

DECLARATION                    **\*\* OFFICIAL RECORDS \*\***  
                                      **BOOK: 1661        PAGE: 1898**

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

OF

A TOWNHOUSE SUBDIVISION

DELWOOD ESTATE, PHASE I

THIS DECLARATION, as made on the date hereinafter set forth by the DELWOOD ESTATES COMMUNITY ASSOCIATION, INC., hereinafter referred to as the "Association."

**W I T N E S S E T H:**

WHEREAS, Property Owners and the Association are the owners of certain property in the City of Panama City, County of Bay, State of Florida, which is more particularly described as:

COMMENCE at the S.E. corner of N.E. 1/4 of S.E. 1/4 Section 31, T-3-S, R-14-W, and run N 00° 40' 14" E for 483.23 feet along the east line of said forty to the P.O.B., thence S 89° 36' 46"W, 175.44 feet, thence S65° 25' 21"W, 56.38 feet, thence S 00° 47' 27" W for 187.23 feet, thence S 50° 34' 51"W, 187.88 feet, thence N77° 03' 19"W, 115.01 feet, thence S78° 02' 41"W, for 181.28 feet, to the west line of the east half of N.E. 1/4 of the S.E. 1/4, thence N 00° 40' 14"E, 110.38 feet, along said twenty line, thence N 77° 37' 40"E, 120.69 feet, thence N 81° 33' 45" E 197.13 feet, thence run N 02° 30' 40" E, 153.60 feet, thence N 88° 01' 05"W, 172.50 feet, thence N 00° 34' 13"W, 372.88 feet, thence N89° 03' 08"W, 136.63 feet, to the west line of the east half of said forty, thence run N 00° 40' 14" E along said twenty line 450.65 feet, to the south right-of-way line of west 19th Street, thence S 89° 24' 46" E along said south right-of-way line 659.80 feet, to the east line of NE 1/4 of SE 1/4 thence S 00° 40' 14" W along said sect. line 800.67 feet to the point of beginning, being a part of the east half of NE 1/4 of SE 1/4 SEC. 31, T-3-S, R-14-W, Bay County Florida containing 12.70 Acres more or less.

WHEREAS, all of the property described above is shown upon the following listed plat: "Plat of: DELWOOD ESTATES, PHASE I, A TOWNHOUSE SUBDIVISION, Bay County, Florida," dated December 7, 1995, being made by Thomas E. Jenkins, registered Florida land surveyor number 2019, which said plat is of record in the Clerk's Office of the Circuit Court of Bay County, Florida, in Plat Book 12, Pages 3 et seq through \_\_\_\_\_ inclusive.

NOW, THEREFORE, Property Owners and the Association hereby declare that all of the property described above shall be subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the property described above or any part

thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

**Section 1. Association.** "Association" shall mean and refer to Delwood Estates Community Association, Inc., a corporation not for profit, organized and existing under the laws of the State of Florida, its successors and assigns.

**Section 2. Owner.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property.

**Section 3. Property.** "Property" shall mean and refer to the real property described above, and such other real property as may hereafter be brought within the jurisdiction of the Association.

**Section 4. Vehicle.** "Vehicle" shall mean and refer to any means of transport of something and/or person(s) whether the vehicle is itself motorized or is pulled by a motorized vehicle.

**Section 5. Common Area.** "Common Area" shall mean all real property and improvements located thereon owned from time to time by the Association for the common use and enjoyment of the lot/townhouse owners.

**Section 6. Lot.** "Lot" shall mean and refer to the numbered plot of land upon which a Townhouse has been constructed.

**Section 7. Townhouse.** "Townhouse" shall mean and refer to a single-family dwelling located on a Lot as part of a multi-family building.

**Section 8. Member.** "Member" shall mean and refer to every person or entity who holds membership in the Association pursuant to the provisions of this instrument, the Articles of Incorporation and the Bylaws of the Association.

## **ARTICLE II**

### **PROPERTY RIGHTS**

**Section 1. Owners' Easements of Enjoyment.** Every Owner and his respective guests, servants or tenants shall have (i) a right and nonexclusive easement of enjoyment in and to the Common Area. An "Owner of Record" of a lot, who leases said

Lot, transfers all easements of enjoyment to his tenant; "these rights of enjoyment." Lots and townhouses located thereon over all roads, ways and streets within the Common area, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and use of the recreational facilities of an Owner for a period, during which any assessment against his Lot remains unpaid and for a period not to exceed 30 days for each infraction of its published rules and regulations and for failure to pay any assessment within thirty (30) days of due date.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, governmental authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded;

(d) the right of the Association to limit the number of guests of Members;

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving, repairing or rebuilding the Common Area and facilities and in aid thereof, with the assent of two-thirds (2/3) of the membership, to mortgage the Common Area. The rights of any such mortgagee or mortgagees in the Common Area shall be subordinate to the rights of the Owners hereunder;

(f) the right of the Association, through its Board of Directors, to determine the time and manner of use of the recreational facilities by the Members.

**Section 2. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Voting Rights.** Each Owner shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. 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 Lot.

#### **ARTICLE IV**

##### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.**

Each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees incurred by the Association in the collection of the assessments shall be a continuing lien on each Lot and the Townhouse located thereon against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the Owner of such Lot and Townhouse at the time the assessment is due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purposes of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property, and for maintaining, operating, insuring and improving the Common Area and the improvements located thereon, and for providing water and sewer service to the Lots, all in accordance with this instrument, the Articles of Incorporation and the Bylaws.

**Section 3. Maximum Annual Assessment.** (a) Subject to Article IV, Section 4, and to the provisions contained therein for special assessments, each Lot shall be assessed an equal amount. The annual assessment may be increased each year by the Board of Directors not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the Membership as hereinafter set forth. (b) The maximum annual assessment may be increased above fifteen percent (15%) by a

majority vote of the Members who are voting in person or by proxy, at a meeting duly called for this purpose.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. Any such assessment shall have the approval of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice of Quorum for Any Action Authorized under Section 3 and Section 4, Article IV.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of Article IV shall be sent by mail to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 6. Annual Assessments: Due Dates.** The annual assessments provided for herein shall be due on the first day of each month for all lots/units. The Board of Directors shall fix the amount of each annual assessment against each Lot at least thirty (30) days in advance of January 1 of each year. Written notices of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors; and, unless otherwise provided, the Association shall collect each month from each Owner one twelfth (1/12) of the annual assessment for his respective Lot. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a Specific Lot have been paid. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 7. Effective of Nonpayment of Assessments: Remedies of the Association.** Any installment of an assessment which is not paid when due shall be delinquent. If the installment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot and Townhouse, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Furthermore, if any installment of an assessment remains unpaid thirty (30) days after the same shall become due, the Board of Directors may declare the entire annual assessment as to that delinquent owner due and payable in full as if the entire amount was originally assessed. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, and its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same and to subrogate so much of its right to such liens as may be necessary or expedient to an insurance company continuing to give total coverage notwithstanding nonpayment of such defaulting Owner's portion of the premium. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 8. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein on any particular Lot shall be subordinate to the lien of any first mortgage held by an Institutional First Mortgagee encumbering that particular Lot. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, the same or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding or conveyance in lieu thereof, shall extinguish the lien of such assessments

as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 9. Exempt Property.** The Common Area shall be exempt from the assessments created herein. However, no Lot or Townhouse shall be exempt from assessment.

**Section 10. Management Agreements.** Each Owner of a Lot hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the management agreement may be cancelled, prior to its expiration, by an affirmative vote of sixty percent (60%) of the votes.

**Section 11. Insurance Assessments.** The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings owned by the Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering all of the Common Area, and all damage or injury caused by the negligence of the Association or any of its agents, or which may be the responsibility of the Association because of its ownership of the Common Area. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses to be deemed assessments. All such insurance coverage shall be written in the name of the Association.

It shall be the individual responsibility of each Owner at his own expense to provide adequate insurance covering his Lot, including without limitation: hazard insurance, homeowner's liability insurance, theft and other insurance covering real and personal property damage and loss. Each Owner may provide personal liability insurance as he sees fit. Because of the location of multiple Townhouses within a single building, each Lot Owner must obtain adequate hazard insurance covering physical damage or loss to his Townhouse, and shall promptly submit a copy of such insurance policy, with proof of payment of the premium, to the Board of Directors. The Board of

Directors may, in their sole discretion, reject any policy as inadequate, and shall promulgate minimum standards to determine adequacy, to be set forth in the Bylaws or Rules and Regulations of the Association. In the event that the Board of Directors rejects a policy as inadequate, they shall levy a special assessment against the Lot Owner in an amount necessary to purchase adequate coverage.

In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagee holding a mortgage upon the Common Area, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution having trust powers located in Bay County, Florida, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two-thirds (2/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. In the event of loss or casualty, the Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Members of the Association, as established by Article IV, Section 4, above, to make up any deficiency for repair or rebuilding of the Common Area.

## **ARTICLE V**

### **CONDEMNATION**

In the event all or any part of the Common Area is taken by eminent domain proceedings or conveyed to any governmental body in lieu thereof, the money payable as a result of such taking and any legal action necessary to collect the award shall be placed in the common fund for common expenses. Any award for the taking of all or part of a Lot shall be payable to the Owner or his mortgagee, as their respective interests may appear.



## **ARTICLE VI**

### **ARCHITECTURAL CONTROL**

**Section 1. Improvement and Structures.** No building, fence, wall, or other structure shall be commenced, erected or maintained upon the property, whether located within a Lot or within the Common Area, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color or finish and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after all of the relevant plans and specifications have been submitted to it, approval shall have been deemed granted and with this Article will be deemed to have been fully complied with, unless extreme circumstances including, but not limited to, severe storm, a flood, etc., requires an extension of time.

**Section 2. Drainage and Water Channels.** No obstruction, diversion, bridging or confining of existing channels upon, under and/or across any portion of said property through which water in time of storms or otherwise naturally flows or through which water has been caused to flow artificially shall be made by any person in such manner as to cause damage to any property. The Architectural Committee may determine that a new channel or a diverted, bridged or reconstructed existing channel is adequate to carry the amount of storm and other water liable to flow therein, and may approve the same; provided.

## **ARTICLE VII**

### **PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Townhouses upon the Property and placed on the dividing line between the Lots shall constitute a party wall; and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party

walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

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

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

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

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

## **ARTICLE VIII**

### **MAINTENANCE**

**Section 1. Owner's Responsibility.** The Owner of any Lot shall maintain, repair and restore at his cost that portion of any Lot owned by him, including the exterior of any building or any other improvement erected on such Lot. In the event that an Owner erects a fence, shrubbery or other barrier separating the front, side or rear yard of his Lot from the Common Area, or causes to be placed three or more objects upon his yard,

such as, but not limited to, chaises, picnic tables, barbecues, shrubs or trees, such Owner shall in addition maintain at his cost the front, side and rear yard of any Lot owned by him, including the obligation to cut, trim and maintain his front, side and rear yard lawn and shrub or other plantings thereon. It shall be the responsibility of each owner, resident or lessee to keep sidewalks and passageways located on his respective Lot free from litter and debris and same shall be removed as soon as practicable. In the event such Owner shall fail to discharge his aforesaid obligations in a manner satisfactory to the Board of Directors of the Association, the Association, after: (1) notice to such Owner, (2) giving such Owner an opportunity to be heard; and (3) approval by two-thirds (2/3) vote of its Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and maintain, repair and restore such portion of said Lot, including the right to cut, trim and maintain said front, side and rear yard lawn, shrub or other planting thereon. The cost of same when performed by the Association shall be added to and become a part of the assessment to which such Lot is subject. Each Owner specifically consents and agrees to this provision, recognizing that proper maintenance of all Lots is important to protect the value of other Lots within the Property.

**Section 2. Association's Obligations.** The Association shall maintain, repair and restore all of the Common Area and shall cut, trim and maintain the grass and shrubs located on the rear, front and side yards of all Lots except as set forth in Article VIII, Section 1, above. The Association shall also maintain, repair and restore any structure or facilities on the Common Area for the common use and benefits of its members, including all sidewalks, paved automobile parking areas and paved streets and driveways within the Common Area, and including the obligation to cut, trim and maintain all lawns, shrubs and other plantings within the Common Area. The Association shall also maintain all vehicular parking designations within the Common Area. The cost of same shall be paid by the Association from the aforesaid assessments and charges referred to in Article IV hereof.

## **ARTICLE IX**

### **USE RESTRICTIONS**

**Section 1. Residential Use.** The property is hereby restricted to residential dwellings for residential use except for such portion of the Common Area which shall be

set aside for the construction and use of recreational facilities. No professional, business or commercial activity of any sort shall be conducted on any Lot, including, but not limited to legal or medical services, hair dressing, and related beauty parlor service, music or dancing lessons, and child care centers.

**Section 2. Construction.** All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property and no subsequent buildings or structures other than a Townhouse shall be constructed; provided, however, that the Association may construct buildings on the Common Area. No structures of a temporary character, trailer, van, motor home, basements, tent, shack, garage, barn or other outbuilding shall be used on any portion of the Property at any time as a residence either temporarily or permanently.

**Section 3. Compliance with Laws.** No use shall be made of any Lot or Townhouse which violates any laws, ordinances or regulations of any governmental body having jurisdiction or which constitutes a fire or health hazard.

**Section 4. Insurance.** No use shall be made of any Lot or Townhouse, or any objects kept therein, which shall increase the premium rates for insurance maintained by the Association upon all Common Areas as hereinabove provided for, or of insurance maintained by any other Lot Owner.

**Section 5. Lots** Each Lot is a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

**Section 6. Loud Noises Prohibited.** No loud or objectionable noises or obnoxious odors shall emanate from any Townhouse or Lot which may be a nuisance or annoyance to other Owners or occupants.

**Section 7. Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of the Lots. Only dogs, cats or other household pets such as, but not limited to, gerbils, birds, etc., which always remain inside the owners' house, may be kept provided that they are not kept, bred or maintained for any commercial purpose, subject to regulation by the Bylaws of the Association as they may exist from time to time.

**Section 8. Signs.** No advertising signs (including without limitation) billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the

property, except "For Rent" or "For Sale" signs and political signs (during normal election periods) may be placed in the windows of units. Seasonal decorations may be put up when season begins. All allowed signs and decorations must be in good taste and removed immediately after the event ends, nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Townhouse or any resident thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of the Property. No owner may place any sign or offensive objects within his townhouse that is visible through any window or glass doors of the townhouse from the exterior.

**Section 9. Storage.** All equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Owners and streets. All rubbish, trash or garbage shall be regularly removed from the Lots and Common Areas and shall not be allowed to accumulate thereon. No clotheslines shall be allowed either in the patio areas or upon any other portion of the Property.

**Section 10. Planting.** Except in the individual patio areas appurtenant to a Townhouse, no planting or gardening shall be done. No fences, hedges or walls shall be erected or maintained upon the Lots and Common Area except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representative. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of Delwood Estates, Phase I, and is necessary for the protection of the Owners.

**Section 11. Maintenance of Townhouses.** Maintenance, upkeep, and repairs of any patio areas, screens and screen doors, exterior door and window fixtures and of all other parts of each Townhouse shall be the sole responsibility of the Owner of that Townhouse and shall not be in any manner the responsibility of the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Townhouses pursuant to Article VIII, Section 1, shall be taken by the Board of Directors of the Association or by its duly delegated representative.

**Section 12. Duty to Maintain Utilities.** All fixtures and equipment installed within a Townhouse, commencing at a point where the utility lines, pipes, wire, conduits, or systems enter the exterior walls of a Townhouse, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhouse or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.

**Section 13. Duty to Rebuild After Casualty.** Unless 50% or more of the Townhouses in Delwood Estates, Phase 1, are rendered uninhabitable for a period of more than sixty (60) days by a common casualty, each Lot Owner shall have the duty to put his Townhouse into as good repair as before any casualty that may have occurred, subject to Article VI. This obligation is absolute and is for the benefit of every other Lot Owners.

**Section 14. Antennas.** No exterior television or radio antennas or communications antennas or satellite discs (dishes) of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Property, nor upon any structure situated upon the Property other than an aerial for a master antenna system approved by the Association, should any such master system or systems be utilized and require any such exterior antenna.

**Section 15. No Transient Rentals.** The respective Lots shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the Owners of the respective Lots shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the Bylaws and such rules and regulations as may be issued and amended from time to time by the Board of Directors.

**Section 16. Use of Vehicles.** Motor vehicles shall not be allowed on bicycle or pedestrian trails. Motor vehicles using private streets and parking areas must be properly licensed and inspected, if required by the State; and drivers must have valid

operators licenses. Horses shall not be permitted on bicycle, pedestrian trails, or streets. Boats, mobile homes, trailers, trucks, campers, and like vehicles shall be parked or stored only in parking areas specially designated by the Association. The Association may prohibit any go-cart, ATV, motorcycle, or motorized bicycle from using the Common Area if in the opinion of the Board of Directors of the Association, such prohibition shall be in the best interests of the Community.

**Section 17. Inoperative Vehicles.** Inoperative or unlicensed cars, trucks, or other vehicles shall not be parked or stored on streets or in townhouse parking areas. Such vehicles will be towed away and stored at the owner's expense. No residents or others, may perform mechanical or repair work, change oil, or remove major parts such as, but not limited to, radiators, engines, etc., on any vehicle inside the Delwood Estates complex.

**Section 19. Rights of Others.** Each occupant of a Townhouse shall use the Common Areas in such a manner as shall not abridge the equal rights of the other Owners and occupants to the use and enjoyment thereof.

## **ARTICLE X**

### **ABATING AND ENJOINING VIOLATIONS BY MEMBERS, RESIDENTS OR LESSEES**

The violation of any of the Use Restrictions above or of any Rule or Regulation adopted by the Board of Directors, or the breach of any provision of the Bylaws of this Declaration, shall give the Board the right, in addition to any other rights set forth elsewhere: (a) to enter the property in which or as to which, such violation or breach exists and to summarily abate and remove at the expense of the member, resident, or lessee at fault, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of such breach.

## **ARTICLE XI**

### **EASEMENTS**

**Section 1. Easements for Encroachments.** Each Townhouse and the Common Area shall be subject to an easement for encroachments created by construction, settling

and overhangs, as originally designed or constructed. A valid easement for the encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure containing two or more Townhouses is partially or totally destroyed, and then rebuilt, the Owners of the Townhouses so affected agree that minor encroachments of parts of the adjacent Townhouses or Common Areas due to construction shall be permitted and that a valid easement for the encroachment and the maintenance thereof shall exist.

**Section 2. Utility and Service Easements.** There is hereby created a blanket easement upon, across, over and under all of the Property for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the Property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Townhouses. An easement is further granted to all police, fire protection, ambulance and all similar persons to enter upon the streets and Common Area in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, and other utilities may be installed or relocated on the Property except as approved by the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors of the Association, shall have the right to grant such easement on the Property without conflicting with the terms hereof. The easements provided for in this Article XI shall in no way affect any other recorded easement on the Property.

The Association specifically accepts the duty to install, replace, repair and maintain all utilities including, but not limited to water, sewer, gas, telephone and electricity and master television antenna system. The Association recognizes that there shall be no obligation or duty on the part of the municipality of the City of Panama City for the purpose of installing, replacing, repairing and maintaining such utilities beyond the contact of the City's main system. Said contact being on 19th Street.



### **Section 3. Underground Electric Service**

**\*\* OFFICIAL RECORDS \*\***  
**BOOK: 1661 PAGE: 1914**

A. Underground electric service shall be available to all Townhouses and to the recreation building constructed on the Common Area, and the metering equipment shall be located on the exterior surface of the wall at a point to be designated by the utility company. The utility company furnishing the service shall have a five (5) foot wide easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service on the Townhouse structure.

B. Easements for the underground service may be crossed by driveways and walkways provided previous arrangements are made with the utility company furnishing electric service. Such easements for the underground service shall be kept clear of all other improvements, including buildings, patios, or other pavings, other than crossing walkways or driveways, and either Association nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to shrubbery, trees, flowers, or other improvements of the Owner located on the land covered by the easements.

## **ARTICLE XII**

### **COMMON TAXES**

In the event that any taxing authority having jurisdiction over the Property shall levy or assess any Tax or Special Assessment against the Common Areas, then such tax or special assessment shall be separately levied and collected as a special assessment by the Association against all of the Owners of all Lots. Such special assessment by the Association shall be separately identified by the Association and when so designated and identified shall be and constitute a lien prior to all mortgages, deeds of trust and encumbrances upon any Lot, regardless of the date of the attachment or recording of such mortgage, deed of trust, or other encumbrance, to the same extent as though such Tax or Special Assessment had been separately levied by the taxing authority upon each Lot.

**ARTICLE XIII**

**ROAD AND PARKING AREAS**

**Section 1. Plot Plan.** Attached hereto and made a part hereof as Exhibit A is a plot plan of the Lots and Common Area (herein referred to as the "Plot Plan"), being the same lands described in plat of Delwood Estates, Phase One, a Townhouse Subdivision, according to plat thereof recorded in Plat Book 12, pages 3 et seq, of the current public records of Bay County, Florida. The Plot Plan has shown thereon the Blocks and the planned interior road system for the Property.

**Section 2. Owner's Easements of Enjoyment and Use.** Every Owner and his guests, servants and tenants, shall have (1) a right and non-exclusive easement of enjoyment over, upon and across the interior road system as shown on the Plot Plan which shall be appurtenant to and shall pass with title to every Lot and (2) a perpetual non-exclusive easement for ingress, egress, access and regress to and from the respective Lots and Townhouses located thereon over the interior road system shown on the Plot Plan and within the Common Area. All vehicular traffic, except as hereinafter provided, shall be limited only to such interior road system, and not to other areas of the Common Area. Nothing herein contained shall be deemed to prohibit emergency, repair and maintenance vehicles from using and driving upon any other parts of the Common Area when such use is needed for emergency, maintenance and repair purposes.

**ARTICLE XIV**

**REPAIR AND REPLACEMENT RESERVE**

The Board of Directors of the Association may, but are not required, to obtain from members contributions to capital on a regular basis, which contributions, if any, will be used to establish a replacement and repair reserve. Such contributions to capital, if assessed by the Board of Directors, shall be conclusively deemed to be a common expense. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, The United States of America. The replacement reserve may be expended only for the purpose of effecting the replacement and repair of the common elements and equipment of the Association as designated by the Board of Directors

utilizing prescribed corporate accounting procedures. The amounts required to be allocated to the replacement reserve may be reduced, by appropriate resolution of the Board of Directors, upon the accumulation in such replacement reserve of a sum equal to the full replacement value of the items required for repair and replacement. Full replacement value shall be annually determined by the Board of Directors for casualty insurance purposes. Under no circumstances may the replacement reserve be commingled with any other funds or used for any purpose other than that for which it was established. The replacement reserve shall be specifically allocated to specific capital improvements and a separate sub-reserve shall be established in the manner provided above for such improvements, including by way of illustration, paved roads, paved sidewalks, re-roofing the recreation building, and resurfacing the tennis court.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provision of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation 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 3. Amendment.** The Covenants and Restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded in the Bay County Courthouse to be considered legal and binding.

**Section 4. Annexation to Additional Property.**

By Members.

Annexation of additional real property by Members shall require the assent of two-third (2/3) of the Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of the Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No subsequent meeting shall be held more than 60 days following the preceding meeting. The event that two-thirds (2/3) of the Membership are not present in person or by proxy, Members not present may give their written consent to the action taken thereat.

**Section 5. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed without the written consent of Members.

IN WITNESS WHEREOF, the undersigned, being the Association herein, has hereunto set its hand and seal this 10<sup>th</sup> day of SEPT., 1996.

Signed, sealed and delivered  
in the presence of:

Cora Mae Etienne  
Dean R. Holder

Delwood Estates Community Association, Inc.

By: Ann McMin  
President

Attest: Larry B. Bishop  
Secretary  
(Corporate Seal)

State of Florida    )  
County of BAY    ) SS

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of SEPTEMBER, 1996, by ANN MC MINN + LAURIE B. BISHOP of DELWOOD ESTATES COMMUNITY ASSOCIATION, INC., a FLORIDA corporation, on behalf of the corporation.

DRIVERS LIC. SHOWN AS I.D.

Dean R. Holder  
Notary Public, State of Florida at Large  
My Commission Expires

RCD Sep 30 1996 04:13pm  
HAROLD BAZZEL, CLERK

DEAN R. HOLDER  
Notary Public - State of Florida  
My Commission Expires March 21, 1997  
Commission No. 270597