

Page 10450

OFFICIAL RECORDS

THIS INSTRUMENT PREPARED BY:
EDWARD C. AXEL, Attorney
BLUMLOCK, HOLDROCK & AXEL, P.A.
SUITE 2301, INDEPENDENT SQUARE
JACKSONVILLE, FLORIDA 32202

OCEAN BREEZE
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION made on the 27 day of June, 1990 by DONALD W. TREDINICK, SR. as Trustee of that certain trust known as Tredinick Children Trust dated December 30, 1987 (hereinafter referred to as the "Declarant" and/or the "Developer").

W I T N E S S E T H:

WHEREAS, a residential subdivision and community known as OCEAN BREEZE is being developed on real property owned by Declarant in Duval County, Florida, which real property is described in Exhibit "A" attached to this Declaration and has been subdivided by plat into Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, OCEAN BREEZE according to plat thereof recorded in Plat Book 46, pages 39 and 39A of the public records of Duval County, Florida, and is referred to as the "Property" afterward in this Declaration;

WHEREAS, Declarant desires to subject the Property to the protective covenants, conditions, restrictions, assessments, and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of said Property and for the benefit of the present and subsequent owners of said Property.

NOW, THEREFORE, Declarant declares that the Property is subjected to this Declaration and is and shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the protective covenants, conditions, restrictions, easements, assessments and liens (sometimes referred to herein collectively as "covenants and restrictions") hereinafter set forth. Every owner and/or grantee of any interest in the Property hereby made subject to this Declaration, by acceptance of a warranty deed or other conveyance of such interest, whether or not it shall be so expressed in any such warranty deed or other conveyance, whether or not such warranty deed or other conveyance shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to this Declaration and to the terms and conditions hereof and shall be deemed to have assented to said terms and conditions. This Declaration shall apply to and bind the grantor and grantee, their heirs, executors, administrators, and assigns, and are hereby imposed pursuant to the general plan for the improvement of said residential community hereinafter set forth, to-wit:

ARTICLE I

DEFINITIONS

1.1 "Declarant" shall mean and refer to DONALD W. TREDINICK, SR. as Trustee of THE TREDINICK CHILDREN TRUST dated December 30, 1987, its successors and assigns.

1.2 "Property" shall mean and refer to Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, OCEAN BREEZE according to plat thereof recorded in Plat Book 46, pages 39 and 39A of the public records of Duval County, Florida, which plat is of the real property hereby made subject to this Declaration as described in Exhibit "A."

1.3 "Plat" or "Plat of OCEAN BREEZE" shall mean the plat as described above.

1.4 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Property, excluding, however, those having such interest merely as security for the performance of an obligation.

1.5 "Lot" and/or "Lots" shall mean and refer to any one or all of the separate parcels of land into which the Property has been subdivided as the context requires. The Property has been subdivided into eleven (11) Lots. A part of each Lot is in the Access Easement or Private Roads known as "OCEAN BREEZE Drive" and "OCEAN

OFFICIAL RECORDS

BREEZE Court" constructed from Seminole Road into the Property. A part of certain Lots is within the "Pedestrian Easement" as depicted on the Plat. The separate Lots, the Pedestrian Easement, the Private Road and certain other easements are depicted on and dedicated by the Plat.

1.6 "Design Quality Standards" shall mean and refer to the document entitled "Design Quality Standards for OCEAN BREEZE, Seminole Road, North, Atlantic Beach, Florida" prepared by Akel, Logan & Shafer, Architects and Engineers, which document has been approved and adopted by the City of Atlantic Beach, Florida as and for the construction and use standards for OCEAN BREEZE. The Design Quality Standards, as applicable to OCEAN BREEZE, are incorporated in this Declaration by this reference and shall apply to construction upon and use of all Lots whether or not specifically stated in the provisions and sections of this Declaration. The Design Quality Standards shall be controlling in the event of an inconsistency unless otherwise specifically stated in this Declaration. A copy is available from the Architectural Review Committee. It is specifically intended that upon surrender of control by the Declarant, the Owners shall take over control of the Architectural Review Committee through the Association as provided in this Declaration rather than as may be otherwise provided or in the implied Design Quality Standards.

1.7 "Association" shall mean and refer to the OCEAN BREEZE OWNERS ASSOCIATION, INC. to be formed as provided in this Declaration.

ARTICLE IIPROPERTY SUBJECT TO THIS DECLARATION

The real property which is, by the recording of this Declaration, subjected to the covenants, restrictions, easements, assessments and liens hereinafter set forth and which, by virtue of this recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered, subject to this Declaration is described in the Plat.

ARTICLE IIIDECLARANT'S PURPOSE

Declarant contemplates the sale of all Lots in the Property for residential building sites, subject to the conditions as set forth herein.

ARTICLE IVUSE OF PROPERTY

All Lots located within the Property shall be for single-family residential purpose only.

ARTICLE VCHARACTER OF BUILDINGS

5.1 No residence building shall be erected or placed on any residential Lots which have a square foot area, exclusive of porches, patios and garages of less than 1,600 square feet in area and shall be no more than thirty-five (35) feet in height and shall comply with the Design Quality Standards in all other respects.

5.2 No building, any part of which is designed for dwelling purposes, shall be in any manner occupied while in the course of original construction. Nor shall any building be in any manner occupied until such building complies with all of the Design Quality

OFFICIAL RECORDS

Standards and all of the conditions set forth herein and with any and all further restrictions established and applicable thereto. In addition to the requirements of the Design Quality Standards, the work of construction of any building or structure shall be prosecuted with reasonable diligence continuously from the time of commencement until same shall be fully completed. No building constructed elsewhere shall be moved to, placed or maintained on any building site. No tent, shack, mobile home, house-trailer, barn, garage or other similar out-buildings shall be used at any time as a residence, either temporarily or permanently, nor shall any residence of a temporary character be permitted on any building site. All rubbish shall be kept in a secure container so as not to be scattered or blown by wind into another Lot.

ARTICLE VISETBACKS AND LOCATION OF BUILDINGS

All buildings shall be located on residential building Lots within the building lines for each building Lot shown on any plat applicable to said Lot and as described in the Design Quality Standards, subject to possible variances that may be granted by the Architectural Review Committee as provided in the Design Quality Standards or herein. Notwithstanding anything to the contrary, no building shall be so situated as to constitute a violation of the applicable rules and regulations of the City of Atlantic Beach, Florida.

ARTICLE VIIEASEMENTS

7.1 Reservation of Easements. The Declarant, for itself and its successors and assigns and for the use and benefit of authorized public and private utilities, hereby reserves and is given a perpetual easement, privilege and right on, over and under the ground of all roads, including the "Private Road" designated on the Plat of Ocean Breeze as "Ocean Breeze Drive," "Ocean Breeze Court," and the "30' Easement for Ingress, Egress, Drainage, and Utilities," all as designated on said Plat, to erect, maintain and use for the purpose of constructing or maintaining any drainage facilities and utilities (water, sewer, electrical, cable television and otherwise) on, in, over and under all of those portions of the Lots lying within the above-described easements and the "Private Road" as depicted on the Plat. The owners of the Lots subject to these privileges, rights and easements as described in this paragraph shall acquire no right, title or interest in or to any transmission lines, equipment or facilities placed on, over or under the Property which is subject to said privileges, rights and easements.

7.2 Grant of Easements. The Declarant hereby grants to the present and future owners of each of the Lots and to the lawful occupants of any dwelling on each Lot and to their guests, invitees, domestic help, delivery, pick-up and fire protection services, police and other authorities of the law, United States mail carriers, representatives of the utilities authorized by the Declarant to serve the Lots, holders of mortgage liens on said Lots and such other persons as the Declarant, its successors and assigns, may from time to time designate, a non-exclusive and perpetual right of ingress and egress over, upon and across the portion of each Lot depicted and designated on said Plat as being within the "Private Road" as depicted on the plat of Ocean Breeze and designated as "Ocean Breeze Drive" and "Ocean Breeze Court," the "30' Easement for Ingress, Egress, Drainage and Utilities" (provided, however, that such easement shall be used only as authorized by the Declarant or as otherwise stated in these covenants and restrictions), and the "ten foot pedestrian easement" shown on the Plat, provided, however, that the "ten foot pedestrian easement" shall be used only by the Lot owners and their respective invitees and guests.

OFFICIAL RECORDS

7.3 Covenants of Title. These easements reserved and granted shall be covenants running with the title to each respective Lot and shall be binding upon and inure to the benefit of the respective successors, heirs, representatives and assigns of the owners and the Declarant, as the case may be.

ARTICLE VIIIARCHITECTURAL CONTROL AND APPROVAL OF PLANS

No building, fence, wall or other structure shall be erected, constructed, altered or maintained (nor shall any construction or improvements be commenced) upon any portion of any building site unless plans and specifications therefor shall have been submitted to and approved by the Architectural Review Committee. The present Architectural Committee shall consist of three (3) persons appointed by Declarant who may be affiliated with Declarant or joint venturers or employees of a joint venturer of Declarant. The address of the Architectural Review Committee shall be care of: AKEL, LOGAN & SHAFER, 110 Riverside Avenue, Jacksonville, Florida 32202 until such time as the Declarant has turned over control to the Association. At such time as the Declarant sells all Lots, Declarant shall surrender control of the Architectural Review Committee to the Association, and in that event the Association's Board of Directors shall designate a committee consisting of three (3) owners of Lots to serve as the Architectural Review Committee for such term as may be established by the Board of Directors; should any of said members resign, cease to be an Owner or otherwise cease to serve as a member, then the remaining members shall elect another Lot Owner to serve as an interim member in place of the member who is no longer the owner of a Lot until such time as the Board of Directors has met to choose a replacement. Until the Declarant surrenders control of the Architectural Review Committee, the Architectural Review Committee may revise, change and/or modify and/or grant waivers and variances of the Design Quality Standards in whole or in part and notice of same shall be furnished to all Owners of Record; such changes shall be binding but shall not apply to construction already completed or commenced if it has reached such a stage that the change would adversely affect such Lot Owner. A document signed by Declarant shall be recorded in the public records to give notice of any such changes by the Architectural Review Committee. Once the Declarant's control has been surrendered to the Association, the Design Quality Standards may be changed only in accordance with Article XII of this Declaration.

ARTICLE IXAPPROVAL BY AND AUTHORITY OF
ARCHITECTURAL REVIEW COMMITTEE

9.1 The Architectural Review Committee. The Architectural Review Committee has been established and is directed to monitor the development of this subdivision and may, at the committee's sole discretion, cause Declarant (or the Association upon Developer's surrender of control) to pursue legal actions and/or to negotiate settlements before, during or after legal actions that assure or compel compliance with the Design Quality Standards and with these covenants, conditions and restrictions in the judgment of the Architectural Review Committee. Additionally, the Architectural Review Committee may promulgate procedures, rules, methods, and other criteria which facilitate the implementation of the Design Quality Standards and the covenants of this Declaration. Such promulgations as may be devised by the Architectural Review Committee, also known as the "ARC", shall have the same status as to applicability and enforceability as if written in the Design Quality Standards and/or within this Declaration and shall be enforceable as provided in this Declaration.

OFFICIAL RECORDS

9.2 Limitations. Actions of the Architectural Review Committee are severally individual and uniquely specific and shall not constitute a precedent against which other actions of a similar and/or dissimilar nature/character are judged and/or submitted to litigation and/or settled by agreement. The Declarant and the "ARC" are concerned primarily with the visual qualities, consistencies, amenities and environmental features and characteristics of the separate communities. The Developer and "ARC" do not assume any level of responsibility and/or liability by inclusion and/or exclusion for any of the following separately and/or collectively:

(a) The structural adequacy, strength, capacity, safety features and/or any other characteristics of any structures, facilities and/or features contained on or in either subdivision whether natural or man made; and/or

(b) Any condition of the soil including but not limited to erosion, erodability, compaction or compactability, permeability, stability, acidity, alkalinity, salinity, vegetative cover and/or support capability, surface and/or below surface conditions/features/components and/or any other specific or non-specific characteristics; and/or

(c) Permits, certificates, insurance, analysis, surveys of any nature and/or character, building and construction codes of any origin/applicability/nature, ordinances, rules, regulations, laws and/or any other documents or devices whether pertinent or not pertinent to either or both subdivisions separately or collectively; and/or

(d) The performance and/or non-performance of any builder, contractor, materialmen/suppliers, workmen, designers, surveyors, architects, engineers, landscape architects, nurserymen, environmentalists, utility men, financiers, realtors, brokers and/or any other person(s) or entity(ies) who and/or which may be or become involved in/on either of the subdivisions separately or collectively.

9.4 Discretion of Committee to Resolve Uncertainties/Disputes. In the event any situations, circumstances, inquiries and/or development arise which are not addressed by the provisions of the Design Quality Standards and/or by this Declaration, the Architectural Review Committee shall render a fair and equitable decision consistent with the principles for its existence as outlined herein and shall not be subject to liability for resolving such matters, whether by settlement of pending or prospective litigation or otherwise.

9.5 Appeal Rights. Should any party affected by any decision and/or action of the Architectural Review Committee remain dissatisfied by/with the decision and/or action, such party shall have the right to appeal the decision and/or action in writing within ten (10) business days. The Architectural Review Committee will respond to any written appeal within thirty (30) calendar days of such appeal. If the Architectural Review Committee does not, in its sole wisdom, grant the expected relief sought by the aggrieved and/or dissatisfied party, said party shall have the right to seek relief through a court of appropriate and competent jurisdiction in Duval County, Florida. All costs of court and all legal fees of the Declarant and the "ARC" as a committee and as individuals shall be borne by the aggrieved and/or dissatisfied party and/or his agent or representative.

OFFICIAL RECORDS

ARTICLE XUSE RESTRICTIONS

In addition to and not in limitation of the Design Quality Standards, the following "Use Restrictions" shall apply:

10.1 Use; Occupancy. No Lot, nor any part thereof, shall be used for the purpose of exploring for, taking therefrom, or producing therefrom, gas, oil or other hydrocarbon substances or any purpose other than for a single family residence. Before any Lot may be occupied as a residence, the improvements constructed or to be constructed thereon must be completely finished on the exterior all the grounds which are visible from any street must be planted with grass or have other suitable ground cover and the driveway must be paved entirely to and tied into the nearest edge of the paved portion of the Private Road, all in compliance with the Design Quality Standards.

10.2 Building Materials. No lumber, brick, stone, cinder block, or other fabricated masonry block units, concrete, or any other building materials, scaffolding devices or any other thing used for building purposes, shall be stored on any portion of the Property except for purposes of construction, and shall not be stored for longer than that length of time reasonably necessary for the construction in which same is to be used.

10.3 Trailers, Boats and Motor Vehicles. No mobile home, motor home, truck, camper, trailer of any kind, tent or similar structure, or boat, shall be kept, placed, stored, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed, or repaired upon any portion of any Lot. A motor home, truck, camper, trailer or boat may be kept, placed or stored in a completely enclosed garage, provided however, that the provisions in this paragraph shall not apply to emergency vehicle repairs.

10.4 Mail Boxes. Mail boxes of a type consistent with the character of the neighborhood shall be selected and placed by Owners and shall be maintained by the Owners to compliment the residence and the neighborhood. Mail boxes and locations shall, however, be in compliance with U.S. Postal Service requirements and the Design Quality Standards.

10.5 Antennas, Clothes Drying Facilities, Air Conditioners, and other Outside Objects. Outside satellite dishes, antenna systems, clothes lines or other outside facilities for drying or airing clothes, and any other outside objects or items (whether affixed to the ground or on any structure) shall not be erected, placed or maintained on any portion of any Lot or on or upon any structure on any Lot. Window mounted air conditioners shall not be permitted on any Lot or on or upon any structure on any Lot.

10.6 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot or any portion of the Property, so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot or any portion of the Property.

10.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on a Lot or any portion of the Property except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring Lots or Property, except to make the same available for collection, and then, only the shortest time reasonably necessary to affect such collection.

OFFICIAL RECORDS

10.8 Tanks. No exposed above ground tanks will be permitted for the storage of fuel, water or any other substance.

10.9 Signs. Only such signs as are hereinafter specified may be erected or maintained on any Lot. The following signs will be permitted on any Lot: professionally lettered builder, realtor or sign of the Owner advertising the Property or Lot for sale or rent; provided, however, that such signs shall not be more than 24 inches x 30 inches in size; that no more than two (2) such signs shall be placed on any one Lot at the same time; that any and all such signs shall be mounted and/or affixed in a single location separate from the house structure or any other structure such as garage, fence, retaining wall or shed; and that no sign shall be attached to any tree or shrubbery. All such signs shall be approved by the Architectural Review Committee prior to being placed on any Lot.

10.10 Off-Street Parking. Adequate off-street parking shall be provided by the Owner of any Lot for the parking on the Lot of automobiles or other vehicles owned by such Owner, and no Owner shall park his automobiles or other vehicles on the Private Road or on adjacent roads and streets as a matter of course.

10.11 Noxious or Offensive Activities. Residents shall refrain from any act or use of their Property which could reasonably cause embarrassment, discomfort or annoyance to Owners and residents of other Property made subject to this Declaration. Noxious or offensive activities shall not be carried on upon any Lot.

10.12 Unightly or Unkept Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on a Lot or any portion of the Property. Also all shrubs, trees, plants and lawns will be maintained in a neat and orderly manner and in keeping with the rest of the Lo's within the Property.

10.13 Animals and Pets. No stable, poultry house or yard, rabbit hutch or other similar structure shall be constructed or allowed to remain on any Lot; no animal or bird, except of a kind which is customarily kept as a domestic pet, shall be kept in any residence or on any Lot; no animal or pet shall be kept, bred, or maintained for any commercial purpose; and no animal or pet shall be kept so as to endanger the health or unreasonably disturb the Owners of any Lot subject to this Declaration or any resident thereof. No structure for the care, housing, or confinement of any animal or bird shall be constructed or maintained on any Lot.

10.14 Restrictions on Subdividing. No re-subdivision shall be made of any Lot. Only one dwelling is permitted on any one Lot.

10.15 Governmental Regulations; Design Quality Standards. The Design Quality Standards and all governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of the Design Quality Standards and/or any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

10.16 Easements. All Lots in said subdivision shall be conveyed subject to any easement in, upon, or across the same for the purpose of constructing or maintaining any and all types of utilities, including but not limited to, sewer, telephone, cable television and electric power lines, gas and water lines and mains, and the Declarant expressly reserves for the benefit of Declarant and its successors and assigns, the right to construct, operate and

OFFICIAL RECORDS

maintain transmission lines and equipment for any and all types of utilities that may now or afterward be available including but not limited to water, gas, sewer, electric, cable television and telephone lines over, under, upon and across said Lots as said lines are now located and as may be shown on any plat, or as hereafter may become necessary, and to grant appropriate easements having locations, dimensions and provisions as may be required by a utility providing service or by the appropriate governmental authority or authorities or the Design Quality Standards.

10.17 Ditches. Any drainage ditches, either natural or man-made, cannot be closed by an Owner unless proper size pipe is installed to permit unobstructed, continuous and undiminished drainage flow in accordance with all governmental rules, regulations and laws.

10.18 Street and Entrance Lighting. Each Lot Owner shall be charged with the responsibility of paying a pro rata share of the cost of electrical current to the Private Road and entrance lights (if any) into and within the Property from Seminole Road, a public road, and repairs and maintenance to the light poles, lines and fixtures (whether the lights are located on public right of way, Lots in the Property, the Private Road or property retained by the Declarant, or otherwise) provided, however, that this responsibility shall extend to lights that afford lighting for the Private Road entrance and other access ways in the Property. Each Lot Owner will pay his/her pro rata share promptly, when due. The pro rata share of each Lot and the Owner(s) thereof shall be a fraction of the total cost. The numerator of the fraction as to each Lot shall be one (1) and the denominator shall be the number of Lots as set forth in Section 1.4. This shall be assessed by the Association at such intervals as may be determined by the Association.

ARTICLE XI

ASSESSMENTS AND OWNERS ASSOCIATION

11.1 Homeowners' Association. For the purpose of maintaining roads, traffic control, general landscaping and planting within roadway areas, and all common community services of every and nature required or desired within the Property for the general use and benefit of all Owners, each and every Owner, in accepting a deed or contract for any Lot in the Property, agrees to and shall be a member of and be subject to the obligations and duly enacted By-laws and Articles of the OCEAN BREEZE OWNERS ASSOCIATION, INC. a nonprofit corporation, the "Association." The Declarant will incorporate the Association and promulgate by-laws. The initial directors shall be the members of the Architectural Review Committee appointed by the Developer and shall serve until all Lots are sold at which time the Owners of Lots shall be entitled to elect the directors. Each Lot shall have one vote and the owner(s) of each Lot shall, upon request, designate in writing one person to cast that vote.

11.2 Regular Assessments. Each Lot and each Owner is hereby subjected to regular maintenance assessments payable on a yearly basis (or more frequent basis as determined by the Association) as hereinafter provided. Commencing at such time and continuing at such intervals and frequency as determined by the Association, each Owner shall pay to the Association, at such place and time as shall be designated by the Association, in advance, the regular maintenance assessment assessed against each Lot as fixed by the Association, which assessment shall be uniform in dollar amount for each Lot. Such regular maintenance assessment shall become delinquent if not paid within ten (10) days after said assessment is due and shall bear interest at the rate of twelve percent (12%) per annum from said date until paid. The regular maintenance assessment and frequency may be adjusted by the Association as required by the

OFFICIAL RECORDS

Association in its judgment to meet the expenses and other charges for which same are assessed.

11.3 Purposes. The regular maintenance assessment described above shall be for the purpose of enabling the Association:

(a) To pay all expenses required for the reasonable repair and maintenance of the Private Road and entrance area from the public road into the community.

(b) To pay for the expense of signage and lighting the Private Road and entrance area, including replacement of bulbs, poles (if any), wiring and any and all other expenses in connection therewith.

(c) To pay for all expenses incurred in connection with providing fire protection for residents of the Property (if any).

(d) To pay for the expenses of maintenance, improvement and operation of drainage easements and facilities.

(e) To pay for the expenses of maintaining, repairing and replacing directional markers, signs and traffic control devices and costs of controlling and regulating traffic on the Private Road.

(f) To pay for all expense incurred in providing mosquito and other pest control for the Property (if any).

(g) To pay for all expenses incurred in lighting and maintaining the sign to be located on or near the entrance area from the Public Road into the Private Road on the Property.

(h) To pay for all expenses incurred in maintaining preserving and replacing the trees and shrubbery located within the Private Road and entrance.

(i) To pay for all expenses of operating the Association, and the Architectural Review Committee, including without limitation management fees, legal and accounting fees, payrolls and general office operating expenses, and doing any and all other things necessary or desirable in the judgment of the Association to keep the Property neat and attractive or to preserve or enhance the value of the Property, or to eliminate fire, health or safety hazards, or which in the judgment of the Association may be of general benefit to the residents of the Property.

(j) To repay funds, together with interest thereon, borrowed by the Association and used for purposes referred to herein.

(k) To accumulate reasonable reserves for the foregoing purposes.

It shall not be necessary for the Board to allocate or apportion the funds collected pursuant hereto or expenditures therefrom among the various purposes specified herein and the judgment of the Association and the expenditures of said funds shall be final. The Board in its discretion may hold said funds invested or uninvested, and may reserve such portions of the funds as the Board determines advisable for expenditure in years following the year for which the regular maintenance assessment was assessed.

11.4 Developer's Lots. Notwithstanding anything herein to the contrary, no lien shall attach against any Lot or other portion of the Property so long as same is owned by Developer. The Developer shall not be required to pay any such assessments but shall continue to pay expenses of the Association not covered by such assessments until control is turned over to the Owners. The Developer shall

OFFICIAL RECORDS

turn over control to the Owners when all Lots are sold. The Developer may, however, turn over control before such time.

11.5 Lien. Each regular and special assessment with interest at the rate provided above shall constitute a debt from the Owner or Owners of the Lot against or with respect to which the same shall be assessed, and shall be secured by a lien upon said Lot and all improvements thereon, and each Owner hereby grants to the Association such lien in accordance with the foregoing. Said lien shall attach as of the date of filing for record a notice of lien with the Clerk of the Circuit Court of Duval County, Florida executed by the Association. The enforcement of said lien shall be by foreclosure or by any other proceeding in equity or at law and the Association shall be entitled to recover in such proceedings all costs, including reasonable attorneys' fees, incurred in and about such proceedings and all such costs shall be secured by such lien. Each such lien shall be subordinate and inferior to the lien of any first mortgage encumbering the Lot if said mortgage was recorded in the public records of Duval County, Florida, prior to the above described attachment date of such lien. Upon request, the Association shall furnish any Owner or Mortgagee a certificate showing the unpaid assessments, if any, against any Lot.

ARTICLE XII

RIGHTS OF DEVELOPER; REMEDIES; AMENDMENTS

12.1 Dedication or Alteration of Easement. Declarant shall have the sole and absolute right at any time, with the consent of the governing body of any municipality or other governmental body or agency then having jurisdiction over the Property to dedicate to the public or to any public body, including a public utility, all or any part of the easements reserved in this Declaration at such locations as may be required. Declarant shall have the right to redesignate, extend, relocate or close any part of the Private Road provided that Owners and mortgagees of each Lot contiguous to, or otherwise provided access by, the portion of the Private Road being relocated or closed, consent to such relocation or closure and provided that no Lot is denied reasonable access to a public dedicated street or highway by such relocation or closure.

12.2 Amendment. Declarant reserves unto itself, its successors, assigns, nominees and designees and shall have the right to the following:

(a) To amend this Declaration, without prior approval of any Owner, so long as such amendment shall conform to the general purposes and standards set forth herein.

(b) To amend this Declaration, without prior approval of any Owner for the purpose of curing any ambiguity in or any inconsistency between the provisions set forth herein or to amend this Declaration in any respect that does not materially affect the rights of any Owners of Lots previously conveyed.

(c) To include in any contract for sale, deed or other instrument hereafter made, any additional covenants other than those set forth herein which do not lower the standards of this Declaration, without the prior approval of any Owner.

(d) To release, without prior approval of any Owner, any Lot or other portion of the Property from any part of the covenants set forth in this Declaration which have been violated if Declarant, in its sole discretion, determines such violation or violations to be minor or insubstantial and to make exceptions, without prior approval of any Owner, to the covenants and restrictions set forth herein.

OFFICIAL RECORDS

(e) To approve any amendment to this Declaration, which approval shall be required in writing regardless of by whom proposed, and regardless of the number of Owners consenting thereto.

(f) Declarant shall have the right, without the prior approval of any Owner, to file an amendment to this Declaration for the purpose of submitting other property to the terms and provisions of this Declaration, with such additions or modifications as Declarant shall provide; and upon such amendment, this Declaration shall apply to such other property as more particularly to be set forth in such amendment. Nothing in this Declaration shall be construed as requiring the Declarant to amend this Declaration to include such other real property owned by Declarant. Such an amendment may be accomplished by filing a statement among the public records of Duval County, Florida, incorporating such terms, covenants and restrictions of this Declaration as are applicable to the property included within such amendment or by adopting all or part of this Declaration by reference in a deed conveying such other property.

Notwithstanding anything in this paragraph 11.2 to the contrary, no amendments to this Declaration shall affect the rights or lien of any mortgagee without such mortgagee's express consent thereto.

12.3 Enforcement. Declarant reserves the right, but shall have no obligation, to enter upon any Lot to remove rubbish, signs, structures, plants or other things or to take such other action at the expense of the Owner as Declarant deems necessary in order to enforce this Declaration and the Design Quality Standards; such entry, abatement and removal shall not be deemed a trespass or make Declarant liable in any respect for any damages on account thereof. The Owner of the Lot shall pay Declarant on demand the actual cost of such enforcement plus ten percent (10%) of the cost in performing such service. In the event that such charges under this paragraph shall not be paid on demand, such charges shall bear interest at the maximum legal rate of interest from the date of demand. Declarant may, at its option, bring an action at law against the Owner personally obligated to pay the same, or upon giving the Owner ten (10) days notice of an intention to file a claim of lien against a Lot, may file and foreclose such lien. Each Owner hereby grants such lien to Declarant. Provided, however, any such lien shall be subordinate and inferior to the lien of any mortgage previously recorded on such Lot or Lots. In addition, after Declarant has surrendered control of the Association, the Architectural Review Committee, acting through the Association, Declarant or any Owner shall be entitled to bring actions at law for damages or in equity for injunctions against those so violating or attempting to violate this Declaration for the purpose of curing, correcting, preventing or enjoining any violation or attempted violation of the terms of this Declaration. All costs and expenses, including, but not limited to, attorney's fees, incurred by Declarant and/or the Association to effectuate collection of any charges, or incurred by Declarant to cure, correct, prevent or enjoin any violation of the terms of this Declaration shall be borne by the Owner violating or attempting to violate this Declaration. All remedies of Declarant, the Association or any Owner shall be cumulative to any and all other remedies provided herein or at law or in equity. The failure by Declarant, the Association or any Owner to bring any action to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to the one occurring prior to or subsequent thereto, nor shall such failure give rise to any claim or cause of action by any Owner or any other party against Declarant.

OFFICIAL RECORDS

ARTICLE XIIIMISCELLANEOUS

13.1 Rights of Mortgagees. Notwithstanding anything in this Declaration to the contrary, the lien of Declarant for charges incurred in enforcing this Declaration shall be subordinate and inferior to the lien of any mortgagee on any Lot recorded prior to the recording of a claim of lien by Declarant. In addition, any mortgagee holding a mortgage lien on a Lot who acquires title thereto as a result of foreclosure or by deed in lieu of foreclosure or any party who purchases the same at a foreclosure sale shall not be liable for the charges pertaining to such Lot which are chargeable to the former Owner and which become due prior to such acquisition of title.

13.2 Term. The terms and provisions of this Declaration shall run with the title to the Property and any part thereof and unless otherwise altered or terminated by Declarant in accordance with the terms and provisions herein contained, shall bind all persons in interest, all Owners and their heirs, legal representatives, successors and assigns until December 1, 2010, at which time this Declaration shall automatically be extended for successive periods of ten (10) years, unless, by agreement between the owners of a majority in number of the Lots at or prior to the end of the initial term or any successive periods of ten (10) years, this Declaration shall be amended, changed or terminated in whole or in part. Provided, that the obligations imposed under Article XI (Assessments and Owners Association) hereof may not be terminated until maintenance of the Private Road and/or any Access Easement has been assured by the governmental entity or agency having jurisdiction.

13.3 Disclaimer. Neither Declarant nor the Association shall be liable to any Owner or other person or firm for any loss, damage, claim, expense, personal injury, death or property damage arising from any cause whatsoever including but not limited to the sole negligence of Declarant and the Association or either one of them or the employees, agents or representatives of either or both of them, or the provisions of, failure to provide, or negligence in providing security, maintenance, repairs or other services by Declarant and the Association or either of them or the employees, agents or representatives of either or both of them.

13.4 Invalidity of Part. The invalidation of any one of the terms or provisions of this Declaration by Judgment or court order shall in no wise affect any other provisions, which provisions shall remain in full force and effect.

13.5 Headings. The paragraph headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

13.6 Evidence of Approval. Whenever approval by the Declarant is required in this Declaration, the same shall be evidenced by a certificate or other writing signed by Declarant. Approval by the Association shall be sufficient if evidenced by a certificate or other writing signed by an officer of the association certifying that approval of a majority of the Association members has been obtained.

13.7 Assignment by Declarant. Declarant shall have the sole and exclusive right to any time and from time to time to transfer and assign any or all rights, powers, privileges, authorities and reservations it may have under any part or paragraph of this Declaration to such other person or entity as Declarant shall elect. No such assignment shall require the consent of any Owner and in the event any such right is assigned, the Assignee shall assume all obligations of the Declarant so assigned and Declarant shall there-

OFFICIAL RECORDS

upon be relieved of any and all obligations or liability with respect thereto. The Declarant shall assign all rights, powers, privileges, authorities and reservations hereunder to the Association upon surrendering control of the Association to the Lot Owners as provided in this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument under seal on the date written above.

Witnesses:

Mari M. McIntyre
Donald S. Bullock

THE TREDINICK CHILDREN TRUST

By Donald W. Tredinick, Sr., SR
Donald W. Tredinick, Sr.,
As Trustee

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 27th day of June, 1990 by DONALD W. TREDINICK, SR., as Trustee of that certain trust known as the Tredinick Children Trust dated December 30, 1987, on behalf of the Trust.

Donald S. Bullock
Notary Public, State of Florida
My Commission expires:

Notary Public, State of Florida
My Commission Expires Dec. 13, 1992
Bonded thru Troy Fain Insurance Inc.

OFFICIAL RECORDS

EXHIBIT "A"

(OCEAN BREEZE)

Commencing at a point where the easterly boundary line of the former Florida East Coast Railway right-of-way, in Section 37, Township 2 South, Range 29 East (which right-of-way is now a Duval County road, called Seminole Beach Road) intersects the southerly boundary line of the land conveyed, February 26, 1937, by the grantor to Wm. H. Rogers et ux. by Deed recorded in the public records of Duval County, Florida, in Deed Book 747 page 6 for a point of beginning (marked by a 6 x 6 inch concrete monument); running thence southerly, along said easterly boundary line of said Seminole Beach road, a distance of 272.5 feet to a corner point; thence easterly, perpendicular to said first course, to the waters of the Atlantic Ocean, a distance of 450 feet more or less; thence northerly along the waters of the Atlantic Ocean, a distance of 272.5 feet to a point in the south boundary line of said land described in the aforesaid Deed Book 747 page 6 of the public records of Duval County, Florida; thence westerly along said boundary line to the point of beginning, containing approximately 2.8 acres.

"Being the property conveyed to D. W. Tredinick by Otelia Medlin Rogers, a widow under Deed dated April 10, 1970, filed April 21, 1970, recorded in Official Records Book 3097, page 939, current public records, Duval County, Florida."

070189

FILED IN PUBLIC RECORDS
OF DADE COUNTY, FLA

JUL 6 8 55 AM '90

Thompson, David
CLERK OF DADE COUNTY