

This instrument prepared by and return to:
LARRY E. SCHNER, ESQ.
750 So. Dixie Highway
Boca Raton, FL 33432

**AMENDMENT
TO THE
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
ESPLANADA AT BOCA POINTE HOMEOWNERS' ASSOCIATION, INC.**

THIS AMENDMENT is made this 15 day of October, 2002, by ESPLANADA AT BOCA POINTE HOMEOWNERS' ASSOCIATION, INC., ("ESPLANADA") pursuant to the Declaration of Covenants and Restrictions, recorded on September 5, 1984 in Official Record Book 4340, Page 0334, of the Public Records of Palm Beach County, Florida, as amended.

WHEREAS, Florida Statute 720.306 authorizes the Declarant to amend the Declaration upon the affirmative vote of two-thirds of the voting interests of the association.

WHEREAS, the Amendment set forth herein is for the purpose of amending the Declaration of ESPLANADA.

WHEREAS, the amendment set forth does not materially effect a unit owners share of the common elements nor impair or prejudice the rights and priorities of lienors or mortgagees.

NOW, THEREFORE, Declarant makes this Amendment to the Declaration of Covenants and Restrictions as follows:
(additions indicated by underline, deletions indicated by ~~strike through~~)

"SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN"

IV. Except as amended and modified herein, all other terms and conditions of the Declaration of Covenants and Restrictions of ESPLANADA shall remain in full force and effect according to their terms.

V. This Amendment has been proposed and adopted by the affirmative vote of two-thirds (2/3) of the voting interests of the association.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to the Declaration of Covenants and Restrictions of ESPLANADA to be executed by the duly authorized officer, this 15 day of OCTOBER, 2002.

WITNESSES: ESPLANADA AT BQCA POINTE HOMEOWNERS' ASSOCIATION, INC.

Dorothy Huth
WITNESS
DOROTHY HUTH
(Print name)

BY: Lee Morgan, President

Cindy Carrozzini
WITNESS
CINDY CARROZZINI
(Print name)

STATE OF FLORIDA
COUNTY OF PALM BEACH

THE FOREGOING instrument was acknowledge before me this 15 day of October, 2002, by Lee Morgan, President of Esplanada Homeowners' Association, Inc., who was personally known to me or who has produced (Florida Driver's License) as identification.

WITNESS my hand and official seal at the County and State aforesaid this 15 day of Oct, 2002.



Darlene Kessaris
Notary Public
My commission expires: 4-22-06

RECORDER'S MEMO: Legibility of document unsatisfactory when received.

RESTATED AND AMENDED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
ESPLANADA AT BOCA POINTE

THIS DECLARATION made this 4th day of September, 1984 by ~~HOME~~CO DEVELOPMENTS, a Florida partnership (the "Developer"), hereby declares that the real property described in Article II herein ~~which is owned by Developer~~ (hereinafter referred to as "Esplanada at Boca Pointe") is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes herein referred to as "covenants and restrictions") set forth below.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration and all its exhibits (unless the context otherwise requires) shall have the following meanings:

(a) "Association" - Esplanada at Boca Pointe Homeowners' Association, Inc., a Florida corporation not for profit, its successors and assigns.

(b) "Common Areas" - The property described in Exhibit "B" attached hereto and made a part of hereof, together with any and all improvements from time to time erected on such property, including without limitation walkways, parking facilities, lakes, ponds, canals and other watercourses, the surface watercourses, the surface water management system, open spaces, private streets, sidewalks, driveways, street lighting, entrance features and landscaping, but excluding any public or private utility installations thereon. If additional real property is brought under the provisions hereof by recorded Supplemental Declaration pursuant to Article II, then the Common areas shall include the portion or portions of the additional real property that may be designated to be Common Areas in such Supplemental Declaration.

(c) "Developer" - Homeco Developments, a Florida partnership, its successors and assigns if such successor or assignee acquires the undeveloped portion of Esplanada at Boca Pointe from the Developer for the purpose of development and is designated as such by developer.

(d) "Lot" - Any lot or other parcel with any and all improvements thereon, in Esplanada at Boca Pointe platted in the Public Records of Palm Beach County, Florida, on which a residential structure could be constructed whether or not one has been

(e) "Owner" - The record owner, whether one or more persons or entities, of the fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

(f) "Member" - An Owner who is a member of the Association as provided in Article III, Section I hereof.

(g) "The Properties: - All of such properties and additions thereto (which additional properties may or may not be contiguous to the real property described in Article II herein) as are subject to this declaration or any supplemental declaration under the provisions of article II hereof.

ARTICLE II

Property subject to this declaration:
Additions Thereto, Deletions Therefrom

Section 1. Legal Description. The real property which is, and shall be held, transferred, sold, conveyed, demised and occupied subject to this Declaration is located in Palm Beach County, Florida and is more particularly described as follows:

See Exhibit "A" attached hereto and made a part hereof.

~~Section 2. Developer's Right to Add Additional Property or Withdraw Property. Developer may from time to time bring additional real property now owned or hereafter acquired by Developer (which may or may not be contiguous to the real property described in Exhibit "A" hereof) under the provisions hereof. Developer may also withdraw portions of the land hereinabove described. No property shall be withdrawn from this Declaration, unless such property is dedicated to another association or governmental authority. Neither the addition or withdrawal of lands as aforesaid shall, without the joinder or consent of a majority of the Members of the Association, materially increase the pro-rata share of Association expenses payable by the Owners of property subject to this Declaration prior to such addition or remaining subject hereto after such withdrawal. The addition or withdrawal of lands as aforesaid shall be made and evidenced by filing in the Public Records of Palm Beach County, Florida, a Supplementary Declaration~~

with respect to the lands to be added or withdrawn. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or any Owner or mortgagee of any of the Properties.

Nothing herein contained shall obligate the Developer to submit additional real property to the provisions of this Declaration. The submission of additional real property to the provisions of this Declaration shall be at the sole discretion of the Developer.

~~Section 3~~ 2. Merger or Consolidation; Dissolution. Upon a merger or consolidation of the Association 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 the Association or another 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 property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration within the Properties. In the event the Association is dissolved, terminated or shall no longer continue to exist for any reason whatsoever, other than merger or consolidation, Boca Pointe Community Association, Inc. will maintain all Common Areas and is hereby authorized to assess all Owners for the costs of such maintenance. In the event Boca Pointe Community Association, Inc. is unable to assume responsibility for the maintenance of the Common Areas, any Owner may petition the Circuit Court of the Fifteenth Judicial Circuit of the State of Florida for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, the Property, and Common Areas. Any disposition of assets shall be conditioned upon the Common Areas being used for the purposes for which they were utilized by the Owners and the Association and shall be subject to the rights and interests of the Owners set forth in this Declaration.

~~Section 4. Platting and Subdivision Restrictions.~~ The Developer shall be entitled at any time and from time to time, to plat or replat all or any part of The Properties, and to file subdivision restrictions or amendments thereto with respect to any portions of The Properties. Any portion of the plat or plats of The Properties containing open spaces may not be vacated in whole or in part unless the entire plat is vacated.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is a record fee simple Owner of a Lot, ~~including the Developer at all times as long as it owns any part of the Property subject to this Declaration~~ shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have one class of voting membership.

~~Class A. Class A~~ Members shall be all of the Owners, as defined in Section 1, ~~with the exception of the Developer. Class A~~ Members shall be entitled to one vote for each Lot in which they hold the interest for membership by 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 by one such Member as specified in the Articles of Incorporation of the Association 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 vote for each Lot in which it holds the interest required for membership by Section 1, provided, however that notwithstanding any provision to the contrary contained herein, the Developer shall have the right to elect a majority of the Board of Directors of the Association until such time as the Developer no longer holds the title to any Lot within The Properties or to any additional property which may have been brought under the provisions hereof by recorded Supplemental Declarations, as set forth in article II hereof. Within six (6) months from the date the Developer conveys title to the last Lot which it owns in The Properties, the Association shall conduct a turnover meeting for the purpose of electing directors by the Class A Members.~~

Section 3. Suspension of Voting Rights. Notwithstanding the provisions hereof, the Association shall have the right to suspend any Member's voting rights other than the right of the Developer for any period during which any assessment or installment thereof shall remain unpaid for more than ~~thirty (30)~~ ninety (90) days after the due date for the payment thereof.

ARTICLE IV

Property Rights in the Common Areas

Section 1. Ownership. ~~Developer may retain the legal title to the Common Areas so long as it owns fee simple title to at least one Lot in The Properties. On or before conveyance by Developer of the last Lot which it owns in The Properties (or sooner at the Developer's option), the Developer, or its successors and assigns, shall convey and transfer the record fee simple title to the Common Areas to the Association and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to mortgages, restrictions, limitations, conditions, reservations and easements of record. Commencing with the date this Declaration is recorded, the Association shall be responsible for the maintenance and administration of the Common Areas in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas and any improvements and personal property thereon accruing from and after the date of such recordation. Such taxes shall be prorated between the 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.~~

Section 2. Members' Easements. Each Member of the Association and each tenant, guest and invitee of such Member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, private streets, sidewalks and driveways from time to time laid out on the Common Areas for use in common with all other Members, their tenants, guests and invitees. The portion of the Common Areas not used, from time to time, for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Members of the Association and each Member shall have a permanent and perpetual easement for the use of such portion of such lands as common open space in such manner as may be regulated by the Association. The foregoing easements are 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 with any restrictions on the plat or plats of The Properties from time to time recorded.
- (b) The right of the Association to suspend the voting rights of an Owner to use the Common Areas (except the private streets, sidewalks and driveways from time to time located on the Common

Areas) for any period during which any assessment against his Lot remains unpaid for more than ~~thirty (30)~~ ninety (90) Days after the due date for the payment thereof, and for a period not to exceed sixty (60) days for any infraction of its lawfully adopted and published Rules and Regulations.

- (c) 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.

(d) The right of ~~The Developer or~~ 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 upon such conditions as may be agreed to by the Members provided, however, that no such dedication or transfer by the Association shall be effective unless approved ~~by the Developer so long as the Developer owns at least one lot within the Property and~~ by ~~seventy-five percent (75%)~~ of the Members present and voting at a regular or special meeting of Members duly called and regularly conducted in accordance with the By-Laws.

The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of his immediate family who reside with him, subject to the regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations. The easements provided in the Section 2 shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Utility Easements. Public Utilities may be installed underground in the Common Areas when necessary for the service of The Properties ~~or additional lands for which Developer holds an option to purchase~~ but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 4. Public Easements. Fire, police, health, sanitation and other public service personnel and vehicles shall have a perpetual, non-exclusive easement for ingress and egress over and across the Common Areas.

Section 5. Easement for Unintentional and Non-Negligent Encroachments. If any other building or improvement shall encroach upon any portion of a Lot, the Common Areas, an easement or any combination thereof, by reason of original construction or by the non-purposeful or non-negligent act of ~~Developer or~~ any other owner of such building or improvement, then an easement for such encroachment shall exist so long as the encroachment exists.

Section 6. Additional Easements. ~~The Developer (during any period in which the Developer has any ownership interest in The Properties and The Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other utility easements, and to relocate any existing utility easement in any portion of The Properties and to grant access easements and to relocate any existing access easements in any portion of The Properties as The Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of The Properties, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.~~

~~For so long as the Developer is the owner of a Lot, in the ordinary course of business, Developer, its licensees, employees, and agents shall have an easement over and across all the lots and common Areas for the purpose of constructing units and appurtenances, and any facilities on the Common Areas the Developer elects to construct. Provided, however, that any damage to landscaping, pavement, driveways, drainage structures or other structures caused by Developer, its licensees, employees or agents during such construction shall be promptly restored and repaired by the Developer, the licensees, employees or agents causing such damage after completion of construction.~~

If a residence is constructed within one (1) foot of the side lot line of any lot, in order to allow the owner of any such residence to maintain the wall facing the adjoining Lot, each owner of such residence shall have an easement over the adjoining Lot, with the right of ingress and egress during reasonable times of day, for the purpose of maintaining and repairing the wall facing the adjoining Lot. The easement created in this section shall be permanent, perpetual and exclusive to the Owners involved.

Section 7. Maintenance of Common Areas. 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)~~, including, but not limited to, all recreational facilities, landscaping, (*sprinkler pipes and systems*), paving, drainage structures, lakes, ponds, canals and other watercourses and the banks, shorelines and boundaries thereof, walkways, common parking facilities, private streets, sidewalks, driveways, street lighting fixtures and appurtenances, entrance features and other structures, except public utilities, all such work to be done as ordered by the Board of Directors. The Common Areas shall include the grass areas to the edge of the pavement of Boca Pointe Drive. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity

consumed in the illumination of such lights. The ~~Developer or the~~ Association may repair, change, replace or restore the walls and fences that are on any of the Lots or Common Areas within The Properties. 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. Such assessments shall be against all Lots equally; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with lawfully adopted Rules and Regulations shall be levied as a special assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the common Areas. The Association, its successors and assigns, shall have a perpetual, non-exclusive easement for ingress and egress over, upon and across all portions of the Properties and to excavate thereon in connection with the maintenance of sprinkler pipes and systems to the extent necessary for the performance of the work to be performed pursuant to this Section: provided, however, that the party causing any such ~~damage excavations~~ restores disturbed areas to the condition thereof immediately prior to such work ~~excavations~~.

ARTICLE V

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation for the Assessments. ~~The Developer, for each Lot owned by it within The Properties, hereby covenants, and~~ Each Owner of any Lot, 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 Association annual assessments or charges for the maintenance of the Common Areas as provided in Article IV hereof, and the Exterior Finishing and Lawn Maintenance as provided in Sections 3 and 4 of this Article V, including such reasonable reserves as the Association may deem necessary, and special assessments as provided in Sections 3 and 4 hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with late fees, 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 such assessment is made. Each such assessment, together with late fees, such interest thereon and costs of collection thereof as hereinafter provided shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Except as otherwise provided in Section 7 of Article IV, and in Sections 3 and 4 of this Article V, all assessments, both regular and special, shall be equally assessed against all Lots within The Properties.

Section 2 . Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the maintenance of the Common Areas as provided in Article IV hereof, for exterior finishing as provided in Section 3 hereof, for lawn maintenance as provided in Section 4 hereof, for capital improvements as provided in Section 5 hereof and to promote the health, safety, welfare, and recreational opportunities of the Members of the Association and their families residing with them, and their guests and tenants.

Section 3 . Exterior Finishing . The paint, coating, stain and other exterior finishing colors on all buildings shall be maintained by the Association as originally installed by the Developer without prior approval of the Architectural Control Board, but prior approval by the Architectural Control Board shall be necessary before any such exterior finishing color is changed. The Board of Directors shall determine the need for any exterior finishing under this Section 3. The Board shall estimate the cost of any such exterior finishing for each year and shall fix the assessments for each year, but said Board shall, thereafter, make such adjustment with the Owners as is necessary, including special assessments if necessary, to reflect the actual cost of such finishing. Such assessments shall be against all Lots equally (except for maintenance specifically requested by an Owner); provided, however, that the cost of any maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted rules and regulations of the Association, shall be levied as a special assessment; against such Owner.

Section 4 . Lawn Maintenance. So long as title to the Common Areas is held by the Association, the Association shall be responsible for maintenance, lawn care and irrigation of those areas. The common Areas shall include the grass areas to the edge of the pavement of Boca Pointe Drive. In addition, the Association shall cut the grass and provide irrigation to in the yards of each of the lots by way of a master sprinkler system to be installed during the development of Esplanada at Boca Pointe. The Board of Directors of the Association shall estimate the cost of any such maintenance for each year and shall fix the assessments for each year, but said Board shall, thereafter, make such adjustment with the Owners as is necessary to reflect the actual cost of such maintenance. Such assessments for maintenance shall be against all Lots equally (except for maintenance specifically requested by and Owner); provided, however, that the cost of any maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted rules and regulations of the Association, shall be levied as a special assessment against such Owner. In addition, an Owner may be especially assessed for any damage or injury caused by the negligent conduct of such Owner to any easement areas granted to provide access to perform the maintenance. It is the intention hereof that the Association shall perform only routine maintenance as described in this Section 4.

For The purpose solely of performing the maintenance authorized by Sections 3 and 4, the Association, through its duly authorized agents, employees or independent contractors, shall have the right to enter upon any Lot at reasonable hours of any day. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the required maintenance aforementioned. In addition, the owner of the adjoining property (not within The Properties) may grant the Association, its duly authorized agents, employees or independent contractors, such easements for ingress and egress across its properties to effect and perform the exterior maintenance aforementioned. In such event, the Association shall indemnify any such adjoining property owner for any damage or injury to the easement areas caused by the use thereof for access to perform the exterior maintenance.

Section 5. Capital Improvements. Funds necessary for capital improvements relating to the Common Areas may be levied as special assessments by the Association, upon approval by a majority of the Board of Directors of the Association and upon approval by a two-thirds vote of Members voting at a meeting or by ballot as may be provided in the By-Laws of the Association.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for in this Article V shall commence on the date or dates (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The annual assessments shall be payable in advance in quarter-annual installments, or in annual or semi-annual installments if so determined by the Board of Directors of the Association.

The amount of the annual assessment may be changed, at any time by said Board from that originally stipulated herein, or from any other assessment that is in the future adopted. The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.

The due date of any special assessment for capital improvements under Section 5 hereof shall be fixed in the resolution of the Board of Directors authorizing such assessment.

Section 7. Duties of the Board of Directors. Except for the initial assessments specified in Section 6 above, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot at least thirty (30) days in advance of the commencement of the assessment

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

The Association shall, upon demand at any time, furnish to any Owner ~~able~~ for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to the Lot ~~owned~~ by the Owner making request thereof. 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 to enter into an agreement or agreements from time to time with one or more persons, firms or corporations for management services. The Association shall have all other powers as provided in its Articles of Incorporation.

The Association shall also collect from all Owners the annual, special and individual assessments of the Boca Pointe Community Association and shall pay said Association all sums collected on a monthly basis.

Section 8. Collection of Assessment; Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of the Association . If the assessments are not paid on the date when due (being the date specified in Section 6 hereof), then such assessments shall become delinquent and shall, together with such interest thereon and the 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 Owner, his heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for unpaid assessments with respect to such Lot. In any voluntary conveyance, the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

If the assessment is not paid within thirty (30) days after the due date, a late fee of \$50.00 shall be charged and the assessment and late fee shall bear interest from the date when due at the rate of eighteen percent (18%) per annum 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 on which the assessment is unpaid and may foreclose the lien against the property on which the assessment is unpaid, in like manner as a foreclosure of a mortgage on real

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, attorney's 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 above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorney's fees in connection with any appeal of such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder.

Section 9 Subordination of the Lien to Mortgages. The lien of the assessment provided for in this Article V shall be subordinate to the lien of any institutional first mortgage recorded prior to the recordation of a claim of lien for unpaid loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan correspondent, or any agency of the United States Government or lender providing funds to the Developer.

~~Section 10. Effect on Developer. Notwithstanding any provision that may be contained to the contrary in this Declaration, for so long as Developer is the owner of any Lot, the Developer shall not be liable for assessments against such Lot, provided that developer funds any deficit in operating expenses of the Association. Developer may, at any time, commence paying such assessments as to all Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association.~~

Section 10. Exempt Property. The Board of Directors shall have the right to exempt property subject to this Declaration from assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

- A. Any easement or other interest therein dedicated and accepted by a public authority and devoted to public use, or to Boca Pointe Community Association, Inc.
- B. All Common Areas as defined in Article 1 hereof.
- C. All properties exempt from ad valorem taxation by the laws of the State of Florida, to the extent agreed to by the Association.

Notwithstanding any provisions herein, no land devoted to dwelling use shall be exempted from said assessments, charges or liens.

Section 12—11 Annual Budget. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration must be met.

Section 12 Trust Funds. The portion of all regular assessment collected by the Association as reserves for future expenses, and the entire amount of all special assessments, shall be held by the Association in trust for the Owners of all Lots, as their interest may appear.

ARTICLE VI

General Restrictive Covenants

Section 1. Applicability. The provisions of this Article VI shall be applicable to all Lots situated within The Properties.

Section 2. Land Use. No Lots shall be used except for residential purposes. No business, service repair or maintenance for the general public or owners shall be allowed on any Lot or on the Common Areas at any time. ~~Temporary uses for model homes, parking lots, or sale offices shall be permitted for the Developer.~~

Section 3. Change in Buildings. No Owner shall make or permit any structural modification or alteration of any building except with the prior written consent of the Architectural Control Board (hereinafter identified) or its successor, and the Architectural Control committee of the Boca Pointe Community Association, Inc. , and such consent may be withheld if in the sole discretion of the party denying the same, it appears that such structural modification or alteration would affect or in any manner endanger other dwelling units. No building shall be demolished or removed without the prior written consent of the Architectural Control Board, the Architectural Control committee of Boca Pointe community Association, Inc. The reconstruction shall be in the same location on the property and shall not exceed the size of the original construction.

Section 4. Building Location. Buildings shall be located in conformance with the Zoning Code of the County of Palm Beach, Florida and any specific zoning approvals thereunder, or as originally constructed on a Lot by Developer. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so under the Zoning Code, said variance or special exception is hereby adopted as an amendment to this Section and any future variance or special exception as to building location or other item shall constitute an amendment of this Section.

Section 5. Easements. Easements for drainage, installation and maintenance of utilities and for ingress and egress are reserved as shown on the recorded plats of The Properties. Within these easements no structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing The Properties and the Association, and their successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, ~~sprinkler lines~~, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots or the Common Areas, under and through the utility easements as shown on the plats and under and through such portions of the rear of each Lot beyond the buildings, as such buildings may from time to time be located. All utilities within the subdivisions, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

Section 6. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Lot owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted to the Association for a decision in writing and whose decision shall be final.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the adjoining properties. ~~Provided, however, that any of The Properties not yet developed by Developer shall be maintained in a clean condition, but shall not be expected to be maintained in a manicured condition.~~

Section 7. Temporary Structures. No structures of a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot either temporarily or permanently. No gas tank, gas container, or gas cylinder ~~except gas tanks, gas containers or gas cylinders as placed by the Developer in connection with the installation of swimming pools or barbecues~~ shall be

permitted to be placed on or about the outside of any house or any ancillary building, and all gas tanks, gas containers and gas cylinders ~~except gas tanks, gas containers or gas cylinders as placed by the Developer in connection with the installation of swimming pools or barbecues~~ 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 safety wall approved by the Architectural Control Board referred to in Section 12 hereof.

Section 8. Signs . No "for rent", "for sale" or other sign of any kind shall be displayed to the public view on The Properties, except one sign of not more than one square foot use to indicate the name of the resident, without the prior written consent of the board of Directors of the Association, and thereafter the Boca Pointe Community Association, Inc., or Architectural Control Committee thereof. ~~provided that the Developer, so long as it has not sold all of its Lots in The Properties, shall retain the right to disapprove any signs displayed to the public view.~~

Section 9. Oil and Mining Operations . No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in The Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in The Properties. 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 land subject to these restrictions.

Section 10. Pets, Livestock and Poultry . No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs weighing less than thirty (30) pounds, cats, or other household pets may be kept, subject to rules and regulations of the Association provided that they are not kept, bred or maintained for any commercial purpose, and provided that they do not become a nuisance or annoyance to any neighbor. No dogs or other pets shall be permitted to have excretions on any Lot, or anywhere else within The Properties except in locations designated by the Association in its rules and regulations. In no event shall an owner or any other person allow a dog anywhere on The Properties unless carried or held on a leash not to exceed six (6) feet.

Section 11. Visibility at Intersections . No obstruction to visibility at street intersections shall be permitted.

Section 12. Architectural Control . No building, wall, fence, or other structure or improvement of any nature shall be erected, placed or altered on any Lot until the construction plan and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Control Board have been approved in writing by the Architectural Control Board named

below, and by the Architectural Control Committee of the Boca Pointe Community Association, Inc. 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 plan so approved. Refusal of approval of plans, specifications and plot plan, or any of them, may be based on any ground, including purely aesthetic grounds. 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, which shall consist of three (3) members, ~~who need not be members of the Association,~~ shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The initial rules and regulations of the Architectural Control Board are set forth on Exhibit "C" attached hereto and made a part hereof. The initial Architectural Control Board shall be composed of: Joel Teitelbaum, David Gostfrand, Sally Radice and the address of said Board shall be 20901 St. Andrews Blvd., Boca Raton, Florida 33433. A majority of the Architectural Control 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 for services performed pursuant to this Section. ~~When all residential dwelling units proposed by the Developer to be constructed within The Properties have been conveyed to Owners,~~ the members of the Architectural Control Board shall be designated by the directors of the Association.

Section 13. Landscaping The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained in accordance with this Declaration, as originally installed by Developer, unless the prior approval for any substantial change is obtained from the Architectural Control Board. No tree or shrub, the trunk of which exceeds two (2) inches in diameter, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Architectural Control Board. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Architectural Control Board.

Section 14. Commercial Trucks, Trailers, Campers and Boats . No trucks or commercial vehicles, campers, mobile homes, motor-homes, boats, house trailers, boat trailers or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages or behind patio walls if not visible from the streets. The term "commercial

vehicle" shall include all automobiles, trucks and vehicular equipment including station wagons, which bear signs or shall be printed on the same of some reference to any commercial undertaking or enterprise, or vehicles of more than six (6') feet in height. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services. If the Developer shall elect to include a storage area for such vehicles within The Properties, all such vehicles, boats, etc., must be stored within such area or within the garage located on a Lot.

Section 15. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard set-back areas, except as originally installed by Developer, and except as any approved by the Architectural Control Board and the Architectural Control Committee of the Boca Pointe Community Association, Inc., as above provided. No fence, wall, or other structure shall be erected over the twenty (20) foot drainage easement located in the rear of Lots 9, 10 and 11.

Section 16. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in a walled-in area; provided, however, that the requirements from time to time of the County of Palm Beach 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 17. Drying Areas. No clothing, laundry or wash shall be aired or dried on any portion of any Lot in an area exposed to view from any other Lot. Drying areas will be permitted only in locations approved by the Architectural Control Board and only when protected from view by screening or fencing approved by the Architectural Control Board.

Section 18. Drainage. No changes in elevations of Property subject to these Restrictions shall be made which will cause undue hardship to adjoining property with respect to natural runoff of rain water.

Section 19. Burial of Pipe and Tanks. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained on the Common Areas above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

Section 20. Underground Wires. No lines or wires for communication or the transmission of current shall be constructed placed or permitted to be placed within the Common Areas unless the same shall be protected cables; any of said lines or wires which are not located in building shall be constructed or placed and maintained underground.

Section 21. Certain Restrictions, Rules and Regulations. The following restrictions, rules and regulations shall be adhered to by each Owner, lessee, their guests and visitors:

(a) No Owner, lessee, their guests or visitors shall make or permit any disturbance that will interfere with the rights, comforts or convenience of others.

(b) All Owners and lessees of Lots in The Properties shall abide by this Declaration, the Articles of Incorporation, the By-Laws and all Rules and Regulations as they are adopted from time to time by the Board of Directors. The Owners shall, at all times, obey the Rules and Regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, lessees and persons over whom they exercise control and supervision. In order to change or amend any Rule or Regulations or adopt new Rules and Regulations, the same must be approved by a majority of the Board of Directors.

No vote of the membership shall be required. A change, amendment or adoption of a Rule or Regulation shall not require an amendment to the Declaration or the By-Laws.

ARTICLE VII

Sales Activity and Developer's Rights

~~Notwithstanding any provision herein to the contrary, until the Developer has completed, sold and conveyed all of the Lots with The Properties, neither the Owners, nor the Association nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of Lots and any other sales activity of the Developer, whether related to The Properties or other developments of the Developer. The Developer (or its authorized agents or assigns) may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices, construction trailers, model homes, and/or parking lots for the showing of the property and display of signs, billboards, flags, placards and visual promotional materials. The Developer shall have the right to use common parking spaces, if any, located on the Common Areas for prospective purchasers and such other parties as Developer determines. Developer reserves the inalienable right to complete the development of The Properties, including the Common Areas, notwithstanding that a purchaser of any Lot has closed title to his Lot.~~

ARTICLE VIII-VII

OWNERSHIP IN BOCA POINTE

Section 1. Ownership in Boca Pointe. By taking title to a Lot, each Owner becomes subject to the terms and conditions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Boca Pointe recorded in Official Records Book 13764, Page 0793 of the Public Records of Palm Beach County, Florida. Among other things, this document provided that an Owner shall become a member of the Boca Pointe Community Association, Inc.; shall acquire certain property rights to the common areas within Boca Pointe; shall be bound by any exclusive service contract for a televisions and security system; shall become subject to the assessments of the Boca Pointe Community Association, Inc. and assessments for television and security system, which assessments, except special assessments to a particular unit, shall be collected by the Association; and shall be subject to the guidelines of the Boca Pointe Architectural Control Design Review Manual.

Section 2. Membership in Boca Pointe Community Association, Inc. In accordance with the provisions of the Articles of Incorporation of Boca Pointe Community Association, Inc., all Owners shall be members in that association. Notwithstanding such membership, only a respective Member, elected at a meeting of the members of the Association, shall be entitled to vote on behalf of all Members of the Association at meetings of the members of the Boca Pointe Community Association, Inc.

Section 3. Notice to Boca Pointe Community Association, Inc. Copies of all amendments to this Declaration, the Articles of Incorporation and the By-Laws of the Association and any easements or conveyances affecting the Common Areas, shall be promptly forwarded to Boca Pointe Community Association. The Association shall also provide a current list of the names and mailing addresses of all Owners within 15 days after receiving a written notice from the Boca Pointe Community Association.

Section 4. Cooperation With Other Maintenance Associations. The Association shall cooperate with any similar maintenance associations levying assessments upon the Property including but not limited to Boca Pointe Community Association, Inc., and may enter into an agreement with any such association that one of the associations shall collect the payment of all maintenance assessments levied upon the Properties and shall remit the appropriate amounts due and payable to each Association.

ARTICLE IX VIII

Enforcement of Restrictions, Covenants,
Rules and Regulations

Section 1. Compliance by Owners. Each Owner shall comply with the restrictions and covenants set forth and any and all Rules and Regulations from time to time adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of the 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 action, and if necessary, costs and attorneys' fee for appellate review. The Association shall have the right to suspend voting rights and use of the Common Areas (except the private streets, sidewalks and driveways from time to time located on the Common Area).

Section 3. Fines. The Association may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors or employees of the Association, or the spouse, parent, child, brother, sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. In addition to all other remedies, in the sole discretion of the Board of Directors, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction rules or regulation contained herein or promulgated pursuant hereto provided the following procedures are adhered to.

- (a) ~~Notice.~~ The Association shall notify the Owner of the infraction or infractions. Included in the notice shall be the date and time of the next Board of Directors meeting at which time the Owner shall be afforded the opportunity to present reasons why a fine or fines should not be imposed.
- (b) ~~Hearing.~~ The matter of noncompliance shall be presented to the Board of Directors at such meeting of the Board and the Board

shall hear reasons why penalties should not be imposed. A written decision of the Board of Directors shall be furnished to the Owner no later than twenty one (21) days after the conclusion of the said meeting of the Board.

- ~~(c) Appeal: Any Owner aggrieved by the decision of the Board of Directors as to a noncompliance may file a written request with the board for an appeal of such decision. Such written request must be filed within seven (7) days after the furnishing of such decision to the Owner charged with any matter of noncompliance. An appeals committee shall be appointed by the Board within seven (7) days after the filing of such request for appeal consisting of three (3) non-interested Members of the Association who are neither officers nor Board members. The said appeals committee will meet and file a written determination of the matter and serve copies on both the Board and the Owner. In no case, shall the appeals committee's findings be binding on either party; however, the Board may elect to review its decision in light of the findings of the appeals committee.~~
- ~~(d) Penalties: The Board of Directors may impose special assessments against the Lot owned by the Owner as follows:~~
- ~~(1) First noncompliance or violation: a fine not in excess of Fifty Dollars (\$50.00).~~
 - ~~(2) Second noncompliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).~~
 - ~~(3) Third and subsequent noncompliance or violation or violations that are of a continuing nature: a fine not in excess of Five Hundred Dollars (\$500.00).~~
- e) Payment of Fines: Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment thereof.
- (f) Collection of Fines: Fines shall be treated as an assessment otherwise due to the Association.
- (g) Application of Fines: All monies received from fines shall be allocated as determined by the Board of Directors.

- (h) **Nonexclusive Remedy:** The imposition of fines pursuant hereto shall not be construed to be an exclusive right or remedy, and the right to impose such fines shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; provided, however, that any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

ARTICLE X

Turnover

~~Section 1. Time of Turnover.~~ The turnover of the Association by the Developer shall occur at the time as specified in Article III Section 2 hereof.

~~Section 2. Procedure of Calling Turnover Meeting.~~ No more than forty five (45) days and no less than thirty (3) days prior to the turnover meeting, the Association shall notify in writing all Class A members of the date of the turnover meeting and purpose of it, which is the election of a new Board of Directors of the Association.

~~Section 3. Procedure for Meeting.~~ The procedure for the election and turnover meeting shall be conducted in accordance with the most recent revision of Robert's Rules of Order.

ARTICLE XI IX

General Provisions

Section 1. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind The Properties, and shall inure to the benefit of and be enforceable by the Association, the Developer and any Owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the thirtieth (30) anniversary of the date of recordation of the Declaration of Covenants, Conditions and Restrictions of Boca Pointe. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional (10) year period; provided, however that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) years renewal period, three-fourths (3/4) of the votes entire voting interests of the Association

cast at a duly held meeting of the Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting.

In the event that the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association, at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at such meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Palm Beach County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Notice. Any notice required to be sent to any 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 provided herein or 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 property to enforce any lien created by these covenants and restrictions. Any failure by the Developer 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.

Section 4. Severability. Invalidation of any one or more of the covenants, restrictions or provisions of this Declaration by judgment or court order shall in no way affect any other covenant, restriction or provision hereof and such other covenants, restrictions and provisions are hereby declared to be severable and shall remain in full force and effect.

Section 5. Captions. The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of the text of this Declaration.

~~Section 6. Limitations.~~ So long as the Developer is in control of the Association and is pursuing the development of The Properties, the Association may take no action whatsoever in opposition to the development plan of The Properties or to any changes proposed thereto by the Developer.

~~Section 7. 6 Context.~~ Whenever the context so requires, any pronoun used herein shall be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein shall be deemed to mean the corresponding plural form thereof and vice versa.

~~Section 8. 7 No Implied Waiver.~~ The failure of the Developer, the Association the Board of Directors or any Owner to object to an owner's or other party's failure to comply with any covenant, restriction or provision contained herein shall in no event be deemed a waiver of any such convent, restriction or provision.

~~Section 9. Execution of Documents.~~ The plan for the development of The Properties may require from time to time the execution of certain documents required by Palm Beach County. If and to the extent that said documents require the joinder of Owners, the Developer by its duly authorized officers may, as the agent or attorney in fact for the Owners, execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint the Developer, through its duly authorized officers, as their proper and legal attorney's in fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable.

~~Section 10. 8. Conflicts.~~ In the event of any inconsistency between this Declaration and the Articles and By Laws of the Association, the provision of this Declaration shall supersede, govern and control. In the event of any inconsistency between this Declaration and the Declaration of Covenants, Conditions and Restrictions of Boca Pointe, the provisions of the latter mentioned document shall supersede, govern and control.

~~Section 11. Developer Payments.~~ Upon the demand of the Developer, the Association shall refund to the Developer any refundable payments or deposits made by the Developer any parties in connection with the development of the Property. By example, and not any way of limitation the Developer shall, upon demand, be reimbursed by the Association, the Developer shall assign to the Association with recourse any of its rights to future repayments from the third party to whom the deposit or refundable payment was made.

ARTICLE X

Amendments. These Declarations of Restrictions and Covenants may be amended at any time by a vote of a majority of the Board of Directors and in addition, by a vote of two thirds (2/3) of the entire voting interests of the membership, subject to the approval of the Boca Pointe Community Association. A duly called meeting stating the purpose (amendments) must be sent to all members forty-five (45) days in advance.

~~IN WITNESS THEREOF, this Declaration of Covenants and Restrictions for Esplanade at Boca Pointe has been executed by Developer on the day and year first above set forth.~~

This is not a certified copy

EXHIBIT "A"
TO
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS
FOR ESPLANADA AT BOCA POINTE

The legal description of The Properties as submitted by this Declaration:

The Plat of Esplanada at Boca Pointe No. 1
as recorded in Plat Book 46, Pages 117 and 118,
Public Records of Palm Beach County, Florida
LESS AND EXCEPT Tracts R - 1, R - 2 and R - 3 as shown herein.

This is not a certified copy

EXHIBIT "B"
TO
DECLARATION OF RESTRICTIONS
AND
PROTECTIVE COVENANTS
FOR
ESPLANADA AT BOCA POINTE

The legal description of the Common Areas is:

Tracts L and R-4, and the drainage easements
as shown on the Plat of the Properties.

This is not a certified copy

EXHIBIT "C"
TO
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS
FOR
ESPLANADA AT BOCA POINTE

Rules and Regulations
of the
Architectural Control Board
of
Esplanada at Boca Pointe

1. Any owner who desires to construct an improvement or structure of any kind on his Lot shall submit two complete sets of all plans and specifications and samples of proposed building materials to the Architectural control Board (the "Board").
2. All approvals by the Board shall be subject to further approval by the Architectural Control Committee of the Boca Pointe Community Association, Inc.
3. All exterior building materials shall be real and not artificial: the exteriors shall be consistent with the theme adopted by the Developer.
4. All fixed games and play structures shall be located behind the residences.
5. No metal cyclone fences are permitted. All walls shall be concrete block and stucco.
6. No window or wall air conditioning units are permitted.
7. All mailboxes or receptacles for the delivery of newspapers, magazines or mail shall be approved by the Board prior to installation on any lot.
8. Except when placed in front for pick-up, no garbage container shall be visible from the street.
9. No television or other outdoor antenna system or facility shall be erected or maintained within the boundaries of the association. Dish OK. Color and location must be approved by Architectural Control Committee.