

DECLARATION OF COVENANTS AND RESTRICTIONS

The Townhomes At The Oceans,
A Subdivision located in
Volusia County, Florida
And

NOTICE OF PROVISIONS OF
THE TOWNHOMES AT THE OCEANS HOMEOWNER'S ASSOCIATION, INC.

THIS DECLARATION is made this 15th day of July, 1987, by BELLEMEAD DEVELOPMENT CORPORATION, a Delaware corporation authorized to transact business in the State of Florida (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the record owner in fee simple absolute of certain real property located in Volusia County, Florida, more particularly described in Exhibit "A-a", being: All of the Townhomes at the Oceans, a Subdivision, as shown on plat recorded in Map Book H1, Pages 163 and 164, of the Public Records of Volusia County, Florida, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, Declarant intends to develop said property as a planned residential community of single family attached housing consisting of multiple townhouse buildings and with each dwelling unit being situated on an individual platted residential lot; and

WHEREAS, Declarant desires to minimize deterioration in the appearance of the residences and of the development as a whole, and to minimize deterioration in the stability and other physical conditions of the multiple townhouse building residences in particular; and

WHEREAS, there is a need to specify and impose covenants, and to grant necessary easements for the proper use of the overall development, and to provide for the effective administration of the common property in the overall development; and

WHEREAS, the Declarant has caused to be incorporated in Florida a non-profit corporation under the name The Townhomes at the Oceans Homeowner's Association, Inc., which has been formed to manage the common property, collect assessments, and generally provide for the orderly enjoyment of The Townhomes at the Oceans; and

WHEREAS, Declarant is the record owner in fee simple absolute of certain other real property located in Volusia County, Florida, more particularly described in Exhibit "A-2" attached hereto and made a part hereof (Additional Property) and if conditions permit intends to develop it as an additional part of The Townhomes at the Oceans; and

WHEREAS, Declarant desires to provide a method whereby portions of the Additional Property may become committed to the provisions of this Declaration (such portions of the Additional Property together with the property described in Exhibit "A-1" to be described as the "Committed Property").

NOW THEREFORE, this Declaration is made, filed and recorded by the Declarant so that from the effective date hereof, the real property described hereinabove is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, used, mortgaged or otherwise encumbered subject to the covenants, restrictions, conditions, easements, assessments, affirmative obligations, and liens (all hereinafter sometimes referred to as the "Covenants") hereinafter set forth. This Declaration shall become effective on the date it is recorded in the Public Records of Volusia County, Florida.

These Covenants and Restrictions are set forth in the following Articles:

	<u>Page</u>
ARTICLE I - Definitions	3
ARTICLE II - Restrictive Covenants	4
ARTICLE III - Use of Common Areas	10
ARTICLE IV - Homeowner's Association – General Provisions	11
ARTICLE V - Homeowner's Association – Maintenance Assessment	18
ARTICLE VI - Amendment and Termination	23
ARTICLE VII - Covenants Against Partition and Separate Transfer Of Membership Rights	23
ARTICLE VIII - Covenants for Benefit of Mortgagees	24
ARTICLE IX - Covenants to Run With Land	25
ARTICLE X - Miscellaneous Provisions	25
ARTICLE XI - Additional Property	26

ARTICLE I
DEFINITIONS

The following words and terms when used in this Declaration and any supplemental Declaration shall have the following meanings, unless the context shall clearly indicate otherwise:

- (a) "Architectural Review Committee" shall mean a committee appointed by the Declarant in accordance with Section 2.2.
- (b) "Association" shall mean The Townhomes at the Oceans Homeowner's Association, Inc., a Florida corporation not for profit, and its successors and assigns.
- (c) "Board" shall mean the Board of Directors of the Association.
- (d) "Building" shall mean any structure having a roof supported by columns or walls for the housing or enclosure of persons or chattels, and shall include any contiguous group of dwelling units connected by party walls.
- (e) "City" shall mean the City of Daytona Beach Shores, Florida.
- (f) "Common Property" shall mean any and all real and personal property and easements and other interest therein, together with the facilities located thereon, now or hereafter owned by the Association for the common use and enjoyment of the owners. Common Property does not include those portions of air conditioning systems serving only a single unit which are located on Common Property.
- (g) "Committed Property" means those portions of the real Estate described in Exhibits "A-1" and "A-2" which become committed to the land use provisions and other benefits, burdens, restrictions, covenants and provisions contained in this Declaration.
- (h) "Declarant" shall mean Bellemead Development Corporation, its successors and assigns.
- (i) "Driveway/Garage/Entrance Areas" shall mean real property designated on the plats as Driveway/Garage Entrance, owned by a unit owner.
- (j) "Dwelling Unit" or "Unit" shall mean an improved parcel of ground designated for use as a single family residence.

- (k) "Family" shall mean one or more persons related by blood, adoption or marriage living and cooking together as a single housekeeping unit, exclusive of household servants. Two (2) persons living and cooking together as a single housekeeping unit, though not related by blood, adoption or marriage, shall be deemed to constitute a family for purposes of this Declaration.
- (l) "Lot" or "Lots" shall mean and refer to any plot or parcel of land shown upon any recorded plat for the entire property or portion thereof, intended for use as a site for a single family residential dwelling unit, along with any improvement constructed thereon.
- (m) "Member" shall mean a member of the Association and shall include any owner of a vest upon acquiring ownership of a unit and shall terminated upon transfer of said ownership.
- (n) "Occupant" shall mean any occupant of a dwelling unit, who shall be either the owner or any one who, to the exclusion of and with the permission of the owner, holds possession of a dwelling unit.
- (o) "Owner" shall mean and refer to the record title holder, whether one or more persons, to any "Lot" or "Dwelling Unit" which is a part of the property. Every "Owner" shall automatically be a member of the Association.
- (p) "Party Wall" shall mean the entire wall, all or any portion of which is used for support or as fire wall protection, situated on the boundary line of adjoining lots or dwelling units.
- (q) "Subdivision" shall mean The Townhomes at the Oceans and any additions, as recorded in the Public Records of Volusia County, Florida.
- (r) "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors of the Association, as the same may be amended from time to time.

ARTICLE II
RESTRICTIVE COVENANTS

Section 2.1. General. The Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete use restrictions and rules and regulations applicable to the units and the common property. This authority shall include, but shall not be limited to, the right to limit the type and size and to set the maximum and minimum speeds of vehicles within the community. The Association shall also have the authority to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the community. Such regulations and use restrictions shall be binding upon all owners and occupants until and unless overruled, cancelled, or modified in a regular or special meeting of the vote of Class "A" members holding a majority of the total votes in the Association and by the vote of the Class "B" member, so long as such membership shall exist.

Section 2.2. No unit constructed in the subdivision shall be used for any purpose except for a single family residential dwelling. The term “residential” is intended to prohibit any commercial use, including

professional office use, of any portion of any dwelling. No building or structure shall be erected, altered, placed or permitted to remain on any lot except those approved by the Architectural Review Committee as hereinafter provided.

Section 2.3. The Architectural Review Committee shall be composed of not less than three (3) nor more than five (5) persons. The members of the original committee shall be appointed by the Declarant. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the original Architectural Review Committee, the Declarant shall promptly appoint a successor. The membership, rules of procedure and duties of the original committee shall be prescribed by and may from time to time, be changed or modified by the Declarant. When the Declarant deems the circumstances appropriate, but not later than the date upon which Class B membership shall cease as provided in Section 4.7 of this Declaration, it shall cause control of the Architectural Review Committee to be turned over to the Board. The Board shall then appoint the membership of the permanent Architectural Review Committee which shall assume the duties and perform the functions as set forth in this Declaration. After turnover of control is completed, any and all appeals from actions of the Architectural Review Committee shall be heard and decided by the Board. The Board has the option at any time to disband the Architectural Review Committee and to assume its duties and responsibilities.

Section 2.4. No building or structure shall be erected, placed, altered or permitted to remain on any lot unless and until the builder or owner files with the Architectural Review Committee a request for an approval to build accompanied by the floor plan, elevation and abbreviated specifications (including exterior material and colors) for the construction of such building or structure and such plans and other material have been reviewed and approved by the Architectural Review committee, and an Approval to Build is issued as the proposed building or structure (including plans and specifications for same) as to the quality of workmanship and materials, the harmony of the external design, color and appearance, the location of the building or structure with existing buildings or structures, the location of the building or structure with respect to topography, vegetation and the finished grade or elevation of the lot, and any other relevant considerations which are based on acceptable standards of planning, zoning, and construction, including considerations based exclusively on aesthetic factors. Declarant need not obtain such approval for any lots owned by it.

No trees over three inches in diameter measured three feet above the grounds shall be killed, cut down or removed without the written approval of the Architectural Review Committee.

Section 2.5. The Architectural Review Committee shall indicate its approval or disapproval of matters required to be acted upon by a written instrument filed with the Declarant, or the Board following turnover of control by Declarant, and served personally or by certified mail upon the owner and all interested parties, identifying the proposed building or structure and, if the same is disapproved, the reasons for such disapproval. Approval by the Architectural Review Committee does not warrant the design of the structure approved. The decision of the Architectural Review Committee may be appealed in writing within ten (10) days after the receipt of the decision by the owner. The appeal shall be to the Declarant, or the Board following turnover. A decision on such appeal, either approval or disapproval of the decision of the Architectural Review Committee, shall be rendered by the Declarant or the Board within two weeks after filing of the appeal. The action of the Declarant or the Board shall be final. If the Architectural Review Committee fails or refuses to approve or disapprove a request for an Approval to Build within thirty (30) days after the application or request, complete with floor plan, elevation and abbreviated specifications (including exterior material and colors), has been received by the committee, then it shall be conclusively presumed, as to all owners and interested persons, that the plans and other material have been approved as submitted.

Section 2.6. The Architectural Review Committee shall, upon the conveyance by Declarant of the first lot to an owner or builder, or as soon thereafter as is feasible, adopt general rules of procedure, forms to be used, and guidelines for interpreting the covenants contained in this Declaration, including but not limited to, rules to regulate animals, signs, storage and use of machinery, garbage containers, trash containers, and planting, maintenance and removal of vegetation on the property.

Section 2.7. The areas included within the lot line of each individual lot, but not included within the dwelling unit constructed on such lot (such areas being hereafter referred to as "Grounds"), shall be used only for normal and customary lawn and/or patio and/or driveway purposes. Any portions of the grounds which are not included within the area originally covered by the original construction driveway/garage entrance, any original construction enclosed concrete front entryway inside security gate, and any original construction concrete rear patio or porch (which shall be similar to the illustration shown on the recorded plat of the Subdivision and shall be shown on any plat of survey delivered to the Purchases at the time of original conveyance by Declarant), shall be treated by the owner and the Association as if they are a part of adjacent or proximate common property owned by the Association. The Association shall have the exclusive right to regulate the use of such portion of portions of the grounds, so long as such regulation is consistent with the restrictions placed upon adjacent or proximate common property. In order to effectuate this use restriction and power of regulation the portions of the grounds which are not included within the area originally covered by the original construction driveway/garage entrance, any original

construction concrete front entryway inside security gate, and any original construction concrete rear patio or porch are hereby subjected to a blanket easement of access and use in favor of the Association.

No structure, including an addition to a dwelling unit, shall be constructed or placed on the grounds without the written approval of the Architectural Review Committee as described in Section 2.2 above, except; that the Declarant need not obtain such approval for any lots owned by it. The

term "structure" as used herein shall include, but is not limited to fences, barbecue grills, patios, recreation facilities such as basketball courts or goals, shuffleboard courts, other type courts, and lawn decorative objects such as statues, bird baths, etc.

Section 2.8. No structure of a temporary nature or character, including, but not limited to, a trailer, house trailer, mobile home, camper, tent, shack, shed, barn, or other similar structure or vehicle, shall be used or permitted to remain on any lot as a storage facility or residence, or other living quarters whether temporary or permanent, except those used as temporary construction and sales offices during construction by Declarant or by a contractor or builder so authorized.

Section 2.9. No trucks or commercial vehicles (except during any period of approved construction), 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 the lots or common property, except in approved areas designated by the Association. This prohibition against parking shall not apply to temporary parking of trucks or commercial vehicles for repair services, pick-up, delivery and other commercial services, and shall not apply to business or commercial automobiles or to panel or pick-up trucks with not over $\frac{3}{4}$ ton capacity when such vehicles are used as personal transportation by the owner or occupant of a dwelling.

Section 2.10. No livestock, poultry or fowl, or other type of animal shall be raised, bred or kept on any lot, except that dogs, cats and other usual household pets may be kept provided they are not kept or bred for commercial purposes. The keeping of dogs, cats and other household pets will be subject to rules adopted by the Association. No lot owner shall engage in any activity which is or may become a nuisance or an annoyance to the neighborhood.

Section 2.11. No outdoor clothes drying activity shall be conducted on any of the lots.

Section 2.12. No sign of any kind shall be erected, permitted to remain on or displayed to public view on or from any lot, except a sign which has been approved by the Board. The Board may approve a sign giving the name of the occupant of the residence located on a lot or may approve a sign advertising the premises for sale or rent.

Section 2.13. No obnoxious or offensive activity shall be conducted or permitted to exist upon any lot, nor shall anything be done or permitted to exist on any lot that may be or may become an annoyance or a private or public nuisance.

Section 2.14. No lot shall be used or maintained for dumping or for the discharge of rubbish, trash, garbage, or other solid waste material. All lots shall be kept free of an accumulation of rubbish, trash, garbage, or other

solid waste materials, and free of unsightly weeds and underbrush. No incinerator or other fixed equipment shall be used for the collection, storage or disposal of waste material.

Section 2.15. All garbage containers and trash containers shall be kept in the garage or other unit interior areas except on the day of collection. On garbage and trash collection days, the garbage and trash in appropriate containers shall be moved to the edge of the access driveway adjacent to the unit driveway.

Section 2.16. Easements for the installation and maintenance of utilities and stormwater retention and drainage facilities are created as shown and described on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, change the direction of flow of drainage in the easements or obstruct or retard the flow of water drainage in the easement unless authorized in writing by the proper authorities, such as a city, county or state agency. The easement area of each lot and all improvements in it shall be maintained continuously by the association, except where a public authority, governmental agency, or utility company is responsible for such maintenance.

Section 2.17. A franchise cable television system is authorized to operate and to make a reasonable charge to each unit for the service. Service shall be by underground cable and an easement shall exist in order to allow the installation and service of such antenna system to each unit. Outdoor antennas for individual dwelling units for television or radio are not permitted.

Section 2.18. No wall or fence other than those included in the original construction shall be erected, placed, altered, maintained, enlarged, or permitted to remain on any lot unless and until the height, type of construction and materials to be used and the location thereof have been approved by the Architectural Review Committee in accordance with the procedure set forth in Section 2.3 hereof.

Section 2.19. No septic tank, drainfield, mobile home storage tank, or other similar container shall be permitted to exist on any lot.

Section 2.20. No parking area or driveway shall be constructed, maintained, altered or permitted to exist on any lot except in the areas specified for such use on the recorded subdivision plat. All parking areas must be constructed and maintained in accordance with the directives issued by the Architectural Review Committee.

Section 2.21. The owner or owners of each lot or dwelling unit agrees to maintain in full force and effect a policy of insurance against loss by fire, with extended coverage, including vandalism, malicious mischief and fire liability coverage on the improvements on said lot, or on said dwelling unit, with full replacement cost coverage. All proceeds thereof shall be used to

Promptly repair or replace any damage to or destruction of improvements to their original condition. In the event of damage to a dwelling unit, if there is no insurance on the dwelling or the insurance on the dwelling is not sufficient to repair or replace the roof, party walls, exterior walls, windows and doors, including trim, to their original condition, then it shall be the duty of the Association to fully repair or replace the exterior of the building and to provide the additional funds necessary to fully repair or replace the roof, party walls, exterior walls, windows and doors, including trim, to their original condition and shall assess the cost thereof against the unit or lot and its owner which shall be a lien on the lot, as provided in this Declaration, and the Association shall collect the same as in the case of other assessments. Each such policy shall name the holder of any mortgage on the unit covered by the policy as a loss payee as the interest of such mortgagee may appear. Unless prohibited by law, the Association shall be named as an additional insured in each policy as its interest may appear. Each policy shall provide for at least ten (10) days advance notice to the mortgagee, if any, and to the Association of the lapse or termination of such insurance. The Association shall maintain a policy of public liability insurance covering the access driveways and all property owned by the Association with such limits as may be determined by the Board of Directors.

Section 2.22. There is hereby created and established a blanket easement upon, across, over, through, and under the above described real property for ingress, egress, installation, replacement, building maintenance and repair, lawn maintenance, grass cutting, shrubbery, trimming, tree trimming, sprinkling, fertilizing, spraying, and maintenance of utility and service lines and systems including but not limited to, drainage, water, sewer, gas, telephone, electricity, television cable or communication lines and systems. This easement shall in no way affect any other recorded easements on said premises. The Association through its Board of Directors is hereby vested with the authority to grant permits, licenses, and easements over the common property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the development.

Section 2.23. For a period of three (3) years after the date of conveyance of the first lot, the Declarant reserves a blanket easement and right on, over and under the ground within the

subdivision to make corrective changes in order to maintain drainage for the property and to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut trees, bushes or shrubbery, grade the soil, or to take any other similar corrective action reasonably necessary to accomplish such purpose. Following such work, the Declarant shall restore the affected property to its original condition as nearly as practicable. The Declarant shall give reasonable notice of its intent to take such corrective action to all affected owners, unless in the opinion of the Declarant an emergency exists in which case such notice is excused.

Section 2.24. Each unit will be provided with a uniform mail box by the Declarant for the receipt of mail addressed to the unit. All mailboxes will be located on common property. Maintenance and replacement of the mail box shall be the responsibility of the Association.

Section 2.25. Easement for Encroachment and Overhang: If any portion of any structure erected by the Declarant, or by Declarant's successor developer, including a building foundation, a boundary line wall, a party wall, or any portion of an air conditioning system serving a single dwelling unit is located, protrudes, or extends across the boundary of a lot upon which the structure is erected and over or on an adjoining lot or common property, the building foundation, structure, boundary line wall, party wall or air conditioning equipment, shall not be deemed a prohibited encroachment upon the adjoining lands. If there is a protrusion, the landowner of the property over which the protrusion extends shall be deemed to have granted a perpetual easement, appurtenant to the lot from which the protrusion extends, to the owner of the protruding structure for the continuing use and maintenance of the building foundation, structure, party wall, boundary line wall or air conditioning equipment, including the replacement thereof.

ARTICLE III

USE OF COMMON AREAS

Section 3.1. The common property, as hereinabove specifically described, shown on the plat of The Townhomes at the Oceans, shall be, and the same is hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the owners or occupants of lots and dwelling units lying within The Townhomes at the Oceans as hereinabove described, for the use of such owners or occupants and the use of their immediate families, guests, lessees, invitees, and other similarly situated, for all proper and normal residential purposes, for the furnishing of services and facilities for which the same are reasonably intended, and for the quiet enjoyment

of said owners. The common property may not be sold by the Association and has no value except for use to the lot owners. The use value of the common property is part of the value of each unit.

Section 3.2. By accepting any instrument of conveyance or by taking possession or occupancy of any dwelling unit or lot, each such person does agree to abide by and comply with the Declaration and its exhibits and all rules and regulations promulgated by the Association, the Board or its committees now in effect or which may hereinafter be adopted, it being understood that such compliance is necessary for the orderly enjoyment of all common property and facilities now existing or which may hereafter be established.

Section 3.3. The common property and any other property of the Association shall be transferred to the Association at or prior to the time the majority of the Board of Directors of the Association are elected by the unit owners other than the Declarant.

ARTICLE IV

HOMEOWNER'S ASSOCIATION – GENERAL PROVISIONS

Section 4.1. To effectively provide for the administration of the common property by the owners of lots or dwelling units in The Townhomes at the Oceans, a non-profit corporation, The Townhomes at the Oceans Homeowner's Association, Inc., a non-profit Florida corporation, has been created. A copy of the Articles of Incorporation of The Townhomes at the Oceans Homeowner's Association, Inc., is attached hereto as Exhibit C. The Association shall own, operate, manage and maintain the common areas, enforce the restrictions and covenants contained herein, the By-Laws of the Association and the Rules and Regulations adopted by the Association, and shall perform all acts necessary and incident to such duties, all in accordance with the provisions of this Declaration and the Articles of Incorporation and By-Laws of said Association. A copy of the By-Laws of The Townhomes at the Oceans Homeowner's Association, Inc., is attached hereto as Exhibit D.

Section 4.2. The Association shall maintain and keep in good repair the common property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements including mailboxes situated on the common property. The Association is not responsible for maintenance of any portion of an air conditioning system serving a single dwelling unit which may be located on common property. The Association shall maintain and keep in good repair all landscaping grounds areas within the boundaries of units, except for landscaping, if any contained within patio areas. The Association shall maintain and keep in good repair all paved or concrete walkways, driveways, parking areas and patios, even though located partially or wholly within the boundaries of a unit. The Association shall maintain and keep in good repair

all water and sewer pipes or facilities which serve more than one (1) unit, whether located within or without a unit's boundaries.

The Association shall provide exterior maintenance upon unit improvements as follows: paint, stain, repair, replace, and care for roof surfaces and roof systems, gutters, downspouts, chimneys, garage doors and, with the exception of entry doors, glass and their appurtenant hardware, all exterior building surfaces.

The Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all owners.

The Association shall maintain and keep the street lights in operation and shall pay for the electric power required to operate them. Said items of maintenance are declared to be operating expenses and the Association is obligated to make and collect assessments sufficient to pay for said items of maintenance as part of the annual regular assessment.

Section 4.3. The owner or owners of each lot or dwelling unit shall be responsible for the maintenance and repair of the windows and doors excluding garage doors. The roof of each building is a common roof shared by all of the units in each building. The exterior of the building is designed to appear as one building, and is painted as one building. In order to preserve the aesthetic value and to provide maintenance and protection for each unit owner in each building, the following covenants are provided:

4.3.a. Party Wall Covenants. Each owner of a unit agrees with the owner of each adjoining unit or units with respect to the party wall between such adjoining units as follows:

- A. The party wall between their units shall be kept in a good state of maintenance and repair and the cost of maintenance of said wall over and above the total proceeds of all insurance coverage attributable thereto shall be borne equally by the owners of the adjoining units served by the wall upon which maintenance or repair is required.
- B. No change or alterations shall be made in said wall that shall weaken it in any way or interfere with the respective parties use thereof as a party wall. No alterations, etc., shall be made in any party wall without the written consent of the adjoining owner and of any person, firm or corporation holding any lien, mortgage, or other encumbrance upon any lot upon which any portion of the party wall to be altered is located.
- C. In the event that it shall be necessary at any time to repair or rebuild said wall or any portion thereof as constructed, the cost of such repairing and/or rebuilding and

thereafter maintaining such wall over and above the total proceeds of all insurance coverages attributable thereto shall be borne equally by the owners of the adjoining units served by the wall upon which maintenance or repair is required.

- D. This agreement shall be perpetual or for so long as the building now constructed shall stand and shall be a covenant running with the land, provided, however, that nothing herein shall be construed as a conveyance by the respective parties in fee of the land upon which said party wall is located.
- E. Notwithstanding any other provisions of this Section, an owner who by his negligence or willful act causes the party wall to be damaged or exposed to the elements shall bear the whole cost of repairing same and furnishing protection against such elements.

4.3.b. Roof Covenants. Each owner of a unit agrees that the roof of each building is a common roof shared by all the units in the building and each owner of a unit agrees with the owners of each other unit in the same building as follows:

- A. The roof of the building shall be kept in a state of maintenance and repair and the cost of the maintenance of the roof over and above the total proceeds of all insurance coverages attributable thereto shall be borne by the Association.
- B. In the event it shall be necessary at any time to repair, rebuild or replace the roof or any portion thereof, the cost of such repairing, rebuilding or replacement over and above the total proceeds of all insurance coverages attributable thereto shall be borne by the Association.
- C. This agreement shall be perpetual or for so long as the building now constructed shall stand and shall be a covenant running with the land.
- D. Notwithstanding any other provisions of this Section, an owner who by his negligent or willful act causes the roof to be damaged or any of the units in the building to be exposed to the elements through the roof, that owner shall bear the whole cost of repair and of furnishing protection against such elements.

Section 4.3.c. Building Exterior Maintenance and Painting Covenants. The exterior of each building is to be painted and maintained as one building, including window casings and framing, but not window glass, doors, trim, and exterior wall and foundation surfaces, and each owner of a unit agrees with the owners of each other unit in the same building as follows:

- A. The cost of painting and maintaining the exterior of the building over and above the total proceeds of all insurance coverages attributable thereto shall be borne by the Association.
- B. The exterior of each building shall be painted at least every four (4) years or more frequently, if in the opinion of the Board the condition of the exterior is in a deteriorating condition or its appearance detracts from the neighborhood.
- C. The exterior of each unit in the same building shall be painted the exact same basic color and the trim on each unit in the same building shall be in a consistent trim color and trim pattern. The paint on each unit in the same building shall be of the same texture and finish.
- D. The color or finish of the exterior or trim of any building may be changed only with the consent of the Board. A majority of the unit owners in a building may petition the board for permission to change the color submitting therewith samples of the color and finish proposed. The board shall act on such petition within forty-five (45) days of its receipt.

Section 4.3.d. Provisions Cumulative. The provisions of Sections 4.3.a., b., and c. do not supersede the provisions of Section 2.21 of this Declaration but are a supplement thereto.

Section 4.3.e. Enforcement of the Party Wall, Roof and Exterior Maintenance and Painting Covenants. The Board shall investigate any cases brought to its attention in which a party wall or roof is in need of maintenance, repair or rebuilding or a building is in need of exterior painting, maintenance or repair or in which there is a violation of the provisions of this Section. In the event the Board finds that a party wall or roof is in need of maintenance, repair or a building is in need of maintenance, repair, or is otherwise not in compliance with this Section, the Board shall send all of the unit owners in the building and also the occupants if occupied by other than the unit owner, a Notice of Non-Compliance or Violation specifically describing the non-compliance or violation and giving not less than ten (10) days nor more than forty-five days within which the non-compliance or violation shall be corrected. The Board, for good cause shown, may extend the forty-five (45) days. In the event thereof, the Board shall

notify the unit owners, and, if appropriate, the occupants, that the Board will hold a hearing on the non-compliance or violation stating the date, place and time of the hearing. At the hearing all interested parties may be heard. A record will be made of the proceedings and ruling of the Board. In the event the Board shall determine that there is, no violation or non-compliance, the matter shall be dismissed; however, if the Board shall determine that there is a violation or non-compliance then the Board may:

- A. Issue an order that the violation or non-compliance be corrected within a reasonable time certain (not less than ten (10) days), and if not corrected within the time set then may impose a fine assessed against the units in the building involved in an amount not to exceed \$150.00, and each day the violation continues after the day set for action may be considered to be a separate violation and the fine reimposed each day until the matter is corrected;
- B. Issue an order that corrective action be taken and specifying a reasonable time certain within which corrective action shall be taken and if not taken within the time set, direct that the Association shall, through its agents and employees, enter upon the lot and unit as necessary and to accomplish the maintenance, repair or other corrective action as ordered and the cost thereof

plus a ten (10%) percent service charge shall be added to and become part of the assessment to which the unit is subject.

- C. Issue an order that a structure or a portion of a structure which constitutes the violation or non-compliance be removed within a reasonable time certain and in the event that the same is not removed within the time set, direct that the Association remove the structure at the expense of the Association and impose an assessment against the unit involved in the amount of the cost of the removal plus a ten (10%) percent service charge; or
- D. The Board may take such other action as it deems appropriate.

Section 4.3.f. Emergency Action By Board. Notwithstanding any other provision of this Section, the Board may in the event of an emergency in which a unit or units are being damaged or in imminent peril of being damaged by the elements, electrical wiring or plumbing failure, fire, hurricane, falling trees or limbs or other casualty, the Board may take immediate action and through its agents and employees enter upon the lots and units as necessary and to

take such action as it deems appropriate to preserve the units and the property of the unit owners.

Section 4.4. The owner or owners of each lot or dwelling unit in The Townhomes at the Oceans shall automatically become members of the Association upon his, her or their acquisition of an ownership interest in the title to any lot or dwelling unit. The membership of each owner shall terminate automatically at the time that such owner is divested of such ownership interest or title to such lot or dwelling unit, regardless of the means by which such ownership may have been divested. No person, corporation or other business entity holding any lien, mortgage or other encumbrance upon any lot or dwelling unit shall be entitled, by virtue of such lien, mortgage, or other encumbrance, to membership in the Association or to any of the rights and privileges, or be charged with any of the duties of such membership; provided, however, that nothing contained herein shall be construed as prohibiting membership in the Association of a person, corporation, or other business entity which acquires title to a lot or dwelling unit either by foreclosure or by voluntary conveyance from a mortgagor, his successor or assign.

Section 4.5. In the administration, operation and management of the Association, the common property and the enforcement of these covenants and restrictions, the Board of Directors of the Association shall have and is hereby granted the full power and authority to adopt reasonable rules and regulations pertaining to the use of the common elements, common property and recreation facilities and the conduct of unit owners and their guests to maintain peace and harmony within the Subdivision, and shall have the full power and authority to enforce all the provisions of this Declaration, the By-Laws and Rules and Regulations adopted pursuant to these documents, to levy

and collect assessments in accordance herewith, and to adopt, promulgate, and enforce such rules and regulations governing the use and enjoyment of the common property and the Administration of the aforesaid covenants and restrictions as the Board may from time to time deem appropriate and in the best interests of the Association. The Board of Directors of the Association is hereby granted the authority to appoint committees of unit owners for the purpose of regulating the Association, which committees shall include Architectural Review as provided in Section 2.2, traffic control, budget, elections and a review committee for the purpose of enforcing the terms of these documents, the Rules and Regulations of the Association, and the Rules and Regulations of the committees, all in accordance with the procedure contained in the By-Laws. The authority hereby granted includes the power for the review committee to punish for violations including the authority to issue reprimands, recommend to the Board of Directors fines which may be imposed by the Board of Directors of the Association in such reasonable sum as it may deem appropriate but not to exceed any limitation on the amount of such fine set by the statutes of the State of Florida, and may be assessed only after written notice to the unit owner and other parties and an opportunity for

them to appear and be heard before the Directors, which fines when imposed by the Board are an assessment against the lot involved and its owners and shall be enforced as other assessments, and to take other lawful and appropriate action.

Section 4.6. As long as the Declaration has rights and obligations under this Declaration, the Association shall not use its resources in opposition to the Declarant's Plan of Development.

Section 4.7. 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 a lot which is subject to assessment.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person owns an interest in a lot, all such persons shall be members. The vote for such lot shall be exercised by one owner designated in writing by all owners, but in no event shall more than one vote be cast for any lot. The voting right of a Class A member is automatically suspended if any assessment against the lot owned shall be delinquent and unpaid.

Class B. The Class B Member(s) shall be the Declarant and it shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership based on a maximum of 81 memberships;
- (b) Three years following the date of conveyance of the first lot or dwelling unit by Declarant.
- (c) In the event Declarant shall sign and record a "Statement" as provided in Article XI of this Declaration, declaring that the property described therein is no longer uncommitted property, then the maximum number of memberships shall be the total number of lots or dwelling units in the committed property.

Section 4.8 It shall be the responsibility of the Association to see that liability and hazard insurance on all common property owned or maintained by the Association, directors and officers liability insurance and fidelity bonding of those officers and directors handling funds of the Association is obtained in effect at all times. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and shall provide

that all proceeds covering property losses shall be paid to the Association. Such insurance policies shall contain a provision that the proceeds covering property losses shall be paid over to the Association only after the Association has provided proof that the fidelity bonding of the officers and directors of the Association has been increased by the amount of such proceeds as provided in Section 5.7 of this Declaration. The duty of the Association shall be to receive and hold the insurance proceeds and other funds that are paid to it in trust for the purposes elsewhere stated in this instrument and for the benefit of the unit owners. In the event of any casualty or loss to any of the common property, the association shall receive all insurance proceeds therefrom for the benefit of itself and the lot owners, which proceeds shall be used to the extent needed solely to reconstruct, replace or repair promptly the facilities so damaged. Any excess insurance proceeds not required for the aforesaid reconstruction, replacement or repairs shall be transferred to the general funds of the Association.

Section 4.9. In the administration, operation and management of the common property and the enforcement of these Covenants and Restrictions, the Association shall have and is hereby granted full power and authority to enforce all the provisions of this Declaration to levy and collect assessments in accordance herewith, and to adopt, promulgate, and enforce such rules and regulations governing the use and enjoyment of the common property and the administration of the aforesaid Covenants and Restrictions as the Board may from time to time deem appropriate and in the best interests of the Association.

Section 4.10. Owners are required to provide the Association with information regarding the name and address of all mortgagees and the Association shall maintain a Registry of Owners and Mortgagees. Owners shall report any changes in this information to the Association. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the individual owner of any obligation under this Declaration which is not cured within sixty (60) days.

Section 4.11 Any agreement for professional management of the common property or recreational areas or any other contract providing for services of the Declarant, sponsor or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee by written notice delivered no less than ninety (90) days prior to the termination date.

Section 4.12 The Association may dedicate or transfer all or any part of the common property to any public agency, 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 has been signed by two-thirds (2/3) of each class of members agreeing to such dedication, sale or transfer.

The Association may also acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

Section 4.13. A quorum for any duly constituted meeting of the members of the Homeowner's Association shall be a majority of all the lots represented in person or by proxy. If a quorum is not present at any meeting when first called, the Board may call a second meeting at which the quorum of the first meeting shall be reduced by fifty percent (50%). The notice for the first called meeting may include the calling of and date for the second called meeting.

ARTICLE V

HOMEOWNER'S ASSOCIATION – MAINTENANCE ASSESSMENT

Section 5.1 The owner of each and every lot and dwelling unit shall by acceptance of a deed or other instrument of conveyance therefor, whether or not it shall be so expressed in any such deed or instrument, be deemed to covenant and agree to all the terms, covenants, conditions, restrictions, and other provisions of this Declaration and to promptly pay to the Association or its successors or assigns the following:

- (a) All annual assessments or charges, and
- (b) All special assessments or charges for the purposes set forth herein.

All assessments or charges shall be fixed, established and levied by the Board of Directors, and collected from time to time as hereinafter provided. Assessments against the owners shall be made for the calendar year annually in advance on or before December 1st preceding the year for which the assessment is made and shall be payable in twelve (12) equal monthly installments on the 1st day of each month commencing January 1 of the year for which the assessment is made commencing January 1988. If an annual assessment is not

made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and monthly installment on such assessments shall be due upon each installment payment date until changed by an amended assessment. The annual and special assessments (together with such interest thereon and the cost of collection including reasonable attorneys' fees as hereinafter provided) shall be a charge and continuing lien on the real property and improvements thereon against which such assessment is made. Each assessment (together with interest thereon and the cost of collection including reasonable attorneys' fees) shall be the personal obligation of the person who was the "owner" of such real property at the time when the assessment first became due and payable. Such personal

obligation shall not pass to successors in title unless assumed by them. In the case of joint ownership of a residential lot or dwelling unit, each owner shall be individually, jointly and severally liable for the entire amount of the assessment and the aforesaid interest, collection costs, and attorneys' fees.

Section 5.2. The assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, and operation of the common areas and properties and to provide services which the Association is authorized to provide including, but not limited to, the payment of taxes, governmental assessments and insurance thereon, construction of improvements, repairs, replacements, payment of the cost of labor, services equipment, materials, management, and other supervision necessary to carry out the authorized functions of the Association, and for the payment of principal, interest and other charges connected with loans made to or assumed by the Association for the purpose of enabling the Association to perform its authorized functions. A deferred maintenance reserve account shall be established out of the regular assessments for common expenses for the purpose of resurfacing the access driveways and designated driveway areas in the Subdivision and for the replacement, maintenance and repair of the building roofs, and other exterior surfaces as well as any other improvements to the common property. The amount of the deferred maintenance reserve shall be fixed, levied and collected based upon the estimated life and estimated replacement cost calculated on accepted engineering principles for resurfacing the access driveways, and designated driveway areas and roofs and any other improvements. No initiation fee may be changed to members as a pre-condition to use of the common facilities. The Association shall not be bound in setting assessments in subsequent years by the amount of the assessments set in earlier years. Notwithstanding any of the provisions of this Article, in no event shall the assessments and other revenues collected by the Association exceed its expenses and reasonable reserves to an extent which would violate the Association's non-profit status.

Each unit purchases shall at the time of closing pay to the Association the sum of \$100.00 as a contribution to working capital in order to establish a working capital fund. Said payment is not to be considered as an advance payment of regular assessments. The Developer shall have the responsibility to see that said working capital fund is maintained for the use and benefit of the Association and is turned over to the Association at the time control thereof passes to the unit owners other than Developer.

Section 5.3. The maximum assessment to be paid monthly to the Association shall not exceed \$50.00 per dwelling unit per month during the period ending January 1, 1990, unless the unit owners other than the Declarant shall have elected a majority of the Board of Directors of the Association prior to the adoption of the budget for such earlier period. Developer agrees to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners. Thereafter the Board, without concurrence of the members, may increase the maximum annual assessment above

that of the previous year by ten (10%) percent, or by the percentage by which the Index of Consumer Prices as published monthly by the Federal Reserve System, increased during the preceding assessment year, whichever percentage is greater.

If an increase in the maximum annual assessments greater than that specified in the preceding paragraph is required, such an increase shall be approved by at least two-thirds (2/3) of the voting members in attendance in person or by proxy at a duly constituted meeting called for that purpose.

The assessments provided for herein shall not be levied or enforced against the Declarant or any lot owned by Declarant during the period of time Declarant shall fund any deficiency between assessments collected and actual expenses of the Association. After the end of the annual budget year during which the Class B membership is converted to Class A membership, the assessments provided for herein shall be levied and enforced against the Declarant or any lot owned by Declarant. The obligation of the Declarant set forth above shall be secured by a lien upon all property owned by Declarant in The Townhomes at the Oceans. Said lien shall be of the same nature, force and effect as the lien set forth in Section 5.9 below.

A written notice of the proposed annual assessment shall be sent to every record owner each year at least thirty (30) days in advance of the annual assessment period.

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 property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a duly constituted meeting called for this purpose. The annual assessment and special assessments described in this paragraph shall be assessed equally against each lot.

Special assessments may be made against individual units. In the event of unit owner shall fail to perform any repairs, maintenance or upkeep which are the responsibility of the unit owners as provided in this Declaration, the By-Laws or the Rules and Regulations of the Association, the Association may give the unit owner ten (10) days written notice to perform the repair, maintenance or upkeep so required and in the event the unit owner shall fail

To do so, the Association may at its expense cause such repair, maintenance or upkeep to be performed and shall levy an assessment against the unit for the cost thereof plus a ten (10%) percent service charge.

Section 5.4. Nothing herein shall prohibit the owner of a dwelling unit from leasing or renting such dwelling unit. In the event the dwelling unit is leased or rented, however, the owner retains the right to vote, and is prohibited from transferring the right to vote to the tenant. On the first day of each tenancy the owner of any dwelling unit which has been leased or rented shall certify in writing to the secretary of the Association the names of all tenants and persons authorized to reside in the dwelling unit as of that date and the length of the tenancy.

Section 5.5. Assessments which are not paid on or before the date the same shall become due shall be delinquent, and such delinquent assessment shall bear interest at twelve (12%) percent per annum until it is paid in full. In addition to the accrual of interest, when an assessment becomes delinquent in payment, the Association may file a Claim of Lien against the lot and dwelling unit to perfect the lien for such assessment. There shall be no exemption from the payment of any assessment or installment thereof by waiver of the use of the common property by abandonment of the lot or dwelling unit, by extended absence from the Subdivision or by or for any other reason, except as provided in Section 5.3.

Section 5.6. Upon written request of an owner, or a mortgagee, the Association shall furnish to a mortgagee or to one designated in the request of the owner such as a prospective purchaser or prospective mortgagee or other authorized person, a statement of the current status of the assessments on such owner's lot or dwelling unit. When executed by the treasurer or other designated officer of the Association, the statement shall be binding on the Association, and any purchaser or mortgagee may rely upon such statement as an accurate statement of the status of assessments.

Section 5.7. All revenue collected by the Association shall be segregated, held and used as the property of the Association, and such revenue may be applied by the Association, at the discretion of the Board, towards the payment of any expenses of operation and maintenance of the common property. Revenue collected by the Association from an owner of a lot or dwelling unit may be commingled with monies collected from other owners. Fidelity bonding shall be obtained on all officers and directors of the Association who control or disburse funds of the Association in an amount to be determined by the Board of Directors and in the event insurance proceeds are payable to the Association as provided in Section 4.8 of this Declaration, then such fidelity bonding shall be increased by the amount of the insurance proceeds and maintained at such amount until such proceeds have been disbursed in the manner elsewhere stated in this instrument at which time the Board of Directors may again determine the amount of the fidelity.

Section 5.8. Although all funds and other assets of the Association, and any profits derived therefrom, shall be held for the benefit of the members of

the Association, no member of said Association shall have the right to assign, encumber, hypothecate, pledge or in any manner transfer his membership or interest in or to said funds

and assets, except as an appurtenance to his lot or dwelling unit. When an owner of a lot or dwelling unit shall cease to be a member of the Association by reason of the divestment of ownership of said lot or dwelling unit, by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association.

Section 5.9. Recognizing that proper management and operation of the common property (including improvements thereto) and carrying out the duties of the Association as set forth in this Declaration, the By-Laws and Rules and Regulations of the Association result in benefit to all members of the Association, the Association is hereby granted a lien upon all real property within The Townhomes at the Oceans and the interests of each member of the Association in the common property and improvements thereto, to secure the prompt payment of each and every assessment made and levied in accordance with this Declaration and each owner shall be liable for, and the lien created herein shall secure, the full amount of said assessment, and the costs and expenses, including attorneys' fees, which may be incurred by the Association in enforcing this lien or the provisions of this Declaration.

Section 5.10. The lien herein established may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. The lien granted herein shall also secure the payment of or advances for taxes and payments on superior mortgages, liens, or encumbrances, insurance premiums and other sums which may be required to be advanced by the Association in order to protect its lien, and the Association shall be entitled to interest computed on the basis of advances made from time to time at the highest legal rate of interest on all such advances.

Section 5.11. All persons, firms, corporations, and other business entities, which shall acquire, by whatever means, any interest in the ownership of a lot or dwelling unit, or who may be given or who may acquire a mortgage, lien or other encumbrance on a lot or dwelling unit are hereby placed on notice of the lien rights granted to the Association under this Declaration, and all such persons, firms, corporations, and other business entities shall acquire their rights, title and interest in and to said lot or dwelling unit expressly subject to the lien rights provided herein.

Section 5.12. The lien created pursuant to this Declaration shall be effective from and after the recording in the Public Records of Volusia County, Florida, of a "Claim of Lien" stating the description of the property encumbered by the lien, the name of the record owner of the property, the amounts due and the date when the same become due. The lien shall continue in effect until all sums secured by the lien have been fully paid. The claim of Lien may include assessments which are due and payable when the claim is made and recorded, plus interest, collection costs, attorneys' fees and advances such as those to pay taxes and prior encumbrances and interest thereon, all as provided herein. The Claim of Lien shall be in the name of and under the seal of the Association and shall be signed and verified by the president or vice

president of the Association. When full payment of all sums secured by such lien is made, the Claim of Lien shall be satisfied of record by the Association. A Claim of Lien filed by the Association shall be subordinate to the lien of any mortgage or any Claim of Lien if the said mortgage or Claim of Lien is recorded prior to the recording of the Association's Claim of Lien.

ARTICLE VI

AMENDMENT AND TERMINATION

The Board of Directors of The Townhomes at the Oceans Homeowner's Association, Inc., by a two-thirds (2/3) vote may, by special resolution, propose changes or amendments to these Covenants and Restrictions. In addition, the record owners of fifty-one (51%) percent of lots or dwelling units by written petition, may purpose that changes be made to these Covenants and Restrictions. Such proposed amendment shall be presented at the next regular or at a special meeting of the members duly called. Approval requires the affirmative vote of at least seventy-five (75%) percent of the then record owners of lots or dwelling units. Until such time as the Class B membership is converted to Class A membership, Declarant reserves the right to amend, modify, alter or annual any of the provisions of this Declaration and its Exhibits without prior notice to the other owners. The right to amend shall include the right to remove part of the real property from the operation of the Covenants and Restrictions by amending the legal description of the property subject to the Declaration. No amendment to this Declaration shall be effective which shall impair or prejudice the rights of the Developer, the Association or of any institutional mortgagee under this Declaration or its exhibits. Immediately after approval by members or amendment by Declarant, a certificate executed in the name of the Association by its president and secretary containing the approved amendment shall be recorded in the Public Records of Volusia County, Florida.

Notwithstanding the foregoing paragraphs of this Article, no amendment which modifies or terminates the obligation of the Association to maintain the common property shall be effective without the approval of the city in which the Subdivision is located.

ARTICLE VII

COVENANTS AGAINST PARTITION AND SEPARATE TRANSFER OF MEMBERSHIP RIGHTS

Recognizing that the full use and enjoyment of any lot or dwelling unit within The Townhomes at the Oceans is dependent upon the use and enjoyment of the common property and the improvements made thereto, and that it is in the best interest of all of the owners that membership rights to use the common property be retained by the owners of lots and dwelling

units, it is therefore declared that the membership rights of any owner to use the common property or areas shall remain undivided, and such owners shall have no right at law or

equity to seek partition or severance of such membership rights to use the common property. In addition, there shall exist no right to transfer the membership rights to use the common property in any other manner than as an appurtenance to and in the same transaction with, a transfer of title to or lease of the lot or dwelling unit provided, however, that nothing herein shall preclude a conveyance by the Declarant herein of any undivided interest in the common property to the owners of lots or dwelling units within the Subdivision for the purpose of effectuating the intent of this Declaration. Any conveyance or transfer of a lot or dwelling unit in The Townhomes at the Oceans shall include the membership rights and the use of the common property appurtenant to such unit whether or not such membership rights shall have been described or referred to in the deed by which said lot or unit is conveyed.

ARTICLE VIII

COVENANTS FOR BENEFIT OF MORTGAGEES

Section 8.1. Notice to Association. An owner who mortgages a unit shall notify the Association through its secretary of the name and address of the mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Units."

Section 8.2 Notice of Unpaid Assessments. The Association shall, upon the request of a mortgagee, report any unpaid assessment due from the owner of a unit upon which such mortgagee holds a mortgage.

Section 8.3. Availability of Information. The Association shall make available to unit owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration and all amendments, the Articles of Incorporation of the Association and its By-Laws with all amendments, all Rules and Regulations with amendments, and the books, records, accounts and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours at the Association office or under other reasonable circumstances.

Section 8.4. Financial Statements. Any holder, insurer or guarantor of an institutional mortgage or of a first mortgage is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

Section 8.5. Lender's Notices. Upon written request to the Association identifying the name and address of the holder, insurer or guarantor of a mortgage and identifying the unit covered by the mortgage, any mortgage holder, or the insurer or guarantor of a mortgage shall be entitled to timely written notice of:

- a. Any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage.
- b. Any delinquency of sixty (60) days in the payment of assessment or charges owed by the owner of any unit upon which it holds a mortgage.
- c. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- d. Any proposed action that requires the consent of a specified percentage of mortgage holders.

Section 8.6. Benefit of Mortgagees. All of the provisions of this Article VIII are for the benefit of mortgagees, may be enforced by a mortgagee and may be amended or repealed only with the written consent of all mortgagees; however, additional provisions for the benefit of mortgagees may be added without such consent.

ARTICLE IX
COVENANTS TO RUN WITH LAND

The restrictions and burdens imposed by the provisions and covenants of this Declaration shall constitute covenants running with the land, each shall constitute an equitable servitude upon the owner of each lot and dwelling unit and the appurtenant undivided interest in the common property and upon the heirs, personal representatives, successors, and assigns of each owner, and the same shall likewise be binding upon the Declarant and its successors and assigns. This Declaration shall be binding and in full force and effect for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive ten-year periods, unless an instrument, signed by ninety (90%) percent of the then record owners of the lots or dwelling units in Oceans Townhomes Subdivision is recorded prior to the expiration of the original thirty (30) year period or any successive then (10) year period containing an agreement of the said owners which alters, changes, modifies, or repeals, in whole or in part, the provisions of this Declaration, then and in that event the alteration, change, modification or repeal shall take effect upon the expiration of the period and be effective for subsequent periods unless this Declaration is repealed completely.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 10.1. The Association, the Declarant, a builder, or any owner, shall have the right to enforce, by a proceeding at law or in equity, all covenants, restrictions, reservations, liens and charges now or hereafter imposed by these Covenants and Restrictions, and any amendments thereto.

The failure of the Association to enforce any rights, privileges, covenants or conditions granted to it by these Covenants and Restrictions, or any other mentioned document, shall not constitute a waiver of its right to enforce such of these Covenants and Restrictions in the future.

Section 10.2. In the event that any part of these Covenants and Restrictions by adjudged, for any reason, by a court of competent jurisdiction to be null and void, such judgment shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the Covenants and Restrictions not so expressly held to be void and these covenants shall continue unimpaired and in full force and effect.

Section 10.3. As long as the Declarant has rights and obligations under this Declaration, the Homeowner's Association may not use its resources to interfere with the Declarant's Plan of Development.

ARTICLE XI

ADDITIONAL PROPERTY

Section 11.1. Plan for Development. Declarant intends to develop the Additional Property (Exhibit "A-2") as part of The Townhomes at the Oceans in accordance with applicable zoning and land use regulations. The actual boundaries for any portion of the Additional Property to become committed to the provisions of this Declaration, will be set forth and determined only by the recordation in the public records of Volusia County of a plat for the portion of the Additional Property shown thereon. The commitment to boundary determination and commitment to use shall occur only upon the same being specified in a plat or replat and in a supplement to or amendment of this Declaration, a Replat Declaration or an Amended Declaration. Developer reserves the right not to commit any Additional Property to the provisions of this Declaration and/or to make such use of all Additional Property as shall be permitted by applicable zoning and land use regulations. Hence, notwithstanding anything to the contrary herein contained or contained in any of The Townhomes at the Oceans documents, only Committed Property shall be subject to the Townhomes at the Oceans documents.

Section 11.2. Committing Additional Property. Declarant may from time to time determine to commit all or any part of the Additional Property to the land use provisions and other benefits, burdens, restrictions, covenants and provisions contained in this Declaration. This determination shall be made in the sole discretion of Declarant. Such and each commitment of a portion of Additional Property to this Declaration shall be made by filing a plat or replat of the property to be committed and be a recitation to that effect in a supplement

or amendment to this Declaration, a Replat Declaration or an Amended Declaration, which shall include a legal description of the portion of Additional Property then becoming Committed Property. On the recording thereof, the portion of Additional Property in question shall thereupon be Committed Property as fully as though originally designated herein as Committed Property. Should Declarant determine at any time that all or any part of the Additional Property shall not become Committed Property, Declarant shall execute a statement ("Statement") to that effect containing a legal description of such property. Upon the recording of this Statement among the

Public records of Volusia County, the property described therein shall no longer be Additional Property and may be developed and/or used by Developer for any purposes consistent with applicable zoning and land use regulations.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal the day and year first above written.

SIGNATURES

COMMITTED PROPERTY

EXHIBIT A-1

ADDITIONAL PROPERTY

EXHIBIT A-2

PLAT MAP

PLAT MAP