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OFF REC 10922 PL 2921

DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

FOR

CALUSA POINT

THIS DECLARATION is made this 6th day of October, 1980, by DACO DEVELOPMENT, INC., a Florida corporation authorized to do business in Florida, hereinafter called "Developer", which declares that the real property described in Article II, which is owned by Developer, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I

Definitions

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

- (a) "Association" shall mean and refer to the Calusa Point Association, Inc., a Florida corporation not for profit, which is to be incorporated.
- (b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (c) "Access Area" shall mean and refer to the portion of each lot that is subject to the easement for ingress and egress and for the installation and maintenance of public utilities as shown on the Plat of Calusa Point and also to that portion of Tracts A and B used for purposes of ingress and egress and roadways.
- (d) "Common Area" shall mean and refer to Tracts A and B as shown on said Plat of Calusa Point, together with any improvements thereon, including without limitation all commonly owned recreational facilities, open space, off-street parking areas, private streets, sidewalks and street lights.
- (e) "Lot" shall mean and refer to any lot described in Article II hereof and any lot shown upon any resubdivision thereon.
- (f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon The Properties.
- (g) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section 1, hereof.

ARTICLE IIProperty Subject to this Declaration;
Additions Thereto

Section 1. Legal Descriptions. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Dade County, Florida, and is more particularly described as all of Calusa Point as recorded in Plat Book 116, Page 42, of the Public Records of Dade County, Florida, all of which real property shall hereinafter be referred to as "The Properties". Developer may from time to time bring other land under the provisions hereof by recorded supplemental declarations.

Section 2. Merger or Consolidation. Upon a merger or consolidation of any association referred to herein with any other association as provided in its Articles of Incorporation, its properties, right and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidation association may administer the covenants and restrictions established by this Declaration within The Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within The Properties.

ARTICLE IIIMembership and Voting Rights
in the Association

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot shall be a member of the Association. Notwithstanding anything else to the contrary set forth in this Section 1, any such person or

entity who holds such interest merely as a security for the performance of any obligation shall not be a member of said Association.

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

Class A. Class A Members shall be all those owners as defined in Section 1 with the exception of the Developer. The Class A Member shall be entitled to one vote for each Lot in which they hold the interests required 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 as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three votes for each Lot in which it holds the interest required for membership by Section 1, and the Class B Member shall be entitled to elect a majority of the Board of Directors, provided that the Class B membership shall cease and terminate when the last Lot within The Properties has been sold and conveyed by the Developer.

Notwithstanding any provision to the contrary, the Developer shall have the right to elect a majority of the Board of Directors of such association until such time as Developer no longer holds the title to any portion of said Properties.

ARTICLE IV

Property Rights in the Access Areas

Section 1. Members Easements. Each Member of the Association, and each tenant, agent, invitee and institutional mortgagee of such Member, shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the drive-ways from time to time laid out on the Access Areas, for use in common with all other such Members, their tenants, agents, invitees and institutional mortgagees. The portion of Tracts A and B and the Access Areas of the Lots not used from time to time for 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 pedestrian traffic across all such portions of such properties and for the use of the same as common open space in such manner as may be regulated by the Association.

Section 2. Easements Appurtenant. The easement provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Maintenance. The Association shall at all times maintain in good repair, and shall replace as often as necessary, the paving, drainage structures, street lighting fixtures and appurtenances, landscaping (if any) and other structures (except utilities) situated on the Access Areas, all such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. Maintenance of said street lighting fixtures shall include and extend to payment for all electricity consumed in their illumination. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article VI.

Section 4. Utility Easements. Use of the Access Areas for utilities, as well as use of the other utility easements as shown on the Plat, shall be in accordance with the applicable provisions of this Declaration.

Section 5. Ownership of Tracts A and B. Upon completion of the development of each Tract constituting part of the Access Areas, the Developer, or its successors and assigns, shall convey and transfer the record fee simple title thereto to the Association, and the Association shall accept such conveyance. Beginning from the date of such conveyance of each Tract, the Association shall be responsible for the payment of taxes assessed against each of said parcels named above which are owned by it and any improvements and any personal property on such parcels, which taxes accrue from and after the date of said conveyance, and such taxes shall be prorated as of the date of each conveyance, between Developer and the Association. Taxes on the portions of the Access Areas which are easements across Lots shall be paid by the

owner of the Lot. Developer shall have the right from time to time to enter upon the Access Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Access Areas that Developer elects to build.

ARTICLE V

Property Rights in the Common Areas

Section 1. Ownership. Upon completion of the development of each Tract as defined in Article I, Section (d) (the "Common Area"), the Developer, or its successors and assigns, shall convey and transfer the record fee simple title thereto to the Association, and the Association shall accept such conveyance. Thereupon, the Association shall be responsible for the maintenance thereof in a continuous and satisfactory manner without cost to the general taxpayers of Dade County, and for the payment of taxes assessed against each of said Tracts and any improvements and any personal property thereon accruing from and after the conveyance to the Association, and such taxes shall be prorated as of the date of conveyance of each Tract. Prior to completion of the Common Areas and conveyance of the title thereto to the Association, the taxes assessed against such nonpublic property shall be paid by the Developer or its successors or assigns.

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

(a) The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities.

(b) The right of the Association to suspend the voting rights and right to use the Common Areas and facilities by Owner for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days after its due date; and for a period not to exceed sixty (60) days for any infraction of its lawfully adopted published rules and regulations. [which sixty (60) days may be extended for continued violation of the rules and regulations.]

(c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated on the Common Areas.

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

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 regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

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

Section 4. Maintenance. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements situated on the Common Areas including but not limited to, all recreational facilities, landscaping, paving, drainage structures, street lighting fixtures and appurtenances, sidewalks and other structures, except utilities, all of such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. Maintenance of street lighting fixtures shall include and extend to payment for all of the electricity consumed in their illumination. All work pursuant to this section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with Article VI. Such assessments shall be against all Lots equally. 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 Developer may, at his discretion, construct in the Common Area walkways and/or stairways to the rear of certain dwelling units. In the event said walkways and stairways are so constructed by the Developer in the initial development of Calusa Point, said walkways and stairways shall be for the exclusive use of the owner of the individual dwelling unit to which they lead.

If said walkways and/or stairways are constructed as described herein, the Association shall at all times maintain in good repair, and shall replace as often as necessary, said improvements situated on the Common Areas. All work pursuant to this paragraph and the cost thereof for the maintenance and/or repair and replacement of said walkways and stairways shall be assessed against the Lot which has the exclusive use of said walkway and stairway.

Section 5. Utility Easements. Public Utilities may be installed underground in the Common Areas when necessary for the service of The Properties, but all use of utility easements shall be in accordance with the applicable provisions of the Declaration.

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

ARTICLE VI

Covenant for Maintenance Assessments

Section 1. Creation of the Lien and Personal Obligation of the Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments or charges for the maintenance of the Access Areas as provided in Article IV hereof and for the maintenance of the Common Area as provided in Article V hereof, including such reasonable reserves as the Association may deem necessary, special assessments as provided in Section 4 hereof, and assessments for maintenance as provided in Section 3 hereof, such assessments to be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall upon the recordation of a Claim of Lien be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the

personal obligation of the person who is the Owner of such property at the time when the assessment fell due. All assessments, both regular and special, by the Association shall be against all Lots subject to its jurisdiction equally.

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

Section 3. Exterior Maintenance. The Association through action of its Board of Directors shall provide exterior maintenance for each building as follows: paint, repair, replace and care for roofs, gutters, downspouts, and exterior building surfaces. In addition to the exterior maintenance referred to in the preceding sentence, the Association shall be obligated to maintain that part of the landscaping, trees, shrubs, grass walks, drives and parking places and other exterior improvements situated outside each Lot as well as inside the Lot for that portion of the Lot which is outside the privacy walls of the front courtyard and rear patio and such expenses may be apportioned on a flat overall charge against all Lots subject to assessment by the Association. The Owner shall permit the use of the hose bib on his Lot as required by the Association for all exterior landscaping maintenance in front of his individual unit. The cost of the exterior maintenance referred to in the first sentence of this Section 3 shall be assessed against the Lot upon which such maintenance is done and shall constitute an annual maintenance assessment or charge. The Board of Directors of the Association shall estimate the cost of any such exterior maintenance for each year and shall fix the assessment for each year, but said Board shall, thereafter, make such adjustment with the Owner as is necessary to reflect the

actual cost of such exterior maintenance. Additionally, there shall be specifically allocated a Ten (\$10.00) Dollar per unit per month reserve charge for exterior painting of each building, which sum shall be added to the monthly maintenance assessment for each unit. The Owner shall maintain the structures and grounds on each Lot, with the exception of the portion of such Lot to be maintained by the Association, at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Association may at its option after giving the Owner ten (10) days' written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot re-sodded or landscaped, and all expenses of the Association under this sentence shall be a lien and charge against the Lot on which the work was done upon the recordation of a Claim of Lien and the personal obligation of the then Owner of such Lot.

Section 4. Capital Improvements. Funds necessary for capital improvements relating to the Access Areas under the ownership of the Association may be levied by such Association as special assessments, upon approval of a majority of the Board of Directors of such Association and upon approval by two-thirds favorable vote of the Members of such Association voting at a meeting or by ballot as may be provided in the By-laws of such Association.

Section 5. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for in this Article VI shall commence on the first day of the month next following the recordation of these covenants.

The annual assessments shall be payable in monthly installments, or in annual or quarter-annual installments if so determined by the Board of Directors of the Association.

The amount of the annual assessment shall be \$403.80 per Lot payable in equal monthly installments, until the amount of the assessment is changed by action of said Board of Directors. The

assessment amount 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 under Section 4 hereof shall be fixed in the Board resolution authorizing such assessment.

Section 6. Duties of the Board of Directors. Except for the initial assessment specified in Section 5, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the properties and assessments applicable thereto 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 liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

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

Section 7. 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 5 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, upon the recordation of a Claim of Lien becoming a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If any assessments are not paid within ten (10) days after the due date, the assessment shall bear interest from the date when due at the highest interest rate allowable by law and the Association may bring an action at law against the Owner personally obligated to pay the same or shall record a Claim of Lien against the property on which the assessment is unpaid or may foreclose the lien against the property on which the assessment is unpaid or may pursue one or more of such remedies at the same time or successively; and there shall be added to the amount of such assessment attorneys' fees and costs of preparing and filing the Claim of Lien and the Complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court together with the costs of the action and the Association shall be entitled to attorneys' fees in connection with any appeal of any such action.

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

Section 8. Subordination of the Lien to Tax Liens and Mortgages. The Lien

of any assessments provided for in this Article VI shall be subordinate to any tax liens and to the lien of any mortgage recorded prior to the recordation of the Claim of Lien, which mortgage encumbers any Lot to any institutional mortgagee (defined as a bank, savings and loan association, insurance company, an Agency of the United States Government, or a lender generally recognized in the

community as an institutional-type lender) and which is now or hereafter placed on any property subject to assessment; provided however, that in the event of a foreclosure, any purchaser or mortgagee at a foreclosure sale, and any mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any assessment accruing and becoming due after such foreclosure (or conveyance in lieu of foreclosure). All unpaid and accrued assessments becoming due prior to the acquisition of title as a result of foreclosure or deed in lieu of foreclosure shall be deemed an assessment divided equally among, payable by all Lots subject to assessments by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place in the manner and procedure aforesaid.

Section 9. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, including all of the maintenance and work permitted under Section 3 of this Article, the Association, through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day except Sunday.

Section 10. Effect on Developer. Notwithstanding any provision that may be contained to the contrary in this instrument, for as 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 Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association.

ARTICLE VII

Villa and Townhouse Covenants

Section 1. Applicability. The provisions of this Article VII shall be applicable to all of the Lots shown on the Plat of

Calusa Point. Nothing in this Article VII shall be applicable to Tracts A and B, except the provisions of Section 5, 8, 9 and 10 hereof, which apply both to Lots and said Tracts.

Section 2. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one single-family townhouse dwelling not to exceed two stories in height. Temporary uses for model homes, parking lots, and/or sales offices shall be permitted until permanent cessation of such uses takes place.

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 all institutional mortgagees holding a mortgage on a dwelling unit within said building, and consent may be withheld if in the sole discretion of the party requested to give 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 all Owners of all other dwelling units with which such building was connected at the time of its construction and all institutional mortgagees holding a mortgage on a dwelling unit within said building and also the prior written consent of Developer or its successor. Developer shall have the right but shall not be obligated to assign all of its rights and privileges under this Section 3 to the Association.

Section 4. Building Location. Buildings shall be located in conformance with the Article XVA, Section 33-202.3, Paragraph P, of the Zoning Code of Dade County, Florida, and any specific approvals thereunder, or as originally constructed on a Lot by Developer or its successor or assignee. It is the intention of

this paragraph to maintain standards equivalent to those imposed by the zoning Code of Dade County. Therefore, where 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 further variance or special exception as to building location or other item shall constitute an amendment of this Section.

Section 5. Easements. Easements for installation and maintenance of utilities and for ingress and egress are reserved as shown on the Plat of Calusa Point. Within these easements indicated by dashed lines of the Plat, no structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic, or prevent the maintenance of utilities. The area of each lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot or by the Association, except for the installations for which a public utility or utility company is responsible. Florida Power & Light Company, Southern Bell Telephone and Telegraph Company, Miami Dade Water & Sewer Authority, and Developer, and their successors and assigns, shall have a perpetual easement for the installation and maintenance, all underground, of water lines, sanitary sewers, storm drains, electric and telephone lines, cables and conduits, and conduits under and through the utility easements as shown on the map, and under and through that portion of the rear of each Lot beyond the building, as such building may from time to time be located. Any damage caused to pavement, drive-ways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the subdivision, shall be installed and maintained underground. The Association shall maintain one television antenna, per building, to service all units within said building. The Association shall have a permanent easement

for ingress and egress for the installation and maintenance for said antennae in accordance with this paragraph.

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.

Section 7. Temporary Structures. No structure of a temporary character, or trailer, tent, boats, trucks, mobile home or recreational vehicle shall be permitted on any Lot at any time or used on any Lot at any time as a residence either temporarily or permanently. No gas tank, gas container, or gas cylinder shall be permitted to be placed on or about the outside of any houses built in this property or any ancillary building, and all gas tanks, gas containers and gas cylinders shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative wall approved by the Architectural Control Board referred to in Section 13 hereof.

Section 8. Signs. No sign of any kind shall be displayed to the public view on The Properties except one sign of not more than one (1) square foot used to indicate the name of the resident, or one sign of not more than one (1) square foot advertising the property for resale or for rent.

Section 9. Oil and Mining Operations. No oil drilling, oil development operation, 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, cats, or other household pets may be kept, however, the number of said pets shall not exceed two (2)

for any Lot, 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, Access Area, or anywhere else within The Properties except in locations designated by the Association.

Section 11. Damage to Buildings. In the event a dwelling unit is damaged, through act of God or other casualty, that Lot Owner shall promptly cause his dwelling unit to be repaired and rebuilt substantially in accordance with the original architectural plans and specifications. It shall be the duty of the Association to enforce such repair or rebuilding of the dwelling unit to comply with this responsibility. To accomplish the requirements of this Section, each Owner shall insure his dwelling unit at the highest insurable value.

Section 12. Visibility at Intersections. No obstruction to visibility at street intersections or Access Area intersections shall be permitted.

Section 13. 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 plans 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. 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, which in the sole and uncontrolled discretion of said Architectural Control Board seems sufficient. Any change in the exterior appearance of any building, wall, fence, or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed

an alteration requiring approval. The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The Architectural Control Board is composed of Irwin Raskin, Stuart M. Feder and Robert Slaughter, and the address of said Board is 8925 S. W. 148th Street, Suite 9-A, Miami, Florida 33176. A majority of the Board may take any action the Board is empowered to take, may designate a representative to act for the Board, and may employ personnel and consultants to act for it. In the event of death, disability, or resignation of any member of the Board, the Board of Directors 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 covenant.

Section 14. Exterior Appearances and Landscaping. The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed 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, together with the written consent of all institutional mortgagees on dwelling units in the said building. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways and ground elevations, shall be maintained by the Owner as originally installed by Developer, unless the prior approval for any substantial change is obtained from the Architectural Control Board. Aluminum foil, newspaper or any other paper covering shall not be placed on windows or glass doors. No Owner may place any furniture, equipment or objects of any kind or construct any structures, slabs or porches beyond the limits of any building or patio wall or place any objects such as bicycles, toys, barbecues, etc. on the rear patio unless concealed from the view of the road frontage and other residential units, except, however, customary outdoor furniture.

Section 15. 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 in this property, except only during the periods of approved construction on said Lot, and except that they may be stored within garages or behind patio walls or in designated areas if not visible from the Access Area, road, and other Lots or parcels. 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.

Section 16. Easement for Encroachment. There shall be an

easement for encroachment in favor of the Association and all Townhome Dwelling Owners in the event any Townhome Dwelling now or hereafter encroaches upon any other Townhome Dwelling as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement. The encroaching improvements shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvement in favor of the Townhome Dwelling Owners, their designees, mortgagees and the Association.

Section 17. Buffer Zone. No structure of any kind shall be constructed on the 35-foot E.U.M. Buffer Area with the exception of the T-turnarounds as depicted on the Plat of Calusa Point.

Section 18. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard setback areas, except as originally installed by Developer's assignee, or except any approved by the Architectural Control Board as above provided.

Section 19. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in areas designated for such purpose; provided, however, that the requirements from time to time of the County of Dade for disposal or

collection of same shall be complied with. All equipment for storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 20. 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 or Unit or roadway. 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 Board.

ARTICLE VIII

Party Walls

Section 1. General. Each wall built as a part of the original construction of the single-family townhouse dwellings upon The Properties and placed on the dividing line between the Lots thereof shall constitute a party wall, and each Owner shall own that portion of the wall which stands on his own Lot, with a cross-easement of support in the other portion.

Section 2. Sharing or Repairing Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall, except as otherwise provided herein.

Section 3. Destruction by Fire or Other Casualty. In the event of damage or destruction of the party wall from any cause whatsoever, other than the negligence or willful misconduct of either Owner thereto, the Owners shall, at their joint expense, repair or rebuild said wall and each Owner, his successors and assigns, shall have the right to full use as herein contained of said wall so repaired or rebuilt. If either Owner's negligence or willful misconduct causes damage or destruction of said wall, such negligent or willfully mischievous Owner shall bear the entire cost of repair or reconstruction. If either Owner shall refuse to pay his share, or all of such cost in the case of negligence or willful misconduct, the other Owner shall have such wall repaired or reconstructed and shall be entitled to a lien on the premises

of the Owner so failing to pay for the amount of such defaulting Owner's share of the repair or replacement costs. If either or both Owners shall give, or shall have given a mortgage or mortgages upon his property to an institutional mortgagee, then the institutional mortgagee shall have the full right at its option to exercise the rights of its mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the mortgagee for repairs hereunder and not reimbursed to said mortgagee by the Owners.

Section 4. Easement for Repairs. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent townhouse dwelling upon The Properties shall not be deemed a trespass so long as the repairs and reconstruction shall be done in workmanlike manner, and consent is hereby given to enter on adjacent townhouse dwellings to effect necessary repairs and reconstruction.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article VIII shall be appurtenant to the land and shall pass to such Owner's successors in title. Upon conveyance or other transfer of title the liability of the prior Owner shall cease.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article VIII, each party shall choose one arbiter, and such arbiters shall choose one additional arbiter, and the decision of a majority of all the arbiters shall be final and conclusive of the question involved.

ARTICLE IX

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the properties and shall inure to the benefit of and be enforceable by the Developer, the Association, or the Owner of any land subject to this Declaration.

and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of two-thirds of the Lots and all institutional mortgagees of Lots have been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

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

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Developer, any association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Control Board. The prevailing party in any proceeding at law or in equity provided for in this Section shall be entitled to recover in said suit the cost of the action, including reasonable attorneys' fees to be fixed by the court, including attorneys' fees in connection with appeal of any such action.

Section 4. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 5. Amendment. In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, and liens of this agreement may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by: (1) Developer, for so long as it holds title to any Lot affected by this Declaration; or alternatively, (2) by Owners holding not less than two-thirds vote of the membership in the Association, provided, that so long as the Developer is the Owner of any Lot affected by this Declaration the Developer's consent must be obtained, (3) and by all institutional mortgagees of Lots affected by this Declaration, provided, that so long as the Developer is the Owner of any Lot affected by this Declaration the Developer's consent must be obtained.

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

EXECUTED as of the date first above written.

Signed in the presence of: DACO DEVELOPMENT, INC.

By Irwin Raskin
IRWIN RASKIN, Vice-President

Attest: Deborah Raskin
DEBORAH RASKIN, Assistant Secretary

STATE OF FLORIDA)
COUNTY OF DADE) SS

The foregoing instrument was acknowledged before me this 5 day of June, 1980, by IRWIN RASKIN and DEBORAH RASKIN, as Vice-President and Assistant Secretary, respectively, of DACO DEVELOPMENT, INC., a Florida corporation, on behalf of the corporation.

Notary Public, State of Florida
at Large

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES JAN 6 1984
BONDED THRU GENERAL INS. CO.

RECORDED IN OFFICIAL NOTARIAL BOOK
OF DADE COUNTY, FLORIDA
RECORDS PLANTED
RICHARD P. BRINKER,
CLERK, CIRCUIT COURT

AMENDMENT TO
DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS
FOR
CRUSA POINT

THIS AGREEMENT is made this 19th day of January, 1982, by DACO DEVELOPMENT, INC., hereinafter called "Developer" which amends the original Declaration of Restrictions and Protective Covenants dated October 6th, 1980, and filed for Record November 6th, 1980, in Official Records Book 10922, Page 2921, of the Public Records of Dade County, Florida.

ARTICLE THREE is herein amended so that the last sentence thereof reads as follows:

"Notwithstanding any provision to the contrary, the Developer shall have the right to elect a majority of the Board of Directors of such association until such time as Developer no longer holds the title to any portion of said Properties, but in no event shall said Developer control extend beyond December 31, 1985".

EXECUTED as of the date first above written.

Signed in the presence of:

DACO DEVELOPMENT, INC.

By

IRWIN RASKIN, Vice-President

Attest:

DEBORAH RASKIN HERSH,
Assistant Secretary

STATE OF FLORIDA)

) SS

COUNTY OF DADE)

The foregoing instrument was acknowledged before me this 19th day of January, 1982, by IRWIN RASKIN and DEBORAH RASKIN HERSH, as Vice-President and Assistant Secretary, respectively, of DACO DEVELOPMENT, INC., A Florida Corporation, on behalf of the corporation.

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
RECORD 10922
RICHARD P. BRINKER
CLERK DADE COUNTY

Notary Public, State of Florida
At Large

My Commission Expires

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES DEC 28 1985
BOND \$1000.00 UNDERWRITTEN

EDWARD S. LEVINE

FABER, LEVINE, TRYSON & MATTAWAY, P.A.

328 Minorca Avenue

Coral Gables, Florida 33134

This Certificate of Filing of By-Laws is executed this 8th day of February, 1990 by CALUSA POINT ASSOCIATION, INC., a Florida corporation not-for-profit (the "Association").

RECITALS

WHEREAS, the Association has been established for the operation of the community known as "Calusa Point", in accordance with the Declaration of Restrictions and Protective Covenants for Calusa Point ("Declaration") and related documents which were recorded on November 6, 1980 in Official Records Book 10922, at Page 2921, of the Public Records of Dade County, Florida, and as amended in Official Records Book 11346, at Page 1865, on the 6th day of February, 1982 in the Public Records of Dade County, Florida; and

WHEREAS, the initial By-Laws governing the operation of the Association were not recorded in the public records; and

WHEREAS, the Association wishes to have the By-Laws recorded, and the Board of Directors of the Association at their regularly scheduled Board meeting on January 11, 1990 unanimously approved recording the Association's By-Laws.

NOW, THEREFORE, the Association does hereby state as follows:

1. The above recitals are true and correct and are hereby incorporated herein by reference.
2. The initial By-Laws of the Association dated December 15, 1980, which are attached hereto, shall be recorded in the Public Records of Dade County, Florida along with this Certificate of Filing of By-Laws.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals as of the date first above written.

CALUSA POINT ASSOCIATION, INC.

[Signature]
Witness

[Signature]
Witness

By: [Signature]
Robert Averitt, President

[Signature]
Witness

[Signature]
Witness

By: [Signature]
Philip Gaylord, Secretary

STATE OF FLORIDA)
COUNTY OF DADE) SS:

BEFORE ME, the undersigned authority, personally appeared ROBERT AVERITT and PHILIP GAYLORD, as President and Secretary respectively of CALUSA POINT ASSOCIATION, INC., and who are personally known to me to have executed this Certificate of Filing of the By-Laws in the above capacity.

SWORN TO AND SUBSCRIBED before me this 8 day of February, 1990.

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. FEB 24, 1991
BONDED THRU GENERAL INS. CO.

Notary Public, State of Florida

My Commission Expires:



1990 FEB 22 AM 11 31
90R067452