meeting; which notice specifically incorporates an identification of agenda items, shall be posted conspicuously on the Property at least forty-eight (48) continuous hours preceding the meeting, except in an emergency. The organizational meeting shall be chaired by the Association Attorney or the Association Manager, and the vote to elect officers may be conducted by secret ballot.

4.4 **Term.** The term of each director's service shall be for two (2) years and subsequently until his successor is duly elected and qualified, or until he or she is removed in the manner elsewhere provided. The directors shall serve staggered terms, with four (4) directors being elected in even numbered years and five (5) directors being elected in odd numbered years. To implement staggered terms, at the first contested election after the effective date of this amendment, the four (4) or five (5) candidates (depending upon whether it is an even numbered or an odd numbered year) with the highest number of votes shall serve a two (2) year term, and the remaining person or persons elected to the Board shall serve a one (1) year term. If there is not a contested election at the first annual meeting after the effective date of this amendment, the persons seated on the Board shall decide among themselves who shall serve two (2) years and who will serve one (1) year in accordance with these provisions or the implementation of staggered terms will be delayed until the next contested election and all Board members will continue to serve one (1) year terms until staggered terms are implemented.

4.5 **Recall.** Any member of the Board may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all Members. A special meeting of the Members to recall a member or members of the Board may be called by ten percent (10%) of the Members giving notice of the meeting as required for a meeting of Members, and the notice shall state the purpose of the meeting. The recall of a

director shall be further governed by the applicable provisions of the Act and the Florida Administrative Code, as same may be amended from time to time.

**4.6 Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings which shall include an agenda, shall be given to each director, personally or by mail, telephone, facsimile, or electronic mail, and shall be transmitted at least forty-eight (48) hours prior to the meeting. The business at the meeting shall be limited to the items on the agenda, unless the Board determines that a matter must be taken up on an emergency basis. Regular meetings of the Board shall be open to all Members, and notice of such meetings shall be posted conspicuously at the Property forty-eight (48) continuous hours preceding the meeting for the attention of the Members of the Association except in the event of an emergency. However, written notice of any meeting at which non-emergency special assessments, or at which amendments to rules regarding Lot use will be proposed, discussed or approved, shall be mailed, hand delivered or electronically transmitted to the Members and posted conspicuously on the Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice requirement shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. The Board may adopt a rule to provide that, in lieu of posting notice of a regular Board meeting on the Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting where assessments against Owners are to be considered for any reason shall contain a statement that assessments will be considered, and the nature of any such assessments. The right of a Member to attend regular Board meetings includes the right to speak at such meetings with reference to all designated agenda items. A Member does not have the right to speak with reference to items not specifically designated on the agenda, but the Board, in its discretion, may permit a Member to speak on such items. The Board may adopt reasonable rules governing the frequency, duration, and manner of Owner statements. Any Member may tape record or videotape meetings of the Board, committee or Members; provided, however, that the equipment utilized does not produce distracting sound or light emissions and subject to any rules which may be adopted by the Board regarding placement, assemblage of audio and video equipment, prior notice to record the meeting, and distraction resulting from moving about during recording of the meeting.

**4.7 Special Meetings.** Special meetings of the directors may be called by the President or, in his absence, by the Vice President, and must be called by the President or Secretary at the written request of four (4) of the directors. Notice of the meeting which shall include an agenda, shall be given personally or by mail, telephone, facsimile, or electronic mail, which notice shall state the time, place and purpose of the meeting, and shall be transmitted to each director not less than forty-eight (48) hours prior to the meeting. The business at the meeting shall be limited to the items on the agenda, unless the Board determines that a matter must be taken up on an emergency basis. Special meetings of the Board shall be open to all Members, and notice of a special meeting shall be posted conspicuously on the Property forty-eight (48) continuous hours in advance for

the attention of the Members of the Association except in the event of an emergency. However, written notice of any special meeting at which non-emergency special assessments, or at which amendments to rules regarding Lot use will be proposed, discussed or approved, shall be mailed, hand delivered or electronically transmitted to the Members and posted conspicuously on the Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice requirement shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association. The Board may adopt a rule to provide that, in lieu of posting notice of a special Board meeting on the Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting where assessments against Owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. The right of a Member to attend special Board meetings includes the right to speak at such meetings with reference to all designated agenda items. The Board may adopt reasonable rules governing the frequency, duration and manner of Owner participation. The provisions set forth in Section 4.6 hereof with respect to speaking at meetings and recording of meetings shall also apply to special meetings.

4.8 **Waiver of Notice.** Any director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the giving of notice. Attendance by any director at a meeting shall constitute a waiver of notice of such meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

4.9 **Quorum and Voting.** A quorum at directors' meetings shall consist of a majority of the entire Board. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of directors is required by the Declaration, the Articles or these By-Laws. Directors may not vote by proxy or secret ballot at Board meetings, except, if allowed by statute, for election of officers. A vote or abstention for each director present shall be recorded in the minutes. A director of the Association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting. A director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. Directors may meet by telephone conference and those attending by telephone conference may be counted toward a quorum and may vote by telephone, provided the telephone conference is conducted on a speaker so that the conversation of those Board members attending by telephone may be heard by the Board and any other person attending the meeting.

4.10 **Adjourned Meetings.** If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time

until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

4.11 **Presiding Officer.** The presiding officer of the directors' meetings shall be the President, his or her designee or, in the absence of the President, the Vice-President or his or her designee. In the absence of the President or Vice-President, the directors present shall designate one of their number to preside or designate the attorney of the Association or a representative of the Association's management company to act as chairman.

4.12 **Order of Business.** The order of business at directors' meetings shall, to the extent practical, be:

- A. Calling of roll;
- B. Proof of due notice of meeting;
- C. Reading and disposal of any unapproved minutes;
- D. Reports of officers and committees;
- E. Unfinished business;
- F. New business;
- G. Adjournment.

4.13 **Compensation.** Directors shall not be entitled to compensation for their services.

4.14 **Resignation.** Any Board member may resign at any time at a Board or members' meeting or by written resignation, delivered to the Association, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date. The acceptance of a resignation shall not be required to make it effective.

4.15 **Committees.** All committee meetings shall be exempt from the procedural requirements applicable to Board meetings, except where prohibited by the Act.

## ARTICLE 5

### **POWERS AND DUTIES**

The Board exercise all powers and duties of the Association under Chapters 617 and 720, Florida Statutes, the Declaration, Articles of Incorporation and By-Laws, except

where a vote of the members is specifically required. Such powers and duties of the Board shall include, without limitation (except as limited elsewhere herein and to the extent that same is in accordance with the Act) the following:

- A. Operation, care, upkeep and maintenance of the Property and facilities.
- B. Determination and adoption of the annual budget of Common Expenses required for the operation of the Property and the Association.
- C. Levying and collection of regular and special Assessments for Common Expenses from Owners required to pay same.
- D. Employment and dismissal of the personnel necessary for the maintenance and operation of the Common Property and facilities.
- E. Adoption and amendment of the Rules and Regulations covering the details of the operation and use of Property and facilities.
- F. Maintaining of bank accounts on behalf of the Association and the designation of the signatories required therefor.
- G. Purchase of Lots at foreclosure or other judicial sales, in the name of the Association or its designee.
- H. Selling, mortgaging or otherwise dealing with Lots acquired by the Association or its designee.
- I. Organization of Corporations to act as designees of the Association in acquiring title to Lots or leasing Lots by the Association.
- J. Obtaining and reviewing insurance for the Property.
- K. Making repairs, additions and improvements to, or alterations of, the Property, and repairs to and restoration of the Property, in accordance with the provisions of the Declaration.
- L. Enforcement of the obligations of the Owners, the allocation of profits and expenses, and the performance of anything and everything else necessary and proper for the sound management of the Community.
- M. Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Property, subject to the terms of the Declaration.

N. Contracting for the management of the Community and the delegation to such manager such powers and duties of the Board as the Board may deem appropriate in the circumstances, and contracting for the management or operation of portions of the Property susceptible to separate management or operation thereof, and the granting of concessions for the purpose of providing services to the Owners. As an exception to the foregoing, there shall be no delegation of powers and duties wherein (1) same are contrary to the Statutes of the State of Florida and are accordingly not susceptible of being delegated; (2) those delegations and duties which may be required by the Declaration and these By-Laws to have approval of the Board or of the Owners; (3) the delegation is a power and duty which by its very nature is a decision or fiduciary responsibility to be made by the Board and is therefore not susceptible of delegation; and (4) same may be contrary to the Declaration or the By-Laws.

## **ARTICLE 6**

### **OFFICERS**

6.1 **Executive Officers.** The executive officers of the Association shall be a President, one or more Vice Presidents, Secretary, and Treasurer, all of whom shall be members of the Board and shall be elected by and serve at the pleasure of the Board. No two of said offices may be united in one person, except that the offices of the Secretary and Treasurer may be united in one person.

6.2 **Appointive Officers.** The Board may appoint such other officers from among the members as they may deem necessary, who shall hold office at the pleasure of the Board and have such authority and perform such duties as from time to time may be prescribed by said Board.

6.3 **Election.** The Board, at its first meeting after each annual meeting of general members, shall elect all officers.

6.4 **Term.** The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board.

6.5 **The President.** The President shall be the chief executive officer of the Association. Subject to the provisions of 4.11 hereinabove, the President shall preside at all meetings of Members and of the Board, shall exercise the executive powers of the Association and have general supervision over its affairs and other officers, and shall perform all of the duties incident to the office and such other duties as may be delegated to the President from time to time by the Board.

6.6 **The Vice President.** The Vice President shall perform all of the duties of the President in the absence of the President, and such other duties as may be required by the Board. If the Board elects more than one Vice President, the order of succession shall be determined by the Board.

6.7 **The Secretary.** The Secretary or assistant Secretary shall issue notices of all Board meetings and all meetings of Members, shall attend and keep the minutes of same, and shall have charge of all of the books of the Association as well as its records and papers, except those kept by the Treasurer. All minutes shall be kept in a businesslike manner and shall be available for inspection by Owners as set forth in the Act.

6.8 **The Treasurer.**

A. The Treasurer shall have custody of the Association's funds and securities, shall keep full and accurate accounts of the Association's receipts and disbursements, and shall deposit all monies and other valuable effects in the name of, and to the credit of, the Association in such depositories designated by the Board. The books shall reflect an account for each Lot in the manner required by the Act.

B. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, making proper vouchers for such disbursements, and shall render an account of all his or her transactions as the Treasurer, and of the financial condition of the Association to the Board whenever it may require it.

C. The Treasurer shall collect all assessments and shall report promptly to the Board the status of collections.

D. The Treasurer shall maintain accounting records according to good accounting practices and shall render to Owners or their authorized representatives, at least annually, a written summary of the Association's fiscal activities.

6.9 **Compensation.** Officers shall not receive compensation for their services.

6.10 **Resignations.** Any officer may resign at any time at a Board or members' meeting or by written resignation, delivered to the Association, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date. The acceptance of a resignation shall not be required to make it effective.

## ARTICLE 7

### **FINANCES AND ASSESSMENTS**

7.1 **Depositories.** The funds of the Association shall be deposited in such banks and depositories as determined and approved by appropriate resolutions of the Board. Funds shall be withdrawn only upon checks and demands for money signed by such officer(s) as may be designated by the Board. All withdrawals of funds must be approved and signed by two (2) authorized officers of the Association.

7.2 **Fiscal Year.** The fiscal year of the Association shall begin on the first day of January of each year; provided, however, that the Board, whenever it deems it advisable, is expressly authorized to change to a different fiscal year in accordance with the applicable provisions of the Internal Revenue Code.

7.3 **Determination of Assessments.**

A. The Board of Directors shall fix and determine the sum or sums necessary and adequate to assess Owners for their share of the Common Expenses set forth in the budget for the Association and the Community. Funds for the payment of Common Expenses shall be assessed against Owners as provided in the Declaration. Assessments shall be payable not less frequently than quarterly and shall be due on the first day of each quarter or month unless otherwise ordered by the Board. Assessments shall be made against Owners in an amount not less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Special Assessments, if necessary, shall be levied in the manner provided in the Act and shall be payable in the manner determined by the Board. All funds due under these By-Laws and the Declaration are Common Expenses.

B. Any meeting at which a proposed annual budget of the Association or an amendment thereto will be considered by the Board shall be open to all Owners.

C. The proposed annual budgets for Common Expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications. In addition to annual operating expenses, the Board is empowered, at its discretion, to include reserve accounts for capital expenditures and deferred maintenance.

D. When the Board determines the amount of any Assessment, the Treasurer shall mail or present to each Owner a statement of Assessment specifying the amount of same and to whom and where same should be payable and sent. Upon request, the Treasurer shall give a receipt for each payment received.

7.4 **Fidelity Bonds.** The Association shall obtain and maintain insurance or fidelity bonding for all persons who control or disburse funds of the Association in the principal sum not less than that required by and subject to the terms of the Act.

7.5 **Financial Statements.** The Board shall cause to be prepared financial statements either compiled, reviewed or audited, financial statement or a report of cash receipts and expenditures in lieu of financial statements, in accordance with the Act.

## ARTICLE 8

### OFFICIAL RECORDS

The Association shall maintain official records as defined in the Act, which shall be subject to inspection as provided in the Act, and as may be supplemented by Rules and Regulations adopted by the Board.

## ARTICLE 9

### PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

## ARTICLE 10

### AMENDMENTS

Except as otherwise provided, these By-Laws may be amended in the following manner:

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

10.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one-fourth (1/4) of the Voting Interests of the Association. A proposed amendment must be approved by not less than sixty percent (60%) of the votes of the members present and participating, in person or by proxy, at a meeting at which a quorum is established or by written agreement provided that a quorum participates, provided, however, that all amendments must be approved by at least a majority of the total votes of the entire membership of the Association.

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

10.3 **Execution and Recording.** A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the

Declaration and By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Palm Beach County.

## **ARTICLE 11**

### **LIABILITY SURVIVES TERMINATION OF MEMBERSHIP**

The termination of membership in the Association shall not relieve or release any former Owner or Member from any liability or obligation incurred under or in any way connected with the Community during the period of ownership and membership, or impair any rights or remedies which the Association may have against such former Owner and Member, arising out of, or which is in any way connected with, such ownership and membership.

## **ARTICLE 12**

### **LIMITATION OF LIABILITY**

Notwithstanding the duty of the Association to maintain and repair parts of the property, the Association shall not be liable for injury or damage caused by a latent condition in the property, nor for injury or damage caused by the elements, or other Owners or persons.

## **ARTICLE 13**

### **SEAL**

The seal of the Association shall have inscribed thereon the name of the Association, the year of its organization, and the words "not-for-profit." Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

## **ARTICLE 14**

### **CONFLICT**

If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these By-Laws and of any of the Declaration, the provisions of the Declaration shall prevail.

## ARTICLE 15

### CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws or the intent of any provisions hereof.

This instrument was prepared by:  
Kenneth S. Direktor, Esquire  
Becker & Poliakoff, P.A.  
1 East Broward Blvd., Suite 1800  
Ft. Lauderdale, Florida 33301  
**WC-112**

## **AMENDED AND RESTATED**

### **DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR**

#### **FAIRMONT PLACE**

**NOTE:** This document is a substantial rewording of the Declaration of Covenants, Restrictions and Easements for Fairmont Place, executed by Developer on June 24, 1987, recorded on July 2, 1987, at Official Records Book 5339, Page 606, of the Public Records of Palm Beach County, as amended to this date (hereinafter the "Original Declaration"), except that all Exhibits to the Original Declaration which are not otherwise referenced herein or attached hereto remain unchanged and are hereby incorporated by reference herein as if attached hereto and made a part hereof.

#### **1. INTRODUCTION AND SUBMISSION.**

- 1.1 Name. The name by which this Property is to be identified is FAIRMONT PLACE (hereinafter called the "Community" or the "Property").
- 1.2 Submission Statement. The Developer submitted the Property and all improvements thereon to this Declaration and declares that the Property and all improvements thereon shall be held, sold, conveyed, encumbered, hypothecated, leased used, occupied and operated subject to the terms and conditions of this Declaration, which shall be a covenant running with title to all portions of the Property.
- 1.3 The Land. The real property comprising FAIRMONT PLACE, located in Palm Beach County, Florida, is more particularly described in Exhibit "A" to the Original Declaration. The foregoing shall hereinafter be referred to as the "Property".

2. **DEFINITIONS.** The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective

meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- 2.1 "Act" means Chapter 720, Florida Statutes, as it may be amended from time to time, and all references herein to the Act shall mean and refer to the Act as amended from time to time, whether or not so stated.
- 2.2 "Articles" or "Articles of Incorporation" mean the Amended and Restated Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds which are required for the payment of Common Expenses which from time to time is assessed against the Owners.
- 2.4 "Association" means FAIRMONT PLACE HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, the entity responsible for the operation and maintenance of the Community.
- 2.5 "Board" or "Board of Directors" means the representative body which is responsible for administration of the Association.
- 2.6 "By-Laws" mean the Amended and Restated By-Laws of the Association, as amended from time to time.
- 2.7 "Common Property" means and includes the portions of the Property which are not included in the Lots, as defined herein.
- 2.8 "Common Expenses" means: (1) expenses of administration and management of the Community; (2) expenses of maintenance, operation, protection, repair or replacement of Common Property, as well as those portions of the Lots for which the Association is responsible; (3) expenses declared Common Expenses by the provisions of this Declaration or by the By-Laws; (4) any valid charge against the Association or against the Common Property; (5) the costs of carrying out the powers and duties of the Association; (6) all expenses properly incurred by the Association in the performance of its duties; and the cost of communications services as defined in Chapter 202, Florida Statutes, information services, or internet service obtained pursuant to a bulk contract shall also be a Common Expense, but shall not include any other separate obligations of individual Owners.
- 2.9 "Parcel" means a Lot together with the Improvements thereon, and all other appurtenances to the Lot, as identified in this Declaration.
- 2.10 "County" means the County of Palm Beach, State of Florida.

- 2.11 "Declaration" means this instrument, as amended from time to time.
- 2.12 "Developer" means the entity identified in the Original Declaration as Developer.
- 2.13 "Home" means the residential dwelling constructed on a Lot.
- 2.14 "Improvements" means all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Property.
- 2.15 "Individual Assessment" means a charge against one or more Owners and their Lots, directly attributable to the failure of such Owner(s) to duly perform the Owner(s) obligations hereunder, and the Association's enforcement of this Declaration against such Owner(s).
- 2.16 "Lot" means a portion of the Community on which a Home is built or to be built, designated as such on the site plan for the Community.
- 2.17 "Member" means an Owner of a Lot and a Member of the Association.
- 2.18 "Mortgagee" means any lending institution having a mortgage lien upon a Parcel, including any of the following institutions, entities or persons: (i) a federal or state savings and loan association or bank doing business in the State of Florida or a life insurance company doing business in Florida which is approved by the Commissioner of Insurance of the State of Florida, or bank or real estate investment trust, or a mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America; or (ii) such other Lenders as the Board shall hereafter designate as such in writing which have acquired a mortgage upon a Parcel; or (iii) any "Secondary Mortgage Market Institution" including Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and such other Secondary Mortgage Market Institution as the Board shall hereafter designate as such in writing which has acquired a mortgage upon Parcels; or (iv) a private lender; or (v) a purchase money mortgage held by the seller.
- 2.19 "Owner of a Lot" or "Owner" means the record owner of a Lot.
- 2.20 "Plat" means the Plat of the Property, located at Plat Book 55, Pages 137 through 141, of the Public Records of Palm Beach County, Florida.
- 2.21 "Special Assessment" means a charge against all Owners and their Lots, representing their proportionate share of the cost incurred by the Association for (i) reconstruction of any portion or portions of Improvements located on

the Common Properties pursuant to the provisions of this Declaration, or (ii) for installation or construction of any capital Improvements on any portion of the Common Properties which the Association may from time to time authorize; or (iii) any other extraordinary expense of the Association, including, but not limited to, amounts necessary to pay Common Expenses which have not been collected through Assessments levied pursuant to an annual budget.

### **3. DESCRIPTION OF COMMUNITY.**

3.1 General Description. The Community is a Planned Unit Development, which operates as housing for older persons under the federal and state fair housing laws and local fair housing ordinance, and which imposes architectural control on the privately owned Lots, both as set forth in this Declaration and in the guidelines adopted and amended from time to time by the Board of Directors. The Community includes one hundred ninety-two (192) Lots, which are identified in the Plat, and the Common Property includes the land and all other parts of the Community not included within the Lots.

3.2 Common Property. Every Owner shall have a non-exclusive common right and easement of ingress and egress to and from his or her Lot and for the use of Common Property for the purposes intended, subject to the terms and conditions of this Declaration, the Rules and Regulations, and the Act. The Common Property shall be owned by the Association, subject to the terms and conditions of this Declaration, the Rules and Regulations, and the Act.

3.3 Access. The Association reserves unto itself and all Owners and their lessees and invitees perpetual non-exclusive easements of ingress and egress over and across any private streets and access ways constructed from time to time in the Community, subject to the terms and conditions of this Declaration, the Rules and Regulations, and the Act.

3.4 Utilities. The Property shall be subject to such easements as may be determined in the sole discretion of the Association for utilities including, but not limited to, water, sewer, electric and cable television as may be reasonably required to properly and adequately serve the Community as it exists from time to time. Each of said easements, whether heretofore 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.

3.5 Ingress and Egress. Police, fire and emergency services provided by a governmental entity shall have the perpetual right of ingress and egress.

Contractors and service providers authorized by the Association shall have the right of ingress and egress for so long as authorized by the Association. Contractors and service providers authorized by Lot Owners shall have the right of ingress and egress, subject to such rules and regulations as the Board may adopt and amend from time to time and, if a contractor or service provider is undertaking any activity requiring Association approval, no access will be provided until such approval is obtained..

3.6 Lot Line Encroachments. Certain Homes constructed on Lots may be situated so that an exterior wall of any such Home is located upon or immediately adjacent to the boundary line between the Lot upon which said Home is located and an adjoining Lot. In all such cases, said adjoining Lot shall be subject to an easement and right of ingress and egress in favor of the Owner of the Lot upon which said Home is located which easement shall be for the purpose of performing proper and normal maintenance upon said wall. However, no exercise of any such easement and right created pursuant to this Section shall unreasonably interfere with the use of the Lot subject to same. Any easements and rights granted pursuant to this Section shall survive any termination of this Declaration. Certain Improvements constructed on Lots may be situated so that a portion thereof, including but not limited to roof overhangs, gutters, dwelling walls, or fences may overhang or encroach upon an adjoining Lot. In all such cases, said adjoining Lot shall be subject to an easement and right in favor of the encroaching Lot which easement and right shall be for the purpose 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 Improvement, including meter reading. However, no exercise of any such easement and right created pursuant to this Section shall unreasonably interfere with the use of the Lot subject to same. Any easements and rights granted pursuant to this Section shall survive any termination of this Declaration.

3.7 Maintenance Easement. The Association shall have an easement to enter a Lot for the maintenance, repair and replacement of the Common Property, any portion of the Lots for which the Association is responsible hereunder or to perform maintenance, repair or replacement which the Lot Owner is required to perform hereunder but has failed to perform. Such access to a Lot shall be with notice to the Owner or other occupant, if practicable, and only during reasonable hours, except that access may be had at any time in case of emergency.

#### **4. SHARE OF COMMON EXPENSES AND VOTING RIGHTS.**

4.1 Percentage Ownership and Shares. Each Lot shall bear an equal percentage share of the Common Expenses.

4.2 Voting. An Owner or Owners of a Lot shall collectively be entitled to one (1) vote in the Association.

4.3 Membership In Association. Each Lot shall have, as an appurtenance thereto, a membership in the Association.

5. AMENDMENTS. Except as elsewhere provided herein, amendments to this Declaration may be effected as follows:

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

5.2 A resolution for the adoption of a proposed amendment may be proposed by either the Board of Directors of the Association or by the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be by not less than two-thirds (2/3) of the votes of the Members present and participating, in person or by proxy, at a meeting at which a quorum is established or by written agreement provided that a quorum participates, provided, however, that all amendments must be approved by at least a majority of the total votes of the entire membership of the Association.

5.3 Proviso. Provided, however, that no amendment may change the configuration or size of any Lot in any material fashion, alter or modify the appurtenances to the Lot, or change the proportion or percentage by which the Owner of the Parcel shares the Common Expenses unless the record Owner of the Parcel and all record owners of liens on it join in the execution of the amendment.

6. MAINTENANCE, REPAIR AND REPLACEMENT OF HOMES, LOTS AND COMMON PROPERTY.

6.1 Homes and Lots. All maintenance, repairs and replacements of, in or to any portion of the Home or Lot, as defined in Sections 2.13 and 2.16 hereof, shall be performed by the Owner of such Home or Lot at the Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. The Association shall be responsible for painting the exteriors of all Homes, including only the trim, soffits, rain gutters, privacy fence, and stucco. All other maintenance, repair and replacement of the trim, soffits, rain gutters and privacy fence shall be the responsibility of the Lot Owner. The Association is responsible for the maintenance, repair and replacement of the irrigation system on both the Common Property and the Lots, as

originally installed or as modified by the Association, and the Association shall have exclusive control over the operation of the irrigation system, including, but not limited to, the operation and setting of the controls and timers. The Association is responsible for maintaining and replacing, when necessary in the judgment of the Board of Directors, all lawns, landscaping and trees, but only as same were originally installed on the Lot by the Developer. All maintenance, repair or replacement for which the Owners are responsible shall be performed by contractors with appropriate licensure and insurance. The Board of Directors may set standards for appropriate levels of insurance and may require proof of licensure, insurance and the procurement of any required permits before permitting a contractor into the Community, and may also adopt such other rules as the Board deems necessary and proper to regulate contractors or any other person performing work anywhere within the Community. The Board may deny access to the property to any contractor performing work that requires approval from the Board of Directors hereunder until such approval has been granted in the manner required herein.

6.2 Common Property. Except to the extent (i) expressly provided to the contrary herein, or (ii) proceeds of insurance are made available therefor, the Association shall be responsible, at Common Expense, for all maintenance, repairs and replacements in or to the Common Property, including all air conditioning supply pipes, return pipes and ball valves serving the Common Property. The Association is responsible for the maintenance, repair and replacement of the perimeter fencing and hedges.

**7. ADDITIONS, ALTERATIONS OR IMPROVEMENTS TO COMMON PROPERTY.**

No portion of the Common Property may be subject to any additions, alterations or improvements (as distinguished from maintenance, repairs and replacements) which involve a Common Expense in excess of five percent (5%) of the annual budget then in effect for Common Expenses, including operating expenses and reserves, for any individual addition, alteration or improvement, or in excess of ten percent (10%) percent of the annual budget then in effect, including operating expenses and reserves, for all additions, alterations or improvements undertaken within a fiscal year, unless such additions, alteration or improvements have been approved by not less than two-thirds (2/3) of the votes of the Members present and participating, in person or by proxy, at a meeting at which a quorum is established or by written agreement provided that a quorum participates, provided, however, that in all additions, alterations and improvements must be approved by at least a majority of the total votes of the entire membership of the Association. Any additions, alterations or improvements to the Common Property, or any part thereof, involving a Common Expense of less than the five percent (5%) and ten percent (10%) thresholds described above, may be approved by the Board of

Directors without approval of the Owners. The cost and expense of any such additions, alterations or improvements to such Common Property undertaken by the Association shall constitute a part of the Common Expenses and shall be assessed to the Owners accordingly.

## **8. ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY OWNERS.**

8.1 Prohibited Alterations. No Owner shall make any addition, alteration or improvement in or to the Common Property.

8.2 Architectural And Designs Controls. The Association, acting through the Board of Directors or the Architectural Review Committee (the "ARC"), shall have the authority to review and approve plans and specifications for the location, size, type or appearance or any other improvement on the Lot, and to enforce standards for the external appearance of any structure or other improvement located on the Lot, as set forth herein and in any architectural guidelines promulgated by the Board of Directors or the ARC. If there are any conflicts between this Declaration and architectural guidelines, the Declaration shall control.

(a) It is the intent of the Association to create a general plan and uniform scheme of development of the Property and to create within the Property a residential community of high quality and harmonious Improvements. Accordingly, the ARC shall, subject to appeal to the Board of Directors, have the right to approve or disapprove all architecture, landscaping and location of any proposed Improvements for any and all Lots. The ARC shall be no less than three (3) members, nor more than five (5) members, all of whom shall be appointed by and serve at the discretion of the Board of Directors. Each member of the ARC shall be a Member of the Association. The ARC may impose standards for construction and development consistent with all applicable provisions prescribed in applicable building, zoning or other governmental codes. The procedures for the ARC shall be as set forth hereinbelow.

(b) No fence, wall, or other addition, improvement, or equipment (including landscaping, antennas, awnings, shutters) shall be installed, painted, erected, removed or maintained in or from the Common Properties, nor, if visible from the exterior, be made on any Residential Property 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 (ARC). The Committee (ARC) 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 comply with all applicable guidelines, will not be detrimental to the appearance of the Community and that the appearance of any structure affected thereby will be in harmony with surrounding structures and is otherwise aesthetically desirable. The ARC 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 ARC may also promulgate and issue rules and guidelines setting forth additional procedures and guidelines for the submission of plans for approval. The ARC 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 ARC of any required plans and specifications, the ARC may postpone review of any plans submitted for approval. The ARC shall have thirty (30) days after delivery of all required plans and other documentation, including any additional materials requested in writing within thirty (30) days of receipt of the initial application and supporting plans and other documentation, to approve or reject any such plans. Any plans not rejected within such thirty (30) day period shall be deemed approved. Any approval of additional landscaping by the ARC may be conditioned upon the Owner's continuing obligation to maintain such landscaping in an acceptable manner, and in no event shall the Association be responsible for the maintenance thereof, except as authorized under Section 16 hereof.

All changes and alterations shall be subject independently to all applicable governmental laws, statutes, ordinances, rules, regulations, orders, and decrees.

- (c) Prior to the occupancy of any Improvement constructed or erected on a Lot, the builder thereof shall submit a final survey and as built plans, to permit the ARC to complete its final inspection and certify that the construction of the Improvement has been completed in accordance with the plans and specifications previously approved by the ARC. The ARC may, from time to time, delegate to management of the Association or a member or members of the ARC, the responsibility to conduct such inspections as may be required in furtherance of the ARC's duties.
- (d) There is specifically reserved unto the ARC, and to any agent or member of the ARC, the right of entry and inspection upon any portion of the Community for the purpose of determining whether

any construction, maintenance, or lack of maintenance of the improvements on or unimproved portion of any Lot violates the terms of any approval by the ARC or the terms of this Declaration. If any Improvement of any nature shall be constructed or altered without the prior approval of the ARC, or is not properly maintained, the Owner shall, upon demand of the Association, cause such Improvement to be removed, or restored in order to comply with this Declaration and the plans and specifications originally approved by the ARC. The Owner shall be liable for the payment of all costs of such removal or restoration, including all costs and attorneys' fees incurred by the Association. Such costs may also be the basis for an Individual Assessment. This provision is not in derogation of the Association's rights under Section 16 hereof. The ARC is specifically empowered to enforce the provisions of this Declaration and, in the event that it becomes necessary, to recommend to the Board of Directors that the Association institute litigation to enforce this Declaration. In the event that any Owner fails to comply with the provisions contained herein or other Rules and Regulations promulgated by the ARC, the ARC may, in addition to all other remedies contained herein, recommend to the Board of Directors that it assess such Owner's Lot or record against that Owner's Parcel a Certificate of Disapproval stating that the Improvements on the Parcel fail to meet the various requirements of the ARC.

- (e) Upon approval by the ARC of any plans and specifications submitted to the ARC, the ARC shall notify the applicant in writing, which notifications shall set forth any qualifications or conditions of approval. In the event that the ARC disapproves any plans and specifications submitted to the ARC, the ARC shall so notify the applicant in writing, stating the grounds upon which such disapproval is based. Any applicant may request a hearing or appeal such decision pursuant to such process as may be set forth in the ARC rules and regulations. The ARC decision, or, if there is an appeal, the Board of Directors' decision after a hearing on an appeal shall be final and binding upon the applicant. Neither the ARC nor the Board of Directors is empowered to approve any construction or improvement, whether through affirmative approval or failure to act, which violates any applicable law or ordinance.
- (f) Except as otherwise provided hereinbelow with respect to the construction of Dwellings, construction of all improvements for which the approval of the ARC is required under this Declaration shall be completed within the time period specified by the ARC. Failure to complete such work within the specified time period shall be deemed a violation of this Declaration for which the Association

will be entitled to any and all remedies provided for in Section 16 of this Declaration.

(g) The ARC shall, in all cases, have the right to determine and designate building set back lines necessary to conform to the general plan of the Property, in order to preserve the integrity of the Property, which shall be subject to but may be stricter than applicable state and local building and zoning requirements. Neither this Section nor any approvals granted hereunder shall be deemed to excuse any Owner from compliance with local building and construction codes, ordinances, and/or regulations and improvements constructed shall conform to the requirements of such laws, codes, ordinances and regulations, nor shall ARC approval create any presumption or representation that the Owner's plans comply with applicable laws, codes, ordinances and regulations, nor that the work will serve its purpose as intended by Owner.

(h) The ARC is empowered to promulgate and/or modify, from time to time, design, development and maintenance standards for the Community, including, but not limited to, the following:

- (i) Roof color and roof design.
- (ii) Fences, walls, doors, screened porches, patios, awnings, shutters and similar structures.
- (iii) Exterior building materials and colors.
- (iv) Exterior landscaping and irrigation.
- (v) Elevations (all sides), signs, mailboxes, antennas, flagpoles, address numbers and exterior lighting.
- (vi) Building setbacks, side yards and related height, bulk and design criteria.
- (vii) Pedestrian and bicycle ways, sidewalks and pathways.
- (viii) Garages, driveways, walkways, garbage and trash containers.
- (ix) Swimming pools, tennis courts, accessory structures, play equipment, cable T.V., security and telephone.

- (i) The ARC may grant variances from the requirements contained herein or in the rules and regulations promulgated by the ARC, on a case-by case basis, provided, however, that the variance sought is reasonable and does not impose a hardship upon other Owners. The granting of such variance by the ARC shall not nullify or otherwise affect the ARC's right to require strict compliance with the requirements set forth herein on any other occasion.
- (j) The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the consent of the ARC shall not be deemed to set a precedent for approval of any similar plans and specifications or drawings subsequently submitted to approval with respect to the same Lot or any other Lot.
- (k) The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC from time to time, by resolution unanimously adopted in writing, may designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties of the ARC on its behalf, except the granting of variances pursuant hereto. In the absence of such designation, the vote of a majority of the members of the ARC shall constitute an act of the ARC.
- (l) The members of the Committee (ARC) shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.
- (m) Neither the Directors or officers of the Association, the members of the ARC, nor any person acting on behalf of any of them, shall be liable for any costs or damages incurred by any Owner within the Property or any other party whatsoever, due to any mistakes in judgment, negligence or any action of the ARC in connection with the approval or disapproval of plans and specifications. Each Owner and occupant of any Lot within the Community agrees that there shall be no claim, action or suit against the Directors or officers of the Association, the members of the ARC or their respective agents, in order to recover any damages caused by the actions of the ARC. The Association shall indemnify, defend and hold harmless the ARC and each of its members from all costs, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the ARC or its members. Neither the Directors nor officers of the Association, the members of the ARC, nor any person acting on behalf of any of them, shall be

responsible for any defects in any plans and specifications, nor for any defects in any improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

**9. OPERATION OF THE COMMUNITY BY THE ASSOCIATION; POWERS AND DUTIES.**

9.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Community. The powers and duties of the Association shall include those set forth in the Amended and Restated By-Laws and Amended and Restated Articles of Incorporation of the Association (respectively, Exhibits "A" and "B" annexed hereto), as amended from time to time. In addition, the Association shall have (i) all the common law and statutory powers of a corporation not for profit and for profit under the laws of Florida that are not in conflict with the provisions of the Articles, the Declaration, the By-Laws or the Act; (ii) the powers and duties set forth in the Act; as well as (iii) all powers and duties granted to or imposed upon it by this Declaration, including without limitation:

- (a) The irrevocable right to have access to each Lot from time to time during reasonable hours when necessary for the inspection, maintenance, repair or replacement of any Common Property, or of any portion of a Lot to be maintained by the Association pursuant to this Declaration or to enforce the terms of this Declaration.
- (b) The power to make and collect regular and special Assessments and other charges against Owners and to regulate, administer, convey, lease, maintain, repair and replace the Common Property.
- (c) The power to purchase Lots in the Community and to hold, mortgage, lease or sell any Lot so acquired.
- (d) The power to acquire, sell or mortgage personal property and to hold, regulate, administer, lease, maintain, repair, and replace same.
- (e) The right to grant, modify or move easements which are part of or cross the Common Property.
- (f) The duty to maintain official records according to good accounting practices, and the requirements of the Act.
- (g) The power to contract for the management and maintenance of the Community and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such

functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules, maintenance, repair and replacement of those portions of the Community for which the Association is obligated or authorized to provide same and such other management functions as the Board of Directors may delegate with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in this Declaration, the Articles of Incorporation, the By-Laws and the Act.

- (h) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, provided that any loan in excess of One Hundred Thousand Dollars (\$100,000.00) must be first approved by not less than two-thirds (2/3) of the votes of the members present and participating, in person or by proxy, at a meeting at which a quorum is established or by written agreement provided that a quorum participates, but, in no event less than a majority of the total voting interests of the entire membership of the Association.
- (i) The power to adopt and amend Rules and Regulations concerning the details of the operation and use of the Lots and the Common Property.
- (j) The power to lease and/or charge a fee for the exclusive use of Common Property to any Owner or other third party being granted a right to such exclusive use, which fees shall be set by and subject to such guidelines as may be made and amended from time to time by the Board of Directors.
- (k) All of the powers which a corporation not for profit in the State of Florida may exercise.

In the event of conflict among the powers and duties of the Association and the terms and provisions of this Declaration, or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate control over the Community, consistent with the Act.

9.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Common Property, the

Association shall not be liable to Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Common Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Owners regardless of whether or not same shall have been approved by the Association pursuant hereto. Further, the Association shall not be liable to any Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where (i) such insurance is not required hereby or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms.

9.3 Restraint Upon Assignment of Shares in Assets. The share of an Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot.

9.4 Approval or Disapproval of Matters. Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting or vote by written agreement, that decision shall be expressed by the same person who would cast the vote for that Lot if at an Association meeting, unless the joinder of all record Owners of the Lot is specifically required by this Declaration or by law.

9.5 Acts of the Association. Unless the approval or action of Owners and/or a certain specific percentage of the Board of Directors of the Association is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable Rules and Regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association under the Declaration, Articles of Incorporation or By-Laws shall be given or taken by the Board of Directors, without the consent of Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution.

10. **DETERMINATION OF COMMON EXPENSES AND FIXING OF ASSESSMENTS THEREFOR.** The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association, determine the amount of Assessments payable by the Owners to meet the Common Expenses and allocate such Assessments among the Owners as provided in Section 4.1 of this Declaration and shall levy such Assessments in accordance with the provisions of this Declaration and the By-Laws. Additionally, the Board of Directors may levy special assessments when determined by the Board of Directors to be necessary. The Board of Directors shall advise all Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are

based, to all Owners. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of the By-Laws.

## **11. COLLECTION OF ASSESSMENTS.**

11.1 Liability for Assessments. An Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable for all Assessments and other charges coming due while that person is the Owner. Except as provided in Section 11.4 below, the Owner shall also be jointly and severally liable with the previous Owner for all unpaid Assessments and other charges that came due up to the time of the transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the Owner. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Parcel and proceed in the same manner as provided herein and in the Act, for the collection of unpaid Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Property or by the abandonment of the Lot for which the Assessments are made or otherwise.

11.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within fifteen (15) days from the date when they are due shall bear interest at the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in the Act, on Assessments and installments thereof not paid when due. All partial payments upon account shall be applied in the manner prescribed in the Act. The Association has a lien on each Parcel to secure the payment of Assessments. The lien shall have such priority as may be provided in the Act. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due at the time a claim of lien is recorded, as well as all regular and Special Assessments which may be levied or which may accrue subsequent to the recording of the claim of lien and prior to satisfaction of the lien or the issuance of a certificate of title, together with interest, late charges and all reasonable costs and attorney's fees incurred by the Association incident to the collection and foreclosure process. Reasonable costs shall include, without limitation, any bank fees charged to the Association due to checks tendered by Owners which are returned due to insufficient funds. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien. The Association may

bring an action in its name to foreclose its lien in the same manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

11.3 First Mortgagee. A First Mortgagee acquiring title to a Lot as a result of foreclosure of its first mortgage, or by deed in lieu of foreclosure, may not, during the period of its ownership of such Lot, whether or not such Lot is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. In addition, the First Mortgagee is liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Lot which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed; provided, however, the First Mortgagee's liability is limited to the maximum amount set forth in the Act. If any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Owners, including such acquirer, and such acquirer's successors and assigns.

11.4 Certificate of Unpaid Assessments. Within fifteen (15) days after request by an Owner or mortgagee of a Lot, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Owner with respect to his or her Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of the Certificate.

11.5 Installments. Regular Assessments may be collected monthly or quarterly, in advance, at the option of the Board of Directors. Special assessments shall be payable on such terms as may be established by the Board.

11.6 Acceleration of Assessment Installments Upon Default. If an Owner shall be in default in the payment of an installment upon an Assessment, the Board may accelerate the remaining installments of the Assessment upon notice to the Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice.

11.7 Individual Assessments. Individual Assessment shall mean and refer to an Assessment levied against an Owner for any monetary obligation of the Owner to the Association, including, but not limited to, fines levied against an Owner pursuant to this Declaration or other costs incurred pursuant to Section 16 hereof. Individual Assessments shall also include, without

limitation, charges imposed upon any Owner for damage caused to or incurred by the Association as a result of the negligence, intentional misconduct or a violation of any of the terms and conditions of this Declaration or the Rules and Regulations by any Owner or by anyone for whom that Owner is responsible. A delinquent Individual Assessment shall bear interest at the maximum rate allowable under the Florida usury laws from the date when due until paid.

11.8 Set Off. Any funds due and payable by the Association to an Owner under this Declaration, the Articles of Incorporation or the By-Laws, or under the Act, shall be subject to a right of set-off for any amounts due and owing to the Association by the Owner under this Declaration, the Articles of Incorporation, the By-Laws, or the Act.

12. INSURANCE. Insurance covering the Community shall be governed by the following provisions:

12.1 Common Property.

(a) The Association shall purchase such insurance policies upon the Common Property as shall be required by the Act and as the Board of Directors, in its judgment, shall deem advisable. The named insured shall be the Association.

(b) Coverage.

(i) Casualty. All Buildings and Improvements upon the Common Property shall be insured in an amount equal to the maximum insurable replacement value, excluding the foundation and excavation costs, as determined annually by the Board of Directors. All personal property included in the Common Property shall be insured for its value, as shall be determined annually by the Board of Directors of the Association. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Coverage shall afford protection against:

- (1) Loss or damage by wind, fire and other hazards covered by a standard extended coverage endorsement; and
- (2) Such other risks as, from time to time, shall be customarily covered with respect to buildings similar in construction, location and use as the Building on the Land, including but not limited to, vandalism and malicious mischief.

(ii) Liability. The Association shall obtain comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Common Property. Such coverage shall be in such amounts as shall be required by the Board of Directors of the Association, but with combined single limit of not less than One Million Dollars (\$1,000,000.00) for each person, accident or occurrence, and Fifty Thousand Dollars (\$50,000.00) property damage.

(iii) Worker's Compensation Insurance to meet the requirements of law.

(iv) Casualty Insurance, Liability Insurance, Worker's Compensation and Other Mandatory Insurance, when applicable, regarding the Improvements and Buildings, as well as such other insurance on said property as the Board of Directors of the Association shall determine from time to time to be necessary or desirable.

(v) Flood Insurance, if required by Institutional Mortgagees, or if the Board so elects.

(vi) Fidelity Bonding Insurance as required in the Act.

(vii) Such Other Insurance as the Board of Directors of the Association shall determine from time to time to be necessary or desirable.

(c) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense and may be financed in such manner as the Board of Directors deems appropriate.

(d) Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and shall provide that all proceeds covering property losses shall be paid to the Association.

## 12.2 Homes and Lots.

(a) All Owners are responsible for obtaining and maintaining liability and casualty insurance, as provided below, for their Homes and Lots. The named insured on such policies shall be the Owner.

(b) Coverages.

- (i) Casualty. The Home shall be insured in an amount equal to the maximum insurable replacement value.
- (ii) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Lot.

**13. RECONSTRUCTION OR REPAIR AFTER CASUALTY.** This provision shall apply to the reconstruction and repair of any portion of the Community damaged by casualty.

**13.1 Requirements to Reconstruct or Repair.** If any part of the Community shall be damaged by casualty, repair and reconstruction shall be governed by the following provisions:

(a) Common Property.

- (i) All damages to the Common Property shall be reconstructed or repaired.
- (ii) Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original construction or the construction as it existed at the time of the casualty, unless alterations are approved in the manner required in Article 7 of this Declaration.
- (iii) Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

(b) Homes and Lots.

- (i) All damages to the Home or Lot shall be reconstructed or repaired.
- (ii) Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original construction or the construction as it existed at the time of

the casualty, unless alterations are approved in the manner required in Section 8 of this Declaration.

- (iii) All casualty repairs shall be completed in the manner prescribed in the Rules and Regulations. The Board of Directors is empowered to make and amend Rules Regulations regarding reconstruction of Homes and improvements on Lots, including, but not limited to, Rules regarding the time for completion of reconstruction and requirements for contractors.

**14. OCCUPANCY AND USE RESTRICTIONS.** In order to provide for congenial occupancy of the Community and for the protection of the values of the Lots, the use of the Community shall be restricted to and shall be in accordance with the following provisions:

- 14.1 Occupancy.** Each Home shall be used as a single family residence only. As used herein, "single family" or words of similar import shall be deemed to include up to two (2) natural persons who are living together as a single housekeeping unit, their children, grandchildren, parents, in-laws and their spouses or domestic partners.

Under no circumstances may any Home or Lot be used for any business purpose which would cause a level of noise, odor, traffic, debris or other activity inconsistent with residential use.

Owners shall not store personal property on the Common Property at any time. Nor may Owners store personal property outdoors on their respective Lots, except as specifically permitted in the Rules and Regulations.

To provide a healthy environment and in order to eliminate odors and vermin, all garbage must be placed in closed, covered, rigid garbage containers placed in the garage and deposited for collection ONLY in the areas designated by the Board and on the days designated by the appropriate authorized agencies. The Common Property and Lots shall be kept free and clear of rubbish, debris, and other unsightly material.

A guest shall be considered any occupant who is not an Owner or approved tenant. There shall be no time limitation on guest occupancy provided the guest occupies the Home with the Owner or approved tenant or the guest is a member of the Owner's or approved tenant's family, as defined above. However, any guest who occupies a Home in excess of thirty (30) days cumulatively in any calendar year, whether with or without the Owner or approved tenant in residence and regardless of any familial relationship, shall be subject to screening as a tenant. Guest occupancy in the absence

of the Owner or approved tenant by persons other than members of the Owner's or approved tenant's family, as defined above, shall be limited to a total of thirty (30) days per calendar year, cumulatively, for all such guest visits. Prior to any occupancy of the Home by any guest, the Owner or approved tenant must provide written notice to the Association of the name or names of the intended guests, any familial relationship to the Owner or approved tenant, the anticipated date of arrival, and the anticipated date of departure.

14.2 Pets. Only Owners may bring pets onto the Property and such pets may be kept on the Property subject to the following restrictions:

- (a) The Owner must sign a pet permission agreement in form and content acceptable to the Board, and all pets must be approved by the Board before being brought onto the Property.
- (b) No animal other than household, domestic animals (dogs, cats, small birds) shall be permitted upon the Property at any time, provided that no Lot Owner may have or allow on his or her Lot more than one dog or one cat per Lot at any time.
- (c) No animal may be kept, bred or maintained for any commercial purpose.
- (d) No breed of animal weighing in excess of twenty (20) pounds, at maturity, may be brought or kept on the Property.
- (e) Each animal brought or kept on the Property shall be at all times under the control of its Owner. No animal may be permitted anywhere on the Property outside the Lot on which it resides unless the animal is on a leash, carried or in a carrier.
- (f) Each Owner shall promptly remove and dispose of all waste matter deposited by his/her animal, in a manner acceptable to the Board.
- (g) No animal shall be allowed to create a nuisance.
- (h) Feeding of ducks and other animals, stray and wild, within the Property is prohibited, except wild birds may be fed from a bird feeder mounted at least five (5) feet above ground level at the rear of the home.
- (i) The Board of Directors is empowered to make and amend additional rules and regulations regarding the keeping and handling of pets on the Lots and otherwise within the Community.

14.3 Use of Common Property. The Common Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Homes.

14.4 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Property, nor shall any use or practice be allowed which is a source of annoyance to residents or occupants of Homes or which interferes with the peaceful possession or proper use of the Property by its residents or occupants. The Board of Directors is hereby authorized to adopt additional rules and regulations regarding noise, including, but not limited to, regulations regarding the types of activities that are permitted, the level of noise that is permitted, and the hours during the day during which certain types of activities are permitted.

14.5 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this subsection.

14.6 Leases. No portion of a Lot may be rented. A Lot shall not be leased or rented without the prior written approval of the Association, which approval shall not be unreasonably withheld. No Owner may lease his or her Lot more than once in a twelve (12) month period, measured from the commencement of the most recent prior lease. No Owner may lease his or her Lot during the first twenty-four (24) months of ownership, measured from the date of recordation of the most recent instrument conveying any interest in title to the Lot, except that this prohibition against leasing during the first twenty-four (24) month of ownership shall not apply to transfers by devise or inheritance to members of the deceased owner's family, as defined hereinabove, transfers of Lots to the Association, including, but not limited to, Lots acquired through foreclosure, or transfers to add a member of the Owner's family, as defined hereinabove, to the title for estate planning purposes. In the event of conveyance of title with an approved occupant in possession under lease, said moratorium against leasing during the first twenty-four (24) months of ownership shall commence upon expiration of lease. No lease may be for a term of less than three (3) months or more than twelve (12) months. No rooms may be rented and no transient tenants accommodated. A Lot shall be considered leased any time it is occupied by a tenant. The Association shall have the

right to require that a substantially uniform form of lease be used. The lease shall include a provision granting the Association authority and standing to evict any lessee of an Owner who is in breach or violation of this Declaration or the rules and regulations of the Association. In the event the Association approves a rental or lease, such approval of a lease or rental shall not release the Owner from any obligation under this Declaration, and the tenant shall have the right to use the facilities and Common Property to the exclusion of the Owner unless the tenant waives such rights in writing. Regardless of whether or not expressed in the applicable lease, if any, an Owner shall be jointly and severally liable with his, hers or their tenants to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for injury or damage to property caused by the negligence of the tenant or for the acts and omissions of the tenant(s) or occupant(s) (whether or not subject to a lease) which constitute a violation of, or non-compliance with, the provisions of this Declaration and of any and all rules and regulations of the Association. All tenants shall comply with and be subject to the provisions of this Declaration, the By-Laws, the Articles of Incorporation, the Rules and Regulations, and the Act and the provisions of same shall be deemed expressly incorporated into any lease of a Lot. Subleases are prohibited.

When a Lot is leased, a tenant shall have all use rights in the Common Property otherwise readily available for use generally by Owners, and the Owner of the leased Lot shall not have such rights. The exclusive use rights of the Lessee shall extend for the full term of any approved lease, unless the lease is terminated due to the death of the tenant or a medical emergency involving the tenant. Nothing herein shall interfere with the access rights of the Owner as a landlord pursuant to Chapter 83, Florida Statutes. Dual usage by an Owner and a tenant of Common Property is prohibited.

14.7 Signs. No "For Sale" or "For Rent" signs or other displays of advertising shall be maintained on any part of the Common Property or Homes, excepting for spaces specifically provided for such signs as may be designated by the Board of Directors.

14.8 Antennas. No television or radio antennas or towers of any nature shall be erected on any part of the Property or the exterior of any Homes, except to the extent such installations must be permitted by federal law or except to the extent such installations are approved as an alteration under Sections 7 or 8 hereof. The Board is empowered to adopt Rules and Regulations regarding the installation of television or radio satellites or antennas consistent with any applicable federal law in order to preserve and protect the Property from damage and to address legitimate safety objectives.

14.9 Limitations on Ownership. No ownership or possessory interest in a Lot may be conveyed, leased or otherwise transferred to a corporation, partnership or other entity of any kind, except as permitted in this Section. Title to a Lot may be transferred to the trustee or trustees of a trust or to a corporation, partnership or other entity where such trust, corporation, partnership or other entity was formed for the purpose of estate or financial planning, provided the trustee(s), corporation, partnership or other entity designates the primary occupants of the Lot in writing on such forms as the Association may require, that such designees be subject to screening under Section 15 of this Declaration in the same manner as tenants, and be subject to all other restrictions in this Declaration and the Rules and Regulations applicable to tenants, that the designees may not be changed more than once each calendar year, and that the designees be members of a single family, as defined above. This provision is not applicable to Lots owned by the Association. Notwithstanding the provisions above regarding the acquisition of title by an entity, any entity acquiring title to a Lot through the foreclosure of a mortgage or other lien or by deed in lieu of foreclosure may hold title, but any person taking occupancy of the Lot while title is held by such entity shall be subject to the restrictions in this Section 14 applicable to leases. Title to a Lot may not be held in the name of more than two (2) natural persons and such persons must be members of the same family, as that term is defined hereinabove. If record title to a Lot(s) is held prior to the effective date of this amendment in a manner that is contrary to this subsection, such ownership is exempt from retroactive application of this provision, provided however that this provision shall apply to all future transfers.

14.10 Housing For Older Persons. Fairmont Place is designed and intended as housing for older persons and the Members of the Association wish to operate as housing for older persons as that term is used and defined in the applicable Federal and State Fair Housing laws. Accordingly, all Lots in the Association shall be held for occupancy by persons fifty-five (55) years of age or older, subject to the exceptions noted below, and no permanent occupancy by persons under the age of eighteen (18) shall be permitted. The term occupancy shall have the meaning ascribed in the applicable Federal and State Fair Housing laws and the rules promulgated pursuant thereto. No occupancy shall be permitted by individuals between the ages of eighteen (18) and fifty-five (55) unless the Lot is also occupied by at least one person fifty-five (55) years of age or older. Accordingly, the Board shall not approve any proposed transfer to persons who do not intend to hold the Lot out for occupancy by persons fifty-five (55) years of age and older or to persons who intend to occupy the Lot without at least one occupant over the age of fifty-five (55). The Board may permit sales where the title holders will not include at least one person fifty-five (55) years of age or older on the condition that all purchasers verify in writing in a form acceptable to the Board that they intend to hold the Lot out for occupancy by persons fifty-five

(55) years of age or older or intend to occupy the Lot with at least one person fifty-five (55) years of age or older in occupancy with them at all times. The only exceptions where occupancy by persons between the ages of eighteen (18) and fifty-five (55) will be permitted are those which the Association is required by law to permit, the surviving spouse or domestic partner of a deceased member where the deceased member was over fifty-five (55) years of age, but the surviving spouse or domestic partner is between eighteen (18) years of age and fifty-five (55) years of age, and the surviving children of a deceased member where the deceased member was over fifty-five (55) years of age, but the surviving children are between eighteen (18) years of age and fifty-five (55) years of age. The foregoing exceptions will only be permitted if the resulting occupancy levels will remain at the required eighty (80%) percent as provided below or as required by applicable law.

The Board of Directors shall establish policies and procedures for the purpose of assuring that the Board implements the intent of this provision in connection with the screening of sales, leases and all other transfers pursuant to this Declaration and for the purpose of assuring that at least eighty (80%) percent of the occupied Lots in the Community are occupied by at least one person fifty-five (55) years of age or older. The Board of Directors shall take all reasonable steps to insure that the Association's status as housing for older persons is preserved and protected. The Board shall also conduct a census to verify the age of the occupants of all occupied Lots and shall obtain reliable documentation of age, such as a driver's license, birth certificate, passport, immigration card, military identification, other state, local, national or international official documents containing a birth date of comparable reliability or a certification in a lease, application, affidavit or other document asserting that at least one person in the Lot is fifty-five (55) years of age or older. The Board shall conduct such a census after the enactment of this amendment and shall update the census at least once every two years thereafter or as often as required by applicable law.

**14.11 Parking.** The following guidelines shall apply with regard to permitted and prohibited vehicles within the Community (including, without limitation, any assigned or unassigned parking spaces):

- (a) ONLY vehicles designed primarily to transport passengers, including automobiles, station wagons, sport utility vehicles, and vans which have windows on all body panels may park within the Community.
- (b) Without limiting the general provisions set forth above, the following types of vehicles WILL NOT be permitted to park within the Community, except as provided below:

- (i) Commercial vehicles of any type, including, without limitation, any vehicle showing or displaying any commercial, charitable or institutional (e.g., church or school) markings, signs, displays or otherwise indicating a commercial or other non-personal use or used for commercial purposes;
- (ii) Vans, other than passenger vans, as described above.
- (iii) Motorcycles or other two-wheeled motorized vehicles;
- (iv) Limousines or "stretch" limousines;
- (v) Trucks of any type, including, but not limited to pick-up trucks of whatever nature, and any vehicle with a passenger cab and cargo bed, whether covered or uncovered, whether with a bed top or without; the term cargo bed being specifically intended to refer to those vehicles with a bed exposed to the elements or covered by a top which are designed, manufactured, marketed or sold primarily for the purpose of carrying cargo rather than passengers. This provision does not apply to sport utility vehicles used solely for private passenger use.
- (vi) Agricultural vehicles;
- (vii) Dune buggies;
- (viii) Any trailer or other device transportable by vehicular towing;
- (ix) Semis, tractors or tractor trailers;
- (x) Buses;
- (xi) Travel trailers;
- (xii) Boats and boat trailers with or without boats;
- (xiii) Vehicles which are not fully mechanically operable or not currently licensed for use;
- (xiv) Motorcycle delivery wagons;
- (xv) Recreational vehicles;
- (xvi) Mobile homes or mobile houses;

- (xvii) Truck mounted campers attached or detached from the truck chassis;
- (xviii) Motor homes or motor houses;
- (xix) Motor vehicles not having any bodies whatever, or incomplete buggies;
- (xx) Swamp buggies;
- (xxi) Passenger automobiles that have been converted for racing.
- (c) While engaged in making deliveries or service calls, or if being utilized by Association employees, trucks and other commercial vehicles may be parked in designated areas for short periods, but not overnight.
- (d) All vehicles parked on the property contrary to the provisions contained herein shall be subject to being towed in accordance with Section 715.07, Florida Statutes, as amended from time to time, at the expense of the owner of the vehicle. Towing shall not be the exclusive remedy of the Association.
- (e) No vehicle repairs or maintenance may be performed within the Community, except for emergency repairs, and the Board is hereby authorized to make and amend rules designating permitted emergency repairs.

**15. CONVEYANCES, SALES AND TRANSFERS.** In order to insure the community of congenial residents and thus protect the value of the Lots, the sale and transfer of Lots by any Owner shall be subject to the following provisions:

**15.1 Transfers Subject To Approval.** The following transfers shall be subject to prior written approval of the Board of Directors and any transfer undertaken without prior written approval of the Board of Directors shall be void:

- (a) All sales of Lots, except judicial sales conducted pursuant to a judgment of foreclosure held by a First Mortgagee encumbering a Lot or public sales conducted by the Palm Beach County Tax Collector resulting from the failure to pay real property taxes.
- (b) All transfers by lease.
- (c) All transfers by gift.

- (d) All transfers by devise or inheritance.
- (e) Any other transfer of title to or possession of a Lot.
- (f) All transfers subject to approval shall require, as a condition of approval, the payment to the Association of a transfer fee not to exceed the maximum amount permitted by the Act and, if the Act is silent, not more than One Hundred Dollars (\$100.00) per applicant, with husband/wife and parent/dependent child counting as a single applicant.
- (g) All transfers by lease may be conditioned upon the posting of a security deposit with the Association not to exceed the maximum amount permitted by the Act, and, if the Act is silent, not more than one month's rent or Two Thousand Dollars (\$2,000.00), whichever is less.

**15.2 Notice to Association.** Prior to approving any transfer subject to approval hereunder, the Association shall be entitled to written notice of the transferor's intent to make the transfer with a copy of the documentation evidencing the intended transfer, including, but not limited to, a copy of the contract for sale in the case of a sale, a copy of the Letters of Administration for the Personal Representative of a deceased Owner's estate and such other documentation from the Probate Court file as the Board may reasonably require in the event of a transfer by devise, and a copy of any other documentation pertaining to a proposed transfer subject to approval hereunder which the Association may reasonably require, completed applications on forms prescribed by the Association, a personal interview with the proposed transferee(s) and any other intended occupants of the Lot, and such other and further information about the intended transferees or occupants as the Association may reasonably require.

**15.3 Association's Election.** Within thirty (30) days of receipt of the last of the information required pursuant to Section 15.2 above, the Association must either approve or disapprove the transfer. Failure on the part of the Association to respond within said thirty (30) day period shall constitute automatic approval for the proposed transfer.

- (a) **Approval.** In the event the Association approves any transfer subject to approval hereunder, the Association shall deliver to the transferor or the transferor's designee an executed certificate of approval, approving the transfer, executed by an authorized representative of the Association.

- (b) Disapproval of Transfer of Title. In the event the Board of Directors disapproves a proposed sale or other transfer of title, unless good cause exists, as defined below, the Association must, within thirty (30) days of receipt of the last of the information provided pursuant to Section 15.2 hereof, provide the Owner with an executed contract from the Association or another purchaser acceptable to the Association, which contract must provide for the purchase of the Lot on the same terms as were set forth in the original proposed contract for sale, which contract must provide for a closing date within thirty (30) days from the date it is delivered to the owner by the Association. If the conveyance or transfer was a gift, devise or inheritance, unless good cause exists, as defined below, the purchase price shall be determined by an appraiser selected by and at the expense of the substitute purchaser. If the Owner does not agree with the appraisal, the Owner may select and pay for another appraisal and the purchase price shall be the average of the two appraisals. If the Association does not respond to the application within thirty (30) days, as set forth above, or the substitute purchaser provided by the Association does not close within thirty (30) days, as set forth above, the original transaction shall be deemed approved and the Owner may proceed to closing and shall be entitled to a Certificate of Approval as described in Paragraph (a) of this Section 15.3.

If good cause exists for the Association to disapprove a proposed sale, conveyance or transfer by gift, devise or inheritance, the Association shall not be obligated to purchase or provide a substitute purchaser for the Lot. Good cause shall be defined to include the following:

- (1) The applicant fails to qualify for membership in the Association, including, but not limited to, those applicants who fail to qualify for membership because the use, occupancy and/or ownership of the Lot and/or the Common Property by the applicant, as disclosed in the screening process, will violate the restrictions on use, occupancy or ownership set forth in this Declaration or the Rules and Regulations, or;
- (2) The person seeking approval (which shall include all proposed occupants) has been convicted of a felony involving violence to persons at any time or has been convicted of any other felony within the ten (10) years preceding the date of application; or
- (3) For transfers by sale, the person seeking approval intends to purchase the Lot without paying at least twenty percent

(20%) of the purchase price, excluding closing costs, in cash or in some form that would result in a first mortgage secured by the Lot with a loan to value ratio (based upon the bona fide sale price) in excess of eighty percent (80%); or

(4) The applicant takes possession of the Lot prior to approval by the Association as provided for herein; or

(5) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in this Community or another Community as a tenant, guest, owner or occupant of a Lot; or

(6) The applicant fails to comply with the requirements of Section 15.2 hereof.

(8) No transfer of title will be approved if, at the time of the application or at any time prior to the time approval is to be granted, the Lot is delinquent in the payment of any financial obligation to the Association under this Declaration or under any of the governing documents or the applicable Statute, or if the Lot is in violation of any provision of this Declaration or the Rules and Regulations which remains uncured at the time the Association is required to make its election hereunder.

**15.4 Exceptions.** The foregoing provisions of this section shall not apply to a transfer to or purchase by a bank, life insurance company, credit union or federal savings and loan association which acquires its title as the result of foreclosing or accepting a deed in lieu of foreclosure of a mortgage upon the Lot concerned; and this shall be so whether the title is acquired by deed from the mortgagor, his successors or assigns, or through foreclosure proceedings.

**15.5 Mortgage Approval and Subordination.** All liens against a Parcel, other than a first mortgage recorded before the Association's claim of lien, shall be subordinate and inferior to the Association's lien for Assessments or for such other charges that may be authorized by this Declaration, regardless of the date of recordation of the Association's claim of lien, except to the extent otherwise required by law. Any first mortgage liens or other liens which become first mortgage liens which involve an outstanding balance which exceeds eighty percent (80%) of the fair market value of the Parcel at the time the mortgage is recorded shall be subordinate and inferior to the Association's claim of lien to the extent the mortgage balance exceeds eighty percent (80%) of the fair market value of the Parcel at the time of recordation of the mortgage.

16. **COMPLIANCE AND DEFAULT.** Each Owner and every occupant, guest, agent, employee or contractor of an Owner and the Association shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, and the Rules and Regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

16.1 **Negligence.** An Owner shall be liable for the expense of any maintenance, repair or replacement, whether to the Common Property, a Home, a Lot, the Owner's personal property, or to the personal property of the Association or other Owners or residents or guests, including, but not limited to, repair after casualty under Section 13 hereinabove, made necessary by his or her violation of any portion of this Declaration or by his or her negligence or intentional misconduct or by that of any member of his or her family or his or her guests, agents, employees or contractors, but only to the extent such expense is not met by the proceeds of insurance actually collected by the Association. Any expense advanced by the Association to perform such maintenance, repair or replacement, together with interest, costs and attorneys' fees, shall be secured by a lien against the Parcel enforceable as an Individual Assessment in the same manner as an Assessment under Article 11 hereof.

16.2 **Compliance.** In the event an Owner or occupant fails to comply with such Owner's obligations under Sections 6, 8, 13 and 14 hereof or fails to observe and comply with any other provision of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Property in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to sue in a court of law for damages, and levy a special charge against the Parcel Owner and the Parcel for the sums necessary to do whatever work is required to put the Owner or Lot in compliance. Such charge, together with interest, costs and attorneys' fees, shall be secured by a lien against the Parcel, enforceable as an Individual Assessment in the same manner as an Assessment under Article 11 hereof.

16.3 **Fines.** In addition to all other remedies provided hereunder, in the event an Owner or anyone for whom an Owner is responsible fails to comply with a provision of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Property in the manner required, the Association shall have the right to impose a fine against the Owner and the Parcel in accordance with the Act. The amount of any fine shall be determined by the Board of Directors of the Association, but in any event

shall not exceed the maximum amount permitted by the Act. The fine shall become a lien against the Parcel to the extent permitted by the Act.

16.4 Suspension of Use Rights. In addition to all other remedies provided hereunder, the Association shall have the right to suspend the rights of the Owner, his or her tenants, guests, licensees or invitees, to use any portion of the Common Property or other facilities during any period of time during which the Owner is delinquent in the payment of Assessments or any other financial obligation to the Association or in the event an Owner or anyone for whom an Owner is responsible fails to comply with a provision of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Property in the manner required.

16.5 Suspension of Voting Rights. In addition to the remedies provided in Section 11 hereof and by applicable law, the Association may suspend the voting rights of any Owner who is delinquent more than ninety (90) days in the payment of any monetary obligation to the Association. Any Owner whose voting rights are suspended does not count towards a quorum and the quorum is reduced to exclude such Owner.

16.6 Set Off. Any funds due and payable by the Association to an Owner under this Declaration, the Articles of Incorporation or the By-Laws, or under the Act shall be subject to a right of set-off for any amounts due and owing to the Association by the Owner under this Declaration, the Articles of Incorporation, the By-Laws, or the Act.

16.7 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the requirements of the Act, this Declaration, the By-Laws, the Articles of Incorporation of the Association, or the Rules and Regulations, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).

16.8 No Waiver of Rights. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the By-Laws, the Articles of Incorporation of the Association, or the Rules and Regulations, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

16.9 Election of Remedies. All rights, remedies and privileges granted to the Association or an Owner pursuant to any terms, provisions, covenants or conditions of the governing documents shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the

same from exercising such other additional rights, remedies or privileges as may be granted by the governing documents.

**17. TERMINATION.**

17.1 Voluntary Termination. These covenants may be terminated only with the unanimous consent of all Owners.

17.2 Certificate. The termination of these covenants shall be evidenced by a certificate of the Association executed by the president and secretary certifying as to the fact of the termination, which certificate shall become effective upon being recorded in the public records of Palm Beach County, Florida.

**18. RESTRICTIONS AND EASEMENTS.** The real property submitted hereto is subject to conditions, limitations, restrictions, dedications, reservations of record, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for Utility Service for the United States Post Office authorities, and any right of the United States of America, State of Florida, or any governmental agency as to any submerged lands and as to any lands lying below the natural, ordinary high water line of the surrounding bodies of water, easements for ingress and egress for pedestrian and vehicular purposes, easements for Utility Service and drainage now existing or hereafter granted by the Association for the benefit of such persons as the Association designates.

An easement, whether heretofore or hereafter created under and pursuant to this Declaration shall constitute a covenant 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 and purpose and shall survive the termination of these covenants. The Owners do hereby designate the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purposes of creating all such easements as are contemplated by the provisions hereof.

**19. COVENANT RUNNING WITH THE LAND.** All provisions of this Declaration, the Articles, By-Laws and applicable Rules and Regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Property and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Association, the Owners, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners, tenants and occupants of Homes shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable Rules and Regulations, as they may be amended from time to time. The acceptance of a

deed of conveyance, or the entering into of a lease, or the entering into occupancy of any Home, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable Rules and Regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

## **20. ADDITIONAL PROVISIONS.**

20.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by first class mail to the Association in care of its office at the Property, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Owners, unless another manner of delivery is specifically required by the Act or this Declaration or the By-Laws. Except as provided specifically in the Act, all notices to any Owner shall be sent by first class mail to the Lot address of such Owner, or such other address as may have been designated by such Owner from time to time, in writing, to the Association. All notices to mortgagees of Parcels shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or ten (10) business days after proper mailing, whichever shall first occur.

20.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto or to the Original Declaration. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

20.3 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed to the Original Declaration.

20.4 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of a Treasurer may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

20.5 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable Rules and Regulations adopted

pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

20.6 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

20.7 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.

20.8 Ratification. Each Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Home, by reason of occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable Rules and Regulations, are fair and reasonable in all material respects.

20.9 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

20.10 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

AMENDMENT TO THE AMENDED AND RESTATED  
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR FAIRMONT PLACE

(Additions shown by "underlining",  
deletions shown by "~~strikeout~~")

\* \* \*

**15. CONVEYANCES, SALES AND TRANSFERS.** In order to insure the community of congenial residents and thus protect the value of the Lots, the sale and transfer of Lots by any Owner shall be subject to the following provisions:

\* \* \*

15.3 Association's Election. Within thirty (30) days of receipt of the last of the information required pursuant to Section 15.2 above, the Association must either approve or disapprove the transfer. Failure on the part of the Association to respond within said thirty (30) day period shall constitute automatic approval for the proposed transfer.

\* \* \*

- (b) Disapproval of Transfer of Title. In the event the Board of Directors disapproves a proposed sale or other transfer of title, unless good cause exists, as defined below, the Association must, within thirty (30) days of receipt of the last of the information provided pursuant to Section 15.2 hereof, provide the Owner with an executed contract from the Association or another purchaser acceptable to the Association, which contract must provide for the purchase of the Lot on the same terms as were set forth in the original proposed contract for sale, which contract must provide for a closing date within thirty (30) days from the date it is delivered to the owner by the Association. If the conveyance or transfer was a gift, devise or inheritance, unless good cause exists, as defined below, the purchase price shall be determined by an appraiser selected by and at the expense of the substitute purchaser. If the Owner does not agree with the appraisal, the Owner may select and pay for another appraisal and the purchase price shall be the average of the two appraisals. If the Association does not respond to the application within thirty (30) days, as set forth above, or the substitute purchaser provided by the Association does not close within thirty (30) days, as set forth above, the original transaction shall be deemed approved and the Owner may proceed to closing and shall be entitled to a

Certificate of Approval as described in Paragraph (a) of this Section 15.3.

If good cause exists for the Association to disapprove a proposed sale, conveyance or transfer by gift, devise or inheritance, the Association shall not be obligated to purchase or provide a substitute purchaser for the Lot. Good cause shall be defined to include the following:

\* \* \*

- (3) For transfers by sale, the person seeking approval intends to purchase the Lot without paying at least twenty percent (20%) of the purchase price, excluding closing costs, in cash or in some form that would result in a first mortgage secured by the Lot with a loan to value ratio (based upon the bona fide sale price) in excess of eighty percent (80%). Notwithstanding the foregoing, the Association, in its sole discretion, shall have the ability to grant exemptions to this equity requirement for reasons of FHA financing, VA financing or any other reason deemed appropriate by the Board of Directors based on other indicia that the applicant is financially stable.

\* \* \*

AMENDMENT TO THE AMENDED AND RESTATED BY-LAWS OF  
FAIRMONT PLACE HOMEOWNERS ASSOCIATION, INC.

(Additions shown by "underlining",  
deletions shown by "~~strikeout~~")

\* \* \*

3.2 **Notices.** It shall be the duty of the Secretary to send by regular mail, hand delivery or electronic transmission a notice of each ~~annual or~~ special meeting to each Lot Owner and to post a copy of said notice in a conspicuous place on the property at least fourteen (14) continuous days but not more than sixty (60) days prior to such meeting. Notices of annual meetings shall be sent by regular mail, hand delivery or electronic transmission in accordance with Article 4.2 of these Amended and Restated Bylaws and posted in a conspicuous place on the property at least sixty (60) days prior to such meeting. The Board may adopt a rule to provide that, in lieu of posting notice of a members' meeting on the Property, the notice and agenda may be conspicuously posted and repeatedly broadcast on a closed-circuit cable television system serving the Association in the manner required by the Act. Notice of any meeting shall list the time, place and purpose thereof and shall incorporate an identification of agenda items. All notices shall be mailed, hand delivered or sent by electronic transmission to the address last furnished to the Association by the Owner as it appears on the books of the Association to each Owner. Proof of posting, delivery or mailing of the notice (if required) shall be given by the affidavit of the person serving the notice, or a United States Postal Service Certificate of mailing, shall be included in the official records of the Association affirming that the notice was mailed, hand delivered or sent by electronic transmission in accordance with Florida law. Notice of specific meetings may be waived in writing before or after the meeting.

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