

**AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS
FOR OCEAN VILLAGE VILLAS, VOLUSIA COUNTY, FLORIDA
AND NOTICE OF PROVISIONS OF
OCEAN VILLAGE VILLAS HOMEOWNERS ASSOCIATION, INC.**

This AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR OCEAN VILLAGE VILLAS , VOLUSIA COUNTY, FLORIDA AND NOTICE OF PROVISIONS OF OCEAN VILLAGE VILLAS HOMEOWNERS ASSOCIATION, INC. is made as of the date this AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR OCEAN VILLAGE VILLAS, VOLUSIA COUNTY, FLORIDA AND NOTICE OF PROVISIONS OF OCEAN VILLAGE VILLAS HOMEOWNERS ASSOCIATION, INC. is recorded in the Public Records of Volusia County by Ocean Village Villas Homeowners Inc., a Florida corporation not for profit.

WITNESSETH

WHEREAS, Peninsula Investment Enterprises, Inc., (hereinafter referred to as the "Developer") was the owner of a parcel of real property located in Volusia County, Florida, which was developed as a community known as Ocean Village Villas; and

WHEREAS, Ocean Village Villas consists of the real property described in and depicted on the following plat recorded in the Public Records of Volusia County, Florida:

OCEAN VILLAGE VILLAS, Plat Book 42, Pages 192 through 197 (hereinafter referred to as the "Plat");

WHEREAS, the real property described on the Plat is hereinafter sometimes referred to as "Ocean Village Villas"; and

WHEREAS, the Developer executed that certain Declaration Of Covenants And Restrictions For Ocean Village Villas, Volusia County, Florida And Notice Of Provisions Of Ocean Village Villas Homeowners Association, Inc. dated April 17, 1989, and recorded June 28, 1989, in Official Records Book 3324, Pages 0724, *et seq.*, of the Public Records of Volusia County, Florida, as amended and supplemented (hereinafter referred to as the "Original Declaration"), and said Original Declaration imposed covenants, conditions and restrictions on Ocean Village Villas;

WHEREAS, Developer provided in the Original Declaration for the establishment of a homeowners' association to maintain, administer and control certain property within Ocean Village Villas,

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as that term is defined herein, and to administer and enforce the covenants and restrictions which association is Ocean Village Villas Homeowners Association, Inc., a Florida not for profit corporation (hereinafter referred to as the "Association"); and

WHEREAS, the Association desires to amend and restate the Original Declaration and impose this Amended And Restated Declaration Of Covenants And Restrictions For Ocean Village Villas, Volusia County, Florida And Notice Of Provisions Of Ocean Village Villas Homeowners Association, Inc. on the real property within Ocean Village Villas, and, accordingly, pursuant to the laws of the State of Florida, prepared this document to amend and restate the Original Declaration; and

WHEREAS, this amended and restated document shall hereinafter be referred to as the "Amended And Restated Declaration"; and

WHEREAS, the purpose of this Amended And Restated Declaration is to substantially and completely amend and restate the covenants, conditions and restrictions previously imposed upon Ocean Village Villas and impose this Amended And Restated Declaration upon the real property within Ocean Village Villas;

NOW, therefore, in consideration of the premises and the covenants herein contained, the Association hereby declares that henceforth the Original Declaration is merged into and is superseded and completely replaced by this Amended And Restated Declaration such that the real property within Ocean Village Villas, and all additions thereto, to the extent permitted by law, shall be owned, held and conveyed subject to the covenants, restrictions, easements, reservations and liens herein established, all of which, to the extent permitted by law, shall be covenants running with the land and shall be binding and inure to the benefit of the Association and the owners of land within Ocean Village Villas, their respective successors and assigns, and any other parties having any right, title or interest in such real property.

ARTICLE I

Section 1. "Association" shall mean and refer to Ocean Village Villas Homeowners Association, Inc., a Florida corporation not for profit, its successors and assigns.

Section 2. "Property" shall mean and refer to that certain real property described on the Plat, i.e., OCEAN VILLAGE VILLAS, recorded in Plat Book 42, Pages 192 through 197, of the Public Records of Volusia County, Florida.

Section 3. "Common Area" shall mean all real property including the improvements thereon shown on the Plat as common property. The term Common Area shall also include any tangible personal property or real property acquired by the Association, if such property is designated as such by the Association. All of the Common Area is to be devoted to and intended for the common use and enjoyment of the members of the Association, their families, guests, persons occupying Dwelling Units, as that term

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is defined herein, on a guest or tenant basis. The Common Area was, or was intended to be, conveyed to the Association by the Developer by a deed of conveyance recorded among the Public Records of Volusia County, Florida.

Section 4. "Residential Lot" or "Lot" shall mean any unimproved or improved parcel of land located within the subdivision and bearing a lot number or which is shown upon the Plat. A parcel of land shall be deemed to be unimproved until the improvements being constructed thereon are substantially complete or are subject to ad valorem tax as improved property.

Section 5. "Dwelling Unit" shall mean and refer to a Lot with a Home, as defined herein, constructed thereon. Dwelling Unit shall also refer to and include each part of a Lot or Lots upon which a Home exists such that each portion of the Lot or Lots containing a Home shall separately constitute a Dwelling Unit.

Section 6. "Developer" shall mean and refer to Peninsula Investment Enterprises, Inc., a Florida corporation, its successors and assigns.

Section 7. "ARC" shall mean an architectural review committee appointed in accordance with Article VI, whose duties shall be as set forth in Article VI.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or Dwelling Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Home" shall mean and refer to any portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single family susceptible to ownership in fee simple and being constructed having party walls and being attached to other similar units.

Section 10. "Member" shall mean and refer to any Owner who is a member of the Association.

Section 11. "Subdivision Community" shall mean and refer to Ocean Village Villas.

Section 12. "Board of Directors" or "Board" shall mean the Board of Directors of Ocean Village Villas Homeowners Association, Inc.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which is the property of the Association, which right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit, subject to

the following provisions:

(a) The right of the Association to suspend the voting rights of an Owner for nonpayment of annual assessments that are delinquent in excess of 90 days; and

(b) The right of the Association to suspend, for a reasonable period of time to be determined by the Board, the rights of an Owner, or the Owner's family, tenants, guests or invitees, to use the recreational facilities on the Common Area for violation(s) of the Association's covenants and restrictions or rules and regulations; and

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

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

Section 3. Rentals. All rentals by any Owner or agent of a Lot or Dwelling Unit are subject to regulation by the Association. Any Owner or agent of Owners desiring to rent a Lot or Dwelling Unit shall supply, at his or her own expense, to the occupant of said Dwelling Unit a copy of the current rules and regulations, the Amended And Restated Declaration, and Bylaws of the Association. All Owners or agents of Owners renting any Lot or Dwelling Unit must return to the Association office at least two (2) days prior to the occupancy of said Lot or Dwelling Unit the completed Association Registration Form signed by the tenant.

All Owners are responsible for any damages to Association property or charges incurred by the Association with respect to any tenancies. The Association (by a majority vote of the Board) may levy, lien and foreclose an individual assessment, as more fully set forth in Article III, against any Owner who fails to reimburse the Association for such damages incurred by the Association.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Dwelling Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, and (3) individual assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided. All assessments must be paid in the form of United States funds. The annual, special, and individual assessments, together with such interest thereon, administrative late fees, and costs of collection thereof as

hereinafter provided, including reasonable attorneys' fees and paralegals' fees regardless whether suit is filed (including such fees and costs before trial, at trial and on appeal) shall be a charge on the land, shall be a continuing lien upon the property against which each such assessment is made, together with such interest thereon and the cost of collection thereof as hereinafter provided, including reasonable attorneys' fees and paralegals' fees regardless whether suit is filed (including such fees and costs before trial, at trial and on appeal) and shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due and shall in addition be the personal obligation of the person who is an Owner subsequent to the time when the assessment fell delinquent in the event that the previous Owner failed to pay the outstanding assessment. Notwithstanding anything contained herein to the contrary, the obligation shall be joint and several as to the Owner in the event that the Owner constitutes more than one person or entity.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of implementing the corporate purposes and powers of the Association and promoting the recreation, health, safety and welfare of the residents of the Property, including, but not limited to, the payment of the taxes on the Common Area and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit to an Owner, the maximum monthly assessment by the Association was Forty Dollars and No Cents (\$40.00) per Lot or Dwelling Unit per month. The annual and special assessments shall be fixed at a uniform and equal rate for all Lots or Dwelling Units.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit, the maximum annual assessment by the Association may not be increased each year more than twenty percent (20%) above the maximum assessment for the previous year without a vote of the membership of the Association; provided, however, that the right to increase such assessments is cumulative such that, by way of example, if the Association increased the assessment by only ten percent (10%) in a given year, including any year prior to the recording of this Amended And Restated Declaration, the Association could increase the assessment in the next year by as much as thirty percent (30%).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit to an Owner, the maximum annual assessment may be increased by the Association above twenty percent (20%), cumulatively, by a vote of fifty-one percent (51%) of the Members who are voting in person or by proxy, at a meeting duly called for such purpose.

(c) The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount than the maximum and may fix the assessment for each calendar year and may increase the maximum assessment by as much as twenty percent (20%) over the maximum amount set for the previous calendar year, provided, however, that the Board of Directors shall retain the right to cumulatively increase such

assessment as set forth in subparagraph (a) hereinabove.

(d) In addition to the foregoing, each Owner shall pay an additional sum equal to three (3) months of monthly assessments. Such sum shall be a working capital contribution to the Association and shall be used by the Association for the purposes set forth herein. Said sum shall be due and payable in full at the time that each Owner acquires title to a Lot or Dwelling Unit.

(e) No interest shall be paid, due or payable by the Association to the Owner on any assessment. The Association shall have the right to place the assessments in an interest bearing account or instrument and any interest earned thereon shall belong to the Association to be used for Association purposes.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area which is the property of the Association, including the necessary fixtures and personal property related thereto, provided that such assessment shall have the assent of fifty-one percent (51%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least ten (10) days in advance and shall set forth the purpose of the meeting.

Section 5. Quorum for any Action Authorized Under Sections 3(b) and 4. The quorum required for any action authorized by Sections 3(b) and 4 hereof shall be as follows:

At the first meeting called, as provided in Sections 3(b) and 4 hereof, the presence at the meeting of Members of the Association, or of proxies, entitled to cast fifty-one percent (51) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirement that written notice of said meeting be sent to all Members at least ten (10) days in advance of the meeting setting forth the purpose of the meeting. The required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein commenced for each Lot or Dwelling Unit on the date that the builder conveyed said Lot or Dwelling Unit to an Owner and has continued thereafter. Assessments shall be collected quarterly in advance on January 1, April 1, July 1, and October 1 of each year. The assessment with respect to each Lot or Dwelling Unit shall be prorated such that the Owner shall be liable for that portion of the assessment due with respect to the balance of the quarterly period in which the Owner takes title of the Lot or Dwelling Unit; provided, however, that the entire sum required in Section 3(d) hereof shall be paid in full.

Section 7. Duties of the Board of Directors. The Board of Directors shall fix the date of commencement and the amount of the assessment against each Lot or Dwelling Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. Failure to perform the foregoing directions by the Association shall not negate the obligation of the Owners to pay the assessments.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effects of Nonpayment of Assessments; The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates specified in Section 6 hereof), then such assessment shall become delinquent and shall, together with such interest thereon, late charges, and cost of collection thereof as hereinafter provided, including reasonable attorneys' fees and paralegals' fees whether suit is filed (including such fees and costs before trial, at trial and on appeal), thereupon become a continuing lien on the Lot or Dwelling Unit which shall bind such Lot or Dwelling Unit in the hands of the then Owner, the Owner's heirs, devisees, personal representatives, successors and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain the Owner's personal obligation as well as subsequent Owners, as more particularly set forth in Section 1 hereof. If the Owner is comprised of more than one (1) person or entity, the elements comprising the Owner shall be jointly and severally liable for the obligation to pay such assessment.

If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the maximum rate of interest permitted by law per annum, reasonable administrative late fees in an amount to be determined by the Board of Directors, and the Association may bring an action at law against the Owner or Owners personally obligated to pay the same or to foreclose the lien against the Lot or Dwelling Unit, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, administrative late fees, and reasonable attorneys' fees and paralegals' fees (including such fees before trial, at trial and on appeal), to be determined by the Court, together with the costs of the action.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage or mortgages now or hereafter placed upon the Lot or Dwelling Unit subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The following property subject to this Amended And Restated Declaration shall be exempted from the assessments, charge and lien created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Areas as defined in Article II, Section 3 hereof.
- (c) Any and all Dwelling Units owned by the Association.

Section 11. Individual Assessments. The Association (by a majority vote of the Board) may levy an individual assessment against any Owner who fails to reimburse the Association for costs incurred by the Association in the maintenance and repair of such Owner's Lot or Dwelling Unit, as more fully set forth in this Amended And Restated Declaration.

ARTICLE IV
EASEMENT RESERVED TO DEVELOPER AND BUILDER

Section 1. Easement over Common Area. For a term of twenty (20) years from the date of execution of the Original Declaration, the Developers reserved unto themselves an easement over, upon and under and across the Common Area as aforesaid, shown on the Plat together with the right to grant easements to others and such easement shall include, but shall not be limited to, the right to use the Common Area to erect, maintain and use electric and telephone poles, wires, cable, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities, drainage and the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation or to provide for drainage and to maintain reasonable standards of health, safety and appearance and the right to locate wells, pumping stations and tanks; provided, however, that said reservation and right shall not be considered an obligation of the Developer or Builder to provide or maintain any such utility or service.

Section 2. Easements Over Lots. The Lots shall be subject to easements as follows:

- (a) Those shown or recited on the Plat.
- (b) If any portion of an existing dwelling shall encroach on an adjoining Lot, due to error in the surveying for the resubdivision, a perpetual easement shall exist to permit such dwelling to remain as constructed.
- (c) Developer reserved the right to create further easements over the portion of any Lot lying within 15 feet of the lot line if such easements are needed in the development and sale of the Property and

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provided such easement does not interfere with the reasonable use of the Lot as a residence, and is not within the boundaries of a dwelling.

Section 3. Creation of Easements. All easements, as provided for in this Article, shall be established by one or more of the following methods, to wit:

- (a) By a specific designation of an easement on the Plat or other recorded plat of the Property;
- (b) By a reservation or specific statement providing for an easement in the deed of conveyance of a given Lot or Dwelling Unit; or
- (c) By a separate instrument referencing this Article V, said instrument to be subsequently recorded by the Developer.

ARTICLE V
ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure, or landscaping, or painting of an exterior surface shall be commenced, erected upon any Lot, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, quality and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the ARC. No addition constructed after the recording date of this Amended And Restated Declaration shall exceed the height of the original one story structure. The Board of Directors may adopt written guidelines (hereinafter referred to as the "ARC Guidelines") for the approval of any such construction, building, landscaping, maintenance, painting, etc. The initial ARC Guidelines are attached hereto and incorporated herein as "Exhibit "A". The ARC Guidelines may be amended by majority vote of the Board of Directors. The ARC shall consist of 3 members appointed by the Board of Directors. Provided, however, that until twenty (20) years from the date of recordation of the Original Declaration, the Developer shall be entitled but not obligated to appoint all members of the ARC and any successor members. Failure of the Developer to exercise its right to appoint such members shall act to vest in the Association the right to appoint such member or members; provided, however, that unless a contrary intention is manifested by the Developer in writing, the foregoing shall not be deemed to waive the Developer's rights to appoint successor members of the ARC. The Association or Developer may appoint members of the Board of Directors, Members or non-Members such as architects, land planners, lawyers or other similarly qualified professionals to the ARC. In the event said ARC fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. All construction by an Owner must be approved by the ARC and must be performed by a contractor acceptable to the ARC. Such contractor must be licensed by the City of Ormond Beach and be insured and/or bonded in an amount and type acceptable to the Association. If ARC approval is granted, a copy of the City of Ormond Beach

permit must be submitted to the Association before any work is begun.

Section 2. The members of the ARC shall be appointed for staggered three (3) year terms. In the event of death, resignation, inability to serve, or other vacancy in office of any member of the ARC, the Association or Developer shall promptly appoint a successor member who shall serve for the duration of the unexpired term of the member who he replaced. The membership, rules of procedure and duties of the ARC shall be prescribed by and, from time to time, changed or modified by the Association. The ARC shall indicate any disapproval of the matters required to be acted upon by them by a written instrument filed with the secretary of the Board of Directors, and served personally or by certified mail upon the Owner and all interested parties, identifying the proposed building or structure and the reasons for such disapproval. The decision of the ARC may be appealed in writing within ten (10) days of the receipt of the decision to the Board of Directors, and the Board shall take action on such appeal and either approve or disapprove the decision of the ARC within two (2) weeks after the receipt of said appeal to the Board of Directors, and the action of the Board shall be final. If there is no appeal within ten (10) days, then the decision of the ARC is final.

ARTICLE VI GENERAL RESTRICTIONS

Section 1. General Restrictive Covenants. The general restrictive covenants contained in this Article shall apply uniformly to all Lots and Dwellings Units of the Property.

Section 2. Residential Use Only. No Lot or Dwelling Unit shall be used for any purpose except residential. The term "residential" is intended to prohibit any commercial use, including professional office use of any portion of any Lot or Dwelling Unit. No building shall be erected, altered, placed or permitted to remain on any Lot other than buildings designed for residential use and private garages. The foregoing shall not prohibit the Association from using Dwelling Units as management offices or for other Association purposes.

Section 3. No Temporary Structures. No structure of a temporary nature or character, including, but not limited to, a trailer, house trailer, mobile home, camper, tent, shack, shed, boat, barn or other similar structure or vehicle, shall be used or permitted to remain on any Lot as a storage facility or residence, or other living quarters whether temporary or permanent, unless approved by the ARC for use during construction only.

Section 4. Parking Restrictions. No commercial truck larger than a pick-up truck, boat, boat and trailer, trailer, house trailer, mobile home, camper, or other similar vehicle shall be parked on the street, including right-of-way thereof, or Property overnight or for a continuous period of time in excess of ten (10) consecutive hours. All vehicles must park in or on garages, driveways, street parking areas and must not drive or park on any grass or sodded areas, including the grass in any parking areas.

Section 5. Parking and Storage Restrictions. No truck larger than a pick-up truck, house trailer, mobile home, camper, boat, boat and trailer, or trailer or other similar vehicle shall be parked for any period of time in excess of ten (10) consecutive hours or stored or otherwise permitted to remain on any Lot or paved driveway leading from the street adjoining a Lot to the doorway of a garage attached to a Dwelling Unit, except in a closed garage attached to a Dwelling Unit. No automobile, truck or other commercial vehicle which contains lettering or advertising thereon or which is identified with a business or commercial activity, shall be parked for any period of time in excess of ten (10) consecutive hours or stored or otherwise permitted to remain on any Lot except in a closed garage attached to a Dwelling Unit or designated parking areas. Screened or glass-enclosed rooms shall not be used as a storage facility so as to create a visible nuisance to other Owners or residents of the Subdivision Community.

Section 6. Livestock and Animal Restrictions. No livestock, poultry, or animals of any kind or size shall be raised, bred, or kept on any Lot or in any Dwelling Unit provided, however, that dogs, cats, or other common domesticated household pets may be raised and kept provided such pets are not kept, bred or maintained for any commercial purposes. Such permitted pets shall be kept in the Owner's Home and shall not be allowed to roam free in the neighborhood or on to any other Owner's property. No permitted pet shall be allowed to make noise in a manner or of such volume as to annoy or disturb other Owners. No permitted pet shall be allowed to be tied outside of any Dwelling Unit. Owners, and their family members, guests, tenants, and invitees shall not allow their pets to defecate on any part of the Common Area or other Owners' Lots, or otherwise destroy, deface, or damage any part of the Property.

Section 7. Restrictions on Activity. No obnoxious or offensive activity shall be conducted or permitted to exist upon any Lot, or in any Dwelling Unit, nor shall anything be done or permitted to exist on any Lot or in any Dwelling Unit that may be or may become an annoyance or private or public nuisance. No Lot, driveway, or Common Area shall be used for the purpose of vehicle repair or maintenance.

Section 8. Restrictions of Walls, Fences, or Hedges. No wall, fence, or hedge in violation of any applicable state or local codes or ordinances shall be erected, placed, altered, maintained or permitted to remain on any Lot. No walls, fences or hedges shall be allowed unless approved by the ARC.

Section 9. Sewerage Restrictions. No septic tank, drain field, mobile home storage tank, or other similar container shall be permitted to exist on any Lot.

Section 10. Antenna Provision.

a. Definitions. The following definitions apply to the Antenna Provision:

1. "Antenna": any device used for the transmission and receipt of video or audio services, including direct broadcast satellite (DBS), television broadcast, and multipoint distribution service (MDS). A mast, cabling, supports, guy wires, conduits, wiring, fasteners, or other accessories necessary for the proper installation, maintenance, and use of a reception antenna shall be considered part of the

antenna.

2. "Covered Antenna": an Antenna covered by the FCC's Over-the-Air Reception Devices (OTARD) Rule.

3. "Central Antenna System": an antenna system installed by the Association to serve more than one Resident simultaneously.

4. "Exclusive Use Area": area (and airspace) in which the Resident has a direct or indirect ownership or leasehold interest and which is designated for the exclusive use of the Resident. However, such designation shall not be required to exist within the Amended And Restated Declaration, Articles or Bylaws, and may be implied and/or implicit in the ownership or leasehold of a Lot.

5. "Individual Antenna": Antenna installed by one Resident for reception by that Resident.

6. "Mast": Structure to which an Antenna is attached that raises the Antenna height to enable the Antenna to receive acceptable-quality signals.

7. "Resident": any person or entity who has a direct or indirect ownership or leasehold interest in a Lot or Unit, regardless of whether such person or entity actually lives or dwells on the Lot or the Properties.

8. "Transmission-Only Antenna": An Antenna that has limited transmission capability and is designed for the Resident to select or use video programming.

b. Antenna Size and Type. Subject to criteria detailed elsewhere herein, the following are Covered Antennas and may be installed:

1. Antennas designed to receive Direct Broadcast Satellite (DBS) service that are 39.4 inches (1 meter) or less in diameter may be installed. DBS antennas larger than 39.4 inches (1 meter) in diameter are prohibited.

2. Antennas designed to receive Multipoint Distribution Service (MDS) that are 39.4 inches (1 meter) or less in diameter may be installed. MDS antennas larger than 39.4 inches (1 meter) in diameter are prohibited.

3. Antennas designed to receive television broadcast signals, (hereinafter referred to as "Television Broadcast Covered Antennas") regardless of size.

4. Transmission-Only Antennas that are necessary for the use of Covered

Antennas.

5. Masts that are required for the installation of Covered Antennas.

6. All Antennas not listed in items 1 through 5 immediately above (including amateur or ham radio antennas) not covered by the FCC's Over-the-Air Reception Devices Rule as amended are prohibited.

c. General Rules

1. Residents are permitted to install Covered Antennas only according to the following rules, provided that these rules do not unreasonably delay Covered Antenna installation, maintenance, or use, or preclude reception of acceptable-quality signals from Covered Antennas.

2. Location

- (i) Covered Antennas are permitted to be installed solely on Lots or Exclusive Use Areas.
- (ii) If Television Broadcast Covered Antennas are to be installed, then they must be installed inside the dwelling located on a Lot wherever possible.
- (iii) Covered Antennas shall not encroach upon any Common Area, any Lot or Exclusive Use Area of another Resident, Common Area airspace, or the airspace of a Lot or Exclusive Use Area of another Resident.
- (iv) Covered Antennas shall be located in a place shielded from view from dwellings located on other Lots, from streets, or from outside the Property to the maximum extent possible. If Covered Antennas can receive acceptable-quality signals from more than one location, then Covered Antennas must be located in the least visible location. This section does not permit installation on Common Area, even if an acceptable-quality signal cannot be received from a Lot or Exclusive Use Area.
- (v) If an installation cannot comply with the previous section because the installation would unreasonably delay, unreasonably increase the cost, or preclude reception of acceptable-quality signals, the Resident must ensure that the installation location is as close to a

conforming location as possible. The Association may request an explanation of why the nonconforming location is necessary.

3. Installation

- (i) Covered Antennas shall be neither larger nor installed higher than is necessary for reception of an acceptable-quality signal.
- (ii) All installations shall be completed so that they do not materially damage any Properties or void any warranties of the Association, other Residents, or in any way impair the integrity of any dwelling or building on the Properties.
- (iii) A Resident is not required to hire a professional antenna installer. However, any installer other than the Resident shall employ qualified personnel to install the Covered Antenna and shall provide the Association with an insurance certificate listing the Association as a named insured prior to installation. Insurance shall meet the following minimum limits. Contractor's general liability (including completed operations): \$1 million. The purpose of this regulation is to ensure that Covered Antennas are installed in a manner that complies with building and safety codes and manufacturer's instructions. Improper installation could cause damage to structures, posing a potential safety hazard to Residents and personnel.
- (iv) Covered Antennas must be secured so that they do not jeopardize the soundness or safety of any structure or the safety of any person at or near the Covered Antennas, or cause property damage, including damage from wind velocity.
- (v) Residents are liable for any personal injury or damage occurring to Common Area, another Resident's Lot or Exclusive Use Areas arising from installation, maintenance, or use of a Covered Antenna, and shall:
 - (a) pay the repair cost for damages to the Common Area another Resident's Lot or Exclusive Use Areas and any other property damaged by Covered Antenna installation, maintenance, or use;

(b) pay the medical expenses incurred by persons injured by Covered Antenna installation, maintenance and/or use; and

(c) reimburse Residents or the Association for damages caused by Covered Antenna installation, maintenance and/or use.

(vi) A Resident installing a Covered Antenna shall indemnify the Association against injury or loss caused by the Covered Antenna.

4. Maintenance

(i) Residents shall not permit their Covered Antennas to fall into disrepair or to become a safety hazard. Residents shall be responsible for the maintenance, repair, and replacement of their Covered Antenna and the correction of any safety hazard caused by their Covered Antenna within thirty days after notification of the need for repair.

(ii) If Covered Antennas detach, the Residents thereof shall remove the Antennas or repair such detachment within seventy-two hours of the detachment. If the detachment threatens safety, the Association may remove Covered Antennas at the expense of the Resident.

(iii) Residents shall be responsible for their Covered Antenna's maintenance and shall not permit the exterior surfaces of their Covered Antennas to deteriorate.

(iv) If the Resident fails to maintain or does not correct a safety hazard within thirty days after notification, the Association may enter onto the Lot where the Covered Antenna is located to make repairs. Any repair expense will be charged to and paid by the Resident of the Lot where the Covered Antenna is located.

5. Covered Antenna Camouflaging

(i) Covered Antennas shall be neutral in color or painted to match the color of the structure (e.g., wall, railing, dwelling, etc.) on which they are installed.

(ii) Covered Antennas installed on the ground and visible from the

street or other Lot or Exclusive Use Areas must be camouflaged. A covered antenna preferably should be camouflaged by existing landscaping or screening. If existing landscaping will not adequately camouflage the Covered Antenna, then the Association may require additional camouflage. If the camouflaging will cause an unreasonable cost increase, then the Association has the option to pay for additional camouflaging.

- (iii) Exterior Covered Antenna wiring shall be installed so as to be minimally visible and blend into the material to which it is attached.
- d. Safety. Because the Association has a legitimate safety interest in preventing personal injury or property damage occurring due to improper or unsafe Covered Antenna installation, Residents must comply with the following safety guidelines: Covered Antennas shall be installed and secured in a manner that complies with all applicable codes, safety ordinances, city and state laws and regulations, and manufacturer's instructions; if a Resident must obtain a permit in compliance with a valid safety law or ordinance, then the Resident shall provide a copy of that permit to the Association before installation. The purpose of this rule is to ensure that Covered Antennas are installed safely and securely, and to minimize the possibility of detachment and resulting personal injury or property damage.
- e. Number of Covered Antennas. No more than one Covered Antenna providing the same service from the same provider may be installed by a Resident on a Lot.
- f. Association Use of Common Area for Covered Antenna Installation
 - 1. The Association may choose to set aside a portion of Common Area for the installation of a Central Antenna System to receive telecommunications signals. If the Association chooses to install a Central Antenna System, the Association may prohibit Individual Antenna installations provided that the following conditions are met:
 - (i) The Central Antenna System offers the same service from the same provider as the Individual Antenna;
 - (ii) The proportionate costs for both the Central Antenna System installation and the signal reception (including any service fees) must be equal to or lower than the costs for installation and service of an Individual Antenna;
 - (iii) The quality of signals received from the Central Antenna System is equal

to or better than that of signals received from Individual Antennas; and

(iv) There is no unreasonable delay in receiving the signals.

2. If the Association installs a Central Antenna System, it may order the removal of Individual Antennas provided that the Association pays for the removal of the Individual Antennas and reimburses the Residents the value of the Individual Antennas.

g. Mast Installation

1. A Mast's height may be no higher than absolutely necessary to receive acceptable-quality signals.
2. Masts extending 12 feet or less beyond the roofline may be installed on Lots or Exclusive Use Area, subject to the regular notification process (see below). Masts that extend more than 12 feet above the roofline or are installed nearer to the lot line than the total height of the Mast and Covered Antenna above the roof must be pre-approved due to safety concerns posed by wind loads and the risk of falling Covered Antennas and Masts. Any application for a Mast higher than 12 feet must include a description of the Covered Antenna and the Mast, the location of Mast and Covered Antenna installation, a description of the means and method of installation, including any manufacturer specifications, and an explanation of the necessity for a Mast higher than 12 feet. If this installation will pose a safety hazard to Residents or other personnel, then the Association may prohibit such installation. The notice of rejection shall specify these safety risks.
3. Since Masts extending more than 12 feet above the roofline pose risks of personal injury and damage to Common Area and other Lots or Exclusive use Areas, these Masts shall be installed by an insured Covered Antenna installer to ensure proper and secure installation.
4. Masts must be painted to match the color of the dwelling on the Lot where the Covered Antenna is located.
5. Masts shall not be installed nearer to electric power lines than a distance equal to the total height of the Mast and Covered Antenna above the roof. The purpose of this regulation is to avoid damage to electric power lines if the Mast should fall in a storm.
6. Masts shall not encroach upon Common Area or another Lot or Exclusive Use Areas.

7. To prevent personal injury and property damage, Masts must be installed to safely withstand environmental conditions (e.g., winds from storms, hurricanes, etc.).
- h. Covered Antenna Removal. Covered Antenna removal requires restoration of the installation location and any other affected locations, if any, to their original condition. Residents of the Lot where the Covered Antenna was located shall be responsible for all costs relating to restoration of these areas.
- i. Association Maintenance of Locations upon which Covered Antennas are Installed. The following provisions apply to Covered Antennas installed by a Resident on a portion of the Properties maintained by the Association:
 1. If a Covered Antenna is installed by a Resident on a portion of the Properties that is maintained by the Association, that Resident retains responsibility for the maintenance of the Covered Antenna. Covered Antennas must not be installed in a manner that will result in increased maintenance costs for the Association or for other Residents. If increased maintenance or damage occurs, the Resident who installed, purchased and/or leased the Covered Antenna is responsible for all such costs. Notwithstanding anything to the contrary, nothing herein shall grant the right to a Resident to install a Covered Antenna on any portion of the Properties to be maintained by the Association.
 2. If maintenance requires the temporary removal of Covered Antennas, the Association shall provide the Resident of the Lot where the Covered Antenna is located with ten days' written notice. Said Resident shall be responsible for removing or relocating the Covered Antenna before maintenance begins and replacing Covered Antennas afterward. If they are not removed in the required time, then the Association may do so, at the Resident's expense. The Association is not liable for any damaged to Covered Antennas caused by Association removal. The Association is not responsible for reinstalling Covered Antennas.
 3. If Covered Antennas pose immediate threats to Association Residents and personnel or Properties, then the Association has the right to remove Covered Antennas. The Association is not liable for any damage to Covered Antennas caused by this removal.
- j. Notification Process
 1. Any Resident desiring to install a Covered Antenna must complete a notification form and submit it to the Association. The installation may then begin immediately.

The purpose of the notification process is to allow the Association to provide Covered Antenna installation rules and other information to Residents, to know if a person other than the Resident will be entering the Properties for Covered Antenna installation, and to determine whether the installation could pose a safety hazard. However, nothing herein shall impose a duty on the Association to oversee installation or preclude any danger or safety hazard.

2. The Association may hire an independent contractor to determine whether an installation in a non-conforming location is necessary. If the independent contractor finds that installation in a conforming location is possible, then the Resident will be required to relocate the Covered Antenna to a conforming location.
- k. Installation by Tenants. These rules shall apply in all respects to all Residents, whether Owners or tenants.
1. Enforcement
 1. If these rules are violated, the Association, after providing the Resident with notice and opportunity to be heard, may bring an action for declaratory relief with the FCC or any court of competent jurisdiction. If the court or FCC determines that the Association rules are enforceable, the Association may proceed with a lawsuit in a court of competent jurisdiction to obtain:
 - (i) a declaratory statement by the court with respect to this matter;
 - (ii) an injunction compelling the removal of the antenna;
 - (iii) an award of attorney fees and costs arising from this matter, whether arising during pre-litigation following the FCC validation, litigation or appeal; or
 - (iv) such other relief as the Association and the court deem appropriate.

Section 11. Trash. No Lot shall be used or maintained for dumping or discharge of rubbish, trash, garbage, or other solid waste materials or any liquid waste, including toxic materials. All Lots shall be kept free of the accumulation of rubbish, trash, garbage, or other solid waste materials, liquid waste materials, and all unsightly weeds and underbrush. All porches, carports, driveways, screened rooms, glass-enclosed rooms, front yards, side yards and back yards must be kept free and clear of unsightly materials, clutter, garbage, refuse and debris. Front porches must be kept free and clear of unsightly materials, including, but not limited to, interior furniture, barbeque grills, garbage cans, recycling bins and bicycles. All Owners or occupants of Dwelling Units shall utilize and maintain in good condition a trash can

with a minimum capacity of thirty-two (32) gallons. Garbage must not be put outside the Dwelling Unit for removal by the City of Ormond Beach before sundown of the day before such removal.

Section 12. Lot Maintenance. In order to implement effective insect, reptile and woods fire control, or to provide Lot maintenance, including sprinkler and irrigation system maintenance, deemed necessary by the Association, the Association shall have the right, but not the duty, to enter upon any Lot or Dwelling Unit, such entry to be made by personnel with tractors or other suitable devices, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, which in the opinion of the Association detracts from the overall beauty, setting and safety of the Property. Such entrance for the purpose of mowing, cutting, clearing or pruning shall not be deemed a trespass but shall be deemed a license coupled with an interest. The Association and its agents may likewise enter upon such land to perform maintenance and to remove any trash which is collected on such Lot or Dwelling Unit without such entrance and removal being deemed a trespass. The provisions in this Section shall not be construed as an obligation on the part of the Association to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services. The costs incurred by the Association in exercising its rights under this Section shall constitute an individual assessment against the Owner of the Lot or Dwelling Unit and shall in every respect constitute a lien on the Lot or Dwelling Unit as would any other assessment of the Association.

Section 13. Signs. No commercial signs, or lettering of any type or other signs, shall be erected or maintained on any Lot or Dwelling Unit except with the written permission of the Association or except as may be required by legal proceedings. Under no circumstances will signs advertising a Dwelling Unit for sale or for rent be allowed without the prior written permission of the Association, and the Association **will not grant permission** for said signs unless their erection is reasonably necessary to avert serious hardship to the Owner. If permission is granted for any other signage, the Association shall have the right to restrict size, color and content of such signs. Notwithstanding anything to the contrary, street numbers identifying the street number of a Dwelling Unit, security signs, and signs required by law may be placed on the exterior of the Dwelling Unit, but the ARC may regulate the size and type of such numbers or signs and may require their removal should they not comply with the ARC Guidelines.

Section 14. Exterior Maintenance. The Association shall paint only the exterior brick surfaces of Dwelling Units. Owners shall be responsible for all other maintenance and repair of their Dwelling Units. Provided, however, that the Association shall have the power to waive this provision to permit Owners to repaint or redecorate such exteriors brick surfaces in accordance with regulations enacted by the Association or with the written consent of the Association. Basic lawn maintenance for any areas not walled or fenced in shall be provided by the Association on a regular basis. By way of example, such basic lawn maintenance may include such services as mowing, edging, fertilizing and spraying weeds with herbicides. Lawn maintenance by the Association shall expressly not include sodding, replacing dead grass, shrubbery or trees, or pulling weeds and mulching. Any and all costs incurred by the Association in performing such painting or basic lawn maintenance under this Section shall be paid out of assessments levied by the Association. The Association shall have the right, but not the duty, to make other reasonable

repairs and perform other reasonable maintenance on Dwelling Units in its sole discretion. If damage other than ordinary wear and tear is caused by the Owner, his agents, guests, or invitees or others whose presence is authorized by the Owner, the Association shall have the right to impose an individual assessment against said Owner to pay for the cost of repairs and replacements. Such individual assessment shall in every respect constitute a lien on the Lot or Dwelling Unit as would any other assessment or special assessment by the Association. The Association shall have the right to enter upon any Lot or upon the exterior of any Dwelling Unit for the purpose of providing repairs and maintenance as provided in this Section, and any such entry by the Association or its agent shall not be deemed a trespass.

Section 15. Allowable Trim. No Owner or tenant of an Owner shall install decorative exterior trim, except small exterior decorations such as address plates and name plates.

Section 16. Party Walls. All common or party walls shall be maintained by the Owners of those Dwelling Units adjoining a party wall subject to the right of the Association to maintain the same as hereinafter set forth. If an Owner, or his agents, guests, invitees or others whose presence is authorized by an Owner including an Owner's tenant damages a party or common wall, or causes damage to the person or property of an adjoining Owner or tenant as a result of damage to a party or common wall, then said Owner shall be liable and responsible to the Association for the damages to the party wall and to the adjoining Owner or tenant for the damages to their person or property, and for any costs incurred by the Association or the adjoining Owner or tenant in the collection thereof, including reasonable attorney's fees.

All costs of reconstructing a party wall in the event such party wall is destroyed or damaged shall be borne equally by the Owners of the Dwelling Unit adjoining such party wall. In the event one Owner bears the entire expense for reconstruction of a party wall, then in such event the Owner of the adjoining Dwelling Unit shall pay to the Owner who reconstructed the party wall one-half (1/2) of the expense incurred in that reconstruction.

Either adjoining Lot Owner shall have an equal right to use a party wall for the support of structural members of a Dwelling Unit to be constructed on either adjoining Lots. This right shall be subject, however, to payment by the Owner seeking to tie into the party wall of any costs of the party wall payable by that Owner to the adjoining Owner.

Each party wall shall be subject to an easement of support for adjoining Dwelling Units subject to payment of costs as provided above and shall be subject to an easement for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to adjoining Dwelling Units.

Each owner of a Lot agrees to maintain fire and extended coverage casualty insurance on the improvements on such Lot, and agrees to use the proceeds thereof to repair or replace any damage to or destruction of improvements within a reasonable time after such casualty.

Section 17. Window Covering. No reflective foil, or other material or tinted glass shall be

permitted on any windows except for tinted bronze glass, and any such installation shall require the approval of the ARC. Shutters and awnings shall not be permitted, unless approved by the ARC. Notwithstanding anything to the contrary, hurricane shutters approved by the ARC may be installed. All windows of a Dwelling Unit shall have window treatments which are uniform in color, design and type of treatment. All window treatments that are capable of being viewed from the exterior of the Dwelling Unit shall be either white or almond (i.e., white to off white) in color.

Section 18. Interior Maintenance. Each individual Owner shall have the responsibility to maintain the interior of their respective Dwelling Unit. In the event the interior of said Dwelling Unit is damaged in such fashion so as to create a health and safety hazard to adjoining Dwelling Units or to create a nuisance and such damage is not repaired within thirty (30) days from the occurrence of the damage, then in such an event, the Association shall have the right to make reasonable repairs to the interior of such Dwelling Unit and shall be entitled to make an individual assessment against the Owner of the Dwelling Unit for the costs of such repairs. Such assessments shall in every respect constitute a lien on the Lot or Dwelling Unit as would any other assessment or special assessment by the Association.

Section 19. Master Policy of Insurance. The Association shall maintain a master insurance policy on the Common Area, including improvements thereon, such as, by way of example, the swimming pool, and common use buildings, which policy shall be paid for from assessments levied by the Association and shall be in an amount sufficient to replace the entire structure if such loss is caused by the named perils in the insurance policy. The Association shall be the named loss payee on said policy.

Section 20. Access at Reasonable Hours. For the sole purpose of performing any maintenance or repairs authorized by this Amended And Restated Declaration, the Association, through its duly authorized agents, contractors or employees shall have a license which shall be exercisable after reasonable notice to the Owner to enter upon any Lot or exterior of any Dwelling Unit or after reasonable notice to the Owner to enter any Dwelling Unit at reasonable hours on any day of the week.

Section 21. Tree Removal Restrictions. Trees situated on any Lot between building set back lines and the property lines having a diameter of two inches (2") or more (measured four feet (4') from ground level) may not be removed without prior approval of the ARC. All requests for approval of tree removal shall be submitted to the ARC along with a plan showing generally the location of such tree(s). Any approved tree removal shall include the removal of the tree stump so that, at a minimum, the remainder of such tree stump is not visible.

Section 22. Replacement of Trees. Anyone violating the provisions of Section 21 will be required to replace such trees with species of palm trees approved by the ARC within thirty (30) days after demand by the ARC. If the Owner fails or refuses to replace the trees as demanded, the ARC shall cause suitable replacements to be planted and the cost thereof shall be a lien against the property of the Owner. The Owner grants to the ARC, its agents, and employees an easement of ingress and egress over and across said Lot to enable it to comply with Section 21 and this Section 22.

Section 23. Garage Doors. In order to maintain a harmonious and aesthetic appearance, the garage doors affixed to the Dwelling Unit shall remain closed except when in actual use to allow ingress and egress into the garage.

Section 24. Rules and Regulations. The Board of Directors may adopt reasonable rules and regulations governing the Property and the Members. The Board of Directors may amend these rules and regulations from time to time by a majority vote of the Board, without recording any amendment hereto.

ARTICLE VII
COVENANTS AGAINST PARTITION AND
SEPARATE TRANSFER OF MEMBERSHIP RIGHTS

Recognizing that the full use and enjoyment of any Lot or Dwelling Unit located in the Property is dependent upon the right to the use and enjoyment of the Common Area and the improvements made thereto, and that it is in the interests of all of the Owners that the right to the use and enjoyment of the Common Area be retained by the Owners of Lots and Dwelling Units, it is therefore declared that the right to the use and enjoyment of any Owner in the Common Area shall remain undivided, and such Owners shall have no right at law or equity to seek partition or severance of such right to the use and enjoyment of the Common Area. In addition there shall exist no right to transfer the right to the use and enjoyment of the Common Area in any manner other than as an appurtenance to and in the same transaction with, a transfer of title to a Lot or Dwelling Unit in the Property. Provided, however, that nothing herein shall preclude a conveyance by the Developer or Buyer herein of any undivided interest in the Common Area to the Owners of Lots or Dwelling Units within the Property for the purpose of effectuating the intent of this Amended And Restated Declaration. Any conveyance or transfer of a Lot or Dwelling Unit in the Property shall include the right to use and enjoyment of the Common Area appurtenant to such Lot or Dwelling Unit subject to reasonable rules and regulations promulgated by the Association for such use and enjoyment, whether or not such rights shall have been described or referred to in the deed by which said Lot or Dwelling Unit is conveyed. Any Owner selling or otherwise transferring legal or equitable ownership of a Lot or Dwelling Unit shall notify the Association at least seven (7) days prior to the closing of the sale or transfer and shall provide the Association with the name of the buyer or transferee and his/her address. The Owner shall provide the transferee prior to closing with a copy of this Amended And Restated Declaration and the Articles of Incorporation, the Bylaws, the rules and regulations and the ARC Guidelines of the Association.

ARTICLE VIII
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee simple interest or undivided interest in fee simple in any Lot or Dwelling Unit which is subject to assessment by the Association shall be a Member of the Association; provided, that any such person or entity who holds such

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interest merely as a security for the performance of an obligation shall not be a Member. No Owner's tenants shall be Members.

Section 2. Voting Rights.

Members shall be every person or entity who is a record owner of a fee simple or undivided fee simple in any Lot or Dwelling Unit which is subject to assessment by the Association. Members shall be entitled to one (1) vote for each Lot or Dwelling Unit and in no event shall more than one (1) vote be cast with respect to any such Lot or Dwelling Unit.

Section 3. Quorum and Voting Authority. Save and except for the quorum required under Section 5 of Article IV, the quorum for any action of the Association, other than that set forth in Sections 3(b) and 4 of Article IV, shall be the presence at the meeting of Members of the Association, or of proxies, entitled to cast fifty-one percent (51%) of all the votes of the membership. A vote of the majority of the quorum as determined hereinabove shall determine the action of the Association. Furthermore, if the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirement that written notice of said meeting be sent to all members at least ten (10) days in advance of the meeting setting forth the purpose of the meeting. The required quorum at any such subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended And Restated Declaration. Failure by any of the aforesaid to enforce any covenant or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter. The offending Owner and/or occupant shall be responsible to the Association for all costs and fees of enforcement specifically including, without limitation, court costs, reasonable attorneys' fees and paralegals' fees, regardless whether suit is brought (including such fees and costs before trial, at trial and on appeal).

(a) Fines and Suspension of Privileges. In the event of an alleged violation of this Amended And Restated Declaration, and the Articles of Incorporation, Bylaws, ARC Guidelines or rules and regulations of the Association, and after written notice of such alleged failure is given in the manner herein provided to the Owner or his/her tenant(s), guest(s) or invitee(s) ("Respondent") alleged to be in default, the Board of Directors shall have the right, after the alleged violator has been given an opportunity for a hearing and upon an affirmative vote of a majority of all members of the Board, to suspend or place conditions on said Respondent's right to use of the Common Area (except for the portions thereof which are necessary as a means of ingress and egress) and to fine such Respondent and/or the Owner of the Lot

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where the Respondent resides. Any such suspension shall be for a period of not more than thirty (30) days for each infraction. The Board of Directors may levy reasonable fines, not to exceed \$100 per violation; however, the Board of Directors may levy a fine on the basis of each day of a continuing violation, which fine may expressly exceed \$1,000 in the aggregate. The failure of the Board to enforce this Amended And Restated Declaration and the Articles of Incorporation, Bylaws, ARC Guidelines or rules and regulations of the Association, or in any particular case shall not constitute a waiver of the right of the Association to enforce the same thereafter. The remedies set forth above and otherwise provided in this Amended And Restated Declaration 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 this Amended And Restated Declaration, or the Articles of Incorporation, Bylaws, ARC Guidelines or rules and regulations of the Association, before that Owner may resort to a court of law for relief from any provision of this Amended And Restated Declaration, or the Articles of Incorporation, Bylaws, ARC Guidelines or rules and regulations of the Association. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of assessments.

(b) Written Complaint. A hearing to determine whether a right or privilege of a Respondent under this Amended And Restated Declaration, and the Articles of Incorporation, Bylaws, ARC Guidelines or rules and regulations of the Association should be suspended or conditioned, or a fine imposed, shall be initiated by the filing of a written complaint ("Complaint") by any Owner or by any officer or director with the president of the Association or other presiding member of the Board. The Complaint shall constitute a written statement or charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, such that Respondent will be able to prepare a defense. The Complaint shall specify the specific provisions of this Amended And Restated Declaration, and the Articles of Incorporation, Bylaws, ARC Guidelines or rules and regulations of the Association which the Respondent is alleged to have violated and shall not consist merely of charges phrased in the language of such provisions without supporting facts.

(c) 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 on all parties or within ten (10) days after service of any amended or supplemental Complaint on all parties, are entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party; and (2) inspect and make a copy of any statements, writings and investigative reports relevant to the subject matter of the hearing. However, nothing in this Section 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.

(d) Appeals Board. The president of the Association shall refer the matter to an appeals board consisting of at least three (3) members (the "Appeals Board") upon receipt of a Complaint as provided in Subsection B of this Section. No Appeals Board member shall be an officer, director or employee of the Association, nor shall any Appeals Board member be involved in any prior investigation of the matter

on behalf of the Board nor related by blood or marriage to the complaining party, the Respondent, or an officer, director or employee of the Association. The Respondent may challenge any Appeals Board member for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence at the hearing. In the event of such challenge, the Board of Directors shall meet to determine the sufficiency of the challenge. If such challenge is sustained, the president shall appoint another person to replace the challenged Appeals Board member. All decisions of the Board of Directors in this regard shall be final. The Appeals Board shall exercise all other powers relating to the conduct of the hearing. The Appeals Board shall serve a written notice of hearing, as provided herein, on all parties at least fourteen (14) days prior to the hearing.

(e) Hearing. Whenever the Appeals Board has commenced to hear the matter and an Appeals Board member is forced to withdraw prior to a final determination by the Appeals Board, the remaining members shall continue to hear the case and the hearing officer (to be appointed by the Board of Directors) 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 Appeals Board. Each party shall have the following rights:

- (1) to be represented by counsel;
- (2) to call and examine witnesses and to introduce exhibits;
- (3) to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
- (4) to impeach any witness regardless of which party first called him to testify; and
- (5) 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. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded. Neither the accusing Owner nor the allegedly defaulting Owner or Respondent is required to be in attendance at the hearing. The hearing shall be open to attendance by all Members. In rendering a decision, official notice may be taken at any time of any generally accepted matter within this Amended And Restated Declaration, and the Articles of Incorporation, Bylaws, and rules and regulations of the Association or the workings of the Association.

- (f) The Appeals Board will prepare written findings of fact and recommendations for

consideration by the Board of Directors. The Appeals Board shall make its determination only in accordance with the evidence presented to it and in accordance with these Bylaws. After all testimony and documentary evidence have been presented to the Appeals Board, the Appeals Board shall vote by secret written ballot upon the matter, with a majority vote of the entire Appeals Board controlling. A copy of the findings and recommendations of the Appeals Board shall be served by the president of the Association on each party in the matter and such party's attorney, if any. Disciplinary action and fines under this Amended And Restated Declaration, and the Articles of Incorporation, Bylaws, or the rules and regulations of the Association shall be imposed only by the Board of Directors, and in accordance with the findings and recommendations of the Appeals Board. The Board of Directors may adopt the recommendations of the Appeals Board in their entirety, or the Board may reduce the proposed penalty and adopt the balance of the recommendation. In no event shall the Board impose more stringent disciplinary action than recommended by the Appeals Board. The decision of the Board shall be in writing and shall be served in the same manner as the findings and recommendations of the Appeals Board. The decision of the Board of Directors 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.

(g) Lien for Unpaid Fines. If a fine remains unpaid for thirty (30) days after the decision of the Board of Directors, the Association may record a lien against an Owner's Lot for such unpaid fine and may foreclose such lien in the same manner as is provided in this Amended And Restated Declaration for foreclosure of liens for assessments.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment and court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Covenants to Run with the Land. The restrictions and burdens imposed by the provisions and covenants of this Amended And Restated Declaration shall constitute covenants running with the land, and each shall constitute an equitable servitude upon the Owner of each Lot and Dwelling Unit and the appurtenant undivided interest in the Common Areas and upon the heirs, personal representatives, successors, and assigns of each Owner, and the same shall likewise be binding upon the Developer and its successors and assigns. This Amended And Restated Declaration shall be binding and in full force and effect for a period of fifty (50) years from the date this Amended And Restated Declaration is recorded, after which time this Amended And Restated Declaration shall be automatically extended for successive ten (10) year periods, unless an instrument, signed by two-thirds (i.e., 66.6%) of the then record Owners of the Lots or Dwelling Units in the Property is recorded containing an agreement of the said Owners with respect to the alteration, change, modification or repeal, in whole or in part of the provisions of this Amended And Restated Declaration.

Section 4. Rights of Association to Merge. The Association retains the right to merge with any other homeowners' association. This right shall be exercised by recordation of an Amendment to this

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Amended And Restated Declaration recorded among the public records of Volusia County which Amendment shall set forth a legal description of the property to which this Amended And Restated Declaration, as amended, shall apply.