

**DECLARATION OF COVENANTS  
of  
WAVERLY HUNDRED SUBDIVISION**

This Declaration is made this 8th day of January 1990, by IVANHOE LAND INVESTMENTS, INC., a Florida corporation, hereinafter referred to as "Declarant."

**SECTION 1**

**PURPOSE AND DEFINITIONS**

1.01 Purpose. Declarant owns fee simple title to the Property. Declarant desires to develop or contract with others for the development of single family residential homes on the Lots included in the Property. By this Declaration Declarant desires to: (1) promote the health and safety of Lot Owners, (2) provide for the preservation of the values and amenities to be constructed on the Lots, and (3) provide for the proper maintenance of the Lots and the administration thereof by the Association.

1.02 Definitions. As used in this Declaration the following words shall have the meanings stated below:

- A. "Association" shall mean and refer to Waverly Hundred Homeowner's Association, a Florida corporation not-for-profit, its successors or assigns.
- B. "Declarant" shall mean and refer to Ivanhoe Land Investments, Inc. a Florida corporation its successors or assigns.
- C. "Declaration" shall mean and refer to the provisions of this Declaration and any amendments thereto properly adopted in accordance with the provisions hereof.
- D. "Developer" shall mean the Declarant and any person, corporation, or partnership to whom Declarant sells any part of the Property for the purpose of having the Developer construct on the Lots residential homes for sale to the consuming public.
- E. "Drainage District" shall mean and refer to the South Broward Drainage District, a water control district, formed under Chapter 298 of the Florida Statutes, its successors or assigns.
- F. "Drainage Easement" shall mean and refer to the drainage easements delineated and referred to as such on the Plat.
- G. "Entranceway Feature Easement" shall mean and refer to each easement for the construction and maintenance of an entranceway feature established under Section 6.01 below.
- H. "Florida Power and Light Easement Parcels" shall mean and refer to the parcels delineated and described as Florida Power and Light Company Easement Parcels "F", "G", and "H".
- I. "Institutional Lender" shall mean any savings and loan association, state bank, federal bank, insurance company, an agency of the United States government, a real estate investment trust, pension trust, credit union, an FHA approved mortgage lender or banker, the Federal National Mortgage Association, or its assigns, or Federal Home Loan Mortgage Company, or its assigns.
- J. "Lake Parcel" shall mean and refer to the parcel delineated and described as Lake Parcel "B" on the Plat.

K. "Lot" shall mean and refer to any Lot numbered Lots 1 through 34 of Block 1, Lots 1 through 13 of Block 2, Lots 1 through 17 of Block 3, Lots 1 through 37 Block 4, Lots 1 through 40 of Block 5, Lots 1 through 10 of Block 6, Lots 1 through 25 of Block 7, Lots 1 through 24 of Block 8, Lots 1 through 13 of Block 9, Lots 1 through 30 of Block 10, Lots 1 through 12 of Block 11, Lots 1 through 26 of Block 12, and Lots 1 through 12 of Block 13 as delineated and numbered on the Plat. The word "Lots" shall mean all of the aforesaid Lots shown on the Plat.

L. "Lot Owner" shall mean and refer to the record titleholder of any Lot.

M. "Park Parcel" shall mean and refer to the parcel delineated and described as Parcel "E" on the Plat.

N. "Plat" shall mean and refer to the Plat of WAVERLY HUNDRED containing the Property as recorded in Plat Book 141, Page 40, of the Public Records of Broward County, Florida.

O. "Property" shall mean and refer to all of the property delineated and described on the Plat except dedicated roads shown thereon, the Lake Parcels, Florida Power and Light Parcels, and the Utility Parcels.

P. "Utility Easement" shall mean and refer to the utility easements delineated on and described as such on the Plat.

Q. "Utility Parcels" shall mean and refer to Parcels "A", "C", and "D" on the Plat.

R. "Wall Easement" shall mean and refer to the easement for the construction and maintenance of a privacy wall established under Section 6.03 below.

## **SECTION 2**

### **JURISDICTION**

2.01 Declarant. Until Declarant or any Developer sells the last Lot in the Property to the consuming public (the "Development Period") Declarant reserves the rights contained in Sections 2.02 through 2.04, 3.01, and 3.02.

2.02 Reservations. Declarant reserves on behalf of itself and Developers the right to maintain on the Property sales models, sales offices, advertising signs, lights, and banners, and to erect and maintain temporary dwellings model homes and/or other structures on the Property.

2.03 Further Restrictions. Declarant reserves the right to impose further restrictions, amend the present restrictions, or grant or dedicate additional easements or rights-of-way on the Property. Such additional restrictions, easements, or dedications shall not encumber any Lot if title passes to a purchaser from the Developer prior to the placing of such easement or dedication of record unless the purchaser or subsequent owner of the Lot affected thereby joins in the execution of such amendment as provided for herein. Any further amendments to this Declaration by Declarant shall be made in accordance with Section 11.02.A. of this Declaration.

2.04 Right of Release. If any home constructed on a Lot violates any covenant of this Declaration, and if, in the opinion of Declarant, such violation is not substantial, Declarant may grant a release of such violation by acknowledging such release in writing and placing it of record in the Public Records of Broward County, Florida. After the date of the termination of Development Period under Section 2.01 this right of release shall succeed to the Association having jurisdiction over the Lot as provided under Section

3.03.

2.05 Association. The Association shall have jurisdiction over the Lots, with the powers and duties defined in Sections 8, 9, and 10.

### **SECTION 3**

#### **ARCHITECTURAL and CONSTRUCTION RESTRICTIONS**

3.01 Construction. No improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, tennis court, screened enclosure, sewer drain, disposal system, decorative building landscape device or object, or other improvement, shall be commenced, erected, placed, or maintained upon any Lot whether or not the purpose thereof is purely decorative or otherwise, nor shall any addition, change, or alteration therein or thereon be made unless and until the plans, specifications, and location of the same shall have been submitted to, and approved in writing by Declarant, or after the termination of the Development Period, by the respective Associations under Section 3.03. All plans and specifications shall be evaluated as to harmony of exterior design, materials, and location in relation to surrounding structures and topography and as to conformance with this Declaration. If Declarant approves plans for a Developer's model home such approval shall be deemed the approval for all subsequent construction of single family residence constructed under the approved plans and no subsequent approval shall be needed except approvals must be obtained if there are any subsequent substantial exterior modifications to the plans by a Developer or an individual prior to the issuance of a Certificate of Occupancy for such single family residence.

3.02 Construction. If construction of any improvement shall not commence six (6) months after the date of such Declarant's approval of plans and specifications as provided in Section 3.01 the approval shall become null and void unless Declarant extends the time in which to commence the construction. Upon commencement, construction shall be prosecuted diligently and completed within a reasonable period of time not to exceed twelve (12) months, unless such time is extended by Declarant. Site appearance during construction shall be kept in a neat and orderly condition so as not to cause an unsightly condition. No dumping of building materials is permitted on any Lot and all construction material shall be disposed of in the manner conforming to the requirements of Broward County. In the event the Lot Owner, Parcel Owner, or Developer, or his agents, contractor or subcontractor shall fail to maintain the site as specified and continue such failure more than seven (7) days following delivery of a written notice with respect thereto from Declarant, Declarant may order a clean-up of the site and assess the respective Owner the cost and expense thereof and enforce payment of same as provided in Section 10.

3.03 Succession. On the date the Development Period terminates under Section 2.01 Declarant's rights under this Section shall succeed to the Association with respect to any construction after such date on the Lots.

3.04 Restrictions. The architectural and construction restrictions pertaining to the Lots are contained in Sections 3.05 through 3.13. When the Association is granted right of approval or discretion as to any matter described in those Sections such right of discretion shall be exercised by Declarant only during the Development Period.

3.05 Homes.

A. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single family dwelling containing liveable enclosed floor area of not less than the total square footage described herein, exclusive of open or screened porches, terraces, garages, pools, out buildings, and tennis courts. A dwelling on any Lot shall contain no less than 1100 square feet of liveable enclosed

floor area on the first floor. The total required square feet of liveable enclosed floor area of any single-family dwelling shall be as follows:

1. As to Lots in Block 1 through Block 5, a minimum of twelve hundred fifty square feet (1250').
2. As to Lots in Block 6 through 13, a minimum of eighteen hundred square feet (1,800').

B. Single-family dwellings shall not exceed thirty five (35) feet in height and shall have roofs made of cement tile, vitreous clay, or wood shingles, except that dwellings may have "built-up" roofs which overhang patio areas not visible from the street. Minimum roof pitch shall be not less than (rise over run) 5/12 unless contemporary design requires same and written approval is given by the Association. Unless approved by the Association as to use, location, and architectural design, no garage, tool or storage room may be constructed separate and from the residential dwelling and if such structure is approved it may not be constructed prior to construction of the main residential dwelling.

**The following paragraph C is the first amendment to the Covenants dated 20 January 1993**

**C. Aluminum roofs to cover patio areas may be approved by the Association if they are part of a screened enclosure, are professionally constructed, meet all local building codes, and do not:**

- 1) **extend beyond the side of the original rooflines of the home**
- 2) **fall within 10 feet of the rear lot line; or**
- 3) **require additional supports or buttressing within the structure.**

**Any aluminum roof structure must be in harmony with the existing structure, location, and appearance of the home in order to not violate Section 3.01 of the Covenants.**

3.06 Garages. Each dwelling on a Lot shall have a private and enclosed garage for not less than two (2) nor more than four (4) cars. All garages located on Lots shall have a minimum width of 16 feet for a two (2) car garage 28 feet for a three (3) car garage and 38 feet for a four (4) car garage as measured from the inside wall of the garage. All garages must have either a single overhead door with a minimum door width of sixteen (16) feet for a two (2) car garage or two (2) sixteen (16) foot doors for a four (4) car garage or two (2), three (3), or four (4) individual overhead doors each with a minimum of eight (8) feet in width. No carports will be permitted unless approved in writing by the Association. If prior written consent is obtained from the Association garages may be enclosed for air conditioned living space.

3.07 Set Backs. Except as provided in this Section, no building, or any part or any projection thereof, shall be erected on any portion of the Lots within five feet (5') of any side lot line, ten feet (10') of any rear lot line, five feet (5') of any drainage easement, or within twenty-five feet (25') of any right-of-way contiguous to the front lot line or ten feet (10') from any right-of-way contiguous to the side or rear lot line. A roof overhang of any building may project into a set-back area no more than two and one-half feet (2 1/2'). Any set-back shall be enlarged to prevent any building or any part or any projection thereof (except for the aforesaid permitted roof overhang projection) from encroaching upon any drainage or other public utility easement. Pools, patios, and screened enclosures without roofs shall only be required to set back five (5) feet from the rear lot line of any Lot. Where Lots have curved property lines, set-back distances shall be taken at right angles with the tangent to the curve. All other set-backs shall be measured at right angles to the lot line.

3.08 Driveway Construction. All dwellings shall have a paved driveway of stable and permanent construction which shall be not less than sixteen (16) feet in width at the entrance to the garage. ALL driveways should be constructed with concrete, asphalt, or a comparable material approved by Declarant. If the driveway is elevated above the natural topography, the sides shall be sloped (rise/run) no greater than 1/4 and shall be grassed or sodded. If the driveway is elevated above the natural topography and does not provide a drainage swale at the right-of-way line then six (6") inch drainage culverts of P.V.C. Schedule Forty (40) pipe or other culvert material, approved in writing by the Association, shall be installed

at the minimum elevation in any driveway which might act as a dike or impediment to the natural flow of water.

3.09 Property Elevation. No changes in the elevation of a Lot shall be made without the prior written approval of Declarant. No fill shall be used to extend a Lot beyond the lot line. No sod, top soil, rock, gravel, sand, clay, or earth, except for the landscaping, shall be removed from the Lot, or any lake or pond dug, without the written consent of the Association and no change in elevation resulting in surface water drainage onto another Lot shall be permitted.

3.10 Landscaping. A landscaping plan for each Lot must comply with the ordinances of the governmental body having jurisdiction over the Lots. Each Lot shall be fully sodded, including the area, if any, between the lot line and the street pavement. No Bahia grass or sod shall be used except for the area between the lot line and the street pavement. No gravel or pavement shall be used as a ground cover unless approved by the Association.

3.11 Fences and Walls.

A. The composition, location, and height of any fence or wall to be constructed on any Lot shall be subject to the prior written approval of the Association. All fences shall be erected so as not to interfere with drainage, maintenance, or utility easements. No barbed wire, wire mesh, chicken or hog wire fences shall be allowed. No chain link or cyclone fence shall extend closer to the front of a Lot than the front of the dwelling. Fences and walls shall be at all times maintained in good repair and condition.

B. No fence, wall, hedge, or shrub planting which obstructs the line of sight and elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines or, in case of a rounded Lot corner, from the intersection of a street property line with the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such lines of sight.

3.12 Play Structures. All basketball backboards and play structures, including, but not limited to, swing sets and playground equipment, shall be located at the rear of the dwelling or on the inside portion of corner Lots within the set-back lines, but in no event closer to the front of the Lot than the rear line of the dwelling unless an exception is granted, in writing, by the Association. No doghouse, playhouse, or similar structure shall be constructed on any part of a Lot in front of the rear line of the residence thereon and all such structures and their locations must, prior to construction, be approved, in writing, by the Association.

3.13 Recreational Areas. Any swimming pool, tennis, racquetball, handball, basketball, badminton, or similar courts or recreation areas to be constructed on any Lot shall be subject to the requirements of the Association which include, but are not limited to, the following:

A. Composition to be of material thoroughly tested and accepted by the industry for such construction.

B. Such facility must be constructed on the same Lot as the residence of the Lot Owner and the location of such facility on such Lot must be first approved, in writing, by the Association.

C. Lighting shall be designed so as to buffer lighting from the surrounding residences to prevent same from constituting a nuisance.

## **SECTION 4**

## USE RESTRICTIONS

4.01 Application. All restrictions contained in this Section pertain to Lots and the residences constructed thereon, except Section 4.14.

4.02 Residential. Each Lot may be used for a residential dwelling for one (1) family only and for no other purpose. No business or commercial building may be erected on any Lot and no business or commercial activity, or any advertising thereof, may be conducted on any part thereof.

4.03 Nuisance. No nuisance shall be permitted to exist or operate on any Lot to the detriment or continued annoyance of any Lot Owner in the vicinity of such nuisance.

4.04 Trash/Clotheslines. No Lot shall be used as a dumping ground for rubbish, trash, or other waste. All trash, garbage, and other waste must be kept in sanitary containers and, except during days of pick-up, shall be totally shielded from public view. Such enclosures must be constructed with the dwelling and be approved by Declarant. No exterior clotheslines will be permitted as to any Lot visible from any street.

4.05 Temporary Structures. No structures of a temporary character or tents, sheds, tanks, mobile homes, campers, barns, motorized vehicles, trailers, vans or out-buildings shall be used on any Lot as a residence, either temporarily or permanently, and such structures shall not be erected or permitted to remain on any Lot without the written consent of Declarant.

4.06 Motor Vehicles. All trucks and commercial vehicles shall be required to be parked in a garage and shall not be permitted to be parked or stored in any other place on any Lot except during periods of approved construction on a Lot. 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. No vehicle without a current valid license plate shall be permitted upon any Lot. Vehicles which are missing one (1) or more wheels or which are not in an operating condition shall not remain upon any portion of any Lot for more than two (2) consecutive days. No airplanes, helicopters, or gliders shall be permitted upon any Lot. No major maintenance or repairs shall be performed upon any vehicle, boat, or similar machine or portion thereof on any Lot, except within an enclosed garage. No recreational vehicles, swamp buggies, or airboats shall be parked overnight on any Lot, except in an enclosed garage. Boats must be kept out of sight in side yards, and not visible from the streets, or kept in enclosed garages.

4.07 Signs. No sign, advertisement, or notice of any type or nature whatsoever shall be erected or displayed on any Lot except for a sign no larger than 576 square inches or where the express prior written approval of the size, shape, content, and location thereof has been obtained from the Association.

4.08 Oil Drilling and Mining. No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot.

4.09 Utility Connections. Connections for all utilities to any Lot, including, but not limited to, water, sewer, electricity, telephone, and television shall be run underground from the proper connecting points to the building structure in such a manner as to be acceptable to the Declarant and the governing utility authority.

4.10 Air Conditioning Units and Antennae.

A. No window air conditioning units shall be permitted to be installed in or extend from the front or sides of a single family dwelling without the consent of the Association.

B. Except as provided in this paragraph, no aerial, windmill, antennae or parabolic dishes shall be

placed, or erected upon any Lot or fixed in any manner to the exterior of any single-family dwelling without the prior written approval of the Association. An owner of a dwelling may erect a standard residential television antenna attached to or supported by his dwelling if the antenna extends no more than eight (8') feet above the crown of the dwelling's roof.

4.11 Fuel Tanks and Storage. No fuel or gas storage tanks may be permitted on any Lot. That notwithstanding, a Lot Owner may keep and maintain a small heating, fuel, or gas tank for gas barbecue fireplaces, spa, or pool heating in an area on a Lot specifically approved by the Association or by rules or regulations promulgated by the Association. Propane gas tanks shall be less than 250 pounds and other fuel tanks shall have a capacity of less than 100 gallons.

4.12 Illegal Use. No illegal use may be made of any Lot or any part thereof. Each Lot must comply with all laws, ordinances, rules, regulations, or other requirements of any governmental agency having jurisdiction thereof. Compliance shall be at the sole expense of a Lot Owner.

4.13 Compliance. It is the responsibility of each Lot Owner to insure that the members of the family of the Lot Owner, his guests, tenants, invitees, and employees abide by the covenants of this Declaration and all rules and regulations from time to time adopted by the Association having jurisdiction over the Lot.

4.14 Subdivision. The Lot Owner of two (2) or more contiguous Lots may apply to Declarant for permission to use them as a site of a single dwelling. Upon receiving the written consent of Declarant, said contiguous Lots shall thereafter be treated as a single dwelling Lot except that said Lots shall continue to be treated as separate and distinct Lots for purposes of voting and assessment. Lot Owners qualifying under this Section shall not be required to comply with the side yard setbacks except as to the outside Lot lines. No Lot shall be divided, subdivided, or reduced in size without the prior written approval of Declarant and unless the divided or subdivided portion thereof is consolidated with one or more contiguous Lots under one ownership. In the event of the division or subdivision of any Lot in accordance herewith the obligation for Declarant expenses attributable to the divided or subdivided Lot shall be and become proportionately attributable and chargeable to the contiguous Lot and the Lot Owner thereof. In the event of such division or subdivision of any Lot the voting rights of the divided or subdivided Lot shall be proportionately attributable to the contiguous Lot to and with which portions of the divided or subdivided Lot become consolidated. Any provision of this Section to the contrary notwithstanding, no dwelling or other structure or improvement shall be erected, altered, placed or permitted to remain on any site not including at least one full platted Lot.

## **SECTION 5**

### **EXTERIOR MAINTENANCE**

5.01 Lots. Each Lot Owner shall be responsible for keeping the exterior of his residential home and all other improvements situated on his Lot in a clean, sanitary, safe, and orderly condition. Each Lot Owner shall be responsible for the maintenance, replacement or repair of all doors, windows, screens, roofs, and other portions of his property and to keep the paint on the exterior walls and roof in a reasonably good state of repair. If any Lot Owner breaches this covenant the Association may enforce this covenant against the Lot Owner under the provisions of Section 10 below.

5.02 Lawn Maintenance. No underbrush and/or other unsightly growth shall be permitted to grow upon any Lot and no refuse or unsightly objects shall be allowed to remain thereon. The lawns and grounds on each Lot shall be maintained by the Lot Owner in a neat and attractive manner including, without limitation, having grass, weeds, undergrowth and other vegetation cut no less than once a month, and the shrubbery and trees located on the Lot trimmed periodically in accordance with good husbandry practices including the removal of any dead trees shrubs or plants. If any Lot Owner shall fail or decline to keep his

Lot free of underbrush, refuse, and/or other unsightly objects then the Association, after providing the Lot Owner with seven (7) days written notice thereof, may enter upon said Lot and remove the refuse or otherwise cure the Lot Owner's default of his obligations hereunder. Such entry by the Association shall not be deemed a trespass and the Lot Owner shall be assessed the cost incurred by the Association in curing said default with such assessment constituting a lien upon the Lot as provided for in Section 9.08 below.

## **SECTION 6**

### **ENTRANCEWAY FEATURE AND WALL EASEMENT**

6.01 Entranceways. Declarant reserves an easement for the construction location access, maintenance, and repair of entranceway features which are to be constructed on the northeast corner of Lot 1 Block 1 and the northwest corner of Parcel "C" (the "Stirling Road Entranceway Feature"); on the southwest corner of Lot 1 Block 8 and the northwest corner of Lot 1 Block 9 the "Dykes Road Entranceway Feature", and on the southeast corner of Lot 25 Block 7 and the northeast corner of Lot 1 Block 6 (the "Hawke's Bluff Entranceway Feature").

6.02 Maintenance. The easement for the Stirling Road Entranceway Feature, the Dykes Road Entranceway Feature, and the Hawke's Bluff Entranceway Feature (the "Entranceway Features") shall inure to the benefit of the Association who shall have the responsibility for the maintenance and repair of those Entranceway Features. The cost thereof shall be a common expense of the Association.

6.03 Wall Easement. Declarant hereby reserves a Wall Easement for a privacy wall or fence which may be constructed by Declarant at the following locations:

- A. In the five foot (5') Wall Easement described on the Plat along the east boundary of Lots 1 through 6 of Block 6 and Lots 20 through 25 of Block 7;
- B. In the twenty foot (20') Utility Easement located on the north side of Lot 1, Block 1 and in Parcel "C" continuous to the north boundary of Lots 1 through 9, Block 3; and
- C. In the Utility Easement contiguous to the west boundary of Lots 1 through 16, Block 8, and Lots 1 through 6, Block 9.

These Wall Easements are for the construction, repair, and access to the privacy wall or fence. These easements shall inure to the benefit of the Association, and the Association shall maintain the privacy wall or fence (the Privacy Walls ) on the above easements in a state of good repair. Declarant however shall be under no obligation to construct a wall or fence in the easements.

## **SECTION 7**

### **LAKE PARCEL AND PARK PARCEL**

7.01 Ownership. The Lake Parcel is to be owned by the Drainage District which parcel is part of a drainage system serving the Property and adjoining property owned by Declarant.

7.02 Lake fronts. No lake front Lots shall be increased in size, by filling in all or any portion of the lake or water on which it abuts, or decreased in size by dredging. No dishwasher, septic tank, grease trap, or washing machine shall be allowed to drain into any lake or body of water. The shore line contours of the Lots abutting a lake may not be changed without the written approval of the Association having



jurisdiction over the waterfront Lot and the Drainage District. Any Lot Owner may use the Lake for the purposes of propelling small boats of not more than eighteen (18') feet in length by sail, oar, or electric motor. Under no condition shall any Lot Owner use the Lake for any other purpose except as permitted by rules and regulations governing the use and enjoyment of the Lake Parcels adopted by the Drainage District. No boat, docks, bulkhead moorings, pilings, or permanently moored rafts shall be constructed on any lake or body of water adjacent to any Lot unless permitted by the Drainage District rules and approved by the Association having jurisdiction over the appropriate lake front Lot.

7.03 Maintenance. The Drainage Easement shall inure to the benefit of the Drainage District and its successors for the maintenance, repair, and replacement of the drainage system and facilities lying within the boundary of the Property. No structure, planting, or other material shall be placed or permitted to remain within the Drainage Easement which may interfere with the installation and maintenance of the Drainage Easement or which may change the direction or flow of drainage channels in the drainage easements or which may obstruct or retard the flow of water through drainage channels in the Drainage Easement or which may change the contour of the Drainage Easement located in the rights-of-way or easements. The easement area on each Lot shall be mowed periodically by the Lot Owner.

7.04 Park Parcel. The Park Parcel shall be owned by the Town of Davie, Florida for park purposes. The maintenance thereof shall be the obligation of the Town of Davie, Florida. The park shall not be used for purposes other than those authorized by the Town of Davie, Florida.

## **SECTION 8**

### **THE ASSOCIATION**

8.01 The Association. The Association is a corporation not for-profit incorporated under the laws of the State of Florida and charged with the duties and empowered with the rights set forth herein. The affairs of the Association shall be governed by its Articles of Incorporation and its Bylaws.

8.02 Membership. The Association shall have two (2) classes of membership:

A. Class A Membership. Each Lot Owner in the Waverly Hundred Subdivision, including the Declarant, shall automatically be a Class A Member of the Association. Such Class A Membership is appurtenant to the ownership of each Lot and shall not be separable from the ownership of the Lot and shall be deemed to have been conveyed with the conveyance of each Lot, whether or not such Membership is expressly referred to in the instrument effecting such conveyance.

B. Class B Membership. Declarant is the sole Class B Member of the Association provided that said Class B Membership shall cease and terminate upon the earlier of: (a) the delivery by Declarant to the Association of written notice that Declarant irrevocably terminates and cancels its Class B Membership; or (b) the date of the termination of the Development Period.

8.03 Voting. Voting by Members in the affairs of the Association shall be as follows:

A. Number of Votes.

(1) Each Class A Member shall be entitled to one (1) vote for each Lot owned.

(2) The Class B Member shall be entitled to a number of votes equal to the sum of (i) the total number of votes possessed by the Class A Members at the time of any particular vote by the membership; plus (ii) one (1) additional vote.

B. No Cumulative Voting. There shall be no cumulative voting on any vote by the Members of the

Association.

8.04 Duties and Power of the Association. Except as provided for in Paragraph B of Section 8.02 above the Association shall have powers and duties which shall include the following:

A. The Association shall have all of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida.

B. The Association shall have all the powers and duties reasonably necessary to perform all the acts required to be performed under the Declaration including, but not limited, to the following:

(1) To make and collect assessments against Lot Owners to defray the cost and expenses in carrying out the duties to be performed by the Association under the Declaration;

(2) To use the proceeds of assessments in the exercise of its powers and duties.

(3) To maintain, repair, replace, and make additions to the Wall Easements.

(4) To purchase insurance insuring the improvements of the common easements, liability insurance for the protection of the Association and its Members, policies of insurance for directors and officers insuring them against personal liability arising out of the performance of their duties and such other insurance as may be deemed necessary in the opinion of the Board of Directors of the Association.

(5) To take all necessary action to properly enforce the provisions of the Declaration and to commence and maintain actions to restrain and enjoin any breach or threatened breach of any provisions of the Declaration.

(6) To employ personnel to perform the services required to carry out the duties of the Association.

C. No power stated above shall be exercised by the Association to allow its net earning to inure to the benefit of any Member or Owner as such limitation is now and hereafter interpreted under Internal Revenue Code Section 528 and the Regulation promulgated thereunder.

D. All funds and the title to all properties acquired by the Association and the proceeds received by the Association shall be held in trust for the members in accordance with the provisions of the Declaration the Articles of Incorporation and the Bylaws. Upon the dissolution of the Corporation all such property shall be distributed to the Lot Owners as tenants-incommon.

## **SECTION 9**

### **ASSESSMENTS**

9.01 Liens. Each Lot Owner, by accepting a deed to any Lot in the Property from Declarant, whether or not it shall be so expressed in such deed, agrees to pay to the Association an annual assessment for reasonable charges incurred in connection with the enforcement of any of the terms and conditions hereof and assessments for the costs of exterior maintenance as described in Section S and other features to protect health, safety, and welfare of the owners. The Association may impose a lien on each Lot for any unpaid assessments with respect to that Lot together with interest costs and reasonable attorneys' fees. The lien is effective from and after recording a Claim of Lien in the Public Records of Broward County, Florida stating the description of the Lot or Lots, the name of the record Lot Owner, the amount due, and the due dates of the unpaid assessments. The lien is in effect until all sums secured by it have been fully

paid. The Claim of Lien includes only assessments which are due when the Claim is recorded and must be signed and acknowledged by an officer or authorized agent of the Association and shall include a statement that a copy of the Claim of Lien has been forwarded by certified mail return receipt requested to the Lot Owner.

9.02 Purpose. The assessments levied by the Association shall be used exclusively for the purposes of promoting the recreation, health, safety, and welfare of the residents and Lot Owners of the Property and for the improvement and maintenance of the Entranceway Features and the Privacy Walls.

9.03 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots in the Property. Exterior maintenance assessments as provided in SECTION 5 hereof and assessments for charges incurred in connection with the enforcement of any of the terms and conditions hereof, may be assessed against one or more Lots as determined by the Association.

9.04 Due Date of Assessments. The due date of any assessment shall be fixed in the resolution authorizing such assessment, and any such assessment shall be payable in advance in monthly, quarterly, semi-annual, or annual installments as determined by the Association.

9.05 Amount and Basis of Annual Assessment. Not less than thirty (30) days prior to the commencement of each fiscal year the directors of the Association shall estimate the costs and expenses, including a reasonable provision for contingencies and for a reserve for capital replacements, to be incurred by the Association during such fiscal year in the performance of the duties of and exercise of the powers of the Association. This amount shall then be divided by the total number of Lots within the Property to determine the assessment due with respect to each Lot. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. During the calendar year 1990 the total annual assessment with respect to any Lot shall not exceed sixty and 00/100 dollars (\$60.00) per Lot.

9.06 Additional Assessments. If the annual assessment estimated at the commencement of any fiscal year shall, for any reason, prove to be insufficient to cover the actual expenses incurred by the Association during such fiscal year, the Association shall, at any time it deems necessary and proper, levy an additional assessment against the Lot Owners. Each Lot Owner shall pay a share of such additional assessment determined in accordance with Section 9.05, as if the additional assessment were an annual assessment.

9.07 Certificate. The Association shall, upon demand, furnish to any Lot Owner a certificate in writing, signed by an officer of the Association, setting forth whether the assessments with respect to that Owner's Lot have been paid, and, if not paid, the amount due. Such certificate shall be conclusive evidence of payment of assessments therein stated to have been paid.

9.08 Effect of Non-Payment of Assessments. If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest from the due date at the maximum rate permitted by law and the costs of collection thereof, become a lien on the Lot or Lots against which such assessment is made upon recording a claim of lien, which shall bind such Lot or Lots in the hands of the Lot Owner, his heirs, devisees, personal representatives, and assigns. If any assessment remains delinquent for thirty (30) days after recording a claim of lien, the Association may, at any time thereafter, bring an action to foreclose the lien against the Lots or Lots in like manner as a foreclosure of a mortgage on real property, for all delinquent assessments assessed against such Lot or Lots, together with the costs, expenses, and reasonable attorneys' fees for bringing such action and any appeal thereof or post judgment proceedings with respect thereto.

9.09 Subordination of the Lien to Mortgages. The lien of the assessments provided in this Section, and any other Section in this Declaration, is subordinate to the lien of any first mortgage to an Institutional Lender which now encumbers or at any time thereafter encumbers any Lot or Lots. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer of any Lot pursuant to foreclosure of a first mortgage to an Institutional Lender or any deed in lieu thereof, extinguishes the

assessment lien as to payments that became due on prior to such sale or transfer. No such sale or transfer relieves such Lot from liability for assessments thereafter becoming due or from the lien thereof.

9.10 Exempt Property. Declarant and the Association shall have the right, but not the obligation, to exempt any property subject to this Declaration from the assessments, charge and lien created herein, provided that such exempt property is used, and so long as it is used for any easement or other interest dedicated for community use and accepted by the Association, or dedicated for public use and accepted by the appropriate governmental authority.

## **SECTION 10**

### **ENFORCEMENT**

10.01 Benefit. Each Lot Owner, their successors and assigns, by acceptance of a deed to such property shall be bound to each and every covenant, condition, easement, restriction, charge and lien recited herein, whether or not it shall be so expressed in the deed.

10.02 Enforcement. Notwithstanding anything to the contrary stated in this Declaration, Declarant shall have the right during the Development period to enforce the terms of this Declaration. If any Lot Owner shall violate or attempt to violate any covenant contained herein, any Lot Owner, or the Association, shall first send by certified mail, return receipt requested, to any Lot Owner who may be violating this Declaration, a letter setting forth the violation and stating the steps to be taken to cure the violation. If any Lot Owner should fail to cure the alleged violation set forth in the above letter within thirty (30) days after the receipt thereof by the recipient then the complaining Lot Owner or Association may bring a suit at law or at equity against such person violating the covenants of this Declaration to prevent or abate any violation of the covenants of this Declaration or to recover damages for the violation of same. In any such proceedings, the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees. Violation of any restrictions shall give the Association having jurisdiction over any Lot the right to enter upon over which it has jurisdiction and as to which the violation exists, or similarly to abate and remove, at the expense of the Lot Owner, as the case may be, any construction, thing, or condition which may be contrary to the provisions hereof. Failure of the Association or any Lot Owner to object to any violation or to enforce any restriction contained herein shall not be deemed to be a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

## **SECTION 11**

### **DURATION AND AMENDMENTS**

11.01 Duration. The covenants and restrictions of this Declaration shall run with and bind each Lot and shall inure to the benefit of, and be enforceable by the Association or any Lot Owner, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date of this Declaration. Thereafter this Declaration shall automatically be extended for successive periods of ten (10) years unless an instrument is placed of record containing certified resolutions of the Association certifying that two-thirds (2/3) of the members of the Association have voted to terminate this Declaration.

Invalidation of any part of the restrictions herein contained shall not invalidate the remaining restrictions which shall remain in full force and effect.

11.02 Amendments. This Declaration may be amended as follows:

A . During the Development Period. Declarant reserves the right to amend his Declaration without the

consent of Lot Owner. Such amendments may be made by Declarant without the consent of Institutional Lenders if such amendments do not amend Sections 9.03, 9.05 or 9.09 of this Declaration. Such amendment shall be effective when the amendment is signed by Declarant and a signed copy thereof recorded in the Public Records of Broward County, Florida.

B. After the termination of the Development Period, the Association may amend Sections 3.04 through 3.13 and Sections 8 and 9 of the Declaration without the joinder of any Institutional Lender if such amendments do not amend Sections of this Declaration specified in Paragraph A. The proposed amendment shall be sent to each Lot Owner by the Association in accordance with its Bylaws, considered at a Member's meeting duly called in accordance with the Bylaws and approved by not less than fifty-one (51%) percent of all of the Members of the Association at such duly called meeting. An amendment of this Declaration as to the above Sections by the Association shall be effective when a written instrument is filed in the Public Records of Broward County, Florida. Such written instrument shall contain the amendment and a certificate signed by the President and Secretary of the Association certifying that fifty one (51%) percent of the Members of the Association approved the amendment at a duly called meeting. Such amendment shall become effective when the properly executed amendment and certificate are recorded in the Public Records of Broward County, Florida.

C. Except for the Sections described in Paragraph B. above, all other Sections of the Declaration may be amended without joinder of an Institutional Lender, provided that Section 9.09 of the Declaration is not amended as provided for in this Paragraph C. The proposed amendment shall be sent to each Lot Owner in accordance with the provision of the respective Bylaws of the Association, considered by the Members of the Association at a meeting duly called in accordance with the Bylaws of the Association and approved by not less than sixty-six and two-thirds percent (66-2/3%) of the total Membership of the Association. Such amendment and certificate by the President and Secretary of the Association certifying that sixty-six and two thirds (66-2/3) percent of the total Membership of the Association approved the amendment at a meeting duly called in accordance with the respective Bylaws of each of the Association are recorded in the Public Records of Broward County, Florida.

## **SECTION 12**

### **SEVERABILITY**

12.01 Invalidation of any one of the provisions, covenants, or restrictions by judgment or court order shall in no way affect any other covenant, restriction or provision of this Declaration and same shall remain in full force and effect.