

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

MOREWOOD POINT COMMUNITY ASSOCIATION

EIGHTH WARD

CITY OF PITTSBURGH

COUNTY OF ALLEGHENY

COMMONWEALTH OF PENNSYLVANIA



DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by BWC DEVELOPMENT INC., a Registered Pennsylvania Corporation (hereinafter referred to as "Declarant").

WITNESSETH: WHEREAS, the Declarant is the equitable owner or shall be the legal owner of the real property situate in the 8th Ward of the City of Pittsburgh, Allegheny County, Pennsylvania, known as the Morewood Heights and/or Morewood Point Plan of Lots and recorded in the Recorder's Office of Allegheny County in Plan Book Volume 146, pages 130 and 131 as shown on Exhibit "A" of this Declaration and desires to create thereon a Planned Residential Development, to be known as Morewood Point (the "Community") which will contain a mix of residential land uses, including various housing types, open space and Community Facilities for the benefit of the Community; and

WHEREAS, the Declarant desires to provide for the preservation and enhancement of the property values and amenities in the Community through the maintenance of the land and improvements to be erected thereon and, to this end, desires to subject the real property described in Exhibit "B", of which Declarant is the legal owner, to the covenants, restrictions, easements, charges and liens, each and all of which is and are for the benefit of such property and each owner thereof, Declarant shall also have the right to subject other properties to the covenants, restrictions, easements, charges and liens as may be added in future phases of the development, provided that such additions are within the perimeter of the general plan of development prepared prior to the sale of any dwelling units of lots and made known to every purchaser, by filing of record a Supplementary Declaration with respect to such additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property; and

WHEREAS, the Declarant has deemed it advisable, for the efficient preservation of the values and amenities in the Community to create an entity to which shall be delegated the power and authority to maintain and administer the Community Facilities and to administer and enforce the covenants, conditions, and restrictions governing the same, and to collect and disperse all assessments and charges necessary for such maintenance, administration and enforcement as hereinafter provided; and

WHEREAS, the Declarant will cause to be incorporated under the laws of the Commonwealth of Pennsylvania, a nonprofit corporation known and designated as Morewood Point Community Association (the "Community Association") as the entity to perform the functions aforesaid and hereinafter more fully set forth, and

WHEREAS, Declarant intends that each owner of a Dwelling Unit or Lot in the Community shall automatically become a member of such entity upon acquiring legal title to a Dwelling Unit or Lot, and, incident to such membership, shall be obligated to abide by all of the terms and conditions set forth in this Declaration of Covenants, Conditions and Restrictions and in the By-Laws of such entity for the operation, maintenance, governance and administration of the Community, including, as herein provided, the financial responsibility for the support and maintenance of the aforementioned entity in the performance of its designated functions.

NOW THEREFORE, Declarant hereby declares that all the property described in Exhibit "B" shall be held and/or sold, and covenants which shall be construed to run with said real property be binding on all parties having any right, title or interest in described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

SECTION 1 - DEFINITIONS

Section 1.01 "By-Laws" shall mean and refer to the By-Laws of the Morewood Point Community Association. In the event of a conflict of interpretation between provisions of this Declaration and the By-Laws, this Declaration shall govern.

Section 1.02 "Charges" shall mean those levies, assessments or sums payable by the Owners in the Community from time to time upon notification by the Community Association, as provided herein, the obligation to pay such charges to be deemed to be a covenant running with the land. Each assessment shall be separate and payable by the Owner of any Dwelling Unit or Lot, subject to the provisions of this Declaration and the By-Laws.

Section 1.03 "Community Association" shall mean and refer to the Morewood Point Community Association, a nonprofit corporation, its successors and assigns, and each and every Owner shall be a member of the Community Association and subject to its By-Laws, Rules and Regulations and this Declaration.

Section 1.04 "Community Facilities" shall include open space, active and passive recreation areas and such other facilities as the Community Association may own or acquire or construct hereafter.

Section 1.05 "Condominium Association" shall mean and refer to a nonprofit corporation, its successors and assigns, organized to own and/or maintain certain facilities solely within the legal boundaries designated for such nonprofit corporation.

Section 1.06 "Condominium Unit" shall mean a part of an apartment building designed or intended for independent use which has a direct exit to a street or way or to one or more common elements leading to a street or way, together with the percentage interest in the common elements assigned to that unit.

Section 1.07 "Declarant" shall mean and refer to BWC Development Inc., its successors and assigns, together with any successor to all or substantially all of its business if developing the Property.

Section 1.08 "Dwelling Unit" shall mean a single-family attached building or an apartment designed and occupied exclusively as a single-family residence, located in the Community and subject to this Declaration. For the purpose of this Declaration, each separate Dwelling Unit shall be subject to all of the rights, privileges and duties as if each were separately owned, irrespective of whether this is so in fact or not.

Section 1.09 "Final Plan" shall mean and refer to a map or plot of each phase of the Property given final approval from the Planning Commission of the City of Pittsburgh.

Section 1.10 "Limited Community Facilities" shall mean those facilities used and enjoyed by a Member or Members of the Community Association and maintained by the Community Association but not owned by the Community Association.

Section 1.11 "Lot" shall mean and refer to any plot of land shown upon any recorded map or plot of the Property, which is used for residential purposes and shall not include the Community Facilities. No Lot shall be severed from the rights, duties, burdens, servitudes or benefits herein contained.

Section 1.12 "Majority of Members" shall mean more than fifty (50%) percent of the Members of the Community Association entitled to vote at any annual or special meeting of the Community Association.

Section 1.13 "Member" shall mean the Owner or Co-Owners of a Dwelling Unit of Lot in the Community.

Section 1.14 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Dwelling Unit or Lot which is part of the Community, but excluding those having such interest merely as security for the performance of an obligation. Ownership of more than one Dwelling Unit or Lot shall subject the Owner to multiple rights, privileges, liabilities and duties with respect to each Dwelling Unit or Lot as if each Dwelling Unit or Lot was or is separately owned.

Section 1.15 "Phase" shall mean each of the major segments of the Community granted or to be granted preliminary approval by the Planning Commission of the City of Pittsburgh and so designated on the Plan of the Property, or as defined subsequently by the Declarant.

Section 1.16 "Plan" shall mean the map or plot of the Community granted preliminary approval by the Planning Commission of the City of Pittsburgh on June 16, 1987.

Section 1.17 "Property" shall mean the Community as described in Exhibit "A", attached hereto and incorporated herein, and such additions as hereafter may be made subject hereto.

Section 1.18 "Recorded" means that an instrument has been duly entered of record in the Office of the Recorder of Deeds in and for Allegheny County, Pennsylvania.

Section 1.19 The "Morewood Point" or the "Community" shall mean and refer to that real property described in Exhibit "A", attached hereto and incorporated herein, and such additions as hereafter may be made subject thereto.

SECTION 2- APPLICABILITY

Section 2.01 APPLICABILITY. This Declaration shall be applicable to the Morewood Point Community Association, a nonprofit corporation of the Commonwealth of Pennsylvania, to the Community Facilities owned by the Community Association, to the common areas which are now or may hereafter be created, and to all condominium associations within Morewood Point hereafter organized to own and/or maintain certain facilities within the legal boundaries of such condominium associations. All present and future Owners and tenants, their guests, licensees, servants, agents, employees and any other person or persons that shall be permitted to use the Facilities of the Community Association, shall be subject to these By-Laws and to the Rules and Regulations as may be issued by the Board of Directors of the Community Association from time to time to govern the conduct of its members. Ownership, rental or occupancy of any Dwelling Unit or Lot in the Community shall be conclusively deemed to mean that said Owner, tenant or occupant has accepted and ratified this Declaration, and the Rules, the By-Laws and Regulations of the Community Association and will comply with them.

Section 2.02 INTERPRETATION OF DECLARATION AND BY-LAWS. In the event of a conflict of interpretation between the provisions set forth in this Declaration and the By-Laws, this Declaration shall govern. In the event that the Internal Revenue Code is hereafter amended or changed, both the By-Laws and this Declaration shall be interpreted in such a manner as to conform to the provisions of the Internal Revenue Code with respect to nonprofit entities, it being the intention to preserve the lawful status of the Morewood Point Community Association as a bona-fide nonprofit entity.

SECTION 3 - MEMBERSHIP

Section 3.01 MEMBERSHIP. Except as otherwise provided, membership in the Community Association shall be limited to the Owners or Co-Owners of a Lot or Dwelling Unit in Morewood Point, in the events that a Member shall lease or permit another to occupy his Dwelling Unit or Lot, the tenant or occupant shall be permitted to enjoy the Facilities of the Community Association but shall not vote in the affairs of the Community Association, except as the Member shall permit the tenant or occupant to exercise the proxy vote of the Member. Use of the Community Facilities of the Community Association shall be limited to occupants of Dwelling Units or Lots and their guests. Any Owner who does not occupy his Dwelling Unit or Lot shall have the right to use such Community Facilities of the Community Association upon payment of such reasonable user's fee as shall be established from time to time by the Board of Directors. Every lawful transfer of title to a Member's Dwelling Unit or Lot shall include membership in the Community Association and upon making such transfer, the previous owner's membership shall automatically terminate. Except as provided above, membership in the Community Association may not be assigned or transferred without the transfer of legal title to a Dwelling Unit or Lot and any attempt at such assignment or transfer thereof shall be void and of no effect.

Section 3.02 TERMINATION OF MEMBERSHIP. Membership in the Community Association shall automatically terminate when such Member sells and transfers his Dwelling Unit or Lot.

Section 3.03 VOTING RIGHTS. A Member of the Community Association shall be entitled to one (1) vote for each Dwelling Unit or Lot in which the Member holds the interest required for membership in Section 3.01. When more than one person holds an interest or interests in any Dwelling Unit or Lot all such persons shall be Members, and the vote for such Dwelling Unit or Lot shall be exercised as provided in the By-Laws, but in no event shall more than one (1) vote be cast with respect to any such Dwelling Unit or Lot. A Member shall be deemed to be "in good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Community Association if, and only if, he shall have fully paid all assessments made or levied against him and against his Dwelling Unit or Lot by the Board of Directors as hereinafter provided, together with all interest, costs, attorneys' fees, penalties and other expenses, if any, properly chargeable to him and against his Dwelling Unit or Lot, at least three (3) days prior to the date fixed for such annual or special meeting.

SECTION 4 - PROPERTY RIGHTS AND DUTIES AS TO THE COMMUNITY FACILITIES

Section 4.01 OWNER'S EASEMENT OF ENJOYMENT. Every Owner shall have the right of ingress, egress, and regress over the streets and roads and the right of enjoyment in and to the Community Facilities which shall be appurtenant to each Dwelling Unit or Lot. Such rights shall pass with title to every Dwelling Unit or Lot, subject, nevertheless, to the following provisions:

(a) The right of the Community Association to make reasonable charges and assessments for the use of any or all of the Community Facilities.

(b) The right of the Community Association to suspend the voting rights and the right to use the Community Facilities by an Owner for the failure to pay in full any assessment within thirty (30) days of the date or for the infraction of any of the Rules and Regulations after being so determined by the Board of Directors of the Community Association.

(c) The right of the Community Association to declare or transfer all or any part of the Community Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members entitled to vote agreeing to such dedication or transfer has been executed.

(d) The right of the Community Association to limit or prescribe the number or kinds of guests of Members or to make a charge for use of the Community Facilities by guests of Members.

(e) The right of the Community Association to establish Rules and Regulations governing the use of the Community Facilities.

(f) The free right and privilege of the Declarant at all times hereafter, without let or hindrance, to go upon any and all of the lands conveyed or developed; to construct, reconstruct, repair, renovate or to correct work to be done by themselves, their agents, servants, workmen or contractors. Such right of the Declarant shall expire upon the conveyance by the Declarant, in the ordinary course of business, of the last Dwelling Unit or Lot to an individual or entity other than the Declarant.

(g) An easement for the present and future installation and maintenance of electric service, master and/or cable TV service, telephone service, water (storm water and sanitary sewer), gas and drainage facilities and the necessary appurtenances to the same which easement shall run in favor of the Declarant, the Community Association and the entity or entities owning or operating such facilities.

(h) A specific easement in favor of the Declarant, its agents, servants, licensees, invites, successors and assigns for the purposes incident to the operation by the Declarant, its successors and assigns. In the process of construction and marketing of Dwelling Units for Lots; provided, however, that such easement shall expire upon the conveyance by the Declarant, in the ordinary course of business, of the last Dwelling Unit or Lot to an individual or entity other than the Declarant.

Section 4.02 WAIVER OF USE. No Member may exempt himself from liability for his charges and assessments duly levied by the Community Association in accordance with the provisions of the Declaration and the By-Laws, nor release the Dwelling Unit or Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Community Facilities, by abandonment of his Dwelling Unit or Lot or by any conveyance or covenant severing

the rights and benefits from the Dwelling Unit or Lot. Said charge, lien or assessment shall be, in addition to being a covenant running with the land, a personal obligation of the Owner at the time of the levy not subject to set-off or counterclaim.

Section 4.03 RECORDATION OF SECTIONAL PLAN. The recording of the Sectional plan or the preliminary approval of the Plan shall not be deemed to be an express or implied offer to dedicate or make available to any public or private entity any rights, including, but not limited to, any rights in, to or over any road, walk, way, parking area or Community Facilities, except as may be specifically granted in writing by the Declarant. The recording of the Sectional Plan is solely for the purpose of compliance with the State Planning Act, as amended in 1959, and all other rights are reserved by the Declarant.

Section 4.04 LIMITED COMMUNITY FACILITIES. Every Owner of a Dwelling Unit or lot which is contiguous to the area shown as Limited Community Facilities on the As Built Plans to be recorded shall have the exclusive use of this area with the right of ingress, egress and regress over the said area which shall be appurtenant to each Dwelling Unit or Lot and shall pass with title to every Dwelling Unit or Lot subject nevertheless, to the following provisions:

(a) The right of the Community Association to make reasonable charges and assessments for the maintenance of the Limited Community Facilities. The Limited Community Facilities to be maintained by the Community Association shall include but are not limited to the roofs and exterior trim of all Dwelling Units.

(b) The right of the Community Association to establish Rules and Regulations governing the maintenance of the Limited Community Facilities.

(c) The free right and privilege of the Declarant and the Community Association at all times hereafter without let or hindrance to go upon any and all of the lands conveyed or developed; to construct, reconstruct, repair, renovate or to correct work to be done by themselves, their agents, servants, workmen or contractors. Such right shall expire upon the conveyance by the Declarant, in the ordinary course of business, of the last Dwelling Unit or Lot to an individual or entity other than the Declarant.

(d) An easement for the present and future installation and maintenance of electric service, master and/or cable TV service, telephone service, water (storm water and sanitary sewer), gas and drainage facilities and the necessary appurtenances to the same which easement shall run in favor of the Declarant and the Community Association, and the entity or entities owning or operation such facilities.

(e) A specific easement in favor of the Declarant its agents, servants and licensees, invites, successors and assigns for the purposes incidental to the operation by the Declarant, its successors and assigns, in the process of construction and marketing; provided, however, that such easement shall expire upon the conveyance by the Declarant in the ordinary course of business of the last Dwelling Unit or Lot in the Community to an entity or individual other than the Declarant.

SECTION 5-COVENANT FOR MAINTENANCE CHARGES

Section 5.01 CREATION OF THE LIEN AND PERSONAL OBLIGATIONS OF CHARGES AND ASSESSMENTS. Each Owner of any Dwelling Unit or Lot, upon acceptance of a deed therefor and the completion of the Dwelling Unit as defined in Section 5.10(b), whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Community Association:

(1) Annual charges of assessments as the same are composed in accordance with §5.10

(2) Special assessments for capital improvements, such charges and assessments to be established and collected as hereinafter provided and

(3) Such charges, assessments or penalties, including interest, that may become due pursuant to this Section 5, or as may be established by the Board of Directors for non-payment of any applicable charges or assessments or for non-compliance with the terms and provisions of this Declaration, the By-Laws or such Rules or Regulations as may be enacted by the Board of Directors. The annual charges, special charges and assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Dwelling Unit or Lot against which each such charge and assessment were made. These charges and assessments, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Dwelling Unit or Lot at the time when the charge and assessment fell due and shall not be subject to the right of set-off or counterclaim. Except as provided in Section 5.10(b) no such charge, assessment or lien shall be made against the Declarant.

✓ **Section 5.02. OWNER'S NEGLIGENCE.** Each Owner shall be obligated to reimburse the Community Association for any expenses incurred by it in repairing or replacing any part or parts of the Community Facilities damaged solely by such Owner's negligence or by the negligence of his tenants, agents, guests or licensees, promptly upon receipt of the Community Association's statement therefore.

Section 5.03. EFFECT OF NON-PAYMENT OF CHARGES AND ASSESSMENTS, REMEDIES OF THE COMMUNITY ASSOCIATION. Any assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the then prime rate of Mellon Bank or the maximum legal rate of interest, whichever is higher. The Community Association shall have the right to pay the same, or foreclose the lien against the Dwelling Unit or Lot, or both, or it may seek and obtain any other remedy provided at law or in equity. All legal costs and reasonable attorneys' fees shall also be a continuing lien upon the Dwelling Unit or Lot against which such charges and assessments were made. In addition to such other remedies available to the Community Association, in the event of non-payment of assessment, the Community Association shall have the right to revoke the rights of any Owner to use the Community Facilities and to vote in the Community Association provided the Community Association shall provide written notice of such revocation and an opportunity for the defaulting owner to be heard before the Board of Directors or a committee appointed for such purpose. The decision of the Board of Directors or such committee shall be final.

Section 5.04. LIEN OF CHARGES. All charges and assessments chargeable to any Dwelling Unit or Lot shall constitute a lien against said Dwelling Unit or Lot in favor of the Community Association, which lien shall be prior to all other liens except

- (a) Assessments, liens and charges for taxes past due and unpaid on the Dwelling Unit;
- (b) A bona-fide mortgage lien, if any, to which the Dwelling Unit or Lot is subject; and
- (c) Any other lien recorded prior to recording the claim of lien.

Such lien shall be effective from and after the time of recording in the public records of Allegheny County, Pennsylvania of a claim of lien stating the description of the Dwelling Unit or Lot, the name of the record Owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the Community Association. Upon full payment of all sums secured by the lien and a preparation fee, the party making payment shall be entitled to a recordable satisfaction of lien to be recorded at his sole expense.

Section 5.05 SUBORDINATION OF THE LIEN TO MORTGAGEES. If a mortgagee of a first mortgage of record, other than the purchaser of a Dwelling Unit or Lot, acquires title to such Dwelling Unit or Lot as a result of a foreclosure of a first mortgage, or a purchase money mortgage, or if it takes a deed in lieu of foreclosure, such acquirer of title, his, her, their, its heirs, administrators, executors, successors and assigns, shall not be liable for the charges and assessments by the Community Association pertaining to such Dwelling Unit or Lot or chargeable to the former owner which became due prior to acquisition of title as a result of the foreclosure.

Section 5.06 VOLUNTARY SALE OF DWELLING UNIT OR LOT. Upon the voluntary sale or conveyance of a Dwelling Unit or Lot, or any other transfer of such Dwelling Unit or Lot by operation of law or otherwise, except the transfer described in Section 5.07 or a transfer by Deed in lieu of foreclosure to a holder of a mortgage, the Grantee or Transferee, as the case may be, shall be jointly and severally liable with the Grantor or Transferor, for all unpaid assessments for common expenses which are charged against the Dwelling Unit or Lot as of the date of the sale, conveyance or transfer, but such joint and several liability shall be without prejudice to the right of the Grantee or Transferee to recover from the Grantor or Transferor in the amount of any such unpaid assessments which the Grantee or Transferee may pay, and until any such assessments are paid, there shall continue to be a charge against the Dwelling Unit or Lot, which may be in force in the manner set forth in this Section 5: provided, however, any person who shall have entered into a written agreement to purchase a Dwelling Unit or Lot shall be entitled to obtain a written statement from the Treasurer or the Management Agent setting forth the amount of unpaid assessments charged against the Dwelling Unit or Lot and its Owner, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the Dwelling Unit or Lot after transfer thereof, shall be liable for the payment of the amount in excess of the unpaid assessments shown on such statement.

Section 5.07 UNPAID ASSESSMENTS AT THE TIME OF EXECUTION SALE AGAINST A DWELLING UNIT. In the event that title to a Dwelling Unit or Lot is transferred by Sheriff's Sale pursuant to execution upon any lien against the Dwelling Unit, the Board of Directors may give notice in writing to the Sheriff of any unpaid assessments which are a charge against the Dwelling Unit, but have not been reduced to a lien, and the Sheriff shall pay the assessments of which he has such notice out of the proceeds of the sale which remain in his hands for distribution after payment of all other claims which he is required by law to pay, but prior to any distribution of the balance to the former Owner against whom the execution issued. The purchaser at such Sheriff's Sale and the Dwelling Unit involved shall not be liable for unpaid assessments, which become due prior to the Sheriff's Sale of the Dwelling Unit. Any such unpaid assessment which cannot be promptly collected from the former Owner may be assessed by the Board of Directors as a Community expense to be collected from all the Owners, including the purchaser or acquirer of title at the Sheriff's Sale, his successors and assigns. To protect its right to collect unpaid assessments which are a charge against a Dwelling Unit, the Board of Directors may on behalf of the Members, purchase the Dwelling Unit at Sheriff's Sale provided such action is authorized by the affirmative vote of the majority of the Board of Directors, and it does so purchase, the Board of Directors shall thereafter have the power to sell, convey, mortgage or lease such Dwelling Unit to any person whatsoever.

Section 5.08 MORTGAGE FORECLOSURE. If a mortgagee of a first mortgage of record or other purchaser of a Dwelling Unit or Lot acquired title to such Dwelling Unit or Lot as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for assessments for Community expenses or other charges by the Community Association pertaining to such Dwelling Unit or Lot or chargeable to the former Owner which became due prior to acquisition of title as a result of the foreclosure. Such unpaid share of the Charges shall be deemed to be Community expenses collectible from all of the remaining Owners, including such acquirer, his successors and assigns.

Section 5.09 ANNUAL CHARGES. Annual Charges shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Community Association, the improvement, operation, maintenance, repair, restoration and replacement of the Community Facilities and Limited Community Facilities, and to cover the costs incurred in the performance of the duties and exercise of the powers of the Community Association created herein and under the By-Laws of the Community Association. *Any non-routine expenditures exceeding \$500.00 shall require (a) the acquisition of at least 3 bids wherever possible, and (b) the approval of a majority of the Board of Directors. (amended 4/14/97).*

Section 5.10 ANNUAL CHARGES - COMPUTATION AND ASSESSMENT.

(a) Each Owner is bound to contribute to the common expenses of administration and maintenance, replacement and repair of the Community Facilities and Limited Community Facilities and to the expenses of administering and maintaining the Community Association and all its real and personal property. Annual Charges payable by each Owner shall be the same charges as are paid by any other Owner. Annual Charges payable by the Owners shall be determined by the Board of Directors each year in advance by an estimation of the total anticipated annual expenses of the Community Association.

(b) No assessments shall be payable by the Owner of any Dwelling Unit or Lot until such Dwelling Unit or Lot is completed and occupied. In the event a Dwelling Unit or Lot is completed but not occupied for a period of six (6) months after such completion, assessments shall first be payable upon the expiration of such six (6) month period. However, the Declarant shall not be liable for any assessments until such time as there has been a conveyance of one of such Dwelling Units to an Owner and only with respect to those Dwelling Units located within the same building or the same block of attached dwelling units sharing common walls as the Dwelling Unit conveyed to such Owner. For purposes of this subparagraph (b) of this Section 5.10, a Dwelling Unit or Lot shall be completed upon the issuance of a certificate of occupancy or comparable permit from the appropriate governmental authority having jurisdiction over such Dwelling Unit or Lot.

(c) Annual Charges shall be assessed on an annual basis but shall be payable in monthly installments of one-twelfth (1/12th) of the total Annual Charge. In addition to such other enforcement rights and powers provided by the Declaration, the By-Laws, or otherwise by law, the Board of Directors shall have the power to accelerate payment of the entire annual charge in the event of a default in the payment of any two (2) consecutive monthly installments.

(d) The Board of Directors shall have the power to alter the method of calculating the Annual Charges as is set forth in this Section 5.10, provided that such alternate method is approved by the Owners by a vote of no less than sixty-seven (67%) of the Owners eligible to vote.

Section 5.11 SPECIAL ASSESSMENTS. The Board of Directors of the Community Association may levy, in addition to Annual Charges levied pursuant to Sections 5.09 and 5.10, Special Assessments for the cost of any construction, reconstruction, unexpected repair, replacement or demolition of any of the Community Facilities and United Community Facilities, including the necessary fixtures and personal property related thereto, provided that any such assessment for a capital expenditure in excess of \$20,000 shall be approved by vote of sixty (60%) percent of the Members, including the Declarant if he currently holds any unsold or unbuilt units, present either in person, by mail ballot or by proxy and entitled to vote at a special meeting of the Community Association called for such purpose.

Section 5.12 LIMITED CHARGES. The Board of Directors of the Community Association may assess Limited Charges to any one or more Dwelling Units or Lots made subject to this

Declaration to provide services which are exclusively for such Dwelling Unit(s) or Lot(s) which services include, but are not limited to, the improvement and maintenance of the Community Facilities and Limited Community Facilities used principally by the Owners or residents of such Dwelling Unit(s) or Lot(s).

Section 5.13 CAPITAL FUND. At settlement, each Owner of a Dwelling or Lot shall contribute to the Capital Fund a sum equal to one-sixth (1/6) of the estimated Annual Charge, which shall be maintained in a segregated account for the use and benefit of the Community Association. The Capital fund shall be used to satisfy unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors.

SECTION 6 - ARCHITECTURAL REVIEW

ARCHITECTURAL REVIEW AS TO OWNERS' LOT, DWELLING UNIT OR PARCEL. No building, fence, wall or other structure or improvement or landscaping shall be commenced, erected or maintained upon the Owner's Dwelling Unit or Lot, nor shall any exterior addition to or change (including change of external color scheme) or alteration be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors and location of same shall have been submitted by certified mail to, and approved, without conditions, in writing, as to harmony of external design and location in relation to surrounding structures and improvements and the topography of the Property, by the Architectural Review Committee empowered by the Board of Directors to so act. Such Committee shall be established and members appointed to the Committee as provided in the By-Laws. In the event said Committee fails to approve, with or without condition, or denies such application within forty-five (45) days after said plans and specifications have been submitted to it, approval will be determined to have been granted without conditions. The Board of Directors of the Community Association or the Committee, with the approval of the Board of Directors, shall establish design criteria and standards which shall be consistent with this Section. Nothing in this Section shall limit or prevent the Board of Directors from appointing itself as the Architectural Review Committee.

SECTION 7- USE RESTRICTIONS AS TO ALL DWELLING UNITS, LOTS, AND COMMUNITY FACILITIES AND LIMITED COMMUNITY FACILITIES

Section 7.01 USE RESTRICTIONS AND EASEMENTS. In addition to all of the Covenants contained herein, the use of the Community Facilities and Limited Community Facilities and each Dwelling Unit or Lot in the Community is subject to the following:

(a) No Owner or any other person, firm or corporation shall build or cause to be built any addition or structure, or any other manner or thing which alters the height of the structure, the area covered by the structure, or the use of exterior color scheme thereof, or any modification therein, without first having the approval of the Architectural Review Committee in writing.

(b) No Owner or lawful occupier shall erect or maintain an antenna on any Lot or building erected on the Property.

(c) The Owner of each Dwelling Unit or Lot shall maintain such Dwelling Unit or Lot in a safe, clear and sanitary manner, in good order and repair and in accordance with all those Covenants, Conditions, Restrictions, Rules and Regulations as may apply to such Dwelling Unit or Lot. In the event that a Dwelling Unit or Lot shall not be so maintained, the Community Association shall have the right, but not the obligation, to enter upon the Dwelling Unit or Lots to maintain the same, after giving the Owner at least fifteen (15) days' written notice, to cure any maintenance problems or deficiencies and, in such event, the Community Association by its Board of Directors shall have the right to establish Rules and Regulations governing the exterior maintenance of any Dwelling Unit or Lot.

(d) No sign of any kind shall be placed upon any of the Community Facilities or Limited Community Facilities except as may be specifically approved by the Community Association in writing and the Community Association shall have the power to remove the sign not so approved and to charge the person or persons causing the erection of same the cost thereof. In the event that the person so responsible cannot be ascertained or the funds cannot be collected, then the Community Association shall be permitted to pay the same from the Community Association funds.

(e) No Owner shall carry on any practice or permit any practice to be carried on which unreasonably interferes with the quiet enjoyment by any other Owner or occupant of a Dwelling Unit or Lot or which creates a hazard or nuisance on the Property.

(f) The Association may, at its option, at any time, maintain fire and extended coverage insurance on all Dwelling Units or Lots. Such insurance policy shall contain a mortgagee endorsement in favor of the holder of any mortgage on any Dwelling Unit or Lot as his interest may appear at the time of loss. The Association shall repair, rebuild or replace with new materials of like size, kind and quality as such property had been prior to its damage or destruction by fire or other casualty. Each Owner of a Dwelling Unit or Lot shall maintain liability, personal property and betterment insurance on such Dwelling Unit or Lot. Fire and extended coverage insurance shall be maintained for the Condominium Units by the Condominium Association. All duties and obligations relating to said insurance shall be set forth in the Condominium Association Documents, Rules and Regulations.

(g) No Owner or lawful occupier shall leave any non-operating vehicle or unregistered vehicle on or about the property of either the Owner or the Community Association.

(h) In the event of taking in condemnation of the Community Facilities or any portion thereof, the award for such taking shall be payable to the Community Association for use by the Community Association to defray costs and expenses of operation, maintenance and replacement of the Community Facilities.

(i) No Owner shall be permitted to lease his Dwelling Unit or Lot unless the lease be in writing and the lease terms be approved by the Community Association. No Dwelling Unit may be leased for a term of less than thirty (30) days. All leases shall provide that the lessee shall be subject in all respects to the provisions of the By-Laws, the Declaration of Covenants, Conditions and Restrictions and Rules and Regulations of the Community Association and that any failure by the lessee to comply with the terms of these Community Association documents shall be a default under the lease. The Owner shall not be relieved of any of his obligations under these Community Association documents by virtue of this leasing his Dwelling Unit or Lot. In the event that an Owner shall fail to pay any charge or assessment levied by the Board of Directors against a leased Dwelling Unit, and such failure to pay continues for thirty (30) days, the Board of Directors shall so notify in writing the lessee of the Dwelling Unit of the amount due and within fifteen (15) days after the date of such notice, the lessee shall pay to the Board of Directors the amount of such unpaid charge or assessment limited, however, in any one month to an amount equal to one month's rental charge. The amount so paid by the lessee to the Board of Directors shall be credited against and shall offset the next monthly rental installment due to the Owner of the Dwelling Unit following the payment by the lessee of such charge or assessment. Any Owner who leases or sells his Dwelling Unit or Lot shall provide his lessee or purchaser, at the Owner's expense, a current copy of this Declaration, the By-Laws, any Rules and Regulations promulgated by the Community Association and such other covenants, conditions or restrictions and related documents as may apply to such Dwelling Unit or Lot. At least three (3) days prior to the execution by an Owner of a lease for or an agreement for the sale of such Dwelling Unit or Lot, the Owner shall submit to the Community Association a certificate signed by his lessee or purchaser that certifies that such lease or purchaser has received

copies of such Documents and Rules and Regulations as are applicable to such Dwelling Unit or Lot. Within five (5) days after the execution by an Owner of lease for such Dwelling Unit or Lot, the Owner shall submit a copy of the executed lease to the Community Association.

Upon the sale by an Owner of his Dwelling Unit or Lot, the selling Owner shall furnish a certificate issued by the Community Association containing the following information:

- (i) A statement of the amount of the annual charges payable monthly and any unpaid annual charge or other assessment currently due and payable from the Selling Owner.
- (ii) A statement of any other fees payable by Owners.
- (iii) A statement of any capital expenditures currently proposed or adopted by the Community Association for the current and two next succeeding fiscal years.
- (iv) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the Community Association for any specified project.
- (v) A copy of the most recent regularly prepared balance sheet and income and expense statement, if any, of the Community Association.
- (vi) A copy of the current opening budget of the Community Association.
- (vii) A statement describing any insurance coverage which may be provided for the benefit of Owners. The Community Association shall fully cooperate in the preparation and provision of such certificate and information to a selling Owner within fifteen (15) days after same is requested in writing by such Owner. An Owner providing such a certificate to a purchaser is not liable to the purchaser for any erroneous information provided by the Association and included in the certificate. A purchaser shall not be liable for any unpaid assessment or fee greater than that set forth in such certificate. The Community Association shall have the power to assess the reasonable cost of the preparation of such certificate to the selling Owner and require payment thereof prior to the delivery of such certificate to the Owner.
- (j) No above-ground swimming pools may be erected on any lot.
- (k) No basketball court may be constructed or maintained on any Lot.
- (l) No tents, trailers, vans, storage tanks, or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot without the written consent of the Architectural Review Committee.
- (m) No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon any Lot, except upon such areas specifically designated for such use by the Declarant or the Board of Directors. Nor shall any vehicle, including automobiles, be parked on any Community Facility or Common Area in violation of the Rules and Regulations of the Community.
- (n) No new plantings, artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Architectural Review Committee.
- (o) No unauthorized plantings, unsightly weeds, underbrush or other vegetation shall be

(o) No unauthorized plantings, unsightly weeds, underbrush or other vegetation shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed, remain, or accumulate thereon; in the event that any Owner shall fail or refuse to keep his Lot free of unauthorized plantings, unsightly weeds, underbrush or refuse piles or other vegetation or objects, then the Declarant or the Community Association may enter upon any Lot and remove the same at the expense of the Owner.

(p) The Declarant and the Community Association shall have the free right and privilege at all times hereafter, without let or hindrance, to go upon any and all of the land conveyed or developed; to construct, reconstruct, repair, renovate or to correct work done by themselves, their agents, servants, workmen or contractors.

(q) An easement for the present and future installation and maintenance of electric service, master and/or cable TV service, telephone service, water (storm water and sanitary sewer) gas and drainage facilities and the appurtenances necessary to the same, which easement shall run in favor of the Declarant, the Community Association and the entity or entities owning or operating such facilities.

(r) A specific easement in favor of the Declarant, its agents, servants and licensees, invitees, successors and assigns for the purposes incidental to the operation by the Declarant, its successors and assigns, in the process of construction and marketing; provided, however, that such easement shall expire upon the conveyance by the Declarant, in the ordinary course of business, of the last Dwelling Unit or Lot to an individual or entity other than the Declarant.

(s) (i) If any portion of the Community Facilities hereafter encroaches upon any Dwelling Unit or Lot, or if any Dwelling Unit or Lot hereafter encroaches upon any other Dwelling Unit or Lot or upon any portion of the Community Facilities, as a result of settling or shifting of buildings or improvements or otherwise other than as a result of the purposeful or negligent act or omission of the Owner of the encroaching Dwelling Unit or Lot, or of the Community Association in the case of encroachments by the Community Facilities, a valid easement appurtenant to the encroaching Dwelling Unit, Lot or Community Facilities for the encroachment and for the maintenance of the same shall exist so long as the encroachment shall exist. In the event that any building or other improvement shall be partially destroyed as a result of fire or other casualty or as a result of a taking by the power of or in the nature of eminent domain or by an action or deed in lieu of condemnation, and then is rebuilt, encroachments of parts of Community Facilities upon any Dwelling Unit or Lot or of any Dwelling Unit or Lot upon any other Dwelling Unit or Lot or upon any portion of the Community Association to such rebuilding, shall be permitted, and valid easements appurtenant to the encroaching Dwelling Units, Lots or Community Facilities for such encroachments and the maintenance thereof shall exist so long as that building or improvement as so rebuilt shall stand.

(ii) If any Dwelling Unit shall encroach upon any other Dwelling Unit situated on one Lot or shall encroach upon any other Dwelling Unit or Lot or upon the Community Facilities by reason of original construction, a valid easement appurtenant to the encroaching Dwelling Unit for the encroachment and the maintenance of both the encroachment and the encroaching Dwelling Unit shall exist so long as the Dwelling Unit shall exist. Subparagraph (i) of this paragraph shall apply with respect of any partial destruction of a Dwelling Unit.

(t) Each Dwelling Unit or Lot and the Community Facilities shall be and are hereby made subject to an easement in favor of any adjacent Dwelling Unit or Lot or the Community Facilities for which access across, upon or through such Dwelling Unit or Lot or the Community Facilities is necessary for the maintenance, repair and/or replacement of such Dwelling Unit or Lot or the Community Facilities benefiting from such an easement.

Section 7.02 DECLARANT EASEMENTS. Access for the Declarant provided under the easements reserved for the Declarant in Section 7.01 or otherwise by this Declarant shall be limited, except in the event of an emergency or other exigency, to the or other exigency, to the hours of 9 a.m. to 7 p.m. The Declarant shall be responsible for the repair of damage to a Dwelling Unit or Lot or to other portions of the Property caused by them, respectively, in the exercise of such rights as are provided by such easements. In addition, the Declarant shall hold the Community Association and Owners of Dwelling Units or Lots harmless against claims that may arise in connection with damage or injury caused by the Declarant in the exercise of the rights provided under such easements.

Section 7.03 RIGHTS OF OWNERS WITH RESPECT TO UTILITIES. The rights and duties of the Owners of Dwelling Units or Lots within the Community with respect to sanitary sewer, storm sewer, water, electricity, telephone lines and facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connections or electricity, or telephone lines are installed within the Community, which connections or any portions thereof lie in or upon Dwelling Units or Lots owned by the Owner of a Dwelling Unit or Lot served by said connections, the Community Association shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon the Dwelling Unit or Lot to have the utility companies or authorities enter upon the Dwelling Unit(s) or Lot(s) within the Community in or upon which such connections, or any portion thereof, lie, to repair, replace and generally maintain such connection as and when they may deem the same necessary. The Owner shall be responsible for restoring the surface of the easement area to the same condition which existed prior to such use to the extent that the utility company or authority is not so responsible or has not done so.

(b) Wherever sanitary sewer house connections and/or water house connections, or electricity or telephone lines are installed within the Community, which connections serve more than one Dwelling Unit or Lot, the Owner of each Dwelling Unit or Lot served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as serve his Dwelling Unit or Lot.

(c) In the event of a dispute between Owners with respect to repair or rebuilding of said connections, or with respect to the sharing of the costs thereof, then, upon written request of any one of such Owners, addressed to the Community Association, the matter shall be submitted to the Board of Directors, who shall decide the dispute, and the decision of the Board shall be final, conclusive and binding on all parties.

SECTION 8

RIGHTS OF FIRST MORTGAGE HOLDER, INSURER AND GUARANTOR

Section 8.01 ELIGIBILITY. A holder, insurer and guarantor of a first mortgage on a Dwelling Unit or Lot in the community shall be required to provide to the Association a statement of its name, address and the Dwelling Unit or Lot against which it holds, insures or guarantees a first mortgage in order to be an eligible holder insurer or guarantor and thereby entitled to the rights set forth in this Section 8 and elsewhere in this Declaration.

Section 8.02 NOTICE TO ELIGIBLE HOLDER, INSURER OR GUARANTOR. Upon written request to the Association, identifying the name and address of the eligible holder, insurer or guarantor and the particular Dwelling Unit or Lot, any eligible holder, insurer or guarantor of a first mortgage lien on a Dwelling Unit or Lot shall be entitled to timely notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or any Dwelling Unit or Lot on which there is first mortgage held, insured or guaranteed by such eligible holder, insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Dwelling Unit or Lot subject to a first mortgage held, insured or guaranteed by such eligible holder, insurer or guarantor, or other default in the performance by the Owner of a Dwelling Unit or Lot against which the mortgage lien applies of any of the obligations set forth in this Declaration, the By-Laws or the Rules and Regulations, which delinquency or default continues for a period of sixty (60) days;

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(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of eligible first mortgagees as specified in Sections 8.03 and 8.04 below.

Section 8.03 MORTGAGE APPROVAL.

(a) Any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Plan, and the original plans and specifications, unless other action is approved by eligible holders holding first mortgage liens on Dwelling Units or Lots which have at least fifty-one (51%) percent of the votes of the Dwelling Units or Lots subject to liens of eligible first mortgagees.

(b) Any election to terminate the legal status of the Community after substantial destruction or a substantial taking in condemnation of the Community property shall require the approval of eligible holders holding first mortgages on Dwelling Units or Lots which have at least fifty-one (51%) percent of the votes of Dwelling Units or Lots subject to liens held by eligible first mortgagees.