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DECLARATION OF COVENANTS

AND RESTRICTIONS FOR

BLUE HERON TOWNHOMES

BLUE HERON AT AQUARINA
Plat Book 29 at Page 88

THIS DECLARATION is made this 18th day of May, 198³
by AQUARINA DEVELOPMENTS, INC., a Florida corporation (herein-
after referred to as the "Developer").

RECITALS AND DECLARATION

A. The Developer presently owns that certain Brevard County, Florida property described in Exhibit "A" hereto (the "Aquarina Lands").

B. The Developer intends to create a mixed-use community on all or portions of the Aquarina Lands pursuant to a general plan of development, and with a view to that end has recorded a Declaration of Covenants, Conditions and Restrictions for Aquarina and formed a homeowners' association called Aquarina Community Services Association, Inc.

C. The Developer's general plan of development contemplates the construction on the portion of the Aquarina Lands described in Exhibit "B" hereto (the "Blue Heron Lands"), of townhome dwellings each of which will share one or more party walls with one or more other such dwellings but will not be submitted to condominium ownership (these dwellings being hereinafter referred to as "Townhomes").

D. Recognizing that certain matters will be of unique or particular concern to the owners of Townhomes as opposed to the owners of other dwellings in the overall Aquarina community, the Developer wishes to submit certain of the Townhomes (and appurtenant lots) it has already constructed (or started constructing) to various covenants, conditions, restrictions, charges and liens at this time (separate and apart from those imposed by the Declaration of Covenants, Conditions and Restrictions for Aquarina generally).

E. In line with its wishes described above, the Developer has formed a non-profit corporation called Blue Heron Townhomes Association, Inc. to perform certain functions of common concern to the Townhome owners and to enforce the covenants, restrictions, charges and liens created by this Declaration.

NOW, THEREFORE, the Developer hereby declares that the real property described in Exhibit "B" hereto (including any and all improvements thereon), together with such additions thereto as are hereafter made pursuant to this Declaration, shall be held, conveyed, leased, mortgaged, used, occupied and improved subject to the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

REC. FEE \$	<u>193.00</u>	REC'D PAYMENT AS
DOC. ST. \$	_____	INDICATE FOR CLASS
INT. TAX \$	_____	OF INTANGIBLE & DOC
SER. CHG. \$	_____	STAMP TAXES SIGNED
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ARTICLE I

DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used herein shall have the meanings hereinafter specified:

Section 1. "Articles" shall mean the articles of incorporation of the Association (a copy of which appears as Exhibit "C" hereto), including any amendments thereto.

Section 2. "Association" shall mean Blue Heron Townhomes Association, Inc., a not-for-profit Florida corporation, and its successors and assigns.

Section 3. "Board" shall mean the Board of Directors of the Association.

Section 4. "Building" shall mean any building containing one or more Townhomes.

Section 5. "By-Laws" shall mean the By-Laws of the Association which have been adopted by the Board (a copy of which appears set forth as Exhibit "D" hereto), including any amendments thereto.

Section 6. "County" shall mean Brevard County, Florida.

Section 7. "Covenants and Restrictions" shall mean the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

Section 8. "Declaration" and "this Declaration" shall mean (and, except as otherwise provided in Section 13 of this Article, "hereto", "hereof", "hereunder", "herein" and words of similar import shall refer to) this instrument as from time to time amended, together with all Supplemental Declarations thereto.

Section 9. "Developer" shall mean Aquarina Developments, Inc., a Florida corporation, and any successor or assign of Aquarina Developments, Inc. which acquires any portion of the Blue Heron Lands from the Developer for the purpose of development and to which Aquarina Developments, Inc. specifically assigns all of the rights of the Developer hereunder by an express written assignment recorded in the County's Public Records.

Section 10. "Developer's Permittees" shall mean the Developer's officers, directors, partners, joint ventures (and the officers, directors and employees of any such corporate partner or joint venturer), employees, agents, independent contractors (including both general contractors and subcontractors), suppliers, visitors, licensees and invitees.

Section 11. "Blue Heron Lands" shall mean the property described in Exhibit "B" hereto.

Section 12. "Family" shall mean (i) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (ii) a group of not more than four (4) persons not so related who maintain a common household in a Townhome.

Section 13. "Initial Declaration" shall mean (and, when following a section, paragraph, page or exhibit designation, the

word "hereto" shall refer to) this Declaration as initially recorded in the County's Public Records.

Section 14. "Institutional Mortgage" shall mean a first mortgage on a Lot or Townhome held by an Institutional Mortgagee.

Section 15. "Institution Mortgagee" shall mean any bank, savings and loan association, insurance company, mortgage company, real estate investment trust, or agency of the United States Government; a lender generally recognized in the community as an institutional lender; if it holds a mortgage on one or more Lots, the Developer; and any assignee of a loan made by one of the foregoing to finance the purchase of a Townhome.

Section 16. "Lot" shall mean one of the 20 lots of land described in Exhibit "B" hereto and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration.

Section 17. "Management Company" shall mean a person, firm or corporation employed by the Association as its agent to assist in fulfilling or carrying out certain duties, powers or functions of the Association.

Section 18. "Master Association" shall mean Aquarina Company Services Association, Inc. and its successors and assigns; and "Master Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Aquarina and any supplemental declarations thereto.

Section 19. "Member" shall mean any person or entity holding a membership in the Association.

Section 20. "Owner" shall mean the person or persons or legal entity or entities holding fee simple interests of record to any Lot, including the Developer and sellers under executory contracts of sale for a Lot, but excluding those having such interests merely as security for the performance of an obligation and excluding purchasers under executory contracts of sale of a Lot.

Section 21. "Primary Institutional Mortgagee" shall mean the Institutional Mortgagee which at any given time owns Institutional Mortgages on more Lots than any other Institutional Mortgagee.

Section 22. "Supplemental Declaration" shall mean any instrument recorded by the Developer in the County's Public Records for the purpose of withdrawing Lots or otherwise amending or supplementing this Declaration.

Section 23. "Townhome" shall mean a dwelling (and the appurtenant garage or carport, if any) now or hereafter constructed on a Lot (as defined in Section 16 of this Article) and designed and intended for use as a single family residence.

ARTICLE II

WITHDRAWAL OF LOTS AND TOWNHOMES

Section 1. Withdrawal. Anything herein to the contrary notwithstanding, the Developer reserves the absolute right at any time to withdraw one or more Lots from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County's Public Records, provided that, to be effective,

any such Supplemental Declaration must be executed by the Developer, the Owner of the Lot sought to be withdrawn, and the holder of any Institutional Mortgage on the Lot sought to be withdrawn, and consented to by the County through the County's attorney.

ARTICLE III

THE ASSOCIATION

Section 1. Membership. The Developer and every Owner of a Lot shall be a Member of the Association. No membership in the Association shall be assignable except to the successor-in-interest of an Owner, every membership being appurtenant to and inseparable from the Member's Lot. Ownership of a Lot shall be the sole qualification for membership of a non-Developer Owner in the Association.

Section 2. Classes of Voting Membership. The Association shall have two (2) classes of voting Members as follows:

Class A. Class A Members shall originally be all Owners (with the exception of the Developer as long as there exists a Class B membership). Class A Members shall be entitled to one (1) vote for each Lot which is subject to assessment as further provided in this Declaration. The Developer shall become a Class A Member with regard to lots owned by it upon termination of its Class B membership as provided below.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote plus two (2) votes for each vote which the Class A Members as a whole are entitled to cast from time to time (by way of illustration, if at a given point in time, there were 16 Class A Members, the Class B Member would be entitled to 33 votes); provided that the Class B membership shall cease and be converted to Class A membership upon the first to occur of any of the following:

- (1) The arrival of December 31, 1986;
- (2) At least twenty (20) Townhomes have been constructed and conveyed to purchasers; or
- (3) Thirty (30) days after the Developer records an instrument in the County's Public Records evidencing the desire to terminate the Class B membership;

whereupon the Class A Members shall assume control of the Association and elect the Board.

Section 3. Vote Distribution.

(a) General Rule. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

(b) Co-Ownership. When more than one person holds such an interest or interests in any Lot (such persons being referred to in this Section as "Co-Owners"), all such Co-Owners shall be Members and may attend any meetings of the Association but only one such Co-Owner shall be entitled to exercise the vote to which the Lot is entitled. Co-Owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. If no voting Co-Owner has been

designated to vote or if a designation of a Co-Owner has been revoked, the vote for the Lot owned by Co-Owners shall be exercised as the majority of the Co-Owners of the Lot mutually agree. Unless the Board receives a written objection from a Co-Owner, it shall be presumed that the appropriate voting Co-Owner is acting with the consent of his other Co-Owners. No vote shall be cast for any Lot if the majority of the Co-Owners cannot agree upon the vote or other action. The non-voting Co-Owner or Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the By-Laws of the association, shall be binding on all Co-Owners, their successors and assigns.

(c) Corporate Ownership. 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 an appropriate officer of the corporation and filed with the Secretary of the Association.

Section 4. Merger or Consolidation. Upon a merger or consolidation of the Association with any other association organized to administer a residential community located within the Aquarina Lands, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or the properties, rights and obligations of any such association may be transferred to the Association as a surviving association. The surviving or consolidated association (whether the Association or another association) may administer, as one scheme, the Covenants and Restrictions established by this Declaration together with other covenants and restrictions established with respect to the Lots or with respect to other properties. No such merger or consolidation shall revoke, change or add to the Covenants and Restrictions or dilute the Developer's voting power with respect to matters affecting the Lots except as may be specifically provided in this Declaration. Any such merger or consolidated shall require the vote or written approval of Owners holding two-thirds (2/3) of the Class A membership voting power and of the Class B Member (if one then exists).

ARTICLE IV

ASSESSMENTS

Section 1. Covenant to Pay; Creation of Lien.

(a) Covenant to Pay. The Developer, for each Lot now or hereafter owned by it and for each Townhome now or hereafter owned by it, hereby covenants and agrees to pay the Association periodic and special assessments as hereinafter provided; and each person or entity who accepts a deed to a Lot or Townhome or who accepts title thereto as an heir or devisee is hereby deemed to have covenanted and agree to pay the Association periodic and special assessments as hereinafter provided (whether or not the covenant or agreement is expressly mentioned in the deed or other instrument by which he or it acquired title).

(b) Creation of Lien. Each periodic and special assessment provided for in this Article together with any related interest, penalties and costs of collection provided for in this Article, shall constitute a charge and continuing lien on the Lot against which the assessment is made, on the Townhome, if any,

located on that Lot and on any other improvements on that Lot that are owned (either legally or beneficially) by the Lot's Owner.

(c) Personal Liability. Each periodic and special assessment provided for in this Article together with any related interest, penalties and costs of collection, shall also constitute the personal obligation of the Owner of the property against which the assessment is made or on which the assessment constitutes or gives rise to a lien and, except as otherwise provided therein, the personal obligation of his successors and assigns. If the Owner consists of more than one person or entity, each such person or entity shall be jointly and severally liable for the aforesaid obligation.

Section 2. Purpose. The assessments imposed pursuant to this Article shall be used for the Association's operation and administration and the fulfillment of its duties hereunder.

Section 3. Commencement of Obligation. Every Owner other than the Developer shall be required to pay assessments under this Article with respect to his Lot upon acquiring title thereto. The Developer, however, shall not be required to pay any assessment under this Article on any Lot owned by it unless and until the appropriate governmental authority has issued a temporary or final certificate of occupancy (or its equivalent) authorizing occupancy of a Townhome on that Lot.

Section 4. Periodic Assessments. The Board shall fix the amount of the periodic assessments for each fiscal year of the Association (or part thereof if assessments commence on other than the first day of such fiscal year) to be levied against each Owner subject to assessment at least thirty (30) days in advance of the period covered by the assessment, and written notice of any change in the amount of the periodic assessment during that period shall be given to each Owner at least thirty (30) days in advance of the change's becoming effective. At least thirty (30) days before the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the members of the Association a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration. The assessments shall be based on a budget that includes reasonable reserves for deferred maintenance of improvements the Association is responsible hereunder for maintaining and may (but need not) include reserves for other contingencies. The Board may provide in its absolute discretion that the periodic assessments be payable either quarterly or monthly. The Board of Directors shall cause to be prepared an annual balance sheet and operating statement for each fiscal year and shall cause to be distributed a copy of each such statement to each Member and to each Institutional Mortgagee who has filed a written request for copies of the same with the Board of Directors.

Section 5. Special Assessments. Special (i.e. non-periodic) assessments may be levied by the Board (a) upon all Owners subject to periodic assessments to make up actual deficits or anticipated deficits in operating and maintenance accounts resulting from inadequate periodic assessments and (b) against any Owner individually to collect a liability of that Owner to the Association that is not common to all the other Owners or a liability of that Owner provided for in Article VI, Section 3 hereof.

Section 6. Share of Assessments. The periodic assessments provided for in Section 4 of this Article and the special

assessments provided for in clause (a) of Section 5 of this Article shall be divided evenly among the Lots subject to assessment.

Anything to the contrary herein notwithstanding, the Developer shall not be liable for any assessments, as long as the Developer pays all deficits in operation of the Association above the assessments collectible from other Owners. In calculating such deficit, only actual current expenses (other than management fees, capital expenses and reserves) shall be computed. The Developer may at any time and from time to time be relieved of all obligations to fund deficits by electing, for any assessment period or periods, to pay assessments imposed on Lots for which it is the Owner pursuant to the formula set forth above in the first paragraph of this Section 6 (except that, in any case, no assessments need be paid by the Developer for any Lot it owns until a certificate of occupancy is issued therefor).

Section 7. Association's Remedies for Non-Payment.

(a) Penalties for Delinquency. Any assessment that is unpaid for more than ten (10) days after the date it is due shall bear interest at the highest rate permitted by law from the date it is due until the date it is paid. In addition, the Owner of any Lot or Townhome with respect to which an assessment is overdue by more than thirty (30) days may be required by the Board to pay the Association a late charge equal to the amount of the delinquent installment.

(b) Enforcement of Lien. The Association may bring an action in its name to foreclose any lien on a Lot or Townhome in the manner in which mortgages on real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid periodic or special assessments with interest thereon (plus the costs and expenses mentioned in Section 7(c) of this Article) without waiving any claim of lien, provided that in either case the Association must give the delinquent Owner at least thirty (30) days' written notice of its intentions and, in the case of a foreclosure, must file a claim of lien in the County's Public Records. Upon the timely curing of any default (including the payment of fees and costs secured by the Association's lien) for which a claim of lien was filed, the Owner curing the default is entitled to have a satisfaction of lien recorded upon payment to the Association of a fee to be determined by the Association but not to exceed fifty dollars (\$50.00).

(c) Attorneys' Fees and Other Costs of Enforcement. Reasonable attorney's fees incurred by the Association or its agent incident to the collection of an unpaid periodic or special assessment or the enforcement of any lien provided for by Section 1 of this Article (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or its agent for taxes and payments on account of superior liens or encumbrances that may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the assessment and be secured by the Association's lien.

(d) Status of Transferees. No person or entity that acquired title to a Lot or Townhome as a result of a foreclosure of an Institutional Mortgage of record or that accepts a deed to a Lot in lieu of foreclosing an Institutional Mortgage of record shall be liable for the share of periodic or special assessments pertaining to that Lot or Townhome or chargeable to

the former Owner thereof which became due prior to its acquisition of title, unless such share is secured by a claim of lien for periodic or special assessments recorded prior to the recording of the mortgage in question. Any such shares of assessments for which the new Owner is not liable shall be collectible by periodic or special assessments from all the Owners, including the new Owner of the Lot in question. Except as expressly provided hereinabove, every grantee in a voluntary conveyance of a Lot or Townhome shall be jointly and severally liable for all unpaid periodic or special assessments against the grantor for his share of the assessments up to the time of the conveyance. Nothing contained herein to the contrary notwithstanding, each and every Owner, including purchasers at a judicial sale, shall be liable for all periodic or special assessments coming due while he is the owner of a Lot or Townhome regardless of how his title was acquired.

(e) Cumulative Remedies. The remedies provided in this Section 7 shall be a cumulative and not mutually exclusive.

Section 8. Association's Certificate. Each Owner of an assessable Lot or Townhome and every holder of a mortgage thereon shall have the right to require from the Association a certificate showing the amount of unpaid periodic or special assessments against the Owner with respect to his Lot or Townhome upon payment to the Association of a reasonable fee not exceeding fifteen dollars (\$15.00). Any person other than the Owner of the Lot or Townhome in question who relies upon such a certificate shall be protected thereby.

Section 9. Subordination. The lien on each Lot or Townhome provided for in this Article shall be subordinate to the lien of any Institutional Mortgage on that Lot or Townhome recorded before a claim of lien is filed under this Article with respect to that Lot or Townhome.

Section 10. Collection of Master Association Assessments. If requested by the Master Association, the Association shall collect from the Owners the assessments levied upon their Lots or Townhomes by the Master Association and remit the assessments thus collected to the Master Association.

ARTICLE V

MAINTENANCE

Section 1. By the Association.

(a) Maintenance of Townhome. The Association shall be responsible for painting, repairing, reconstructing and replacing, as and when reasonably necessary, the party walls (exclusive of painting of interior party walls) and exterior building walls of each Townhome, the roof and foundations of each Townhome, those portions of each parapet partially surrounding a patio, terrace, balcony or lanai appurtenant to a Townhome which is visible from outside the Lot on which the Townhome is situated, and the gutters, downspouts and window casements of each Townhome (but not the doors, windows and screens of any Townhome). The Board may delegate the responsibility of ordering and/or performing the work required by this Section to a Management Company.

(b) Trash Collection. If and to the extent it is not provided for by the Master Association, the Association shall arrange and contract for the collecting of trash from the Townhomes.

Section 2. By Owners.

(a) Maintenance of Townhome. Each Owner shall be responsible for keeping the interior and exterior of his Townhome in a clean, safe and orderly condition and good repair to the extent the Association is not responsible for doing so hereunder.

(b) Failure to Perform. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to enjoin compliance with them. In addition, the Association shall be entitled (though not obligated) to restore the neglected Townhome to the condition required by this Section and to levy on the offending Owner a special assessment equal to the cost of the work that was the Owner's responsibility.

ARTICLE VI

INSURANCE

Section 1. Purchase, Custody and Payment.

(a) Authorization of Association. The Developer for each Lot and Townhome now or hereafter owned by it hereby irrevocably nominates, and each person who accepts a deed to a Lot or Townhome (or who accepts title thereto as a heir or devisee) is hereby deemed to irrevocably nominate, the Association, as trustee, to obtain and maintain the insurance policies described in Section 2 of this Article.

(b) Purchase. All insurance policies described in Section 2 of this Article shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida and which, in the case of hazard insurance, has either a financial rating in Best's Financial Insurance Reports of Class VI or better or a financial rating therein of Class V and a general policyholder's rating of at least "A".

(c) Approval. Each insurance policy, the agency and company issuing the policy and the insurance trustee hereinafter described (the "Insurance Trustee") shall be subject to the approval of the Primary Institutional Mortgagee in the first instance.

(d) Named Insured. The named insured of each hazard policy shall be the Association, individually, and as agent for the Owner of townhome covered by the policy and as agent for his mortgagees, if any, with the Owner and the mortgagees as additional insureds.

(e) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee described in Section 4 of this Article, and all policies and endorsements thereto shall be deposited with the Insurance Trustee.

(f) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional Mortgagee who holds a mortgage upon a Townhome covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(g) Personal Property and Liability. Unit Owners may obtain insurance coverage at their own expense and in their own discretion upon the property lying within the interiors of their Townhomes, including, but not limited to, their personal property (except as covered in Section 2(a) below), and for their personal liability and living expense and for any other risks.

Section 2. Coverage. The Association shall maintain insurance covering the following:

(a) Casualty. Every Townhome (including all fixtures, installations or additions comprising that part of the Townhome outside the interior living space of the Townhome and initially installed in accordance with the original plans and specifications therefor, and replacements thereof of like kind or quality, but excluding all furniture, furnishings and other personal property owned, supplied or installed by the Owners or his tenants and excluding all other alterations, capital improvements and betterments made by the Owner or his tenants) (collectively the "Insured Property"), shall be insured in an amount not less than one hundred percent (100%) of the insurable value thereof (based on replacement cost), excluding foundation and excavation costs. Any such policy may contain reasonable deductible provisions as determined by the Board. The coverage shall afford protection against:

(i) Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and

(ii) Such Other Risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief, and, if required by the Primary Institutional Mortgagee or the Association elects, flooding.

(b) Workmen's compensation and other mandatory insurance when applicable.

(c) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable (including but not limited to fidelity bonding of the Association's directors, officers, employees and managing agents and liability insurance for its officers and directors).

(d) Specific Provisions

(i) When appropriate and obtainable, each of the foregoing policies shall waive the insurer's standard right to: (A) subrogation against the Association and against the Owners individually and as a group, (B) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (C) avoid liability for a loss that is caused by an act of the Board, by a member of the Board or by one or more Owners.

(ii) All policies of physical damage insurance shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days' prior written notice to all of the named insureds, including all mortgagees of Townhomes. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be obtained pursuant to this Section.

Section 3. Premiums.

(a) Casualty. Premiums for the insurance coverage on each Townhome described in Section 2(a) of this Article shall not be part of the Association's common expense payable out of periodic assessments, but rather an expense of the Owner of that Townhome and a debt of that Owner to the Association to be paid to the Association within ten (10) days after notice and statement thereof. Upon default by an Owner in paying his premium, the Association may (but need not) pay the premium itself and levy on that Owner a special assessment equal to the cost thereof.

(b) Owner. Premiums for the coverage described in Section 2(b) and 2(c) of this Article shall be part of the Association's common expenses payable out of periodic assessments or special assessments provided for in Section 5(a) of Article V.

Section 4. Insurance Trustee; Share of Proceeds. All insurance policies obtained by the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board and which, if so appointed, shall be a bank, or trust company in Florida with trust powers, with its principal place of business in the County. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal of the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee (if applicable) shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners of the damaged Townhomes and their respective mortgagees in proportion to the amount of damage to each Owner's Townhome.

Section 5. Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Declaration.

Section 6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

(a) Expenses of the Trust. First, all expenses of the Insurance Trustee shall be paid or provided for.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairing and reconstructing the damaged property as provided elsewhere herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Owners and their mortgagees being payable jointly to them.

(c) Certificate. In distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

Section 7. Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner, for each owner of a mortgage or other lien upon a

Townhome and for each owner of any other interest in the Insured Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

Section 8. Insurance Trustee Not Appointed. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee hereunder. Anything to the contrary in this Declaration notwithstanding, if the Association fails or elects not to appoint an Insurance Trustee, the Association shall perform directly all obligations imposed upon the Insurance Trustee by this Declaration.

ARTICLE VII

RECONSTRUCTION OR REPAIR AFTER CASUALTY DAMAGE

Section 1. General. Any part of the Insured Property that has been damaged by casualty shall be reconstructed in the manner provided in this Article VII.

Section 2. Responsibility for Reconstruction and Repair. If the damage is only to parts of the Insured Property the responsibility of repairing and maintaining which is the Owners' under Article V, each Owner shall be responsible for the reconstruction and restoration of his Townhome. In all other cases, the Association shall be responsible for reconstructing and repairing: damaged Insured Property the responsibility for maintaining which is the Association's; damaged Insured Property, such as non-glass entrance doors, balcony parapets, and terrace fences, the responsibility for maintaining which is normally divided between the Association and Owner; damaged interior partition walls out to their unfinished surfaces; and those portions of each two-story Townhome that lie between the unfinished ceiling of the Townhome's first story and the unfinished surface of the floor slab of the Townhome's second story.

Section 3. Plans for Reconstruction or Repair. Any reconstruction or repair after casualty damage shall substantially follow the plans and specifications for the original improvements (including those for any authorized alterations and additions made after the Initial Declaration is recorded) unless an alternative set of plans and specifications are approved by the Board, by seventy percent (70%) of the Owners and by all Owners of Townhomes covered by the alternative plans and specifications.

Section 4. Estimate of Cost. Immediately after determining to reconstruct or repair property damaged by casualty, the Association shall obtain detailed estimates of the cost of doing so from reliable contractors.

Section 5. Assessments; Determination of Sufficiency of Funds.

(a) Assessments. If the proceeds of insurance are insufficient to defray the estimated costs of reconstruction and repair for which the Association is responsible, or if at any time during the work or upon its completion the funds available for the payment of such costs prove insufficient, special assessments shall be made by the Association against Owners in sufficient amounts to provide funds for payment of those costs. Such assessments shall be levied against the Owners in amounts proportional to the costs of reconstructing and repairing their Townhomes.

(b) Determination of Sufficiency of Funds. If the estimated costs of reconstruction and repair for which the Association is responsible do not exceed \$50,000, the sufficiency of funds to pay the costs shall be determined by the Board and the sums collected from the assessments levied pursuant to Section 5(a) of this Article VII shall be held by the Association. If these estimated costs exceed \$50,000, the sufficiency of funds to pay the costs shall be determined by an architect qualified to practice in Florida and employed by the Association to supervise the work, and the sums collected from the assessments shall be deposited by the Association with the Insurance Trustee.

Section 6. Disbursement of Funds. The funds held by the Association or the Insurance Trustee after a casualty (which funds will consist of insurance proceeds and sums collected from special assessments against Unit Owners on account of the casualty) shall be disbursed in the following manner and order:

(a) Expenses of Insurance Trustee. Payment of all expenses of the Insurance Trustee or provision for their payment shall be made first.

(b) Reconstruction and Repair of Damage. The balance of the funds shall be disbursed in the following manner:

(i) Repair by Association When the Cost Does Not Exceed \$50,000. If the estimated costs of reconstruction and repair that are the Association's responsibility do not exceed \$50,000, the funds shall be disbursed by the Insurance Trustee (and the Association, if applicable) in payment of these costs at the direction of the Board.

(ii) Repair by Association When the Cost Exceeds \$50,000. If the estimated costs of reconstruction and repair that are the Association's responsibility exceed \$50,000 the funds shall be disbursed by the Insurance Trustee (and the Association, if applicable) in payment of those costs in the manner directed by the Board, with an architect who is licensed to practice in Florida and is employed by the Association to supervise the work approving all disbursements as being due and properly payable.

(iii) Repair By Unit Owners. If insurance proceeds remain after payment of the costs of reconstruction and repair that are the Association's responsibility, they shall be distributed to the Owners of damaged Townhomes who have the responsibility to reconstructing and repairing them in a share to each Owner equal to the ratio of the estimated cost of reconstructing and repairing his Townhome to the total of these costs in all damaged Townhome, provided, however, that no Owner shall be paid an amount that exceeds the estimated costs of the repair and reconstruction of his Townhome that are his responsibility. If a Unit is subject to a mortgage or mortgages listed on the Association's Roster of Mortgagees, the distribution shall be paid to the Owner and the mortgagees jointly, and they may use the proceeds as they determine between themselves.

(iv) Surplus. The first moneys disbursed in payment of the costs of reconstruction and repair shall be presumed to be from insurance proceeds. If there is a balance remaining after payment of the costs for which the funds are collected, the balance shall be distributed to the beneficial owners of the funds. Remittances to Owners and their mortgagees shall be made payable jointly to them, provided, however, that the part of a distribution to a Owner that is not in excess or any special assessments paid by the Owner into the funds shall not be made payable to any mortgagee.

(c) Reliance Upon Certificates. Notwithstanding the provisions of this Declaration, the Insurance Trustee shall not be required to make a determination as to the existence of certain facts upon which the distribution of funds is conditioned. Instead, the Insurance Trustee may rely upon a certificate made by the Association's President and Secretary stating: (1) whether or not payments collected from special assessments against Owners pursuant to this Article VII shall be deposited with the Insurance Trustee; (2) that particular sums are due and properly payable, the name of the payee and the amount to be paid; (3) the names of Owners to receive distribution of funds and the amounts to be distributed to them; provided, however, that when a mortgagee is required by this Article VII to be named as a joint payee of a distribution to a Owner, the Insurance Trustee shall name the mortgagee as payee of any distribution of insurance proceeds to the Owner if the mortgagee is listed as holding a mortgage on that Owner's Townhome in the Roster of Mortgagees furnished the Insurance Trustee.

ARTICLE VIII

PARTY WALLS

Section 1. General. Each wall built as part of the original construction of two Townhomes and placed on the dividing line between Lots on which they are situated shall constitute a party wall, and each Owner of one of the Lots shall own that portion of the wall which stands on his own Lot together with a cross-easement of support in the other portion. To the extent not inconsistent with the provisions of this Article or Article V, VI or VII hereof, the general rules of law regarding party walls and liability or property damage due to negligence or willful acts or omissions shall apply to all such party walls.

Section 2. Easements. Easements are reserved in favor of all Lots sharing a party wall for overhangs or other encroachments resulting from original construction or from restoration that conforms substantially to the original construction.

Section 3. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article generally, each party shall choose one arbitrator those arbitrators shall choose one additional arbitrator, and the decision of a majority of the three arbitrators thus chosen shall be conclusively determinative of the question involved. If a panel cannot be designated in this way, the matter shall be arbitrated pursuant to the rules of the American Arbitration Association (or its successors in function) then prevailing. Any decision made pursuant to this Section 3 shall be conclusive and may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code.

ARTICLE IX

USE RESTRICTIONS

Section 1. Occupancy. Each Townhome shall be used as a residence only, except as otherwise expressly provided herein. A Townhome owned by an individual, corporation, partnership, trust or other fiduciary may be occupied only by the following persons, and such persons' families and guests: (i) an individual Owner, (ii) an officer, director, stockholder or employee or a corporate Owner, (iii) a partner or employee of a partnership Owner, (iv) the fiduciary or beneficiary of a fiduciary Owner, or (v) per-

mitted occupants under an approved lease or sublease of the Townhome (as described below), as the case may be. A Townhome may be occupied under an approved lease or sublease only by the following persons, and such persons' families and guests: (i) an individual lessee or sublessee, (ii) an officer, director, stockholder or employee of a corporate lessee or sublessee, (iii) a partner or employee of a partnership lessee or sublessee, or (iv) a fiduciary or beneficiary of a fiduciary lessee or sublessee. Under no circumstances may more than one Family reside in a Townhome at one time. "Family" and words of similar import used herein shall be deemed to include spouses, parents, parents-in-law, brothers, sisters and children and grandchildren. In no event shall occupancy (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom in a Townhome. The Board of Directors shall have the power to authorize occupancy of a Townhome by persons in addition to those set forth above for visits of temporary duration that do not exceed sixty (60) days in any calendar year.

Section 2. Pets. No animal may be kept anywhere in a Townhome or on a Lot unless it is a small bird or fish, a dog weighing less than twenty (20) pounds, a household cat, or some other "household pet" (as defined by the Board of Directors) capable of being hand-carried. With the exception of birds and fish housed in a cage or aquarium within the Owner's Townhome, no Owner may keep more than one (1) pet in a Townhome or on a Lot. No pet may be kept, bred or maintained for any commercial purpose or become a nuisance or annoyance to neighbors. Owners must pick up all solid wastes of their pets and dispose of them appropriately. All pets (including cats) must be leashed at all times when outside the Townhome. No dogs may be kept on a terrace, balcony, patio or lanai of a Townhome when the Townhome's Owners is absent from the Townhome. Violation of any provision of this Section shall entitle the Association to all of its usual rights and remedies (including, but not limited to, the right to fine Owners as provided herein, in the Association's By-Laws or in any applicable rules and regulations) and also to require any pet to be permanently removed from its Owner's Lot and Townhome upon three (3) days' notice. No one other than an Owner shall be permitted to keep any pets.

Section 3. Alterations. No Owner shall cause or allow improvements or changes to any exterior portion of his Townhome (including, but not limited to, painting or other decorating of any nature, installing any electrical wiring, television antenna, machinery or air-conditioning units or in any manner changing the appearance of any portion of the Townhome) without first obtaining the written consent of the Association.

Section 4. Nuisances. No use or practice shall be allowed in or around Townhomes which is a source of annoyance to Owners or occupants of Townhomes or which interferes with the peaceful possession or proper use of the Townhomes or any surrounding common areas.

Section 5. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any Townhome, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any Townhome shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Townhome as elsewhere herein set forth.

Section 6. Leases. No portion of a Townhome (other than an entire Townhome) may be rented. All leases shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, of the Articles of Incorporation and By-Laws of the Association, of applicable rules and regulations, of the Master Declaration or of any other agreement, document or instrument governing the Lots or Townhomes. The leasing of Townhomes shall also be subject to the prior written approval of the Association, which may reject the leasing of any Townhome on any reasonable grounds. The Owner of a leased Townhome shall be jointly and severally liable with his tenant to the Association to pay any claim of injury or damage to property caused by the negligence of the tenant. No Unit may be leased for a term shorter than three (3) months. Every lease shall be subordinated to any lien filed by the Association or the Master Association whether before or after the lease was entered into.

Section 7. Exterior Improvements; Landscaping. Without limiting the generality of Section 3 of this Article, no Owner shall, without first obtaining the written consent of the Association, cause anything to be affixed or attached to, displayed or placed on, or hung from the exterior walls, doors, windows, patios, lanais or terraces of his Townhome (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment), or plant or grow any type of shrubbery, flower, tree, vine, grass or other plant life outside his Townhome.

Section 8. Effect on Developer; Selective Relief. The restrictions and limitations set forth in this Article shall not apply to the Developer or to Lots or Townhomes owned by the Developer, nor to Institutional Mortgagees or to Lots or Townhomes owned by Institutional Mortgagees. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article for good cause shown.

ARTICLE X

SELLING, LEASING AND MORTGAGING UNITS

Section 1. Right of First Refusal. Any Owner who receives a bona fide offer to purchase or lease his Townhome (such offer to purchase or lease a Townhome, as the case may be, being herein called an "Outside Offer", and the Owner to whom the Outside Offer is made being herein called an "Offeree Owner") which he intends to accept shall give notice by registered mail to the Board of Directors of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Board of Directors may reasonably require and shall include a copy of contract containing the Outside Offer. The giving of such notice to the Board of Directors shall constitute an offer by such Owner to sell his Townhome or to lease his Townhome to the Association or its designee upon the same terms and conditions as contained in such Outside Offer and shall also constitute a warranty and representation by the Unit Owner who has received such Outside Offer to the Association that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Owner shall submit in writing such further information with respect thereto as the Board of Directors may reasonably request. Not later than twenty (20) days after receipt of such notice, together with such further information as may have

been requested, the Association or its designee may elect, by sending written notice to such Offeree Owner before the expiration of said twenty (20) day period, by certified mail, to purchase or lease such Townhome (as the case may be) upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Owner.

In the event the Association shall timely elect to purchase such Townhome or to lease such Townhome, or to cause the same to be purchased or leased by its designee, title shall close or a lease shall be executed at the office of the attorneys for the Association, in accordance with the terms of the Outside Offer, within the latter of forty-five (45) days after the giving of notice by the Association of its election to accept such offer or the closing date specified in the Outside Offer. If, pursuant to such Outside Offer to purchase said Townhome, the Outside Offeror was to assume or take title to the Townhome subject to the Offeree Owner's existing mortgage or mortgages, the Association may purchase the Townhome and assume or take title to the Townhome subject to the existing mortgage or mortgages, as the case may be. At the closing, the Offeree Owner, if such Townhome is to be sold, shall convey the same to the Association, or to its designee, by statutory warranty deed, with all tax and/or documentary stamps affixed at the expense of such Owner, who shall also pay all other taxes arising out of such sale. Title shall be good and marketable and insurable and the Offeree Owner shall deliver an abstract or provide a title binder (and subsequently, title insurance) at its expense at least thirty (30) days prior to such closing. Real estate taxes, mortgage interest if any and assessments shall be apportioned between the Offeree Owner and the Association, or its designee, as of the closing date. In the event such Townhome is to be leased, the Offeree Owner shall execute and deliver to the Board of Directors or to its designee a lease between the Offeree Owner, as landlord, and the Association, or its designee, as tenant, covering such Townhome, for the rental and term contained in such Outside Offer, provided no security deposit shall be required.

In the event the Association or its designee shall fail to accept such offer or, in the case of a lease, shall fail to reject the proposed lease within twenty (20) days after receipt of notice and all additional information requested, as aforesaid, the Offeree Owner shall be free to accept the Outside Offer within sixty (60) days after (i) notice of refusal is given by the Association, or (ii) the expiration of the period in which the Association or its designee might have accepted such offer, as the case may be. In the event the Offeree Owner shall not, within such sixty (60) day period, accept, in writing, the Outside Offer or if the Offeree Owner shall accept the Outside offer within such sixty (60) day period but such sale or lease, as the case may be, shall not be consummated in accordance with the terms of such Outside Offer or within a reasonable time after the date set for closing thereunder, then, should such Offeree Owner thereafter elect to sell such Townhome or to lease such Townhome, as the case may be, the Offeree Owner shall be required to again comply with all of the terms and provisions of this Section.

Any lease executed in connection with the acceptance of any Outside Offer to lease a Townhome shall be consistent herewith and with the By-Laws and rules and regulations and shall provide specifically that (i) it may not be modified, amended, extended or assigned, without the prior consent in writing of the Board of Directors, (ii) the tenant shall not assign his interest in such lease or sublet the demised premises or any part thereof without the prior written consent in writing of the Board of Directors, and (iii) the Board of Directors shall have the power,

but shall not be obligated, to terminate such lease and/or to bring summary proceedings to evict the tenant in the name of the landlord thereunder, in the event of (a) a default by the tenant in the performance of its obligations under such lease, or (b) a foreclosure of the lien granted under the Act.

Except as hereinbefore set forth, the form of any such lease executed by the Association or an Outside Offeror may contain such other modifications as shall be approved in writing by the Board of Directors. Any lease executed by the Association as Tenant shall provide that the Association may enter into a sub-lease of the premises without the consent of the landlord.

Any purported sale or lease of a Townhome in violation of this Section shall be voidable at any time at the election of the Association, and if the Board of Directors shall so elect, the Townhome's Owner shall be deemed to have authorized and empowered the Association to institute legal proceedings to evict the purported tenant (in case of an unauthorized leasing) in the name of the Owner as the purported landlord and the Owner shall reimburse the Association for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

Section 2. Consent of Owners to Purchase or Lease of Townhomes by the Association. The Association shall not exercise any option hereinabove set forth to purchase or lease any Townhome without the prior approval of Owners of a majority of the Townhomes present in person or by proxy and voting at a meeting at which a quorum has been obtained.

Section 3. Release by the Association of the Right of First Refusal. The right of first refusal contained in Section 1 of this Article may be released or waived by the Association only in the manner provided in Section 4 of this Article. In the event the Association releases or waives its right of first refusal as to any Townhome, such Townhome may be sold, conveyed or leased free and clear of the provisions of Section 1 of this Article.

Section 4. Certificate of Termination of Right of First Refusal. A certificate executed and acknowledged by an officer of the Association stating that the provisions of Section 1 of this Article have been satisfied by an Owner, or stating that the right of first refusal contained therein has been duly released or waived by the Association and that, as a result thereof, the rights of the Association thereunder have terminated (as to that sale or lease only), shall be conclusive with respect to all persons who rely on such certificate in good faith. Upon request, the Board of Directors shall furnish such certificate upon request to any Owner in respect to whom the provisions of such Section have, in fact, terminated or been waived. No fee shall be charged by the Association in connection with the furnishing of such a certificate in excess of the charges reasonably required for processing it. No charge shall be made in connection with the consideration of the approval of an extension or renewal of a previously approved lease.

Section 5. Exceptions. The provisions of Section 1 of this Article shall not apply with respect to any lease, sale or conveyance of any Townhome (or interest therein) by (a) the Owner thereof to his spouse, adult children, parents, parents-in-law, adult siblings or a trustee, corporation or other entity where the Owner or the aforementioned related persons are and continue to be the sole beneficiary or equity owner of such trustee, corporation or other entity, or to any one or more of the above, (b)

the Developer, (c) the Association, (d) any proper officer conducting the sale of a Townhome in connection with the foreclosure of a mortgage or other lien covering such Townhome or delivering a deed in lieu of foreclosure thereof, or (e) an Institutional mortgagee (or its designee) which derived title by virtue of a foreclosure of its mortgage or acceptance of a deed in lieu of foreclosure; provided, however, that each succeeding Owner shall be bound by, and his Townhome subject to, the provisions of this Article X.

Section 6. Gifts and Devises, etc. Any Owner shall be free to convey or transfer his Townhome by gift, to devise his Townhome by will, and to have his Townhome pass by intestacy, without restriction; provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Article X.

Section 7. Expanded Meaning of "Townhome" and "Owner". Wherever used in this Article X, the word "Townhome" shall be construed to encompass both Townhomes and Lots and the word "Owner" to encompass the record owner of a Townhome as well as that of the Lot underlying it.

ARTICLE XI

ADDITIONAL RIGHTS OF INSTITUTIONAL FIRST MORTGAGEE

In addition to all other rights herein set forth, each holder of an Institutional Mortgage shall have the right, upon written request to the Association, to:

(a) inspect the Association's books and records during normal business hours;

(b) receive an unaudited financial statement of the Association within ninety (90) days after each of its fiscal years closes;

(c) receive from the Association written notice of any meeting of the Association's membership and to attend any such meeting;

(d) receive from the Association written notice of any default under this Declaration or the By-Laws by an Owner of a Lot or Townhome encumbered by a mortgage to the Institutional Mortgagee, if the default remains uncured for more than thirty (30) days;

(e) receive timely written notice of casualty damage to or condemnation of any part of any Townhome on which it has a mortgage.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Covenant Running with the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, as well as the provisions of the Master Declaration and all applicable management contracts, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Lots and Townhomes and with every part thereof and interest therein, and

all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent Owner(s) of the Lots and Townhomes or any part thereof, or interest therein, and their respective heirs, personal representative, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Owners and tenants and occupants of Townhomes shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations, as well as the provisions of the Master Declaration as they may be amended from time to time. The acceptance of a deed or conveyance to a Lot or Townhome, or the entering into of a lease of, or occupancy of, any Townhome shall constitute an adoption and ratification by such Owner, tenant or occupant of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as well as the provisions of the Master Declaration and all applicable management contracts, as they may be amended from time to time, including, but not limited to a ratification of any attorneys-in-fact contained therein.

Section 2. Duration. The Covenants and Restrictions shall be effective for a term of forty (40) years from the date the Initial Declaration is recorded. After that time they shall be automatically extended for successive periods of fifteen (15) years each unless an instrument has been recorded in which eighty percent (80%) of the then Owners and eighty percent (80%) of the holders of the then outstanding Institutional Mortgages agree by signing it to revoke the Covenants and Restrictions in whole or in part; provided, however, that no such agreement shall be effective unless it is made and recorded at least three (3) years before the effective date of the change provided for in it and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days before any action is taken.

Section 3. Enforcement. This Declaration, the Articles of Incorporation and the By-Laws may be enforced by the Association as follows:

(a) The breach of any of the covenants contained in the Declaration or the By-Laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by the Developer, the Association, the successors-in-interest of the Association or an Owner or Owners. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees, in such amount as the court may deem reasonable, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the By-Laws are violated in whole or in part is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity with respect to nuisances either public or private shall be applicable and may be exercised by the Developer or the Association or their successors-in-interest.

(c) The remedies herein provided for breach of the covenants or restrictions contained in this Declaration or in the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants or restrictions contained in this Declaration or in the By-Laws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the By-Laws shall not affect or impair the lien or charge of any mortgage made in good faith and for value on any Townhome; provided, however, that any subsequent Owner of a Townhome shall be bound by those covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

Section 4. Severability. The invalidation of any one of the Covenants and Restrictions by judgment or court order shall in no way affect any of the other Covenants and Restrictions, all of which shall remain in full force and effect.

Section 5. Interpretation. The article and section headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. The singular shall include the plural and the plural the singular, and the masculine, feminine and neuter genders shall each include the other.

Section 6. Amendments. This Declaration may be amended by the Association (1) by the affirmative vote or written consent of the Owners holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Class A Membership and the affirmative vote of the Class B Member (so long as the Class B Membership exists); or (2) by the affirmative vote of the Class B Member alone; provided, however, that no amendment shall be permitted which has a materially adverse affect upon substantial rights of any Owner or Institutional Mortgagee without the prior written consent of the Owner or Institutional Mortgagee so affected, as appropriate. Without in any way limiting the generality of clause (2) above, as long as it is the Class B Member or owns one or more Lots, the Developer shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder) which is required to correct a surveying error or an erroneous legal description or which is requested or required by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association or other governmental or quasi-governmental body which owns or expects to own one or more Institutional Mortgages or requested or required by any Institutional Mortgagee or prospective Institutional Mortgagee to enhance the saleability of Institutional Mortgages owned by it to one or more of the foregoing. As long as the Developer owns any portion of the Aquarina Lands, no amendment may be passed that adversely affects the Developer's rights or privileges without its prior written consent. Nothing contained herein shall affect the right of the Developer to make such amendments of this Declaration or such Supplemental Declarations as may otherwise be permitted herein without any consents, approvals or joinders. This Section may not be amended. All amendments shall be in accordance with the Brevard County regulations, codes and ordinances applicable to planned unit developments.

Section 7. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right or title to a Lot or Townhome shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Lot or Townhome.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72)

hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the Unit of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

The Developer has caused this Declaration to be executed on the date first written above.

Signed, sealed and delivered in the presence of:

AQUARINA DEVELOPMENTS, INC.

[Signature]
Juda J. Moore

By: [Signature]
Vice President

[CORPORATE SEAL]

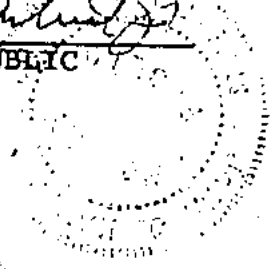


STATE OF FLORIDA)
) SS:
COUNTY OF BREVARD)

The foregoing Declaration of Covenants and Restrictions was acknowledged before me this 18th day of May, 1983, by BERT LEITZ, Vice President of AQUARINA DEVELOPMENTS, INC., a Florida corporation, on behalf of the corporation.

[Signature]
NOTARY PUBLIC

My Commission Expires:
5-11-87



JOINDER

Blue Heron Townhomes Association, Inc., a Florida corporation not for profit, hereby agrees to accept all the benefits and all the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits hereto.

IN WITNESS WHEREOF, Blue Heron Townhomes Association, Inc. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 18th day of May, 1983.

Signed, sealed and delivered in the presence of:

BLUE HERON TOWNHOMES ASSOCIATION, INC.

[Signature]
[Signature]

By: [Signature]
PRESIDENT

[CORPORATE SEAL]

STATE OF FLORIDA)
) SS:
COUNTY OF BREVARD)

The foregoing Declaration of Covenants and Restrictions was acknowledged before me this 18th day of May, 1983, by BERT LEITZ, President of BLUE HERON TOWNHOMES ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation.

[Signature]
NOTARY PUBLIC

My Commission Expires:

5-11-87

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EXHIBIT "A"

DESCRIPTION OF AQUARINA LANDS

Government Lots 4 and 5, Section 25, Township 29 South, Range 38 East.

Government Lot 1, Section 35, Township 29 South, Range 38 East, lying North-easterly of Mullet Creek.

Government Lots 1, 2 and 3, Section 36, Township 29 South, Range 38 East.

All lying in Brevard County, Florida.

Subject to right-of-way for State Road A1A, as shown on Florida Department of Transportation Maintenance Map thereof, Section 7D06D, Survey Book 2, Pages 75 through 79, Public Records, Brevard County.

Subject to additional right-of-way for State Road A1A and Brevard County road right-of-way as recorded in Official Records Book 1338, Page 26, Public Records, Brevard County.

Subject to the plat of AQUARINA P.U.D. STAGE I, as recorded in Plat Book 29, Page 68, Public Records of Brevard County, Florida.

Less and except any lands previously dedicated to Brevard County.

OFF. REC.

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EXHIBIT "B"

Lots 1 through 20, inclusive, of BLUE HERON AT AQUARIUM
according to the Plat thereof, recorded in Plat Book
29, at Page 88, of the Public Records of
Brevard County, Florida.

OFF. REC.

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EXHIBIT "B"

Blue Heron Townhomes

Blue Heron Townhomes - Parcels 1 thru 4

A part of Tract I AQUARINA P.U.D. STAGE I, Sections 25 and 36, Township 29 South, Range 38 East, Brevard County, Florida, according to the plat thereof, as recorded in Plat Book 29, Pages 96 and 97, Public Records, Brevard County; more particularly described as follows:

Commence at the most Westerly corner of said Tract I; thence N.48°12'23"E. along the Northwesterly boundary thereof for 13.31 feet to the Point of Beginning; thence continue N.48°12'23"E. along said boundary for 139.67 feet; thence S.41°47'37"E. for 24.00 feet; thence N.48°12'23"E. for 4.67 feet; thence S.41°47'37"E. for 11.33 feet; thence S.48°12'23"W. for 4.67 feet; thence S.41°47'37"E. for 24.01 feet; thence S.48°12'23"W. for 16.67 feet; thence S.41°47'37"E. for 23.33 feet; thence S.48°12'23"W. for 107.00 feet; thence N.41°47'37"W. for 36.00; thence S.48°12'23"W. for 16.00 feet; thence N.41°47'37"W. for 18.50 feet; thence S.48°12'23"W. for 4.67 feet; thence N.41°47'37"W. for 11.33 feet; thence N.48°12'23"E. for 4.67 feet; thence N.41°47'37"W. for 16.83 feet to the Point of Beginning.

Containing 10,687 square feet, more or less.

Blue Heron Townhomes - Parcels 5 thru 8

A part of Tract I AQUARINA P.U.D. STAGE I, Sections 25 and 36, Township 29 South, Range 38 East, Brevard County, Florida, according to the plat thereof, as recorded in Plat Book 29, Pages 96 and 97, Public Records, Brevard County; more particularly described as follows:

Commence at the most Westerly corner of said Tract I; thence N.48°12'23"E. along the Northwesterly boundary thereof for 170.98 feet to the Point of Beginning; thence continue N.48°12'23"E. along said boundary for 139.67 feet; thence S.41°47'37"E. for 24.00 feet; thence N.48°12'23"E. for 4.67 feet; thence S.41°47'37"E. for 11.33 feet; thence S.48°12'23"W. for 4.67 feet; thence S.41°47'37"E. for 20.34 feet; thence S.48°12'23"W. for 20.34 feet; thence S.41°47'37"E. for 27.00 feet; thence S.48°12'23"W. for 107.00 feet; thence N.41°47'37"W. for 36.00 feet; thence S.48°12'23"W. for 12.33 feet; thence N.41°47'37"W. for 18.50 feet; thence S.48°12'23"W. for 4.67 feet; thence N.41°47'37"W. for 11.33 feet; thence N.48°12'23"E. for 4.67 feet; thence N.41°47'37"W. for 16.83 feet to the Point of Beginning.

Containing 10,659 square feet, more or less.

Blue Heron Townhomes - Parcels 9 thru 12

A part of Tract I AQUARINA P.U.D. STAGE I, Sections 25 and 36, Township 29 South, Range 38 East, Brevard County, Florida, according to the plat thereof, as recorded in Plat Book 29, Pages 86 and 87, Public Records, Brevard County; more particularly described as follows:

Beginning at the most Northerly corner of said Tract I; thence S. 39°07'18"E. along the Northerly boundary line of said Tract I for 138.67 feet; thence S. 50°52'42"W. for 24.00 feet; thence S. 39°07'18"E. for 4.67 feet; thence S. 50°52'42"W. for 11.33 feet; thence N. 39°07'18"W. for 4.67 feet; thence S. 50°52'42"W. for 20.34 feet; thence N. 39°07'18"W. for 20.34 feet; thence S. 50°52'42"W. for 27.00 feet; thence N. 39°07'18"W. for 35.33 feet; thence S. 50°52'42"W. for 12.00 feet; thence N. 39°07'18"W. for 32.67 feet; thence N. 50°52'42"E. for 12.00 feet; thence N. 39°07'18"W. for 39.00 feet; thence N. 50°52'42"E. for 36.00 feet; thence N. 39°07'18"W. for 12.33 feet; thence N. 50°52'42"E. for 18.50 feet; thence N. 39°07'18"W. for 4.67 feet; thence N. 50°52'42"E. for 11.33 feet; thence S. 39°07'18"E. for 4.67 feet; thence N. 50°52'42"E. for 14.51 feet; thence N. 74°12'23"E. for 2.53 feet to the Point of Beginning.

Blue Heron Townhomes - Parcels 13 thru 16

A part of Tract I AQUARINA P.U.D. STAGE I, Sections 25 and 36, Township 29 South, Range 38 East, Brevard County, Florida, according to the plat thereof, as recorded in Plat Book 29, Pages 86 and 87, Public Records, Brevard County; more particularly described as follows:

Commence at the most Northerly corner of said Tract I; thence S. 39°07'18"E. along the Northerly boundary thereof for 238.34 feet; thence S. 50°52'42"W. for 36.67 feet to the Point of Beginning; thence continue S. 50°52'42"W. for 139.67 feet; thence N. 39°07'18"W. for 24.00 feet; thence S. 50°52'42"W. for 4.67 feet; thence N. 39°07'18"W. for 11.33 feet; thence N. 50°52'42"E. for 4.67 feet; thence N. 39°07'18"W. for 20.34 feet; thence N. 50°52'42"E. for 20.34 feet; thence N. 39°07'18"W. for 27.00 feet; thence N. 50°52'42"E. for 103.33 feet; thence S. 39°07'18"E. for 36.00 feet; thence N. 50°52'42"E. for 16.00 feet; thence S. 39°07'18"E. for 18.50 feet; thence N. 50°52'42"E. for 4.67 feet; thence S. 39°07'18"E. for 11.33 feet; thence S. 50°52'42"W. for 4.67 feet; thence S. 39°07'18"E. for 16.83 feet to the Point of Beginning.

Containing 10,527 square feet, more or less.

Blue Heron Townhomes - Parcels 17 thru 20

A part of Tract I AQUARINA P.U.D. STAGE I, Sections 25 and 36, Township 29 South, Range 38 East, Brevard County, Florida, according to the plat thereof, as recorded in Plat Book 29, Pages 86 and 87, Public Records, Brevard County; more particularly described as follows:

Commence at the most Northerly corner of said Tract I; thence S.39°07'18"E. along the Northerly boundary line of said Tract I for 214.67 feet; thence S.50°52'42"W. for 194.34 feet to the Point of Beginning; thence continue S.50°52'42"W. for 139.67 feet; thence N.39°07'18"W. for 24.00 feet; thence S.50°52'42"W. for 4.67 feet; thence N.39°07'18"W. for 11.33 feet; thence N.50°52'42"E. for 4.67 feet; thence N.39°07'18"W. for 28.01 feet; thence N.50°52'42"E. for 16.67 feet; thence N.39°07'18"W. for 23.33 feet; thence N.50°52'42"E. for 29.67 feet; thence S.39°07'18"E. for 1.00 feet; thence N.50°52'42"E. for 51.33 feet; thence N.39°07'18"W. for 14.00 feet; thence N.50°52'42"E. for 29.67 feet; thence S.39°07'18"E. for 53.00 feet; thence N.50°52'42"E. for 12.33 feet; thence S.39°07'18"E. for 18.50 feet; thence N.50°52'42"E. for 4.67 feet; thence S.39°07'18"E. for 11.33 feet; thence ~~S.50°52'42"W.~~ for 4.67 feet; thence S.39°07'18"E. for 16.83 to the Point of Beginning.

Containing 11,663 square feet, more or less.

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EXHIBIT "C"

ARTICLES OF INCORPORATION

OF

BLUE HERON TOWNHOMES ASSOCIATION, INC.

The undersigned subscribers, desiring to form a corporation not for profit under Chapter 617, Florida Statutes, as amended, hereby adopt the following Articles of Incorporation.

ARTICLE I

The name of the corporation shall be Blue Heron Townhomes Association, Inc. (hereinafter referred to as the "Association").

ARTICLE II

Terms used herein shall have the meanings ascribed to them in the Declaration referred to below, unless the context indicates otherwise.

ARTICLE III

The purposes for which the Association is formed are:

1. To promote the common good, health, safety and general welfare of all of the Owners;
2. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association arising from the Declaration of Covenants and Restrictions for Blue Heron Townhomes (the "Declaration"), as amended and supplemented from time to time and recorded (or to be recorded) in the Public Records of Brevard County, Florida (the definitions of which are incorporated herein by reference);
3. To have and to exercise any and all powers, rights and privileges, including delegation of powers as permitted by law, which a corporation organized under Chapter 617, Florida Statutes, may now or hereafter have or exercise.

The foregoing statement of purposes shall be construed as a statement both of purposes and of powers, and such purposes and powers in each clause shall not be limited or restricted by reference or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. Notwithstanding any of the above statements of purposes and powers, the Association shall not to a substantial degree engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

ARTICLE IV

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject under the Declaration to assessment by the Association, including contract

sellers, but excluding persons or entities holding title merely as security for performance of an obligation and excluding contract purchasers, 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 by the Association. The Membership shall also be divided into the following classes set forth below:

Class A. Class A Members shall originally be all Owners (with the exception of the Developer for so long as there exists a Class B Membership). Each Class A Member shall be entitled to one (1) vote for each Lot owned by him which is subject to assessment, as further provided in the Declaration or any Supplement Declaration. The Developer shall become a Class A Member with regard to Lots owned by the Developer upon termination of the Developer's Class B Membership as provided below.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the Class A Members as a whole are entitled to cast from time to time (by way of illustration, if at any given point in time, there were 18 Class A Members, the Class B Members would be entitled to 37 votes); provided that the Class B Membership shall cease and be converted to Class A Membership upon the first to occur of any of the following events:

- (1) The arrival of December 31, 1986;
- (2) When at least twenty (20) Townhomes have been constructed and conveyed to purchasers; or
- (3) Thirty (30) days after the Developer records an instrument in the County's Public Records indicating its election to terminate the Class B Membership;

whereupon the Class A Members shall assume control of the Association and elect the Board of Directors.

ARTICLE V

The Association shall have perpetual existence.

ARTICLE VI

The affairs of the Association shall be managed by a Board of Directors of not less than three (3) persons.

The names and addresses of the members of the first Board of Directors of the Association who shall hold office until the first election thereafter are as follows:

<u>Name</u>	<u>Address</u>
Bert Leltz	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Solonge Benilous	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Lee Shur	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903

Except for the first Board of Directors and unless otherwise provided in the By-Laws, Directors shall be elected by the members of the Association at the annual meeting of the membership as provided by the By-Laws of the Association, and the by-Laws may provide for the method of voting in the election and for the removal from office of Directors. Only members of the Association, or authorized representatives, officers or employees of corporate members or of the Developer may be Directors.

Members elected to the Board of Directors shall hold office until the next succeeding annual meeting of members, and thereafter until qualified successors are duly elected and have taken office.

If a Director elected by the general membership shall for any reason cease to be a Director, the remaining Directors so elected may elect a successor to fill the vacancy for the balance of the unexpired term.

ARTICLE VII

The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect. One person may hold more than one office, subject to the limitations set forth in the By-Laws.

The officers of the Association, in accordance with applicable provisions of the By-Laws, shall be elected by the Board of Directors for terms of one year and until qualified successors are duly elected and have taken office.

The names and addresses of the first officers of the Association, who shall hold office until successors are duly elected and have taken office, shall be as follows:

President:	Bert Leltz	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Vice President:	Lee Shur	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Treasurer:	Solonge Benilous	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Secretary:	Solonge Benilous	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903

ARTICLE VIII

The By-Laws of the Association may be made, altered, or rescinded at any annual meeting of the Association, or any special meeting duly called for such purpose, upon the vote of the Members as provided in the By-Laws, except that the initial By-Laws of the Association shall be made and adopted by the first Board of Directors.

ARTICLE IX

Amendments to these Articles of Incorporation may be proposed by a member of the Board of Directors of the Association or Members of the Association holding fifteen percent (15%) of the

voting rights in the Class A Membership. These Articles may be amended at any annual meeting of the Association, or at any special meeting duly called and held for such purpose, on the affirmative vote of two-thirds (2/3rds) of the Class A Members present in person or by proxy at a meeting at which a quorum is present, except that the Developer shall have the right to veto any amendment while the Class B Membership exists.

ARTICLE X

The name and addresses of the subscribers to these Articles of Incorporation are:

<u>Name</u>	<u>Address</u>
Bert Leltz	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Solonge Benilous	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903
Lee Shur	325 Fifth Avenue, Suite 207 Indialantic, Florida 32903

ARTICLE XI

The initial registered office of this corporation shall be at c/o Wolfe, Kirschenbaum, Caruso, Mosley & Kabboord, P.A., 505 North Orlando Avenue, Cocoa Beach, Florida 32931, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be John J. Kabboord, Jr., Esq.

ARTICLE XII

Upon dissolution of the Association, all of its assets shall be conveyed to another non-profit corporation, unincorporated association or public agency.

IN WITNESS WHEREOF, the said subscribers have hereunto set their hands this _____ day of _____, 198_____.

BERT LELTZ

SOLONGE BENILOUS

LEE SHUR

STATE OF FLORIDA)
) SS:
COUNTY OF BREVARD)

The foregoing instrument was acknowledged before me this _____
day of _____, 198_, by BERT LETZ, SOLONGE BENILOUS and
LEE SHUR.

Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**CERTIFICATE DESIGNATING PLACE OF BUSINESS
OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN THIS
STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

In compliance with the laws of Florida, the following is submitted:

First -- That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, at City of Indialantic, County of Brevard, State of Florida, the corporation named in the said Articles has named John J. Kabboord, Jr., Esq. located at (P. O. Box 757, Cocoa Beach, Florida 32931) 505 N. Orlando Avenue, County of Brevard, State of Florida, as its statutory registered agent.

Having been named the statutory agent of said corporatin at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

Registered Agent

DATED this ____ day of _____,
1983.

EXHIBIT "D"

BY-LAWS

OF

BLUE HERON TOWNHOMES ASSOCIATION, INC.

ARTICLE I

GENERAL INTRODUCTION

Section 1. Name. The name of the Corporation is BLUE HERON TOWNHOMES ASSOCIATION, INC., hereinafter referred to as the "Association". Until changed, the principal office of the Association shall be located in Brevard County, Florida.

Section 2. Definitions. The capitalized terms herein shall have the meanings given them in Article I of the Declaration of Covenants and Restrictions for Blue Heron Townhomes or, if undefined there, in §2 of the Declaration of Covenants, Conditions and Restrictions for Aquarina.

Section 3. Effect. The acquisition or rental by anyone of a Lot or Townhome on the Aquarina Lands or his occupancy of any such Townhome shall mean that the provisions of these By-Laws and the Declaration are accepted, ratified and will be observed by that person.

ARTICLE II

VOTING RIGHTS, MAJORITY, QUORUM, PROXIES

Section 1. Voting Rights. The Association shall have two (2) classes of voting Members, as provided in the Association's Articles.

Section 2. Majority of Quorum. Unless otherwise expressly provided in these By-Laws or in the Declaration, any action which is desired to be taken by Members of the Association may be so taken by a vote a majority of a quorum of the Members of the Association.

Section 3. Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of at least thirty-three and one-third percent (33-1/3%) of the total Membership of the Association shall constitute a quorum of the Membership. Such Members present at a duly called or held meeting at which a quorum thereof is present may continue to accomplish the business of the meeting until adjournment, notwithstanding the withdrawal during the meeting of enough Members to leave less than such quorum. In the event, however, the required quorum is never present, the meeting may be rescheduled subject to the notice requirements set forth herein.

Section 4. Proxies. Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically terminate after completion of the meeting for which the proxy was filed and upon conveyance by the Member of his Unit.

ARTICLE III

ADMINISTRATION

Section 1. Association Responsibilities. The Association shall have the responsibility of fulfilling the maintenance obligations set forth in the Declaration, approving the annual budget, establishing and collecting all Assessments, enforcing applicable rules and regulations and performing all other obligations of the Association hereunder and under the Declaration, including, but not limited to, arranging for the management of the Association pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the Management Company. The Management Company may be an affiliate of the Developer.

Section 2. Place of Meetings of Members. Meetings of the Members shall be held on the Properties, or such other suitable place as close thereto as practicable in Brevard County as may be designated by the Board of Directors.

Section 3. Annual Meeting of Members. The first annual meeting of Members shall be held on the date at the place and at the time determined by the Board of Directors, provided, however, that said meeting shall be held within sixteen (16) months after the Developer's first sale of a Lot. Thereafter, the annual meetings of the Association shall be held on the date, and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and no later than thirteen (13) months after the last preceding annual meeting. At each annual meeting there shall be elected by ballot of the Members a Board of Directors, in accordance with the requirements of these By-Laws. At the first annual meeting, the directors shall be elected to serve until the second annual meeting, and at the second annual meeting, directors shall be elected for a term of one (1) year beginning with the second annual meeting. Unless a director resigns before the expiration of his term of office, each director shall hold his office until his successor has been elected and has qualified. The term of office of any director elected to fill a vacancy created by the resignation of his predecessor shall be the balance of the unserved term of his predecessor. The Members may also transact such other business of the Association as may properly come before the meeting. Each Institutional Mortgagee may designate a non-voting representative to attend all annual meetings of the Members.

Section 4. Special Meetings of Members. Special meetings of the Members may be called at any time by a majority of a quorum of the Board of Directors, or upon a petition signed by Members holding at least fifteen percent (15%) of the voting power of each class of the Members. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice. Each Institutional Mortgagee may designate a non-voting representative to attend all special meetings of the Members.

Section 5. Notice of Meetings of Members. It shall be the duty of the Secretary to mail a notice of each annual or special meeting of Members, stating the purpose thereof as well as the day, hour and place where it is to be held, to each Owner and to each Institutional Mortgagee which has filed a written request for such notice with the Secretary, at least ten (10), but not more than sixty (60) days prior to such meeting. The notice may set forth time limits for speakers and nominating procedures for

the meeting. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served. If no address has been furnished the Secretary, notice shall be deemed to have been given to a Member if delivered to his Unit and posted in a conspicuous place on the Common Properties.

Section 6. Adjourned Meetings. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days, nor more than thirty (30) days, from the time the original meeting was called. Such adjourned meetings may be held only upon a new notice thereof as provided in this Article, except that notice shall be given by announcement at the meeting at which such adjournment is taken. If a meeting is adjourned for more than thirty (30) days, notice of the adjourned meeting shall be given as in the case of an original meeting.

Section 7. Order of Business. The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspectors of election; (g) election of directors; (h) unfinished business; and (i) new business. Meetings of Members shall be conducted by the officers of the Association, in order of their priority.

Section 8. Action Without Meeting. Any action which under the provisions of Florida law may be taken at a meeting of the Members, may be taken without a meeting if authorized in writing by the requisite percentage of all Members who would be entitled to vote at a meeting for such purpose, and if thereafter filed with the Secretary.

Section 9. Consent of Absentees. The transactions at any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, a majority of the Members not present in person or by proxy signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 10. Minutes, Presumption of Notice. Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number and Qualification. The property, business and affairs of the Association shall be governed and managed by a Board of Directors composed of at least three (3) persons, each of whom, except for those appointed and serving as first directors, must either be an Owner of a Lot or an agent of the Developer. The Board of Directors may increase, by resolu-

tion, the authorized number of members of the Board. Directors shall not receive any stated salary for their services as directors, provided, however, that (1) nothing herein contained shall be construed to preclude any director from serving the Association in some other capacity and receiving compensation therefor, and (2) any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 2. Powers and Duties. The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and may take all such acts and do such things as are not by law, the Declaration, the Articles or by these By-Laws required to be exercised and done exclusively by the Owners.

Section 3. Special Powers and Duties. Without prejudice to the foregoing general powers and duties and such powers and duties as are set forth in the Declaration and the Articles, the Board of Directors is vested with, and responsible for, the following powers and duties:

(a) To select, appoint and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, with the Articles of Incorporation, the Declaration and these By-Laws, to fix their compensation, if any, and to require from them security for faithful service when deemed advisable by the Board.

(b) To conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, with the Articles of Incorporation, the Declaration and these By-Laws, as the Board may deem necessary or advisable.

(c) To change the principal office for the transaction of the business of the Association; to designate any place for the holding of any annual or special meeting or meetings of Members consistent with the provisions hereof; and to adopt and use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment, may deem best, provided that such seal shall at all times comply with the provisions of law.

(d) To borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and security therefor, provided no action authorized hereunder shall be taken without the prior written consent of the Developer as long as the Developer owns any Units.

(e) To fix and levy from time to time periodic and special assessments upon the Owners, as provided in the Declaration; to determine and fix the due date for the payment of such assessments, and the date upon which the same shall become delinquent. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves as provided in the Declaration. Should any Owner fail to pay such assessments levied against his Lot or Unit before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

(f) To enforce the provisions of the Declaration, the Articles, these By-Laws, applicable rules and regulations or other agreements of the Association.

(g) To delegate its powers according to law.

(h) To fix, determine and name from time to time, if necessary or advisable, the public agency, fund, foundation or non-profit corporation or association, which is then organized, to which the assets of this Association shall be distributed upon liquidation or dissolution, according to the Articles of Incorporation of the Association. The assets so distributed shall be those remaining after satisfaction of all just debts and obligations of the Association, and after distribution of all property held or acquired by the Association under the terms of a specific trust or trusts.

(i) To adopt such rules and regulations as the Board may deem necessary or desirable to promote a congenial, harmonious community of Owners, which rules and regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of such number of directors attached to a copy of the rules and regulations of the Association, and a copy of them is mailed to each Member entitled to vote at meetings of the Association. Such rules and regulations shall not materially adversely affect the rights, privileges or preferences of the Developer as established by the Declaration, the Articles of Incorporation of the Association and these By-Laws without the prior written approval of the Developer. Such rules and regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these By-Laws.

Section 4. Management Agent. To select a managing agent to manage the Common Properties and the affairs of the Association, who shall perform such duties and services as the Board shall authorize.

Section 5. Election and Term of Office. At the first annual meeting of the Association, and thereafter at each annual meeting of the Members, directors shall be elected by written ballot by a plurality of Members as provided in these By-Laws, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. In the event that an annual meeting is not held, or the Board is not then elected, the Board may be elected at a special meeting of the Members held for that purpose. Each director shall hold office until his successor has been elected and has qualified or until his death, resignation, removal or judicial adjudication of mental incompetence. Any person serving as a director may be re-elected, and there shall be no limitation on the number of terms during which he may serve. The conveyance of all Lots owned by any director (except directors appointed by the Developer) shall result in the resignation of such director.

Section 6. Books, Audit. The Board of Directors shall cause to be maintained a full set of books and records showing the financial condition of the Association in a manner consistent with accounting practices established by the Association or Management Company, and at no greater than annual intervals shall obtain a summary (which need not be certified) of such books and records. A copy of each such summary shall be delivered to Members within thirty (30) days after the completion of such summary.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the majority of the remaining directors, even though they may constitute less than a quorum; and each person so elected shall be a director until a successor is elected at the next annual meeting of the Members of the Association, or at a special meeting of the Members called for that purpose. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any director, increases in the size of the Board or in case the Members fail to elect the full number of authorized directors at any meeting at which such election is to take place.

Section 8. Removal of Directors. At any regular or special meeting of the Members duly called, any one or more of the directors (other than the Developer's appointees) may be removed with or without cause by a majority vote of the Members of the Association, and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the directors are so removed, new directors may be elected at the same meeting.

Section 9. Organization Meeting. The first regular meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the directors at the meeting at which such directors were elected, for the purpose of organization, election of officers and the transaction of other business. No notice shall be necessary to the newly elected directors in order legally to constitute such meeting, provided a majority of the whole Board shall be present.

Section 10. Other Regular Meetings. Other regular meetings of the Board of Directors shall be open to the Members (who shall not be recognized or entitled to participate) and may be held at such time and place within the Properties as shall be determined, from time to time, by a resolution adopted by a majority of a quorum of the directors; provided, however, that such meeting shall be held no less frequently than annually. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or telegraph, at least seventy-two (72) hours prior to the date named for such meeting, and shall be posted at a prominent place or places within the Common Properties.

Section 11. Special Meetings. Special meetings of the Board of Directors shall be open to all Members (who shall not be recognized or entitled to participate) and may be called by the President (or by any two (2) directors). At least seventy-two (72) hours' notice shall be given to each director, personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places within the Common Properties. If served by mail, each such notice shall be sent, postage prepaid, to the address reflected on the records of the Association, and shall be deemed given, if not actually received earlier, at 5:00 o'clock p.m. on the second day after it is deposited in a regular depository of the United States mail as provided herein. Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to such director, as required by law and as provided herein.

Section 12. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. The transactions at any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the directors not present signs such written waiver of notice, a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

Section 13. Quorum and Adjournment. Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 14. Action Without Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the vote or written consent of all the directors. Any action so approved shall have the same effect as though taken at a duly constituted meeting of the directors.

Section 15. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

Section 16. Committees. The Board of Directors by resolution may, from time to time, designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its members, as well as a chairman, and shall state the purposes of the committee, and shall provide for reports, termination and other administrative matters as deemed appropriate by the Board.

ARTICLE V

OFFICERS

Section 1. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary. Officers need not be directors. Any two offices may be held by the same person, but the office of President and Secretary may not be held by the same person.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board of Directors, and each officer shall hold his office at the pleasure of the Board of Directors, until he shall resign or be removed or otherwise disqualified to serve or his successor shall be elected and have qualified to serve.

Section 3. Removal of Officers. Upon an affirmative vote a majority of the entire Board of Directors, any officer may be removed, with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective. The conveyance by an officer (other than an officer appointed by the Developer) of all Lots owned by such officer shall be a resignation of such officer.

Section 4. Compensation. Officers, agents and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent or employee, provided that no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation.

Section 5. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex officio a member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board of Directors or these By-Laws of the Association.

Section 6. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled or refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or these By-Laws.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members of the Association at the principal office of the Association or at such other place as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct; and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board of Directors required by these By-Laws or by law to be given. The Secretary shall maintain a list of Owners, listing the names and addresses of the Owners as furnish-

ed the Association, and such list shall be changed only at such time as satisfactory evidence of a change in Ownership is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board of Directors.

Section 8. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and other records of business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall co-sign all checks on behalf of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with the Declaration, shall render to the President and directors, upon request, an account of all his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

ARTICLE VI

AMENDMENTS TO BY-LAWS

These By-Laws may be amended by the Association at a duly constituted meeting of the Members for such purpose. No amendment to these By-Laws shall take effect unless approved by the Class B Member (so long as the Class B Membership exists) and at least a majority of a quorum of Class A Members present, in person or by proxy, at a duly constituted regular or special meeting of the Members. No amendment may be adopted which adversely affects the rights of any Institutional Mortgagee (if it holds a mortgage made in good faith and for value on a Unit) or the Developer without the prior written consent of such Institutional Mortgagee or the Developer (as the case may be). This Article may not be amended.

ARTICLE VII

NOTICES

Section 1. Notice to Association. An Owner who mortgages his Lot or Townhome shall notify the Association, through the Management Company or the Secretary of the Board of Directors in the event there is no Management Company, of the name and address of his Mortgagee; and the Association shall maintain such information. Any such Owner shall likewise notify the Association as to the release or discharge of any such Mortgage.

Section 2. Notice of Unpaid Assessments. The Board of Directors of the Association shall at the request of an Mortgagee of a Lot or Townhome report any unpaid assessments due from the Owner thereof, in accordance with the provisions of the Declaration.

ARTICLE VIII

CONFLICTING PROVISIONS

In case any of these By-Laws conflict with any provisions of the laws of the State of Florida, such conflicting By-Laws shall be null and void upon final court determination to such effect, but all other provisions of these By-Laws shall remain in full force and effect. In case of any conflict between the Articles and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE IX

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Except to the extent that such liability or damage or injury is covered by insurance proceeds, the Board of Directors shall authorize the Association to pay expenses incurred by, or to satisfy a judgment or fine rendered or levied against, a present or former director, officer, committee or tribunal member, or employee of the Association, in any action brought by a third party against such person, whether or not the Association is joined as a party defendant, to impose a liability or penalty on such person for an act alleged to have been committed by such person while a director, officer, committee or tribunal member or employee, provided such director, officer, committee member or employee was acting in good faith within what he reasonably believed to be the scope of his employment or authority and for a purpose which he reasonably believed to be in the best interests of the Association or its Members. Payments authorized hereunder include amounts paid and expenses incurred in settling any such action or threatened action. The provisions of this Article shall apply to the estate, executor, administrator, heirs, legatees or devisees of a director, officer, committee or tribunal member or employee and may not be amended.

ARTICLE X

MISCELLANEOUS

Section 1. Execution of Documents. The Board of Directors, except as in these By-Laws otherwise provided, hereby authorize its President, or any Vice President, to enter into any contract or execute any instrument in the name and on behalf of the Association.

Section 2. Inspection of By-Laws. The Association shall keep in its office for the transaction of business the original or a copy of these By-Laws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Owners and all first Mortgagees at all reasonable times during office hours.

Section 3. Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors and having been so determined, is subject to change from time to time as the Board of Directors shall determine. In the absence of a specific termination, the fiscal year shall be the calendar year.

Section 4. Membership. The Association shall keep and maintain in its office for the transaction of business the name and address of each Member. Termination or transfer of Ownership

of any Unit by an Owner shall be recorded, together with the date on which such Ownership was transferred, in accordance with the provisions hereof and of the Declaration.

Section 5. Board of Directors. Unless specific actions are specifically required to be taken by the Members, all such actions may be taken by the Board through its proper officers with or without a specific authorization.

ARTICLE XI

NOTICE AND HEARING PROCEDURE

Section 1. Suspension of Privileges. In the event of an alleged violation of the Declaration, the Articles, these By-Laws or the rules and regulations adopted hereunder, and after written notice of such alleged failure is given to the Owner or to anyone in his family alleged to be in default in the manner herein provided, the Board of Directors shall have the right, after the alleged violator has been given an opportunity for an appropriate hearing and upon an affirmative vote of a majority of all members of the Board, to fine such Owner. No fine shall exceed the sum of \$1,000.00. The failure of the Board to enforce the rules and regulations, these By-Laws, the Articles or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these By-Laws or by law shall be cumulative and none shall be exclusive. However, any individual Owner must exhaust all available internal remedies of the Association prescribed by these By-Laws, or by the Rules and Regulations adopted by the Association, before that Owner may resort to a court of law for relief from any provision of the Declaration, the Articles, these By-Laws or the rules and regulations, the Articles, these By-Laws or the rules and regulations. The foregoing limitation pertaining to exhausting administrative remedies shall not necessarily apply to the Board or to any Member where the complaint alleges non-payment of Assessments.

Section 2. Written Complaint. A hearing to determine whether a right or privilege of an Owner or any of his Family ("Respondent") under the Declaration or these By-Laws should be suspended or conditioned or a fine imposed shall be initiated by the filing of a written Complaint by any Owner or by any officer or member of the Board of Directors with the President of the Association or other presiding Member of the Board. The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language 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 specify the specific provisions of the Declaration, the Articles, these By-Laws or the 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.

Section 3. Discovery. After initiation of a proceeding in which the Respondent is entitled to a hearing, the Respondent and the individual filing the Complaint, upon written request made to the other party, prior to the hearing and within fifteen (15) days after service by the Board of Directors of the Complaint or within ten (10) days after service of any amended or supplemental Complaint, is entitled to (1) obtain the names and addresses or witnesses to the extent known to the other party, and (2) inspect and make a copy of any statements, writings and 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 work product.

Section 4. Tribunal. The President shall appoint a Tribunal of three Owners upon receipt of a written Complaint as provided in Section 2 of this Article. No member of the Tribunal shall be a director of the Association, nor shall any member of the Tribunal be involved in any prior investigation of the matter on behalf of the Board nor related by blood or marriage to either the complaining party or the Respondent. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing neighbors of the Respondent or any Owners who are witnesses to the alleged violation giving rise to the Complaint. The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to taking of evidence of the hearing. In the event of such a challenge, the Board of Directors shall meet to determine the sufficiency of the challenge, without the President voting. If such challenge is sustained, the president shall appoint another Owner to replace the challenged member of the Tribunal. All decisions of the Board of Directors in this regard shall be final. The Tribunal shall elect a Chairman. The Tribunal shall exercise all other powers relating to the conduct of the hearing.

Section 5. Notice of Hearing. The Tribunal shall serve a notice of hearing, as provided herein, on all parties at least ten (10) days prior to the hearing.

Section 6. Hearing.

(a) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear the case and the hearing officer shall replace the withdrawing member. Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal.

(b) Each party shall have these rights: to be represented by counsel; to call and examine witnesses; to introduce exhibits; to cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. 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 purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(d) Neither the accusing Owner nor the allegedly defaulting Owner must be in attendance at the hearing. The hearing shall be open to attendance by all Owners. In rendering a decision, official notice may be taken at any time of any generally accepted matter within the Declaration, the Articles, these By-Laws, the rules and regulations or the workings of the Association.

Section 7. Decision. The Tribunal will prepare written findings of fact and recommendations for consideration by the Board of Directors. The Tribunal shall make its determination only in accordance with the evidence presented to it and in accordance with these By-Laws. After all testimony and documentary evidence has been presented to the Tribunal, the Tribunal shall vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling. A copy of the findings and recommendations of the Tribunal shall be served by the President on each party in the matter and his attorney, if any. Disciplinary action and fines under the Declaration, these By-Laws or the rules and regulations shall be imposed only by the Board of Directors, and in accordance with the findings and recommendations of the Tribunal. The Board of Directors may adopt the recommendations of the Tribunal in their entirety, or the Board may reduce the proposed penalty and adopt the balance of the recommendations. In no event shall the Board impose more stringent disciplinary action than recommended by the Tribunal. The decision of the Board shall be in writing and shall be served and posted in the same manner as the findings and recommendations of the Tribunal. The decision of the Board shall become effective ten (10) days after it is served upon the Respondent, unless otherwise ordered in writing by the Board of Directors. The Board may order a reconsideration at any time within fifteen (15) days following service of its decision on the parties on its own motion or upon petition by a party.

WE HEREBY CERTIFY THAT the foregoing By-Laws of the Association were duly adopted by the Board of Directors of the Association on the _____ day of _____, 19__.

Approved

President

Secretary

CONSENT AND JOINDER BY MORTGAGEE

KNOW ALL MEN BY THESE PRESENTS:

That BANKERS LIFE AND CASUALTY COMPANY, an Illinois corporation, being the owner and holder of that certain mortgage dated November 13, 1975, and recorded in Official Records Book 1575 at Page 160, Public Records of Brevard County, Florida, and as modified by Mortgage Modification Agreement dated March 28, 1978, and recorded in Official Records Book 1885, at Page 692, Public Records of Brevard County, Florida and further amended by Mortgage Modification Agreement dated December 12, 1978, and recorded in Official Records Book 1980, at Page 990, Public Records of Brevard County, Florida, do hereby consent to and join in the filing of the foregoing Declaration of Covenants, Conditions and Restrictions for BLUE HERON TOWNHOMES running with that certain real property described therein.

This consent and joinder is made without any representation or warranty expressed or implied by law, statute or otherwise, as to any matter set forth, in such Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, BANKERS LIFE AND CASUALTY COMPANY, has caused this presents to be executed this 9th day of December, 1982.

Signed, Sealed and Delivered in the presence of:

[Signature]
[Signature]

BANKERS LIFE AND CASUALTY COMPANY

By: [Signature]
B. D. Underwood, Vice President

STATE OF ~~ILLINOIS~~ FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, an officer duly authorized to administer oaths and take acknowledgements, personally appeared B. D. UNDERWOOD, the Vice President of BANKERS LIFE AND CASUALTY COMPANY, a corporation under the laws of the State of Illinois, to me known to be the individual and officer described in and who executed the foregoing instrument and he acknowledged its execution to be his free act and deed as such duly authorized officer; and that the official seal of the corporation is duly affixed and the instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Palm Beach Gardens, Palm Beach County, Florida, this 9th day of December, 1982.

[Signature]
Notary Public State of ~~ILLINOIS~~ Florida

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA
M. COMMISSION EXPIRES JULY 30 1986

OFF. REC.
2434

PAGE:
1876

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