

VILLAGES OF HOMESTEAD TOWNHOMES OF AUDUBON SOUTH



Declaration of Protective Covenants Conditions and Restrictions

Contents

Definitions	4
Property Rights in Common Areas.....	6
Section 1. Ownership	6
Section 2. Members' Easements	7
Section 3. Easements Appurtenant	8
Section 4. Maintenance	8
Section 5. Operation of Common Areas	8
Section 6. Utility Easements	8
Section 7. Public Easements.....	8
Membership and Voting Rights in the Association.....	8
Section 1. Membership.....	8
Section 2. Voting Rights.....	9
Covenant for Maintenance and Operation Assessments	9
Section 1. Creation of the Lien and Personal Obligation of the Assessments	9
Section 2. Purpose of Annual Assessments	10
Section 3. Special Assessments for Capital Improvements.....	10
Section 4. Date of Commencement of Annual Assessments.....	10
Section 5. Duties of the Board of Directors.....	10
Section 6. Amounts of Annual Assessments	11
Section 7. Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association	12
Section 8. Subordination of the Lien to Mortgages.....	13
Section 9. Collection of Assessments.....	13
Section 10: Effect on Developer	13
Section 11. Trust Funds.....	14
Section 12. Notice and Quorum.....	14
Section 13. Special Taxing Districts	14
Residential Area Covenants.....	14
Section 1. Use Restriction	14
Section 2. Sight Distance at Intersections	15
Section 3. Clothes Lines	15
Section 4. Easements.....	15
Section 5. Nuisances.....	15
Section 6. Temporary Structures	16
Section 7. Signs.....	16
Section 8. Oil and Mining Operations	16
Section 9. Pets, Livestock and Poultry	16
Section 10. Sewage Disposal.....	16
Section 11. Water Supply	16
Section 12. Architectural Control	16
Section 13. Commercial Trucks; Recreational Vehicles; Trailers; Boats	17
Section 14. Garbage and Trash Disposal.....	17
Section 15. Care and Appearance of Premises.....	17
Section 16. Lake Front Lots.....	18
Section 17. Telephone, Gas, CATV, and Electric Underground Service	18
Section 18. Drainage.....	18

Section 19. Unit Air Conditioners and Reflective Materials.....	19
Section 20. Exterior Antennas	19
Section 21. Fences.....	19
Section 22. Front and Rear Yards.....	19
Section 23. Excavation.....	19
Section 24 Waste Material.....	19
Section 25 Tree removal.....	19
Party Walls.....	20
Section 1. General Rules of Law to Apply	20
Section 2. Sharing of Repair and Maintenance.	20
Section 3. Destruction by Fire of Other Casualty.....	20
Section 4. Weatherproofing	20
Section 5. Right to Contribution Runs With Land.....	20
Section 6. Arbitration.	20
Rules and Regulations	20
Section 1. Compliance by Owners.....	20
Section 2. Enforcement.	20
General Provisions	21
Section 1. Duration	21
Section 2. Notice	21
Section 3. Enforcement	21
Section 4. Severability.	21
Section 5. Amendment	21
Section 6. Hazard or Liability Insurance	22
Section 8. FHA/VA Approval.....	22
Section 9. Effective Date	22
Section 10. Cumulative Effect.....	22

THIS DECLARATION is made this 21 day of March, 1980, by DCA of HOMESTEAD, INC. a Florida Corporation ("Developer"), and GROSSMAN HOLDINGS LIMITED, BLEEMAN HOLDINGS LIMITED, THE MERIDIAN BUILDING GROUP LIMITED, and MARKBOROUGH PROPERTIES LIMITED, all Canadian corporations incorporated under the laws of Ontario, individually, and d/b/a HOMESTEAD PROPERTIES, a general partnership ("HOMESTEAD").

WITNESSETH:

HOMESTEAD is the owner of certain property in the City of Homestead, County of Dade, State of Florida, which is more particularly described as follows:¹

All of TOWNHOMES OF AUDUBON SOUTH, according to the plat thereof, recorded in Plat Book 115, Page 91, of the Public Records of Dade County, Florida, less and except Tract E thereof.

Tract G of TOWNHOMES OF AUDUBON SOUTH, according to the plat thereof recorded in Plat Book 115, Page 91 of the Public Records of Dade County, Florida and such Tract G shall be, and is hereby declared, Common Areas (as defined in the Declaration)²

Developer and Homestead hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the values and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

Merger or Consolidation. Upon a merger or consolidation of any association referred to herein with any other association as provided in its Articles of Incorporation, its properties, rights, and obligations, may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one (1) scheme. No such merger or consolidation, however, shall affect or effect any revocation, change, or addition to the covenants established by this Declaration within the Properties.

ARTICLE I

Definitions

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

¹ OR 10884 P 1495 9/30/1980

² OR 10939 P 190 11/24/1980

(a) "Overall Association" shall mean and refer to VILLAGES OF HOMESTEAD HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not for profit, which is to be incorporated, its successors, and assigns, established pursuant to the VILLAGES of HOMESTEAD DECLARATION of PROTECTIVE COVENANTS and CONDITIONS recorded (or to be recorded) in the Public Records of Dade County, Florida.

(b) "Audubon Village Homeowners Association" shall mean and refer to VILLAGES OF HOMESTEAD AUDUBON VILLAGE HOMEOWNERS ASSOCIATION, INC, a Florida corporation not for profit which is to be incorporated, its successors, and assigns, established pursuant to the AUDUBON VILLAGE OF HOMESTEAD DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS, recorded in the Public Records of Dade County, Florida.

(c) "Townhomes Association" or "Association" shall mean and refer to the TOWNHOMES OF AUDUBON SOUTH ASSOCIATION, INC., a Florida corporation not for profit, which is to be incorporated, its successors and assigns.

(d) The "Properties" shall mean and refer to all existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration pursuant to the provisions hereof. Developer may from time to time bring other lands under the provisions hereof by recording Supplemental Declarations, as provided in Article VIII, Section 6 hereof.

(e) The "Common Areas" shall mean and refer to Tracts A through D, F and G³ inclusive, as shown on the plat of TOWNHOMES OF AUDUBON SOUTH, as recorded in Plat Book 115, Page 91, and such additional nonpublic areas and facilities provided for the common or joint use of all residents of the Properties (all such property being also referred to herein as "Neighborhood Common Area"), as may from time to time be designated as Common Areas under these covenants and conditions, each such designation to be by recorded instrument, together with the landscaping and any improvements thereon including, without limitation, all structures recreational facilities, open space walkways sprinkler systems and street lights but excluding any public utility installations thereon. The Common Areas shall be conveyed to the Townhome Association before the first Lot is conveyed to a homeowner.

(f) "Lot" shall mean and refer to any residential Lot (but not any parcel designated as a Tract) or residential condominium unit within the Properties and any such lot or condominium unit shown upon any re-subdivision of the Properties. When a Lot is contiguous to a Lake (as hereinafter defined) the boundary of the Lot shall be as described in the plat of the Properties.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot situated upon the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

³ OR 10939 P 190 11/24/1980

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

(i) "Developer" shall mean and refer to DCA of Homestead, Inc., its successors and/or assigns, if such successors and/or assigns should acquire the rights of Developer created by this Declaration together with more than one (1) undeveloped Lot or Tract for the purpose of development. The rights of Developer created by this Declaration shall not accrue to any successor or assign of Developer unless by written instrument in a form recordable in the Public Records of Dade County, Florida.

(j) "Lake" shall mean and refer to the bodies of water designated on the Plat(s) of the Properties and shall include all of such water area to the shoreline, whether or not the water area is over a portion of a Lot. That portion of the Lake not included within Lot boundaries shall be considered Common Areas.

The use of the term "subdivided" in this Declaration with respect to Tracts shall also include subjecting Tracts or portions thereof to the condominium form of ownership,

(k) "Architectural Control Committee" shall mean and refer to the VILLAGES OF HOMESTEAD ARCHITECTURAL CONTROL COMMITTEE as established by the VILLAGES of HOMESTEAD DECLARATION of PROTECTIVE COVENANTS and CONDITIONS recorded (or to be recorded) in the Public Records of Dade County, Florida.

ARTICLE II

Property Rights in Common Areas

Section 1. Ownership. The Neighborhood Common Areas are hereby dedicated to the joint and several use, in common, of the Owners of all Lots and Tracts that may, from time to time constitute a portion of the Properties. Before the sale of any Lot to a homeowner, the Developer shall convey and transfer all of its interest in the Common Areas to the Townhome Association, and the Townhome Association shall accept such conveyance. Thereupon, the Townhome Association shall be responsible for the maintenance thereof in a continuous and satisfactory manner without cost to the general taxpayers of the City of Homestead. It is intended that all real estate taxes against the Neighborhood 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 Townhome Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property thereon accruing from and after the date these covenants are recorded and such taxes shall be prorated between Developer and the Association as of the date of such recordation. The 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 completion of the facilities on the Common Areas which the Developer is committed to construct or provide, as appropriate, in

accordance with the Townhomes Common Areas Development Plan submitted to the Veteran's Administration ("VA") or the Federal Housing Administration ("FHA") (or any subsequent Common Areas Development Plan submitted to the VA or FHA for those portions of the Common Areas which may be brought under this Declaration pursuant to the annexation provisions hereinafter set forth). The Owner of a Lot shall have no personal liability for any damages for which the Townhome Association is legally liable or arising out of or connected with the existence or use of the Common Areas or any other property required to be maintained by the Townhome Association.

Section 2. Members' Easements. Each Member and each tenant, agent, and invitee of such Member shall have a permanent and perpetual easement for the use of the Common Areas, Such easements shall be reciprocal and in common with all other Members, 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.

(b) The right of the Association to suspend the voting rights and the right to use of the recreational facilities constructed on the Common Areas of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas and for goods and services provided by the Association.

(d) The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas and all facilities at any time situated thereon.

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as set forth in this Article and 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 each class of Members agreeing to such dedication or transfer has been recorded. In the event any Common Area as herein defined is dedicated to the City of Homestead for public purposes, said Common Area shall cease to be subject to these Covenants and Conditions as of the date of said dedications except as provided in this subparagraph (e); provided, however if a reversionary interest is retained in any Common Area dedicated to the City of Homestead, in the event said Common Areas revert to the dedicator, these covenants and conditions shall apply in full force and effect to said Neighborhood Common Area as if said dedication had never occurred.

If any Common Areas are dedicated to the City of Homestead and the City required supervisory maintenance of said Common Areas to be performed by the dedicator, the provisions of this Declaration shall apply to the extent necessary to provide said supervisory maintenance, and the Association shall provide said supervisory maintenance according to the covenants and conditions of this Declaration.

The right of an Owner to the use and enjoyment of the Common Areas shall extend to the members of his immediate family who reside with him, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

Section 3. Easements Appurtenant. The easement provided in Section 2 shall be appurtenant to and shall pass with the title to each Lot.

Section 4. Maintenance. The Association shall at all times maintain the Common Areas in good repair and shall replace, as often as necessary, any and all improvements situated on the Common Areas, including, but not limited to all recreational facilities, landscaping, paving, drainage structures, street lighting fixtures and appurtenances, sidewalks, and other structures, except utilities, all such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. Maintenance of street lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article IV. Such assessments shall be against all Lots equally. No Owner may waive or otherwise escape liability for the assessments for such maintenance by nonuse of the Common Areas or abandonment of his right to use said Common Areas.

Section 5. Operation of Common Areas. The Townhomes Association at all times shall operate, supervise, control, and manage the Common Areas and any income producing activities that may be established or permitted to operate in the Common Areas. The Association, in its sole discretion, shall determine all activities and programs to be carried on in the Common Areas and shall employ the necessary personnel required therefor as it determines in its sole discretion. The operation, supervision, and management of the Common Areas may be delegated by the Association as set forth in Article IV, Section 5 of this Declaration.

Section 6. Utility Easements. Public utilities may be installed underground in the Common Areas when necessary for the service of the Properties, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 7. Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

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

automatic and appurtenant to and may not be separated from the ownership of any Lot that is subject to assessment.

Section 2. Voting Rights. The Townhome 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 (1) vote for each Lot in which they hold the interest required for membership in 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 or Tract shall be exercised as they among themselves determine, but in no event shall more than one (1) 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 three (3) votes for each Lot owned. It is further provided however, that the Class B membership shall cease and be converted to Class A membership on the occurrence of the earlier of the following events:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on December 31, 1985.

ARTICLE IV

Covenant for Maintenance and Operation Assessments

Section 1. Creation of the Lien and Personal Obligation of the Assessments. The Developer for each Lot owned by it within the Properties hereby covenants, and each Owner of any Lot or Tract by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Townhome Association as hereinafter provided:

- (1) annual assessments or charges, which shall include assessments for the maintenance and operation of the Common Areas as provided in Section 4 and 5, of Article II, including such reasonable reserves as the Townhome Association may deem necessary;
- (2) special assessments for capital improvements; such assessments to be fixed, established, and collected from time to time as hereinafter provided; and.
- (3) other assessments hereinafter provided for.

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 continuing lien upon the property against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the

Owner of such property at the time when the assessment fell due. All assessments, both annual and special, imposed by the Townhome Association shall be against all Lots subject to its jurisdiction, fixed at a uniform rate per Lot, and may be collected on a monthly basis.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Townhome Association shall be used exclusively for the general purpose of promoting the recreation, health, safety, and welfare of the Members of the Townhome Association, their families residing with them, their guests, and tenants; and, in particular for the improvement, maintenance, and operation of the Properties, services, and facilities, if any, devoted to this purpose and related to the use and enjoyment of the Common Areas facilities situated upon the Properties, including, but not limited to, the capital improvement repair, replacement and additions thereto, and for the cost of labor, equipment materials, management and supervision thereof.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 2 hereof, the Townhome Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, repair, or replacement of a capital improvement that in the judgment of the Board benefits all Lots, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Members who are voting in person or by proxy at a meeting duly called for this purpose, as provided in the By-Laws of the Townhome Association.

Section 4. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Townhome Association to be the date of commencement; provided, however, that such commencement date shall be subsequent to the conveyance of the Common Areas to the Association.

The annual assessments shall be payable in monthly installments due the first day of each month, or in annual or quarter-annual installments if so determined by said Board.

The amount of the annual assessment that may be levied for the balance remaining in the first year of assessment shall be an amount bearing the same relationship to the annual assessment provided for herein as the remaining number of months in such calendar year bears to the total number of months in said calendar year.

The due date of any special assessment levied under Section 3 hereof shall be fixed in the resolution authorizing such assessment.

Section 5. Duties of the Board of Directors. The Board of Directors of the Townhome Association shall fix the date of commencement and the amount of assessment against each Lot subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Properties and assessments applicable thereto that shall be kept in the office

of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Townhome Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of said 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 Townhome Association, through the action of its Board of Directors, may enter into an agreement or agreements from time to time with one or more persons, firms, or corporations for the purpose of providing professional management, operation of and maintenance services for the Common Areas. The Townhome Association shall have all other powers provided in its Articles of Incorporation and By-Laws as well as by law.

Section 6. Amounts of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$ 216.00 per Lot.

(a) from and after January 1 of the year immediately following the conveyance of the first Lot or Tract to an Owner, the maximum assessment may be increased each year not more than the greater of five (5%) percent above the maximum assessment for the previous year or the "Adjusted Maximum Annual Assessment" as hereinafter defined without a vote of the membership.

Adjusted Maximum Annual Assessment. The "Adjusted Maximum Annual Assessment" shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index-U.S. City Average for Urban Wage Earners and Clerical Workers, 1967 equals 100, All Items", hereinafter called the "Consumer Price Index"⁴. For purposes of identification, the Consumer Price Index for August 1977 was 183.3. The "Adjusted Maximum Annual Assessment" shall be computed by the following formula:

i = Consumer Price Index for the month in which conveyance of the first Lot to an Owner occurs (the "Base Date").

I = Consumer Price Index for the first anniversary of the Base Date for the first adjustment and each subsequent anniversary of the Base Date for future adjustments.

$$\frac{I - i}{i} \text{ Plus } 1.0 \text{ multiplied by } \$216.00 = \text{"Adjusted Maximum Annual Assessment"}$$

If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining "Adjusted Maximum Annual Assessment" shall be altered or amended, if possible,

⁴ http://www.bls.gov/regions/west/data/ConsumerPriceIndexOldBase_US_Table.pdf

so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and it is not available from any other source, public or private, then and in any such event a new formula for determining "Adjusted Maximum Annual Assessment" shall be adopted by the Association. Any such new formulas for computing increases in assessments are subject to prior acceptance by the VA and FHA as appropriate.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the greater of 5% of the previous year's maximum annual assessment or above the Adjusted Maximum Annual Assessment by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The assessment for each Lot shall be equal to the assessment for each other Lot. The Board of Directors of the Association shall, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for each year in an amount not to exceed the maximum annual assessment as herein defined.

Section 7. Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid within thirty (30) days after the date when due (being the dates specified in Section 4 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the date when due, the assessment shall bear Interest from the date when due, at the rate of ten percent (10%) per annum, however, in no event shall this interest rate exceed the maximum allowable by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property or may foreclose the lien against the property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment attorneys' fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee, including attorneys' fees incurred by an appeal of such action, to be fixed by the court, together with the costs of the action.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot. It shall be the legal duty and responsibility of the Townhome Association to enforce payment of the assessments.

In addition to the rights of collection of assessments stated in this Section 7, any and all persons

acquiring the title to or the interest in a Lot as to which the assessment is delinquent including without limitation persons acquiring title by operation of law and by judicial sale, shall not be entitled to the occupancy of such Lot or Tract 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; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 8 of this Article.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to any tax lien and the lien of any first mortgage encumbering any lot or Tract to any institutional lender or governmental agency now or hereafter placed upon the Properties subject to assessments. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due of from the lien thereof. Any unpaid assessment that cannot be collected as a lien against a Lot by reason of this Section shall be deemed to be an assessment divided equally among, payable by, and a lien against all Lots subject to the jurisdiction of the Association levying the assessment, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Such assessments shall be collected as provided in Section 9, hereof. Liens for assessments under this Article IV shall be of equal dignity with liens for assessments of the Overall Association and the Audubon Village Homeowners' Association.

Section 9. Collection of Assessments. The Townhome Association shall collect all assessments imposed pursuant hereto, together with all assessments due the Audubon Village Homeowners' Association and the Overall Association upon certification by the Audubon Village Homeowners' Association and the Overall Association to the Townhome Association from time to time of the amount of respective assessments levied by the Audubon Village Homeowners' Association and the Overall Association the with respect to each Lot subject to such assessment. In the event that only a portion of the assessments are collected, the amount collected shall be prorated in the same proportion that the assessments of the Overall Association, the Audubon Village Homeowners' Association and the Townhome Association bear to the total assessment levied. In the event any past due assessment is to be divided equally among and payable by all of the Lots subject to assessment by the Townhome Association as provided in Section 8 hereof, any amounts representing assessments due the Overall Association and the Audubon Village Homeowners Association shall be divided equally among all Lots (as well as all other lots) subject to assessment by the Overall Association and the Audubon Village Homeowners' Association, as appropriate. Nothing in this Section 9 should be construed to prohibit either or both of the Overall Association and the Audubon Village Homeowners' Association from imposing and collecting their respective assessments directly against the Lots rather than through the Townhome Association.

Section 10: Effect on Developer :Notwithstanding any provision that may be contained to the contrary in this instrument, the Developer shall be liable for assessments against Lots owned by the Developer,

provided that vacant Lots, Lots with partially completed structures and Lots with completed structures which are not and have not previously been occupied, shall be assessed at a rate equal to twenty-five (25%) of regular assessments on such Lots as long as the viability of the Association will not be jeopardized.

Section 11. Trust Funds. The portion of all regular assessments collected by the Townhomes Association for reserves for future expenses, and the entire amount of all special assessments, shall be held by the Townhome Association in trust for the Owners of all Lots, as their interest may appear, until disbursed as herein contemplated..

Section 12. Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 6 hereof shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast a majority of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 13. Special Taxing Districts. In the event a Special Taxing District is established to provide any services currently rendered by the Townhome Association, these covenants and conditions shall no longer be of any force and effect as to those services provided by said Special Taxing District; provided, however, the covenants and conditions set forth herein shall continue to bind and run with the land as herein provided as to all of the Properties for services not provided by said Special Taxing District. If said Special Taxing District is terminated for any reason, these covenants and conditions shall thereupon apply in full force and effect as if said Special Taxing District had never been created.

ARTICLE V

Residential Area Covenants

Section 1. Use Restriction. Each and all Lots within the Properties are restricted to the use of a single family, their household servants and guests, exclusively for residential purposes. By way of illustration but not limitation, the Lots or any buildings erected or to be erected thereon shall not be used for the purpose of any profession, trade, employment, service, manufacture or business of any description, not as a school, hospital or other charitable institution, nor as a hotel, apartment house, rooming house or place of public resort, not for any sport (other than such games as are usually played in connection with the occupancy of private residences), nor for any purpose other than a private residence.

Only one (1) residence may be built on one Lot. Buildings accessory to the use of one-family living may be erected provided they do not furnish accommodations for an additional family. A construction shed

and related facilities may be placed on a Lot and remain there temporarily during the course of active construction of a residence, otherwise no portable or temporary buildings or mobile homes or tents or shacks or barns may be placed on a Lot. Temporary uses for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination thereof, shall be permitted until permanent cessation of such uses takes place.

Section 2. Sight Distance at Intersections. No structures, hedge, shrub or planting that obstructs sightlines at elevations between (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines extended and a line connecting them at points twenty-five (25) feet from the intersection of the extended street lines. The same sight-line limitations shall apply to any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight-lines.

Section 3. Clothes Lines. No exterior clothes lines or drying lines shall be permitted.

Section 4. Easements. Easements for the installation and maintenance of utilities and for installation and maintenance of drainage facilities are reserved as shown on the recorded plats of the Properties. Within these easements, no structure, planting or other material shall be placed or permitted to remain that may damage any structure installed in accordance with said easement, or prevent the installation and maintenance of utilities in the utility easements, or that may change the direction of flow of drainage channels in the drainage easements, or that may obstruct or retard the flow of water through drainage channels in the drainage easements, provided, however, fences that otherwise comply with these restrictions and have Architectural Control Committee approval may be constructed within such easements. The easement areas of each lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for installations for which a public authority or utility company is responsible. The City of Homestead, Florida Power & Light Company, Southern Bell Telephone and Telegraph Company, City Gas Company of Florida and the Developer and their respective successors and assigns, shall have a perpetual easement for the installation and maintenance (all underground) of water lines, sanitary sewers, gas mains, storm drains, electric and telephone lines, excepting, however, those electric transmission lines presently above ground, cables and conduits, under and through the utility easement as shown on the plats. There is hereby reserved a perpetual easement for the installation and maintenance of cable and community antenna radio and television lines. Any damage caused to pavements, driveways, drainage structures, sidewalks and other structures in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the Properties, whether in street rights-of-way or utility easements, shall be installed and maintained underground, unless approval for above ground installation is received from the Architectural Control Committee and such approval is not inconsistent with applicable ordinances.

Section 5. Nuisances. No noxious or offensive activity shall be carried on any Lot, nor shall

anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 6. Temporary Structures. No structure of a temporary character, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, workshop, office or storage room, either temporarily or permanently. No canvas, pipe or other type of carport shall be placed between the sidewalk and the front building line of any Lot. No gas tank, gas contained or gas cylinder shall be permitted to be placed on or about the outside of any dwellings built in this subdivision or any ancillary building, and all gas tanks, gas containers or gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative wall approved by the Architectural Control Committee.

Section 7. Signs No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than one (1) square foot used to indicate the name of the resident, or one (1) sign of not more than one (1) square foot advertising the property for sale or for rent. Signs used to advertise the property during the construction and sales period must have the approval of the Architectural Control Committee.

Section 8. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or within the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within the Properties, provided however, Developer shall be allowed to excavate for landscaping, filling and grading purposes. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Properties subject to these restrictions.

Section 9. Pets, Livestock and Poultry No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose or in excessive numbers, all permissible household pets have been duly licensed in compliance with all applicable governmental regulations and they do not become an annoyance or nuisance to any neighbor. All such household pets shall not be permitted or allowed to stray, run, be or go at large in or upon any public street, sidewalk, the Common Areas or on private property of others without the implied or express consent of the owner of such private property. No dogs or other pets shall be permitted to have excretions on any portion of the Common Areas.

Section 10. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot, provided that a central sewage disposal system serving the Property is available for immediate and continuing use.

Section 11. Water Supply. No individual water supply system shall be permitted on any Lot, except for use in air conditioners, swimming pools or sprinkler systems, provided that a central water supply system is available for immediate and continuing use.

Section 12. Architectural Control No building, wall or other structure or improvement of any nature

shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved in writing by the Architectural Control Committee as set forth more particularly in the Villages of Homestead Protective Covenants and Conditions recorded in the Public Records of Dade County Florida.

Section 13. Commercial Trucks; Recreational Vehicles; Trailers; Boats. No trucks or commercial vehicles, home trailers, motor homes, campers or boats, boat trailers or recreational vehicles or trailers of every other description shall be permitted to be parked or stored at any place on any Lot in the Properties except in a garage or carport, or except during periods of approved construction on said Lot. This prohibition of parking shall not apply to temporary parking or trucks and commercial vehicles, such as for pickup, delivery and other commercial services.

Section 14. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in a suitable receptacle and in the covered porch area attached to the residence. Such area for the deposit storage or collection of garbage or trash shall be substantially shielded or screened from neighboring property and the Common Areas, provided, however, that garden trash and rubbish that is required to be placed at a point approved by the Architectural Control Committee in order to be collected may be placed and kept at such designated point, and need not be in any container, for periods not exceeding twenty-four (24) hours, provided, further that requirements for time to time of the City of Homestead for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 15. Care and Appearance of Premises. The structures and grounds on each Lot shall be maintained in a neat and attractive manner. Upon the Owner's failure to do so, the Architectural Control Committee may, at its option, after giving the Owner ten (10) days' written notice sent to his last known address, have the grass weeds and vegetation cut when and as often as the same is necessary within its judgement, and have dead trees, shrubs and plants removed from any Lot and re-sod any Lot.

Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Architectural Control Committee may, at its option, after giving the Owner thirty (30) days' written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner.

The Owner of such Lot shall reimburse the Architectural Control Committee for the cost of any work as above required, and to secure reimbursement, the party or parties incurring such expenses shall have a lien upon such Lot enforceable as herein provided.

Upon performing the work as herein provided, the performing party shall be entitled to file, in the Public Records of Dade County, Florida, a notice of its claim of lien by virtue of this implied contract with the Owner. Said notice shall state the cost of said work and shall contain a description of the property against which the enforcement of the lien is sought. The lien herein provided shall date from the time that the work is completed,

but shall not be binding against creditors or subsequent purchasers for a valuable consideration and without notice until such notice is recorded. The lien herein provided shall be due and payable forthwith upon completion of the work and if not paid, such lien may be enforced by foreclosure in the same manner as mortgages. The amount due and secured by said lien shall bear interest at ten (10%) percent per annum from the date of recording said notice of lien, and shall also include attorneys' fees to include costs and attorneys' fees for appellate review. The liens herein provided shall be subordinate to the lien of any mortgage encumbering any Lot to any institutional lender or governmental agency; provided however, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to the sale or transfer, provided that any such payments which become due subsequent to such sale or transfer, and the lien thereof, shall be valid and enforceable as against the applicable purchaser or transferee.

Section 16. Lake Front Lots. As to all of the Lots that have a boundary contiguous to Lakes, the following additional restrictions shall be applicable:

(a) No boathouse, dock, wharf or other structure of any kind shall be erected, placed or maintained on the shores of any Lakes

(b) The Overall Association is responsible for the maintenance of the Lakes' waters and shoreline in accordance with the provisions of the Declaration of Protective Covenants and Conditions establishing the Overall Association. In addition, each Lot Owner shall at all times keep and maintain (1) that area of the Lake shoreline; slope and bottom that is part of the Owner's Lot, free from all debris contaminants and excessive weed growth, and (2) those filtration berms and swales, which are contiguous around the shorelines of all Lakes, protecting the Lakes from pollutants carried by surface run off, and those crest line berms, which have elevations equal to or greater than 7.5 feet above mean sea level surrounding all Lakes preventing hurricane tidal salt water intrusion, that are part of the Owners' Lot so that said berms shall continue to provide the protections set forth herein. Enforcement of said Lake and berm maintenance shall include, but not be limited to, those procedures set forth in Section 18 of this Article V.

(c) Shoreline contours of said Lakes and the Lots above or below water and any retaining walls that may be installed by Developer or others may not be changed without the written approval of the Architectural Control Committee. No Lot shall be increased in size by filling in the waters upon which it abuts.

Section 17. Telephone, Gas, CATV, and Electric Underground Service. Service to all buildings on all Lots by telephone, gas, community radio and television and electric power must be by underground services from easement areas into the buildings, unless an exception is granted by the Architectural Control Committee and that exception is not inconsistent with applicable ordinances.

Section 18. Drainage. No changes in elevations of any Lot shall be made that will cause undue hardship to adjoining property in connection with surface water drainage.

Section 19. Unit Air Conditioners and Reflective Materials. No air conditioning units may be mounted through windows or walls unless the location, method of installation, appearance and desirability per se has been approved by the Architectural Control Committee. It is the intention of this provision to authorize the Committee in its sole discretion to approve or disapprove any such air conditioning unit on purely aesthetic grounds or any other grounds or for the reason that there should be no such unit in such location. No building shall have any aluminum or other metal foil placed in any window or glass door or any reflective substance placed on any glass.

Section 20. Exterior Antennas. No television, radio or other antennas exterior to the building shall be permitted on any Lot or improvement thereon, but this provision shall not apply to underground installations.

Section 21. Fences. No fence, wall or other enclosure shall be erected in the front yard or rear yard set-back areas, except any that are originally installed by Developer or its contractors, and except any approved by the Architectural Control Committee as above provided. If approved, the fence, wall or other enclosure shall be maintained by the property Owner for the protection of adjacent property.

Section 22. Front and Rear Yards. No repair of any automobile or to any other vehicle or equipment shall be carried out in the front yard of any Lot nor in the rear of any Lot. Front yard for the purpose of this Section 25 shall be defined as that part of a Lot extending across the full width of such Lot between the front Lot line and the nearest part of any building or structure on the Lot.

Section 23. Excavation. No excavation shall be made on the Properties except excavation for the purpose of pool installation and building on the Properties at the time of commencement of such building or for the improvement of the gardens and grounds thereof, and no soil, sand or gravel shall be removed from the Properties except in each case with the prior written permission of the Architectural Control Committee.

Section 24 Waste Material. No building waste or other material of any kind shall be dumped or stored on the Properties except clean earth for the purpose of grading in connection with the erection of a building thereon or for the immediate improvement of the grounds.

Section 25 Tree removal. No living tree shall be cut down or removed from the Properties other than those standing within an area to be excavated for the erection of a building or accessory improvements thereon without the consent in writing of the Architectural Control Committee. During the period of construction, any existing tree shall be protected so as to prevent any damage and, subject to the above exception, if any tree is cut down, removed or damaged without the prior written consent of the Architectural Control Committee, the Owner responsible for the destruction of the tree will forthwith replace the tree under the supervision and to the satisfaction of the Architectural Control Committee.

ARTICLE VI

Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the buildings upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire of Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be made by a majority of all the arbitrators.

ARTICLE VII

Rules and Regulations

Section 1. Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations 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 action which may include, without limitation, an action to recover sums due for damages, injunctive relief or any combination thereof, including costs and attorneys' fees incurred in bringing such actions, and if necessary, costs and attorneys' fees for appellate review. The Townhome Association shall have the right to suspend voting rights and use of the Common Areas, the maintenance for which is the responsibility of the Association.

ARTICLE VIII

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Architectural Control Committee, the Townhome Association, the Overall Association, the Audubon Village Homeowner' Association or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended as provided in Section 5 of this Article VIII.

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 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 land to enforce any lien created by these covenants; and, failure by the Developer, any association, or any Owner to enforce any covenant or restriction herein contained shall, in no event be deemed a waiver of the right to do so thereafter. These covenants may be enforced by the Architectural Control Committee, the Developer, any Owner of a Lot or Tract subject to these Covenants and Conditions, the Townhome Association, the Overall Association, and the Audubon Village Homeowner's Association. In the event legal action is taken to enforce these covenants, as herein provided, the prevailing party shall be entitled to recover the costs of such action, including attorneys' fees, and appellate costs and attorneys' fees if necessary.

Section 4. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, 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 agreement may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners during the initial 30-year period by an instrument signed by not less than ninety (90%) percent of the Members, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Members; provided, however, no such amendment authorized by Subparagraph (2) of this Section 5 shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed amendment is sent to every Owner at least ninety (90) days in advance of

any action and provided further that no amendment which adversely affects the rights of the Developer, as provided herein (and in any modification required by the VA or FHA), shall be valid without the written consent of the Developer to such amendment. Any amendment of this Declaration must be recorded in the Public Records of Dade County, Florida.

Section 6. Hazard or Liability Insurance. No person other than the Owner, or a mortgagee where permitted by the mortgage, shall have the right to place hazard or liability insurance for that Lot. Neither Developer nor the Townhome Association shall impose a requirement to insure through a particular company or agent or to require that such policies be approved by them. Proceeds of insurance claims shall not be required to be paid to anyone other than the Owner of the Lot or Tract and/or the mortgagee.

Section 8. FHA/VA Approval. As long as there is a Class B Membership, the following actions will require the prior approval of the FHA or VA: annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Protective Covenants Conditions and Restrictions. This Declaration is being submitted to the FHA and VA for approval. Notwithstanding anything to the contrary contained in Section 5 of this Article, Developer shall have the right from time to time without the necessity of joinder or consent by any Lot Owners, to amend, add to, change, modify, and derogate the provisions of this instrument in such a way as may be required by the FHA or VA in order for said Administrations to approve financing of residential units on Lots within the Properties. FHA or VA approval of any such document executed by Developer shall be conclusive evidence that the amendment or other change was required by the FHA or VA pursuant to this provision.

Section 9. Effective Date. This Declaration shall become effective upon its recordation in the Dade County Public Records.

Section 10. Cumulative Effect. The provisions of this Declaration shall be cumulative to the provisions of the VILLAGES OF HOMESTEAD DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS creating the Overall Association and AUDUBON VILLAGE DECLARATION OF PROTECTIVE COVENANTS AND CONDITIONS creating the Audubon Village Homeowners' Association, as recorded in the Public Records of Dade County Florida.

Executed as of the date first above written.⁵

⁵ Signature Page OR 10884 P 1514