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RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
OSPREY VILLAS, EAST AQUARINA

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made this 5th day of May, 2012, by Osprey Villas East HOA, Inc., a non-for profit corporation authorized to do business in the State of Florida.

RECITALS AND DECLARATION

WHEREAS, the Association desires that all of the below-described property be subject to like restrictions for the mutual benefit and protection of themselves and all persons, both real and corporate, who hereafter may purchase or acquire said property or any part thereof, or any interest in or lien upon said property or any part thereof; and

WHEREAS, the non-profit corporation called OSPREY VILLAS EAST AT AQUARINA HOMEOWNERS ASSOCIATION, INC. has been formed to perform certain functions of common concern to the lot and dwelling owners and to enforce the covenants, restrictions, charges and liens created by this Declaration, and

WHEREAS, the Declaration of Covenants and Restrictions for Osprey Villas East was originally recorded on May 23, 2001 in Official Record Book 46, Page 95 of Brevard County, Florida (the "Declaration"), and

WHEREAS, the Declaration of Condominium was previously amended by amendment dated August 10, 2006 and recorded on August 23, 2006 in Official Record Book 5688, Page 6982, and

WHEREAS, Article XII, Section 6 of the Declaration of Covenants and Restrictions for Osprey Villas East allows for an amendment by affirmative vote or written consent of the owner's holding not less than sixty-six and two-thirds percent (66 2/3%) of the voting power of the class A membership. Ten unit owners have either signed this restated Declaration of Covenants and Restrictions for Osprey Villas, East or have attached their written consent to this restated Declaration of Covenants and Restrictions for Osprey Villas, East.

NOW, THEREFORE, the Association hereby declares that the real property described on Exhibit A attached hereto (including any and all improvements thereon), together with such additions thereto as are hereafter made pursuant to this restated Declaration of Covenants and Restrictions for Osprey Villas, East, 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.

ARTICLE I
DEFINITIONS

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

1. **“Articles”** shall mean the Articles of Incorporation of the Association (a copy of which is attached hereto as Exhibit B), including any amendments thereto.

2. **“Association”** shall mean OSPREY VILLAS EAST AT AQUARINA HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, and its successors and assigns.

3. **“Board”** shall mean the Board of Directors of the Association.

4. **“By-Laws”** shall mean the By-Laws of the Association which have been adopted by the Board including any amendments thereto.

5. **“County”** shall mean Brevard County, Florida.

6. **“Covenants and Restrictions”** shall mean the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

7. **“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 amended from time to time, together with all supplemental declarations thereto.

8. **“Dwelling”** shall mean the improvements (and the appurtenant garage) 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, for which a certificate of occupancy has been issued by Brevard County.

9. **“Property”** shall mean the property described in Exhibit A attached hereto, as amended as provided for in Article II.

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10. **“Family”** shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption; or (b) a group of not more than four (4) persons not so related who maintain a common household in a dwelling.

11. **“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.

12. **“Institutional Mortgage”** shall mean a first mortgage on a dwelling held by an institutional mortgagee.

13. **“Institutional 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; and any assignee of a loan made by one of the foregoing to finance the purchase of a dwelling.

14. **“Lot”** shall mean one of the fifteen (15) lots of land described in Exhibit A hereto, and which is not subsequently withdrawn from the provisions of this Declaration, or any lot subsequently added to the provisions of this Declaration, by a supplemental declaration.

15. **“Master Association”** shall mean AQUARINA COMMUNITY SERVICES ASSOCIATION, INC., and its successors and assigns; and **“Master Declaration”** shall mean the Declaration of Covenants, Conditions and Restrictions for AQUARINA recorded in Official Records Book 2434, page 1145, Public Records of Brevard County, Florida, and any supplemental declarations thereto.

16. **“Member”** shall mean any person or entity holding a membership in the Association.

17. **“Owner”** shall mean the person or persons or legal entity or entities holding fee simple interests of record to any lot or dwelling, including the Developer and sellers under executory contracts for sale of a dwelling, but excluding those having such interest merely as security for the performance of an obligation and excluding purchasers under executory contracts for sale of a lot.

18. **“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.

19. **“ARC”** shall mean and refer to the Architectural Review Committee so established under Article XI hereof.

ARTICLE II **THE ASSOCIATION**

1. **Membership.** Every Owner of a lot or dwelling 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 dwelling.

2. **Classes of Voting Membership.** The Association shall have one class of voting membership:

A. **CLASS A.** Class A members shall be all owners and shall be entitled to one vote for each dwelling or lot owned. When more than one person holds an interest in any dwelling, or lot, all such persons shall be members. The vote for such dwelling or

lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any dwelling.

3. **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 the Covenants and Restrictions established with respect to the lots or with respect to other properties. Any such merger or consolidation shall require the vote or written approval of owners holding two-thirds (2/3) of the membership voting power.

ARTICLE IV **ASSESSMENTS**

1. Covenant to Pay; Creation of Lien.

A. **Covenant to Pay.** Each person or entity who accepts a deed to a lot or dwelling, or who accepts title thereto as an heir or devisee, is hereby deemed to have covenanted and agreed 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 title was acquired).

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 or dwelling.

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 such owner's 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.

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

3. **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 fifteen (15) days in advance of the period covered by the assessments, and written notice of any change in the amount of the periodic assessment during that period shall be given to each Owner at least fifteen (15) days in advance of

the changes becoming effective. At least fifteen (15) 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 statement (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 assessment 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.

4. **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 other Owners or a liability of that Owner provided for in Article VI, Section 3 hereof.

5. **Share of Assessments.** The periodic assessments provided for in Section 3 of this Article and the special assessments provided for in Section 4 of this Article shall be divided evenly among the dwellings in Osprey Villas East. Vacant lots will be assessed only for the services provided them and any special assessment that is applicable.

6. **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 dwelling 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 of \$25 or 5% of the amount of the installment, whichever is greater. (this is required by statute 720.3085(3) (a))

1. Further, in the board's sole discretion upon written notice, the board can accelerate the balance of the periodic assessments for the delinquent owner for the remainder of the fiscal year.

B. **Enforcement of Lien.** The Association may bring an action in its name to foreclose any lien on a dwelling 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 Subparagraph C below) 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 care 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 (\$50.00) dollars.

C. Attorney Fees and Other Costs of Enforcement. Reasonable attorney's fees incurred by the Association or its agent incident to the collection of any unpaid periodic or special assessment or the enforcement of any lien provided for by Section 1 of this Article (including attorney 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. If an institutional mortgagee of record acquires title to a dwelling as a result of foreclosure, then such institutional mortgagee of record shall be liable for that share of the periodic or special assessments pertaining to the dwelling or chargeable to the former owner thereof, which became due prior to the acquisition of title as specifically provided for in Florida's Statutes, Chapter 720. 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 dwelling in question. Except as expressly provided hereinabove, every grantee in a voluntary conveyance of a dwelling shall be jointly and severally liable for all unpaid periodic or special assessments up to the time of conveyance. Nothing herein contained to the contrary notwithstanding, each and every Owner, including purchasers at judicial sale, shall be liable for all periodic or special assessments coming due while he is the Owner of a dwelling, regardless of how his title was acquired.

E. Cumulative Remedies. The remedies provided in this Section 6 shall be cumulative and not mutually exclusive.

7. Association's Certificate. Each Owner of an assessable dwelling 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 dwelling upon payment to the Association of a reasonable fee not exceeding fifteen (\$15.00) dollars. Any person other than the Owner of the Dwelling in question who relied upon such a certificate shall be protected thereby.

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

10. Initial Assessments. Upon purchasing a dwelling each purchaser shall pay to his seller Two Hundred Fifty Dollars (\$250.00) for the benefit of the

Association at closing to be used as working capital. Each such amount shall be held by the Association as an operating reserve and may be used and applied from time to time to meet deficits or for such other purposes as the Association determines. Its payment shall not operate to relieve the Owner who paid it from commencing payment of periodic assessments as provided in Section 1 of this Article.

**ARTICLE V
MAINTENANCE**

1. By the Association.

A. **Maintenance of Dwelling.** The Association shall be responsible for exterior painting, exterior wall and roof maintenance and reconstructing or replacing, as and when reasonably necessary, the exterior building walls of each dwelling, the roof and foundations of each dwelling, those portions of each wall partially surrounding a patio, courtyard or pool appurtenant to a dwelling which is visible from outside the Lot on which the dwelling is situated, and window casements of each dwelling (but not the doors, windows and screens, gutters or downspouts of any dwelling). 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 may arrange and contract for the collection of trash from the dwellings.

C. **Grounds Maintenance.** The Association shall be responsible for maintaining all landscaping and driveways.

2. By Owners.

A. **Maintenance of Dwelling.** Each Owner shall be responsible for keeping the interior and exterior of his dwelling 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 dwelling 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**

1. Purchase, Custody and Payment.

A. **Authorization of Association.** Each person who accepts title to a dwelling (or who accepts title thereto as a heir or devisee) is hereby deemed to irrevocably nominate the Association as its attorney in fact.

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".

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C. **Approval.** Each insurance policy, the agency and company issuing the policy and the Insurance Trustee shall be subject to the approval of the Association.

D. **Named Insured.** The named insured of each hazard policy shall be the Association, individually, and as agent for the Owner of a dwelling covered by the policy and as agent for his mortgagees, if any, with the mortgagees as additional insured's.

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 dwelling 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 dwellings, their personal property (except as covered in Section 2.A below), and for their personal liability and living expense and for any other risks.

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

A. **Casualty.** Every dwelling (including all fixtures, installations or additions comprising that part of the dwelling outside the interior living space of the dwelling and initially installed in accordance with the original plans and specifications therefore, 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 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). Any such policy may contain reasonable deductible provisions as determined by the Board. The coverage shall afford protection against:

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

(2) **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. **Worker'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**

(1) 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.

(2) All policies of physical damage insurance shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to all of the named insured's, including all mortgagees of dwellings. 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.

3. **Premiums**. Premiums for the coverage described in Section 2 of this Article shall be assessed against each dwelling and will be based on size of the dwelling. Vacant lots will be assessed only for general liability insurance.

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 dwellings and their respective mortgagees in proportion to the amount of damage to each Owner's dwelling.

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.

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.

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 dwelling 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.

8. **Insurance Trustee**. The Board of Directors shall have the option in its discretion of appointing an Insurance Trustee. 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

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.

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 dwelling. In all other cases, the Association shall be responsible for reconstructing and repairing: damaged Insured Property the responsibility for maintaining which is the Associations; 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 dwelling that lie between the unfinished ceiling of the dwelling's first story and the unfinished surface of the floor slab of the dwelling's second story.

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 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 dwellings covered by the alternative plans and specifications.

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.

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 dwellings.

B. **Determination of Sufficiency of Funds.** If the estimated costs of reconstruction and repair for which the Association is responsible do not exceed \$50,000.00, 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 \$50,000.00, 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.

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:

(1) **Repair by Association When the Cost Does Not Exceed \$50,000.00.** If the estimated costs of reconstruction and repair that are the Association's responsibility do not exceed \$50,000.00, 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.

(2) **Repair by Association When the Cost Exceeds \$50,000.00.** If the estimated costs of reconstruction and repair that are the Association's responsibility exceed \$50,000.00 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 or general contractor 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.

(3) **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 dwellings 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 dwelling to the total of these costs in all damaged dwelling, provided, however, that no Owner shall be paid an amount that exceeds the estimated costs of the repair and reconstruction of his dwelling 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.

(4) The first moneys disbursed in payment of the costs of reconstruction and repair shall be presumed to be for 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 dwelling in the Roster of Mortgagees furnished the Insurance Trustee.

ARTICLE VIII **DRIVEWAYS**

1. **General.** Each driveway shared by two dwellings, and placed on the dividing line between lots on which they are situated, and each owner of one of the lots shall own that portion of the driveway 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 liability or property damage due to negligence or willful acts or omissions shall apply to all such driveways.

2. **Easements.** Easements are reserved in favor of all Lots for encroachments resulting from original construction or from restoration that conforms substantially to the original construction.

ARTICLE IX **USE RESTRICTIONS**

1. **Occupancy.** Each dwelling shall be used as a residence only, except as otherwise expressly provided herein. A dwelling owned by an individual, corporation, partnership, trust or other fiduciary may be occupied only by the following persons, and such persons' families and guests: (a) an individual Owner, (b) an officer, director, stockholder or employee or a corporate Owner, (c) a partner or employee of a partnership Owner, (d) the fiduciary or beneficiary of a fiduciary Owner, or (e) permitted occupants under an approved lease or sublease of the dwelling (as described below), as the case may be. A dwelling may be occupied under an approved lease or sublease only by the following persons, and such persons' families and guests: (a) an individual lessee or sub lessee, (b) an officer, director, stockholder or employee of a corporate lessee or sub lessee, (c) a partner or employee of a partnership lessee or sub lessee, or (c) a fiduciary or beneficiary of a fiduciary lessee or sub lessee. Under no circumstances may more than one Family reside in a dwelling 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 dwelling. The Board of Directors shall have the power to authorize occupancy of a dwelling 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.

2. Pets. With the exception of birds and fish housed in a cage or aquarium within the Owner's dwelling, no Owner may keep more than two (2) pets in a dwelling. 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 dwelling. No dogs may be kept on a terrace, balcony, patio or lanai of a dwelling when the dwelling's Owners is absent from the dwelling. 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 dwelling upon three (3) days' notice.

3. Alterations. No Owner shall cause or allow improvements or changes to any exterior portion of his dwelling (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 dwelling) without first obtaining the written consent of the Association.

4. Nuisances. No use or practice shall be allowed in or around dwellings which is a source of annoyance to Owners or occupants of dwellings or which interferes with the peaceful possession or proper use of the dwellings. All owners or occupants shall enforce and observe "quiet hours" between Midnight and 6 a.m.

5. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any dwelling.

6. Lease. All leases 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 instrument, document or instrument governing the dwellings. The Owner of a leased dwelling shall be jointly and severally liable with his tenant to the Association to pay any claim of injury or damage caused by the negligence of the tenant. 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. No dwelling may be leased for periods of less than three months.

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, courtyards or terraces of his dwelling (excluding storm shutters and screens) or make substantial changes to landscaping.

ARTICLE X
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:

1. Inspect the Association's books and records during normal business hours;
2. Receive an unaudited financial statement of the Association within sixty (60) days after each of its fiscal years closes;
3. Receive from the Association written notice of any meeting of the Association's membership and to attend any such meeting;
4. Receive from the Association written notice of any default under this Declaration or the By-Laws by an Owner of a Lot or dwelling encumbered by a mortgage to the Institutional Mortgagee, if the default remains uncured for more than thirty (30) days;
5. Receive timely written notice of casualty damage to or condemnation of any part of any dwelling on which it has a mortgage.

ARTICLE XI
ARCHITECTURAL CONTROL

1. **Necessity of Architectural Review and Approval.** It is the intent of this Declaration and the association that any new structure erected within this association shall have the same type, style, and coloration of roof; type and style of exterior architecture and windows; type and style of garage doors; type of style of exterior painting colorations; and type and style of exterior planting and landscaping. No improvement or structure of any kind, including without limitation, any grading, clearing, extensive interference with the landscape, building, fence, wall, swimming pool, screen enclosure, landscape device or object, or other improvement shall be commenced, erected, placed or maintained upon any lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same shall have been submitted to, and approved in writing by the Architectural Review Committee, hereinafter referred to as "ARC." All plans and specifications shall be evaluated as to environmental compatibility, harmony of external design, and location in relation to surrounding structures and topography.

2. **Architectural Review Committee.** The architectural and control review functions as provided for in this Article shall be administered and performed by an Architectural Review Committee, hereby created and hereafter referred to as ARC.

Said ARC shall consist of three (3) members, who need not be members of the Association. Members of the ARC shall be appointed by and shall serve at the pleasure

of the Board of Directors of the Association. A majority of the ARC shall constitute a quorum to transact business at any meeting of the ARC, and the action of a majority present at the meeting at which a quorum is present shall constitute the action of the ARC. Any vacancy occurring on the ARC because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors. The appointment, and/or administration of the ARC shall be performed by the Association or its appointed committee, in accordance with Section 3 below.

3. Powers and Duties of the ARC.

The ARC shall have the following powers and duties:

A. To recommend, from time to time, to the Board of Directors of the Association, modifications and/or amendments to the Architectural Planning Criteria. Any modification or amendment to the Architectural Planning Criteria shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and voting.

4. **Purpose of the ARC.** The ARC shall provide for a systematic and uniform review of all proposed improvements and construction of any type or nature whatsoever within OSPREY VILLAS EAST. The ARC shall review all plans for said improvements, to provide for sound and aesthetically pleasing development of the subdivision. The ARC shall assure itself of the soundness of the proposed improvements in order to prevent, to the extent possible, rapid and early deterioration. In addition, the ARC shall evaluate the proposed improvements with emphasis upon their harmonious incorporation into the community as a whole and with specific emphasis on external design, location of the improvement in relation to surrounding structures and/or improvements, topography, and conformity to the restrictive covenants imposed hereunder.

5. **Procedure Before the ARC.** Prior to the commencement of any work on the premises contemplated for improvement, an applicant must submit to the ARC one (1) complete set of plans and specifications for any improvement or structure of any kind, together with such fully executed application form and fees as may then be required by the ARC, and such additional information as required by this Declaration. In addition thereto, the application shall contain a \$5,000 deposit payable to the association for fulfillment of the terms and conditions of the approval of construction and to be refunded in full upon completion of the construction in compliance with the application and the approval by the ARC. No later than fifteen (15) business days after receipt of said plans and specifications, the ARC shall respond to the application in writing by approving said application, or disapproving said application. In the event the ARC fails to respond within the fifteen (15) day period, the plans and specifications shall be deemed approved. In the event of disapproval of plans and/or specifications as submitted, no work or construction shall be commenced in furtherance of the proposed improvement. Failure of any owner or occupant to comply with the above procedures could result in the Association seeking legal remedies. Upon issuance of the certificate of occupancy by the

County of Brevard, the ARC shall inspect the dwelling for compliance with the application and the ARC approval. If the dwelling is in compliance, then the construction deposit shall be refunded in full. If the construction is not in compliance, then the ARC shall give written notice specifying the deficiencies, and the applicant shall have sixty (60) days to bring the property into compliance. If the property is not brought into compliance, then the deposit is forfeited to the association who shall be entitled to use those funds to correct any deficiency or to compel compliance of any deficiency in a court of competent jurisdiction, together with recovery of the additional court costs and attorney's fees incurred by the association against applicant.

ARTICLE XII

GENERAL PROVISIONS

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 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 dwellings 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 dwellings 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 dwelling, or the entering into of a lease of, or occupancy of, any dwelling 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.

2. **Duration.** The Covenants and Restrictions shall be effective for a term of forty (40) years from the date the 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.

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 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 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 dwelling; provided, however, that any subsequent Owner of a dwelling shall be bound by those covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

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.

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.

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 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. All amendments shall be in accordance with the Brevard County regulations, codes and ordinances applicable to planned unit developments.

7. **Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right or title to a dwelling 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 dwelling.

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.

IN WITNESS WHEREOF, the Association has executed this Declaration on the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Georgia A. Kauffman
Witness Signature

Georgia A. Kauffman
Witness Printed Name

Richard W. Jaeger
By: 172 President and Individually
Whaler Drive
Melbourne Beach, FL 32951

Witness Signature

Witness Printed Name

The foregoing instrument was acknowledged before me this 10 day of May, 2012, by Richard W. Jaeger, who is president of Osprey Villas East Homeowners' Association, a Florida corporation, on behalf of the corporation and individually with Florida driver's license

Georgia A. Kauffman
Notary Public/State of Florida



JOINED IN WRITTEN CONSENT OF OWNERS

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to ~~saying~~ *same*.

By: Lawrence Olson 6/25/12

122 Whaler Drive

Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By: 

130 Whaler Drive

Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By By *Craig Mahoney*

132

Whaler Drive Whaler Drive

Melbourne Beach, FL 32951 Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By Michael J. Ardo

142 Whaler Drive

Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By: Samuel F. Ryan 

150 Whaler Drive

Melbourne Beach, FL 32951

Written Consent for the Restated Declaration of Covenants and Restrictions for Osprey Villas, East at Aquarina

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By Mary Connors
152- _____ Whaler Drive
Melbourne Beach, FL 32951

By _____
_____ Whaler Drive
Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants and
Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to same.


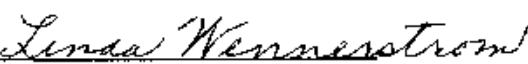

By: _____

160 Whaler Drive
Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to same.

(AS CORRECTED)

By  Catherine  Linda Wennesstrom

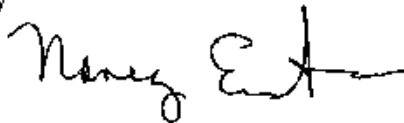
162 Whaler Drive

Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By: By

A handwritten signature in black ink, appearing to read "Nancy East". The signature is written in a cursive style with a large initial "N" and a long horizontal stroke at the end.

Whaler Drive Whaler Drive

Melbourne Beach, FL 32951 Melbourne Beach, FL 32951

**Written Consent for the Restated Declaration of Covenants
and Restrictions for Osprey Villas, East at Aquarina**

I am a unit owner in Osprey Villas East at Aquarina, a Homeowners' Association, and I have read and reviewed the restated Declaration of Covenants and Restrictions and consent and agree to saying.

By 

172 Whaler Drive

Melbourne Beach, FL 32951