

REC. 1491970 423

DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
FLAMINGO GARDENS ESTATES

THIS DECLARATION is made this 16 day of July, 1990 by FLAMINGO GARDENS DEVELOPMENT L.C., a Florida Limited Liability Company which declares that the real property described in ARTICLE II, which is owned by it, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I

Definitions

The following words when used in this Declaration and in its exhibits shall have the following meanings:

(a) "Association" shall mean and refer to FLAMINGO GARDENS ESTATES HOMEOWNERS ASSOCIATION, INC., a Florida Corporation not for profit, which is to be incorporated.

(b) "Common Areas" shall mean and refer to all of the Properties, as defined hereinbelow, less and except all Lots and Residential Units and "Common Areas" shall also include any improvements within the Properties, including parks and open space and landscaping thereon, private streets, sidewalks, walls, street lights, and entrance features, but excluding any public utility installations thereon, and all personal property used in connection with the above owned or leased by the Association.

(c) "Declaration" shall mean and refer to these covenants and restrictions, the exhibits hereto, and such amendments, if any, as may be duly adopted from time to time pursuant to the terms hereof.

(d) "Developer" shall mean and refer to FLAMINGO GARDENS DEVELOPMENT L.C., a Florida Limited Liability Company, its successors and such of its assigns as to which the rights of Developer hereunder are specifically assigned. Developer may assign only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Properties. In the event of such a partial assignment, the assignee shall not be deemed the Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

(e) "Homeowner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any Lot and/or Residential Unit as defined herein.

(f) "Mortgagee" shall mean and refer to any bank, savings and loan association, insurance company, FHA approved mortgage lender or other business entity which holds a first mortgage encumbering title to any Residential Unit or Lot hereinbelow defined.

(g) "Lot" shall mean and refer to any lot as shown on the Plat of FLAMINGO FARMS ESTATES and on the Plat of FLAMINGO FARMS ESTATES FIRST ADDITION recorded in the Public records of Dade County, Florida.

(h) "Member" shall mean and refer to all those owners of Lots or Residential Units who are members of the Association as provided in Article III, Section 1, hereof.

(i) "Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this declaration or any amendment thereto.

(j) "Residential Unit" shall mean and refer to any residential unit or a Lot designated and intended for use by a single family as a residence, the construction of which has been completed as evidenced by the issuance of a certificate of occupancy or its equivalent by the appropriate governmental authority.

ARTICLE II

Property Subject to This Declaration; Additions Thereto and Withdrawal Therefrom

Section 1. Property. The Real Property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Dade County, Florida, and is legally described on Exhibit "A" hereto and made part hereof.

Section 2. Additions. Developer may from time to time bring other land being in the Development under the provisions hereof by recorded supplemental declarations (which shall not require the consent of then existing Owners or the Association, or any Institutional First Mortgagee) and thereby add to The Properties. To the extent that such additional real property shall be made a part of The Properties as a common scheme, reference herein to The Properties should be deemed to be reference to all of such additional property where such reference is intended to include property other than that legally described above.

Nothing herein, however, shall obligate the Developer to add to the initial portion of The Properties, to develop any such future portions under such common scheme, nor to prohibit Developer from rezoning and changing the development plans with respect to such future portions and/or the Developer from

adding additional or other property to The Properties under such common scheme. All Owners, by acceptance of a deed to their Lots, thereby automatically consent to any such rezoning, change addition or deletion thereafter made by Developer and shall evidence such consent in writing if requested to do so by the Developer at anytime. Any additions or exclusions shall require prior written approval of Dade County.

Section 3. Withdrawal. Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of The Properties then owned by the Developer or its affiliates from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for The Properties desired to be effected by the Developer; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for The Properties. Any withdrawal of land not owned by Developer shall require the written consent or joinder of the then-owner(s) and mortgagee(s) of such land.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity, who is a record owner of a fee or undivided fee interest in any Lot shall be a member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or entity who holds such interest merely as security for the performance of any obligation shall not be a member of said Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote for each Lot or Residential Unit in which they hold the interests required for membership by said Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote entitled to be cast by each Class A Member. The Class B membership shall cease and be converted to Class A Membership upon the happening of either of the following events, whichever occurs earlier:

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(a) 100% of the Lots are deeded to Homeowners.

(b) January 1, 1999.

Section 3. General Matters. When reference is made therein, or in the Articles, By-laws, Rules and Regulations, management contract or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

ARTICLE IV

Property Rights in the Common Areas; Other Easements

Section 1. Ownership. The Common Areas are hereby dedicated to the joint and several use, in common, of the owners of all Lots that may from time to time constitute part of the Properties. When this Declaration has been recorded in the Public records of Dade County, Florida, the Developer, or its successors and assigns, shall convey and transfer the records fee simple title to the Common Areas to the Association, and the Association shall accept such conveyance, holding title for the owners as state in the preceding sentence. Beginning upon the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Areas, in a continuous and satisfactory manner without cost to the general taxpayers of Dade County. It is intended that all real estate taxes levied against the Common Areas shall be proportionately assessed against and payable as part of the taxes of the Lots within the Properties. However, in the event that any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment of same, including taxes on any improvements and any personal property thereon accruing from and after the date this Declaration is recorded, and such taxes shall be prorated between Developer and the Association as of the date of such recordation. Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent properties, and for the purpose of construction of any facilities on the Common Areas that Developer elects to build, and Developer shall have the right to use the Common Areas for sales, displays and signs during the period of construction and sales of all or part of The Properties.

Section 2. Members' Easements. Each Member of the Association and each tenant, agent and invitee of such Member shall have a permanent and perpetual easement for the use of all Common Areas located thereon, in common with all other Members of the Association, their tenants, agents and invitees, subject to the following:

(a) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas in compliance with the provisions of this Declaration and any other existing restrictions or any restrictions which may from time to time be recorded by Developer.

(b) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas, including the right to fine Members as provided in Article VIII hereof. The right of a Homeowner for the use and enjoyment of the Common Areas shall extend to the members of his immediate family who reside with him, subject to the rules and regulations from time to time adopted by the Association. If ingress or egress to any residence is through any common area, any conveyance or encumbrance of such area is subject to the Lot owner's easement

Section 3. Easements Appurtenant. All easements provided for in this Section shall be appurtenant to and shall pass with the title to each Lot or Residential Unit.

Section 4. Maintenance. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements situated on the Common Areas (upon completion of construction by Developer), except for the installations for which a public authority or any utility company is responsible; such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article V hereof.

Section 5. Utility Easements. Public utilities may be installed underground in the Common Areas when necessary for the service of the Properties or other lands owned by Developer, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 6. Public Easements. Fire, police, health and sanitation and other service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

Section 7. Project Identification. The Developer may, in its discretion as it desires, and with the approval of Dade County, erect and maintain identification structures on the Properties. This action will not require the approval of the Association or its Board of Directors.

ARTICLE VCovenant for Maintenance Assessments

Section 1. Creation of the Lien Personal Obligation of the Assessments. Except as provided elsewhere herein, the Developer (and each party joining in any supplemental declaration), for all Lots within the Properties, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefore or other conveyance thereof, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association assessments and charges for the operation of the Association and the maintenance, management, operation and insurance of the Common Areas as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, capital improvement assessments, assessments for maintenance and all other charges and assessments hereinafter referred to or lawfully imposed by the Association, all such assessments to be fixed, established and collected from time to time as herein provided. In addition, special assessments may be levied against particular Owners and Lots for fines, expenses incurred against particular Lots and/or Owners to the exclusion of others and other charges against specific Lots or Owners as contemplated in this Declaration. The annual, special and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such annual assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due and all subsequent Owners until paid. Except as provided herein with respect to special assessments which may be imposed on one or more Lots and Owners to the exclusion of others, all assessments imposed by the Association shall be imposed against all Lots subject to its jurisdiction equally.

Reference herein to assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

Section 2. Purpose of Assessments. The regular assessments levied by the Association shall be used exclusively for the purposes expressed in Section 1 of this Article.

Section 3. Special Assessments. In addition to the regular and capital improvement assessments which are or may be levied hereunder, the Association (through the Board of Directors) shall have the right to levy special assessments against an Owner(s) Lot to the exclusion of other Owners for (i) the repair or replacement of damage to any portion of the Common Areas (including, without limitation, improvements and landscaping thereon) caused by the

misuse, negligence or other action inaction of an Owner or such Owner's permittee(s) or (ii) the costs of work performed by the Association in accordance with Article VI of this Declaration (together with any surcharges collectable thereunder). Any such special assessment shall be subject to all of the applicable provisions of this Article including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any Special assessment levied hereunder shall be due within the time specified by the Board of Directors in the action imposing such assessment.

Section 4. Capital Improvements. Funds in excess of \$20,000.00 in any one case which are necessary for the addition of capital improvements (as distinguished from repairs and maintenance) relating to the Common Areas under the jurisdiction of the Association and which have not previously been collected as reserve or are otherwise available to the Association (other than by borrowing) shall be levied by the Association as special assessments only upon approval of a majority of the Board of Directors of the Association and upon approval by two-thirds (2/3) favorable vote of the Members of the Association voting at a meeting or by ballot as may be provided in the By-Laws of the Association.

Section 5. Date of Commencement of Annual Assessments; Due Dates. The assessments provided for in this Article V shall commence on the first day of the month next following the recordation of these Covenants. The maintenance assessments shall be payable in annual installments unless otherwise determined by the Board of Directors of the Association.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a two-thirds (2/3) vote of the membership, voting in person or by proxies, at a duly called meeting for this purpose.

(b) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. The assessment shall be for a twelve (12) month period ending December 31st, except as otherwise provided in the By-Laws of the Association, but the amount of the annual assessment to be levied during any period shorter than a full fiscal year shall be in proportion to the number of months remaining in such fiscal year.

The due date of any special assessment under Section 4 hereof shall be fixed by the Board resolution authorizing such assessment.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and

the amount of the assessment against each Lot subject to the Association's jurisdiction for each assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written Notice of a change in the assessment shall thereupon be sent to every Owner subject thereto thirty (30) days prior to payment of the first installment thereof, except as to special assessments. In the event no such notice of a change in the assessments for a new assessment period is given, the amount payable shall continue to be the same as the amount payable for the previous period, until changed in the manner provided for herein.

Subject to other provisions hereof, the Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Developer) for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.

Section 7. Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association. If an assessment (or installment) shall become delinquent, said assessment shall, together with late charges, interest and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the then Owner, his heirs, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such annual assessment shall pass to his successors in title and recourse may be had against either or both. However, nothing in this Declaration shall be interpreted to impose absolute Liability on a Lot Owner for Special Assessment Liens.

If any installment of an assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than the amount of such unpaid installment may be imposed (provided that only one late charge may be imposed on any one unpaid installment and if such installment is not paid thereafter it and the late charge shall accrue interest as provided herein but shall not be subject to additional late charges, provided further, however, that each other installment thereafter

coming due shall be subject to one late charge each as aforesaid) or the next twelve (12) months' worth of installments may be accelerated and become immediately due and payable in full and all such sums shall bear interest from the dates when due until paid at the highest lawful rate. The Association may bring an action at law against the Owner(s) personally obligated to pay such assessment may record a claim of lien (as evidence of its lien rights as hereinabove provided for) against the Lot on which the assessment and late charge are unpaid, may foreclose the lien against the Lot on which the assessment and late charge are unpaid, or may pursue one or more of such remedies at the same time or successively, and attorneys' fees and costs of preparing and filing the claim of lien and the complaint, if any, in such action shall be added to the amount of such assessment, late charge and interest, and in the event a judgment is obtained, such judgment shall include all such sums as above provided and attorneys' fees actually incurred together with the costs of the action, through all applicable trial and appellate levels.

In the case of an acceleration of the next twelve (12) months; worth of installments, each installment so accelerated shall be deemed, initially, equal to the amount of the then most current delinquent installment, provided that if any such installment so accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot whose installments were so accelerated shall continue to be liable for the balance due by reason of such increase and special assessments against such Lot shall be levied by the Association for such purpose.

In addition to the rights of collection of assessments stated in this Section, any and all persons acquiring title to or an interest in a Lot as to which the assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall be entitled to the occupancy of such Lot or the enjoyment of the Common Areas until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid; however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder. Failure of the Association to send or deliver bills shall, however relieve Owners from their obligations hereunder.

All assessments, late charges, interest, penalties, fines attorney's fees and other sums provided for herein shall accrue to the benefit of the Association.



Owners shall be obligated to deliver the documents originally received from the Developer, containing this and other declarations and documents, to any grantee of such Owner.

Section 8. Subordination of the Lien. The lien of the assessments provided for in this Article shall be subordinate to tax liens and to the lien of any mortgage (recorded prior to recordation by the Association of a claim of lien) held by a Mortgagee and which is now or hereafter placed upon any property subject to assessment; provided, however, that any such Mortgagee when in possession or any, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such Mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such Purchaser or Mortgagee, shall hold title subject to the liability and lien of any assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). This Section may not be amended unless all Mortgagees currently owning and holding a mortgage or mortgage note secured by a Lot or Residential Unit joins in such amendment.

Section 9. Developer's Assessments. Notwithstanding anything herein to the contrary, Developer shall have the option, in its sole discretion, to (i) pay assessments on the Lots owned by it, (ii) pay assessments only on certain designated Lots (e.g., those under construction or those containing a Unit for which a certificate of occupancy has been issued) or (iii) not pay assessments on any Lots and in lieu thereof fund any resulting deficit in the Association's operating expenses not produced by assessments receivable from Owners other than Developer. The deficit to be paid under option (iii), above, shall be the difference between (i) actual operating expenses of the Association (exclusive of capital improvement costs, reserves and management fees) and (ii) the sum of all monies receivable by the Association (including, without limitation, assessments, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). Developer at any time elects option (ii), above, it shall be deemed to have necessarily elected option (i) or (iii) as to the Lots which are not designated under option (ii). When all Lots within The Properties are sold and conveyed to purchasers, neither the Developer nor its affiliates shall have further liability of any kind to the Association for the payment of assessments, deficits or contributions.

Section 10. Association Funds. The portion of all regular assessments collected by the Association for reserves for future expenses, and the entire amount of all special assessments, shall be held by the Association for the Owners of all Lots, as their interests may appear, and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks or savings and loan institutions the deposits of which are insured by an agency of the United States.

Section 11. Working Capital Contribution. All Class A Members will pay to the Association, a three month working capital contribution to provide funds for prepaid expenditures. The budget shall be so constructed as to ensure the replenishment of this fund during the course of each fiscal year.

ARTICLE VI

Maintenance of Units and Lots

Section 1. Exteriors of Units. Each Owner shall maintain all structures (including the Unit) located on his Lot in a neat, orderly and attractive manner and consistent with the general appearance of both The Properties and the Development as a whole. The minimum (though not sole) standard for the foregoing shall be consistency with the general appearance of The Properties and the Development as initially constructed and otherwise improved by Developer (taking into account, however, normal weathering and feeding of exterior finishes, but not to the point of unsightliness -- in the judgement of the Architectural Control Board hereinafter provided for). Each Owner shall repaint or restrain, as appropriate, the exterior portions of his Unit (with the same colors as initially used by Developer) as often as is necessary to comply with the foregoing standards.

Section 2. Lots. Each Owner shall maintain the trees, shrubbery, grass and other landscaping on his Lot in a neat, orderly an attractive manner and consistent with the general appearance of both The Properties and the Development as a whole. The minimum (though not sole) standard for the foregoing shall be the general appearance of The Properties and the Development as initially landscaped by Developer (such standard being subject to being raised by virtue of the natural and orderly growth and maturation of applicable landscaping as properly trimmed and maintained.

Section 3. Remedies for Noncompliance. In the event of the failure of an Owner to maintain his Unit or Lot in accordance with this Article, the Association shall have the right, upon five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or Unit, as applicable, into compliance with the standards set forth in this Article. Such work may include, but shall not necessarily be limited to, the cutting/trimming of grass, trees and shrubs; the removal (by spraying or otherwise) of weeds and other vegetation; the resodding or replanting of grass, trees or shrubs; the repainting or restraining of exterior surfaces of a Unit; the repair of walls, fences, roofs, doors, windows and other portions of a Unit or other structure on a Lot; and such remedial work as is judged necessary by a majority of the Board of Directors or the Architectural Control Board. The remedies provided for herein

shall be cumulative with all other remedies available to the Association under this Declaration (including, without limitation, the imposition of fines or the filing of legal or equitable actions).

Section 4. Costs of Remedial Work; Surcharges. In the event that the Association performs any remedial work on a Unit or Lot pursuant to this Article, the costs and expenses thereof shall be deemed a special assessment under Article V, Section 3 of this Declaration and may be immediately imposed by the Board of Directors. In order to discourage Owners from abandoning certain duties hereunder for the purposes of forcing the Association to assume same, and, additionally, to reimburse the Association for administrative expenses incurred, the Board of Directors may impose a surcharge of not more than thirty-five (35) percent of the cost of the applicable remedial work, such surcharge to be a part of the aforesaid special assessment. No bids need to be obtained by the Association for any of the work performed pursuant to this Article and the person(s) or company performing such work may be selected by the Association in its sole discretion.

Section 5. Right of Entry. There is hereby created an easement in favor of the Association and its applicable designees over each Lot for the purpose of entering onto the Lot in the performance of the work herein described, provided that the notice requirements of this Article are complied with and any such entry is during reasonable hours.

Section 6. Purpose. The purpose of this prohibition is to ensure that uniform appearance of all Lots and Units within The Properties, which uniformity may be impaired by inconsistent maintenance.

Section 7. Limited Exemption. To the extent that a Unit on a Lot is under construction by the Developer the provisions of this Article (as well as those of Article V, Section 10) shall not apply to such Lot until such time as the construction of the Unit is completed as evidenced by the issuance of a certificate of occupancy therefor.

ARTICLE VII

Certain Rules and Regulations

Section 1. Applicability. The provisions of this Article VII shall be applicable to all of The Properties but shall not be applicable to the Developer or Lots or other property owned by the Developer.

Section 2. Land Use and Building Type. No Lot shall be used except for residential purposes. No building constructed on a Lot shall be used except for residential purposes. No building shall

be erected, altered, placed or permitted to remain on any Lot other than one Unit. Temporary uses by Developer and its affiliates for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination of such uses, shall be permitted until permanent cessation of such uses takes places. No changes may be made in buildings erected by the Developer or its affiliates (except if such changes are made by the Developer) without the consent of the Architectural Control Board as provided herein.

Section 3. Easements. Easements for installation and maintenance of utilities are reserved as shown on the recorded plats covering The Properties and as provided herein. Within these easements, no structure, painting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installations for which public authority or utility company is responsible. The appropriate water and sewer authority, electric utility company, telephone company, the Association, and Developer and its affiliates, and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, and electric, telephone and security lines, cables and conduits, under and through the utility easements as shown on the plats. Developer and its affiliates, and its and their designees, successors and assigns, shall have perpetual easement for the installation and maintenance of cable and community antennae, radio, television and security lines (and for all future technological advances not now known) within platted utility easement areas. All utilities and lines within the subdivision, whether in street rights-of way or utility easements, shall be installed and maintained underground.

Section 4. Nuisances. No noxious, offensive or unlawful activity shall be carried on upon the The Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.

Section 5. Signs. No sign of any kind shall be displayed to the public view on The Properties, except only one sign of not more than one (1) square foot used to indicate the name of the resident or one sign of not more than five (5) square feet advertising the property for sale or for rent (in locations and in accordance with design standards approved by the Architectural Control Board), or any sign used by a builder to advertise the company during the construction and sales period. No sign of any kind shall be permitted to be placed inside a home or on the outside walls of the home or on any fences on The Properties, no on the Common Areas, nor on dedicated areas, nor on entryways or on any vehicles within The Properties, except such as are placed by the Developer or its affiliates.

Section 6. Visibility at Intersections. No obstruction to visibility at street intersections or Common Area intersections shall be permitted.

Section 7. Architectural Control. No building, wall, fence or other structure or improvement of any nature (including, but not limited to, landscaping, exterior paint or finish, hurricane protection, basketball hoops, birdhouses, other pet houses, swales, asphaltting or other improvements or changes of any kind) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping or of the materials as may be required by the Architectural Control Board have been approved in writing by the Architectural Control Board and all necessary governmental permits are obtained. Each building, wall, fence or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Control Board seem sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. A majority of the Board may take any action the Board is empowered to take, may designate a representative to act for the Board and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Board, the remaining members shall have full authority to designate a successor. The members of the Board shall not be entitled to any compensation of services performed pursuant to this covenant. The Architectural Control Board shall act on submissions to it within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved. Members of the Board shall be appointed by the Board of Directors of the Association as a committee thereof.

The approval of any proposed improvements or alterations by the Architectural Control Board shall not constitute a warranty or approval as to, and no member or representative of the Architectural Control Board or the Board of Directors shall be liable for, the safety, soundness, workmanship, materials or usefulness for any purpose of any such improvement or alteration nor as to its compliance with governmental or industry codes or standards. By submitting a request for the approval of any improvement or alteration, the requesting Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid members and representatives, and the Association



generally, from and for any loss, claim or damages connected with the aforesaid aspects of the improvements or alterations.

No approval of the Architectural Control Board shall be required for the maintenance (including repainting and restraining of Unit exteriors) required by Article VI of this Declaration.

Section 8. Commercial Trucks, Trailers, Campers and Boats.

No trucks or commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on The Properties, nor in dedicated areas, unless the Developer or the Association designates specifically certain spaces for some or all of the above. This prohibition of parking shall not apply to temporary parking of trucks and commercial services, nor to passenger type vans for personal use which are in acceptable condition in the sole opinion of the Board (which favorable opinion may be changed at any time), nor to any vehicles of the Developer or its affiliates. No on-street parking shall be permitted.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations now or hereafter adopted may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of 24 hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph of this paragraph, "vehicle" shall also mean campers, mobile homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

Section 9. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 10. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard setback areas, except as originally installed by Developer or its affiliates, and except any approved by the Architectural Control Board as above provided.

Section 11. Unit Air Conditioners and Reflective Materials. No air conditioning units may be mounted through windows or walls.

No residential unit shall have any aluminium foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except such as may be approved by the Architectural Control Board for energy conservation purposes.

ARTICLE VIII

Resale Restrictions

Section 1. Estoppel Certificate. No Owner may sell or convey his interest in a Lot unless all sums due the Association shall be paid in full and an estoppel certificate in recordable form to such effect shall have been received by the Owner. If all such sums shall have been paid, the Association shall deliver such certificate within ten (10) days of a written request therefore. The Owner requesting the certificate shall pay to the Association a reasonable sum to cover the costs of examining records and preparing the certificate.

ARTICLE IX

Enforcement

Section 1. Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner to comply with such restrictions, covenants or rules and regulations shall be grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend voting rights and use of Common Areas (except for legal access) of defaulting Owners. The offending Lot Owner shall be responsible for all costs of enforcement including attorneys' fees actually incurred and court costs.

Section 3. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees or employees, to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(a) Notice: The Association shall notify the Owner of the alleged infraction or infractions. Included in the notice shall be the date and time of a special meeting of the Board of Directors at which time the Owner shall present reasons why a fine(s) should not be imposed. At least six (6) days' notice of such meeting shall be given.

(b) Hearing: The alleged non-compliance shall be presented to the Board of Directors after which the Board of Directors shall hear reasons why a fine(s) should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner no later than twenty-one (21) days after the Board of Director's meeting. The Owner shall have the right to be represented by counsel and to cross examine witnesses.

(c) Amounts: The Board of Directors (if its or such panel's findings are made against the Owner) may impose special assessments against the Lot owned by the Owner as follows:

(1) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(2) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00).

(3) Third and subsequent non-compliance, or a violation or violations which are of a continuing nature: a fine not in excess of One Thousand Dollars (\$1,000.00).

(d) Payment of Penalties. Fines shall be paid not later than five (5) days after notice of the imposition or assessment of the penalties.

(e) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth herein.

(f) Application of Proceeds: All monies received from fines shall be allocated as directed by the Board of Directors.

(g) Non-exclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, any penalty paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

ARTICLE X

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind The Properties, and shall insure to the benefit of and be enforceable by the Developer, the Association, and Architectural Control Board and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of 75 percent of all the Lots subject hereto has been recorded, agreeing to revoke said covenants and restrictions. Provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

Section 2. Notice: Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be accomplished by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots to enforce any lien created by these covenants; and failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event that Declarant and the Association fail to enforce the terms of this Declaration, then any Member may do so.

Section 4. Severability. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

Section 5. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and liens of this Declaration may be amended, changed or added to at any time and from time to time upon the execution and recordation of an instrument executed by the

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Developer alone or no less than 66-2/3 percent vote of the membership in the Association.

Section 6. Effective Date. This Declaration shall become effective upon its recordation in the Dade County Public Records.

Section 7. Withdrawal. Developer reserves the right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of The Properties then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of reasonable changes in the plans for The Properties desired to be effected by the Developer.

Section 8. Conflict. This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and the Articles shall take precedence over the By-Laws.

Section 9. Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Developer or its affiliates, the Association or the Architectural Control Board, such consent, approval or action may be withheld in the sole and unfettered discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Developer or its affiliates or the Association shall be deemed so completed or substantially completed in the reasonable opinion of the Developer or Association, as appropriate. This Declaration shall be interpreted by the Board of Directors and an opinion of counsel to the Association rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.

Section 10. Easements. Should the intended creation of any easement provided for in this Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were originally intended to have been granted the benefit of such easement and the Owners designate hereby the Association as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated

in the easement provisions hereof to the extent not so recited in some or all of such provision.

Section 11. Convenants Running with the Land. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND SUBJECT TO THE LIMITATIONS) OF SECTION 1 HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE CONVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTIES. WITHOUT LIMITING THE GENERALITY OF SECTION 4 HEREOF, IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCE IN A MANAGER WHICH WILL ALLOW THESE CONVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISIONS AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE CONVENANTS AN RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

ARTICLE XI

Disclaimer of Liability of Association

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING OR BINDING THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FORGOING:

- (a) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;
- (b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THAT COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, DADE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES; AND

- (C) THE PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATED TO HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUND AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USES) SHALL BE BOUND BY THIS ARTICLE AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS ARTICLE.

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF ASSOCIATION'S DIRECTORS, OFFICERS, (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS. THE PROVISIONS OF THIS ARTICLE SHALL INURE TO THE BENEFIT OF THE DEVELOPER, WHICH SHALL BE FULLY PROTECTED HEREBY.

SHOULD ANY OF THE COVENANTS HEREIN IMPOSED BE VOID OR BECOME UNENFORCEABLE AT LAW OR IN EQUITY, THE REMAINING PROVISIONS OF THIS INSTRUMENT SHALL NEVERTHELESS BE AND REMAIN IN FULL FORCE AND EFFECT.



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IN WITNESS WHEREOF, the undersigned being, the Declarant herein, has hereunto set its hand and seal this 16 day of July, 1990.

FLAMINGO GARDENS DEVELOPMENT, L.C.,
a Florida Limited Liability Company.

By: Salvador Molina, Manager

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY that on this day personally appeared before me Salvador Molina, Manager of FLAMINGO GARDENS DEVELOPMENT, L.L., a Florida Limited Liability Company, the Declarant who executed the foregoing Declaration of Covenants and Restrictions for FLAMINGO GARDENS ESTATES and who did certify and swear to me that he executed the foregoing Declaration of Covenants and Restrictions of FLAMINGO GARDENS ESTATES for the purposes therein stated.

WITNESS my hand and official seal in Dade County, Florida, this 16 day of July, 1990.

Robert M. McClaskey, Jr.
Notary Public, State of Florida

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXP. APR. 7, 1993
BONDED THRU GENERAL INS. UND.

@samna@corp@flamingo.dcr

Prepared by:

ROBERT M. McCLASKEY, JR.
Palmer McClaskey & Farr
1550 Madruga Avenue, Suite 120
Coral Gables, FL 33146
(305) 661-4600

Exhibit "A"

Lots 1 through 23, Block 1, of FLAMINGO FARMS ESTATES,
according to the Plat thereof, as recorded in Plat Book
135 at Page 76, of the Public Records of Dade County,
Florida

and

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA.
RECORD VERIFIED
Clerk of Circuit & County
Courts

Lots 1 through 20, Block 2, of FLAMINGO FARMS ESTATES,
FIRST ADDITION, according to the Plat thereof, as recorded
in Plat Book 138, at Page 17 of the Public Records of
Dade County, Florida

Exhibit "A"