

COPY

OCEAN CLUB AT TURTLEMOUND, A CONDOMINIUM

PURSUANT TO S. 728.504, FLORIDA STATUTES, 1987, AS THIS CONDOMINIUM CONTAINS FEWER THAN 20 UNITS, NO PROSPECTUS AS DEFINED BY THE STATUTE IS REQUIRED.

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DECLARATION OF CONDOMINIUM  
OF  
OCEAN CLUB AT TURTLEMOUND, a CONDOMINIUM  
6612 South Atlantic Avenue  
New Smyrna Beach, Florida 32609

This Declaration made this 20 day of December 1988, by Ocean Club at Turtlemound Condominiums, a Joint Venture, by Melvin, Berkoben & Sawruk, Inc., a Florida corporation and Cedar Creek Enterprises, Inc., a Florida corporation, joint venturers, hereinafter called Developer, for itself, its successors, grantees and assigns.

WHEREIN, the Developer makes the following declarations:

1. Purpose. The purpose of this Declaration is to submit and the Developer does hereby submit the lands described in this instrument and improvements on those lands to the condominium form of ownership and use in the manner provided by The Condominium Act, as it exists on the date hereof, presently designated as Chapter 718, Florida Statutes.

1.1 Name and address. The name by which this condominium is to be identified is Ocean Club at Turtlemound, a Condominium, and its address is 6612 South Atlantic Avenue, New Smyrna Beach, Florida 32609. It is hereafter called "the condominium."

1.2 The land. The lands owned by Developer in the name of Cedar Creek Enterprises, Inc., joint venturer, which by this instrument are submitted to the condominium form of ownership, are located in Volusia County, Florida, and are described on Exhibit A attached hereto.

2. Definitions. The terms used in this Declaration and in its exhibits shall have the meanings stated in The Condominium Act and as follows unless the context otherwise requires:

2.1 Approval or consent. Whenever approval or consent is required of any person or entity, that approval or consent shall not be unreasonably withheld.

2.2 Association means Ocean Club at Turtlemound Condominium Association, Inc., and its successors.

2.3 Bylaws means Bylaws of the Association and of the condominium.

2.4 Common elements shall include the items stated in The Condominium Act.

2.5 Common expenses include:

Expenses of administration; expenses of insurance, maintenance, operation, repair, replacement and betterment of the common elements, and of the portions of units to be maintained by the Association.

Expenditures for amounts of assessments by the Association against an individual unit for payment of costs that are the responsibility of a unit owner, including but not limited to costs of repair of damage to a unit in excess of insurance proceeds, and the costs of insurance upon a unit.

Expenses declared common expenses by provisions of this Declaration or the Bylaws.

Any valid charge against the condominium property as a whole.

2.6 Condominium means all of the condominium property as a whole when the context so permits, as well as the meaning stated in The Condominium Act.

2.7 Condominium parcel means a unit together with the undivided share in the common elements that is appurtenant to the unit; and when the context permits, the term includes all of the appurtenances to the unit.

2.8 Regulations means regulations respecting the use of the condominium property that have been adopted by the Association from time to time in accordance with its Bylaws.

2.9 Singular, plural, gender. Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

2.10 Utility services as used in The Condominium Act and as construed with reference to this condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning, cable television or master antenna system, the closed circuit television, telephone security system, and garbage and sewage disposal.

2.11 Institutional mortgage. For the purposes of this instrument, an "institutional mortgage" shall be defined as a mortgage originally executed and delivered to a mortgage banking firm, bank, savings and loan association, real estate investment trust or insurance company.

3. Development plan. The condominium is described and established as follows:

3.1 Survey. A survey of the land showing the location of the improvements on it with Surveyor's Certificate is attached as Exhibit B, Sheet 1.

3.2 Plans. The improvements upon the land are constructed substantially in accordance with the plans and specifications prepared by LoggiaArchitecture,

Incorporated, Architect, A.I.A. and designated as its project #1988LS, a summary of a portion of which plans are attached as the following exhibits:

Exhibit B, Sheet 2	Site plan
Exhibit B, Sheet 3	Typical floor plan
Exhibit B, Sheet 4	Front elevation

3.3 Easements. A non-exclusive easement for ingress and egress in favor of each unit owner is hereby created over the driveways, walks, parking areas, elevators, stairs, hallways, lobbies and other common areas as part of the common elements to provide each unit owner access to the public ways. No easement for ingress or egress shall be encumbered or subject in any way to be encumbered. Easements are reserved through the condominium property as may be required for utility services in order to serve the condominium adequately; provided, however, these easements through a unit shall be only according to the plans and specifications for the apartment building, or as may be changed during construction of the building, unless approved in writing by the apartment owner. A unit owner shall do nothing within or outside his unit that interferes with or impairs the utility services using the easements. Developer reserves an easement over and through all of the common elements of the condominium for sales purposes and may maintain a sales office and models in the building until all of the units of the Developer have been sold. The last mentioned provision may not be amended without the written consent of Developer. During such time as the Developer, its successors or assigns, is in the process of construction on any portion of the condominium building, the Developer, its successors or assigns, reserve the right to prohibit access to any portion of the common elements of the condominium building to any of the occupants of the building, and to utilize various portions of the common elements of the building in connection with such construction and development. No unit owner or his guests, or invitees shall in any way interfere with or hamper the Developer, its employees, successors or assigns, in connection with such construction. Thereafter, during such time as the Developer, its successors or assigns, own any units within the building and is carrying on any business in connection therewith, including the selling, renting or leasing of such units, the unit owners, their guests and invitees shall in no way interfere with such activities or prevent access to such units by the Developer, its successors or agents. In order to maintain an orderly procedure for moving into the condominium, the Developer reserves the right, which authority shall pass to the Association upon sale and closing of the last unit by the Developer, to schedule the day and year which the owners or other occupants may move in, subsequent to the final closing on the sale of an individual unit. The building manager will prohibit owners or other occupants from moving in at any time other than the time designated by the Developer. The Association has full right and authority to grant permits, licenses, and easements over the common areas for utilities, road rights-of-way, and other purposes reasonably necessary or useful for the proper maintenance and/or operation of the Condominium.



### 3.4 Improvements - General description.

A. Apartment building. The condominium consists of a single apartment building (the building) consisting of three levels. The first level is the parking area and the second level and third level contain the living units. The building contains 14 living units.

B. Other improvements. The condominium includes landscaping, an outdoor swimming pool, cabanna, and other facilities located substantially as shown upon the plans and which are part of the common elements and confined to the surveyed condominium property.

3.5 Unit boundaries. Each unit consists of an apartment, the dimensions of which are as shown in Exhibit B attached hereto and shall include that area, the title lines or boundaries of which are as follows:

A. Horizontal Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to an intersection with the vertical boundaries:

- 1) Upper Boundary shall be the horizontal plane of the undecorated, finished ceiling.
- 2) Lower Boundary shall be the horizontal plane of the undecorated finished floor.

B. Vertical (Perimetrical) Boundaries. The vertical boundaries of the unit are the vertical planes of the undecorated and/or unfinished inner surfaces of the walls bounding the unit extended to intersections with each other and with the unit's upper and lower boundaries. Exhibit B, Sheet 3 shows the perimeter boundaries of the units and the approximate dimensions of such boundaries, the walls separating each room within the units and the approximate dimensions of each room and the location of all doorways.

C. Boundaries - Further defined. The boundaries of the unit shall not include all of those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of the perimeter walls and those surfaces above the undecorated finished ceilings of each unit, and those surfaces below the undecorated finished floor of each unit, and further shall not include those spaces and improvements lying within the undecorated and/or unfinished inner surfaces of all interior bearing walls and/or bearing partitions, and further, shall exclude all pipes, ducts, wires, conduits and other utilities running through an interior wall or partition for the furnishing of utility services to other units and/or for common elements.

D. Deck. All units shall include, as indicated in Exhibit B, sheet 3, a balcony. The boundaries of the balcony shall be as follows: All horizontal and perimetrical boundaries shall be the same as set forth above; however should a perimetrical boundary be railing, then the unit shall include the railing and the boundary shall be the exterior surface of the railing. Maintenance of the finished

floor of the balcony shall be borne by the owner of the unit to which the balcony is appurtenant. Each balcony is a part of the unit which it abuts and is for the exclusive use of the owners of the abutting unit; provided, however, no unit owner shall carpet or enclose any portion of the balcony, paint or otherwise decorate or change the appearance of any portion of the condominium building and/or condominium property.

3.6 Portions of the Unit Located Outside the Boundaries.

A. The unit shall include the heating, hot water and air conditioning apparatus exclusively serving the unit whether or not located within the boundaries of the unit.

B. The unit shall include any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture which lies partially within and partially outside the designated boundaries of a unit and which serves only that unit.

C. The unit shall include any shutters, awnings, window boxes, doorsteps, stoops, porches and all exterior doors and windows, (including sliding glass doors) window and door screens, and all other fixtures designed to serve a single unit, and which serves only that unit, even though such fixtures are located outside the unit's boundaries.

3.7 Common elements. All property included in this condominium which is not a portion of any living unit and which has not been designated as a limited common area shall be deemed common elements.

A. Automobile parking. The designated parking areas as shown on Exhibit B, Sheet 2; shall be used for automobile parking. Parking spaces will be numbered so that there will be not less than 28 parking spaces. The right to use a parking space shall be an appurtenance to each unit, but the particular parking space or spaces to be so used shall be designated by the Developer, which authority shall pass to the Association upon sale and closing of the last unit by the Developer; provided that no change in the designation of parking spaces shall be made for the benefit of a unit owner that discriminates against another unit owner without the latter's consent. Each unit shall be assigned only one (1) exclusive parking space. The Association shall have authority to make reasonable regulations for the control of automobile parking and the use of parking spaces; provided, however, that the use shall be limited to the residents of the condominium and their guests.

B. Use; charges. The foregoing and all other common elements other than limited common elements, except as otherwise provided, shall be available for use by all unit owners without discrimination. That use will be without charge unless a charge is specifically authorized by this Declaration, except that the

Association when permitted by law and authorized by its regulations may charge for the exclusive use of facilities from time to time if the exclusive use is made available to all unit owners. All revenue from those charges shall be treated as proceeds from assessments for common expenses and shall be applied to the payment of common expenses or added to common surplus.

4. The units. The units of the condominium are apartments and are described more particularly and the rights and the obligations of their owners are established as follows:

4.1 Unit numbers. On the second level are seven (7) units numbered 101 to 107 inclusive; on the third level there are seven (7) units numbered 201 to 207, inclusive. The number 01 is assigned to the unit located on the north side of the building and the apartment numbering proceeds southerly so that number 02 is immediately to the south of 01, number 03 is immediately to the south of 02, and so on.

4.2 Typical unit plans. The plan for each level is identical. All units have the same dimensions as units 101 and 201, except that units 105 and 205 are larger, as described in Exhibit B, sheet 3.

4.3 Appurtenances to units. The owner of each unit shall own a share and certain interests in the condominium property, which share and interests are appurtenant to his unit, including but not limited to the following items that are appurtenant to the several units as indicated:

A. Ownership of common elements and common surplus. The undivided share in the land and other common elements and in the common surplus that are appurtenant to each apartment is  $1/14$ th for each unit. Total 100%.

B. Use of common elements. Use of the common elements in common with other unit owners in the manner elsewhere described.

C. Use of limited common elements. Use of limited common elements appurtenant to the unit, in the manner elsewhere described.

D. Condominium Association membership. The membership of each unit owner in the Condominium Association and the interest of each unit owner in the funds and assets held by the Condominium Association.

4.4 Liability for common expenses. Each unit owner shall be liable for a proportionate share of the common expenses, that share being the same as the undivided share in the common elements appurtenant to his unit.

11. 11.  
5. Maintenance, alteration and improvement. Responsibility for maintenance of the condominium property, and restrictions upon its alteration and improvement, shall be as follows:

5.1 Units.

A. By the Association. The Association shall maintain, repair and replace at the Association's expense:

All boundary walls and boundary slabs of a unit, except interior surfaces; all portions of a unit contributing to the support of the apartment building, which portions to be maintained shall include but not be limited to the outside walls of the apartment building and all fixtures on its exterior, boundary walls of units, floor and ceiling slabs, load-bearing columns and load-bearing walls, and the common element side of all doors leading from units to common elements;

Balconies, except the painting of floors;

All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services contained in the portions of a unit maintained by the Association; and all such facilities contained within a unit that service part or parts of the condominium other than the unit within which contained; and

All incidental damage caused to a unit by this work shall be repaired promptly at the expense of the Association;

Provided that the Association shall have authority to require unit owners at their expense to maintain, repair and replace screens and glass for windows and glass doors within their respective units except in the case of damage for which insurance proceeds are paid under policies purchased by the Association.

B. By the Unit owner. The responsibility of the unit owner shall be as follows:

To maintain, repair and replace at his expense all portions of his unit except the portions to be maintained, repaired and replaced by the Association. This shall be done without disturbing the rights of other unit owners.

The portions of a unit to be maintained, repaired and replaced by the unit owner at his expense shall include but not be limited to the following items: windows, screens, sliding glass doors, air handling equipment for space cooling and heating, service equipment, such as dishwasher, refrigerator, oven and stove, whether or not these items are built-in equipment; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slab, and inside paint and other inside wall and ceiling finishes. Mechanical equipment and the installation of that equipment shall be such that its operation will not cause annoyance to the occupants of other units.

To report promptly to the Association any defect or need for repairs for which the Association is responsible.

C. Alteration and improvement. Except as elsewhere provided, neither a unit owner nor the Association shall make any alteration in the portions of a unit that are to be maintained by the Association, or remove any portion of them, or make any additions to them, or do anything that would jeopardize the safety or soundness of the apartment building, including but not limited to, drilling, boring, cutting or sawing into the floor or ceiling of a unit, or impair any casement without first obtaining approval in writing of owners of all units in which the work is to be done and the owners of all units affected by the work to be done and the approval of the Board of Directors of the Association. If the alteration or improvement will change the appearance of any portion of the exterior of the apartment building, the change in appearance shall be approved also by the owners of 75% of the common elements at a meeting of unit owners called for that purpose. A copy of plans for all work prepared by an architect licensed to practice in this State shall be filed with the Association prior to the start of the work. Developer reserves the right to change the interior design and arrangement of any or all unit or units as long as Developer owns the unit or units so changed and altered, provided such change shall be contained in an amendment of this Declaration, and provided, further, that an amendment for such purpose need be executed and acknowledged only by the Developer and approved by the institutional mortgagee of an institutional mortgage covering the units affected, whether the said units are encumbered by original mortgages, or whether they are included in an overall construction mortgage on the condominium property, if any, and need not be approved by the Association, its officers, directors and members, or unit owners, whether or not elsewhere required for an amendment to this Declaration. Developer reserves the right to alter the boundaries between units, so long as Developer owns the units so altered; to increase or decrease the number of units, and to alter the boundaries of the common elements, as long as the Developer owns the units abutting the common elements where the boundaries are being altered, provided no such change shall be made without amendment of this Declaration, and, provided further, that an amendment for such purpose need be executed and acknowledged only by the Developer and approved by any institutional mortgagee of an institutional mortgage covering the units affected, whether the said units are encumbered by original mortgages, or whether they are included in an overall construction mortgage on the condominium property, but such amendment shall not require the approval of the Association, its officers, directors and members, or unit owners.

## 5.2 Common elements.

A. By the Association. The maintenance and operation of the common elements shall be the responsibility of the Association and the cost shall be a common expense.

B. Alteration and improvement. After the completion of the improvements included in the common elements contemplated by this Declaration, there shall be no alteration nor further improvement of the common elements or acquisition of additional common elements without prior approval in writing by the owners of not less than 75% of the common elements, except as provided by the Bylaws. Any such alteration or improvement shall not interfere with the rights of any unit owners without their consent.

C. Disposition of personal property. Any personal property acquired by the Association may be sold or mortgaged or otherwise disposed of by the Association.

6. Assessments. The making and collection of assessments against unit owners for common expenses shall be pursuant to the Bylaws and subject to the following provisions:

6.1 Share of common expense. Each unit owner shall be liable for a proportionate share of the common expenses and, in event of default, for interest and costs of collection including reasonable attorney's fees, and shall share in the common surplus, those shares being the same as the undivided share in the common elements appurtenant to the units owned by him. Each assessment against a unit is the personal obligation of the unit owner or owners at the time the assessment become due. Such personal obligation shall not pass to successors in title unless assumed by them or required by law.

6.2 Interest; application of payments. The portions of assessments and installments on assessments that are not paid when due shall bear interest at the rate of the highest percentage allowed by law from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due.

6.3 Liens. The Association shall have a lien upon a unit for any assessment and installments on assessments levied against that unit and a lien for such other charges against the unit as may be authorized by this Declaration or in the Bylaws of the Association, together with interest thereon, which are not paid when due. The lien for unpaid assessments shall secure reasonable attorneys' fees, including but not limited to fees for appellate court representation, incurred by the Association incident to the collection of an assessment or enforcement of a lien. The lien for unpaid assessments is and shall be subordinate to the lien of an institutional mortgage in a first mortgage which was recorded prior to the assessment becoming payable.

6.4 Assessments against developer-owned units.

During such time as the Developer owns one (1) or more units, the assessments, as provided for in subparagraph 6.1 of this Article, shall never be more than the estimated sums necessary to pay for the current budgeted operating expenses and reserves. In the event any excess is paid, the Association will refund such excess to the unit owners including the Developer upon demand. Notwithstanding any of the foregoing provisions respecting assessments, during the period of time beginning with the date the first unit is closed and titled out to a unit purchaser and ending on the date control of the Association is turned over to unit owners other than the Developer, the Developer shall not be obligated to pay the share of the common expenses and assessments attributable to units it is offering for sale, as a result of its guaranteeing assessments pursuant to §718.116, (8), Florida Statutes. The Developer guarantees that assessments will not increase above \$135.12 for year one of operation, \$155.38 for year two of operation and \$178.68 for year three of operation, and any subsequent year of the guaranty period. During the guaranty period, the Developer shall be obligated to pay any amount of common expenses incurred during such period

and not produced by the assessments at the guaranteed level, receivable from other unit owners. After the expiration of said period, all assessments and the individual unit owners' and the Developer's responsibility as to assessments shall be as is otherwise provided for herein.

6.5 Protection of institutional mortgagee. Where an institutional mortgagee of record obtains title to a condominium unit or where any other purchaser obtains such title as a result of the foreclosure by an institutional mortgagee of record, or where said institutional mortgagee or its designee accepts a deed to said condominium unit in lieu of foreclosure, such acquirer of the title, his heirs, legal representatives, successors and assigns, shall not be liable for the share of common expenses or assessments by the Association pertaining to such condominium unit or chargeable to the former owners of such unit which became due prior to acquisition of title thereto as a result of the foreclosure and issuance of a Certificate of Title pursuant thereto, or the acceptance of such deed in lieu of foreclosure. Such unpaid share of common expenses or assessments shall be, if possible, collected from the proceeds of the mortgage sale, if any, which would otherwise accrue to the benefit of the unit owner against whom the foreclosure proceedings were maintained, or in the event there are not sufficient funds available for such purpose, then such unpaid share of common expenses or assessments shall be determined to be common expenses collectible from all of the unit owners including such acquirer, his heirs, legal representatives, successors and assigns. The lien for assessments and/or dues first becoming due and payable after the recording of said certificate or deed shall not be impaired and shall be effective as to the grantee of such Certificate of Title.

6.6 Rights of construction lender. If the lender which is providing the funds to construct the condominium shall foreclose the lien of its mortgage or shall accept a deed in lieu of foreclosure to itself or its designee, such lender or its designee shall succeed to the rights of and enjoy all of the benefits of the original Developer hereunder.

7. Association. The operation of the condominium shall be by Ocean Club at Turtlemound Condominium Association, Inc., a corporation not for profit under the laws of Florida, which shall fulfill its functions pursuant to the following provisions:

7.1 Membership. The Developer and all persons hereafter owning a vested present interest in the fee simple title to any of the units shown on the exhibits hereto and which interest is evidenced by recording of a proper instrument in the Public Records of Volusia County, Florida, shall automatically be members and their membership shall automatically terminate when they no longer own such an interest.

7.2 Voting rights. There shall be a total of 14 votes to be cast by the owners of the condominium units. Such votes shall be apportioned and cast as follows: The owners of each condominium unit (designated as such on the exhibits attached to this Declaration) shall be entitled to cast one (1) vote. Where a condominium unit is owned by the Association, no vote shall be allowed for such condominium unit. Where a condominium unit is owned by an artificial entity or by more than one person, the entity or all the owners thereof shall be collectively

entitled to the vote assigned to such unit and such owners shall, in writing, filed with the Association, designate an individual who shall be entitled to cast the vote on behalf of the owners of such condominium unit until such authorization shall have been changed in writing. The term "owner" as used herein shall be deemed to include the Developer.

7.3 Articles of Incorporation. The Articles of Incorporation of the Association are attached as Exhibit C.

7.4 The Bylaws of the Association shall be the Bylaws, a copy of which are attached as Exhibit D.

7.5 Limitation upon liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the condominium property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or other owners or persons.

7.6 Rosters.

A. Owners of units. The Association shall maintain a roster of names and mailing addresses of unit owners. The roster shall be maintained from evidence of ownership furnished from time to time. Each unit owner shall furnish to the Association a copy of the record evidence of his title, which evidence shall entitle the unit owner to be included in the roster if his ownership has been approved by the Association in the manner elsewhere required. Such roster shall show the name and mailing address of the individual designated in writing by the unit owner(s) as entitled to cast the vote assigned to the unit on behalf of the owners.

B. Mortgagees. The Association shall maintain a roster that shall contain the name and address of each owner and holder of a mortgage upon a unit in the condominium of which notice is given to the Association. This notice shall consist of a copy of the recorded instrument evidencing the interest of the mortgagee, which term when used in this Declaration shall include any owner and holder of a mortgage. The mortgagee shall be stricken from the roster upon receipt by the Association of a request from the mortgagee or of a certified copy of a recorded release or satisfaction of the mortgage. Notice of the removal shall be given to the mortgagee unless the removal is requested by the mortgagee.

C. Parking space assignments. The Association shall maintain a roster that shall contain a listing of the parking space assigned to each unit, which shall list each unit in numerical order and show the parking space assigned to it and separately list each parking space in numerical order and show the unit number to which it is assigned.

7.7 Restraint upon assignment of shares in assets. The share of a unit owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his unit.



7.8 Approval or disapproval of matters. Whenever the decision of a unit owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote of that owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

8. Insurance. The insurance other than title insurance that shall be carried upon the condominium property and the property of the unit owners shall be governed by the following provisions:

A. Purchase. All insurance policies upon the condominium property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

B. Named insured. The named insured shall be the Association individually and as agent for the owners of units covered by the policy without naming them, and shall include mortgagees listed in the roster of mortgagees who hold mortgages upon units covered by the policy whether or not the mortgagees are named. Unit owners may obtain insurance coverage at their own expense upon their personal property and for their personal liability and living expense.

C. Custody of policies and payment of proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association, and all policies and endorsements on them shall be held by the Association.

D. Approval of company issuing and form of policies, etc. Each policy shall be in a form and amount and written by an insurance company approved by the institutional mortgagee having the greatest number of mortgages in the condominium and, if there are no institutional mortgages, by the Board of Directors of the Association. A copy of each policy shall be furnished each institutional mortgagee upon request.

#### 8.1 Coverages.

A. Casualty. The condominium building and all units and improvements upon the land shall be insured in an amount equal to the maximum insurable replacement values. The coverage shall exclude foundation and excavation costs, that part of the value of each unit occasioned by special improvement not common to units otherwise comparable in construction and finish, and all increases in value of units occasioned by alterations, betterments and further improvement. All personal property included in the common elements shall be covered by such insurance. Values of insured property shall be determined annually by the Board of Directors of the Association after receiving the advice of the insurance carrier writing the insurance. Insurance coverage shall afford protection against:

Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the building on the land, including but not limited to insurance covering flooding, vandalism and malicious mischief. The bailee liability, if any, of the Association to unit owners shall be insured. The policy coverages shall include fixtures, improvements and alterations comprising a part of the building and refrigerators, air conditioners, cooking ranges, dishwashers and clothes washers and dryers, contained within units, and owned by the named insured or unit owner, all while at the designated premises. The policies shall state whether the following items are included within the coverage in order that unit owners may insure themselves if the items are not insured by the Association: air handling equipment for space cooling and heating; service equipment, such as dishwasher, refrigerator, oven, stove, and water heater, whether or not those items are built-in equipment; interior fixtures such as electrical and plumbing fixtures; floor coverings except the floor slabs, and inside paint and other inside wall and ceiling finishes.

When appropriate and possible, the policies shall waive the insurer's right to:

Subrogation against the Association and against the unit owners individually and as a group;

The pro-rata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk; and

Avoid liability for a loss that is caused by an act of the Board of Directors of the Association, or by a member of the Board of Directors of the Association or by one or more unit owners.

B. Public liability insurance shall be carried in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.

C. Worker's compensation insurance shall be carried to meet the requirements of law.

D. Officer and directors indemnification insurance shall be carried as provided in the Bylaws.

E. Fidelity bond. Fidelity bonding of all officers and directors of the Association who control or disburse the funds of the Association in such amount as may be determined by the Board of Directors, or, in the event insurance proceeds are payable to the Association as provided in Section 8.3 of this Declaration, then such fidelity bonding shall be increased by the amount of the insurance proceeds and maintained at such amount until such proceeds have been disbursed in the manner elsewhere stated in this instrument at which time the Board of Directors may again determine the amount.

F. Other insurance may be purchased as the Board of Directors of the Association shall determine from time to time to be desirable.

8.2 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by use for other than a residence, or misuse, occupancy or abandonment of a unit or its appurtenances or of the common elements by a unit owner shall be assessed against and paid by that owner. Evidence of the payment of premiums shall be furnished by the Association to each mortgagee listed in the roster of mortgagees. In the event the Association fails to procure such insurance and pay the premiums, the mortgagee with the greatest number of mortgages in the condominium shall have the right to order and pay for such policies and be subrogated to the assessment and lien rights of the Association for such payment.

8.3 Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. Such insurance policies shall contain a provision that the proceeds covering property losses shall be paid over to the Association only after the Association has provided proof that the fidelity bonding of the officers and directors of the Association has been increased by the amount of such proceeds. The duty of the Association shall be to receive and hold the insurance proceeds and other funds that are paid to it in trust for the purposes elsewhere stated in this instrument and for the benefit of the unit owners and their mortgagees.

A. Unit owners - an undivided share for each unit owner, that share being the same as the undivided share in the common elements appurtenant to his unit.

B. Mortgagees. In the event the Association has notice of a mortgage on the unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear; provided, however, that 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 distributions of proceeds made to the unit owner and mortgagee.

8.4 Distribution of proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the manner hereafter provided in the section entitled "Reconstruction or repair after casualty."

8.5 Association as agent. The Association is irrevocably appointed agent for each unit owner and for each owner of a mortgage or other lien upon a unit and for each owner of any other interest in the condominium property, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8.6 Benefit of mortgagee. Certain provisions in this section entitled "Insurance" are for the benefit of mortgagees of condominium parcels. All of these provisions are covenants for the benefit of any mortgagee of a unit and may be enforced by that mortgagee.

9. Reconstruction and repair after casualty.

9.1 Determination whether to reconstruct and repair. Whether or not condominium property damaged by casualty shall be reconstructed and repaired shall be determined in the following manner:

A. Lesser damage. If units to which 50% of the common elements are appurtenant are found by the Board of Directors of the Association after receiving the opinion of the mortgagee with the greatest number of mortgages in the condominium and receiving the opinion of an architect licensed to practice in this State, to be tenantable after the casualty, the damaged property shall be reconstructed and repaired.

B. Major damage. If units to which more than 50% of the common elements are appurtenant are found by the Board of Directors of the Association after receiving the opinion of the mortgagee with the greatest number of mortgages in the condominium and receiving the opinion of an architect licensed to practice in this State, to be not tenantable after the casualty, whether the damaged property will be reconstructed and repaired or the condominium terminated shall be determined in the following manner:

Immediately after the determination of the amount of insurance proceeds, the Association shall give notice to all unit owners of the casualty, the extent of the damage, the estimated cost to rebuild and repair, the amount of insurance proceeds and the estimated amount of assessments required to pay the excess of the cost of reconstruction and repair over the amount of insurance proceeds.

The notice shall call a meeting of unit owners to be held within thirty (30) days from the mailing of the notice.

If the reconstruction and repair is approved at the meeting by the owners of 75% of the common elements, the damaged property will be reconstructed and repaired; but if not so approved, the condominium shall be terminated without requirement of agreement as elsewhere provided. Mortgagees holding mortgages on any of the units may appear at such meeting in person or by a representative and express their views.

The approval of a unit owner may be expressed by vote or in writing filed with the Association at or prior to the meeting.

The expense of this determination shall be assessed against all unit owners as a common expense.

C. Certificate. The unit owners may rely upon a certificate of the Association made by its president and secretary to determine whether or not the damaged property is to be reconstructed and repaired.

9.2 Report of damage. If any part of the condominium property shall be damaged and insurance proceeds or other funds are paid to the Association on account of the damage, a report of the damage shall be submitted by the Association to the unit owners and mortgagees as shown by the records of the Association. The report shall include the following information:

Date and cause of damage.

Whether the damaged property will be reconstructed and repaired or the condominium terminated.

If the damaged property will be reconstructed and repaired, the report shall include the following information:

Schedule of damage for which the Association has responsibility for reconstruction and repair and the estimated costs of reconstruction and repair.

Whether damaged property for which the Association has responsibility for reconstruction and repair includes structural parts of a building.

Schedule of damage for which unit owners have the responsibility for reconstruction and repair and the estimated costs of each owner for reconstruction and repair.

The report of damage shall be substantiated by an attached report of an architect qualified to practice in this state.

9.3 Responsibility for reconstruction and repair. The responsibility for reconstruction and repair after casualty shall be the same as for maintenance and repair of the condominium property as provided in the section entitled "Maintenance, alteration and improvement."

9.4 Plans and specifications. Any reconstruction and repair must be substantially in accordance with the plans and specifications for the original improvements, portions of which are attached as exhibits; or, if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the apartment building, by the owners of not less than 75% of the common elements, including the owners of all units the plans for which are to be altered.

9.5 Assessments; determination of sufficiency of funds.

A. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair for which the Association is responsible, or if at any time during that work or upon completion of the work the funds available for the payment of the costs are insufficient, assessments shall be made by the Association against all unit owners in sufficient amounts to provide funds for the payment of those costs. The assessments shall be made as for a common expense, except that the cost of construction, reconstruction and repair occasioned by special improvement made at the request of the owner and not common to other units shall be assessed to the owner of the unit.

B. Determination of sufficiency of funds. If the estimated costs of reconstruction and repair for which the Association is responsible do not exceed \$10,000, the sufficiency of funds to pay the costs shall be determined by the Board of Directors of the Association and the sums paid upon the assessments shall be held by the Association. If the estimated costs exceed \$10,000, the sufficiency of funds to pay the costs shall be determined by an architect qualified to practice in Florida and employed by the Association to supervise the work, and the sums paid upon the assessments shall be held by the Association.

9.6 Disbursement of funds. The funds held by the Association after a casualty, which will consist of proceeds of insurance and the sums collected from assessments against unit owners on account of the casualty, shall be disbursed in the following manner and order:

A. Termination of the condominium. If the condominium is terminated, either by agreement after lesser damage or by failure of the unit owners to approve reconstruction and repair after major damage, the remaining funds shall be deemed to be condominium property and shall be owned by the unit owners as tenants in common in the undivided shares in which they own the common elements prior to the termination. The balance of the funds shall be distributed to the beneficial owners as deemed appropriate by the Association in the amounts certified by the Association, remittances to unit owners and their mortgagees being made payable jointly to them.

B. Reconstruction and repair of damage. If the damaged property is reconstructed and repaired, the funds shall be disbursed in the following manner:

By Association - damages of \$10,000 or less. If the estimated costs of reconstruction and repair that is the responsibility of the Association do not exceed \$10,000, the funds shall be disbursed in payment of these costs upon the order of the Association; provided, however, the funds shall be disbursed in the manner hereafter provided for the reconstruction and repair of damage of more than \$10,000 if the damaged property includes structural parts of a building, or if requested by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the funds.

By Association - damage of more than \$10,000. If the estimated costs of reconstruction and repair that is the responsibility of the Association exceed \$10,000, the funds shall be disbursed in payment of these costs in the manner required by the Board of Directors of the Association; provided, however, that an architect qualified to practice in Florida and employed by the Association to supervise the work shall approve all disbursements as being due and properly payable.

By unit owners. If there is a balance of insurance proceeds after payment of costs of reconstruction and repair that is the responsibility of the Association, this balance shall be distributed to owners of damaged units who have responsibility for reconstruction and repair of their units. The distribution shall be in the shares that the estimated cost of reconstruction and repair of this damage in each damaged unit bears to the total of these costs in all damaged units;

provided, however, that no unit owner shall be paid an amount in excess of the estimated costs for his unit. If there is mortgage upon a unit, the distribution shall be paid to the unit owner and the mortgagee jointly and they may use the proceeds as they may determine.

Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance remaining after payment of the costs for which the funds are collected, the balance shall be distributed to the beneficial owners of the funds, remittances to unit owners and their mortgagees being made payable jointly to them; provided, however, that the part of a distribution to a unit owner that is not in excess of assessments paid by that owner into the funds shall not be made payable to any mortgagee.

C. Reliance upon certificates. The Board of Directors of the Association shall make a determination as to the existence of certain facts upon which the distribution of funds is conditioned and a certificate of the Association executed by its president and secretary, copies of which shall be provided to each unit and owner and their mortgagees, stating:

Whether the damaged property will be reconstructed, repaired or the condominium terminated.

Whether or not assessments will be made against unit owners.

That sums to be paid are due and properly payable, the name of the payee and the amount to be paid.

The names of unit owners to receive distribution of funds and the amounts to be distributed to them; provided, however, that when a mortgagee is required by this instrument to be named as payee of a distribution to a unit owner, the Association also shall name the mortgagee as payee of any distribution of insurance proceeds to a unit owner.

D. Proviso. Provided, however, that under the following circumstances the approval of the architect elsewhere required shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair:

When the report of damage shows that the damaged property includes structural parts of a building.

When the report of damage shows that the estimated costs of reconstruction and repair that is the responsibility of the Association exceed \$10,000.

If required by the Association or by a mortgagee that is a beneficiary of an insurance policy the proceeds of which are included in the funds to be disbursed.

9.7 Benefit of mortgagees. Certain provisions in the section entitled "Reconstruction or repair after casualty" are for the benefit of mortgagees of condominium parcels. All of these provisions are covenants for the benefit of any mortgagee of a unit and may be enforced by the mortgagee.

10. Use restrictions. The use of the condominium property shall be in accordance with the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land.

10.1 Units. Each of the units shall be utilized for residential purposes only by only one family, its servants and guests, and used as a residence and for no other purpose. "Family" as used herein shall have the meaning set forth in the Code of Ordinances of the Volusia County, Florida.

10.2 Common elements. The common elements shall be used only for the purpose for which they are intended in the furnishing of services and facilities for the enjoyment of the units by their occupants.

10.3 Nuisances. No nuisances shall be allowed upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the condominiums shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit use of his unit or make any use of the common elements that will increase the cost of insurance upon the condominium property above that required when the unit is used for the approved purposes.

10.4 Exterior appearance. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed from any apartment balcony or common element. Nothing shall be hung or displayed on the outside walls of the apartment building and no awning, canopy, shade, window guard, ventilator, fan, air conditioning device, radio or television antenna may be affixed to or placed upon the exterior walls or roof or any part thereof without the prior consent of the Association. No materials of any nature or description including but not limited to window film for sun and heat control may be affixed, adhered or otherwise caused to remain on the interior or exterior of any apartment window or door. All draperies and curtains of each apartment must be lined with a white material so that the windows and doors, when viewed from the exterior of the building will have a uniform and attractive appearance, and all exterior wall surfaces of the condominium will be painted one color.

10.5 Lawful use. No immoral, improper, offensive, or unlawful use shall be made of the condominium property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

10.6 Leasing. Entire units may be leased or rented provided the occupancy is by only one family, its servants and guests. Approval must be obtained for leases over six (6) months in duration. Leases for periods less than one (1) week are prohibited.

10.7 Regulations. Reasonable regulations concerning the appearance and use of



condominium property may be made and amended from time to time by the Association in a manner provided by its Articles of Incorporation and Bylaws. Copies of those regulations and amendments shall be furnished by the Association to all unit owners and residents of the condominium upon request.

10.8 Proviso. Provided, however, that until Developer has closed the sales of all of the units and of the condominium, neither the unit owners nor the Association nor the use of the condominium property shall interfere with the sale of the units. Developer may make such use of the unsold units and common areas without charge as may facilitate the sale, including but not limited to maintenance of a sales office, the showing of the property and the display of signs.

11. Maintenance of community interests. In order to maintain a community of congenial residents who are financially responsible and thus protect the value of the units, the transfer of units by any owner other than the Developer shall be subject to the following provisions as long as the condominium exists and the apartment building in useful condition exists upon the land, which provisions each unit owner covenants to observe:

11.1 Transfers subject to approval.

A. Sale. No unit owner of a unit may dispose of a unit or any interest in a unit by sale without approval of the Association except to the owner of another unit.

B. Lease. No unit owner, including the Developer, may dispose of a unit or any interest in a unit by lease for a term longer than six (6) months without approval of the Association except to the owner of another unit.

C. Gift. If any unit owner shall acquire his title by gift, the continuance of his ownership of his unit shall be subject to the approval of the Association. Section 11, however, shall not apply to gifts by a unit owner to a member of his immediate family (viz. spouse, children or parents).

D. Other transfers. If any unit owner shall acquire his title by any manner not considered in the foregoing subsections, other than by devise or inheritance, the continuance of his ownership of his unit shall be subject to the approval of the Association.

11.2 Approval by Association. The approval of the Association that is required for the transfer of ownership of units shall be obtained in the following manner:

A. Notice to Association.

Sale. A unit owner intending to make a bona fide sale of a unit or any interest in it shall give to the Association notice of that intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. The notice at the unit owner's option may include a demand by the unit owner that the

Association furnish a purchaser of the unit if the proposed purchaser is not approved, and if that demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

Lease. A unit owner intending to make a bona fide lease of unit for a term longer than six (6) months shall give to the Association notice of that intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as the Association may reasonably require, and a certified copy of the instrument evidencing a transferee's title.

Gifts and other transfers. A unit owner intending to make a gift of a unit or any interest in a unit, and a unit owner who has obtained his title by gift, or by any other manner not previously approved by the Association, shall give to the Association notice of the proposed gift or of the acquiring of title, together with such information concerning the transferee as the Association may reasonably require, and a certified copy of the instrument evidencing a transferee's title.

Failure to give notice. If the above required notice to the Association is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association at its election and without notice may approve or disapprove the transaction or ownership. If the Association disapproves the transaction or ownership, the Association shall proceed as if it had received the required notice on the date of that disapproval.

Costs. A unit owner who is required to give notice to the Association of a transfer of ownership shall pay a reasonable fee to the Association in an amount determined by the regulations, but not to exceed \$50, to cover the costs incident to the determination by the Association. The fee shall be paid with the giving of the notice, and the notice shall not be complete unless the fee is paid; and if the notice is not given, the fee shall be assessed against the party owning the unit at the time of assessment.

#### B. Certificate of approval.

Sale. If the proposed transaction is a sale, then within fifteen (15) days after receipt of the notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association in recordable form. The certificate shall be recorded in the Public Records of Volusia County, Florida at the expense of the purchaser.

Lease. If the proposed transaction is a lease for a term longer than six (6) months, then within fifteen (15) days after receipt of the notice and information the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association in recordable form, which, at the election of the Association, shall be delivered to the lessee or shall be recorded in the Public Records of Volusia County, Florida at the expense of the lessee.

Gifts and other transfers. If the notice is of an intended gift or the unit owner giving notice has acquired his title by gift, or in any other manner not previously approved by the Association, then within fifteen (15) days after receipt of the notice and information the Association must either approve or disapprove the donee or the continuance of the transferee's ownership of his unit. If approved, the approval shall be stated in a certificate executed by the president and secretary of the Association in recordable form. The certificate shall be recorded in the Public Records of Volusia County, Florida at the expense of the unit owner.

11.3 Disapproval by the Association. If the Association shall disapprove a transfer of ownership of a unit, the matter shall be treated in the following manner:

A. Sale. If the proposed transaction is a sale and if the notice of sale given by the unit owner shall so demand, then within fifteen (15) days after receipt of the notice and information the Association shall deliver or mail by certified mail to the unit owner an agreement signed by a purchaser approved by the Association and obligating the purchaser to buy the unit upon the terms hereafter stated. The seller shall be obligated to sell the unit to the purchaser upon the following terms:

At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract or sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit; and a judgment of specific performance of the sale upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

The purchase price shall be paid in cash, or upon terms approved by the seller.

The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if it is by arbitration, whichever is the later.

A certificate of the Association executed by its president and secretary and approving the purchaser shall be recorded in the Public Records of Volusia County, Florida, at the expense of the purchaser.

If the Association shall fail to provide a purchaser upon the demand of the unit owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction as contained in the unit owner's original notice of intent to sell shall be deemed to have been approved and the Association shall furnish a certificate of approval as elsewhere provided. The certificate shall be recorded in the Public Records of Volusia County, Florida, at the expense of the purchaser.

B. Lease. If the proposed transaction is a lease, the unit owner shall be advised in writing of the disapproval and the lease shall not be made.

C. Gifts and other transfers. If the notice is of a proposed gift, the unit owner shall be advised in writing of the disapproval and the gift shall not be made. Any attempted gift to a party who is not approved by the Association shall be void. If the unit owner giving notice has acquired his title by gift, or in any other manner, then within thirty (30) days after receipt from the unit owner of the notice and information required to be furnished, the Association shall deliver or mail by certified mail to the unit owner an agreement signed by a purchaser approved by the Association and obligating the purchaser to buy the unit upon the terms hereafter stated. The unit owner shall be obligated to sell the unit to the purchaser upon the following terms:

The sale price shall be the fair market value determined by agreement between the unit owner and purchaser within thirty (30) days from the delivery or mailing of the agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the unit. A judgment of specific performance of the sale upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

The purchase price shall be paid in cash or upon terms approved by the unit owner.

The sale shall be closed within ten (10) days following the determination of the sale price.

A certificate of the Association executed by its president and secretary and approving the purchaser shall be recorded in the Public Records of Volusia County, Florida, at the expense of the purchaser.

If the Association shall fail to provide a purchaser in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval the ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided. The certificate shall be recorded in the Public Records of Volusia County, Florida, at the expense of the unit owner.

11.4 Exceptions. The foregoing provisions of the section entitled "Maintenance of community interests" shall not apply to:

A transfer to or purchase by an institutional lender or its designee that acquires its title as the result of owning a mortgage upon the unit concerned, whether the title is acquired by deed from the mortgagor, his successor or assigns, or through foreclosure proceedings;

A transfer or sale by an institutional lender that so acquires its title;

A transfer to a purchaser who acquires the title to a unit at a duly advertised public sale with open bidding that is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale;

A mortgage or transfer to or a purchase or other acquisition by Developer, or a mortgage, sale or transfer by Developer;

A gift by a unit owner to a member of his immediate family (viz. spouse, children or parents); or

Title acquired by devise or inheritance.

11.5 Unauthorized transactions. Any sale, lease for a term in excess of six (6) months or assignment of lease for a term in excess of six (6) months that is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

12. Compliance and default. Each unit owner and the Association shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation of the Association and the Bylaws and Regulations adopted pursuant to those documents, and all of those documents and regulations as they may be amended from time to time. The Board of Directors of the Association is hereby granted the authority to appoint a committee or committees of unit owners for the purpose of implementing and enforcing the terms of these documents and regulations under the rules of procedure contained in the Bylaws. The Association and unit owners shall be entitled to the following relief in addition to the remedies provided by The Condominium Act:

12.1 Negligence. A unit owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that expense is not met by the proceeds of insurance carried by the Association.

12.2 Costs and attorneys' fees. In any proceeding arising because of an alleged failure of a unit owner or the Association to comply with the requirements of The Condominium Act, this Declaration, the Bylaws, or the Regulations, and those items as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees.

12.3 No waiver of rights. The failure of the Association or any unit owner to enforce any covenant, restriction or other provision of The Condominium Act, this Declaration, the Bylaws or the Regulations shall not constitute a waiver of the right to do so thereafter.

13. Amendments. Except as elsewhere provided, this Declaration of Condominium may be amended in the following manner:

13.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

13.2 Adoption. A resolution for the adoption of a proposed amendment may be at any regular or special meeting of the Association called in accordance with the Bylaws at which a quorum is present. Such amendments may be proposed by either the Board of Directors of the Association or by the members at a meeting of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing signed by the individual designated to cast the vote for the unit as provided in Section 7.2 of this Declaration, providing that approval is delivered to the secretary at or prior to the meeting.

Except as elsewhere provided, the approvals must be either by:

Not less than a majority of the entire membership of the Board of Directors and by not less than a majority of the total number of votes to which the unit owners present and voting shall be entitled; or

Not less than 75% of the votes of the entire membership of the Association; or

Not less than 50% of the entire membership of the Board of Directors in the case of amendments that are only for one or more of the following purposes:

To correct misstatements of fact, typographical or clerical errors in the Declaration and its exhibits.

To change the boundaries between units in the manner elsewhere stated provided the amendment is signed and acknowledged by the owners, lienors and mortgagees of condominium property.

Until such time as the unit owners other than the Developer are entitled to elect a majority of the directors, Developer reserves the right, with the consent of the record owner of all institutional mortgages, to amend, modify, alter or annul any of the covenants, restrictions or conditions of this Declaration.

13.3 Proviso. Provided, however, that no amendment shall discriminate against any unit owner nor against any unit or class or group of units, unless the unit owners so affected shall consent; and no amendment shall change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of the unit shares the common expenses and owns the common surplus unless the record owner of the unit and the record owners of all mortgages on the unit join in the execution of the amendment and unless the record owners of two-thirds of all of the other units approve the amendment. Neither shall an amendment make any change in Sections 8, 9, 11 and 13 entitled "Insurance", "Reconstruction and repair after casualty", "Maintenance of community interests" and "Amendments" unless the record owners of all mortgages upon the condominium shall join in the execution of the amendment.

13.4 Execution and recording. An amendment adopted in any manner shall be evidenced by attaching a copy of the amendment to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of

the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Volusia County, Florida.

14. Termination. The condominium may be terminated in the following ways in addition to the manner provided by The Condominium Act:

14.1 Destruction. If it is determined in the manner elsewhere provided that the apartment building shall not be reconstructed because of major damage, the condominium plan of ownership thereby will be terminated without agreement.

14.2 Agreement. The condominium may be terminated by approval in writing of all record owners of units and all record owners of mortgages on units.

14.3 Certificate. The termination of the condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Volusia County, Florida.

14.4 Shares of owners after termination. After termination of the condominium, unit owners shall own the condominium property and all assets of the Association as tenants in common in undivided shares, and their respective mortgagees and lienor shall have mortgages and liens upon the respective undivided shares of the unit owners. The undivided shares of the unit owners shall be the same as the undivided shares of the common elements appurtenant to the owners' units prior to the termination.

14.5 Amendment. This section concerning termination cannot be amended without consent of all unit owners and of all record owners of mortgages upon the units.

15. Turnover of Association control to unit owners other than Developer. At such time as the unit owners other than Developer elect a majority of the Directors of the Association as provided in the Bylaws of the Association, the Developer shall be responsible to deliver to the Association all contributions to the condominium Association's working capital as provided in the Purchase Agreement and paid to the Association under the control of the Developer at the time of closing less prepaid items which shall be pro-rated as of the date of turnover. It shall be the responsibility of the Developer to see that the contribution to working capital paid by each unit owner at the closing of the sale by Developer is paid over to the Association.

16. Cable television. The Developer during construction or after completion, as evidenced by issuance of a certificate of occupancy by the appropriate authority, or the Association, by action of its Board of Directors, is authorized to enter into agreements to provide cable television service, to be given to the owners or occupants of units of the condominium, upon such terms and conditions as the Developer or the Board of Directors shall approve, including but not limited to the authority of the Association to enter into a service contract for such service to all units of the condominium in which case the cost shall be treated as a common

expense. This authority shall be liberally construed to allow the placement of cables, equipment and all necessary adjunctive mechanical, electro-mechanical, electrical and/or electronic devices upon the condominium property as the Developer or Board of Directors shall approve to effectuate the intentions of this paragraph. In the event service to all units is not provided, unit owners shall have the right to have cable television service extended and provided within their units without action of the Board of Directors and such services may be brought to the unit owners requiring or desiring such service over the common elements of the condominium and as other utility services may be extended to the condominium units, providing that such installation shall not be unsightly and that such installation shall not interfere with the reasonable, lawful and peaceful use of the common elements and the limited common elements by the persons entitled to use them. Nothing in this paragraph shall be construed to impose upon the Developer or any other person, either real or corporate, the obligation to provide or install cable television facilities in this condominium, nor to prohibit such installation. Unit owners are prohibited from installing any type of antenna on the roof or on any part of the exterior of the condominium.

17. Pets - Limitation or prohibition. The condominium Association, acting through its Board of Directors, may impose regulations, restrictions or limitations upon the keeping of pets and may appoint a committee for the purpose of enforcing such regulations in accordance with rules of procedure as contained in the Bylaws. Such regulations, restrictions or limitations may not prohibit a unit to keep up to one (1) domestic pet such as a dog or cat which normally require access to the outside, provided the total weight of such pets does not exceed twenty (20) pounds at maturity. This provision may not be amended except on the affirmative vote of seventy-five percent (75%) of the unit owners in the manner for amendments as elsewhere provided in this instrument.

18. Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration of Condominium, the Articles of Incorporation of the Association, the Bylaws and Regulations of the Association, shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration the day and year first above written:

Signed, sealed and delivered  
in the presence of:

OCEAN CLUB AT TURTLEMOUND,  
a CONDOMINIUM

By: MELVIN, BERKOWITZ & SAWRUK, INC.  
JOINT VENTURER

By: [Signature]

[Signature]  
[Signature]





By: CEDAR CREEK ENTERPRISES, INC.,  
JOINT VENTURER

By: Charles W. Mellor  
Charles W. Mellor, President

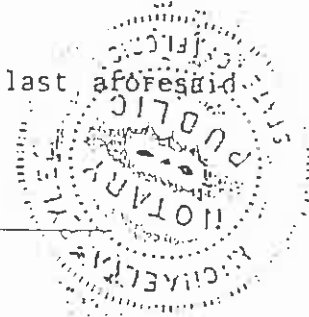


STATE OF FLORIDA  
COUNTY OF VOLUSIA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Michael Sawruk, well known to me to be the Chairman, of MELVIN, BERKOBEN & SAWRUK, INC., in the foregoing Declaration of Condominium, and that they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true and corporate seal of said corporation.

WITNESS my hand and official seal in the State and County last aforesaid this 20 day of December, 19 88.

Michael Sawruk  
Notary Public,  
State of Florida at Large.  
My commission expires:



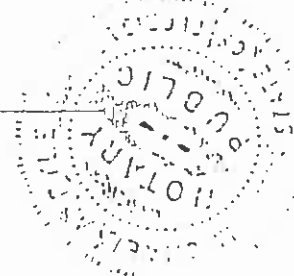
STATE OF FLORIDA  
COUNTY OF VOLUSIA

NOTARY PUBLIC, State of Florida at Large  
My Commission Expires November 2, 1991  
Bonded by UNITED PACIFIC INS. CO.

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Charles W. Mellor, well known to me to be the President of CEDAR CREEK ENTERPRISES, INC., in the foregoing Declaration of Condominium, and that they acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in them by said corporation and that the seal affixed thereto is the true and corporate seal of said corporation.

WITNESS my hand and official seal in the State and County last aforesaid this 20 day of December, 19 88.

Charles W. Mellor  
Notary Public,  
State of Florida at Large.  
My commission expires:



RE71

NOTARY PUBLIC, State of Florida at Large  
My Commission Expires November 2, 1991  
Bonded by UNITED PACIFIC INS. CO.

OCEAN CLUB AT TURTLEMOUND,  
A CONDOMINIUM

LEGAL DESCRIPTION

Lot 6, 7 and 8 & Lots 39 through 48, inclusive, Block 35,  
Bethune Beach Unit 5 of 7 units, as per map thereof recorded in  
Map Book 11, Pages 155 through 161 of the Public Records of  
Volusia County, Florida.

EXHIBIT A

TO

DECLARATION OF CONDOMINIUM

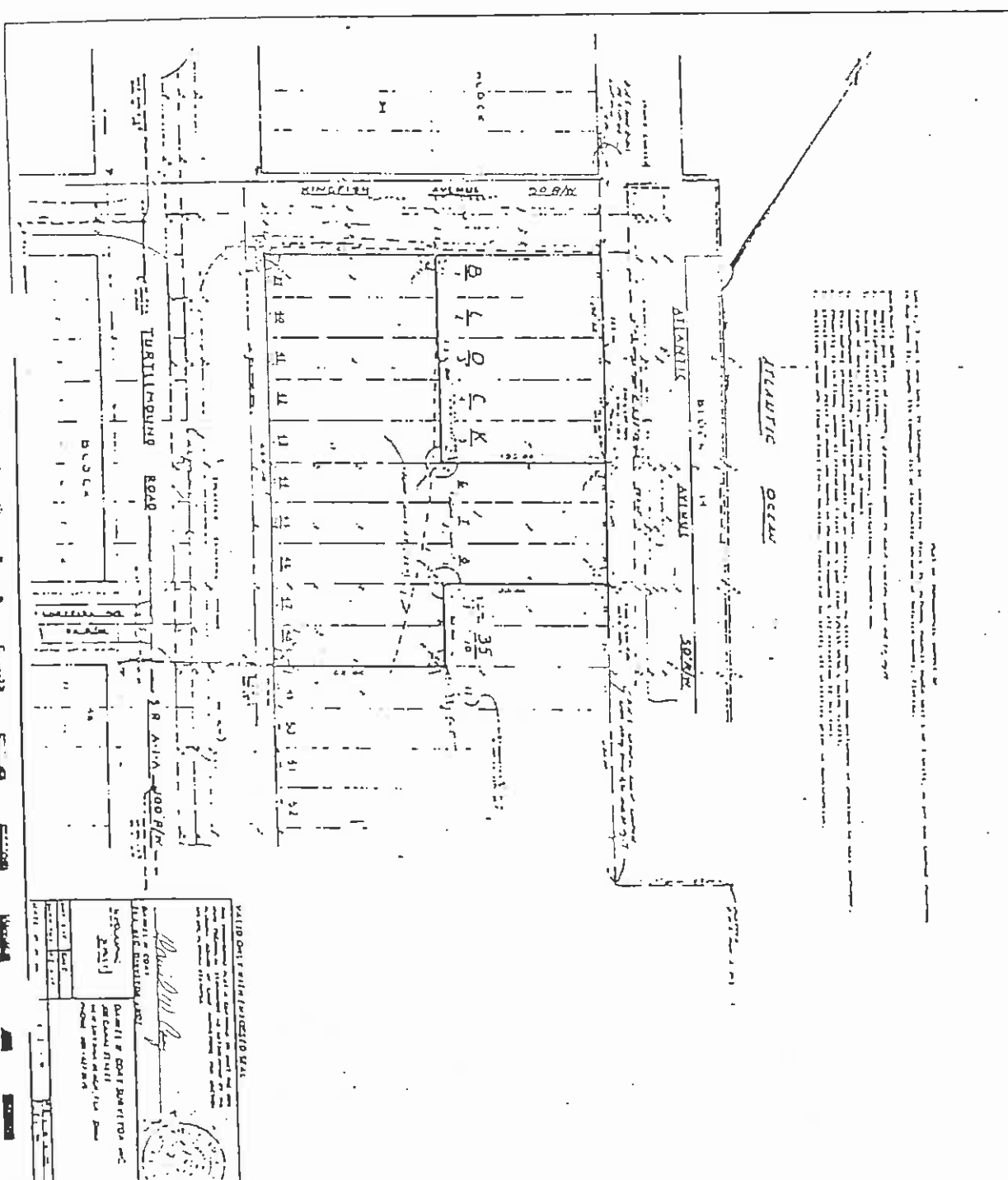
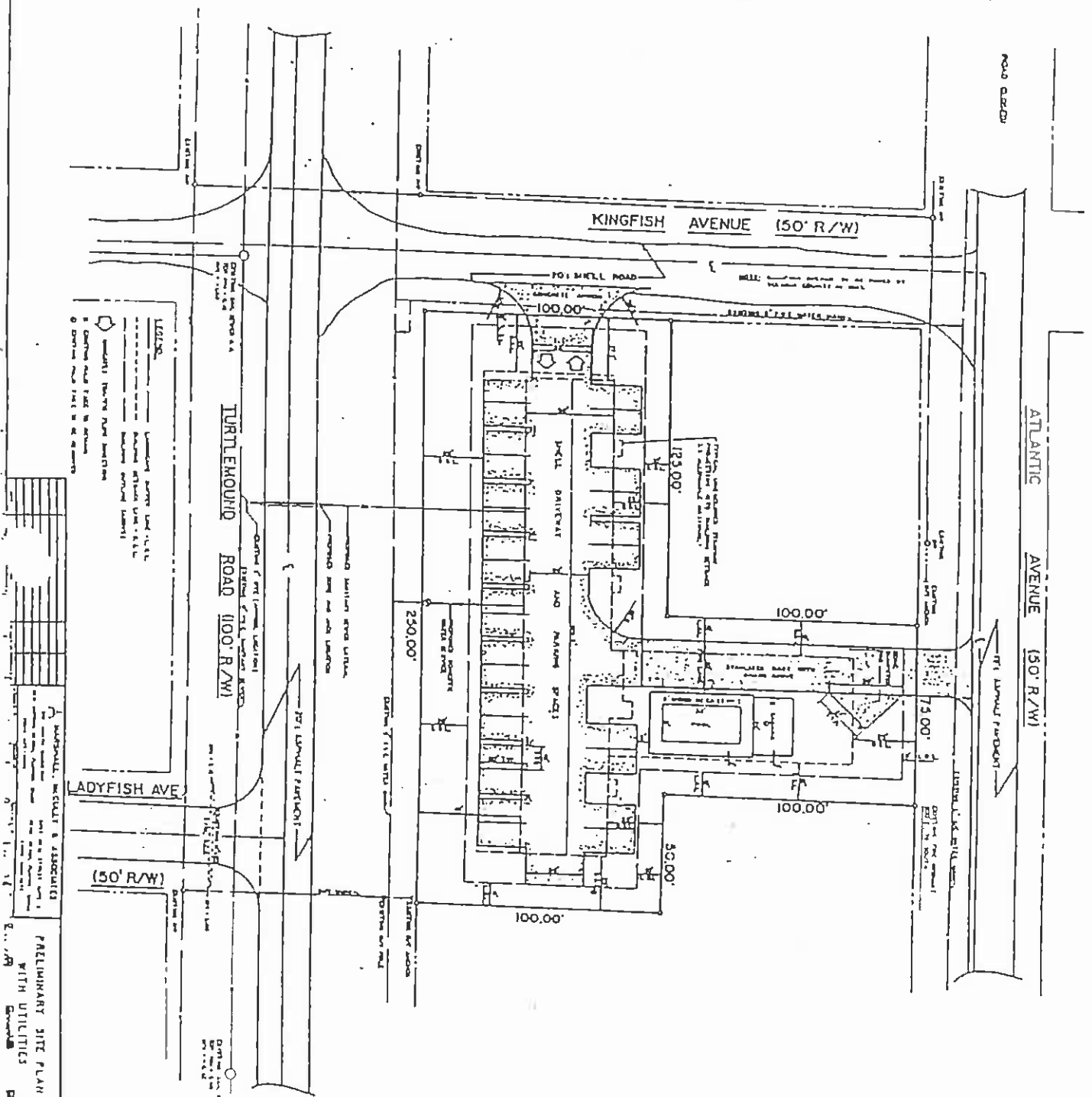


EXHIBIT B, SHEET 2

SITE PLAN

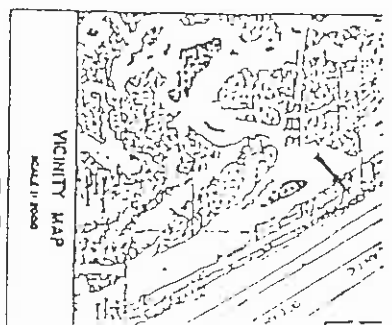


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**Notes:**

1. All dimensions are in feet and inches.
2. All setbacks are from the centerline of the road.
3. All easements are shown in dashed lines.
4. All utility lines are shown in solid lines.
5. All other features are shown in solid lines.
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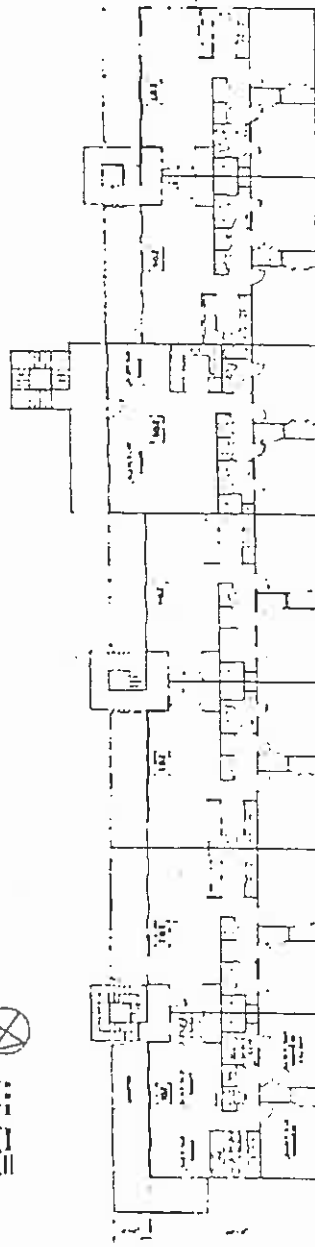
## MEMORANDUM

1. PROPERTY OWNER: CEDAR CREEK ENTERPRISES, INC.  
811 LADY/JAN AVENUE  
NEW SMYRNA BEACH, FLORIDA 32080
2. SITE DEVELOPER/CONTRACT PURCHASER: MELVIN, MELROSE & SHAW  
1011 VIVIANA DRIVE  
DALLAS, FLORIDA 32043  
(407)834-1331
3. PROJECT ENGINEER: MARSHALL, MCCULLY & ASSOCIATES  
340 NORTH CAMPBELL  
NEW SMYRNA BEACH, FLORIDA 32080  
(407)427-0431
4. PROJECT ARCHITECT: LORRA ARCHITECTURE  
320 CHANDLER DRIVE  
DALLAS, FLORIDA 32043  
(407)427-2310
5. LEGAL DESCRIPTION: SEE ATTACHED SURVEY(1)
6. CURRENT ZONING CLASSIFICATION: R-8, TOURIST CLASSIFICATION
7. PROPOSED PROJECT TITLE: OCEAN CLUB AT TWENTY POUNDS
8. TOTAL PROJECT ACREAGE: .78 ACRES (33500 SQUARE FEET)
9. PROJECT DENSITY: R-8 ZONING MAXIMUM  
(MULTI-FAMILY) - 20 UNITS/NET ACRE  
ALLOWABLE MAXIMUM NUMBER OF UNITS FOR  
.78 ACRE PARCEL - 16 UNITS  
PROPOSED NUMBER OF UNITS - 16 UNITS  
PROPOSED PROJECT DENSITY - 20.6 UNITS/NET ACRE
10. PERCENTAGE(S) OF SITE COVERAGE: BUILDING COVERAGE =  $\frac{141,10 \text{ FT.}}{33500 \text{ SQ. FT.}} = 4.21\%$   
IMPERVIOUS SURFACE COVERAGE =  $\frac{140,110 \text{ FT.}}{33500 \text{ SQ. FT.}} = 4.18\%$
11. MAXIMUM SPACE PROVIDED: 25 SPACES, BASED ON TWO SPACES PER MULTI-FAMILY UNIT (16 UNITS x 2 = 32 SPACES)
12. COVER OVER SPACES AREAS: TO BE MAINTAINED BY CONDOMINIUM ASSOCIATION AS DETAILED IN CONDOMINIUM DOCUMENTS SUBMITTED FOR STATE APPROVAL.
13. PROPOSED BUILDING HEIGHTS: MULTI-FAMILY RESIDENTIAL - 44' MAXIMUM  
GARAGE - 20' MAXIMUM  
BUILDING SETBACK LINES ON PLAN ADJUSTED ACCORDINGLY.
14. PROPOSED BUILDING FLOOR AREAS:  
MULTI-FAMILY RESIDENTIAL - 16 UNITS OF 813 SQUARE FEET.  
2 UNITS OF 497 SQUARE FEET.  
TOTALING 11750 SQUARE FEET.  
GARAGE - 304 SQUARE FEET
15. SCHOOL SITES: NONE WITHIN TWO MILE RADIUS
16. UTILITIES: WATER, SEWER & ELECTRIC SERVICE TO BE PROVIDED BY UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH
17. EXISTING VEGETATION: THREE PALM TREES EXISTING ON SITE AS DETAILED ON SITE PLAN; ALL OTHER VEGETATION IS SAW PALMETTO, PRICKLY PEAR CACTUS, AND SMALLER TYPICAL COASTAL MATERIAL.
18. THERE ARE NO KNOWN WILDLIFE CORRIDORS FOR FEDERALLY ENDANGERED SPECIES OR SPECIES OF SPECIAL CONCERN.
19. THERE ARE NO KNOWN PLANTS OR ANIMALS ENDANGERED BY THE SITE LISTED AS FEDERALLY ENDANGERED OR SPECIES OF SPECIAL CONCERN.

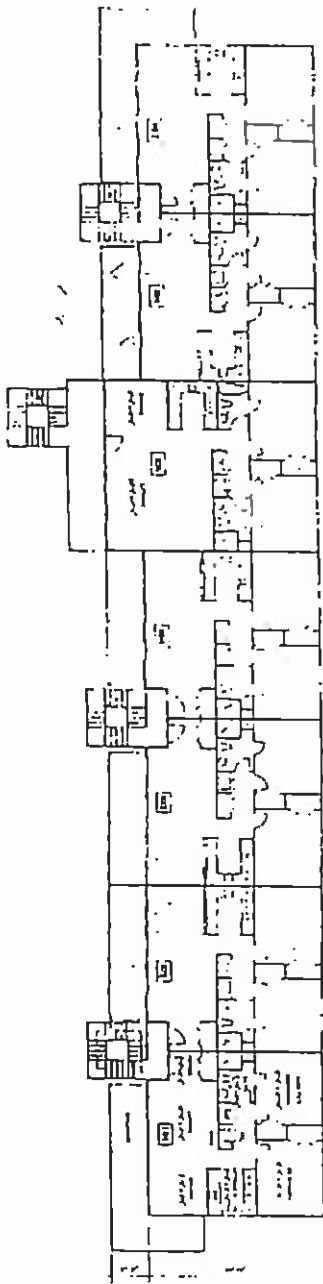
EXHIBIT B, SHEET 3

TYPICAL FLOOR PLAN

Third Level Plan



Second Level Plan



THE OCEAN CLUB  
LOGGIA



AI TURTLEGROUND  
ARCHITECTURE



Scale  
1" = 10'

Handwritten signature and date: 10/1/80



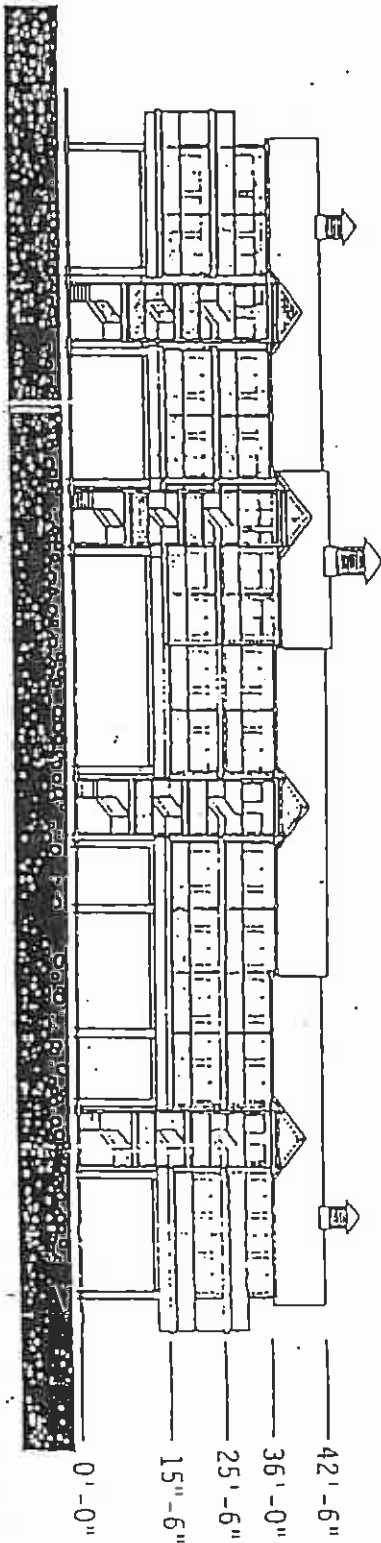
EXHIBIT B, SHEET 4

FRONT ELEVATION

CERTIFICATE OF INCORPORATION  
AND  
ARTICLES OF INCORPORATION

EXHIBIT C  
to  
Declaration of Condominium

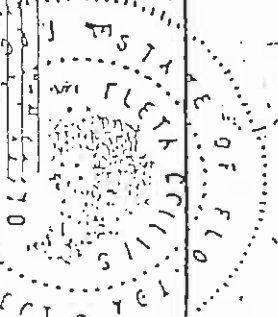
FRONT ELEVATION (EAST)



TURTLECREEK  
ARCHITECTURE



TURTLECREEK  
ARCHITECTURE



PROPOSED BUDGET

EXHIBIT E  
to  
Declaration of Condominium

OCEAN CLUB AT TURTLEMOUND  
OPERATING EXPENSE BUDGET - 1/1/89 - 12/31/89  
(14 UNITS)

DEVELOPER MAY BE IN CONTROL OF THE BOARD OF ADMINISTRATION OF THE CONDOMINIUM DURING THE PERIOD FOR WHICH THIS BUDGET HAS BEEN PROJECTED.

[Categories required by 718.504(20)]

1. Expenses for the Association and Condominium	<u>Annual</u>	<u>Monthly</u>
A. Administration of the Association(1)	-0-	-0-
B. Management Fees	4,800.00	400.00
C. Maintenance:		
i. Pool Maintenance and Supplies	2,400.00	200.00
ii. Grounds Maintenance and Supplies	2,400.00	200.00
iii. Exterior Building Maintenance	600.00	50.00
D. Rent for Recreational and Other Commonly Used Facilities(2)	-0-	-0-
E. Taxes Upon Association Property(3)	-0-	-0-
F. Taxes Upon Leased Areas(4)	-0-	-0-
G. Insurance	2,023.00	168.58
H. Security Provisions(5)	-0-	-0-
I. Other Expenses:		
i. Utilities: Water & Sewer	5,880.00	490.00
Common Area Electric	1,500.00	125.00
ii. Exterminator	240.00	20.00
iii. Trash Removal	1,320.00	110.00
iv. Professional Fees (Local)	48.00	4.00
v. Parking lot maintenance	60.00	5.00
J. Operating Capital(6)	-0-	-0-
K. Reserves for Capital Expenditure and Deferred Maintenance:		
Building Painting:		
Estimated Life - 5 years		
Estimated Return on Reserve - 3%		
Current Balance -0-		
Estimated Replacement Cost-\$5,000.	970.00	80.83
Roof Resurfacing:		
Estimated Life - 20 years		
Estimated Return on Reserve - 3%		
Current Balance -0-		
Estimated Cost - \$6,200.	300.70	25.06
Shell Parking Lot Resurface		
Estimated Life - 1 year		
Estimated Return on Reserve - 0%		
Current Balance -0-		
Estimated Cost - \$144.00	144.00	12.00
L. Fees Payable to Division of Florida Land Sales, Condominiums and Mobile Homes	14.00	1.17
TOTAL EXPENSES AND RESERVES	22,699.70	1,891.53

ALLOCATION OF CONDOMINIUM BUDGET AMONG UNITS

	<u>Annual Assessment</u>	<u>Monthly Assessment</u>
Per Unit Assessment	\$ 1,621.41	\$ 135.12

NOTES

- (1) Not applicable. Included in the Management Fee.
- (2) Not applicable. There are no recreational or other commonly used facilities being rented by the Association
- (3) Not applicable.
- (4) Not applicable. There are no areas being leased by the Association.
- (5) Not applicable. No provisions for security have been provided for the association.
- (6) At the time of closing, each purchaser is required to make a mandatory contribution to the operating capital. The amount of the contribution shall be three times one months association assessment as shown on the original budget.

1 unit monthly assessment	\$ 135.12
1 unit capital contribution	\$ 405.36
Total capital contribution (405.36 x 14 units)	\$5,675.04
- (7) The developer has guaranteed that during the period of time beginning with the date the first unit is closed and titled out to a unit purchaser, the assessments will not increase above \$135.12 for year one of operation, \$155.38 for year two of operation, and \$178.68 for year three of operation, and any subsequent year of the guaranty period. The guaranty is described in Section 6.4 of the Declaration.

PROPOSED MANAGEMENT AGREEMENT

EXHIBIT F  
to  
Declaration of Condominium

<p style="text-align: center;">OCEAN PROPERTIES &amp; MANAGEMENT, INC. MANAGEMENT AGREEMENT</p>
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This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1988, by and between OCEAN CLUB a Florida non-profit corporation, hereinafter referred to as "THE ASSOCIATION", and OCEAN PROPERTIES & MANAGEMENT, INC., a Florida corporation, hereinafter referred to as "AGENT."

Ocean Club means: Ocean Club at Turtleound Condominium Association, Inc.  
Witnesseth:

Whereas OCEAN CLUB was formed and organized for the purpose of maintaining the values and amenities of a Homeowners Association located in Volusia County, Florida, and;

Whereas THE ASSOCIATION deems it advisable to engage the AGENT as its manager for the purposes of maintaining and providing, as aforesaid, the values of OCEAN CLUB and;

Whereas the AGENT desires to be employed to manage THE ASSOCIATION.

Now Therefore it is agreed as follows:

I. THE ASSOCIATION hereby employs the AGENT exclusively to manage the Association for a period of one year, commencing on \_\_\_\_\_ and thereafter for yearly periods from time to time, unless on or before sixty (60) days prior to the expiration of the initial term or on or before thirty (30) days prior to the expiration of any such renewal period, either party hereto shall notify the other in writing that it elects to terminate this agreement, in which case this agreement shall be terminated at the end of said period. However, this agreement shall be terminated by either party within thirty (30) days prior written notice for just cause.

II. The AGENT agrees to provide complete, professional management services in the name of and on behalf of THE ASSOCIATION, who hereby gives the AGENT the authority and powers required to perform the services. These services shall include the following segments of this agreement.

#### A. Administrative

1. Provide members with notice of intent to place liens, place and record liens, and as appropriate, prepare and record satisfaction of liens. A lien fee of \$50.00 will be charged and collected from the owner of the property liened.

2. Provide members with notice of intent to initiate foreclosure suits, initiate and follow-up on foreclosure suits with the Association's attorney to satisfaction of the Association's interest.

3. Provide a repository for official records of the Association to include covenants, correspondence files, insurance policies, minutes of the Association, etc. Ownership of all records remains with the Association.

4. Handle lease and sale paperwork received from members (if required by documents). Investigate credit and past residences and make recommendations to the Board of Directors for



approval or disapproval for a fee of \$25.00 per lease or sale. Fee to be collected from member who is selling or leasing.

5. Type and reproduce minutes of meetings.
6. Type, reproduce, and distribute general announcements and other information to all members. Printing and postage to be paid by the Association.
7. Receive and dispose of all correspondence addressed to the Association.
8. Attend \_\_\_\_\_ Board of Directors meetings per year plus \_\_\_\_\_ annual meeting.

### B. Accounting

1. Maintain individual ledger accounts for each member on which are posted all debits and credits to include monthly computations of interest and/or late charges due on delinquent accounts.
2. Mail reminders to all members who are fifteen (15) days delinquent in payment of assessments.
3. Receive, deposit, disburse and account for all Association funds.
4. Prepare monthly financial statements on the accrual basis including an income and expense statement, a balance sheet and an itemized listing of accounts receivable by age, and a disbursements register by the 20th of the following month.
5. Provide individual members with account statements upon verbal request.
6. Have printed and distribute billings and envelopes to all members.
7. Arrange for annual audit or review of the Association financial records, to include filing of all tax forms, by a CPA of the Association's choice.
8. Annually renew corporate charter with the State of Florida.
9. Maintain a complete record of all financial documents.
10. Assist directors in preparation of the annual budget. Submit preliminary budget to the Board of Directors no later than November 15th.

### C. Maintenance

1. Receive maintenance requests from individual members and when such requests meet approved guidelines, prepare and issue purchase order, follow-up on purchase orders, inspect work as required, and disburse Association funds to pay for maintenance services.
2. AGENT shall receive a fee of 5% of the contract price for supervision of special projects such as roof replacement, building painting, road resurfacing and any other major project exceeding \$10,000 in cost where supervision is necessary. The Board of Directors of the Association may provide the supervision in lieu of paying the 5% fee.
3. Obtain competitive bids and make awards agreed to by the Board of Directors, supervise contract compliance, and pay for contracted services such as liability insurance, pool and grounds maintenance, pest control, and other special requirements for the Association.

### D. Public Relations

1. Type, reproduce, and distribute association newsletter. Input to be provided by Association. Printing and postage to be paid by the Association.
2. Act as the Association's liaison with others such as developers, government agencies, attorneys, and realtors.
3. Assist Directors in enforcing the Association's Covenants and Restrictions:
  - a. Write letters to members in violations, and
  - b. Handle legal enforcement of Covenants and Restrictions if necessary, provided Board of Directors has voted to take legal action.

### E. Personnel (Depending on budget and management plan)

1. The Agent shall assign one Property Manager at the Agent's expense to oversee the property. The Property Manager will make periodic visits to the property to inspect work in progress and meet with homeowners.
2. Select and employ an on-site Resident Manager for the Association's benefit, if budgeted. All expenses incident to the manager's salary will be a budgeted expense of the Association. Those expenses are: State and Federal Unemployment taxes, F.I.C.A., Workman's Compensation Insurance and Bodily Injury and Property Damage Liability Insurance.
3. Select, employ, and supervise any and all on-site maintenance employees for the Association's benefit. All expenses incident to the employment of such maintenance personnel will be borne by the Association as a budgeted expense of the Association. Those expenses are: State and Federal Unemployment taxes, F.I.C.A., Workman's Compensation Insurance and Bodily Injury and Property Damage Liability Insurance.
4. All employees will be subject to the Company policies set forth by the AGENT. Vacation policy for regular full-time employees is one week after one year, two weeks after two years, three weeks after six years, and four weeks after eleven years. Holidays are New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving, and Christmas. Other days following or preceding a holiday are at the discretion of management. All regular full-time employees are eligible for such leave benefits. The employee will receive a one-half days sick leave credit for each month of continuous employment; a total of six days per calendar year. From time to time, company policies may be revised at the discretion of the AGENT.
5. Benefits consistent with the employment of quality personnel such as Health Insurance are considered incident to the employment of such personnel.

III. Notwithstanding any other provision of the Agreement, the AGENT is given no authority or responsibility for maintenance or repairs to individual dwelling units in the Association. Such maintenance and repairs shall be the sole responsibility of the MEMBERS individually. Each individual dwelling unit owner may contract with the AGENT on an individual basis for the provision of certain maintenance and other related services which will be paid for in accordance with the agreement between the AGENT and the individual unit owner. Such shall not be considered to be a conflict of interest or otherwise obligate the AGENT to take any action except as he may agree to with the individual unit owner.

IV. The AGENT agrees that all monies collected by it on behalf of THE ASSOCIATION shall be deposited in a custodial account in a state or national bank where deposits are insured by the Federal Deposit Insurance Corporation separate and apart from AGENT'S own funds.

63. 63.

V. The AGENT agrees that all its employees who handle or are responsible for the safekeeping of any monies of THE ASSOCIATION shall be covered by a fidelity bond. Such bond to be in an amount of \$100,000 with a company determined by the AGENT.

VI. All expenses of operation and management may be paid from THE ASSOCIATION'S funds held by the AGENT, and the AGENT is authorized to pay any amounts owed to the AGENT by THE ASSOCIATION from such account without prior notice to THE ASSOCIATION. The AGENT shall have no obligation to advance funds to THE ASSOCIATION for any purpose whatsoever. AGENT shall not make any expenditures nor incur any non-budgeted contractual obligation exceeding \$500.00 without the prior consent of THE ASSOCIATION.

VII. THE ASSOCIATION shall pay the AGENT a management fee equal to \_\_\_\_\_ p e r month, plus applicable Florida Sales Tax. The management fee shall be paid monthly. The fee covers all services included in this contract with the exception of printing, mailing supplies, postage, long distance calls, and supplies which become the property of THE ASSOCIATION.

VIII. THE ASSOCIATION shall designate a single individual who shall be designated to deal with the AGENT on any matter relating to the management of THE ASSOCIATION. The AGENT is directed not to accept directions or instructions with regard to the management of THE ASSOCIATION from anyone else. In the absence of any other designation by THE ASSOCIATION, the President of THE ASSOCIATION shall have this authority.

IX. The AGENT shall have no authority to make any structural change in THE ASSOCIATION or to make any other major alterations or additions in or to any buildings or equipment therein, except such emergency repairs as may be required because of danger to life or property or which are immediately necessary for the preservation and safety of THE ASSOCIATION or the safety of the MEMBERS and occupants or are required to avoid the suspension of any necessary service to THE ASSOCIATION.

X. THE ASSOCIATION agrees to save the AGENT harmless from all damage, suits or claims in connection with the management of the property, and from all liability for injuries to persons or properties suffered or sustained by any employee or any other person whomsoever, not caused by the AGENT'S own gross negligence or willful misconduct, and the ASSOCIATION and its members do hereby indemnify and save harmless the AGENT from any such liability for damages, costs and expenses, including attorneys fees, for the administration of its duties hereunder or from injury to any person or property in and about or in connection with THE ASSOCIATION property from any costs whatsoever unless such loss or injury shall be directly caused by the AGENT'S own gross negligence or willful misconduct.

THE ASSOCIATION shall cause to be placed or kept in force all insurance required or permitted by the association documents to be kept or placed by THE ASSOCIATION with AGENT named as an additional insured, sufficient to furnish THE ASSOCIATION and AGENT reasonable, adequate protection against liability which may be incurred in the management and operation of the condominium.

XI. Any notice required or permitted to be served hereunder may be served by registered mail or in person as follows:

A. If to the AGENT:

Ocean Properties & Management, Inc.  
429 East Third Avenue  
South Causeway, Beach Plaza  
New Smyrna Beach, Florida 32069

B. If to THE ASSOCIATION, to the President of THE ASSOCIATION at his or her home address.

Either party may change the address for notice by notice to the other party. Notice served by mail shall be deemed to have been served when deposited in the mails.

XII. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the AGENT and the heirs, administrators, successors and assigns of THE ASSOCIATION.

XIIV. The management company is in no way affiliated with the Developer or Association.

In Witness Whereof the parties hereto have affixed or caused to be affixed their respective signatures this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

Witnesses, as to \_\_\_\_\_ /

/ \_\_\_\_\_ /

/ \_\_\_\_\_ /

/ \_\_\_\_\_ /

Witnesses, as to Ocean Properties & Management, Inc.

/ \_\_\_\_\_ /

/ \_\_\_\_\_ /

/ \_\_\_\_\_ /

ESCROW AGREEMENT

EXHIBIT G  
of  
DECLARATION OF CONDOMINIUM

## OCEAN CLUB AT TURTLEMOUND, A CONDOMINIUM

ESCROW AGREEMENT

THIS AGREEMENT made this 30<sup>th</sup> day of August, 1988, between Ocean Club at Turtlemound Condominiums, a Joint Venture, by Melvin Berkoben & Sawruk, Inc., a Florida corporation and Cedar Creek Enterprises, Inc., a Florida corporation, joint venturers, 1011 Virginia Drive, Orlando, Florida 32803, hereinafter called the "Developer", and Kinsey Vincent Pyle, P.A., 150 South Palmetto Avenue, Daytona Beach, Florida, 32015, hereinafter called "Escrow Agent".

WHEREAS, Developer currently plans to construct a residential condominium apartment building containing 14 single family residential dwelling units at 6612 South Atlantic Avenue, New Smyrna Beach, Florida 32609, to be known as Ocean Club at Turtlemound, a Condominium, and

WHEREAS, Developer plans to offer condominium units in said Ocean Club at Turtlemound, a Condominium, for sale and to accept deposits under said contracts; and

WHEREAS, Developer wishes to have Escrow Agent act as Escrow Agent in accordance with Florida Statutes, Chapter 718 and the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes, and

WHEREAS, Kinsey Vincent Pyle, P.A., is a Florida Professional Service Corporation which has as its shareholders only attorneys who are members of the Florida Bar, and

WHEREAS, Developer has requested Kinsey Vincent Pyle, P.A., to act as Escrow Agent with respect to deposits to be received from purchasers.

NOW THEREFORE, in consideration of the foregoing and the sum of Ten Dollars and other good and valuable consideration, each to the other in hand paid, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Deposits made by Purchasers.

a. Deposits of up to 10 percent of the sale price made by Purchasers prior to completion of construction. All deposits of up to 10 percent of the sale price made under an Ocean Club at Turtlemound, A Condominium, Purchase Agreement prior to the completion of construction shall be in the amount(s) shown on the face of the Purchase Agreement. All deposits so received from purchasers shall be paid over to the Escrow Agent and deposited by Escrow Agent in a common escrow account in a Bank or Savings and Loan Association whose deposits are insured by an agency of the United States Government to be held under the terms of this Agreement. Developer shall deliver to the Escrow Agent with the deposit a correct copy of the face page and any pages and or addendums containing special clauses of the Purchase Agreement.

b. Deposits of over 10 percent of the sale price made by Purchasers prior to completion of construction. All deposits of Buyer which are in excess of 10 percent of the sale price and which are made under this Agreement prior to

completion of construction will be held in a special escrow account by Kinsey, Vincent, Pyle, P.A., Escrow Agent, whose address is City Center East, 150 South Palmetto Avenue, Daytona Beach, Florida 32015, and deposited with a Bank or Savings and Loan Association authorized to transact business in the State of Florida, in an interest bearing account.

Pursuant to §718.202, Florida Statutes, once construction has commenced, the developer may withdraw escrow funds in this special escrow account and may use the funds in the actual construction and development of the condominium property.

c. Deposits made by Purchasers after completion of construction. All deposits made under an Ocean Club at Turtle mound, a Condominium Purchase Agreement after completion of construction shall be in the amount(s) shown on the face of the Purchase Agreement. All such deposits so received from purchasers shall be paid over to the Escrow Agent and held by Escrow Agent in a common escrow account in a Bank or Savings and Loan Association whose deposits are insured by an agency of the United States Government to be held under the terms of this Agreement. Developer shall deliver to the Escrow Agent with the deposit a copy of the face page and any pages and or addendums containing special clauses of the Purchase Agreement.

2. Escrow Account. The Escrow Agent agrees to establish and hold the deposit monies in accounts in accordance with Florida Statutes, Section 718.202(8) and to provide a receipt to the purchaser under the Purchase Agreement upon request acknowledging receipt, subject to clearance of check(s), of the funds to be held in escrow under this Agreement.

3. Release and Disbursement of Escrow Funds. The Escrow Agent agrees to release and disburse the escrow deposits only in accordance with Florida Statutes, Section 718.202. The Escrow Agent is responsible to see that monies are not released directly to the Developer except in accordance with the terms of the Purchase Agreement between Developer and the purchaser. Any release and disbursement of funds pursuant to this Agreement shall be made within a reasonable time after the purchaser's check has cleared.

4. Terms and Conditions. The parties hereto agree that the Escrow Agent will hold such deposits in escrow under the following terms and conditions:

a. Escrow Agent will deposit purchaser's check for the deposit under the Ocean Club at Turtle mound, a Condominium Purchase Agreement in a Bank or Savings and Loan Association in the State of Florida.

b. The deposit and any accrued interest shall be paid over to or credited to purchaser in the following instances:

(1) Purchaser properly terminates this Agreement pursuant to the terms of the Condominium Purchase Agreement or pursuant to Chapter 718, Florida Statutes, in which event the deposit of purchaser and any accrued interest held by the Escrow Agent shall be paid over to purchaser.

(2) The deposit and any accrued interest shall be credited to purchaser at closing as part payment toward the purchase price.

c. The deposit and any accrued interest (up to 10 percent of the sales price) shall, at the election of the developer, be paid over to Developer in the event purchaser defaults in the performance of the Condominium Purchase Agreement.

d. In the event there is a dispute between purchaser and Developer, the purchaser may so notify the Escrow Agent and may file a complaint with the Division of Florida Land Sales, Condominiums and Mobile Homes pursuant to said Division's Rule 7D-19.02, in which event the Escrow Agent shall not release the deposit to Developer or to purchaser until the dispute is settled by agreement between the purchaser and Developer, or resolved to the satisfaction of said Division, or resolved by a Court of competent jurisdiction. The deposit shall be paid according to the manner in which the dispute is resolved.

e. The full deposit and any accrued interest shall be paid over to the Developer at the time of closing and the Developer will credit the deposit and any accrued interest as payment by the purchaser against the purchase price.

5. Indemnification. The Developer agrees to save and hold Escrow Agent harmless in the event of any misdelivery of funds and shall indemnify Escrow Agent for all costs and expenses incurred relating to misdelivery or any claim resulting therefrom, unless the misdelivery was the willful and intentional act of Escrow Agent.

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year first above written.

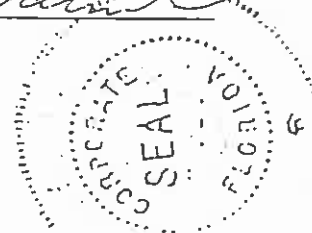
Witnesses:

OCEAN CLUB AT TURTLEMOUND,  
A CONDOMINIUM

[Signature]

By: [Signature]

Sharon L. Woodfin  
As to Developer



KINSEY VINCENT PYLE, P.A.

[Signature]

By: [Signature]

Sharon L. Woodfin  
As to Escrow Agent

RE153



PURCHASE AGREEMENT

EXHIBIT H  
of  
DECLARATION OF CONDOMINIUM

OCEAN CLUB AT TURTLEMOUND, a Condominium  
PURCHASE AGREEMENT

PARTIES: OCEAN CLUB AT TURTLEMOUND CONDOMINIUMS, a joint venture, as "DEVELOPER" of 1011 Virginia Drive, Orlando, Florida 32803(phone: 904-898-5355) and "BUYER", of \_\_\_\_\_ (phone: \_\_\_\_\_) as

Buyer hereby offers and agrees to purchase from Ocean Club at Turtleound Condominiums (the "Developer"), residential condominium Unit Number \_\_\_\_\_ (the "Unit") of OCEAN CLUB AT TURTLEMOUND, a Condominium (the "Condominium") in accordance with and subject to the terms and provisions of the proposed Declaration of Condominium and its exhibits, copies of which have been delivered to Buyer and which are to be recorded in the Public Records of Volusia County, Florida, prior to closing and delivery of deed, together with all of the appurtenances to that Unit including the right to use parking space # \_\_\_\_\_ which will be assigned to the Buyer at the closing subject to the terms of the Declaration of Condominium and its exhibits. The Condominium is to be located at 6612 South Atlantic Avenue, New Smyrna Beach, Florida 32069, on real property owned by the Developer and described on Exhibit "A" to the Declaration of Condominium (the "Property").

The total purchase price of the Unit shall be payable by Buyer to Developer as follows:

PURCHASE PRICE AND PAYMENT:

- (a) Purchase Price is \$ \_\_\_\_\_
- (b) Deposit to be held in escrow by Kinsey Vincent Pyle, P.A., in the amount of \$ \_\_\_\_\_
- (c) Additional deposit to be held by Kinsey Vincent Pyle, P.A., on or before \_\_\_\_\_ \$ \_\_\_\_\_
- (d) Mortgage if any to be Procured by Buyer \$ \_\_\_\_\_
- (e) Other: \_\_\_\_\_ \$ \_\_\_\_\_
- (f) Cash on closing and delivery of deed (or such greater or lesser amount as may be necessary to complete payment of purchase price after credits, including deposit, adjustment and prorations)
- (Plus Buyer's closing expenses) \$ \_\_\_\_\_
- TOTAL \$ \_\_\_\_\_

CLOSING FUNDS MUST BE CASH OR LOCALLY DRAWN CERTIFIED OR BANK CASHIERS CHECK  
ALL PAYMENTS MUST BE MADE IN UNITED STATES FUNDS.

CONTRIBUTION TO OCEAN CLUB AT TURTLEMOUND CONDOMINIUM ASSOCIATION, INC. "WORKING CAPITAL" \$ \_\_\_\_\_ TO BE PAID IN CASH AT TIME OF CLOSING.

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

ESCROW OF DEPOSITS UP TO 10 PERCENT OF SALE PRICE PRIOR TO COMPLETION OF CONSTRUCTION. All deposits of Buyer up to 10 percent of the sale price which are made under this Agreement prior to the substantial completion of the condominium will be held in escrow by Kinsey Vincent Pyle, P.A., Escrow Agent, whose address is City Center East, 150 South Palmetto Avenue, Daytona Beach, Florida 32015, and deposited with a Bank or Savings and Loan Association authorized to transact business in the State of Florida, in an interest bearing account.

Escrow Agent will on request furnish Buyer a receipt for Buyer's deposit(s). Any interest actually earned, from the actual date of deposit in the interest bearing account will accrue for the benefit of Buyer or Developer as herein provided. In the event this Purchase Agreement is terminated for any reason during the time such funds are on deposit and it is necessary for Escrow Agent to return the deposit to Buyer, then Buyer shall pay out of accrued interest the penalty, if any, assessed for early withdrawal from the deposit.

Interest shall be paid over to or credited to Buyer in the following instances:

a. Buyer properly terminates this Agreement pursuant to the terms hereof or pursuant to Chapter 718, Florida Statutes, in which event the deposit of Buyer held by the Escrow Agent, together with the interest accrued thereon shall be paid to Buyer within forty-five (45) days of such termination.

b. Interest earned on said deposit, along with the deposit, shall be credited to Buyer at closing as part payment toward the purchase price.

Interest shall be paid over to or credited to Developer in the following instances:

a. Interest earned on said deposit, along with the deposit shall be paid over to Developer in the event Buyer defaults in the performance of this Agreement.

In the event there is a dispute between Buyer and Developer, the Buyer may so notify the Escrow Agent and may file a complaint with the Division of Florida Land Sales, Condominiums and Mobile Homes pursuant to said Division's Rule 7D-19.02, in which event the Escrow Agent shall not release the deposit or interest accrued thereon to Developer or to Buyer until the dispute is settled by agreement between the Buyer and Developer, or resolved to the satisfaction of said Division, or resolved by a Court of competent jurisdiction. The deposit and interest accrued thereon shall be paid according to the manner in which the dispute is resolved.

ESCROW OF DEPOSITS IN EXCESS OF 10 PERCENT PRIOR TO COMPLETION OF CONSTRUCTION. All deposits of Buyer which are in excess of 10 percent of the sale price and which are made under this Agreement prior to completion of construction will be held in a special escrow account by Kinsey, Vincent, Pyle, P.A., Escrow Agent, whose address is City Center East, 150 South Palmetto Avenue, Daytona Beach, Florida 32015, and deposited with a Bank or Savings and Loan Association authorized to transact business in the State of Florida, in an interest bearing account.

Pursuant to §718.202, Florida Statutes, once construction has commenced, the developer may withdraw escrow funds in this special escrow account and may use the funds in the actual construction and development of the condominium property.

DEPOSITS AFTER COMPLETION OF CONSTRUCTION. All deposits of Buyer which are made under this Agreement after completion of construction will be held by Kinsey Vincent Pyle, P.A., Escrow Agent, whose address is City Center East, 150 South Palmetto Avenue, Daytona Beach, Florida 32015, in a non-interest bearing account. Buyer shall not be entitled to any interest on such deposit(s).

1. Acceptance of Offer. Buyer has the option to cancel this Agreement within fifteen (15) days of Buyer's execution hereof. If Buyer's offer to purchase the Unit is not accepted by Developer on or before thirty (30) days subsequent to the date of Buyer's execution hereof by Developer delivering or mailing to Buyer a copy of this Agreement signed and accepted by Developer, then thereafter Buyer may elect to withdraw this offer at any time prior to its acceptance by Developer. Upon such cancellation and termination or withdrawal by Buyer, all sums paid heretofore by Buyer to Developer will be repaid to Buyer forthwith upon demand subject to clearance of checks given for deposit(s). If Developer shall reject this offer, then all payments paid hereunder by Buyer shall be returned to Buyer with notice of rejection subject to clearance of checks given for deposit(s). Upon return to Buyer of all such sums, the parties hereto shall be released from all obligations under this Agreement, and thereupon neither party hereto shall have any further liability to the other.

2. Method of Payment.

a. Mortgage Financing. Buyer intends to pay \$\_\_\_\_\_ of the Total Purchase Price by obtaining a mortgage loan ("Mortgage Loan") from a bona fide lending institution ("Mortgagee") at prevailing interest rates and terms. Buyer shall complete application for same not later than the later of the expiration of the fifteen (15) day period during which Buyer has the option to cancel this contract or the expiration of ten (10) days after the execution of this Purchase Agreement by Developer. Buyer agrees: to perform all of the following acts (herein referred to as the "Mortgage Loan Acts"); to use his best efforts to obtain the Mortgage Loan in good faith; to execute all necessary documents and disclose all information; to pay any and all costs, charges and expenses ("Mortgage Costs") in connection with the Mortgage Loan; to otherwise promptly and duly comply in a timely fashion with all requests of Mortgagee and/or Developer to apply for, update the application and close the Mortgage Loan; to take such actions as are reasonably necessary for the obtaining of the Mortgage Loan; and, where deemed necessary by Developer, to make further applications for the Mortgage Loan.

In the event Buyer, having undertaken and performed the Mortgage Loan Acts, fails to qualify and does not receive a mortgage loan commitment or receives a commitment which contains conditions or requirements that require the Buyer to perform acts in the future such as the sale of other unrelated property any of which conditions or requirements are not acceptable to Developer, then in that event, within sixty (60) days of notification from Buyer to Developer by certified mail, return receipt requested, Developer shall have the option in its sole discretion to

extend Buyer financing upon terms and conditions at least as favorable as those currently being offered by the bona fide lending institution to which Buyer previously applied to credit worthy customers seeking similar residential financing. The Developer shall notify Buyer whether the Developer will extend to Buyer the necessary financing. In the event Developer fails to notify Buyer whether it shall extend financing within the sixty (60) day period, Developer shall be conclusively deemed to have determined not to extend the financing. Upon such notification by Developer, Buyer shall be conclusively presumed to have qualified for necessary financing. In the event, Developer elects not to extend such financing to Buyer pursuant to the terms of this paragraph, all sums paid heretofore by Buyer to Developer will be repaid to Buyer forthwith upon demand subject to clearance of checks given for deposit(s) Upon return to Buyer of all such sums, the parties hereto shall be released from all obligations under this Agreement. In the event, however, that Developer ascertains that Buyer has failed to qualify for the Mortgage Loan due to the failure of the Buyer to perform the Mortgage Loan Acts, such an event shall constitute a default by Buyer hereunder entitling Developer to retain the sums paid hereunder as set forth in Paragraph 10 hereof.

b. All Cash. Should Buyer elect to pay the Total Purchase Price in cash, without benefit of mortgage financing, Buyer agrees to provide to Developer within thirty (30) days from the acceptance of this Purchase Agreement by Developer a financial statement of Buyer in the form accepted by Banks and Savings and Loan Associations and such other financial information as Developer may reasonably request to demonstrate Buyer's ability to pay the balance of the purchase price in cash. In the event such financial information is not furnished timely or is not satisfactory to Developer, Developer may require Buyer to make an additional deposit under this Agreement in an amount set by Developer or Developer may return any deposit monies paid to it hereunder subject to clearance of checks given for deposit(s), whereupon the parties hereto shall be relieved of all further rights and obligations hereunder. In any event, Developer shall notify Buyer of its approval or disapproval within thirty (30) days after such information is submitted by Buyer; otherwise, it shall be deemed approved.

3. Plans and Specifications. Developer agrees to construct and equip the Condominium building within which the Unit is to be contained, the Unit and the other improvements to the property substantially in accordance with the plans and specifications prepared by LoggiaArchitecture, Incorporated, and designated as its project #1988LS. A copy of such plans and specifications is available for inspection by Buyer at the sales office of the Developer located at 855 Ladyfish Avenue, New Smyrna Beach, Florida 32069. Buyer acknowledges that Unit dimensions are approximate and that in the course of construction of the improvements on the Property and of the unit, certain changes, deviations or omissions may become desirable or be required by governmental authorities having jurisdiction of the Property, may be necessary because of job conditions, or design changes may be deemed necessary by the Architect. Developer reserves the right at any time to make such changes as it deems necessary or desirable, without the prior approval of Buyer, provided that no such change may alter the configuration of or size of any Condominium Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of the Unit shares the common expenses and owns the common surplus unless the Buyer

and all record owners of liens on it consent thereto. If a change would otherwise materially affect the rights of the Buyer or the value of the Unit, Buyer will be notified of such change in writing. Unless Buyer shall notify Developer in writing within fifteen (15) days from the receipt of such notice of change that Buyer disapproves of the changes, such change shall be considered approved by Buyer. Developer expressly reserves the right to make substitution of materials, appliances, products or brand names provided such substitutions are of substantially equal quality to those shown in the plan and/or in any display model, as determined solely by Developer. Any model apartment(s) and any furnishings placed therein are for display purposes only and do not constitute a representation of items included in the purchase price. Apartment dimensions are approximate.

4. Insulation. Insulation installed in this Condominium is as follows:

Walls R-19

Ceiling R-30

Floors R-19

5. Developer's Authorization and Right of Amendment. Buyer hereby authorizes Developer, as Developer deems necessary, to record among the Public Records of the county in which the Condominium is located, such documents and instruments as are required to be filed under the laws of the State of Florida, in order to create and maintain the Condominium. Developer reserves the right to utilize units owned by it for sales promotional purposes including the right to authorize prospective purchasers of property owned by Developer, or any of its subsidiaries to occupy the same as their temporary lodging while in the area. Buyer further acknowledges and agrees that Developer retains the right to amend the Declaration of Condominium and its exhibits until such time as Unit owners other than the Developer are entitled to elect a majority of the Directors of the Condominium Association. Developer shall have the right while it is owner of any Unit in the Condominium to display advertising or signs for unsold Units on the Property and/or in the Condominium and to sell, mortgage, rent or otherwise deal with all Units owned by Developer without requiring the approval of any other Unit Owner or of the Condominium Association. The provisions of this paragraph shall survive delivery of the deed.

6. Construction. This paragraph does not apply if the building is complete at the time of execution of this Agreement. Developer agrees to complete construction of the Unit and other improvements comprising the Condominium within a period of two (2) years from the date of this Purchase Agreement, except that such period may be extended for construction delays caused by conditions which would be legally supportable in the State of Florida as constituting impossibility of performance for reasons beyond the control of the Developer.

7. Closing Date. When Developer is ready to close, Developer will designate the date, time and place of closing in a written notice given by Developer to Buyer provided: (a) such written notice shall be given not less than ten (10) days prior to the date set for closing, and (b) on the date set for closing the Unit has been completed and Developer is in possession of a Certificate of Occupancy or similar

instrument covering the Unit which shall be binding and conclusive on the Buyer that the Unit is completed for purposes of the closing hereunder. The fact that other units in the Condominium and other improvements on the Property may not be fully completed or that the Unit covered by this Agreement may require minor work, touchups or adjustments shall not constitute a valid reason for Buyer's failure to close.

8. Title and Conveyance. Developer, shall deliver to Buyer at or before closing an owner's binder of title insurance by a reputable title insurance company, agreeing to insure title to the unit in the amount of the purchase price as stated above, subject only to standard printed exceptions, those items mentioned in this Purchase Agreement and any items that may be cured by an application of the purchase price. The binder shall be conclusive of compliance by the Developer relative to the title requirements of this Purchase Agreement. However, Buyer shall pay the title insurance premium at closing, which premium shall not exceed three-quarters of one percent of the purchase price. If Buyer intends to complete this transaction with the assistance of a federally related mortgage loan as defined in the Real Estate Settlement Procedures Act of 1974 and the lending institution making such loan will accept a simultaneous issue policy, Buyer shall pay a simultaneous issue fee (presently estimated to be \$50.00). If Developer fails or refuses to correct any defects of title revealed by the title binder, Buyer shall have the right to cancel this contract and receive a return of all money paid under it or to proceed to a closing with no abatement of the purchase price, taking title in its then condition.

a. At the closing, Developer will convey, by Warranty Deed, with required documentary stamps to be affixed and paid for by Buyer, fee simple title to the unit subject to the following exceptions:

i. The provisions of the Declaration of Condominium and exhibits attached thereto, as described in this Agreement and such regulations and service contracts as shall be in force under the Declaration and this Agreement, and any amendments thereto;

ii. Conditions, limitations, restrictions, reservations, easements and other matters now of record or hereafter placed of record by Developer and such zoning or other restrictions regarding use of the Unit as may be imposed by governmental authorities having jurisdiction thereof, none of which shall prohibit use of the Unit as a residence by Buyer as contemplated by the Declaration and this Agreement;

iii. Liens for work or materials furnished at the request of the Buyer; and

iv. In the event closing is between January 1st and the date upon which the tax statement for the calendar year in which closing is held is received by the Developer (Florida law requires that tax statements shall be mailed on or before November 1st of the calendar year for which the tax is levied), the Unit shall be conveyed subject to the lien of taxes for the current year. In the event closing is after the tax statement is received by the Developer and before January 1st of the succeeding year, the tax shall be paid and prorated as provided in Paragraph 9.d. of this contract.

b. All rights of Buyer under this Agreement are hereby subordinated to the lien of any mortgages placed upon the Property or the Unit by the Developer prior to closing, but the Developer shall cause the Unit being sold herein to be released or discharged from the lien of any such mortgage at or prior to the closing.

9. Closing.

a. Buyer or Buyer's representative will be given a reasonable opportunity to examine the subject condominium unit with a representative of the developer prior to closing. At that time, Buyer will sign an inspection statement listing items which Buyer contends are defects in workmanship or material (in the basic unit only). Any item listed which Developer agrees is actually defective workmanship or materials, considering the construction standards prevailing in Volusia County for similar property, the Developer will correct or otherwise adjust within a reasonable period of time after closing. The Developer's agreement to correct or otherwise adjust items or the Developer's refusal to recognize as defective items listed by Buyer as defects will not be grounds for deferring the closing, nor for imposing any conditions on closing. No escrows or holdback of closing funds will be permitted.

b. The closing shall be held on the date designated by Developer in accordance with Paragraph 7 hereof in the New Smyrna Beach or Daytona Beach, Florida area at a location to be designated by Developer in Developer's Notification to Buyer that Developer is ready to close.

c. The balance of the purchase price, plus any balance due for extras or special items, plus the sum for initial working capital contributions to both the Associations will be paid in cash or by a locally drawn certified or bank cashier's check drawn to the order of the designated closing agent. All payments must be made in United States funds.

d. Ad valorem taxes, less the November discount, will be prorated to the date of closing designated by Developer in accordance with Paragraph 7 hereof. If the taxes for the year in which the sale is closed are assessed against the Condominium as a whole, then the portion of the taxes attributable to the Unit shall be the same share as the share in the common elements that is attributable to the Unit. In such event, Developer and Buyer agree that the taxes will be paid by the Developer and the taxes attributable to the Unit shall be charged or credited to Developer and Buyer in the sums prorated to them. If the current year's assessment is not available, then the taxes will be prorated on an estimated basis determined by the Developer. Any tax proration on an estimate shall be subsequently readjusted upon receipt of the tax bill.

e. The following expenses and amounts will be paid by Buyer:

i. Costs related to purchase: (a) Clerk's fee for recording deed \$6.00; (b) State documentary stamps on the deed on the basis of \$.55 for each \$100.00 or any part thereof of the purchase price (the recording fee and State documentary stamps are set by State statute and may be changed by the State Legislature and Buyer shall pay the costs as so set).



ii. Utilities: Utility deposits for the Unit.

iii. Mortgage Costs: All costs which any mortgagee requires to be paid if Buyer executes a mortgage on the Unit, including but not limited to documentary stamps and intangible tax for a note and mortgage, charges for prepaid interest, escrow for taxes, charges for abstracting, costs of mortgage title insurance, lender's attorney's fees, all sums of fees deducted from the gross amount of such mortgage, and all costs and fees incident to the obtaining or closing of any such mortgage loan.

iv. Contribution to Ocean Club at Turtle mound Condominium Association, Inc., for "Working Capital" in the amount stated on page 1 of this Agreement. These working capital funds are to insure that the respective Association Boards will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. AMOUNTS PAID INTO THE FUNDS ARE NOT TO BE CONSIDERED AS ADVANCE PAYMENT OF REGULAR ASSESSMENTS!

f. Buyer will pay to Ocean Club at Turtle mound Association, Inc., the assessment for common expenses commencing as of the date of closing designated by Developer in accordance with Paragraph 7 hereof. The assessment shall be in an amount specified by the Prospectus for the Unit and Buyer agrees to pay such assessment for common expenses in monthly installments in advance on the first day of each month of each year. The first monthly installment payment will be prorated for the period beginning on the date of closing as set forth in Developer's Notice under Paragraph 7 and ending with the next assessment installment payment date following said date and together with the next month's installment, will be collected at the closing.

g. The acceptance of a deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation on the part of the Developer to be performed pursuant to the provisions of this Agreement, except those which survive by operation of law or herein specifically stated to survive delivery of the deed.

10. Buyer's Default. Should Buyer fail to make any of the payments due hereunder as hereinabove scheduled, or fail or refuse to execute the instruments required to close this transaction, or fail to close when notified, or refuse to pay any costs or other sums required by this Agreement, or otherwise default hereunder, and should Buyer fail to correct such default within ten (10) days after Developer has given Buyer written notice of such default, the Developer may elect to declare this Agreement terminated and retain the monies paid by Purchaser in the amount of ten (10%) percent of the total purchase price as shown on page 1 of this Agreement as liquidated and agreed upon damages, which Developer shall have sustained and suffered as a result of Buyer's default, and upon such election by Developer, the parties hereto will be released and relieved from all obligations hereunder. The provision herein contained for liquidated and agreed upon damages is a bona fide provision for such and is not a penalty, the parties understanding that by reason of the withdrawal of the Unit from sale to the general public at a time when other parties would be interested in purchasing the Unit, that Developer will have

sustained damages if Buyer defaults, which damages will be substantial but will not be capable of determination with mathematical precision and, therefore, as aforesaid, the provision for liquidated and agreed upon damages has been incorporated in this Agreement, as a provision beneficial to both parties. If, upon default, Developer does not elect to terminate this Agreement, the Agreement will continue in full force and effect, and Developer shall have the right to compel closing. Buyer agrees to pay Developer all of Developer's reasonable legal fees and expenses in the event of Buyer's default hereunder.

11. Damage to Unit. If between the date of this contract and the closing the Unit is damaged by fire or other casualty, the following shall apply:

a. The risk of loss to the Unit by fire or other casualty, until the time of delivery of the deed as herein provided, is assumed by the Developer (unless and until Buyer takes possession of same, at which time such risk shall be assumed by Buyer), but without any obligation or liability by Developer to repair or replace same, except that if Developer elects to repair or replace such loss or damage to the Unit, this Agreement shall continue in full force and effect, and Buyer shall not have the right to reject title or receive a credit against or abatement in the purchase price. In such event, Developer shall be entitled to a reasonable period of time within which to complete said repairs or replacement. It is agreed that the proceeds received from insurance or in satisfaction of any claim or action in connection with such loss or damage shall (subject to the rights of the Board of Directors in the event the Declaration of Condominium shall have been recorded) belong entirely to Developer and if such proceeds shall be paid to Buyer, Buyer shall promptly upon receipt thereof turn same over to Developer. The provisions of the preceding sentence shall survive delivery of the deed.

b. In the event Developer notifies Buyer that it does not elect to repair or replace any such loss or damage or (in the event the Declaration of Condominium is recorded prior thereto) the Unit Owners do not resolve to make such repairs or replacement pursuant to the Declaration and Bylaws of the Condominium, then this Agreement shall be deemed cancelled and of no further force or effect and Developer shall refund to Buyer all monies deposited hereunder, whereupon the parties shall be released and discharged of all claims and obligations hereunder, except that if Buyer is then in default hereunder (beyond the applicable grace period, if any), Developer shall retain all such deposits as and for liquidated damages.

12. Notice. The delivery of any item, and the giving of notice in compliance with this Agreement, shall be accomplished by delivery of the item or the notice, which shall be in writing, to the party intended to receive it or by depositing such notice in United States mail by Registered or Certified Mail with sufficient postage affixed and addressed to the address of the party intended to receive it. Notice by mail shall be effective upon receipt.

13. Effective Date. The effective date of this Agreement is the date of acceptance by Developer.

RECEIPT OF CONDOMINIUM DOCUMENTS

EXHIBIT I  
of  
DECLARATION OF CONDOMINIUM

RECEIPT FOR CONDOMINIUM DOCUMENTS

The undersigned acknowledges that the documents checked below have been received or, as to plans and specifications, made available for inspection. Name of Condominium: Ocean Club at Turtlemound, A Condominium; Address of Condominium: \_\_\_\_\_, New Smyrna Beach, Florida. Place a check in the column by each document received or, for the plans and specifications, made available for inspection. If an item does not apply, place "N/A" in the column.

DOCUMENT	RECEIVED
Prospectus Text	
Declaration of Condominium*	n/a
Articles of Incorporation*	
ByLaws*	
Estimated Operating Budget	
Form of Agreement for Sale or Lease	
Rules and Regulations	n/a
Ground Lease	
Management and Maintenance Contracts for More Than One Year	n/a
Renewable Management Contracts	n/a
Lease of Recreational and Other Facilities to be Used Exclusively by Unit Owners of Subject Condominium	n/a
Form of Unit Lease if a Leasehold	n/a
Declaration of Servitude	n/a
Sales Brochures	n/a
Phase Development Description (See 718.503(2)(k) and 504(14))	n/a
Lease of Recreational and Other Facilities to be Used by Unit Owners with Other Condominiums (See 718.503(2)(h))	n/a
Description of Management for Single Management of Multiple Condominiums (See 718.503(2)(k))	n/a
Conversion Termite Inspection Report	n/a
Plot Plan*	
Floor Plan*	
Survey of Land and Graphic Description of Improvements*	
Executed Escrow Agreement	

MADE AVAILABLE

Plans and Specifications

THE PURCHASE AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF EXECUTION OF THE AGREEMENT BY THE BUYER AND RECEIPT BY THE BUYER OF ALL THE DOCUMENTS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER. THE PURCHASE AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN FIFTEEN (15) DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN FIFTEEN (15) DAYS AFTER BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THE PURCHASE AGREEMENT SHALL TERMINATE AT CLOSING.

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

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Purchaser

ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

IN WITNESS WHEREOF, Buyer and Developer have executed this Agreement as of the dates set forth below their respective signatures.

WITNESSES:

\_\_\_\_\_  
Buyer (SEAL)

\_\_\_\_\_  
Buyer (SEAL)

Date: \_\_\_\_\_

ACCEPTANCE

Developer hereby accepts the foregoing offer to purchase and agrees to the terms and conditions set forth in this Agreement.

WITNESSES:

OCEAN CLUB AT TURTLEMOUND CONDOMINIUMS,  
a Joint Venture

By: Melvin, Berkoben & Sawruk, Inc.

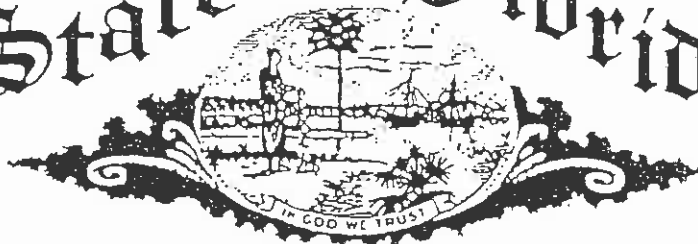
By: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Attachments:

1. Receipt for Condominium Documents

# State of Florida



## Department of State

I certify that the attached is a true and correct copy of the Articles of Incorporation of OCEAN CLUB AT TURTLEMOUND CONDOMINIUM ASSOCIATION, INC., a corporation organized under the Laws of the State of Florida, filed on December 15, 1988, as shown by the records of this office.

The document number of this corporation is N29737.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
15th day of December, 1988.



*Jim Smith*

Jim Smith  
Secretary of State

ARTICLES OF INCORPORATION  
OF  
OCEAN CLUB AT TURTLEMOUND CONDOMINIUM ASSOCIATION, INC.  
(A Florida Not For Profit Corporation)

ARTICLE I. NAME

The name of this corporation is OCEAN CLUB AT TURTLEMOUND CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "association," these articles of incorporation as the "articles" and the bylaws of the association as the "bylaws."

ARTICLE II. PURPOSE

This association is organized for the purpose of providing an entity under the Florida Condominium Act (the Act) for the operation of a condominium located in Volusia County, Florida, and known as Ocean Club at TurtleMound Condominium Association, Inc. (the condominium), created pursuant to the declaration of condominium (the declaration). To accomplish the foregoing the corporation shall have all corporate powers permitted under Florida law.

ARTICLE III. MEMBERS

The qualification of members and the manner of their admission shall be as regulated by the bylaws.

ARTICLE IV. INITIAL REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of this corporation is 855 Ladyfish Avenue, New Smyrna Beach, Florida, and the name of the initial registered agent of this corporation at that address is Charles W. Mellor.

ARTICLE V. FIRST BOARD OF DIRECTORS

The number of persons constituting the first board of directors shall be three and their names and addresses are as follows:

<u>Name</u>	<u>Address</u>
Charles W. Mellor	855 Ladyfish Avenue New Smyrna Beach, Florida 32069
L. Mills Tuttle	1011 Virginia Drive Orlando, Florida 32803
James Berkoben	1011 Virginia Drive Orlando, Florida 32803

ARTICLE VI. FIRST OFFICERS

The names and addresses the officers who shall serve until the first election are as follows:

<u>Office</u>	<u>Name</u>	<u>Address</u>
President	Charles W. Mellor	855 Ladyfish Avenue New Smyrna Beach, Florida 32069
Secretary	Michael Sawruk	1011 Virginia Drive Orlando, Florida 32803
Treasurer	James Berkoben	1011 Virginia Drive, Orlando, Florida 32803

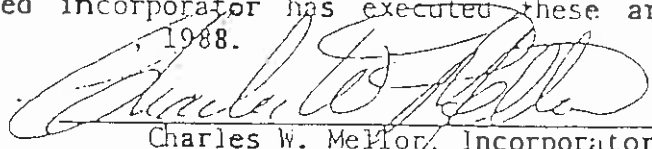
FILED  
1988 DEC 15 12 11:42  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
1988 DEC 17 11:42  
FILED

ARTICLE VII. INCORPORATOR

The name and address of the incorporator to these articles is as follows:

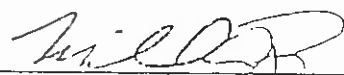
Charles W. Mellor	855 Ladyfish Avenue New Smyrna Beach, Florida 32069
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IN WITNESS WHEREOF the undersigned incorporator has executed these articles of incorporation on December 14, 1988.

 (SEAL)  
Charles W. Mellor, Incorporator.

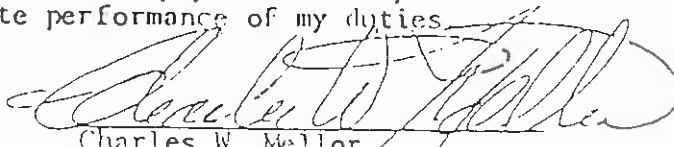
STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of December, 1988, by Charles W. Mellor.

  
Notary Public, State of Florida at Large.  
My commission expires:

NOTARY PUBLIC, State of Florida at Large  
My Commission Expires November 2, 1991

Having been named as registered agent to accept service of process for the above stated corporation, at the place designated in these articles, I agree to act in this capacity and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

  
Charles W. Mellor

RE66  
MAP/sw



BYLAWS

EXHIBIT D  
to  
Declaration of Condominium

BYLAWS  
OF  
OCEAN CLUB AT TURTLEMOUND CONDOMINIUM ASSOCIATION, INC.  
(A Florida Not For Profit Corporation)

ARTICLE I

Section 1. - Identity. These are the Bylaws of Ocean Club at Turtlemound Condominium Association Inc., called Association in these Bylaws, a corporation not for profit under the laws of the State of Florida. The Articles of Incorporation of the Association were filed in the office of the Secretary of State on \_\_\_\_\_. The Association has been organized for the purpose of administering a condominium pursuant to Chapter 718, Florida Statutes, called The Condominium Act in these Bylaws, which condominium is identified by the name Ocean Club at Turtlemound Condominium Association, Inc. is located at 855 Ladyfish Avenue, New Smyrna Beach, Florida.

Section 2. The office of the Association shall be 855 Ladyfish Avenue, New Smyrna Beach, Florida.

Section 3. The fiscal year of the Association shall be the calendar year.

Section 4. The seal of the corporation shall bear the name of the corporation, the word "Florida", the words "Corporation not for profit" and the year of incorporation, an impression of which is as follows:

(impression of seal)

ARTICLE II

Membership, Voting, Majority of Owners, Quorum, Proxies

Section 1. - Membership. The owners of each unit shall automatically be members of the Association as provided in the Declaration of Condominium of Ocean Club at Turtlemound Condominium Association, Inc. (The Declaration).

Section 2. - Voting. Voting shall be based on unit ownership as provided for in the Declaration and each unit shall be entitled to one vote, except that where a unit is owned by the Association no vote shall be allowed for such unit. If a unit is owned by one person, his right to vote shall be established by the record title to his unit. If a unit is owned by more than one person, or is under lease, the person entitled to cast the vote for the unit shall be designated by a certificate signed by all of the record owners of the unit and filed with the Secretary of the Association. If a unit is owned by a corporation, excluding any unit which may be owned by this corporation, the person entitled to cast the vote for the unit shall be designated by a certificate signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Association. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership

of the unit concerned. A certificate designating the person entitled to cast the vote of a unit may be revoked by any record owner of a unit. If such a certificate is not on file, the vote of such owners shall not be considered in determining the requirement for a quorum nor for any other purpose.

Section 3. - Majority of Owners. As used in these Bylaws, the term "majority of owners", shall mean those owners holding a majority of the votes in accordance with the votes as assigned in the Declaration.

Section 4. - Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of a "majority of owners" as defined in Section 3 of this Article shall constitute a quorum.

Section 5. - Proxies. Votes may be cast in person or by proxy. A proxy may be made by any person entitled to vote and shall name the person authorized to vote, shall state the date, time and place of the meeting for which the proxy is given and shall be valid only for the particular meeting designated in the proxy or if adjourned to date, time and place certain, to the continuation thereof. A proxy must be filed with the Secretary at or before the appointed time of the meeting, or if given for the continued portion of an adjourned meeting, before the time to which the meeting is adjourned.

### ARTICLE III

#### Administration

Section 1. - Association Responsibilities. The owners of the units, being all of the members of this non-profit corporation, will constitute the association of owners (hereinafter referred to as "Association") who will have the responsibility of administering the development, approving the annual budget, establishing and collecting monthly assessments and arranging for the management of the project. The Association agrees that in the event any present or future tax assessor refuses to tax units individually together with interest in the common elements, then the Board of Administration of this Association, referred to herein and in the Declaration and Articles of Incorporation of this Association as the Board of Directors, shall so assess each individual owner for his percentage of the tax as it shall actually be assessed, and each owner shall pay such assessment as herein provided for regular assessments, and the Association shall have the same rights and remedies as herein provided for regular assessments. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of owners.

Section 2. - Place of Meetings. Meetings of the Association shall be held at the principal office of the development or such other suitable place convenient to the owners as may be designated by the Board of Directors.

Section 3. - Annual Meeting. The annual members' meeting of the Association shall be held at 8:00 o'clock P.M. on the first Tuesday in December in each year, for the purpose of electing directors and transacting any other business authorized to be transacted by the members. Florida Statutes require that unit owners meet at least once in each calendar year and such meeting shall be the annual meeting.

Section 4. - Special Meetings. It shall be the duty of the President to call a special meeting of the owners as directed by resolution of the Board of Directors or upon a petition signed by twenty-five (25%) percent of the owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the votes present, either in person or by proxy.

Section 5. - Notice of Meetings. It shall be the duty of the Secretary to mail to each unit owner and to post at a conspicuous place on the condominium property a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, at least fourteen (14) days prior to such meeting. A certificate of mailing shall be retained as proof of such mailing. Unit owners may waive notice of meetings in writing prior to, at or after said meeting, which waiver shall be filed as part of the minutes of the meeting.

Section 6. - Adjourned Meetings. If any meeting of owners cannot be organized because a quorum has not attended, the owners who are present, either by proxy or in person, may adjourn the meeting to a time not more than forty-eight (48) hours from the time the original meeting was called. If the business for which the meeting is called is not completed, the meeting may be adjourned to a date, time and place certain, not more than ten (10) days from the time the original meeting was called.

Section 7. - Order of Business. At annual members' meetings and as far as practical at other members' meetings, the order of business shall be:

- a. Election of chairman of meeting
- b. Calling of the roll and certifying of proxies
- c. Proof of notice of meeting or waiver of notice
- d. Reading and disposal of any unapproved minutes
- e. Reports of officers
- f. Reports of committees
- g. Election of inspectors of election
- h. Election of directors
- i. Unfinished business
- j. New business
- k. Adjournment.

Section 8. - Parliamentary Rules. Roberts Rules of Order (latest revision and edition) shall govern the conduct of the Association and Board of Directors meetings when not in conflict with the Declaration of Condominium or these Bylaws.

Section 9. - Indemnification of Directors and Officers. The Association shall indemnify any and all persons who may serve or who have served at any time as directors or officers, and their respective heirs, administrators, successors and assigns, against any and all expenses, including amounts paid upon judgments, counsel fees, and amounts paid in settlements (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them,

are made parties, or a party, or which may be asserted against them, or any of them, by reason of having been directors or officers, or a director or officer of the Association, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance, or malfeasance, in the performance of his duties. Such indemnification shall be in addition to any rights to which those indemnified may be entitled under any law, bylaw, agreement, vote of members, or otherwise.

#### ARTICLE IV

##### Board of Directors

Section 1. - Number and Qualifications. The initial Board of Administration, referred to herein as the Board of Directors, consists of the three (3) persons named in the Articles of Incorporation. The directors of the Association shall have a fiduciary relationship to the unit owners.

Section 2. - Election. Election of directors shall be conducted in the following manner:

- a. Election of directors shall be held at the annual members' meeting.
- b. A nominating committee of three (3) members shall be appointed by the Board of Directors not less than thirty (30) days prior to the annual members' meeting. The committee shall nominate one person for each director then serving. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.
- c. The election shall be by ballot (unless dispensed by unanimous consent) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.
- d. Except as to vacancies provided by removal of directors by members, vacancies in the Board of Directors occurring between annual meetings of members may be filled by the remaining directors.
- e. Provided, however, that within sixty (60) days after sales by Developer have been closed and titled out on 15% of the units, that is, a total of two (2) units, one of the directors of the corporation appointed by the Developer shall resign and the Association shall call a meeting of the owners, giving not less than thirty (30) nor more than forty (40) days notice of such meeting, and at such meeting the unit owners other than the Developer shall be entitled to elect a total of one (1) director to hold office until the next annual meeting of the Association at which time their successors shall be elected in accordance with these Bylaws or until the management of the condominium project is formally transferred to the Association. Within three (3) years, after sales by the Developer have been closed on fifty (50%) percent of the units, that is, a total of seven (7) units that will be operated ultimately by the corporation, or three (3) months after sales have been closed by the Developer on ninety (90%) percent of the units, that is, a total of thirteen (13) units, or when all of the units that will ultimately be operated

by the corporation have been completed, some of them sold, and none of the others are being offered for sale by the Developer in the ordinary course of business, whichever shall first occur, the Association shall call a meeting of the owners, giving not less than thirty (30) nor more than forty (40) days notice of such meeting, and at such meeting the unit owners other than the Developer shall be entitled to elect a total of two (2) directors to hold office until a special meeting to be held within sixty (60) days after the time that unit owners other than the Developer elect the majority of the members of the Board of the Association at which time their successors shall be elected in accordance with these Bylaws and a formal transfer of the management of the Association shall be made. The Developer further agrees, notwithstanding any other provisions of this document and in spite of any rights reserved elsewhere herein to Developer, that following the earlier of the expiration of four (4) months after sales have been closed by the Developer on seventy-five (75%) percent of the units or the expiration of three (3) years from the date of the first conveyance of a unit by the Developer, it shall have no right to "control" the Association, the Association Board of Directors, the Condominium, or the unit owners in any manner. The Developer further agrees that if "control" has not previously been relinquished under other provisions of this document prior to the earlier of the above dates that all actions necessary to relinquish "control", will be taken on or before that date. As long as the Developer holds for sale in the ordinary course of business at least one (1) unit in the condominium project, Developer shall be entitled to elect one (1) member of the Board of Directors of the Association, however, Developer may waive such right. The number of authorized directors may be increased by action of the owners after turnover of control has occurred.

f. The Developer may at any time after the unit owners other than the Developer have elected one (1) director, cause its directors to resign and by such act turn over control of the Association to the unit owners other than the Developer, whereupon it shall be the affirmative obligation of the remaining director(s) to elect directors to fill the vacancies and to assume control of the Association.

Section 3. - Term. The term of each director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

Section 4. - Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the owners.

Section 5. - Other Duties. In addition to the duties imposed by these Bylaws or by the resolutions of the Association, the Board of Directors shall be responsible for the following:

- a. Shall comply with all the terms and conditions of the Declaration.
- b. Care and upkeep of the condominium and the common areas and facilities and limited common areas and facilities.

c. Collection of monthly assessments from the owners.

d. Employ, dismiss, and control the personnel necessary for the maintenance and operation of the project, the common areas and facilities and the limited common areas and facilities.

Section 6. - Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the owners as herein provided shall be filled by the vote of a majority of the remaining directors, and each person so elected shall be a director until a successor is elected to the next annual meeting of the Association.

Section 7. - Removal of Directors. At the annual or any special meeting of the members duly called for that purpose; or by agreement in writing, any one or more of the directors may be removed with or without cause by a majority vote of all unit owners and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting. A meeting to remove a member or members of the Board of Directors may be called by ten (10%) percent of the unit owners giving notice of the meeting as required for a meeting of unit owners and such notice shall state the purpose of the meeting.

Section 8. - Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected, and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 9. - Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director, personally or by mail, telephone or telegraph, at least three (3) days prior to the time set for such meeting.

Section 10. - Special Meetings. Special meetings of the Board of Directors may be called by the President on three days notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the meeting time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three (3) directors.

Section 11. - Waiver of Notice. Before, at or after any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. - Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. - Notice of Board of Directors Meetings to Unit Owners. Notwithstanding any other provision of these Bylaws, all meetings of the Board of Directors shall be open to all unit owners and notices of meetings shall be posted at a conspicuous place on the condominium property forty-eight (48) hours in advance of the meeting for the attention of unit owners except in an emergency.

## ARTICLE V

### Officers

Section 1. - Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors and all of whom shall be members of the Board of Directors. The Directors may appoint an assistant treasurer, and an assistant secretary, and such other officers as in their judgment may be necessary. The officers of the Association shall have a fiduciary relationship to the unit owners.

Section 2. - Election of Officers. The officers of the Association shall be elected annually by the Board of Directors of the organizational meeting of each new Board, and shall hold office at the pleasure of the Board.

Section 3. - Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. - President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the president of an association including, but not limited to, the power to appoint committees from among the owners, from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. - Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.



Section 6. - Secretary. The Secretary shall keep in a book in a businesslike manner the minutes of all meetings of the Board of Directors of all meetings of the Association, all of which minutes shall be available for inspection by unit owners and Board members at all reasonable times; such minutes shall be retained for a period of not less than seven (7) years; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all of the duties incident to the office of Secretary.

Section 7. - Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association in accordance with good accounting practices which shall be open to unit owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to unit owners or their authorized representatives. Such accounting records shall include a record of all receipts and expenditures, an account for each unit which shall designate the name and address of the unit owners, the amount of each assessment, the dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

Section 8. - Fidelity Bonding. All officers, directors and employees of the Association who control or disburse funds of the Association shall be covered by a fidelity bond in such amount as the Board of Directors may determine is adequate to safeguard the funds of the Association. The Association shall bear the cost of such bonding.

## ARTICLE VI

### Fiscal Management

The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

Section 1. - Accounts. The receipts and expenditures of the Association set forth in the Declaration and Articles of Incorporation shall be supplemented by the following provisions:

Section 2. - Budget. The Board of Directors shall adopt a budget for each calendar year. A copy of the proposed annual budget of common expenses shall be mailed to the unit owners not less than thirty (30) days prior to the meeting at which the budget will be considered. The unit owners shall be given written notice of the time and place at which the meeting of the Board of Directors to consider the budget shall be held, and such meeting shall be open to the unit owners. If a budget is adopted by the Board of Directors which requires assessment against the unit owners in any fiscal or calendar year exceeding 115% of the assessment for the preceding year, upon written application of ten percent (10%) of the unit owners, a special meeting of the unit owners shall be held upon not less than ten (10) days written notice to each unit owner, but within thirty (30) days of the delivery of

such application to the Board of Directors or any member thereof, at which special meeting, unit owners may consider and enact a revision of the budget, or recall any and all members of the Board of Directors and elect their successors. In either case, the revision of the budget or the recall of any and all members of the Board of Directors shall require a vote of not less than a majority of the whole number of votes of all unit owners. The Board of Directors may in any event propose a budget to the unit owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the unit owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be reexamined by the unit owners in the manner hereinabove set forth. In determining whether assessments exceed 115% of similar assessments in prior years, there shall be excluded in the computation any provision for reasonable reserves made by the Board of Directors in respect to repair or replacement of the condominium property or in respect of anticipated expenses by the condominium association which are not anticipated to be incurred on a regular or annual basis and there shall be excluded from such computation, assessment for betterments to the condominium project. Provided, however, that so long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessments without approval of a majority of the unit owners. Such proposed annual budget and budget adopted shall take into account those items specified in the Declaration and these Bylaws and as may be provided by law from time to time.

Section 3. - Assessments. Assessments against the unit owners for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 10 preceding the year for which the assessments are made. Such assessment shall be payable in twelve (12) equal monthly installments on the 1st day of each month commencing on January 1 of the year for which the assessment is made. If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior assessment and monthly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended by the Board of Directors if the accounts of the amended budget do not exceed the limitations for that year. The amendments of any account that does exceed the limitation as provided in these Bylaws shall be subject to notices and procedures as required in these Bylaws. The unpaid assessment for the remaining portion of the calendar year for which the amended assessment is made shall be due in monthly payments. Assessments shall be paid monthly and in amounts no less than are required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Any funds remaining at the end of the year or at the direction of the Board of Directors may be applied to reduce the assessment for the following year.

Section 4. - Acceleration of Assessment Installments Upon Default. If a unit owner shall be in default in the payment of an installment upon an assessment, the Board of Directors may to the maximum extent permitted by law accelerate the remaining installments of the assessment upon notice to the unit owner, and then the unpaid balance of the assessment shall come due upon the date stated in the

51. notice, but not less than ten (10) days after delivery of the notice to the unit owner, or not less than twenty (20) days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

Section 5. - Assessments for Emergencies. Assessments for common expenses of emergencies that cannot be paid from the annual assessments for common expenses shall be made only after notice of the need for such is given to the unit owners. After such notice and upon approval in writing by persons entitled to cast more than one-half of the votes of the unit owners, the assessment shall become effective, and it shall be due after thirty (30) days' notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

Section 6. - Additional Assessments. Additional assessments may be made, upon affirmative vote of a majority of the unit owners, to establish reserves for capital improvements. Such funds are to be earmarked for specific capital improvements and are to be considered as contributions of capital.

Section 7. - Legal Action, Requirement to Notify Unit Owners. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the Association shall give notice of the exposure within a reasonable time to all unit owners who may be exposed to the liability and they shall have the right to intervene and defend. A copy of each insurance policy obtained by the Association shall be made available for inspection by unit owners at reasonable times.

## ARTICLE VII

### Obligations of the Owners

Section 1. - Assessments. Owners are obligated to pay monthly assessments imposed by this Association against their respective units to meet all project communal expenses. All owners agree to pay the taxes on their unit whether assessed directly or assessed against the condominium as a whole and prorated by the Board of Directors.

#### Section 2. - Maintenance and Repair.

a. Each unit owner must perform promptly all maintenance and repair work within his own unit, which if omitted would affect the condominium in its entirety or a part belonging to other owners, each unit owner being expressly responsible for the damage and liability that his failure to do so may cause.

b. Repairs to installations within the unit, such as water, light, gas, power, sewage, telephone, air conditioners, sanitary installations, doors, windows, lamps, and other accessories belonging to the unit are, except those items which by the Declaration are specifically the responsibility of the Association, shall be at the owner's expense, unless the repair is covered by insurance.

Section 3. - Use of Family Units - Internal Changes.

- a. All units shall be utilized for residential purposes only.
- b. An owner, other than the Developer, shall not make structural modifications or alterations in his unit or installations located therein except in the manner provided in the Declaration and these Bylaws.

Section 4. - Use of Common Areas and Facilities and Restricted Common Areas and Facilities. An owner shall not place or cause to be placed in the lobbies, stairways, vestibules, and other common areas and facilities furniture, obstructions, or objects of any kind. Such areas shall be furnished by the Association and used for normal transit through them.

Section 5. - Right of Entry.

- a. Each owner hereby grants the right of entry to the manager or to any other persons authorized by the Board of Directors of the Association in case of emergency originating in or threatening his unit, whether the owner is present at the time or not.
- b. An owner shall permit representatives of the Association when so required, to enter his unit for the purpose of performing installations, alteration, or repairs to the mechanical or electrical services, provided that requests for entry are made in advance and that such entry is at a time convenient to the owner. In case of an emergency, such right of entry shall be immediate.

Section 6. - Rules of Conduct. The Board of Directors of the Association may adopt Rules and Regulations governing the conduct of unit owners in accordance with the provisions of these Bylaws.

ARTICLE VIII

Rules and Regulations, Committees

Section 1. - Adoption. The Board of Directors of the Association shall have the power by a two-thirds vote of all of the members of the Board of Directors, to adopt Rules and Regulations for the operation of the condominium, for the use of condominium property and governing the conduct of the unit owners.

Section 2. - Committees. The Board of Directors of the Association shall have the power, by a two-thirds vote of all of the members of the Board of Directors, to adopt rules and regulations establishing committees for the following purposes:

- a. Budget
- b. Parking control
- c. Pet control
- d. Recreation facilities
- e. Such other purposes as the Board of Directors may establish

The Board of Directors may establish by resolution the purpose of each committee, outline its mission and its authority, and determine the number of members to serve on the committees and their qualifications and appoint the members of such committees who shall serve at the pleasure of the Board of Directors.

#### ARTICLE IX

##### Enforcement

Section 1. - Review Committee. For the purposes of enforcing the terms and provisions of the Declaration of Condominium and the Articles of Incorporation of Ocean Club at Turtlemound Condominium Association, Inc., enforcing these Bylaws and the Rules and Regulations adopted by the Board of Directors, the Ocean Club at Turtlemound Review Committee is hereby created and established.

a. Composition. The Ocean Club at Turtlemound Review Committee shall consist of three (3) members, all of whom shall be unit owners and at least one (1) of whom shall be a member of the Board of Directors of the Association. The members of the committee shall be appointed by the Board of Directors and shall serve for a term of one (1) year and thereafter until their successor is appointed. The committee shall elect from its members its own chairman and its own secretary who shall keep minutes of all proceedings of the committee.

b. Duty to Investigate. It shall be the duty of the committee to investigate any alleged violation of the terms and provisions of the Declaration of Condominium, the Articles of Incorporation of Ocean Club at Turtlemound Condominium Association, Inc., these Bylaws and the Rules and Regulations adopted by the Board of Directors of the Association. Alleged violations may be brought to the committee by a complaint in writing signed by a unit owner and referred to the committee by the Board of Directors, or the committee may act upon its own motion.

c. Written Complaint. An action under this section may be initiated upon the filing of a written complaint by any member of the Association or by any officer or member of the Board of Directors with the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. The complaint shall specify the specific provisions of The Condominium Act, the Declaration of Condominium, Articles of Incorporation, Bylaws or Rules and Regulations which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

d. Service of Complaint. Upon the filing of the complaint, the Board shall serve a copy thereof on the respondent by any of the following means: (1) personal delivery or (2) by registered or certified mail, return receipt requested, and addressed to respondent, at the address appearing on the books of the Association. Service by mailing or posting shall be deemed delivered and effective two (2) days after such posting and mailing in a regular depository of the United States mail. The complaint shall be accompanied with a post card or other written for entitled "Notice of Defense" which, when signed by the respondent, or on behalf of

respondent, will constitute a notice of defense hereunder. No order adversely affecting the rights of the respondent shall be made in any case, unless the respondent shall have been served as provided herein. The matter shall then be referred to the Review Committee for hearing.

e. Notice of Hearing. Along with service of complaint, the committee shall serve a Notice of Hearing, as provided herein, on all parties at least ten (10) days prior to the hearing. The notice to the respondent shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before the Ocean Club at Turtle mound Review Committee at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ upon the charges made in the complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may have a court reporter present at the hearing, may present any relevant evidence and you will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to compel the attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors of the Association."

If any of the parties can, within twenty-four (24) hours, show good cause as to why they cannot attend the hearing on the set date and indicate times and dates on which they would be available the committee may reset the time and date of hearing and promptly deliver notice of the new hearing date.

f. Notice of Defense. Service of complaint and Notice of hearing shall be accompanied by a Notice of Defense.

The Notice of Defense shall state the respondent may:

- (1) Attend a hearing before the committee as hereinafter provided;
- (2) Object to a complaint upon the grounds that it does not state acts or omissions upon which the committee may proceed;
- (3) Object to the form of the complaint on the grounds that it is so indefinite or uncertain that the respondent cannot identify the violating behavior or prepare his defense; or
- (4) Admit to the complaint in whole or in part. In such event the committee shall meet to determine appropriate action or penalty, if any. Any objections to the form or substance of the complaint shall be considered by the committee within ten (10) days of their receipt. The committee shall make its determination and notify all parties within said ten (10) day period. If the complaint is insufficient, the complaining party shall have seven (7) day within which to amend the complaint to make it sufficient. The same procedure as set forth above shall be followed with respect to any amended or supplemental complaint. If it is determined by the committee that the complaint is still insufficient, then the matter shall be dismissed by the committee.

g. Cease and Desist Orders. The committee may, at its own discretion, issue a cease and desist order, along with the complaint statement to respondent and Notice of Defense, such cease and desist order to be substantially in the following form:

"The Ocean Club at Turtle mound Review Committee has received the attached complaint.

The committee hereby requests that you CEASE AND DESIST such acts or actions until such time, if any, as a ruling of the committee or court of law permits.

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

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

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

j. Notarized Statements. At any time ten (10) or more days prior to a hearing or a continued hearing, any party shall mail or deliver to the opposing party a copy of any sworn statement which that party proposes to introduce in evidence, together with a notice as provided below. Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine the statements' author, his right to cross-examine such author is not afforded after request is made as herein provided; the statement may be introduced in evidence, but shall be given only the same effect as hearsay evidence.

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

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

1. Hearing:

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

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

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

(4) The chairman of the committee shall serve as hearing officer and preside over the hearing. At the beginning of the hearing, the hearing officer shall explain the rules and procedures by which the hearing is to be conducted. Generally, each principal is entitled to make an opening statement, starting with the complainant. Then each party is entitled to produce evidence, witnesses and testimony and to cross-examine the witnesses and opposing party. Then each party is entitled to make a closing statement. Any party may waive the rights to exercise any part of this process, and the committee is entitled to exercise its discretion as to the specific manner in which the hearing will be conducted, so long as the above rights are protected.

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

(1) Reprimand.

(2) Levying a fine in such amount as may be reasonable under the circumstances which shall not exceed the maximum amount permitted by Statute.



(n) Fines as Common Expense. Fines levied by the committee pursuant to this Article IX shall be collectible by any means permitted by law.

(o) Appeals. In the event either party is aggrieved by the decision or actions of the committee, procedural or final, the aggrieved party may appeal the decision or action within ten (10) days of the action to the Board of Directors who shall review the matter on the record and render a decision within thirty (30) days from the receipt of the record of the hearing.

#### ARTICLE X

##### Amendments

Section 1. - Bylaws. These Bylaws may be amended from time to time by resolution adopted at any regular or special meeting of the unit owners of the condominium called in accordance with the Bylaws at which a quorum is present, such adoption to be by the affirmative vote of two-thirds of the total number of votes to which the unit owners present and voting shall be entitled, but not more than a majority of the total number of votes authorized. Such amendment shall be duly recorded in compliance with requirements of The Condominium Act. No amendment shall change any condominium parcel nor the share of the common elements, common expenses or common surplus attributable to any parcel, nor the voting rights appurtenant to any parcel, unless the record owners or owner thereof and all record owners of liens upon such parcel or parcels shall join in the execution of such amendments.

#### ARTICLE XI

##### Mortgagees

Section 1. - Notice to Association. An owner who mortgages his unit shall notify the Association through its Secretary of the name and address of his mortgagee, and shall file with the Secretary a copy of such mortgage; and the Association shall maintain such information in a book entitled "Mortgagees of Units".

Section 2. - Notice of Unpaid Assessments. The Association shall at the request of a mortgagee, report any unpaid assessment due from the owner of a unit upon which such mortgagee holds a mortgage.

#### ARTICLE XII

##### Compliance

Section 1. - Conflict with Declaration. In the event these Bylaws in any way conflict with the provisions of the Declaration of Condominium, it is hereby agreed and accepted that the provisions of the Declaration of Condominium will control.

The foregoing were adopted as the Bylaws of Ocean Club at Turtle mound Condominium Association, Inc., at its membership meeting held the 20 day of December, 1981.

This 20 day of December, 1981

  
(SEAL)  
, Secretary

RE72  
MAP/sw