

BY-LAWS  
OF  
THE TOWNHOMES AT THE OCEANS HOMEOWNER'S ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

The name of the corporation is THE TOWNHOMES AT THE OCEANS HOMEOWNER'S ASSOCIATION, INC., hereinafter referred to as the "Association". The principal officer of the corporation shall be located at 2990 South Atlantic Avenue, Daytona Beach Shores, Florida. Meetings of members and directors may be held at such places as may be designated by the Board of Directors of the Association from time to time.

ARTICLE II

SEAL

The corporate seal of the Association shall be in circular form and shall bear the name of the Association and such other language as is required by laws of the State of Florida.

ARTICLE III

DEFINITIONS

All terms and provisions in these By-Laws shall have the same meaning as in the Declaration of Covenants and Restrictions, The Townhomes at the Oceans and its Exhibits ("Declaration") executed by Bellemead Development Corporation, recorded in the Public Records of Volusia County, Florida. Bellemead Development Corporation is hereinafter referred to as "Declarant".

ARTICLE IV

PURPOSES

This Association is not organized for pecuniary gain or profit to the members thereof. The specific purposes for which it is formed are to provide for management, maintenance, preservation and architectural control of the lots and common areas within that certain tract of real property known as The Townhomes at the Oceans, located in the City of Daytona Beach shores, Volusia County, Florida, as further described in the Declaration, and to promote the health, safety and welfare of the owners and residents within the above-described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association and for this purpose to:

- (a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Articles of Incorporation, the Declaration, and all supplementary declarations thereto, applicable to the property and recorded in the Public Records of Volusia County, Florida and as the same may be amended from time to time.
- (b) fix, levy, collect and enforce payment by any lawful means, of all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association.
- (c) 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 property in connection with the affairs of the Association.
- (d) pledge, sell, lease, operate, maintain, transfer or otherwise dispose of any or all of its personal property.
- (e) mortgage any or all of the real property and improvements thereon owned by it, subject to the approval of two-thirds (2/3) of each class of members.
- (f) dedicate, sell or transfer all or any part of the real property and improvements thereon owned by it subject to the approval of two-thirds (2/3) of each class of members, except as otherwise provided in the Declaration.
- (g) participate in any mergers and/or consolidations with other corporations authorized by the laws of the State of Florida.
- (h) have all powers authorized by law and to have and exercise all powers necessary or convenient to effect any or all purposes for which the corporation is organized.

## ARTICLE V

### MEMBERSHIP AND VOTING

Section 1. Membership in the Association and voting rights of members shall be as set forth in the Articles of Incorporation of The Townhomes at the Oceans Homeowner's Association, Inc., and the Declaration of Covenants and Restrictions of The Townhomes at the Oceans. The owner of each lot shall be liable for all assessments against said lot as provided in the Declaration.

Section 2. Declarant shall be a member of the Association so long as it holds title to any lots in The Townhomes at the Oceans.

Section 3. Each member authorized or designated to vote may in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease, according to its terms, after one (1) year or upon the member's disqualification to vote, whichever occurs sooner.

## ARTICLE VI

### MEETING OF MEMBERS

Section 1. The Association shall have an annual meeting of its members. The first annual meeting of the members shall be held in the year in which the Class B membership is converted to Class A membership. The annual meeting shall be held between December 1 and December 15 on the day and at the time determined by the Board of Directors of the Association.

Section 2. Special meetings of the members may be called at any time by the President or by a majority of the Board of Directors, or upon the written request of one-fourth (1/4) of the members of the Association who are entitled to vote.

Section 3. Except as otherwise provided in these By-Laws, the presence at a meeting of members and proxies entitled to cast a majority of the votes of each class of members shall constitute a quorum. If, however, such quorum shall not be present or represented at a duly called meeting, the board may call a second meeting at which the quorum required for the first meeting shall be reduced by fifty percent (50%). The notice for the first meeting may include notice for the second meeting with the time and date for the second called meeting.

Section 4. Any notice required by the Declaration, supplementary declarations thereto Articles of Incorporation of the Association, or by these By-Laws shall be provided in writing by personal delivery or by mailing a copy of such notice, first class postage prepaid, to the member at the address last appearing on the books of the Association or supplied by such member for the purpose of notice.

Notice of meetings for a referendum, where action by vote of the members for or against a matter is required, shall be provided to members at least thirty (30) days and no more than sixty (60) days prior to such meeting. The notice shall include the specific matter or matters to be voted upon. Notice of all other meetings of members shall be provided to members at least fifteen (15) days before such meeting.

Notice of meetings shall specify the place, day and hour. In the case of a special meeting, the notice shall state the purpose or purposes for which the meeting is called.

ARTICLE VII  
BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 1. The affairs of this Association shall be managed by a Board of Directors of three (3) persons initially, however, at such time as the Class B membership is converted to Class A membership, the Board of Directors shall be increased to five (5) persons.

Section 2. The Board of Directors shall have the powers necessary for the proper administration of the affairs of the Association and it may do all acts and things which are not specifically reserved to be exercised and done by the members in the Declaration, Articles of Incorporation or these By-Laws.

Section 3. In addition to the duties imposed by these By-Laws, the Declaration or by resolution of the Association, the Board of Directors shall be responsible for the following:

- (a) to call special meetings of the members whenever it deems necessary; and it shall call a meeting at any time upon written request of twenty-five percent (25%) of the voting membership.
- (b) to appoint and remove at its pleasure all officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, officer or director of the Association in any capacity.
- (c) to establish, levy, assess, and collect the assessments or charges created or authorized by the Declaration and/or supplementary declarations.
- (d) to adopt and then distribute to the unit owners the rules and regulations governing the use of the property as needed to protect the health, comfort, safety and welfare of the members.
- (e) to exercise for the Association, all powers, duties and authority vested in or delegated to this Association, except those reserved to the members.
- (f) to make and collect assessments authorized by the Declaration and to lease, maintain, repair and replace the common elements.
- (g) to grant or contract for easements, licenses and other privileges and duties on behalf of the members.

- (h) to cause to be kept a complete record of all its acts and corporate affairs and to present a summary thereof to the members at the annual meeting of the members or at any special meeting when such is requested in writing by twenty-five percent (25%) of the voting members.
- (i) to maintain a Book of Resolutions containing all resolutions of the Board of Directors for all rules and regulations adopted by the Board of Directors from time to time.
- (j) to maintain accounting records according to accepted accounting practices, which shall be available and open to inspection by members or their mortgagees during normal business hours.
- (k) to supervise all officers, agents and employees of the Association and see that their duties are properly performed.
- (l) to issue, upon the request of a member, a certificate stating whether or not the assessments against his unit have been paid, for which a reasonable charge may be made.
- (m) to designate depositories for Association funds, designate those officers, agents and/or employees who have authority to withdraw funds from such accounts on behalf of the Association, and cause such persons to be bonded, as it may deem appropriate.
- (n) to hold a general meeting for members for discussion of its proposed annual budget. Adoption of the annual budget shall be by an affirmative vote of a majority of directors.
- (o) by an affirmative vote of a majority of the directors, to set an annual assessment at an amount sufficient to pay the expenses of the Association and to meet the obligations imposed by the Declaration and any supplementary declarations.
- (p) to send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of the due date of the annual assessment or first installment thereof. Monthly notice will not be sent. Monthly installments are due on the first day of each month in the amount specified in the one notice.
- (q) to accelerate the payment of any assessment for the balance of the Association's fiscal year and declare the entire balance immediately due and payable in full if any installment remains unpaid thirty (30) days after the installment due date.
- (r) to take action it deems appropriate for the best interests of the Association with regard to assessments, which may include the filing of a lien against the property,

the bringing of an action at law or equity against the owner personally obligated to pay the same or to perfect, record and foreclosure a lien against the property.

- (s) to procure and maintain adequate insurance policies to protect the Association, its employees and its personal properties.
- (t) To enter into mortgage agreements and obtain capital debt financing subject to the provisions of the Declaration and Articles of Incorporation.
- (u) To appoint such committees as prescribed herein or as it otherwise deems appropriate.
- (v) To exercise their powers and duties in good faith with a view to advancing the interest of the Association, and to this end, adopt appropriate guidelines for action on matters where a potential problem may exist.

Section 4. Declarant shall be vested with the power to appoint the initial Board of Directors, who need not be members of the Association. The initial Board shall serve until the class B membership is converted to Class A membership. Vacancies in the original Board of Directors may be filled by Declarant. Subsequent to the first election of directors by the lot owners, vacancies in the Board of Directors occurring between annual meetings of the membership shall be filled by the remaining members of the Board.

At such time as the Class B membership is converted to Class A membership, or at such earlier time as Declarant may determine, the lot owners shall be entitled to elect a new Board of Directors consisting of five (5) members, and the Board of Directors shall call a special meeting of the members for that purpose. At such meeting after the election of the Board of Directors, Declarant shall deliver to the Association contributions to working capital required in the Purchase Agreement, less pre-paid items which shall be pro-rated.

Section 5. Candidates for election to the Board of Directors of the Association shall file a petition of candidacy with an Elections Committee to be appointed by the board at least three (3) weeks before the annual meeting. The Elections Committee shall provide all members with a ballot containing the names of all qualified candidates not less than ten (10) days before the annual meeting.

Section 6.

- (a) Election of directors shall be held at the annual meeting of the Association. Balloting shall be by secret written ballot placed in the ballot box at the meeting or delivered to the Chairman or Secretary of the Elections Committee not more than 48 hours prior to the start of the meeting.

(b) Each member entitled or designated to vote shall receive as many ballots as he has votes. Notwithstanding that a member may be entitled to several votes, he shall exercise only one (1) vote for each lot for each vacancy shown on the ballot.

(c) If a lot is owned by one (1) person, the right of the owner to vote may be established by filing with the Secretary of the Association a copy of the deed to the lot or signing and filing with the Secretary a certificate

designating the owner as the one entitled to vote. If a lot is owned by more than one person, the owner entitled to cast the vote for the lot shall be designated by a certificate signed by all of the record owners of the lot and filed with the Secretary of the Association. If a lot is owned by a partnership, the person entitled to cast the vote for the lot shall be designated by a certificate signed by all of the partners, or if a limited partnership, by the general partner, and filed with the Secretary of the Association. If a lot is owned by a corporation, the person entitled to cast the vote for the lot shall be designated by a certificate signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Association. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the unit concerned. A certificate designating the person entitled to cast the vote of a unit owned by more than one person may be revoked by any owner thereof.

Section 7. The first meeting of the first Board of Directors shall be held at such place and at such time as determined by Declarant, and no notice shall be necessary in order to legally constitute such meeting and any action taken at such meeting.

Section 8. Regular meetings of the Board of Directors shall be held at least four times a year, once each quarter, and may be held without notice, at such place and hour as may be fixed from time to time by the Board.

Section 9. Special meetings of the Board of Directors shall be held when called by an officer of the Association or by any two (2) directors after not less than three (3) days notice to each director. Notice of special meetings may be waived provided it is waived in writing by all directors.

## ARTICLE VIII

### OFFICERS

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year, or until his successor is duly elected and qualified, unless he shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and if so directed by the Board of Directors shall co-sign all checks and promissory notes.

Vice-President

- (b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

- (c) The Secretary shall record the votes and shall keep the minutes of all meetings and proceedings of the Board and of the members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of



meetings of the Board and of the members; shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Declaration, these By-Laws and by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in the Association bank accounts all funds of the Association and shall disburse such funds as

directed by the Board of Directors, shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall cooperate with the Budget Committee in its semiannual review of the financial condition of the Association; shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall work with the Budget Committee in the preparation of an annual budget and estimated statement of income and expenditures to be presented to the membership at its regular annual meeting. A copy of the proposed budget and estimated statement of income and expenses shall be delivered to each member prior to the annual meeting.

ARTICLE IX  
OBLIGATIONS OF OWNERS

Section 1. All members are obligated to pay the periodic assessments imposed by the Board of Directors to meet the expenses of the Association.

Section 2. Except as otherwise provided in the Declaration of Covenants and Restrictions, every member must perform all maintenance, upkeep and repair work within his own dwelling unit, being expressly responsible for the damages and liabilities that his failure to do so may engender.

A member shall reimburse the Association for any expenditure incurred in repairing or replacing any part of the communal facilities damaged through the fault of any agent, guest or lessee of such member, including damage to the driveway area.

Section 3. Usage of all property shall be limited to usage as described by duly adopted ordinances that are now in effect or may become in effect, in the City of Daytona Beach shores, Volusia County, Florida and further limited by the Declaration and these By-Laws.

Section 4. Conduct of members shall be governed by rules and regulations, which from time to time may be approved by the Board of Directors.

ARTICLE X  
COMMITTEES

Section 1. The Board shall appoint the committees hereinafter named and such other committees as it deems appropriate to carry out its purposes. Committees shall serve at the pleasure of the Board unless otherwise specified in the Declaration or these By-Laws.

(a) Architectural Review Committee. The duties of this committee shall be as defined in the Declaration and in these By-Laws.

Declarant, as long as it owns any lots described in the Declaration, and the Board of Directors thereafter, shall appoint not less than three (3) nor

more than five (5) persons to serve as the Architectural Review Committee of the Association. Persons appointed to the Architectural Review Committee by Declarant need not be members of the Association; however, when the directors are elected by the lot owners, members of the committee shall be lot owners.

Subsequent to the election of the directors by the lot owners, the Architectural Control Committee shall be appointed from the lot owners and shall be composed of a Chairman, who need not be a director, and a minimum of two (2) and not more than four (4) other members. A quorum for action shall be a majority of the members of the committee.

It shall be the duty of the Architectural Control Committee to regulate the external design, appearance, location and maintenance of the property and of the improvements thereon and to regulate such uses of property as permitted in the Declaration and any supplementary declaration.

In order to implement these By-Laws, the Architectural Control Committee shall formulate guidelines and procedures and submit them to the Board of Directors for approval and adoption. Such guidelines and procedures shall be considered adopted within thirty (30) days of the date submitted. The adopted guidelines and procedures shall be incorporated in the Book of Resolutions and the Architectural Control Committee shall act in accordance with such guidelines and procedures.

(b) Budget Committee. The duties of this committee shall be for the purpose of reviewing the financial condition of the Association at least semi-annually and reporting the same to the Board and recommending to the Board an annual budget.

(c) Traffic Control. The duties of this committee shall include the duty to develop and recommend to the Board for adoption rules and regulations covering the use of the streets and driveway areas and the parking of vehicles within the subdivision designed for the safety of the residents and for the preservation of the beauty and orderly appearance of the development.

- (d) Elections Committee. The duties of this committee shall include designing and duplicating ballots for each election, designating and duplicating a form of proxy for members who wish to vote by proxy, receiving and verifying the authenticity of and recording proxies, controlling the distribution of ballots, verifying, counting and tabulating all ballots and certifying the results to the meeting. The chairman may receive ballots starting 48 hours prior to elections.
- (e) The Townhomes at the Oceans Review Committee. The duties of this committee are set forth in Article XI of these By-Laws.

## ARTICLE XI

### ENFORCEMENT

Section 1. Review Committee. For the purposes of enforcing the terms and provisions of the Declaration of Covenants and Restrictions, the Articles of Incorporation of The Townhomes at the Oceans Homeowner's Association, Inc., these By-Laws and the Rules and Regulations adopted by the Board of Directors, the Townhomes at the Oceans Review Committee is hereby created and established.

a. Composition. The Townhomes at the Oceans Review Committee shall consist of five (5) members, all of whom shall be lot owners and at least one (1) of whom shall be a member of the Board of Directors of the Association. The members of the committee shall be appointed by the Board of Directors and shall serve for a term of one (1) year and thereafter until their successor is appointed. The committee shall elect from its members its own Chairman who shall preside over its meetings and its own Secretary who shall keep minutes of all proceedings of the committee.

b. Duty to Investigate. It shall be the duty of the committee to investigate any alleged violation of the terms and provisions of the Declaration of Covenants and Restrictions, the Articles of Incorporation of The Townhomes at the Oceans Homeowner's Association, Inc., these By-Laws and the Rules and Regulations adopted by the Board of Directors of the Association. Alleged violations may be brought to the committee by a complaint in writing signed by a lot owner and referred to the committee by the Board of Directors, or the committee may act upon its own motion.

c. Written Complaint. An action under this Section may be initiated by filing with the Board of Directors a written complaint signed by any member of the Association or by any officer or member of the Board of Directors. The complaint shall identify the lot and identify

the respondents as lot owner or owners and/or tenants, and shall be signed by the members of the Association making the charge or be signed by an officer of the Association or Board member in his or her official capacity if he or she is so acting. The complaint shall contain a written statement of charges set forth in ordinary and concise language describing the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. The complaint shall identify the specific provisions of the Declaration of Covenants and Restrictions, Articles of Incorporation, By-Laws or Rules and Regulations which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

d. Service of Complaint. Upon the filing of the complaint, the Board shall serve a copy thereof on the respondent by any of the following means:

(1) Personal delivery or (2) by registered or certified mail, return receipt requested, and addressed to respondent, at the address appearing on the books of the Association. Service by mailing shall be deemed delivered and effective two (2) days after such mailing in a regular depository of the United States mail. The complaint shall be accompanied by two (2) copies of a form entitled "Notice of Defense" which, when completed as hereinafter provided and the original signed by the respondent, or on behalf of the respondent and returned to the Board of Directors by personal delivery or by registered or certified mail, return receipt requested, within ten (10) days of the date the complaint was served on respondent shall constitute notice to the Board of Directors that the respondent will defend the complaint, does admit the allegations of the complaint, all or part of them, or will take other appropriate action provided for in these By-Laws. If the Notice of Defense is not received by the Board of Directors within the time provided above, the Board of Directors shall proceed as if the respondent has admitted all of the allegations of the complaint. No order adversely affecting the rights of the respondent shall be made in any case, unless the respondent shall have been served as provided herein. The matter shall then be referred to the Review Committee for hearing.

e. Notice of Hearing. Along with service of complaint, the committee shall serve a Notice of Hearing, as provided herein, on all parties at least fifteen (15) days prior to the hearing. The notice to the respondent shall be substantially in the following form but may include other information.

"You are hereby notified that a hearing will be held before The Townhomes at the Oceans Review Committee at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ upon the charges made in the complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may have a court reporter present at the hearing, may present any relevant evidence and you will be give full opportunity to cross-examine all witnesses testifying against you. You are entitled to compel the

attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors of the Association.”

If any of the parties can, within forty-eight (48) hours after receipt of notice, show good cause why they cannot attend the hearing on the date set and indicated reasonable times and dates on which they would be available, the committee may reset the time and date of hearing and promptly deliver notice of the new hearing date.

f. Notice of Defense. Service of Complaint and Notice of Hearing shall be accompanied by a Notice of Defense.

The “Notice of Defense” form shall contain substantially the following information in substantially the following form:

“TO: Board of Directors  
The Townhomes at the Oceans Homeowner’s Association, Inc.

The undersigned owner(s)/occupant(s) of Lot \_\_\_\_\_, The Townhomes at the Oceans acknowledge the receipt of complaint served on the undersigned the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and receipt of Notice of Hearing on said complaint setting a hearing thereon for \_\_\_\_\_ o’clock \_\_\_\_\_.M. on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_, Daytona Beach shores, Florida.

1. The Respondent does hereby object to the complaint because: (fill in items relied upon)

a. The complaint fails to allege facts or describe acts or omissions upon which the committee can act for the following reasons: (Explain)

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b. The complaint is so indefinite or uncertain that the Respondent cannot prepare a defense for the following reasons: (Explain)

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c. And/or the following reasons: (Explain any other reasons)

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2. The Respondent does hereby admit all of the allegations of the complaint but states by way of defense or explanation the following: ( ) Admits Allegations; ( ) Denies Allegations, check one. (Explanation):

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3. The respondent does hereby admit only the following part of the allegations: (Quote portion admitted)

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and states by way of defense or explanation the following (Explanation):

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Respondents mailing address:

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\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Respondent

**NOTE:**

Respondent must complete this form or respond in similar fashion within 10 days of receipt of the complaint. This form or other response must be served upon the Board by personal delivery or by registered or certified mail return receipt requested to the President, Vice President or Secretary of the Association.

In the event all of the allegations of the complaint are admitted the committee shall determine the appropriate action or penalty. Objections to the form or substance of the complaint shall be considered by the committee within ten (10) days of their receipt. The committee shall make its determination and notify all parties within said ten (10) day period. If the complaint is insufficient, the complaining party shall have seven (7) days within which to file an amended

complaint. The same procedures as set forth above shall be followed with respect to an amended or supplemental complaint. If it is determined by the committee that the complaint is still insufficient, then the matter shall be dismissed by the committee.

g. **Cease and Desist Orders.** The Board may, in its own discretion, issue a cease and desist order, and serve the order on the respondent with the complaint and Notice of Defense, such cease and desist order shall be substantially in the following form:

“The Board of Directors of the Townhomes at the Oceans Homeowner’s Association has received the attached complaint.

The Board hereby requests that you CEASE AND DESIST Commission of the acts or actions described in the complaint until such time as a ruling of this Board or a court of law permits.

Failure to comply with this request may result in the imposition of a penalty greater than that which would be imposed for a single violation.”

h. Amended or Supplemental Complaints. At any time prior to the hearing date, the committee may file or permit the filing of an amended or supplemental complaint. All parties shall be provided copies thereof in the manner herein provided. If the amended or supplemental complaint presents new charges, the committee shall afford the respondent a reasonable opportunity to prepare and serve his defense thereto.

i. Discovery. Upon written request to the other party, made prior to the hearing and within fifteen (15) days after service of the complaint by the committee or within ten (10) days after service of any amended or supplemental complaint, either party is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, and (2) inspect and make a copy of any statements, writings or investigative reports relevant to the subject matter of the hearing. Nothing in this Section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney’s work product. Any party claiming his request for discovery has not been complied with shall submit a petition to compel discovery to the committee. The committee shall make a determination and issue a written order setting forth the matters or parts thereof which the petitioner is entitled to discover.

j. Notarized Statements. At any time ten (10) or more days prior to a hearing or a continued hearing, a party shall mail or deliver to the opposing party a copy of any sworn statement which that party proposes to introduce in evidence, together with a cover letter identifying the one making the sworn statement and identifying the proceeding in which the

sworn statement will be offered. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the statements' author, his right to cross-examine such author is waived and the statement may be introduced in evidence, and shall be given only the same effect as hearsay evidence.

k. Constraints on the Committee. It shall be incumbent upon each member of the committee to make a determination as to whether he is able to function in a disinterested and objective manner in consideration of the case before it. Any member incapable of such objective consideration of the case shall disclose such to the committee and remove himself from the proceedings and have it so recorded in the minutes.

In any event, the respondent may challenge any member of the committee for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence and testimony at the hearing. In the event of such a challenge, the committee shall meet to determine the sufficiency of the challenge. If a majority of the committee sustains the challenge, the President shall appoint a member to replace the challenged member of the committee.

#### I. Hearing.

(1) Whenever the committee has commenced to hear the matter and a member of the committee is forced to withdraw prior to a final determination, the remaining members shall continue to hear the case and the President shall replace the withdrawing member. Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association.

(2) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses; and to rebut the evidence against him. Even if the respondent does not testify on his own behalf, he may still be called and examined as if under cross-examination.

(3) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Generally, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding.

(4) The Chairman of the committee shall serve as hearing officer and preside over the hearing. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. Generally, each principal is entitled to



make an opening statement, starting with the complainant. Then each party is entitled to produce evidence, witnesses and testimony and to cross-examine the witnesses and opposing party. Then each party is entitled to make a closing statement. Any party may waive the rights to exercise any part of this process, and the committee is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted, so long as the above rights are protected.

m. Authorized Action. At the conclusion of testimony, the committee shall deliberate the evidence. By a vote of its members the committee shall determine whether the allegations as presented constitute a violation. If the committee concludes that a violation has taken place, it may take the following action.

(1) Reprimand.

(2) Recommend to the Board of Directors the levying of a fine in such amount as may be reasonable under the circumstances but not exceed \$150.00, or such lesser maximum amount as may be set by the statutes of the State of Florida, for a single violation of the Declaration, Articles of Incorporation of the Association, these By-laws and the Rules and Regulations adopted by the Board. Each day a violation continues shall be a separate violation.

(3) Recommend to the Board of Directors the initiation of appropriate legal action.

n. Fines as Assessments. Fines recommended by the committee shall be automatically referred to the Board for review. The Board of Directors shall give written notice to the unit owner and other parties involved at least five (5) days prior to the meeting of the Board of Directors at which the matter will be heard, and shall give the unit owner and other parties involved an opportunity to appear and be heard by the Board of Directors. After allowing the respondent an opportunity to be heard the Board may dismiss the matter, and approve the fine recommended by the committee or may levy a fine in an amount which it deems reasonable under the circumstances but not to exceed the sum of \$150.00, or such lesser maximum amount as may be set by the statutes of the State of Florida for a single violation. The amount of the fine shall be an assessment against the member, levied against the lot owned by the member involved in the violation, and shall be collected in the same manner as other assessments of the Association.

o. Appeals. In the event either party is aggrieved by the decision or actions of the committee, procedural or final, the aggrieved party may appeal the decision or action within ten (10) days of the action to the Board of Directors who shall review the matter on the record and render a decision within thirty (30) days from the receipt of the record of the hearing. This appeal provision shall not apply to fines levied and assessed by the Board of Directors.

## ARTICLE XII

## AMENDMENTS

Section 1. These By-Laws may be amended, with the consent of the record owners of all mortgages, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy.

Section 2. Until such time as the unit owners are entitled to elect the Board of Directors, Bellemead Development Corporation reserves the right, with the consent of the record owners of all mortgages, to amend, modify, alter or annul any of the provisions of these By-Laws without notice.

Section 3. In no event shall an amendment which modifies or terminates the obligation of the Association to maintain common areas be effective without the express written approval of the City of Daytona Beach Shores.

Section 4. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration applicable to the Property and these By-Laws, the Declaration shall control.

## ARTICLE XIII

### INDEMNIFICATION

Each officer, director and committee member of the Association in consideration of his services as such, shall be indemnified by the Association to the full extent permitted by law against expenses and liabilities reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, to which he may be a party by reason of being or having been a director, officer or committee member of the Association. The foregoing right of indemnification shall not be exclusive of any other rights to which the director, officer, committee member or person may be entitled by law, or agreement, or vote of the members, or otherwise.

IN WITNESS WHEREOF, we being all of the directors of The Townhomes at the Oceans Homeowner's Association, Inc., have hereunto set our hands this 5<sup>th</sup> day of July, 1987.

## **SIGNATURES**

**CERTIFICATION**