Return to
CITY OF ROCKLEDGE
P.O. BOX 550689
ROCKLEDGE, FL 32955-0689

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS
FOR
VENTANA

THIS DECLARATION is made and executed this 1 day of March, 1995 by VENTANA DEVELOPMENT COMPANY, INC. a Florida corporation, (hereinafter referred to as the "DEVELOPER").

WITNESSETH:

WHEREAS, DEVELOPER is the record owner in equitable owner to certain real property situated in Brevard County, Florida, which is legally described as follows, to wit:

(SEE ATTACHED EXHIBIT A)

WHEREAS, DEVELOPER intends that the SUBJECT PROPERTY be subdivided, developed, improved, occupied, used, and enjoyed as an exclusive, unique, and attractive single family residential community; and

WHEREAS, DEVELOPER desires to insure that the SUBJECT PROPERTY is subdivided, developed, improved, occupied, used, and enjoyed pursuant to a uniform plan of development with consistently high architectural, ecological, environmental, and aesthetic standards so as to create a unique, pleasant, attractive, and harmonious physical environment which will contribute to and enhance the quality of life for all residents of and visitors to VENTANA; and

WHEREAS, DEVELOPER desires that the lands within and comprising VENTANA SUBDIVISION shall be initially subject to these uniform covenants, restrictions, and easements; and

WHEREAS, DEVELOPER has caused to be incorporated under the laws of the State of Florida a corporation not for profit VENTANA OWNERS ASSOCIATION, INC. for the purposes of exercising the functions aforesaid, which corporation is NOT intended to be a condominium association within the meaning of the Florida Condominium Act, Chapter 718 of the Florida Statutes and as amended from time to time;

NOW, THEREFORE, for and in consideration of the premises hereof, DEVELOPER does hereby declare that the SUBJECT PROPERTY shall be and is hereby encumbered by and made subject to those covenants, restrictions, and easements hereinafter set forth; to wit:

Sandy Crawford Clerk Circuit Court
Recorded and Verified Brevard County, FL
Pgs: 47 # Names: 2
Trust Fund 24.00 Deed Doc 1.50
Service Chg ____ Int Tax ____
Surcharge ____ Mtg Tax ____
Service Chg ____ Retund ____

BK3461PG1665

I:\projects\mur\declar-012595

Prepared by:
T M Barlow, Esquire
Gleason + Barlow + Bolme
123 Fifth Ave.
P.O. Box 033648 Indialantic, FL 32903

ARTICLE I

DEFINITIONS

For purposes of this DECLARATION, the following terms shall have the following definitions and meanings:

1.1 ARCHITECTURAL REVIEW BOARD (ARB) shall mean and be defined as the committee created and established by and pursuant to this DECLARATION which is responsible for the review and approval of all plans, specifications, and other materials describing or depicting IMPROVEMENTS proposed to be constructed on any LOT, and also responsible for the administration of those provisions of Article XII of this DECLARATION involving Architectural and Landscape Control.

1.2 ARCHITECTURAL STANDARDS MANUAL shall mean and be defined as that document or those documents adopted, promulgated, and published by the ARCHITECTURAL REVIEW BOARD, as the same shall be amended from time to time, setting forth Architectural and Landscape Design Standards, specifications, and other criteria to be used as the standard for determining compliance with this DECLARATION and the acceptability of those components of buildings, structures, landscaping, and all other IMPROVEMENTS constructed, erected, placed, or installed upon any LOT as more particularly provided in Article XII of this DECLARATION.

1.3 ARTICLES mean the Articles of Incorporation of the ASSOCIATION.

1.4 ASSESSMENT shall mean and be defined as any assessment of an OWNER and a LOT by the ASSOCIATION for COMMON EXPENSES and other items and which an OWNER may be required to pay to the ASSOCIATION pursuant to, in accordance with, and for the purposes specified in Article IX of this DECLARATION.

1.5 ASSOCIATION shall mean and be defined as VENTANA OWNERS ASSOCIATION, INC., a corporation not-for-profit, organized and existing under the laws of the State of Florida as set forth in this DECLARATION.

1.6 BOARD means the Board of Directors of the ASSOCIATION.

1.7 BY-LAWS means the By-Laws of the ASSOCIATION as amended from time to time.

1.8 CITY shall mean and be defined as The City of Rockledge, a municipal corporation of the State of Florida, specifically including each and all of its departments and agencies.

1.9 COMMON EXPENSES shall mean and be defined as all expenses of any kind or nature whatsoever properly incurred by the ASSOCIATION, for the use and benefit of the SUBJECT PROPERTY and more particularly identified and described in Section 9.2 of this DECLARATION.

1.10 COMMON PROPERTY shall mean and be defined as all real and personal property, whether improved or unimproved, from time to time owned or maintained by the ASSOCIATION for the common use, enjoyment, and benefit of all OWNERS, and may include, without limitation, entrance way, nature preserves, mitigation areas, recreational facilities, docks, marine facilities, waterways, the utilities, the COMMON STREETS AND ROADS, the SURFACE WATER MANAGEMENT SYSTEM, and such other portions of the SUBJECT PROPERTY as are conveyed to the ASSOCIATION by the DEVELOPER pursuant to and as more particularly provided in Article VIII of this DECLARATION or declared by the DEVELOPER from time to time as COMMON PROPERTY, provided that the foregoing shall not be deemed a representation or warranty that all of the foregoing types of common areas will be provided.

1.11 COMMON SURPLUS means the excess of all receipts of the ASSOCIATION over the amount of the COMMON EXPENSES.

1.12 CITY Shall mean and be defined as the City of Rockledge, a political subdivision of the State of Florida, specifically including each and all of it's departments and agencies.

1.13 COUNTY shall mean and be defined as Brevard County, a political subdivision of the State of Florida, specifically including each and all of its departments and agencies.

1.14 DECLARATION shall mean and be defined as this properly executed Declaration of Covenants, Restrictions, and Easements for VENTANA, and all amendments thereto and modifications thereof as are from time to time recorded among the Public Records of the COUNTY.

1.15 DEVELOPER means VENTANA DEVELOPMENT COMPANY, INC. who is executing this DECLARATION, or any PERSON who may be assigned the rights of DEVELOPER pursuant to a written assignment executed by the then present DEVELOPER recorded in the public records of the COUNTY. In addition, in the event any PERSON who obtains title to all the SUBJECT PROPERTY then owned by DEVELOPER as a result of the foreclosure of any mortgage or deed in lieu thereof, such PERSON may elect to become the DEVELOPER by a written election recorded in the public records of the COUNTY and, regardless of the exercise of such election, such PERSON may appoint as DEVELOPER any third party who acquires title to all or any portion of the SUBJECT PROPERTY by written appointment recorded in the Public Records recorded in the COUNTY.

In any event, any subsequent DEVELOPER shall not be liable for any defaults or obligations incurred by any prior DEVELOPER, except as same may be expressly assumed by the subsequent DEVELOPER.

1.16 GOVERNMENTAL REGULATIONS shall mean and be defined as all applicable laws, statutes, codes, ordinances, rules, regulations, limitations, restrictions, orders, judgments, or other requirements of any governmental authority having jurisdiction over the SUBJECT PROPERTY or any IMPROVEMENTS constructed or located thereon, including, without limitation, those pertaining to building and zoning.

1.17 VENTANA shall mean and be defined as VENTANA Subdivision, the single family residential community planned for and developed on the SUBJECT PROPERTY as reflected on the PLAT, including all LOTS, all phases, and COMMON PROPERTY as those terms and such properties are defined and described in this DECLARATION and on the PLAT.

1.18 IMPROVEMENTS shall mean, be defined as, and include any buildings, outbuildings, structures, driveways, walkways, swimming pools, patios, decks, fences, walls, landscaping, boat houses, docks, and any and all other appurtenances, facilities, structures, and improvements of any kind, nature, or description constructed, erected, placed, installed, or located on any LOT, and any replacements thereof, and all additions, alterations, or maintenance thereto.

1.19 INSTITUTIONAL LENDER shall mean, be defined as, and include, but not limited to:

a. any State or Federal savings bank, commercial bank, savings and loan association, any real estate investment trust, any insurance company, any mortgage banking company, an agency of the United States or any other governmental authority, any mortgage company, and pension and/or profit sharing plan, or any other lending or investing institution generally and customarily recognized as being engaged, in the ordinary course of its business, in making, holding, insuring, or guaranteeing first lien priority real estate mortgage loans, and

b. the DEVELOPER, to the extent that the DEVELOPER shall hold a mortgage upon any portion of the SUBJECT PROPERTY, and all successors, assigns, assignees, and transferees of DEVELOPER who shall own or hold any mortgage upon the SUBJECT PROPERTY or any portion thereof which was originally executed and delivered to and owned and held by DEVELOPER, and

c. any individual, corporation, or partnership making, holding, or guaranteeing first or less lien priority purchase money real estate mortgage loans.

1.20 LOT shall mean and be defined as a separate single family residential building site within the SUBJECT PROPERTY as the same is subdivided and described pursuant to and in accordance with the PLAT, and shall include any IMPROVEMENTS from time to time constructed, erected, placed, installed, or located thereon.

1.21 OWNER shall mean and be defined as one or more PERSONS or entities who or which are alone or collectively the record owner of fee simple title to any LOT, parcel, piece, or tract of land within VENTANA, including the DEVELOPER and his successors and assigns, but excluding those having an interest in any such LOT, parcel, piece, or tract of land merely as security for the payment of a debt or the performance of an obligation.

1.22 PERSON means an individual, corporation, partnership, trust, or any other legal entity.

1.23 PLAT shall mean and be defined as the plat of VENTANA which shall initially consist of Phase One as recorded in Plat Book 44, at Pages 46 through 47, inclusive, the Public Records of Brevard County, Florida, and all future recorded plats of additional phases of the SUBJECT PROPERTY.

1.24 RESIDENTIAL PROPERTY shall include all LOTS shown on the PLAT and designated in this DECLARATION for use as single family residential home sites.

1.25 RULES AND REGULATIONS shall include additional reasonable rules and regulations adopted by the ASSOCIATION relating to the use, enjoyment, and maintenance of VENTANA.

1.26 SUBJECT PROPERTY shall mean all lands and improvements thereto included within and comprising VENTANA, which are initially described within the preamble of this DECLARATION, on Exhibit "A" attached hereto, and also described and depicted on the PLAT, and as is amended, added to, or modified from time to time, subject to Article IV of this DECLARATION.

1.27 SUBDIVISION shall mean the SUBJECT PROPERTY as depicted on the PLAT.

1.28 SURFACE WATER MANAGEMENT SYSTEM shall mean and be defined as all land, easements, and other facilities and appurtenances which together constitute and comprise the master surface water management and drainage system of VENTANA as reflected on the plans therefor on file with and approved by the CITY and St. Johns River Water Management District, which are conveyed by the DEVELOPER to the ASSOCIATION as COMMON PROPERTY pursuant to the provisions of Article VIII of this DECLARATION, or otherwise dedicated to the ASSOCIATION as COMMON PROPERTY pursuant to the PLAT.

SURFACE WATER MANAGEMENT SYSTEM shall also include all lands included within and comprised of additional contiguous phases as described in additional plats as recorded in the Public Records of Brevard County, Florida.

SURFACE WATER MANAGEMENT SYSTEM shall specifically include the outfall to Barnes Blvd. and the outfall to the Viera Development District's Surface Water Management System. The outfalls are contained within easements that are outside the boundaries of the plat. Said easements run in favor of the ASSOCIATION.

1.29 UNIT means the residential dwelling constructed upon a LOT.

ARTICLE II

OBJECTS AND PURPOSES

The covenants, restrictions, and easements set forth in this DECLARATION are hereby imposed upon the SUBJECT PROPERTY for the following objects and purposes; to wit:

a. To establish VENTANA as an upscale single family residential community in the area;

b. To create, develop, foster, maintain, preserve, and protect within VENTANA a unique, pleasant, attractive, and harmonious physical environment which will contribute to and enhance the quality of life for all residents of and visitors to VENTANA;

c. To ensure that the development of VENTANA will proceed pursuant to a uniform plan of development with consistently high architectural, environmental, ecological, and aesthetic standards;

d. To ensure the proper and appropriate subdivision, development, improvement, occupation, use, and enjoyment of each LOT within VENTANA;

e. To protect each LOT within VENTANA against the improper, undesirable, unattractive, or inappropriate subdivision, development, improvement, occupation, use, and enjoyment of contiguous, adjacent, or neighboring LOTS.

f. To encourage the development, construction, maintenance, and preservation of architecturally and aesthetically attractive and harmonious improvements appropriately designed for and properly located on each LOT within VENTANA;

g. To guard against the development and construction of improper, undesirable, unattractive, or inappropriate improvements on any lot and the use of improper, undesirable, unsuitable or unsightly materials;

h. To provide for the future ownership, management, administration, improvement, care, maintenance, use, regulation, preservation, and protection of all COMMON PROPERTY within VENTANA, SURFACE WATER MANAGEMENT SYSTEM, and to provide for and assure the availability of the funds required therefor;

i. To provide for the establishment, maintenance, preservation, protection, and enhancement of consistently high property values within VENTANA;

j. To accomplish, meet, satisfy, and fulfill certain GOVERNMENTAL REGULATIONS and other governmental requirements, specifically including those of the St. Johns River Water Management District, and the CITY.

k. To provide DEVELOPER with effective control over the development, management, administration, care, maintenance, use, appearance, marketing and sale, and the construction of IMPROVEMENTS upon the SUBJECT PROPERTY.

l. In general, to provide for the development, creation, operation, and preservation upon the SUBJECT PROPERTY of an exclusive single family community.

m. To provide aesthetically attractive and useful COMMON AREAS for all OWNERS' use and enjoyment.

ARTICLE III

EFFECT OF DECLARATION

3.1 Covenants Running with Land. This DECLARATION and each and every one of the covenants, restrictions, and easements contained herein are hereby declared to be, and shall hereafter continue as, covenants running with the title to those portions of the SUBJECT PROPERTY upon which the same are hereby imposed as an encumbrance.

3.2 Property Affected. This DECLARATION and the covenants, restrictions, and easements set forth herein shall be binding upon, inure to the benefit of, and constitute a burden upon all of the SUBJECT PROPERTY and additional property as it is incorporated into this DECLARATION in accordance with the terms set forth herein. Accordingly, as more particularly specified in this DECLARATION, all LOTS, pieces, parcels, and tracts of land within the SUBJECT PROPERTY shall hereafter be owned, held, transferred, sold, conveyed, demised, devised, assigned, leased, mortgaged, occupied, used, and enjoyed subject to and benefitted and burdened by the terms and provisions of this DECLARATION and each of the covenants, restrictions, and easements contained herein.

3.3 Parties Affected. Except as hereinafter specifically provided, this DECLARATION shall be binding upon and inure to the benefit of all OWNERS of the property affected and encumbered by this DECLARATION, including the DEVELOPER, the ASSOCIATION, any INSTITUTIONAL LENDERS, and all other PERSONS having or claiming any right, title, or interest in such property.

Accordingly, each and every PERSON or party who or which shall hereafter acquire, have, or claim any right, title, or interest in or to any LOT, piece, parcel, or tract of land within the SUBJECT PROPERTY, whether by, through, or under the DEVELOPER or any subsequent OWNER, shall, by virtue of the acceptance of any such right, title, interest, or claim, whether by deed or other instrument, or by operation of law or otherwise, and whether voluntarily or involuntarily, be deemed to have acquired and accepted such right, title, interest or claim in or to any such LOT, piece, parcel, or tract of the SUBJECT PROPERTY subject to and benefitted and burdened by the covenants, restrictions, and easements set forth in this DECLARATION the same as if such PERSON or party had specifically joined in and agreed and consented to each and every one of the terms and provisions of this DECLARATION and the same as if each and every one of the covenants, restrictions, and easements set forth in this DECLARATION had been fully set forth in the deed or any other instrument of conveyance pursuant to which such right, title, interest, or claim was acquired.

ARTICLE IV

PROPERTY SUBJECT TO DECLARATION

4.1 SUBJECT PROPERTY. The property which shall be subject to and encumbered, governed, benefitted, and burdened by this Declaration shall be all of the SUBJECT PROPERTY and additional property as it is incorporated into this DECLARATION as the same is herein defined and described.

4.2 Addition of Property. The DEVELOPER hereby reserves to itself and shall hereafter have the right, but not the obligation, at any time and from time to time, in its sole and absolute discretion and without notice to or the approval of any party or PERSON whomsoever or whatsoever, to add additional property to this DECLARATION and the additional property will be included within the SUBJECT PROPERTY by an amendment to this DECLARATION or a Declaration of Covenants and Restrictions substantially similar to this DECLARATION, recorded in the Public Records of the COUNTY. Such additional property specifically includes, but is not limited to, any or all the real property contiguous to the SUBJECT PROPERTY, or any property contiguous or across any canal, or roadway, from such property, or which is now or may hereafter be owned by the DEVELOPER. Such additional property shall only include that property as designated and developed for residential use and shall be subject to the same or substantially similar restrictions.

Any amendment or Declaration of Covenants and Restrictions adding any property to this DECLARATION need only be signed by the DEVELOPER if such property is owned by the DEVELOPER, and if the property is not owned by the DEVELOPER, such amendment need only be signed by the DEVELOPER and the owner of such property.

4.3 Withdrawal of Property. The DEVELOPER hereby reserves unto itself and shall hereafter have the right, at any time and from time to time, in its sole and absolute discretion, and without notice to or the approval of any other PERSON or party whomsoever or whatsoever, to withdraw any property, including portions of the SUBJECT PROPERTY and additional property, from the purview, operation, and effect of this DECLARATION, including any property previously subjected to and encumbered by this DECLARATION, which shall be owned by the DEVELOPER at the time of such withdrawal, by the filing of an appropriate instrument to that effect among the Public Records of the COUNTY.

ARTICLE V

PERMITTED USES

5.0 Generally. To the extent that a particular use shall otherwise be in compliance with GOVERNMENTAL REGULATIONS and the covenants, restrictions, and easements set forth in this DECLARATION, the following uses shall be permitted on the SUBJECT PROPERTY:

5.1 RESIDENTIAL PROPERTY. Except as hereinafter provided in Section 6.4 of this DECLARATION, RESIDENTIAL PROPERTY shall be any LOT improved as and used, occupied, and enjoyed solely and exclusively for single family residential dwelling purposes and no other uses or purposes whatsoever.

5.2 COMMON PROPERTY. COMMON PROPERTY shall be improved, maintained, used, and enjoyed for the common recreation, health, safety, welfare, benefit, and convenience of all OWNERS of VENTANA and their guests and invitee's. Notwithstanding anything to the contrary set forth in this DECLARATION, however, the DEVELOPER, for himself and his successors and assigns and his guests or invitee's, hereby specifically reserves unto himself an easement upon and the right, privilege, and license of using any or all of the COMMON PROPERTY, including, without limitation, any and all common utilities, and any streets and roads, in connection with and in support of any operations and activities and any amateur or professional events conducted upon the COMMON PROPERTY, including specifically, without limitation, the right, privilege, license, and easement to limit, control, restrict, or permit, by ticket, pass, or otherwise, ingress or egress to and from the COMMON PROPERTY, including the streets and roads; provided, however, that the exercise of such right, privilege, license, and easement by the DEVELOPER and his successors and assigns shall not prohibit or unreasonably interfere with or restrict the right, privilege, license, and easement of an OWNER and the members of his or her family, his or her guests, employees and other invitees to have ingress and egress to and from his or her residence as elsewhere provided in this DECLARATION.

ARTICLE VI

USE RESTRICTIONS - RESIDENTIAL PROPERTY

The use, occupation, and enjoyment of any LOT shall be subject to and governed by the following covenants, conditions, and restrictions, to wit:

6.1 Single Family Only. Except as specifically provided in this DECLARATION, or as provided by the DEVELOPER in writing, no use shall be made of any LOT other than for single family residential dwelling purposes, with only one UNIT constructed on any LOT.

6.2 Ownership and Leasing. Ownership of any LOT shall be for single family residential dwelling purposes only. Accordingly, RESIDENTIAL PROPERTIES may not be rented or leased for any single period of less than one (1) month. No "Time Sharing Plan" as that term is defined in Section 721.05 Florida Statutes, or any similar plan of fragmented or interval ownership of any LOT shall be permitted.

6.3 SUBDIVISION. No LOT shall be subdivided nor shall any portion of a LOT less than the whole thereof be sold, conveyed, or transferred without the prior written approval and consent of the DEVELOPER and the ASSOCIATION. Nothing herein contained, however, shall prevent the subdivision of a LOT by the DEVELOPER in such manner that any portion of a LOT may be sold, transferred, and conveyed by the DEVELOPER, together with the whole of an adjacent or contiguous LOT such that the whole of one LOT and a portion of another LOT which are owned in common by the same OWNER may be combined, developed, and improved by such OWNER as a single unified home site. Once so combined, developed, and improved as a single unified residential home site, no such combination of a LOT and a portion of another LOT or combination of two (2) or more LOTS shall thereafter be re-subdivided into more than one (1) single family residential home site.

6.4 Commercial Activity. Except as specifically provided in Section 5.1 of this DECLARATION, no business, commercial, industrial, trade, professional, or other non-residential activity or use of any nature, type, kind, or description shall be conducted upon or from any LOT or within any IMPROVEMENTS located or constructed thereon. This provision shall not prohibit those minor business-related activities which might occur within the confines of any LOT which are incidental to the OWNER's primary business and do not create any offensive activity, or promote deliveries or other excessive public access to the SUBJECT PROPERTY, or which may be promoted for tax benefits or other reasons of convenience. The ASSOCIATION may prohibit any business-related activity it deems to be an offensive activity or a violation of this Paragraph.

6.5 Offensive Activity. No illegal, noxious, unpleasant, unsightly, noisy, or offensive activity shall be carried on or conducted upon or from any LOT nor shall anything be done thereon which may be or tend to become or cause an unreasonable annoyance or nuisance, whether public or private, to residents in the immediate vicinity or to VENTANA in general or which may be or tend to become an interference with the comfortable and quiet use, occupation, or enjoyment of any other any LOT or any COMMON PROPERTY, unless specifically approved in writing by the ASSOCIATION.

6.6 Animals and Pets. No reptiles, livestock, poultry, or animals of any kind, nature, or description shall be kept, bred, or raised upon SUBJECT PROPERTY unless specifically approved in writing by the ASSOCIATION, except for dogs, cats, birds, or other usual and customary household pets which may be kept, raised, and maintained upon SUBJECT PROPERTY, provided that the same are not kept, raised, or maintained thereon for business or commercial purposes, or in number deemed unreasonable by the DEVELOPER or the ASSOCIATION in the exercise of their reasonable discretion. Numbers in excess of three (3) of each such type of household pet, or a total of five (5) (other than aquarium-kept tropical fish) shall be prima facia and considered unreasonable. Notwithstanding the foregoing provisions of this Section permitting dogs, cats, birds, or other usual and customary household pets, however, no such reptiles, animals, birds, or other pets may be kept, raised, or maintained on SUBJECT PROPERTY under circumstances which, in the good faith judgment of the DEVELOPER or the ASSOCIATION, shall constitute an unreasonable annoyance or nuisance to the residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation, and enjoyment of other SUBJECT PROPERTY or adjoining COMMON PROPERTY.

Any pet must be carried or kept on a leash when outside a UNIT or fenced-in area. Each OWNER shall be responsible for his pets and the pets of any PERSON residing in his UNIT. Any resident shall pick up and remove any solid animal waste deposited by his pet on the COMMON PROPERTY or on other RESIDENTIAL PROPERTY, except in designated pet-walk areas, if any. The ASSOCIATION may require any pet to be immediately and permanently removed from the SUBJECT PROPERTY due to a violation of this Paragraph, or may seek other remedies as provided in this DECLARATION.

The ASSOCIATION may grant written permission allowing any OWNER to keep on any LOT other animals not specifically permitted herein. Permission may be withdrawn at any time and may have specific restrictions placed on it by the ASSOCIATION, which may be modified by the ASSOCIATION from time to time at its sole discretion.

6.7 Commercial and Recreational Vehicles.

6.7.1 Parking of Vehicles. No truck, bus, trailer, or other "commercial vehicle" (as that term is herein defined in Section 6.7.6), and no mobile home, motor home, house trailer, camper, boat, boat trailer, horse trailer, or other recreational vehicle or the like shall be permitted to be parked or stored on the SUBJECT PROPERTY unless the same shall be parked or stored entirely within and fully enclosed by a garage; nor shall any such commercial or recreational vehicle or the like be permitted to be parked or stored on any street in front of or adjacent to any LOT. Notwithstanding the foregoing, however, it is expressly provided that recreational and commercial vehicles shall be permitted to be parked on, or in front of, or adjacent to any LOT on which bona fide ongoing construction activity is taking place; nor shall the foregoing provision of this Paragraph apply to parking on "a temporary or short-term basis" (as that term is hereinafter defined in Paragraph 6.7.4).

6.7.2 Repair of Vehicles. No passenger automobile, commercial, recreational, or other motorized vehicle, or trailerable boat, or the like, shall be dismantled, serviced, rebuilt, repaired, or repainted outside any UNIT. Notwithstanding the foregoing provisions of this Paragraph, however, it is expressly provided that the foregoing restriction shall not be deemed to prevent or prohibit those activities normally associated with and incident to the day-to-day washing, waxing, and polishing of such vehicles or such repairs as may be necessary in an emergency situation. Repairs, service, or painting made within the confines of a garage or designated enclosure may be denied by the ASSOCIATION if deemed a nuisance by the ASSOCIATION.

6.7.3 Motorcycles, etc. No motorcycle, golf carts, motor scooter, moped, ATV (all terrain vehicle), or other two-wheeled, three-wheeled, or four-wheeled motorized vehicle, or the like, shall be permitted to be parked or stored on any LOT, unless outfitted with an appropriate noise reduction device which is in working order.
The same shall be parked or stored entirely within, and fully enclosed by, a garage; except for those which may be used or employed in connection with the internal security of VENTANA and the maintenance and operation of the COMMON PROPERTY or for sales and promotion of the SUBJECT PROPERTY by the DEVELOPER.

Notwithstanding, the foregoing provisions of this Paragraph permitting motorcycles, motor scooters, mopeds, ATV (all terrain vehicle), or other two-wheel, three-wheel, or four-wheel motorized vehicles or the like with an appropriate noise reduction device, no such vehicle shall be allowed on the SUBJECT PROPERTY under circumstances which, in the good faith judgement of the DEVELOPER or the ASSOCIATION, shall constitute an unreasonable annoyance or nuisance to the residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation, and enjoyment of any other LOT or adjoining COMMON PROPERTY.

The ASSOCIATION or DEVELOPER may, at its sole discretion, grant permission for the use and storage of such vehicles, notwithstanding the foregoing provisions of this Paragraph. Such permission may be withdrawn at any time, from time to time, for any reason at the sole discretion of the ASSOCIATION or DEVELOPER. Such permission may have specific restrictions attached to it as deemed necessary by the DEVELOPER or the ASSOCIATION and any violation of those restrictions or the ASSOCIATION deeming that the vehicle is a nuisance shall be considered prima facia evidence of an automatic irrevocation and withdrawal of permission.

6.7.4 Parking on a Temporary or Short-term Basis. Parking on "a temporary or short-term basis" shall mean and be defined as parking, on a non-recurring basis and for a single period not exceeding twenty-four

(24) hours in duration, of commercial, recreational vehicles or boats belonging to OWNERS or their guests, commercial vehicles used in connection with the furnishing of services and/or the routine pick-up and delivery, respectively, of materials from and to any LOT, and commercial or recreational vehicles belonging to or being used by OWNERS for loading and unloading purposes only.

The ASSOCIATION or DEVELOPER may, at their sole discretion, grant an extension in writing to any OWNER on a "temporary or short term basis". Such extension may be withdrawn at any time, from time to time, at the sole discretion of the ASSOCIATION or DEVELOPER.

Such extension may have specific restrictions attached to it as deemed necessary by the DEVELOPER or ASSOCIATION. Any violation of those restrictions will be considered prima facia evidence of automatic irrevocation and withdrawal of permission.

6.7.5 Private Passenger Vehicles. The OWNER or residents of any UNIT may not keep more than two (2) private passenger vehicles parked outside any UNIT on a permanent basis without the prior written consent of the ASSOCIATION.

All vehicles parked within the SUBJECT PROPERTY must be in a reasonably good appearance and good working order, and no vehicle which is unlicensed or which cannot operate on its own power may be parked outside any UNIT. Any vehicle considered by the ASSOCIATION to be creating an unreasonable annoyance or in an unsightly condition may be removed by the ASSOCIATION or the ASSOCIATION may prevent access to the COMMON STREETS AND ROADS of the vehicle.

6.7.6 Commercial Vehicle. The term "commercial vehicle" shall mean and be defined as a truck, motor home, bus, or van of greater than three-quarter (3/4) ton capacity or as designated as such by the State of Florida Division of Motor Vehicles, and any vehicle, including a passenger automobile, with a sign displayed on any part thereof advertising any kind of business or on or within which any commercial materials and/or tools are visible.

6.7.7 RULES AND REGULATIONS. The ASSOCIATION shall be entitled and is hereby empowered to adopt additional reasonable RULES AND REGULATIONS governing the admission to and parking, use, and storage of private, commercial, and recreational vehicles within VENTANA and, if so adopted, the same shall be binding upon all LOTS and all OWNERS and their guests and invitee's except for the Developer

6.7.8 Removal by the ASSOCIATION. Any private, commercial, recreational, or other vehicle parked or stored in violation of these restrictions or in violation of any rules and regulations adopted by the ASSOCIATION concerning the same may be towed away or otherwise removed by or at the request of the ASSOCIATION and at the sole expense of the owner of such commercial, recreational, or other vehicle in violation of these restrictions or such RULES AND REGULATIONS.

In the event of such towing or other removal, the ASSOCIATION and its employees or agents shall not be liable or responsible to the owner of such vehicle for trespass, conversion, or damage incurred as an incident to or for the cost of such removal or otherwise; nor shall the ASSOCIATION, its employees, or agents be guilty of any criminal act or have any civil liability by reason of such towing or removal, and neither its towing or removal nor the failure of the owner of the towed or removed vehicle to receive any notice of the violation of the provisions of this Section 6.7 shall be grounds for relief of any kind.

6.8 Maintenance. Each LOT and all IMPROVEMENTS located thereon, including landscaping, shall at all times be kept and maintained in a safe, clean, wholesome, and attractive condition and shall not be allowed to deteriorate, fall into disrepair, or become unsafe or unsightly. In particular, no weeds, underbrush, or other unsightly growth, and no trash, rubbish, refuse, debris, or unsightly objects of any kind shall be permitted or allowed to accumulate on any LOT.

6.9 Reconstruction of Damaged IMPROVEMENTS. In the event that a UNIT or other IMPROVEMENTS on any LOT shall be damaged or destroyed by casualty, hazard, or other cause, including fire or windstorm, then, within a reasonable period, not exceeding two (2) months following the occurrence of the offending incident, the OWNER of the affected UNIT shall cause the damaged or destroyed IMPROVEMENTS to be repaired, rebuilt, or reconstructed, or to be removed and cleared from such LOT. Any such repair, rebuilding, or reconstruction shall be approved and accomplished as otherwise required pursuant to the provisions of this DECLARATION.

6.10 Garbage and Garbage Containers. All garbage and trash containers and their storage areas and the like shall be kept or placed inside of or behind opaque walls or landscaping attached to and made a part of the UNIT constructed on each LOT and otherwise in conformity with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL. In no event shall any of the same be visible from any adjacent or neighboring property, whether a LOT or COMMON PROPERTY, including any of the COMMON STREETS AND ROADS. Further, all garbage and trash containers and their storage areas shall be designed and maintained so as to prevent animals from gaining access thereto.

Each OWNER shall regularly pick up all garbage, trash, refuse, or rubbish on the OWNER'S LOT. Garbage, trash, refuse, or rubbish that is required to be placed at the front of the LOT in order to be collected may be placed and kept at the front of the LOT after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed on the collection day.

All garbage, trash, refuse, or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters, or garbage facilities shall be stored inside a UNIT or fenced-in area and screened from view and shall be kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

6.11 Burning. No burning of leaves, trash, rubbish, garbage, or other waste materials of any type shall be permitted or conducted on any LOT. Nothing herein contained, however, shall be deemed to prohibit the burning of wood, logs, natural gas, or charcoal in properly constructed or installed fireplaces, barbecue cookers, or the like, whether inside or outside of any building or other structure located on any LOT.

Notwithstanding the foregoing provisions of this Paragraph, however, it is expressly provided that the foregoing restriction shall not be deemed to prevent or prohibit those activities as performed by the DEVELOPER or his agents, or contractors on the SUBJECT PROPERTY.

6.12 Storage Tanks. No storage tanks including, but not limited to, those for water, oil, propane gas, or other liquid, fuels, or chemicals, including those used for swimming pools or the like, shall be permitted outside of any UNIT unless the same shall be underground or placed inside of walls, fences, landscaping screens, or similar type enclosures in conformity with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL. In no event shall any of the same be visible from any adjacent or neighboring property, whether a LOT or COMMON PROPERTY, including the COMMON STREETS AND ROADS.

6.13 Mineral Exploitation. No exploration, mining, quarrying, or drilling for or exploitation of gas, oil, phosphate, or other minerals of any type of kind shall be permitted or conducted on the SUBJECT PROPERTY.

6.14 Laundry & Clothes Drying. No laundry or clothes drying lines or areas shall be permitted outside of any UNIT unless the same shall be placed inside of walls, fences, landscaping screens, or similar type enclosures in conformity with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL.

In no event shall any of the same be permitted if visible from any adjacent or neighboring property, LOT, or COMMON PROPERTY, including the streets and roads.

6.15 Radio Transmission Equipment. No radio, microwave, or other electronic transmission equipment, including ham radios, citizens band radios, outside antennas, satellite dishes, outside sending devices, and the like, shall be permitted on any LOT. The association may approve, in writing, the use of small dish type receiving devices so longs as the operation of such equipment does not interfere with ordinary radio and television reception or

communication equipment as so long as the placement of such equipment is not visible from any common street or road and as deemed aesthetically acceptable by the ARB.

6.16 Signs. No sign, billboard, or advertising of any kind shall be displayed to public view on the SUBJECT PROPERTY without the prior written consent of the ARCHITECTURAL REVIEW BOARD and the DEVELOPER; except as follows, to wit:

Initially, lot availability and new construction builder signs must meet specifications as set forth by Developer and its revisions. Thereafter owner resales of improved lot shall have no more than one (1) discreet, professionally prepared "for sale" signs of not more than five (5) square feet total, including the frame. The sign shall be constructed of wood and/or metal, must be kept in like-new condition, and must be aesthetically pleasing, complementing the environment.

Notwithstanding the foregoing provisions of this Section, the DEVELOPER specifically reserves the right, for himself and his agents, employees, nominees, and assigns, the right, privilege, and easement, to construct, place, and maintain upon any LOT such signs as it deems appropriate in connection with the development, IMPROVEMENTS, construction, marketing, and sale of any LOT.

Except as hereinabove provided, no signs or advertising materials displaying the names or otherwise advertising the identity of subcontractors, real estate brokers, or the like employed in connection with the construction, installation, alteration, or other IMPROVEMENT upon, or the previous sale or leasing of, any LOT shall be permitted.

6.17 Trees. No trees shall be removed from any LOT without the prior written consent of the ARCHITECTURAL REVIEW BOARD. Such approval shall be reasonably given, however, if such removal is necessary in connection with the location of the main residential dwelling on a particular LOT where the preservation of any tree would work a hardship or require extraordinary design measures in connection with the location of such dwelling on the LOT. As used herein, the term "trees" shall mean and be defined as any tree having a caliper of four inches (4") or greater in diameter as measured four feet above ground level.

6.18 Drainage. A SURFACE WATER MANAGEMENT SYSTEM has been designed for VENTANA to provide a working system of integrated flood control in the event of a large storm. This system is also designed to prevent the discharge of road oils, pollutants, and fertilizers into the St. Johns River Water Management District basin, minimizing any effects of development on the local water quality.

All storm water from any LOT shall drain into or onto contiguous or adjacent drainage easements, retention areas, or COMMON PROPERTY in accordance with the SURFACE WATER MANAGEMENT SYSTEM for VENTANA as filed with and approved by the CITY and the St. Johns River Water Management District, under the latter's permit as modified, and any replacement or substituted permits issued by the St. Johns River Water Management District from time to time.

No OWNER shall be permitted to alter the grade of or original drainage plan for any LOT, or change the direction of, obstruct, or retard the flow of surface water drainage, nor shall any OWNER alter or remove any drainage or environmental berm or swale on any LOT or divert any storm water drainage over, under, through, or around any such berm or swale.

The ASSOCIATION shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface or stormwater management capabilities as permitted by the St. Johns River Water Management District. The ASSOCIATION shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District and the City.

The storm water system is designed to have submerged pipes where the interconnecting stormwater pipes are designed to have standing water most of the time.

6.19 Window Treatments. Window treatments shall consist of draperies, blinds, decorative panels, or other tasteful window coverings, and no newspaper, aluminum foil, sheets, or other temporary window treatments are permitted for more than sixty (60) days after the issuance of the Certificate of Occupancy.

6.20 Outside Storage of Personal Property. The personal property of any resident of the SUBJECT PROPERTY shall be kept inside the resident's UNIT, except for tasteful patio furniture and other personal property commonly kept outside, unless specifically approved by the ASSOCIATION in writing.

6.21 RULES AND REGULATIONS. In addition to the foregoing restrictions on the use of any LOT, the ASSOCIATION shall have the right, power, and authority, subject to the prior written consent and approval of DEVELOPER, to promulgate and impose reasonable RULES AND REGULATIONS governing and/or restricting the use of any LOT and to thereafter change, modify, alter, amend, rescind, and augment any of the same; provided, however, that no RULES AND REGULATIONS so promulgated shall be in conflict with the provisions of this DECLARATION. Any such RULES AND REGULATIONS so promulgated by the ASSOCIATION shall be applicable to and binding upon the SUBJECT PROPERTY and the OWNERS thereof and their successors and assigns, as well as all guests or invitee's of and all parties claiming by, through, or under such OWNERS.

6.22 Enforcement. In the event of a violation of or failure to comply with the foregoing requirements of this section and the failure of the OWNER of the affected LOT, within a reasonable time period as determined by the BOARD following written notice by the ASSOCIATION of such violation or non-compliance and the nature thereof to cure or remedy such violation, then the ASSOCIATION or its duly appointed employees, agents, or contractors, shall have and are specifically granted the right and privilege of and an easement and license to enter upon the affected LOT or any portion or portions thereof or IMPROVEMENTS thereon, without being guilty of any trespass thereat, for the purpose of undertaking such acts or actions as deemed necessary by the ASSOCIATION and as may be reasonably necessary to cure or eliminate such violation; all at the sole cost and expense of the OWNER of the affected LOT.

Such costs and expenses, together with an overhead expense to the ASSOCIATION of fifteen percent (15%) of the total amount thereof, shall be assessed by the ASSOCIATION as an Individual LOT ASSESSMENT as provided in Section 9.11 of this DECLARATION to the affected LOT and the OWNER thereof. Any such Individual LOT ASSESSMENT shall be payable by the OWNER of the affected LOT to the ASSOCIATION within ten (10) days after written notice of the amount thereof. Any such Individual LOT ASSESSMENT not paid within said ten-day period shall grant the ASSOCIATION the right to lien the affected LOT in accordance with the provisions of Section 9.5 of this DECLARATION. Each such late payment shall be subject to a late payment penalty as set by the Board of Directors from time to time, but in no case shall the late payment penalty exceed twenty-five percent (25%) of the regular annual assessment.

In addition, the ASSOCIATION shall specifically have the right to injunctive relief to require the OWNER to stop, remove, and/or alter any alteration, addition, IMPROVEMENT, or change in a manner which complies with the requirements of this DECLARATION, or the ASSOCIATION may pursue any other remedy available to it, which specifically includes reasonable fines as provided for in Section 9.5 of the DECLARATION. In connection therewith, the ASSOCIATION shall have the right to enter onto any LOT and make any inspection necessary to determine that the provisions of this Section have been complied with.

Any action to enforce this Section must be commenced within one year after the date of the violation. The foregoing shall be in addition to any other remedy set forth herein for violations of this DECLARATION. Notwithstanding anything contained within this DECLARATION to the contrary, the ASSOCIATION shall have the exclusive authority to enforce the provisions of this Paragraph.

6.23 Precedence Over Less Stringent Governmental Regulations. In those instances where the covenants, conditions, and restrictions set forth in this DECLARATION set or establish minimum standards or limitations or

restrictions on use in excess of GOVERNMENTAL REGULATIONS, the covenants, conditions, and restrictions set forth in this DECLARATION shall take precedence and prevail over less stringent GOVERNMENTAL REGULATIONS.

ARTICLE VII

BUILDING RESTRICTIONS - RESIDENTIAL PROPERTY

7.0 Generally. The erection, placement, construction, and installation of all IMPROVEMENTS on any LOT shall be subject to and governed by this DECLARATION, and the following covenants, restrictions, and easements, to wit:

7.1 Building Type. As the use of RESIDENTIAL PROPERTY is limited to single family residential dwelling purposes only.

7.2 Approved Plans. All IMPROVEMENTS must be constructed in accordance with detailed plans and specifications prepared by licensed registered architects and landscape architects or approved designers in conformance with all applicable GOVERNMENTAL REGULATIONS and approved by the ARCHITECTURAL REVIEW BOARD prior to the commencement of construction as more particularly provided in Article XII of this DECLARATION.

7.3 GOVERNMENTAL REGULATIONS. All IMPROVEMENTS placed, located, erected, constructed, and installed upon RESIDENTIAL PROPERTY shall conform to and comply with all applicable GOVERNMENTAL REGULATIONS, including, without limitation, all building and zoning regulations of the CITY.

7.4 ARCHITECTURAL STANDARDS MANUAL. All IMPROVEMENTS shall be placed, located, erected, constructed, installed, and maintained on RESIDENTIAL PROPERTY in conformance with the ARCHITECTURAL STANDARDS MANUAL for which provision is made in Article XII of this DECLARATION, as the same may be changed, amended, or modified from time to time.

7.5 Construction. The construction of all residential dwellings and other IMPROVEMENTS on RESIDENTIAL PROPERTY must be performed by such builders, general contractors, and subcontractors which are:

a. licensed in the State of Florida or the COUNTY to engage in the business of residential building and construction, unless otherwise permitted in writing by the DEVELOPER, and/or

b. approved in writing by the DEVELOPER and the ARCHITECTURAL REVIEW BOARD as being qualified and otherwise acceptable to DEVELOPER to perform construction work within VENTANA. The latter approval shall be within the sole and absolute discretion of DEVELOPER and the ARCHITECTURAL REVIEW BOARD, and may be withdrawn without notice at any time.

7.6 Construction Time. Unless and otherwise approved by the ARCHITECTURAL REVIEW BOARD in writing, substantial construction of residential dwellings and other IMPROVEMENTS must be commenced not later than one (1) year from the date that the ARCHITECTURAL REVIEW BOARD issues its written approval of the final plans and specifications therefor. If substantial construction shall not commence within such one-year period, the plans and specifications for any proposed construction must once again be reviewed and approved by the ARCHITECTURAL REVIEW BOARD in accordance with the provisions of Article XII of this DECLARATION and any prior approval of the same by the ARCHITECTURAL REVIEW BOARD shall no longer be binding on the ARCHITECTURAL REVIEW BOARD.

Commencement of construction must also occur on or before limitations as set forth by the DEVELOPER from time to time and notified in writing to the ASSOCIATION and the ARCHITECTURAL REVIEW BOARD. Commencement of construction time limits as set forth herein by the DEVELOPER supersede all other construction time limitations for VENTANA.

Upon commencement of construction, such construction shall be prosecuted diligently, continuously, and without interruption to completion within a reasonable time; but in no event more than one year from the date of the commencement of such construction. However, the ARCHITECTURAL REVIEW BOARD shall have the power and authority to extend the period permitted for construction, as aforesaid; provided that the OWNER and residential contractor involved make written application for such extension stating the reasons for the requested extension of time and provided further that the ARCHITECTURAL REVIEW BOARD, in the exercise of its reasonable discretion, determines that the request is reasonable and the extension is warranted.

7.7 Height Limitation. No IMPROVEMENT on any LOT shall exceed twenty-five feet (25') in height, as measured from the finished grade of first floor to the roof peak at its highest point. Each residential dwelling on a LOT shall consist of not more than two full stories unless otherwise approved in writing by the ARCHITECTURAL REVIEW BOARD.

7.8 Building Setback Lines. No part of any building shall be constructed, erected, placed, or installed any closer to the property boundary lines of any LOT as set forth and permitted by the ARCHITECTURAL REVIEW BOARD and in conformance with the ARCHITECTURAL STANDARDS MANUAL as the same may be changed, amended, or modified from time to time.

7.9 Dwelling Size. Each single family residential dwelling constructed on RESIDENTIAL PROPERTY, except a guest house when permitted by the ARCHITECTURAL REVIEW BOARD, shall have a minimum heated and cooled living area of 1,700 square feet.

7.10 Temporary IMPROVEMENTS. No buildings, structures, IMPROVEMENTS, or other facilities of a temporary nature, including trailers, tents, or shacks shall be permitted on RESIDENTIAL PROPERTY; provided, however, that temporary improvements or facilities used solely in connection with and during the period of the construction of approved permanent IMPROVEMENTS may be permitted by the ARCHITECTURAL REVIEW BOARD, in its discretion, during the period of the construction of such permanent IMPROVEMENTS so long as the same are located as inconspicuously as possible, are kept in good condition, have no signage attached thereto, and are removed immediately following the completion of such construction. The location of such temporary improvements during construction shall be approved in writing by the ARCHITECTURAL REVIEW BOARD.

7.11 Garages and Carports. No carports shall be placed, erected, constructed, installed, or maintained on RESIDENTIAL PROPERTY. Each single family residential dwelling constructed and maintained on RESIDENTIAL PROPERTY shall have a garage as an appurtenance thereto. All garages shall be for not less than two (2) standard size passenger automobiles. Garages may also contain appropriately sized storage rooms, recreational workshops, and tool rooms as approved by the ARCHITECTURAL REVIEW BOARD.

No garage shall be converted to another use (e.g., living space) without the substitution, on the LOT involved, of another garage meeting the minimum requirements of this Section of this DECLARATION and the approval of the ARCHITECTURAL REVIEW BOARD as otherwise provided in this DECLARATION.

All garages must be as set forth and permitted by the ARCHITECTURAL REVIEW BOARD and in conformation with the ARCHITECTURAL STANDARDS MANUAL.

7.13 Roofs. The roofs of the main body of all buildings and other structures, including the principal residence shall be pitched.

The pitch of all roofs shall be not less than six inches (6") in twelve inches (12") (6/12 vertical/horizontal) or as otherwise specified in the ARCHITECTURAL STANDARDS MANUAL. All roofs shall be constructed of clay, tile, cement tile, slate, standing seam copper, cedar shake shingle, architectural grade asphalt or fiberglass shingles minimum weight of 240lbs per square or other materials specified in the ARCHITECTURAL STANDARDS MANUAL or otherwise approved by the ARCHITECTURAL REVIEW BOARD. All roof colors must be approved by the ARCHITECTURAL REVIEW BOARD.

7.14 Antennas, Etc. See Section 6.15

7.15 Windows. The windows of all buildings on RESIDENTIAL PROPERTY shall have frames and/or muttons, if any, constructed of wood, factory colored aluminum or such other materials as shall be in conformance with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL. In no event shall raw or silver aluminum windows frames be permitted.

7.16 Reflective or Mirrored Glass. No substantially reflective or mirrored glass shall be used on, in, or for the windows or doors of any buildings or other IMPROVEMENTS constructed upon RESIDENTIAL PROPERTY.

7.17 Exterior Air Conditioning Equipment. All air conditioning compressors and other equipment located outside of a residential dwelling shall be screened from the view of streets and roads and adjacent LOTS by opaque walls attached to and made a part of each single family residential dwelling and otherwise in conformity with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL or as otherwise approved by the ARCHITECTURAL REVIEW BOARD. Absolutely no window air conditioning units shall be permitted.

7.18 Fences and Walls. Other than those constructed by the DEVELOPER and/or the ASSOCIATION, no fences or walls shall be erected on RESIDENTIAL PROPERTY unless approved in writing by the ARCHITECTURAL REVIEW BOARD. The height of all fences or walls and building specifications shall be subject to the control and approval of the ARCHITECTURAL REVIEW BOARD, and shall conform to guidelines and specifications otherwise set forth in the ARCHITECTURAL STANDARDS MANUAL.

7.19 Exterior Building Materials, Finishes, and Colors. All exterior building materials, finishes, and colors shall be in conformance with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL or as otherwise approved by the ARCHITECTURAL REVIEW BOARD. Uncovered or exposed (whether painted or not) concrete or concrete block shall not be permitted as the exterior finish of any building structure or wall unless approved by the ARCHITECTURAL REVIEW BOARD and the DEVELOPER. The foregoing restriction shall be equally applicable to the initial as well as any subsequent painting of any IMPROVEMENTS located on RESIDENTIAL PROPERTY.

7.20 Garbage and Trash Storage Areas. All exterior garbage and trash storage areas shall be enclosed by opaque walls attached to and made part of each single family residential dwelling or behind a solid landscaping screen and otherwise in conformity with the applicable provisions of the ARCHITECTURAL STANDARDS MANUAL or as otherwise approved by the ARCHITECTURAL REVIEW BOARD.

7.21 Natural Gas Appliances. Unless otherwise approved by the DEVELOPER upon a showing of good cause for an exception from the provisions of this Section, each single family residential dwelling constructed within VENTANA must contain at least two (2) natural gas consuming "major household appliances" with a year-round demand which are connected to the natural gas distribution system which is located in the right-of-way of the COMMON STREETS AND ROADS within VENTANA. This requirement shall be deleted should no natural gas distribution system be installed within VENTANA.

The term "major household appliances" shall include, without limitation, water heaters, ovens, ranges, clothes dryers, and heating equipment, including furnaces.

Barbecue grills, gas logs, and outdoor gas lighting appliances shall not qualify as "major household appliances" for purposes of this Section.

7.22 Mailboxes and Other Delivery Boxes. The United States Postal Service (USPS) has determined that Ventana shall have centralized mail delivery which provides delivery of mail for a number of homes at several central locations.

The placement of the central delivery mailboxes is at the discretion of the USPS and beyond the control of the Association or Developer. Typically they shall be placed within the road easement, along the curb centered on two (2) property lines. A preliminary location plan is included in the Exhibits of the Architectural Standards Manual.

In the event that the Developer deem it appropriate the Developer may direct that a facade be constructed and landscaping be installed around each mail box location to meet specifications deemed appropriate by the Developer. The Developer shall establish a fee to be assessed and collected by the Homeowners Association and paid by each lot owner at the time of ARB submittal. The fee, which may be revised from time to time, shall reimburse the Developer for all costs, including interest and administration associated with the construction of the facade and landscaping around all mail box locations.

The abutting homeowner who first completes their home shall be responsible for installing and maintaining irrigation to the landscaping around each mailbox location.

7.23 Underground Utilities. All utility lines and facilities shall be located and installed underground or concealed under or within a building or other on-site IMPROVEMENTS approved by the ARCHITECTURAL REVIEW BOARD; provided, however, that the foregoing restriction shall not be deemed to prohibit the following:

a. temporary electric power and telephone service poles and water lines which are incident to the ongoing construction of approved permanent IMPROVEMENTS, and, provided further, that the same are removed immediately following the completion of such construction;

b. above-ground electric transformers, meters, and similar apparatus properly screened as specified in the ARCHITECTURAL STANDARDS MANUAL or as otherwise approved by the ARCHITECTURAL REVIEW BOARD;

7.24 Landscaping. Each LOT shall be landscaped in accordance with a landscape plan which is prepared by a landscape architect licensed in the State of Florida, or other approved professional.

The landscape plan submitted to and approved by the ARCHITECTURAL REVIEW BOARD shall reflect a minimum budget of $1,500. Such budget shall be for initial plant materials, trees, and installation, exclusive of the cost of sod and the required underground irrigation system, unless the ARCHITECTURAL REVIEW BOARD, in consideration of the preservation and utilization of certain existing trees, plants and vegetation shall approve a budget in a lesser amount.

All landscaping approved by the ARCHITECTURAL REVIEW BOARD shall be installed within twenty (20) days after the completion of construction of the main residential dwelling on a LOT as evidenced by the issuance of a certificate of occupancy for such dwelling. Extensions may be granted for delays in obtaining plant materials, trees etc.

7.25 Grass. No type or variety of grass other than St. Augustine Floratam grass shall be planted on RESIDENTIAL PROPERTY unless specifically approved by the ARCHITECTURAL REVIEW BOARD in writing, and such grass shall be planted only in those areas where specified on the landscape plan approved by the ARCHITECTURAL REVIEW BOARD. The planting of grass on RESIDENTIAL PROPERTY shall be accomplished by the installation of full sod covering the entire area required to be grassed. Partial sodding, sprigging, plugging, or seeding shall not be permitted.

The foregoing shall not prohibit the Developer from installing sod or "seed and mulch" with the same or other type of grass as deemed appropriate in any common property.

7.26 Trees. The provisions of Section 6.17 of this DECLARATION shall be applicable to the building or construction of any single family residential dwelling or other structure or IMPROVEMENTS on RESIDENTIAL PROPERTY

and such provisions are incorporated in this Article VII by this reference thereto. There shall be a minimum tree requirement as is set forth by the ARCHITECTURAL REVIEW BOARD.

7.27 Irrigation Systems. All landscaped and grassed open areas on RESIDENTIAL PROPERTY shall be irrigated by means of an automatic underground irrigation or sprinkler system capable of regularly and sufficiently irrigating all lawns and plantings within such open area.

Such system shall connect to the master water reuse system under the terms and conditions as set forth in the Architectural Standards Manual.

If such reuse system is not available at the time the Owner completes the house, then the owner shall install a well and pump irrigation system. Once reuse water is available the owner shall, within 30 days of notification by the Association or the City, convert to such system. The cost of such connection shall be the sole responsibility of the Owner.

The Association shall have the authority to establish reasonable rules and regulations with regard to the use of the reuse system.

7.28 Artificial Vegetation. No artificial vegetation shall be permitted on the exterior of any building on RESIDENTIAL PROPERTY.

7.29 Owner Tie-In To The Surface Water Management System. All OWNERS shall properly grade their lots such that storm water run-off be properly directed to the existing SURFACE WATER MANAGEMENT SYSTEM.

7.30 Precedence Over Less Stringent GOVERNMENTAL REGULATIONS. In those instances where the covenants, conditions, and restrictions set forth in this DECLARATION set or establish minimum standards in excess of GOVERNMENTAL REGULATIONS including, without limitation, building and zoning regulations, the covenants, conditions, and restrictions set forth in this DECLARATION shall take precedence and prevail over less stringent GOVERNMENTAL REGULATIONS.

7.31 Waivers, Exceptions, and Variances by DEVELOPER. Notwithstanding anything to the contrary set forth in or which may otherwise be implied from the terms and provisions of this DECLARATION, the DEVELOPER specifically reserves exclusively unto itself, for the duration hereinafter specified, the right and privilege (but DEVELOPER shall have absolutely no obligation), upon a showing of good cause therefor, to:

a. grant waivers with respect to any existing or proposed future deviation from, or violation or infraction of, the building restrictions specified in Article VII of this DECLARATION where, in the reasonably exercised good faith judgment and discretion of the DEVELOPER, the DEVELOPER shall determine or decide that such deviation, violation, or infraction is de minimis, minor, or insignificant, and

b. grant waivers of, exceptions to, or variances from, the building restrictions specified in Article VII of this DECLARATION where special conditions and circumstances exist which are peculiar to a particular LOT and not generally applicable to other LOTS (e.g., because of its unusual size, configuration, or location) or where a literal interpretation or application of any such building restriction to a particular LOT would be inappropriate, inequitable, or otherwise work or result in a hardship or deny such LOT and the OWNER thereof specific rights which are generally enjoyed by other LOTS and OWNERS; it being expressly provided, however, that, in all cases, the DEVELOPER, in its exercise of such right and privilege shall, in its reasonably exercised and good faith judgment and discretion determine or decide that its grant of any such waiver, exception, or variance shall not result in, represent, be, or constitute a significant deviation of or derogation from:
1. the uniform plan of development for VENTANA, or
2. the high architectural, ecological, environmental, and aesthetic standards otherwise established for VENTANA, or

3. the objects and purposes of this DECLARATION as hereinabove enumerated in Article II of this DECLARATION.

The DEVELOPER shall have such right and privilege to grant waivers, exceptions and variances, as aforesaid, until either:

a. the expiration of a period of fifteen (15) years from the date of the recordation of this DECLARATION among the Public Records of the COUNTY, or

b. the sale by the DEVELOPER or its successors or assigns in the ordinary course of business, and not in bulk, of one-hundred percent (100%) of all LOTS, specifically including additional property, in VENTANA, whichever shall first occur. Following the occurrence of the first of the foregoing events to occur, the right and privilege of the DEVELOPER to grant waivers, exceptions, and variances, as aforesaid, shall be delegated and assigned by the DEVELOPER to and thereafter vest in the ARCHITECTURAL REVIEW BOARD.

To the extent that any such waiver, exception, or variance is granted in a particular instance or with respect to any particular LOT or IMPROVEMENT pursuant to the provisions of this Section as aforesaid, the same shall not be deemed to be a precedent for the granting of such or any similar waiver, exception, or variance in any other particular instance of any other particular LOT or IMPROVEMENT.

ARTICLE VIII

COMMON PROPERTY

8.1 Conveyance by DEVELOPER. On or before the date of the last conveyance of all LOTS within the SUBJECT PROPERTY by the DEVELOPER to any third party owner, the COMMON PROPERTY hereinabove described in Section 5.2 shall be conveyed (TURNOVER) by the DEVELOPER to the ASSOCIATION free and clear of any and all liens, encumbrances, exceptions, or qualifications whatsoever, save and except only for:

a. real property taxes for the year of such conveyance, if any
b. title exceptions of records, if any,
c. the covenants, restrictions, and easements set forth in this DECLARATION and any amendments hereto, and
d. any special covenants, restrictions, and easements which may be contained in the instrument of conveyance pursuant to which title to such COMMON PROPERTY is conveyed by the DEVELOPER to the ASSOCIATION.

8.2 Maintenance Prior to Conveyance. Notwithstanding anything herein set forth to the contrary, however, the ASSOCIATION, subsequent to the conveyance by the DEVELOPER as set forth in Section 8.1 shall assume all common maintenance, COMMON EXPENSES, and liabilities associated with the use and ownership of any such COMMON PROPERTY, as set forth in this DECLARATION, or for all COMMON PROPERTY as set forth by the PLAT within the SUBJECT PROPERTY.

8.3 ADDITIONAL PROPERTY. In addition to the COMMON PROPERTY described in Section 5.2 of this DECLARATION, the DEVELOPER, in its sole discretion, shall have the right to convey to the ASSOCIATION, and the ASSOCIATION shall be unconditionally obligated to accept, any other portion of the SUBJECT PROPERTY owned by the DEVELOPER so long as such property is used or useful for any of the objects and purposes for which the ASSOCIATION has been created and established.

Should the DEVELOPER so convey any such additional property, the same shall thereupon become and thereafter continue to be COMMON PROPERTY which shall be subject to all covenants, restrictions, and easements set forth in this DECLARATION with respect to all other COMMON PROPERTY.

8.4 Restriction on Use. Subsequent to the conveyance of any COMMON PROPERTY to the ASSOCIATION by the DEVELOPER, the COMMON PROPERTY shall, subject only to the easements specified in Article XI of this DECLARATION, and be developed, improved, maintained, used, and enjoyed solely for the purposes specified in this DECLARATION and in the instrument of conveyance and for the common health, safety, welfare, and passive recreation of the residents of and visitors to VENTANA and for no other purpose or purposes whatsoever. No other use shall be made of the COMMON PROPERTY without the prior written consent of the DEVELOPER or ASSOCIATION.

8.5 Restriction on Conveyance. Subject only to the provisions of the ARTICLES, subsequent to the conveyance of any COMMON PROPERTY to the ASSOCIATION by the DEVELOPER, the COMMON PROPERTY may not be subdivided, partitioned, sold, transferred, conveyed, alienated, leased, mortgaged, or hypothecated by the ASSOCIATION in any manner whatsoever without the prior written consent of the DEVELOPER. Neither shall the COMMON PROPERTY be abandoned by the ASSOCIATION without the prior written consent of the DEVELOPER.

Upon a violation of this provision of this Section, title to any COMMON PROPERTY so subdivided, partitioned, sold, transferred, conveyed, alienated, leased, mortgaged, or hypothecated by the ASSOCIATION without the prior written consent of the DEVELOPER shall automatically revert to and become re-vested in the DEVELOPER upon the filing by the DEVELOPER among the Public Records of the COUNTY of an appropriate declaration of its intention to accept such reversion.

8.6 Encumbrance as Security. Notwithstanding the provisions of Section 8.5 above (upon the conveyance by DEVELOPER), the ASSOCIATION shall have the right, in accordance with this DECLARATION and its ARTICLES and BY-LAWS, to:

a. borrow money for the purpose of improving, replacing, restoring, or expanding the COMMON PROPERTY and to mortgage or otherwise encumber the COMMON PROPERTY solely as security for any such loan or loans, and

b. engage in purchase money financing with respect to personal property and equipment purchased by the ASSOCIATION in connection with the performance of its duties and obligations pursuant to this DECLARATION and to secure the payment of the purchase price therefor by the encumbrance of the personal property and equipment so purchased.

It being expressly provided, however, that any such mortgage or other encumbrance shall be subject in all respects to the terms and provisions of this DECLARATION and any amendments hereto and, provided further, that in no event shall the ASSOCIATION be entitled or empowered to mortgage or otherwise encumber the COMMON STREETS AND ROADS, the SURFACE WATER MANAGEMENT SYSTEM, or any other easements granted to it.

8.7 Use by OWNERS. Subject to any reasonable RULES AND REGULATIONS adopted and promulgated by the ASSOCIATION pursuant to and in accordance with this DECLARATION, and subject always to any and all easements granted by or reserved to the DEVELOPER in this DECLARATION, each and every OWNER shall have the non-exclusive right, privilege, and easement to use and enjoy the COMMON PROPERTY for the purpose or purposes for which the same is conveyed, designated, and intended by the DEVELOPER and maintained by the ASSOCIATION, and such non-exclusive right, privilege, and easement shall be an appurtenance to and shall pass with the title to each and every LOT within the SUBJECT PROPERTY; subject, however, at all times to the covenants, restrictions, and easements set forth in this DECLARATION.

a. Notwithstanding anything herein set forth to the contrary, however, the ASSOCIATION shall have no right, power, or authority hereunder to suspend or otherwise unreasonably interfere with any OWNER'S right, privilege, and easement to use the COMMON STREETS AND ROADS for ingress and egress to and from such OWNER's LOT; it being expressly provided, however, that temporary interference for purposes of appropriate identification at and clearance through any VENTANA security gate and guards shall not be

deemed to be an unreasonable interference with such right, privilege, and easement of and for ingress and egress, or in the enforcement of this DECLARATION.

b. The right of the ASSOCIATION to limit the number of guests of OWNERS who may use the COMMON PROPERTY from time to time and to limit the use of the COMMON PROPERTY by PERSONS not in possession of a LOT at a particular time, but owning a sufficient interest therein for so as to be classified as an OWNER and member of the ASSOCIATION.

c. The right of the ASSOCIATION to establish, promulgate, and enforce reasonable RULES AND REGULATIONS pertaining to and with respect to the use of the COMMON PROPERTY pursuant to Section 8.11 of this DECLARATION.

d. The right of the ASSOCIATION to take such steps as are reasonably necessary to maintain, preserve, and protect the COMMON PROPERTY.

e. The right of the ASSOCIATION to have unlimited access to the common streets and roads of VENTANA, subject to all provisions herein.

8.8 Delegation of Use. Any OWNER shall be entitled to and may delegate his right, privilege, and easement to use and enjoy the COMMON PROPERTY to the members of his family, his tenants, guests, or other invitee's; subject, at all times, however, to such reasonable RULES AND REGULATIONS governing such delegation as may be established, promulgated, and enforced by the ASSOCIATION pursuant to Section 8.11 of this DECLARATION.

In the event and for so long as an OWNER shall delegate such right, privilege, and easement for use and enjoyment to tenants who reside on his LOT, the ASSOCIATION shall be entitled, after the adoption and promulgation of appropriate RULES AND REGULATIONS with respect thereto, to limit or restrict the right of the OWNER making such delegation to a tenant in the simultaneous exercise of such right, privilege, and easement of and for the use and enjoyment of the COMMON PROPERTY.

8.9 Waiver of Use. No OWNER may exempt himself from personal liability for or exempt his LOT from any ASSESSMENTS duly levied by the ASSOCIATION, or release the LOT owned by him from the liens, charges, encumbrances, and other provisions of this DECLARATION, or the RULES AND REGULATIONS of the ASSOCIATION by:

a. the voluntary waiver of the right, privilege, and easement for the use and enjoyment of the COMMON PROPERTY,

b. the abandonment of his LOT, or

c. by conduct which results in the ASSOCIATION's suspension of such right, privilege, and easement as provided in Section 8.7 of this DECLARATION.

8.10 Administration and Care. The administration, regulation, care, maintenance, repair, restoration, replacement, preservation, and protection of the COMMON PROPERTY shall be the responsibility of the ASSOCIATION as more particularly provided in Article VIII of this DECLARATION and in the ARTICLES of the ASSOCIATION.

8.11 Common Property Warranty: There shall be no additional warranty either inferred no implied on any common property improvement than that typical 1 year limited warranty provided to the Developer by the General Contractor(s). On all common property improvements, all warranties shall begin from the date when the improvement is completed, as is specified in the Contractors Limited Warranty. The association shall assume all maintenance responsibilities required to keep any warranty in force.

8.12 RULES AND REGULATIONS. In addition to the foregoing restrictions on the use of SUBJECT PROPERTY, and subsequent to turnover of COMMON PROPERTY by DEVELOPER, the ASSOCIATION shall have the right, power, and authority, to promulgate and impose reasonable RULES AND REGULATIONS governing and/or restricting the use of COMMON PROPERTY and to thereafter change, modify, alter, amend, rescind, and augment any of the same; provided, however, that no RULES AND REGULATIONS so promulgated shall be in conflict with the provisions of this DECLARATION.

Any such RULES AND REGULATIONS so promulgated by the ASSOCIATION shall be applicable to and binding upon all COMMON PROPERTY and all OWNERS and their successors and assigns, as well as upon all members of their families, their tenants, guests, and other invitee's, and upon all other parties claiming by, through, or under such OWNERS.

8.13 Exculpation from Liability and Responsibility. Presently, the SURFACE WATER MANAGEMENT SYSTEM for VENTANA is private; not public. They have not been dedicated to or accepted or maintained by any governmental authority, including the COUNTY or CITY. As hereinabove provided in Article XI, it is contemplated that easements for the SURFACE WATER MANAGEMENT SYSTEM for VENTANA have heretofore been or shall hereafter be granted and conveyed by the DEVELOPER to the ASSOCIATION.

Following such conveyance (turnover) as set forth in Section 8.1, the ASSOCIATION shall, subject to the covenants, restrictions, and easements of this DECLARATION, have sole and exclusive jurisdiction over and responsibility for the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, improvements, preservation, and protection of the SURFACE WATER MANAGEMENT SYSTEM within SUBJECT PROPERTY. Accordingly, each OWNER, by acceptance of a deed or other conveyance to his LOT shall be deemed to have agreed that neither the DEVELOPER, the CITY, nor any other governmental agency shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the SURFACE WATER MANAGEMENT SYSTEM for SUBJECT PROPERTY and each such OWNER shall be deemed to have further agreed to look solely and exclusively to the ASSOCIATION with respect to any such liability or responsibility.

8.14 Payment of ASSESSMENTS Not Substitute for Taxes. The payment of ASSESSMENTS from time to time established, made, levied, imposed, and collected by the ASSOCIATION pursuant to this DECLARATION, including, without limitation, those for the maintenance of the COMMON PROPERTY, including those ASSESSMENTS for maintenance of the COMMON PROPERTY, the SURFACE WATER MANAGEMENT SYSTEM, and the common street lighting system shall not be deemed to be a substitute for or otherwise relieve any OWNER of the SUBJECT PROPERTY from paying any other taxes, fees, charges, or assessments imposed by the CITY, COUNTY, or other governmental authority.

8.15 Dedication of COMMON PROPERTY. Notwithstanding the provisions of this ARTICLE VIII any or all of the COMMON PROPERTY may be dedicated (1) by the DEVELOPER, prior to turnover, or (2) by the OWNERS of all lots contained within this subdivision, or (3) by the ASSOCIATION, after turnover, to the appropriate governmental agency(s) having jurisdiction over the specific COMMON PROPERTY(S). Upon such dedication, the provisions contained in this ARTICLE VIII relating to use, maintenance, restrictions, administration, and ASSESSMENTS will be amended since said IMPROVEMENTS will thereafter be public and not privately owned as provided in this ARTICLE VIII.

8.16 Maintenance of the Surface Water Management System. The ASSOCIATION shall be responsible for the maintenance, operation and repair of the SURFACE WATER MANAGEMENT SYSTEM. Maintenance of the SURFACE WATER STORMWATER MANAGEMENT SYSTEM(S) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface or stormwater management capabilities as permitted by the St. Johns River Water Management District. The ASSOCIATION shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

The storm water system is designed to have submerged pipes where the interconnecting stormwater pipes are designed to have standing water most of the time.

ARTICLE IX

ASSESSMENTS

9.1 ASSESSMENTS for COMMON EXPENSES. In order to provide for and assure the availability of the funds necessary to pay COMMON EXPENSES associated with the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, preservation, and protection of the COMMON PROPERTY and such additional COMMON EXPENSES as may be associated with and otherwise necessary for the ASSOCIATION to perform its duties and obligations pursuant to and in accordance with this DECLARATION and its ARTICLES and BY-LAWS and to otherwise carry out and accomplish the objects and purposes for which the ASSOCIATION has been created and established, each LOT and each OWNER of such LOT shall, by the acceptance of a deed or other conveyance of title to his LOT, whether or not it shall be expressly stated in any such deed or other conveyance, be obligated for and be deemed to have covenanted and agreed to pay to the ASSOCIATION all ASSESSMENTS, whether Regular ASSESSMENTS, Capital Expenditure ASSESSMENTS, Special ASSESSMENTS, or Individual LOT ASSESSMENTS, established, levied, made, and imposed by the ASSOCIATION pursuant to this DECLARATION.

All such ASSESSMENTS shall be established, levied, made, imposed, enforced, and collected pursuant to the provisions of this DECLARATION and the ARTICLES, BY-LAWS, and RULES AND REGULATIONS of the ASSOCIATION.

9.2 COMMON EXPENSES. The COMMON EXPENSES for which ASSESSMENTS shall be established, made, levied, imposed, enforced, and collected by the ASSOCIATION pursuant to this DECLARATION shall be all costs and expenses incurred by the ASSOCIATION in the discharge and performance of the duties and obligations of the ASSOCIATION pursuant to this DECLARATION and the ARTICLES and BY-LAWS of the ASSOCIATION and in furtherance of the objects and purposes for which the ASSOCIATION has been formed, created, and established, including, without limitation, the following costs and expenses, to wit:

a. Those incurred in the management and administration of the business and affairs of the ASSOCIATION, including, but not limited to, the salaries of any employees of the ASSOCIATION and the fees or other compensation paid to consultants to the ASSOCIATION, including, without limitation, architects, engineers, accountants, and attorneys.

b. Those incurred in connection with the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation, and protection of the COMMON PROPERTY, including, without limitation, the SURFACE WATER MANAGEMENT SYSTEM, and any recreational facilities.

c. Reasonable reserves for repairs to and replacement of the COMMON PROPERTY, including, without limitation, the SURFACE WATER MANAGEMENT SYSTEM, and any recreational facilities.

d. Those incurred for utility services to the ASSOCIATION and the COMMON PROPERTY, including, without limitation, electric power for the common street lighting, central electronic security, central cable television, irrigation systems, gas, and phone.

e. Those incurred for garbage and trash collection, removal, and disposal services provided to the ASSOCIATION and the COMMON PROPERTY.

f. Those incurred for COMMON PROPERTY and easements, landscape maintenance and replacement, including irrigation.

g. Those incurred as premiums on or for any insurance obtained by the ASSOCIATION, including without limitation, fire, casualty, liability, and other insurance covering the COMMON PROPERTY and health, medical, workman's compensation and other insurance covering employees of the ASSOCIATION, if any.

h. All taxes paid by the ASSOCIATION, including, without limitation, ad valorem real and personal property taxes on the COMMON PROPERTY, if any.

i. Those incurred in connection with any payments by the ASSOCIATION for the discharge of any lien or encumbrance upon the COMMON PROPERTY or any portion thereof.

j. Those incurred by the ARCHITECTURAL REVIEW BOARD in the performance of its duties and obligations pursuant to this DECLARATION, including, without limitation, the fees of or other compensation paid to consultants to the ARCHITECTURAL REVIEW BOARD, including architects, landscape architects, engineers, and attorneys.

k. Those incurred from time to time by any committees of the ASSOCIATION which are reasonably connected to the discharge of the duties and obligations of the ASSOCIATION pursuant to this DECLARATION.

l. Those incurred in connection with the acquisition and repayment of any loans made to the ASSOCIATION, including the principal of, interest on, and closing costs and other charges associated with any such loan or loans and/or purchase money financing engaged in by the ASSOCIATION.

m. Those incurred in connection with the enforcement of the provisions of this DECLARATION, including the fees, costs, and expenses of any attorney retained or employed by the ASSOCIATION for that purpose.

n. Those incurred in connection with any other Declaration of Covenants and Restrictions, in which the ASSOCIATION as set forth in this DECLARATION is a member.

9.3 Use of ASSESSMENTS. The funds received and derived from any and all ASSESSMENTS made by the ASSOCIATION shall be used exclusively for the performance of the duties and obligations of the ASSOCIATION pursuant to this DECLARATION, the payment of COMMON EXPENSES, the improvement of the COMMON PROPERTY, the operation and administration of the ASSOCIATION, and the promotion of the health, safety, and general welfare of the residents of VENTANA and for the benefit of the VENTANA community generally.

9.4 Prohibited Use of ASSESSMENTS. Notwithstanding anything to the contrary set forth in or otherwise implied from the terms and provisions of this DECLARATION generally, or Section 9.1 of this DECLARATION in particular, the ASSOCIATION shall not have the power or authority to use, make, levy, impose, enforce, and collect, and is hereby expressly prohibited from using, making, levying, imposing, enforcing, and collecting, any ASSESSMENT for the purpose, in whole or part, of financing the prosecution of or otherwise supporting any actual or contemplated litigation, including any and all appeals related thereto, against the DEVELOPER with respect to matters related to VENTANA or its development or operation.

If, notwithstanding the foregoing prohibition, the ASSOCIATION shall attempt to use, make, levy, impose, enforce, and collect any ASSESSMENT for such prohibited purpose or use, the DEVELOPER and any LOT or other property owned by DEVELOPER within VENTANA shall be and are hereby exempted from any such ASSESSMENT or attempted ASSESSMENT.

9.5 Lien for ASSESSMENT. All ASSESSMENTS established, made, levied, and imposed by the ASSOCIATION pursuant to this DECLARATION, together with interest, late charges, costs, and expenses, including reasonable attorneys' fees associated with the collection thereof (whether suit be brought or not), shall be a charge and a continuing lien upon each LOT against or with respect to which any such ASSESSMENT is made or levied.

9.6 Personal Liability for ASSESSMENTS. In addition to the foregoing lien for such ASSESSMENTS, each such ASSESSMENT, together with interest, late charges, costs, and expenses, including attorneys' fees associated with the collection thereof (whether suit be brought or not), as aforesaid, shall also be the personal obligation and liability of the OWNER of the LOT against or with respect to which any such ASSESSMENT is made, levied, or imposed at the time such ASSESSMENT is so made, levied, or imposed.

Such personal liability for ASSESSMENTS made, levied, or imposed pursuant to this DECLARATION prior to the sale, transfer, or other conveyance of a particular LOT shall not, by virtue of any such sale, transfer, or other conveyance, pass to such OWNER's successor or successors in title unless such personal liability of the OWNER shall be expressly assumed as the personal obligation of such successor or successors in title; provided, however, that no such assumption of personal liability by such successor or successors in title shall relieve any OWNER otherwise personally liable for payment of ASSESSMENTS from the personal liability and obligation for the payment of the same.

9.7 Types of ASSESSMENTS. The ASSOCIATION is hereby authorized and empowered to establish, make, levy, impose, enforce, and collect those Regular ASSESSMENTS, Capital Expenditure ASSESSMENTS, Special ASSESSMENTS, and Individual LOT ASSESSMENTS for which provision is made in this DECLARATION.

9.8 Regular ASSESSMENTS. The ASSOCIATION shall be and is hereby authorized, empowered, and directed to establish, levy, make, impose, enforce, and collect during each calendar year a Regular ASSESSMENT for COMMON EXPENSES to be incurred by the ASSOCIATION during such calendar year in the performance of its duties and obligations pursuant to this DECLARATION. Such Regular ASSESSMENTS shall be established, made, levied, imposed, enforced, collected, and otherwise governed by the following provisions, to wit:

9.8.1 Initial Regular ASSESSMENT. The initial or first Regular ASSESSMENT for a full or partial calendar year shall be in an amount determined by the DEVELOPER and the association shall be notified in writing of the due date and amount.

9.8.2 Rate of Regular ASSESSMENTS. Subsequent to the initial calendar year, the amount of the Regular ASSESSMENT for each calendar year shall be established and determined by the BOARD of the ASSOCIATION not later than thirty (30) days prior to the beginning of each calendar year. The BOARD shall establish the Regular ASSESSMENT for each calendar year based upon a pro forma operating statement or estimated budget for such calendar year which, in turn, shall be based, among other things, upon an estimate of the total COMMON EXPENSES likely to be incurred during such calendar year, taking into account the previous operating history of any surplus funds (not including reserves) held by the ASSOCIATION, and the establishment of reasonable reserves for the maintenance and replacement of and repairs to the COMMON PROPERTY, including the SURFACE WATER MANAGEMENT SYSTEM.

The BOARD of the ASSOCIATION shall, at least fifteen (15) days prior to the establishment of the Regular ASSESSMENT for the next succeeding calendar year, provide to each OWNER a copy of the pro forma operating statement or estimated budget to be used by the ASSOCIATION in the establishment of the Regular ASSESSMENT for the next succeeding calendar year. The total amount of the COMMON EXPENSES so estimated shall be divided by the total number of LOTS within the SUBJECT PROPERTY in order to determine the amount of the Regular ASSESSMENT for each LOT for such calendar year; it being expressly provided, however, that:

a. In the case of the common ownership of more than one platted LOT (i.e., one LOT and a portion of another LOT or two or more LOTS) and their combination, upon the completion of a single family home on a single unified home site as otherwise provided in this DECLARATION, the same shall be deemed, for ASSESSMENT and voting purposes, to be a single LOT, and

b. Such classification must be deemed appropriate by the ASSOCIATION in writing within thirty (30) days upon request by the OWNER. Upon dispute of classification, the ARCHITECTURAL REVIEW BOARD shall make a classification. Re-classification can only occur prior to the adoption by the BOARD of the new calendar year budget, and shall be binding on the succeeding year's ASSESSMENTS.

9.8.3 Notice of Regular ASSESSMENTS. Not later than fifteen (15) days prior to the beginning of each calendar year, the ASSOCIATION shall provide written notice to each OWNER of the amount of the Regular ASSESSMENT established, made, levied, and imposed for the next succeeding calendar year and the dates upon which installments for the same shall become due and payable.

9.8.4 Commencement of Regular ASSESSMENTS. Unless otherwise determined by the BOARD of the ASSOCIATION, regular ASSESSMENTS shall commence as to all LOTS upon transfer of title from DEVELOPER to the first owner of each lot, but not prior to the substantial completion of the common streets and roads. Upon the substantial completion of the common streets and roads, the BOARD shall notify each OWNER in writing and the regular ASSESSMENTS shall begin immediately upon the date of such notice.

9.8.5 Insufficient Regular ASSESSMENTS. In the event that the ASSOCIATION shall determine during any calendar year that the Regular ASSESSMENT established for such calendar year is or will become inadequate or insufficient to meet all COMMON EXPENSES for such calendar year, for whatever reason, the ASSOCIATION, upon approval by the BOARD, shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular ASSESSMENT for such fiscal

year, issue a supplemental estimate of COMMON EXPENSES to all members of the ASSOCIATION, and within thirty (30) days thereafter establish, make, levy, impose, enforce and collect a supplemental or revised Regular ASSESSMENT for such calendar year.

9.8.6 Limitation on Increases. After the DEVELOPER no longer has the right to appoint a majority of the DIRECTORS as set forth in Section 7.7 of the ARTICLES, the ASSOCIATION shall not establish, make, levy, impose, enforce, and collect any Regular ASSESSMENT which is increased over the amount of the Regular ASSESSMENT for the immediately preceding calendar year by more than fifteen percent (15%) without the prior approval of a majority of the members who are voting in person or by proxy at a meeting of the ASSOCIATION duly called for such purpose and of which written notice specifying the amount of a proposed increase in the Regular ASSESSMENT for the prior fiscal year is sent to each member of the ASSOCIATION at least thirty (30) days in advance of such meeting.

Notwithstanding anything herein set forth to the contrary, however, should the ASSOCIATION deem it necessary to establish, make, levy, impose, or enforce bill collection, any Regular ASSESSMENT which is an increase over the limitations as set forth in this Section due to the addition of COMMON PROPERTY or personal property or an increase in the SUBJECT PROPERTY. Said increase may be imposed by the ASSOCIATION with the approval of the BOARD only.

9.8.7 Payment of ASSESSMENTS. Regular ASSESSMENTS shall be due and payable in advance in monthly or quarterly or semi-annual installments as determined by the BOARD of the ASSOCIATION, in its reasonable discretion. Such installments shall be due and payable without any further notice other than that notice specified in Section 9.8.3 above.

9.8.8 DEVELOPER Option. Notwithstanding anything set forth in this DECLARATION to the contrary, until such time as DEVELOPER no longer owns any lots, the DEVELOPER shall have the option of either:

a. paying the Regular ASSESSMENT with respect to each LOT owned by the DEVELOPER from time to time, the same as any other OWNER except for reserves, if any, or

b. paying the difference between the actual COMMON EXPENSES, excluding reserves and any capital or improvement expense, incurred by the ASSOCIATION for a particular calendar year over the total amount of Regular ASSESSMENTS levied by the ASSOCIATION against all other LOTS (i.e., LOTS not owned by DEVELOPER) and OWNERS during such year.

9.8.9 Reserves. After the initial Regular ASSESSMENT, the Regular ASSESSMENTS shall include reasonable amounts as determined by the BOARD of the ASSOCIATION to be collected as reserves against and for the future periodic maintenance, repair, or replacement of all or any portion or portions of the COMMON PROPERTY, including, without limitation, the COMMON STREETS AND ROADS, the SURFACE WATER MANAGEMENT SYSTEM, common recreational facilities, and common area landscaping, or for such other purpose or purposes as shall be determined by the BOARD of the ASSOCIATION, in its reasonable discretion.

Such portion of Regular ASSESSMENTS representing amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the ASSOCIATION in a separate interest-bearing bank account to be held in trust by the ASSOCIATION for the purpose or purposes for which the same are collected and are to be segregated from and not commingled with any other funds of the ASSOCIATION.

9.9 Capital Expenditure ASSESSMENTS. In addition to the other ASSESSMENTS for which provision is made in this DECLARATION, the ASSOCIATION shall be and is hereby authorized and empowered to establish, make, levy, impose, enforce, and collect from time to time Capital Expenditure ASSESSMENTS for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction or the unexpected repair or replacement of any capital improvement to or upon the COMMON PROPERTY or the cost of the initial purchase or any subsequent unexpected repair or replacement of any fixtures, equipment, or personal property purchased, repaired, or replaced by the ASSOCIATION in furtherance of the discharge of its duties and obligations pursuant to this DECLARATION.

Provided, however, that any such Capital Expenditure ASSESSMENT shall have the prior approval of two-thirds (2/3) of the members who are voting in person or by proxy at a meeting of the ASSOCIATION duly called for such purpose and of which written notice specifying the nature of the proposed capital expenditure and the amount of the proposed Capital Expenditure ASSESSMENT is sent to all members of the ASSOCIATION at least thirty (30) days in advance of such meeting. All sums collected as Capital Expenditure ASSESSMENTS shall be used only for the capital improvements or purchases for or with respect to which such Capital Expenditure ASSESSMENT has been approved and such sums shall be deposited by the ASSOCIATION in a separate interest-bearing bank account, not commingled with any other funds of the ASSOCIATION, to be held in trust by the ASSOCIATION for such purposes until said capital expenditure is complete.

9.10 Special ASSESSMENTS. In addition to other ASSESSMENTS for which provision is made in this DECLARATION, the ASSOCIATION shall be and is hereby authorized and empowered to establish, make, levy, impose, enforce, and collect from time to time Special ASSESSMENTS for any purpose directly related to the discharge of its duties and obligations pursuant to this DECLARATION, provided, however, that any such Special ASSESSMENT shall have the prior approval of two-thirds (2/3) of the members of the ASSOCIATION who are voting in person or by proxy at a meeting of the ASSOCIATION duly called for such purpose and of which written notice specifying the nature and amount of the proposed Special ASSESSMENT is sent to all members of the ASSOCIATION at least thirty (30) days in advance of such meeting. All sums collected as Special ASSESSMENTS shall be used only for the purpose for which such Special ASSESSMENT is established, made, levied, imposed, enforced, and collected, and shall be deposited in a separate interest-bearing bank account, not commingled with any other funds of the ASSOCIATION, and held in trust by the ASSOCIATION for such purpose.

Special Group ASSESSMENTS. In addition to other ASSESSMENTS for which provision is made in this DECLARATION, the ASSOCIATION shall be, and is hereby, empowered to establish, make, levy, impose, enforce, and collect, from time to time, special group ASSESSMENTS for any purpose directly related to the discharge of the ASSOCIATION's duties and obligations pursuant to this DECLARATION provided, however, that any such special group ASSESSMENT shall have the prior approval of two-thirds (2/3) of those members who are, as determined by the BOARD, the special group being assessed, and such special group shall vote in person or by proxy at a meeting of such special group members duly called for such purpose.

The BOARD shall determine such special group and assess such special group ASSESSMENT only to those lots which, in whole or in part, are materially and positively benefitted, as determined by the BOARD, by the planned results and purpose of the special group ASSESSMENT, and shall assess those lots equally based on the total number of lots determined to be such special group.

9.11 Individual LOT ASSESSMENTS. In addition to any other ASSESSMENTS for which provisions are made in this DECLARATION, the ASSOCIATION shall be and hereby is authorized and empowered to establish, make, levy, impose, enforce, and collect against and from a particular LOT and the OWNER of such LOT an Individual LOT ASSESSMENT for:

a. costs and expenses incurred by the ASSOCIATION in bringing a particular OWNER or his particular LOT into compliance with the provisions of this DECLARATION, including any action taken, fines imposed, or cost or expense incurred by the ASSOCIATION to cure and eliminate any violation of or non-compliance with the provisions of this DECLARATION, following the failure of such OWNER to cure or remedy such violation or non-compliance;
b. costs and expenses, including reasonable attorneys' fees, whether or not suit be brought, incurred by the ASSOCIATION in the enforcement of the provisions of this DECLARATION against a particular LOT or the OWNER of such LOT;
c. costs and expenses incurred by the ASSOCIATION in furnishing or providing labor, services, and materials which benefit a particular LOT or the OWNER of a particular LOT provided that such labor, services, or materials can be accepted or rejected by such particular OWNER in advance of the ASSOCIATION's furnishing or providing the same such that upon such OWNER's acceptance of any such labor, services, or materials such OWNER shall be deemed to have agreed that the costs and expenses associated therewith shall be made, levied, imposed, collected, and enforced as an Individual LOT ASSESSMENT against such particular OWNER and his particular LOT; and
d. reasonable overhead expenses of the ASSOCIATION associated with any Individual LOT ASSESSMENT, established, made, levied, imposed, collected, and enforced pursuant to this Section in an amount not to

exceed fifteen percent (15%) of the actual costs and expenses incurred by the ASSOCIATION for any Individual LOT ASSESSMENT specified in Subparagraphs a, b, or c of this Section.

9.12 Quorum for Action Authorized Under Sections 9.8.6, 9.9, and 9.10. The quorum required at any meeting of the ASSOCIATION for any action authorized pursuant to Sections 9.8.6, 9.9, and 9.10 of this DECLARATION shall be as follows:

At the first meeting called for the purpose of taking any such action, the presence at such meeting, in person or by proxy, of members of the ASSOCIATION entitled to cast at least fifty-one percent (51%) of all the votes of the members shall constitute a quorum. If the required quorum is not forthcoming at such first meeting, a subsequent meeting may be called for the same purpose, subject to the notice requirements set forth in said Section 9.8.6, 9.9, and 9.10, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the first meeting; provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.13 Uniformity of ASSESSMENTS. Except for Individual LOT ASSESSMENTS for which provision is made in Section 9.11 of this DECLARATION, all ASSESSMENTS shall be uniformly fixed at an equal amount per LOT and shall be collected on a uniform basis from the OWNER of each LOT.

9.14 Exempt Property. Notwithstanding anything to the contrary set forth in or otherwise implied from the terms and provisions of this DECLARATION, the COMMON PROPERTY shall be and is hereby made exempt from all ASSESSMENTS of any kind, nature, type, or character whatsoever. Additionally, any property, other than a LOT, which is owned by or dedicated to and accepted by any governmental body or agency, shall be exempt from any ASSESSMENTS. All property otherwise exempted from taxation by the laws of the State of Florida or the United States of America shall also be exempt from all ASSESSMENTS; but only upon the same terms, subject to the same conditions, and only to the extent of any such exemption from taxation.

9.15 Subordination of ASSESSMENT Lien. The lien of and for all ASSESSMENTS provided for in this DECLARATION shall be and is hereby made junior, inferior, and subordinate in all respects to the lien of any bona fide first mortgage held by an INSTITUTIONAL LENDER or a purchase money mortgage held by the DEVELOPER upon a particular LOT.

The sale, transfer, or conveyance of title to a particular LOT shall not affect the effectiveness, viability, or priority of any ASSESSMENT lien or the personal liability of the OWNER of such LOT for the payment of any ASSESSMENT; provided, however, that the sale, transfer, or conveyance of title to a particular LOT pursuant to judicial proceedings in foreclosure of a bona fide first mortgage on such LOT held by an INSTITUTIONAL LENDER or the DEVELOPER shall extinguish the lien of such ASSESSMENTS (but not the personal liability of the OWNER of such LOT) as to payments on account thereof which became due and payable prior to such foreclosure sale, transfer, or conveyance. However, no such foreclosure sale, transfer, or conveyance shall relieve such LOT or the OWNER of that LOT from the personal obligation or liability for the payment of any ASSESSMENTS accruing or becoming due and payable subsequent to such sale, transfer, or conveyance from the lien thereof.

9.16 Certificate of ASSESSMENTS Due. The ASSOCIATION shall, upon the request of an OWNER or any other interested party, furnish a certificate executed by its President, Secretary, Treasurer or any other officer thereunto duly authorized, setting forth whether ASSESSMENTS payable with respect to a particular LOT have been paid, the amount of the delinquency, if any, and the amounts of any outstanding and unpaid interest, late charges, penalties, and costs of collection, including attorney's fees and court costs, if any, associated with any such delinquent ASSESSMENTS.

A properly executed certificate of the ASSOCIATION as to the status of ASSESSMENTS, as aforesaid, shall be binding upon the ASSOCIATION as conclusive evidence of the status of the payment of any ASSESSMENT therein stated to have been paid or to be delinquent as of the date of the issuance of such certificate. The ASSOCIATION shall be entitled to charge and collect a reasonable fee not to exceed ten percent (10%) of the regular ASSESSMENT for and as a condition precedent to the issuance of any such certificate.

9.17 No Defenses or Offsets. All ASSESSMENTS shall be payable in the amounts and at the times specified in any Notice of ASSESSMENT and no defenses or offsets against the payment of such amount shall be permitted for any reason whatsoever, including, without limitation, any claim by an OWNER that:

a. the ASSOCIATION is not property exercising its rights and powers or performing or discharging its duties and obligations as provided in this DECLARATION or its BY-LAWS;

b. an OWNER and his family or guests has made or elected to make no use of the COMMON PROPERTY;

c. the OWNER and his family or guests have otherwise waived or elected to waive their membership in the ASSOCIATION; or

d. the ASSOCIATION has suspended the right, privilege, and easement of such OWNER and his family to use the COMMON PROPERTY as provided in Article VIII of this DECLARATION.

9.18 Waiver of Homestead or other Exemptions. Each OWNER, by the acceptance of a deed or other conveyance to his LOT, shall, to the extend permitted by applicable law, be deemed to have waived, to the extent of any lien for ASSESSMENTS at any time imposed upon such LOT pursuant to this DECLARATION, the benefit of any homestead or similar exemption laws of the State of Florida or the United States of America now in effect or hereafter enacted.

ARTICLE X

NON-PAYMENT OF ASSESSMENTS

10.1 Delinquency. Any ASSESSMENT established, made, levied, or imposed by the ASSOCIATION pursuant to and in accordance with this DECLARATION which is not paid on its due date shall be delinquent. If the delinquent ASSESSMENT is not paid within five (5) days of the due date, the ASSOCIATION, in its discretion, shall be entitled to immediately impose a reasonable late charge associated with the administration of such delinquent ASSESSMENT.

Additionally, any such unpaid ASSESSMENT shall bear interest from the date of delinquency at the highest rate then allowed by the laws of the State of Florida or such lesser rate as shall be determined by the BOARD its discretion.

After any ASSESSMENT becomes delinquent and aforesaid reasonable late charge has been imposed, the ASSOCIATION shall provide written notice of such delinquency and fine to the OWNER of the LOT to which such delinquent ASSESSMENT has been made, levied, and imposed.

10.2 Notice of Lien. The ASSOCIATION shall, upon approval of the BOARD, at any time following the expiration of a period of ten (10) days following the aforesaid delivery of the notice of delinquency, be entitled to cause a Claim of Lien for such delinquent ASSESSMENTS to filed among the Public Records of the COUNTY. Any such Claim of Lien shall, among other things, state and identify the legal description of the LOT against or with respect to which the lien is claimed, the name of the record OWNER of such LOT as best known to the ASSOCIATION as determined from its records, the amount of the lien claimed, including interest, late charges, and costs and expenses associated with collection, including attorney's fees, if any, accrued to the date of the execution of such Claim of Lien. Such Claim of Lien shall be executed by the President, Secretary, Treasurer, or other officer of the ASSOCIATION thereunto duly authorized by the ASSOCIATION or by the attorney for the ASSOCIATION. Within seven (7) days of the recording of the same, a copy of such Claim of Lien shall be sent to the OWNER of the LOT against or with respect to which such lien is claimed by either:

a. United States certified or registered mail with return receipt requested and with postage prepaid, or

b. hand delivery to the mailbox of the residential dwelling situate on such LOT.

10.3 Foreclosure of ASSESSMENT Lien. The ASSOCIATION shall, at any time subsequent to the filing of the aforesaid Claim of Lien among the Public Records of Brevard County, Florida against or with respect to a particular LOT, be entitled to bring an action in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida to foreclose the lien of the ASSOCIATION for delinquent ASSESSMENTS evidenced by such Claim of Lien in the same manner as mortgage liens are foreclosed.

Any judicial sale pursuant to such foreclosure action shall be conducted as ordered by the Court or in accordance with the provisions of Section 45.031 Florida Statutes, as amended or replaced from time to time.

The ASSOCIATION shall have the right and power to bid at any foreclosure sale with respect to any lien foreclosed by it using its judgment for the delinquent ASSESSMENT, ASSOCIATION funds, or funds otherwise borrowed by the ASSOCIATION for that purpose, and if the successful bidder at such foreclosure sale, to acquire, own, hold, lease, sell, mortgage, and convey any LOT upon or with respect to which it has foreclosed its lien for delinquent ASSESSMENTS.

10.4 Collection from OWNER. The ASSOCIATION shall, at any time following the delivery of the aforesaid notice of delinquency, also be entitled to bring an action at law for the recovery and collection of such delinquent ASSESSMENT in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida against the OWNER of the LOT personally obligated for the payment of such delinquent ASSESSMENT. Each OWNER of a LOT, by the acceptance of a deed or other conveyance of the LOT owned by him shall be deemed to have agreed and consented to the jurisdiction of said Court over the PERSON of such OWNER for purposes of any action at law for the recovery and collection of any delinquent ASSESSMENT for the payment of which he is personally obligated.

10.5 Judgment Amount. Whether in an action at equity to foreclose the lien of the ASSOCIATION or delinquent ASSESSMENTS or in an action at law for the recovery and collection of any such delinquent ASSESSMENT from the OWNER of the LOT personally obligated for the payment of the same, the ASSOCIATION shall be entitled to recover in such proceedings the amount of such delinquent ASSESSMENT, together with late charges and interest thereon, if any, and such costs and expenses, including reasonable attorneys' fees, associated with the enforcement, recovery, and collection thereof as may be awarded by the Court.

10.6 Acceleration of ASSESSMENTS. If any OWNER is in default in the payment of any ASSESSMENT owed to the ASSOCIATION for more than sixty (60) days after written demand by the ASSOCIATION, the ASSOCIATION, upon written notice to the defaulting OWNER, shall have the right to accelerate and require such defaulting OWNER to pay to the ASSOCIATION the ASSESSMENTS for COMMON EXPENSES for the next twelve (12) month period based upon the then existing amount and frequency of ASSESSMENTS for COMMON EXPENSES. In the event of such acceleration, the defaulting OWNER shall continue to be liable for any increases in the regular ASSESSMENTS for COMMON EXPENSES, for all special ASSESSMENTS for COMMON EXPENSES, and/or for all other ASSESSMENTS payable to the ASSOCIATION.

10.7 Rental and Receiver. If an OWNER remains in possession of his UNIT and the Claim of Lien of the ASSOCIATION against his UNIT is foreclosed, the court, in it discretion, may require the OWNER to pay a reasonable rental for the UNIT, and the ASSOCIATION is entitled to the appointment of a receiver to collect the rent.

10.8 Subordination of Lien. Where any PERSON obtains title to a LOT pursuant to the foreclosure of a first mortgage of record, or where the holder of a first mortgage accepts a deed to a LOT in lieu of foreclosure of the first mortgage of record of such lender, such acquirer of title and its successors and assigns shall not be liable for any ASSESSMENTS or for other monies owed to the ASSOCIATION which are chargeable to the former OWNER of the LOT and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of such funds is secured by a Claim of Lien recorded prior to the recording of the foreclosed or underlying mortgage. The unpaid ASSESSMENTS or other monies are COMMON EXPENSES collectable from all of the OWNERS, including such acquirer and his successors and assigns. The new OWNER, from and after the time of acquiring such title, shall be liable for payment of all future ASSESSMENTS for COMMON EXPENSES and such other expenses as may be assessed to the OWNER's LOT. Any PERSON who acquires a LOT, except through foreclosure of a first mortgage of record or deed in lieu thereof, including, without limitation, PERSONS acquiring title by sale, gift, devise, operation of law, or by purchase at a judicial or tax sale, shall be liable for all unpaid ASSESSMENTS and other monies due and owing by the former OWNER to the ASSOCIATION, and shall not be entitled to occupancy of the UNIT or enjoyment of the COMMON AREAS, or of the recreational facilities as same may exist from time to time, until such time as all unpaid ASSESSMENTS and other monies have been paid in full.

10.9 Assignment of Claim and Lien Rights. The ASSOCIATION, acting through its BOARD, shall have the right to assign its claim and lien rights for the recovery of any unpaid ASSESSMENTS and any other monies owned to the ASSOCIATION, to any third party.

10.10 Application of Payments. Any payments made to the ASSOCIATION by any OWNER shall first be applied towards any sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior

mortgages, liens, or encumbrances which may have been advanced by the ASSOCIATION in order to preserve and protect its lien; next toward reasonable attorneys' fees incurred by the ASSOCIATION incidental to the collection of ASSESSMENTS and other monies owed to the ASSOCIATION by the OWNER and/or for the enforcement of its lien; next toward interest on any ASSESSMENTS or other monies due to the ASSOCIATION, as provided herein, and next toward any unpaid ASSESSMENTS owed to the ASSOCIATION, in the inverse order that such ASSESSMENTS were due.

10.11 Remedies Cumulative. The remedies herein provided for the collection and enforcement of ASSESSMENTS and the foreclosure of the lien therefor shall be cumulative and not alternative; it being expressly provided that any suits brought for the collection of ASSESSMENTS against the OWNER personally obligated and liable for the payment of the same and for the foreclosure of the lien herein provided against the LOT involved may be brought simultaneously as separate counts in the same action.

10.12 Satisfaction of Lien. Upon payment or other satisfaction of:

a. all delinquent ASSESSMENTS specified in the Claim of Lien,

b. interest, late charges, costs and expenses of collection, including attorneys' fees, as aforesaid, which have accrued to the date of such payment or satisfaction, and

c. all other ASSESSMENTS which have become due and payable with respect to the LOT with respect to which a Claim of Lien has been recorded, the President, Secretary, Treasurer, or other officer of the ASSOCIATION thereunto duly authorized, or the attorney for the ASSOCIATION, shall cause an appropriate release of such Claim of Lien to be filed and recorded among the Public Records of Brevard County, Florida upon the payment by the OWNER of the LOT with respect to which such Claim of Lien was recorded of a reasonable fee to be determined by the ASSOCIATION, to cover the costs associated with the administration of the satisfaction of such lien including, without limitation, the cost of preparing and recording such release.

ARTICLE XI

EASEMENTS AND TRACTS

11.1 Easements Generally. The DEVELOPER, on behalf of itself and for the benefit, where so stated, of the COUNTY, the CITY, the ASSOCIATION, all OWNERS, and other specified parties, and also for the benefit of all real property from time to time included within the SUBJECT PROPERTY, hereby creates, declares, and reserves the following easements upon those affected portions of the SUBJECT PROPERTY hereinafter specified, to wit:

11.2 Public Utility Easements. There are hereby created, declared, granted, and reserved for the benefit of the DEVELOPER, the CITY, the ASSOCIATION, all OWNERS and any public or private providers of utility services to the SUBJECT PROPERTY and their respective successors and assigns a non-exclusive easement for utility purposes over, under, within, and upon the rights-of-way, sidewalk, public utility, and upon all other utility easements and easement areas shown on the PLAT or otherwise reserved, declared, or created pursuant to this DECLARATION for the purposes of constructing, installing, inspecting, maintaining, repairing, and replacing from time to time any and all utility lines, systems, and facilities from time to time located therein or thereon. The utilities contemplated to be served by such utility easements shall include, without limitation, those providing electric power, sanitary sewer services, natural gas, telephone, potable water, cable television, and electronic security services.

11.3 DRAINAGE AND RETENTION EASEMENTS. There is hereby created, declared, and reserved for the benefit of the DEVELOPER, the ASSOCIATION, and all OWNERS a non-exclusive easement for storm water collection, retention, detention, and drainage over, upon, and within the rights-of-way of all streets and roads and all other DRAINAGE AND RETENTION EASEMENTS and public utility and drainage easements as shown on the PLAT or otherwise reserved, declared, or created pursuant to this DECLARATION, together with an easement and license to enter upon such easements and easement areas for the purposes of constructing, installing, inspecting, maintaining, repairing, and replacing any and all storm water drainage systems, IMPROVEMENTS, and facilities from time to time located therein
or thereon.

Additionally, the DEVELOPER, for the benefit of itself, the ASSOCIATION, and all OWNERS hereby reserves easements over any and all other portions of the SUBJECT PROPERTY as may be reasonably required from time to time in order to provide storm water drainage to all or any portions of the SUBJECT PROPERTY; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any OWNERS of the particular LOTS affected thereby or any Improvements from time to time placed, located, constructed, erected, or installed thereon.

The easements hereinabove created, declared, and reserved contemplate the construction of all storm water drainage improvements and facilities shown on the plans for the SURFACE WATER MANAGEMENT SYSTEM for VENTANA as approved by the CITY and the St. Johns River Water Management District, as modified, and any replacement or substitute permits issued by the St. Johns River Water Management District, and such additional or supplemental facilities as may reasonably be required to provide adequate storm water drainage and surface water management to all portions of the SUBJECT PROPERTY.

Not less than annually, the ASSOCIATION shall be required to inspect and measure all drainage systems located within the SUBJECT PROPERTY to insure that the drainage systems operate as designed. The ASSOCIATION shall be required to modify the drainage systems should maintenance measures become insufficient to achieve operation of the drainage systems as designed. The ASSOCIATION must apply for and obtain approval from the St. Johns River Water Management District for any alternative design prior to installation.

11.4 Emergency Access and Drainage Easement. There is hereby created, declared, granted, and reserved for the benefit of the CITY, a non-exclusive easement over and upon the streets and roads, and all drainage easements comprising and appurtenant to the SURFACE WATER MANAGEMENT SYSTEM for the purpose of undertaking emergency maintenance and repairs to the SURFACE WATER MANAGEMENT SYSTEM in the event that inadequate maintenance or repair of the SURFACE WATER MANAGEMENT SYSTEM shall create a hazard to the public health, safety, or general welfare. To the extent that the CITY shall, in fact, undertake any such emergency maintenance and repairs to the SURFACE WATER MANAGEMENT SYSTEM because of the inadequate maintenance and repair thereof by the ASSOCIATION, the CITY shall have a lien upon the COMMON PROPERTY as security for the payment by the ASSOCIATION of those costs and expenses reasonably incurred by the CITY in connection therewith. It is expressly provided, however, that the creation, declaration, and reservation of such Emergency Access and Drainage Easement shall not be deemed to impose upon the CITY any obligation, burden, responsibility, or liability to enter upon the SUBJECT PROPERTY or any portion thereof to take any action to maintain or to repair the SURFACE WATER MANAGEMENT SYSTEM or any portion or portions thereof.

11.5 Construction and Sales Easements. There is hereby created, declared, granted, and reserved for the benefit of the DEVELOPER, together with the right to grant, assign, and transfer the same to the DEVELOPER's sales agents and sales representatives, Real Estate Broker, or any Real Estate Sales Agents as engaged by the DEVELOPER, as well as to builders or building contractors approved by DEVELOPER for the construction of residences within VENTANA as provided in Section 7.5 of this DECLARATION, an easement for construction activities upon SUBJECT PROPERTY and an easement for sales activities and signs on SUBJECT PROPERTY and for the maintenance on SUBJECT PROPERTY from time to time of a Sales and Administrative Center in which and from which the DEVELOPER and its authorized sales agents and sales representatives and approved builders and building contractors may engage in exhibit, sales, and administrative activities of a commercial nature on a temporary basis during the period of the development of and construction within VENTANA.

Provided, however, that such exhibit, sales, and administrative activity shall be conducted from and within a building constructed as a single family residential dwelling which is temporarily used for such exhibit, sales, and administrative activities and which is thereafter to be sold, used, and occupied as a single family residential dwelling. The location of such Sales and Administrative Center within VENTANA may be changed from time to time by the DEVELOPER, in its sole and absolute discretion.

11.6 COMMON PROPERTY Easement. There is hereby created, declared, granted, and reserved for the benefit of the DEVELOPER, the ASSOCIATION, and each OWNER a non-exclusive easement upon and the right and privilege of using any or all of the COMMON PROPERTY, including, without limitation, the streets and roads for ingress, and egress, and for the passive recreation, health, safety, and welfare of the residents of and visitors to SUBJECT PROPERTY.

The easement and right to use and enjoy the COMMON PROPERTY, however, shall be subject to regulation by the ASSOCIATION, including the right of the ASSOCIATION to suspend such use and enjoyment as more particularly provided in Section 8.7 of this DECLARATION.

11.7 ASSOCIATION Easement. There is hereby created, declared, and granted to the ASSOCIATION, such easements over and upon all or any portion of the SUBJECT PROPERTY, as may be reasonably necessary to permit the ASSOCIATION to carry out and discharge its duties, obligations, and responsibilities under and pursuant to this DECLARATION and the ARTICLES, BY-LAWS, and RULES AND REGULATIONS of the ASSOCIATION.

Such ASSOCIATION Easement shall be in addition to the Drainage Easements hereinabove granted to the ASSOCIATION pursuant to Sections 11.5-7 of this DECLARATION for the purpose of constructing, installing, inspecting, maintaining, repairing, and replacing any and all portions of and facilities comprising the SURFACE WATER MANAGEMENT SYSTEM for VENTANA.

11.8 Future Easements. There is hereby reserved to the DEVELOPER and its successors and assigns, together with the right to grant and transfer the same, the right, power, and privilege to, at any time hereafter, grant to itself, the ASSOCIATION, the CITY, or any other parties such other further and additional easements as may be reasonably necessary or desirable, in the sole opinion and within the sole discretion of the DEVELOPER, for the future orderly development of VENTANA in accordance with the objects and purposes set forth in this DECLARATION.

It is expressly provided, however, that no such further or additional easements shall be granted or created over and upon any LOT pursuant to the provisions of this Section if any such easement shall unreasonably interfere with the presently contemplated or future use and development of a particular LOT as a single family residential home site.

The easements contemplated by this Section may include, without limitation, such easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of VENTANA in accordance with the objects and purposes specified in this DECLARATION. Such further or additional easements may be hereafter created, granted, or reserved by the DEVELOPER without the necessity for the consent or joinder of the OWNER of the particular portion of the SUBJECT PROPERTY over which any such further or additional easement is granted or required.

11.9 Conservation Easement Area: There is hereby created, declared, granted and reserved for the benefit of the DEVELOPER, the CITY, and the ASSOCIATION Conservation Tract(s) as shown on the plat for the protection of the wetlands vegetation within Ventana.

The Conservation Easement Areas shall and are hereby declared to be subject to a Conservation Deed Restriction pursuant to Section 704.06, F.S., in favor of the St. Johns River Water Management District ("District"), for the purpose of retaining and maintaining the Conservation Easement Areas in their predominantly natural condition as a wooded water recharge, detention, percolation and environmental conservation area. In furtherance of this Conservation Deed Restriction, all the following uses of the Conservation Easement Areas are hereby prohibited and restricted without the prior written consent of the St. Johns River Water Management District, to wit:

A. The construction, installation or placement of signs, buildings, fences, walls, roads or any other structures and improvements on or above the ground of the Conservation Easement Areas,

B. The dumping or placing of soil or other substances or materials as landfill or the dumping or placing of trash, waste or unsightly or offensive materials,

C. The removal or destruction of trees, shrubs or other vegetation from the Conservation Easement Areas,

D. The excavation, dredging or removal of loam, peat, gravel, rock, soil, or other material substance in such a manner as to affect the surface of the Conservation Easement Areas,

E. Surface use, except for purposes that permit the land or water area to remain in predominantly natural

condition.

F. Activities detrimental to drainage, flood control, water conservation, erosion control, erosion control, soil conservation, or fish and wildlife habitat preservation, and

G. Acts or uses detrimental to such retention of land or water areas.

The Conservation Easement Areas hereby created and declared shall be perpetual. The District, its successors or assigns, shall have the right to enter upon the Conservation Easement Area at all reasonable times and in a reasonable manner, to assure compliance with the aforesaid prohibitions and restrictions.

The Association, and all subsequent owners of the Conservation Easement Areas shall be responsible for the periodic removal of trash and other debris which may accumulate on such Conservation Easement Area.

The prohibitions and restrictions upon the Conservation Easement Areas as set forth in this section may be enforced by the St. Johns River Water Management District or its successor agency by proceedings at law or in equity including, without limitation, actions for injunctive relief. The provisions of this Conservation Easement Area restriction may not be amended without prior approval from the St. Johns River Water Management District.

All rights and obligations arising hereunder are appurtenances and covenants running with the land of the Conservation Easement Areas, and shall be binding upon and shall insure to the benefit of the District and its successors and assigns. Upon conveyance by the Developer to third parties of any land affected by this easement, the Developer shall have no further liability or responsibility hereunder, provided the deed restriction covering the Conservation Easement Areas is properly recorded.

This section may be enforced by the ASSOCIATION, CITY and the St. Johns River Water Management District. Nothing set forth herein shall prohibit the DEVELOPER from incorporating modifications which are permitted or required by any governmental agency.

11.10 Notice of Release and Indemnification by Association; Viera Easement. In consideration of receiving certain easements and rights for the use and benefit of the Association and lands under the jurisdiction thereof, set forth in that certain Agreement and Grant of Drainage Easements by and between the Declarant, the Association, the Viera East Community Development District and The Viera Company recorded in Official Records Book 3461, at page 1649 of the Public Records of Brevard County, Florida (hereinafter referred to as the "Easement Agreement"), Declarant and the Association for itself and its members have released, waived and discharged the Viera East Community Development District and The Viera Company from any and all liability to the Declarant, and Association, and the Association's members for death, personal injury or property damage arising from certain causes being more particularly described in the Easement Agreement. Furthermore, as additional consideration for such easements and rights, the Declarant and the Association have agreed to indemnify, defend and hold harmless the Viera East Community Development District and The Viera Company from any and all liabilities, claims, demands, judgments, liens, losses, costs and expenses in connection with any death, personal injury, property damage or construction lien occasioned wholly or in part by certain causes or events being more particularly described in the Easement Agreement. Such release, waiver, discharge, and indemnification by the Association shall be and is binding on the Association and its members, and inure for the benefit of and be enforceable by the Viera East Community Development District and The Viera Company for so long as such Easement Agreement or the easements and rights granted thereunder remain in effect in whole or in part.

ARTICLE XII

ARCHITECTURAL AND LANDSCAPE CONTROL

12.1 Reservation of Architectural and Landscape Control. In order to ensure that the development of VENTANA will proceed pursuant to a uniform plan of development and construction of the highest quality, and in accordance with consistently high architectural, ecological, environmental, and aesthetic standards which are designed and calculated to bring about the achievement and creation of and to thereafter maintain, preserve, and protect with VENTANA a unique, pleasant, attractive, and harmonious physical environment, the DEVELOPER shall have and hereby reserves exclusively unto itself, for the duration hereinafter specified, the right, privilege, power, and authority to review, prevent, approve, modify, and otherwise control the design, placement, construction,

erection, materials used, and installation of any and all buildings, structures, and other IMPROVEMENTS of any kind, nature, or description, including landscaping, upon any LOT and all COMMON PROPERTY. Such right and control of the DEVELOPER shall be exercised in the manner hereinafter provided in this Article XII.

12.2 ARCHITECTURAL REVIEW BOARD. The architectural and landscape review and control functions expressly reserved by and unto to the DEVELOPER pursuant to Section 12.1 of this DECLARATION, as aforesaid, shall be and are hereby delegated by DEVELOPER to and shall be administered and performed on behalf of DEVELOPER by a ARCHITECTURAL REVIEW BOARD appointed from time to time as hereinafter provided in Section 12.3 of this DECLARATION. The DEVELOPER shall determine the number of members on the ARCHITECTURAL REVIEW BOARD until such time as DEVELOPER no longer appoints all members of the BOARD, at which time the number of members shall be determined by the ASSOCIATION but at no time shall be composed of less than three (3) persons. The members of the ARCHITECTURAL REVIEW BOARD need not be OWNERS or members of the ASSOCIATION. The action of a majority of such members as are present at a meeting of the ARCHITECTURAL REVIEW BOARD shall determine the action taken by the ARCHITECTURAL REVIEW BOARD at such meeting.

12.3 Appointment of ARCHITECTURAL REVIEW BOARD. Notwithstanding anything to the contrary set forth in or which may otherwise be implied from this DECLARATION or the ARTICLES, BY-LAWS, or RULES AND REGULATIONS of the ASSOCIATION, the DEVELOPER hereby reserves unto itself and shall hereafter have and retain right to appoint and replace from time to time all members of the ARCHITECTURAL REVIEW BOARD until either:

a. the expiration of a period of eighteen (18) years from the date of the recordation of this DECLARATION among the Public Records of the COUNTY, or

b. the sale by the DEVELOPER or its successors or assigns in the ordinary course of business, and not in bulk, of one-hundred percent (100%) of all contemplated LOTS within VENTANA, whichever shall first occur.

Following the occurrence of the first of the foregoing events to occur, or at some other time as deemed by the DEVELOPER, the architectural and landscape review and control functions hereinabove reserved by and unto the DEVELOPER shall be delegated and assigned by the DEVELOPER to the ASSOCIATION and thereafter the ASSOCIATION, acting by and through its BOARD, shall have the right to appoint and replace from time to time all members of the ARCHITECTURAL REVIEW BOARD; provided, however, that the ASSOCIATION shall be required at all times to appoint at least one member of the ARCHITECTURAL REVIEW BOARD designated by the DEVELOPER. The DEVELOPER may waive its right to appoint any of the members to the ARCHITECTURAL REVIEW BOARD and thereafter the ASSOCIATION shall have the right to elect those members.

12.4 Purpose and Function of ARCHITECTURAL REVIEW BOARD. The purpose and function of the ARCHITECTURAL REVIEW BOARD shall be to:

a. create, establish, develop, foster, maintain, preserve, and protect within VENTANA a unique, pleasant, attractive, and harmonious, physical environment grounded in and based upon a uniform plan of development and construction of the highest quality and with consistently high architectural, ecological, environmental, and aesthetic standards, and

b. review, prevent, approve, change, and otherwise control the design of any and all buildings, structures, and other IMPROVEMENTS of any kind, nature, or description, including landscaping, to be constructed upon any LOT and all COMMON PROPERTY within VENTANA. Neither the DEVELOPER, nor the ARCHITECTURAL REVIEW BOARD, or any of its members, shall have any liability or obligation to any PERSON or party whomsoever or whatsoever to check any detail of any plans and specifications or other materials submitted to and approved by it or to inspect any IMPROVEMENTS constructed upon the SUBJECT PROPERTY to assure compliance with any plans and specifications approved by it or to assure compliance with the provisions of the ARCHITECTURAL STANDARDS MANUAL or this DECLARATION.

12.5 All IMPROVEMENTS Subject to Approval. No buildings, structures, walls, fences, pools, patios, paving, driveways, docks, decks, sidewalks, landscaping, planting, irrigation, landscape device or object, or other IMPROVEMENTS of any kind, nature, or description, whether purely decorative, functional, or otherwise, shall

be commenced, constructed, erected, made, placed, installed or maintained upon SUBJECT PROPERTY, nor shall any change, maintenance, or addition to or alteration or remodeling of the exterior of any previously approved buildings, structures, or other IMPROVEMENTS of any kind, including, without limitation, the painting of the same (other than painting with the same color and type of paint which previously existed) shall be made or undertaken upon SUBJECT PROPERTY except in compliance and conformance with and pursuant to plans and specifications therefor which shall first have been submitted to and reviewed and approved in writing by the ARCHITECTURAL REVIEW BOARD.

12.6 Standards for Review and Approval. Any such review by and approval or disapproval of the ARCHITECTURAL REVIEW BOARD shall take into account the objects and purposes of this DECLARATION and the purposes and function of the ARCHITECTURAL REVIEW BOARD. Such review by and approval of the ARCHITECTURAL REVIEW BOARD shall also take into account and include the type, kind, nature, design, style, shape, size, height, width, length, scale, color, quality, quantity, texture, and materials of the proposed building, structure, or other IMPROVEMENT under review, both in its entirety and as to its individual or component parts, in relation to its compatibility and harmony with other, contiguous, adjacent, and nearby structures and other IMPROVEMENTS and in relation to the topography and other physical characteristics of its proposed location and in relation to the character of the VENTANA community in general. The ARCHITECTURAL REVIEW BOARD shall have the right to refuse to give its approval to the design, placement, construction, erection, or installation of any IMPROVEMENT on the SUBJECT PROPERTY which it, in its sole and absolute discretion, deems to be unsuitable, unacceptable, or inappropriate for VENTANA.

12.7 Architectural Standards and ARCHITECTURAL STANDARDS MANUAL. The ARCHITECTURAL REVIEW BOARD shall develop, adopt, promulgate, publish, and make available to all OWNERS and others who may be interested, either directly or through the ASSOCIATION, at a reasonable charge, and may from time to time change, modify, and amend a manual or manuals setting forth detailed architectural and landscape design standards, specifications, and criteria to be used by the ARCHITECTURAL REVIEW BOARD as a guide or standard for determining compliance with this DECLARATION and the acceptability of those components of development, construction, and improvement of the SUBJECT PROPERTY requiring review and approval by the ARCHITECTURAL REVIEW BOARD.

Any such ARCHITECTURAL STANDARDS MANUAL, together with any changes, modifications, or amendments, must be approved by the DEVELOPER in writing prior to its adoption and promulgation. Any such ARCHITECTURAL STANDARDS MANUAL may include a detailed interpretation or explanation of acceptable standards, specifications, and criteria for a number of typical design elements, including, without limitation, site planning, architectural design, building materials, building construction, landscaping, irrigation, and such other design elements as the ARCHITECTURAL REVIEW BOARD shall, in its sole discretion, determine.

Such ARCHITECTURAL STANDARDS MANUAL shall be used by the ARCHITECTURAL REVIEW BOARD and other affected persons only as a guide and shall not be binding upon the ARCHITECTURAL REVIEW BOARD in connection with the exercise of its review and approval functions and ultimate approval or refusal to approve plans and specifications submitted to it pursuant to this DECLARATION.

12.8 Procedure for Architectural Review. The ARCHITECTURAL REVIEW BOARD shall develop, adopt, promulgate, publish, and make available to all OWNERS and others who may be interested, either directly or through the ASSOCIATION, at a reasonable charge, and either included within or separate and apart from the ARCHITECTURAL STANDARDS MANUAL, reasonable and practical RULES AND REGULATIONS governing the submission of plans and specifications to the ARCHITECTURAL REVIEW BOARD for its review and approval. Unless such RULES AND REGULATIONS are complied with in connection with the submission of plans and specifications requiring review and approval by the ARCHITECTURAL REVIEW BOARD, plans and specifications shall not be deemed to have been submitted to the ARCHITECTURAL REVIEW BOARD.

Additionally, the ARCHITECTURAL REVIEW BOARD shall be entitled, in its discretion, to establish, determine, charge, and assess a reasonable fee in connection with and for its review, consideration, and approval of plans and specifications pursuant to this Article XII, taking into consideration actual costs and expenses incurred during the review process.

12.9 Time Limitation on Review. The ARCHITECTURAL REVIEW BOARD shall either approve or disapprove a complete application submitted to it within thirty (30) days after the same has been duly and completely submitted in accordance with any RULES AND REGULATIONS regarding such submission as shall have been

adopted by the ARCHITECTURAL REVIEW BOARD. The failure of the ARCHITECTURAL REVIEW BOARD to either approve or disapprove the same within such 30-day period shall be deemed to be and constitute an approval of such plans, specifications, and other materials; subject, however, at all times to the covenants, conditions, restrictions, and other requirements contained in this DECLARATION and also subject to the provisions of the ARCHITECTURAL STANDARDS MANUAL.

12.10 Duration of Approval. Any approval of plans, specifications, and other materials, whether by the ARCHITECTURAL REVIEW BOARD, or by the DEVELOPER or the BOARD of the ASSOCIATION following appeal, shall be effective for a period of one year from the effective date of such approval. If construction or installation of the building, structure, or other IMPROVEMENT for which plans, specifications, and other materials have been approved, has not commenced within said one year period, such approval shall expire, and no construction shall thereafter commence without a resubmission and approval of the plans, specifications, and other materials previously approved. The prior approval shall not be binding upon the ARCHITECTURAL REVIEW BOARD on resubmission in any respect.

12.11 Interior Alterations Exempt. Nothing contained in this Article XII shall be construed so as to require the submission to or approval of the ARCHITECTURAL REVIEW BOARD of any plans, specifications, or other materials for the reconstruction or alteration of the interior of any building, structure, or other IMPROVEMENT constructed on RESIDENTIAL PROPERTY or COMMON PROPERTY after having been previously approved by the ARCHITECTURAL REVIEW BOARD, unless any proposed interior construction or alteration will have the effect of changing or altering the exterior appearance of such building, structure, or other IMPROVEMENT, or unless specifically stated in the DECLARATION or unless it shall have the effect of materially reducing the retail value of the home and LOT.

12.12 DEVELOPER Exempt. The DEVELOPER and all the COMMON AREAS shall be exempt from compliance with the provisions of this Article XII.

12.13 Exculpation for Approval or Disapproval of Plans. The DEVELOPER, any and all members of the ARCHITECTURAL REVIEW BOARD, and any and all officers, directors, employees, agents, and members of the ASSOCIATION, shall not, either jointly or severally, be liable or accountable in damages or otherwise to any OWNER or other PERSON or party whomsoever or whatsoever by reason or on account of any decision, approval, or disapproval of any plans, specifications, or other materials required to be submitted for review and approval pursuant to the provisions of this Article XII, or for any mistake in judgment, negligence, misfeasance, or nonfeasance related to or in connection with any such decision, approval, or disapproval.

Each PERSON who shall submit plans, specifications, or other materials to the ARCHITECTURAL REVIEW BOARD for consent or approval pursuant to the provisions of this Article XII, by the submission thereof, and each OWNER by acquiring title to any LOT or any interest therein, shall be deemed to have agreed that he or it shall not be entitled to and shall not bring any action, proceeding, or suit against the DEVELOPER, the ARCHITECTURAL REVIEW BOARD, the ASSOCIATION, nor any individual member, officer, director, employee, or agent of any of them for the purpose of recovering any such damages or other relief on account of any such decision, approval, or disapproval.

Additionally, plans, specifications, and other materials submitted to and approved by the ARCHITECTURAL REVIEW BOARD, or by DEVELOPER or BOARD of the ASSOCIATION on appeal, shall be reviewed and approved only as to their compliance with the provisions of this DECLARATION and their acceptability of design, style, materials, appearance, and location in light of the standards for review and approval specified in this DECLARATION and the ARCHITECTURAL STANDARDS MANUAL, and shall not be reviewed or approved for their compliance with any applicable GOVERNMENTAL REGULATIONS, including, without limitation, any applicable building or zoning laws, ordinances, rules, or regulations. By the approval of any such plans, specifications, or materials, neither the DEVELOPER, the ARCHITECTURAL REVIEW BOARD, the ASSOCIATION, nor any individual member, officer, director, employee or agent of any of them, shall have assumed or incurred any liability or responsibility whatsoever for any violation of GOVERNMENTAL REGULATIONS or defect in the design or construction of any building, structure, or other IMPROVEMENT, constructed, erected, placed, or installed pursuant to or in accordance with any such plans, specifications, or other materials approved pursuant to this Article XII.

ARTICLE XIII

AMENDMENT

13.1 Amendment by DEVELOPER. Subject to the provisions of Section 13.5 of this DECLARATION until December 31, 2006, the covenants, restrictions, and easements set forth in this DECLARATION may be changed, amended, or modified from time to time, including the addition of additional property, by the DEVELOPER in its sole, but reasonable discretion, and without requiring the joinder or consent of any person or party whomsoever, including the ASSOCIATION or any OWNER or OWNERS.

13.2 Amendment by ASSOCIATION. Subject to the provisions of Section 13.5 of this DECLARATION, the terms and provisions of and the covenants, restrictions, and easements set forth in this DECLARATION may be changed, amended, or modified at any time and from time to time by the ASSOCIATION upon the affirmative written consent or the vote of not less than seventy-five percent (75%) of the total voting power of the members of the ASSOCIATION; provided, however, that until December 31, 2004, no such change, amendment, or modification by the ASSOCIATION shall be effective without the DEVELOPER's express written joinder and consent.

13.3 Manifestation of Requisite Consent. In the case of any change, amendment, or modification of this DECLARATION by the ASSOCIATION which requires the affirmative written consent or vote of members of the ASSOCIATION as hereinabove provided in Section 13.2, the acquisition of the requisite written consent or vote of members shall be manifested on the face of the amending instrument in a certificate duly executed and sworn to before a Notary Public by the President and Secretary of the ASSOCIATION affirmatively stating that such requisite affirmative written consent or vote has, in fact, been acquired or obtained prior to the recordation of such amending instrument among the Public Records of the COUNTY. Such certificate shall be and constitute conclusive evidence of the satisfaction of the provisions of Section 13.2 of this DECLARATION with respect to the change, amendment, or modification of this DECLARATION effected by the amending instrument of which such certificate is made a part.

13.4 Effectiveness of Amendments. All changes, amendments, or modifications of this DECLARATION shall be manifested in a written amending instrument duly executed by the DEVELOPER or the ASSOCIATION, or both, as may from time to time be required pursuant to the provisions of this Article XIII, and shall be duly recorded among the Public Records of the COUNTY. Such change, amendment, or modification of this DECLARATION shall be effective as of the date of such recordation or such later date as may be specified in the amending instrument itself.

13.5 Limitations on Amendments. Notwithstanding anything to the contrary set forth in this DECLARATION, the rights of the DEVELOPER and the ASSOCIATION to change, amend, or modify the terms and provisions of and the covenants, restrictions, and easements set forth in this DECLARATION shall at all times be subject to and limited and restricted as follows, to wit:

a. To the extent that particular rights or interests are expressly conferred upon or granted to the CITY pursuant to this DECLARATION, the particular terms and provisions of this DECLARATION pursuant to which any such rights and interests are conferred upon and granted to the CITY shall not be changed, amended, or modified without the prior written consent and joinder of the CITY.

b. This DECLARATION may not be changed, amended, or modified in such manner as to terminate or eliminate any easements granted or reserved herein to the DEVELOPER, the ASSOCIATION, the CITY, the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT or to the COUNTY, respectively, without the prior written approval of the DEVELOPER, the ASSOCIATION, the COUNTY, or the CITY, as the case may be, and any attempt to do so shall be void and of no force and effect.

c. This DECLARATION may not be changed, amended, or modified in any fashion which will result in or facilitate the dissolution of the ASSOCIATION or the abandonment or termination of the obligation of the ASSOCIATION to maintain the COMMON PROPERTY, including specifically the SURFACE WATER MANAGEMENT SYSTEM, and/or the obligation of the ASSOCIATION to establish, make, levy, enforce, and collect ASSESSMENTS for such purposes, unless said COMMON PROPERTY(s) are dedicated to a governmental authority who may assume said responsibilities.

d. This DECLARATION may not be changed, amended, or modified in any fashion which would affect the SURFACE WATER MANAGEMENT SYSTEM, or its maintenance by the ASSOCIATION, without the prior written consent and approval of the St. Johns River Water Management District.

e. This DECLARATION may not be changed, amended, or modified in such fashion as to change, amend, modify, eliminate, or delete the provisions of this Section 13.5 of this DECLARATION without the prior written consent and joinder of the DEVELOPER, in any case, and to the extent of any proposed change, amendment, or modification which shall affect the rights of the COUNTY, the CITY, the St. Johns River Water Management District, hereunder, the same shall require the written consent and joinder of the COUNTY, the CITY, the St. Johns River Water Management District, as the case may be.

ARTICLE XIV

DURATION

The covenants, restrictions, and easements set forth in this DECLARATION shall continue and be binding upon the DEVELOPER and the ASSOCIATION and upon each OWNER and all OWNERS from time to time of any portion of the SUBJECT PROPERTY and their respective successors and assigns and all other PERSONS, parties, or legal entities having or claiming any right, title, or interest in the SUBJECT PROPERTY, by, through, or under any of them, for a period of sixty (60) years from the date this DECLARATION is recorded among the Public Records of the COUNTY, after which time this DECLARATION and the covenants, restrictions, and easements set forth herein, as the same shall have been changed, amended, or modified from time to time, shall be automatically extended for successive periods of ten (10) years unless an instrument of termination executed by the DEVELOPER (or its successor in title) and the ASSOCIATION upon the affirmative written consent or the vote of not less than ninety-five percent (95%) of the total voting power of the members of the ASSOCIATION (certified as provided in Section 13.3 of this DECLARATION), with the consent and joinder of the COUNTY and CITY, shall be recorded among the Public Records of the COUNTY at least one year prior to the end of the initial term or any subsequent extension term of this DECLARATION.

Each of the easements herein declared to be created, granted, or reserved shall continue to be binding upon the DEVELOPER and the ASSOCIATION and upon each OWNER and all OWNERS from time to time of any portion of the SUBJECT PROPERTY and their respective successors and assigns and all PERSONS, parties, and legal entities claiming by, through, or under any of them in perpetuity, unless any such easement shall have been changed, amended, modified, released, or terminated by the execution and recordation among the Public Records of the COUNTY of a written instrument or Court order, as the case may be, which, in either case, is otherwise legally sufficient in all respects to effect any such change, amendment, modification, release, or termination of any such easement.

ARTICLE XV

ENFORCEMENT

15.1 Parties Entitled to Enforce. Subject to the provisions of Section 15.2 of this DECLARATION, the terms, provisions, covenants, restrictions, and easements set forth in this DECLARATION, as changed, amended, or modified from time to time. shall be enforceable by the DEVELOPER, the ASSOCIATION and any OWNER. Additionally, to the extent that particular rights or interests are expressly conferred upon or granted to the CITY pursuant to this DECLARATION, the particular terms and provisions of this DECLARATION conferring or granting such rights or interests to the CITY shall also be enforceable by the CITY.

Those so entitled to enforce the provisions of this DECLARATION shall have the right to bring proceedings at law or in equity against the party or parties violating or attempting to violate any of said covenants, restrictions, and easements or against the party or parties defaulting or attempting to default in his, its, or their obligations hereunder in order to:

a. enjoin any such violation or attempted violation or any such default or attempted default,

b. cause any such violation or attempted violation or default to be cured, remedied, or corrected,

c. recover damages resulting from or occasioned by or on account of any such violation or attempted violation or default or attempted default, and

d. recover reasonable costs and expenses, including attorneys' fees, incurred in connection with the enforcement of this DECLARATION.

The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

15.2 Limitations on Enforcement Rights. Notwithstanding the foregoing provisions of Section 15.1 of this DECLARATION, the right to enforce the provisions of this DECLARATION shall be subject to and limited by the following provisions, to wit:

a. The ASSOCIATION shall have the exclusive right to collect ASSESSMENTS and enforce ASSESSMENT liens.

b. The ASSOCIATION shall have the exclusive right to assess and collect fines.

c. Only the DEVELOPER and the ASSOCIATION shall have the right to enforce the provisions of Article XII of this DECLARATION with respect to Architectural and Landscape Control.It is expressly provided, however, that if both the DEVELOPER and the ASSOCIATION fail, refuse, or are unable to commence enforcement of such provisions within thirty (30) days following written demand to do so from any OWNER, any OWNER who makes such demand and who otherwise has standing to do so, shall have the right to enforce the provisions of said Article XII; provided, however, that such right of enforcement shall not include the right to seek judicial review of discretionary decisions made either by the DEVELOPER, the ASSOCIATION, or the ARCHITECTURAL REVIEW BOARD where the discretion to make such decisions is expressly conferred pursuant to this DECLARATION.

d. To the extent that specific rights, interests, or reservations are conferred upon or granted or reserved to specific parties pursuant to this DECLARATION only those parties upon or to whom or which such rights, interests, or reservations are conferred, granted, or reserved shall have the right to enforce the provisions of this DECLARATION relating to such rights, interests, or reservations.

15.3 Right of ASSOCIATION to Evict Tenants, Occupants, Guests, and Invitee's. With respect to any tenant or any PERSON present in any UNIT or any portion of the SUBJECT PROPERTY, other than an OWNER and the members of his immediate family permanently residing with him in the UNIT, if such PERSON shall materially violate any provision of this DECLARATION, the ARTICLES, or the BY-LAWS, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the SUBJECT PROPERTY, or shall willfully damage or destroy any COMMON AREAS or personal property of the ASSOCIATION, then upon written notice by the ASSOCIATION, such PERSON shall be required to immediately leave the SUBJECT PROPERTY and, if such PERSON does not do so, the ASSOCIATION is authorized to commence an action to evict such tenant or compel the PERSON to leave the SUBJECT PROPERTY, and, where necessary, to enjoin such PERSON from returning.

The expense of any such action, including attorneys' fees, may be assessed against the applicable OWNER, and the ASSOCIATION may collect such ASSESSMENT and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the ASSOCIATION.

15.4 Attorneys' Fees. In the event that legal or equitable proceedings are instituted or brought to enforce any of the provisions set forth in this DECLARATION, as changed, amended, and modified from time to time, or to enjoin any violation or attempted violation or default or attempted default of the same, the prevailing party in such proceeding shall be entitled to recover from the losing party such reasonable attorneys' fees and court costs as may be awarded by the Court rendering judgment in such proceedings.

15.5 Fines. The amount of any fine shall be determined by the BOARD, and shall not exceed one-third of one month's ASSESSMENT for COMMON EXPENSES for the first offense, and two-thirds of one month's ASSESSMENT for COMMON EXPENSES for a second similar offense, and one month's ASSESSMENT for COMMON EXPENSES for a third and each subsequent similar offense. At no time shall a fine be less than

twenty-five dollars ($25.00). Any fine or summary of fines for similar violations shall be imposed by written notice to the OWNER or tenant, signed by an officer of the ASSOCIATION, which shall state the amount of the fine, the violation for which the fine is imposed, and shall specifically state that the OWNER or tenant has the right to contest the fine by delivering written notice to the ASSOCIATION within ten (10) days after receipt of the notice imposing the fine. If the OWNER or tenant timely and properly objects to the fine, the BOARD shall conduct a hearing within thirty (30) days after receipt of the OWNER's or tenant's objection, and shall give the OWNER or tenant not less than ten (10) days written notice of the hearing date.

At the hearing, the BOARD shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and that the fine imposed is appropriate. The OWNER or tenant shall have the right to attend the hearing and to produce evidence on his behalf. At the hearing the BOARD shall ratify, reduce, or eliminate the fine and shall give the OWNER or tenant written notice of its decision. Any fine shall be due and payable within ten (10) days after written notice of the BOARD's decision at the hearing. Any fine levied against an OWNER shall be deemed an ASSESSMENT, and if not paid when due, all of the provisions of this DECLARATION relating to the late payment of ASSESSMENTS shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the ASSOCIATION shall have the right to evict the tenant pursuant to Paragraph 15.3.

15.6 No Waiver. Failure by the DEVELOPER, the ASSOCIATION, and OWNER, or the CITY (only to the extent any right of enforcement is otherwise granted to or conferred upon the CITY pursuant to this DECLARATION), to enforce any covenant, restriction, or easement herein contained in any particular instance or on any particular occasion shall not be deemed a waiver of the right to do so upon any subsequent violation or attempted violation or default or attempted default of the same or any other covenant, restriction, or easement contained herein.

15.7 Nuisance. The result of every act or omission, where any term or provision of, or covenant, restriction, or easement set forth in, this DECLARATION is violated, breached, or in default in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the DEVELOPER, the ASSOCIATION, or any OWNER.

15.8 Cumulative Rights and Remedies. In connection with the enforcement of this DECLARATION, all rights and remedies of the DEVELOPER, the ASSOCIATION, the OWNERS, and the CITY, to the extent provided herein, shall be cumulative, and no single right or remedy shall be exclusive of any other, and DEVELOPER, the ASSOCIATION, the OWNERS, and the CITY, to the extent specifically provided in this DECLARATION, shall have the right to pursue any one or all of such rights or remedies or any other remedy or relief which may be provided by law, whether or not expressly stated in this DECLARATION or otherwise.

15.9 Exculpation. The DEVELOPER, the ASSOCIATION, the ARCHITECTURAL REVIEW BOARD, and the individual members, officers, directors, employees, or agents of any of them, shall not, jointly or severally, be liable or accountable in damages or otherwise to any OWNER or other party affected by this DECLARATION, or to anyone submitting plans or other materials for any required consent or approval hereunder, by reason or on account of any decision, approval, or disapproval required to be made, given, or obtained pursuant to the provisions of this DECLARATION, or for any mistake in judgment, negligence, or nonfeasance related to or in connection with any such decisions, approval, or disapproval.

Each PERSON who shall submit plans or other materials for consent or approval pursuant to this DECLARATION, by the submission thereof, and each OWNER of any LOT, by acquiring title thereto or an interest therein, shall be deemed to have agreed that he or it shall not be entitled to bring and shall not bring any action, proceeding, or suit against the DEVELOPER, the ASSOCIATION, the ARCHITECTURAL REVIEW BOARD, or any individual member or members, officer or officers, director or directors, employee or employees, or agent or agents of any of them for the purpose of recovering any such damages or other relief on account of any such decision, approval, or disapproval.

ARTICLE XVI

POWER AND AUTHORITY OF LOCAL GOVERNMENTS

16.1 Definitions. For purposes of this Section, the definitions in Article I of this DECLARATION shall apply. In addition, the following terms shall have the following meanings:

A. "Rockledge" shall mean the municipal corporation known as the City of Rockledge.

B. "Benefit" and "benefitted" shall refer to the use of common facilities of the subdivision in any way and to services provided by such facilities to any LOT. A LOT shall be deemed to be benefitted by a common facility if such facility serves such LOT or property in any way. A given street or drainage facility shall be deemed to benefit all LOTS given access by such street or drained by such facility.

16.2 Power of City to Provide Maintenance. Rockledge shall have the power and authority, but not the obligation, to provide maintenance and repairs to drainage facilities, and other facilities in the COMMON AREAS of the subdivision as necessary to provide for the health, safety, and welfare of the OWNERS of LOTS.

As a pre-requisite to the exercise of such power and authority, the governing body of Rockledge shall adopt a resolution finding that the ASSOCIATION has failed to maintain or repair a common facility identified in the resolution to those standards or specifications set forth in the applicable ordinances or construction codes which are generally applicable to similar public facilities.

Nothing in this Subsection shall be deemed to require Rockledge to exercise the power provided herein if the city council, in its discretion, elects not to provide the maintenance and repair work which is the subject of this Section.

16.3 Right of Assessment to Pay the Costs of Maintenance or Repair of Common Areas. In the event that Rockledge makes the determination as provided in the preceding subsection that the city will provide maintenance or repair to a common facility of the subdivision, the city shall have the power under this DECLARATION to assess all costs thereof (including, but not limited to, inspection, engineering, advertising, legal, construction, and administration costs) to the OWNERS of LOTS benefitted by such maintenance or repairs.

The said Assessment may be accomplished by resolution using the methods and procedures set forth for municipal special assessments in Chapter 170, Florida Statutes, or any other method provided by law; provided, however, that the Assessments described herein may, at the discretion of the city's governing board, be made for all purposes generally described in this Section, including those purposes not described in the said Chapter 170.

At a minimum, the resolution establishing the Assessment provided for herein shall set forth the total amount of the Assessment and shall allocate the said total Assessment among the LOTS benefitted by the maintenance or repairs for which the Assessment is made. Such allocation shall be made in proportion to the amount of benefit, based upon a formula or other method of allocation determined by the governing body of the city, taking into account all circumstances of the proposed Assessment program and the benefit resulting therefrom.

No Assessment made pursuant to this Section shall become final unless and until all OWNERS of LOTS subject to the Assessment have been notified in writing mailed to such OWNERS' addresses shown in the most recent tax roll and the city has conducted a public hearing at which such OWNERS have had the opportunity to appear and be heard with respect to the Assessment. Failure of an OWNER to receive said notice shall not be deemed to be sufficient reason to invalidate any Assessment made hereunder.

16.4 Declaration of Assessment; Interest on Installment Payments. An Assessment made by Rockledge as authorized in this Section may be payable in a single installment or in annual installments over a period of not more than five (5) years, in the sole discretion of the city imposing the Assessment. If the city elects to collect any Assessment in installments, the principal sum shall be payable in equal payments, and interest at the rate of twelve percent (12%) per annum shall be payable on the unpaid balance, beginning ninety (90) days after adoption of the resolution confirming the Assessment. In no event shall any initial payment of any Assessment be due sooner than ninety (90) days after adoption of the final resolution confirming the Assessment.

16.5 Lien for Payment of Assessments; Foreclosure. When the final Assessment roll for an Assessment provided for in this section is adopted by Rockledge, and a certified copy thereof is recorded in the Public Records of Brevard County, the city shall have a lien on each LOT, subject to the Assessment, in the full amount of the principal Assessment and all interest thereon. Such lien shall have a priority relating back to the date of recording of this DECLARATION.

The city shall have the right to foreclose such lien by bringing an action for foreclosure in the Circuit Court of Brevard County. No such action shall be brought unless the payment of an Assessment, or any installment thereof, is more than ninety (90) days past due. The city shall be entitled to an award of a reasonable attorney's fee and court costs in addition to a judgment for the principal balance of the Assessment and interest thereon.

16.6 Geographical Extent of Assessments. Rockledge shall have the Assessment power described in this Section for those maintenance and repair projects within its corporate limits. Notwithstanding the restriction set forth in the preceding sentence, Rockledge shall have the power under this DECLARATION, as a covenant running with the title to LOTS in the SUBDIVISION, to assess the OWNERS of all LOTS, for the costs of repair and maintenance of streets which provide ingress and egress to the LOTS being assessed.

16.7 Authority for Law Enforcement. The police department of the City of Rockledge is hereby requested by the DEVELOPER to exercise full power for enforcement of all federal, state, county, and city laws and ordinances to the same extent as generally done elsewhere within the said city, including enforcement of traffic laws and ordinances on the streets of the SUBDIVISION. This Section shall be deemed to be a grant by the DEVELOPER and the OWNERS of all LOTS in the subdivision of full authority for access to all of the SUBJECT PROPERTY for such purposes.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

17.1 Constructive Notice and Acceptance. Every PERSON, corporation, partnership, limited partnership, trust, association, or other legal entity, who or which shall hereafter have, claim, own, or acquire any right, title, interest, or estate in or to any portion of the SUBJECT PROPERTY, whether or not such interest is reflected upon the Public Records of Brevard County, Florida, shall be conclusively deemed to have consented and agreed to each and every covenant, restriction, and easement contained or by reference incorporated in this DECLARATION (including those matters set forth in the ARCHITECTURAL STANDARDS MANUAL as amended from time to time), and any published RULES AND REGULATIONS of the ASSOCIATION controlling the use of all residential LOTS and COMMON PROPERTY, whether or not any reference to this DECLARATION is contained in the document or instrument pursuant to which such PERSON, corporation, partnership, limited partnership, trust, association, or other legal entity shall have acquired such right, title, interest, or estate in the SUBJECT PROPERTY or any portion thereof.

17.2 Personal Covenants. To the extent that the acceptance or conveyance of a LOT creates a personal covenant between the OWNER of such LOT and the DEVELOPER, the ASSOCIATION, or any other OWNER or OWNERS, such personal covenant shall terminate and be of no further force or effect from or after the date when a PERSON or entity ceases to be an OWNER, except to the extent that this DECLARATION may provide otherwise with respect to the personal obligation of such OWNER for the payment of Assessments for which provision is expressly made in this DECLARATION.

17.3 Governing Law. This DECLARATION and the interpretation and enforcements of the same shall be governed by and construed in accordance with the laws of the State of Florida.

17.4 Construction. The provisions of this DECLARATION shall be liberally construed so as to effectuate and carry out the objects and purposes specified in Article III of the ARTICLES.

17.5 Article and Section Headings. Article and Section headings contained in the DECLARATION are for convenience and reference only and in no way define, describe, extend, or limit the intent, scope, or content of the particular Articles or Sections in which they are contained or to which they refer and, accordingly, the same shall not be considered or referred to in resolving questions of interpretation or construction.

17.6 Singular Includes Plural, Etc. Whenever the context of this DECLARATION requires the same, the singular shall include the plural and the plural the singular and the masculine shall include the feminine and the neuter.

17.7 Time of Essence. Time is of the essence for this DECLARATION and in the performance of all covenants, restrictions, and easements set forth herein. Whenever a date or the expiration of any time period specified herein shall fall on a Saturday, Sunday, or legal holiday, the date shall be extended to the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

17.8 Notice. Any notice required or permitted to be given pursuant to the provisions of this DECLARATION, the ARTICLES, or the BY-LAWS shall be in writing and may be delivered as follows:

17.8.1 Notice to OWNER. Notice to an OWNER shall be deemed to have been properly delivered when delivered to the OWNER's LOT, whether said OWNER personally receives said notice or not (providing OWNER resides on said LOT), or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such OWNER in writing to the ASSOCIATION for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such OWNER's LOT. Any notice so deposited in the mail within the COUNTY shall be deemed delivered forty-eight (48) hours after such deposit. In the case of co-owners, any such notice may be delivered or sent to any one of the co-owners on behalf of all co-owners and shall be deemed to be and constitute delivery on all such co-owners.

17.8.2 Notice to ASSOCIATION. Any notice required or permitted to be given to the ASSOCIATION shall be in writing and shall be deemed to have been properly delivered forty-eight (48) hours after the time when such notice is placed in the first class certified United States mail, postage prepaid, and with return receipt requested, within the COUNTY to the address furnished by the ASSOCIATION or to the address of the principal place of business of the ASSOCIATION.

17.8.3 Notice to the DEVELOPER. Any notice required or permitted to be given to the DEVELOPER shall be in writing and shall be deemed to have been properly delivered forty-eight (48) hours after the time when such notice is placed in the first class certified United States mail, postage prepaid, and with return receipt requested, within the COUNTY to the address furnished by the DEVELOPER to the ASSOCIATION or to the address of the principal place of business of the ASSOCIATION.

17.8.4 Affidavit. The affidavit of an officer or authorized agent of the ASSOCIATION declaring under penalty or perjury that a notice has been served to any member at the address shown on the records of the ASSOCIATION, or otherwise in accordance with Section 7.3 of the BY-LAWS, shall be deemed conclusive proof of the delivery of such notice, whether or not such notice is actually received.

17.9 Development and Construction by DEVELOPER. Nothing set forth in this DECLARATION shall be deemed, either expressly or impliedly, to limit the right of the DEVELOPER to change, alter, or amend its development plan or plans for the SUBJECT PROPERTY, or to construct such IMPROVEMENTS as the DEVELOPER deems advisable prior to the completion of the development of all of the SUBJECT PROPERTY. DEVELOPER reserves the right to alter its development and construction plans and designs as it deems appropriate from time to time; subject, however, to all applicable GOVERNMENTAL REGULATIONS, including, without limitation, those of the CITY.

17.10 Assignment of DEVELOPER's Rights and Interests. The rights and interests of the DEVELOPER under this DECLARATION may be transferred and assigned by the DEVELOPER to any successor or successors to all or part of the DEVELOPER's interest in the SUBJECT PROPERTY by an express transfer, conveyance, or assignment incorporated into any recorded deed or other instrument, as the case may be, transferring, conveying, or assigning such rights and interests to such successor.

17.11 Conflicts. In the event of any conflict between the ARTICLES and the BY-LAWS and this DECLARATION, this DECLARATION, the ARTICLES, and the BY-LAWS, in that order, shall control.

17.12 Authority of ASSOCIATION and Delegation. Nothing contained in this DECLARATION shall be deemed to prohibit the BOARD from delegating to any one of its members, or to any officer, or to any committee or any other PERSON, any power or right granted to the BOARD by this DECLARATION including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the BOARD is expressly authorized to so delegate any power or right granted by this DECLARATION.

17.13 Effect of Invalidation. If in the course of an attempt to enforce this DECLARATION, any particular provision of this DECLARATION is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

17.14 No Warranties. This DECLARATION is made for the objects and purposes set forth in Article II of this DECLARATION and the DEVELOPER makes no warranties or representations, express or implied as to the binding effect or enforceability of all or any portion of the terms and provisions of or the covenants,

restrictions, and easements set forth in this DECLARATION, or as to the compliance of any of the same with public laws, ordinances, and regulations applicable thereto.

17.15 Turnover of the Association. At such time that the Developer shall no longer appoint a majority of the Directors, control of the association, by virtue of a majority of electoral board members, shall be turned over to the individual lot owners.

17.16 Transition Committee: The DEVELOPER may appoint a Transition Committee composed of not less than 3 nor more than 5 OWNERS. The Transition Committee shall assist the Association in accomplishing a smooth transition from a DEVELOPER appointed BOARD to a BOARD where a majority is elected by the OWNERS.

It shall be the Transition Committee's responsibility to review the ASSOCIATIONS accounts, COMMON AREAS, administration, and any other items deemed appropriate by the Transition Committee to effect a smooth transition from a DEVELOPER controlled BOARD.

The Transition Committee shall be empowered to settle any outstanding issues with the DEVELOPER related to the transition process. The ASSOCIATION and the individual OWNERS shall hold harmless the decisions of the Transition Committee.

IN WITNESS WHEREOF, the DEVELOPER has caused this DECLARATION to be made and executed as of the day and year first above written.

Signed, sealed, and delivered in the presence of:

VENTANA DEVELOPMENT COMPANY, INC.

By: _____
TIMOTHY F. MCWILLIAMS, President

STATE OF FLORIDA
COUNTY OF BREVARD

I hereby certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgements, personally appeared Timothy F. McWilliams, President of Ventana Development Company, Inc, a Florida Corporation authorized to do business in the State of Florida known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that executed the same, that I relied upon the following form(s) of identification of the above-named person(s): _____ and that an oath (was) (was not) taken.

MARGARET A. UTECHT
MY COMMISSION # CC 373624
EXPIRES: May 19, 1998
Bonded Thru Notary Public Underwriters

Notary Rubber Stamp Seal

Witness my hand and official seal in the County and State last aforementioned on this 1 day of MARCH, 1995.

Notary Signature

MARGARET A. UTECHT
Printed Notary Signature

WILLIAM MOTT LAND SURVEYING, INC.

SATELLITE BEACH PROFESSIONAL CENTER
1275 South Patrick Drive, Suite H ★ Satellite Beach, Florida 32937-3963
(407) 773-4323 ★ FAX (407) 777-4795

LEGAL DESCRIPTION: VENTANA PHASE ONE

PART OF LANDS DESCRIBED IN O.R.B. 2240, PAGE 2937 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, SAID LANDS LYING IN SECTION 22, TOWNSHIP 25 SOUTH, RANGE 36 EAST, SAID BREVARD COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 22 AND RUN N.89°58'00"E. ALONG THE SOUTH LINE OF SAID SECTION 22 A DISTANCE OF 75.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF MURRELL ROAD (150 FT. RIGHT-OF-WAY) FOR THE POINT-OF-BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE N.00°14'41"W. ALONG SAID EAST RIGHT-OF-WAY A DISTANCE OF 2003.01 FEET; THENCE LEAVING SAID EAST RIGHT-OF-WAY S.89°38'04"E. A DISTANCE OF 20.00 FEET; THENCE S.00°14'41"E. A DISTANCE OF 783.11 FEET; THENCE S.15°32'14"E. A DISTANCE OF 81.10 FEET; THENCE S.00°21'56"W. A DISTANCE OF 145.00 FEET; THENCE S.89°38'04"E. A DISTANCE OF 160.00 FEET; THENCE S.00°21'56"W. A DISTANCE OF 20.00 FEET TO THE POINT-OF-CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 39.27 FEET TO THE POINT-OF-TANGENCY; THENCE S.89°38'04"E. A DISTANCE OF 85.00 FEET; THENCE N.00°21'56"E. A DISTANCE OF 110.00 FEET; THENCE N.31°21'35"W. A DISTANCE OF 53.59 FEET; THENCE N.40°55'07"W. A DISTANCE OF 97.74 FEET; THENCE N.31°24'42"W. A DISTANCE OF 69.13 FEET; THENCE N.02°47'40"W. A DISTANCE OF 75.19 FEET; THENCE N.00°14'41"W. A DISTANCE OF 80.00 FEET; THENCE N.00°10'47"W. A DISTANCE OF 78.94 FEET; THENCE N.25°07'29"E. A DISTANCE OF 67.90 FEET; THENCE N.32°14'32"E. A DISTANCE OF 149.43 FEET; THENCE N.00°21'56"E. A DISTANCE OF 60.69 FEET; THENCE S.89°38'04"E. A DISTANCE OF 392.00 FEET TO A POINT ON A CURVE ALSO BEING THE POINT-OF-CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 375.00 FEET, A CENTRAL ANGLE OF 02°59'53", A CHORD BEARING OF S.01°08'00"E. AND A CHORD DISTANCE OF 19.62 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 19.62 FEET; THENCE LEAVING SAID CURVE S.87°22'03"W. A DISTANCE OF 110.66 FEET; THENCE S.00°21'56"W. A DISTANCE OF 55.30 FEET; THENCE S.18°31'43"E. A DISTANCE OF 359.87 FEET; THENCE S.14°28'43"E. A DISTANCE OF 73.93 FEET; THENCE S.00°21'56"W. A DISTANCE OF 251.17 FEET; THENCE S.89°38'04"E. A DISTANCE OF 88.00 FEET TO THE POINT-OF-CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 39.27 FEET; THENCE S.89°38'04"E. A DISTANCE OF 50.00 FEET TO A POINT OF A CURVE, SAID POINT ALSO BEING THE POINT-OF-CURVATURE OF A CIRCULAR CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 25.00, A CENTRAL ANGLE OF 90°00'00", A CHORD BEARING OF S.44°38'04"E. AND A CHORD DISTANCE OF 35.36 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 39.27 FEET TO THE POINT-OF-TANGENCY; THENCE S.89°38'04"E. A DISTANCE OF 88.00 FEET; THENCE S.00°21'56"W. A DISTANCE OF 243.00 FEET; THENCE S.00°42'02"W. A DISTANCE OF 78.00 FEET; THENCE S.03°42'19"W. A DISTANCE OF 78.13 FEET; THENCE S.06°15'50"W. A DISTANCE OF 78.42 FEET; THENCE S.06°06'33"W. A DISTANCE OF 78.39 FEET; THENCE S.03°12'40"W. A DISTANCE OF 78.10 FEET; THENCE S.00°31'16"W. A DISTANCE OF 78.00 FEET; THENCE S.00°21'56"W. A DISTANCE OF 95.00 FEET; THENCE N.89°38'04"W. A DISTANCE OF 34.00 FEET; THENCE S.00°21'56"W. A DISTANCE OF 166.77 FEET TO THE SAID SOUTH LINE OF SECTION 22; THENCE S.89°58'00"W. 906.25 FEET TO THE SAID EAST RIGHT-OF-WAY LINE OF MURRELL ROAD AND THE POINT-OF-BEGINNING. CONTAINING 29.152 ACRES OF LAND MORE OR LESS

WILLIAM A. MOTT, P.L.S.
PRESIDENT

Exhibit BK 3461 PG 171

JONATHAN M. MOTT, P.L.S.
VICE-PRESIDENT