

DECLARATION OF COVENANTS, RESTRICTIONS  
AND EASEMENTS  
FOR  
SHOMA HOMES AT NAUTICA  
SINGLE FAMILY TOWNHOMES

PREPARED BY:  
RICHARD L. SCHANERMAN  
Akerman, Senterfitt & Eidson, P.A.  
SUNTRUST INTERNATIONAL CENTER  
ONE S.E. 3<sup>RD</sup> AVENUE • 28<sup>TH</sup> FLOOR  
MIAMI, FLORIDA 33131-1704

INSTR # 99586811  
OR BK 29887 PG 0172  
RECORDED 09/29/99 01:40 PM  
COMMISSION  
BROWARD COUNTY  
DEPUTY CLERK 1033

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES

THIS DECLARATION is made on this 14th day September, 1999, by SHOMA DEVELOPMENT CORP., a Florida corporation (hereinafter referred to as "Declarant").

RECITALS:

WHEREAS, Declarant owns certain property in the County of Broward, State of Florida, which is more particularly described in Exhibit "A" attached hereto (hereinafter referred to as "Shoma Homes at Nautica Single Family Townhomes Complex"); and

WHEREAS, the general plan of development conceived by Declarant contemplates that various portions of Shoma Homes at Nautica Single Family Townhomes Complex shall be set aside for the collective use of all of the residents of the community created by Declarant upon all or a portion of Shoma Homes at Nautica Single Family Townhomes Complex; and

WHEREAS, Declarant is desirous of preserving and enhancing the value of the dwelling units which are constructed upon Lots within Shoma Homes at Nautica Single Family Townhomes Complex and of promoting their owners' and occupants' welfare, and accordingly, Declarant wishes to submit certain portions of Shoma Homes at Nautica Single Family Townhomes Complex to various easements, covenants, restrictions, conditions, reservations, equitable servitudes, liens and charges, all running with the said properties as hereafter set forth; and

WHEREAS, in order to promote the objectives described above, Declarant has caused the formation of a non-profit corporation known as Shoma Homes at Nautica Single Family Townhomes Neighborhood Association, Inc. to maintain, administer and eventually own various portions of Shoma Homes at Nautica Single Family Townhomes Complex intended to be used by all or a segment of the Owners of Dwelling Units constructed upon Lots within Shoma Homes at Nautica Single Family Townhomes Complex and to enforce the covenants, restrictions, conditions, reservations, easements, equitable servitudes, charges and liens created or provided for by this Declaration; and

WHEREAS, Declarant is further desirous of making provision for the execution, acknowledgment and recordation of supplemental or amendatory declarations for so long as Declarant owns any portion of Shoma Homes at Nautica Single Family Townhomes Complex and for providing in such supplemental or amendatory declarations such further conditions, covenants and restrictions for the operation, amenities, protection and maintenance of Shoma Homes at Nautica

Single Family Townhomes Complex as may be necessary or then desired.

NOW, THEREFORE, the Declarant declares that the real property described in Exhibit "A" hereto (including any and all Improvements thereon), together with such additions thereto as are hereafter made pursuant to this Declaration shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes expressly declared as applicable to Shoma Homes at Nautica Single Family Townhomes Complex, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability thereof, and in furtherance of a general plan for the protection, maintenance, improvement and sale of residential dwellings within Shoma Homes at Nautica Single Family Townhomes Complex, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein and as expressly declared as applicable to the Properties (or Lots or Common Properties thereon) shall inure to the benefit of and run with the title to the Lots upon which Dwelling Units are situate and shall be binding upon all persons having any right, title or interest therein, or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of and be binding upon Declarant, its successors and assigns, the Association and its successors-in-interest and each Owner and his respective successors-in-interest; and may be enforced by any owner, and his successors-in-interest, by the Association, and by the Declarant and its successors and assigns so long as it or they own any portion of Shoma Homes at Nautica Single Family Townhomes Complex.

## ARTICLE I.

DEFINITIONS

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

Section 1. "Architectural Committee" shall mean and refer to the committee established pursuant to Article IX hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of Shoma Homes at Nautica Single Family Townhomes Neighborhood Association, Inc. which have been or will be filed in the office of the Secretary of the State of Florida, in substantially the form as that of which is attached hereto, marked Exhibit "E" and incorporated herein by reference, and as such Articles may be amended from time to time.

Section 3. "Association" shall mean Shoma Homes at Nautica Single Family Townhomes Neighborhood Association, Inc., a Florida non-profit corporation, and its successors and assigns.

Section 4. "Assessment" shall mean any of the types of assessments defined below in this Section.

(a) "Common Assessment" shall mean the charge against each Owner and his Dwelling Unit representing a portion of the total costs incurred by the Association in owning, maintaining, improving, repairing, replacing, insuring, managing and operating the Common Properties, or incurred by the Association in performing

any maintenance, repair or service obligation required by this Declaration or the Master Declaration, or any charge or assessment of the Master Association required to be paid under the Master Declaration and required or requested by the Master Association to be collected by the Association.

(b) "Special Assessments" shall mean a charge against one or more (but not all) Owners and their Dwelling Units equal to the cost incurred by the Association in connection with the enforcement of the provisions of this Declaration.

(c) "Reconstruction Assessment" shall mean a charge against each Owner and his Dwelling Unit representing a portion of the cost incurred by the Association for reconstruction of any portion or portions of the Improvements on the Common Properties pursuant to the provisions of this Declaration.

(d) "Capital Improvement Assessment" shall mean a charge against each Owner and his Dwelling Unit, representing a portion of the cost incurred by the Association for installation or construction of any Improvements on any portion of the Common Properties which the Association may from time to time authorize.

Section 5. "Board" shall mean the Board of Directors of the Association elected in accordance with the By-Laws of the Association.

Section 6. "By-Laws" shall mean the By-Laws of the Association, which have been or shall be adopted by the Board

substantially in the form of Exhibit "F" attached hereto and incorporated herein by this reference, and as such By-Laws may be amended from time to time.

Section 7. "Common Expenses" shall mean the actual and estimated costs of ownership, maintenance, management, operation, repair and replacement of the Common Properties (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments and including those costs not paid by the Owner responsible for payment; the costs of any and all commonly metered utilities, cable or master television charges, and other commonly metered charges for the Common Properties; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees and costs of insurance bonds covering those personnel; the costs of all utilities, gardening and other services benefiting the Common Properties and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance, and other insurance covering the Common Properties; the costs of bonding of the members of the Board and any management body; taxes paid by the Association, including real property taxes for the Common Properties; costs that the Association is required to bear in connection with the costs of conveying the Common Properties; amounts paid by the Association for Properties, or portions thereof; the costs of any other item or items so designated by, or in accordance with, other expenses incurred by the Association for any reason whatsoever in connection with the Common Properties for the benefit of the Owners; and reserves for capital improvements and deferred maintenance of the Common Properties; the costs

incurred by the Association in performing any maintenance, repair or service obligation required by this Declaration; Common Expenses shall also mean the actual or estimated regular or special assessments for common expenses which the Association must pay or is requested to pay to the Master Association pursuant to the Master Declaration.

Section 8. "Common Properties" shall mean those portions of Shoma Homes at Nautica Single Family Townhomes Complex which are more particularly described in Exhibit "D" hereto (including all Improvements thereon) and, in addition, such portions of Shoma Homes at Nautica Single Family Townhomes Complex (together with all Improvements thereon) as are declared to be Common Properties in any Supplemental Declaration, less whatever portions of Shoma Homes at Nautica Single Family Townhomes Complex are declared to be withdrawn from the provisions of this Declaration in any Supplemental Declaration. Notwithstanding anything to the contrary herein (or in Exhibit "D" hereto) contained, Common Properties shall not include any portions of Shoma Homes at Nautica Single Family Townhomes Complex which are deemed to constitute common areas (regardless of class or type) under the Master Declaration.

Section 9. "Declaration" shall mean (except as otherwise provided in Section 15 of this Article) this instrument as it may be amended from time to time, together with any supplemental declarations.

Section 10. "Declarant" shall mean and refer to Shoma Development Corp., a Florida corporation, and any successor or assign thereof, which acquires any portion of Shoma Homes at



Nautica Single Family Townhomes Complex from the Declarant for the purpose of development and to which Declarant specifically assigns all or part of the rights of the Declarant hereunder by an express written assignment recorded in the Broward County, Florida, Public Records.

Section 11. "Declarant's Permittees" shall mean the Declarant's officers, directors, parent, and/or other developer expressly designated as such by Declarant (and the officers, directors and employees of any such corporate parent entity, or other designated developer), as well as the employees, agents, independent contractors (including both general contractors and sub-contractors), suppliers, visitors, licensees and invitees of all of the foregoing.

Section 12. "Dwelling Unit" or "Unit" shall mean and refer to a constructed dwelling which is designed and intended for use and occupancy as a family residence.

Section 13. "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of not more than six (6) persons not so related who maintain a common household in a Dwelling Unit.

Section 14. "Improvement" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located upon the Common Properties which may, but not necessarily, include sidewalks, private roadway systems, adjacent paved and parking areas, gazebos, walkways, sprinkler pipes,

landscaping, hedges, windbreaks, swing sets, slides, recreational equipment, plantings, planted trees and shrubs, poles, signs, and the like.

Section 15. "Initial Declaration" shall mean this Declaration as initially recorded in the Public Records of Broward County, Florida.

Section 16. "Institutional Mortgage" shall mean a first mortgage upon a Dwelling Unit held by an institutional mortgagee.

Section 17. "Institutional Mortgagee" shall mean any bank, savings and loan association, insurance company, mortgage company, real estate investment trust, agency of the United States government, or a lender generally recognized in the community as an institutional lender if it holds a mortgage on one or more Lots, as well as the Declarant, and any assignee of a loan made by one of the foregoing to finance the purchase of a Dwelling Unit.

Section 18. "Limited Common Properties" shall mean any portions of the real property described in Exhibit "B" hereto that are declared by this Declaration (including any supplemental declaration) to be for the use of fewer than all the Owners.

Section 19. "Lot" shall mean one of the plots of land described in Exhibit "C" hereto together with the improvements thereon less any portion of Shoma Homes at Nautica Single Family Townhomes Complex that has been declared to be a Lot but has been subsequently withdrawn from the provisions of this Declaration applicable to the Lots by a Supplemental Declaration.

Section 20. "Management Company" shall mean the person, firm or corporation which may be appointed by the Association hereunder as its agent and delegated certain duties, powers or functions of the Association.

Section 21. "Master Association" shall mean the association created pursuant to the Master Declaration.

Section 22. "Master Declaration" shall mean that certain document entitled Master Declaration for Nautica, as the same may be lawfully amended and supplemented from time to time, which Master Declaration is intended to govern the master planned community referred to herein as well as the other community included withing the definition of "Property" as that term is defined in the Master Declaration. The Master Declaration has been or will be recorded in the Public Records of Broward County, Florida.

Section 23. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 24. "Notice and Hearing" shall mean written notice and a public hearing before a tribunal appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at Owner's expense, in the manner as the Board of Directors may from time to time prescribe.

Section 25. "Party Wall" shall mean any wall built as part of the original construction of two or more Dwelling Units which is

placed on the dividing line or platted lot line between such Dwelling Units.

Section 26. "Owner" shall mean and refer to the person or persons' or other legal entity or entities holding fee simple interest of record to any Lot, including Declarant and sellers under the executory contracts of sale, but excluding those having such interests merely as security for the performance of an obligation and excluding purchasers under executory contracts of sale of a Lot. For purposes of the Article entitled "Use Restrictions" only, unless the context otherwise requires, Owner shall also include the family, invitees, guests, licensees and lessees and sublessees of any Owner, and any other permitted occupants of a Dwelling Unit.

Section 27. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 28. "Properties" shall mean the property described in Exhibit "A" hereto (including all Improvements thereon), and, in addition, such portions of Shoma Homes at Nautica Single Family Townhomes Complex (together with all Improvements thereon) as are declared to be Properties in any Supplemental Declaration, less whatever portions of Shoma Homes at Nautica Single Family Townhomes Complex (together with all Improvements thereon) which have been declared to be Properties but have been subsequently withdrawn from the provisions of this Declaration applicable to the Properties by any Supplemental Declaration.

Section 29. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the Clerk of the Circuit Court of Broward County, Florida.

Section 30. "Supplemental Declaration" shall mean any instrument recorded by Declarant in the Public Records of Broward County, Florida, for the purpose of supplementing this Declaration, for the purpose of declaring certain properties to be Common Properties or Limited Common Properties (or withdrawn as such), for the purposes of declaring certain properties to be added as, and constitute, Properties, or of withdrawing properties from the Properties, or for the purposes of adding or withdrawing Lots.

Section 31. "Shoma Homes at Nautica Single Family Townhomes Complex" shall mean the real property described in Exhibit "A" hereto as the same may be added to or supplemented in the future.

## ARTICLE II.

### GENERAL PLAN OF DEVELOPMENT

Section 1. THE SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES COMPLEX. The Shoma Homes at Nautica Single Family Townhomes Complex lies wholly within a master planned community commonly referred to as the "Nautica" which is described in greater detail in the Master Declaration and any Amendments thereto.

Among other things, the Master Declaration (i) requires the Master Association to maintain and care for master common areas defined as such thereunder; (ii) compels membership in the Master

Association by each Owner of a Dwelling Unit, among others; (iii) affords Owners of Lots upon the Properties constituting portions of Shoma Homes at Nautica Single Family Townhomes Complex non-exclusive rights to the use and enjoyment of certain defined classes of master common areas; and (iv) provides for the promulgation of maintenance assessments and enforcement by lien of collection of payment therefor. Each Owner of a Lot shall be subject to all terms, restrictions, conditions and reservations of rights set forth in the Master Declaration.

**Section 2. DESCRIPTION OF THE PROPERTIES.** The Properties shall, subject to the provisions of Sections 5 and 6 of this Article II and Section 8 of Article I, be comprised of Lots and Common Properties. Dwelling Units are contemplated to be constructed upon the Lots as more particularly described in Exhibit "C" hereto, subject, however, to the provisions of Section 5 of this Article II.

Declarant's general plan of development for the Common Properties shall include such facilities and amenities as Declarant considers in its sole judgment to be appropriate to and for the Properties. As of the date hereof, Declarant's general plan of development for the Common Properties is to have the Association maintain the Common Properties as green areas or childrens' "tot lots" without any additional improvements (other than possibly playground equipment) to be constructed thereon. Notwithstanding any provision hereof or designation in Exhibit "D" to the contrary, Common Properties shall not include any portions of Shoma Homes at Nautica Single Family Townhomes Complex which are deemed to constitute master common areas under the Master Declaration.

Section 3. DESCRIPTION OF SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES COMPLEX. Shoma Homes at Nautica Single Family Townhomes Complex is expected to be composed of the Properties, Lots and Common Properties, all as more particularly defined by this Initial Declaration, and, in addition, lands which the Declarant intends to add, but shall in no way be obligated to add by Supplemental Declaration(s) pursuant to which Declarant may declare the same to the additional portions of the Properties, Lots or Common Properties, as the case may be. The real property comprising Shoma Homes at Nautica Single Family Townhomes Complex is more particularly described in Exhibit "A" hereto. Declarant contemplates that it may construct, but it shall not be obligated to construct, upon Shoma Homes at Nautica Single Family Townhomes Complex, four hundred fifty (450) town home Dwelling Units. The implementation of any such development shall be subject to Declarant's reservation of rights and plan for the addition or withdrawal of the Properties, Lots and/or Common Properties as more particularly set forth in the Initial Declaration.

Construction and development of the portions of Shoma Homes at Nautica Single Family Townhomes Complex (which do not constitute the Properties) is a projected plan of development only and nothing contained herein shall be construed as making it obligatory upon Declarant to construct the balance of Shoma Homes at Nautica Single Family Townhomes Complex (except for the Properties, Lots, Common Properties and Improvements thereon in accordance with its duties, but subject to its reservations, as described in the Initial Declaration) or, if constructed, to construct the same in accordance with a contemplated plan for development.

Declarant expressly reserves the rights to: (i) develop Shoma Homes at Nautica Single Family Townhomes Complex upon such time table as it in its sole discretion chooses; and (ii) modify the plan for development of Shoma Homes at Nautica Single Family Townhomes Complex in such manner as it, in its sole discretion, chooses.

**Section 4. COMPLETION OF CERTAIN IMPROVEMENTS.** Subject to Declarant's reservations of rights pursuant to this Declaration, Declarant covenants that, by the time of its conveyance of each Lot hereunder, it shall have completed Improvements to an extent sufficient to provide (i) the improvements upon such Lot required to be completed under its contract of sale for each such Lot and related utilities services required as a condition to the granting of a certificate of occupancy or equivalent municipal authorization by the municipal authorities for such Lot, all in accordance with the plan for development disclosed in this Declaration; and (ii) green areas (and such other landscaping as Declarant deems appropriate or necessary).

**Section 5. ADDITIONS.** Declarant may, from time to time, by recording appropriate Supplemental Declarations in the Public Records of Broward County, Florida, add properties to the Properties created by the Initial Declaration and may declare all or part of such additional property (including any Improvements thereon) to be Common Properties or Lots, or both. To be effective, any such Supplemental Declaration must be executed by both the Declarant and the record fee owner or owners, if any, of the property which the Supplemental Declaration purports to add. Phases, if added and declared as Properties, shall be added in



accordance with the foregoing and, in such event, the joinder in or consent to such Supplemental Declaration by Owners (except as prescribed by the foregoing) or by lienors or the Association, shall not be necessary for such Supplemental Declaration to be effective, and the joinder in or consent to this Initial Declaration or the taking of title to any Lot or portion of the Properties by any such parties shall constitute full acknowledgment and approval of the foregoing. Nothing contained in this Section shall be construed to require the joinder by or entitle a right to consent by Owners of Lots or any other lands which are not so added by such Supplemental Declaration.

**Section 6. WITHDRAWALS.** Anything herein to the contrary notwithstanding, Declarant reserves the absolute right at any time to withdraw portions of the Properties and any Lots or Common Properties thereon from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the Broward County, Florida, Public Records, provided that, to be effective, any such Supplemental Declaration must be executed by the Declarant, the Owner of each Dwelling Unit located on the property sought to be withdrawn (if any), each holder of an Institutional Mortgage on a Dwelling Unit located on the property sought to be withdrawn (if any), and the holder of any other mortgage located on the Property sought to be withdrawn (if any). The execution of a joinder in or consent to any such Supplemental Declaration by unit owners, (except as prescribed by the preceding sentence, or by lienors or the Association, shall not be necessary for such Supplemental Declaration to be effective, and the joinder in or consent to this Initial Declaration by any such parties shall constitute full acknowledgment and approval of the foregoing.

However, that for so long as Class B Membership shall exist, withdrawals pursuant to this section shall have the prior approval of the Veterans Administration or the Federal Housing Administration if any Institutional Mortgage encumbering a Dwelling Unit has been insured or guaranteed by either of such agency. The certification of either (i) receipt of such approval by Declarant; or (ii) that no Institutional Mortgage has been guaranteed or insured in such Supplemental Declaration shall have the same effect as the recordation of a document conclusively evidencing such status. Nothing contained in this Section shall be construed to require the joinder by or entitle a right to consent by Owners of Lots upon the portion of the Properties which is not withdrawn by such Supplemental Declaration.

### ARTICLE III.

#### OWNER'S PROPERTY RIGHTS

Section 1. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a non-exclusive, common right and easement of ingress and egress over, enjoyment in, and use of Common Properties, which right and easement shall be appurtenant to and shall pass with title to his Dwelling Unit subject to the following conditions and limitations:

(a) The right of the Association to reasonably limit the number and nature of guests and invitees of Owners or of an Owner's lessees using the Common Properties.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common

Properties including, but not limited to, the right and obligation of the Association to enforce parking restrictions within the Common Properties.

(c) The right of the Association to establish uniform rules and regulations pertaining to the portions of each Lot visible from any portion of the Common Properties for the purposes of enhancing the aesthetic uniformity of the Properties including, but not limited to, prohibitions against or guidelines for the planting of trees, flowers, hedges and other plants or against the temporary or permanent placement of personalty including swings, hammocks, toys or other recreational devices.

(d) The right of the Association in accordance with its Articles, By-Laws and this Declaration, with the vote or written assent of two-thirds (2/3) of each class of Members, to borrow money for the purpose of improving the Common Properties and facilities, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

(e) The right of the Association to dedicate, release, alienate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. If however, any Institutional Mortgage encumbering a Dwelling Unit has been insured or guaranteed by the Veterans Administration or the Federal Housing Administration, then for so

long as Class B Membership shall exist, any such dedication, release, alienation or transfer pursuant to this section shall have the prior approval of either of such agency. The certification of either (i) receipt of such approval; or (ii) that no such Dwelling Unit is encumbered by any such mortgage by Declarant in such Supplemental Declaration shall have the same effect as the recordation of a document conclusively evidencing such status. In any event, no such dedication, release, alienation or transfer shall be effective, unless Members entitled to cast two-thirds ( $2/3$ ) of the voting power of the Class A Members, or one-third ( $1/3$ ) of the Class A Members, and the Class B Members if any, agree to such dedication, release, alienation or transfer.

(f) The right of the Declarant and Declarant's Permittees to the non-exclusive use of the Common Properties and the facilities thereof, without charge, for sales, display, access, ingress, egress, construction and exhibit purposes.

(g) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Properties, in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Common Properties, as the case may be.

(h) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Properties.

(i) The easements provided elsewhere in this Article and in Article XIV hereof, and the use restrictions described in Article X hereof.

(j) The rights of non-exclusive pedestrian and vehicular ingress and egress over and across the paved portions of the Common Properties (to the extent any portion of the Common Properties constitute paved road ways or pedestrian access ways and are not owned by the Master Association) which afford direct and closest access to other portions of the Shoma Homes at Nautica Single Family Townhomes Complex, such rights to be for the benefit of all parties entitled to the use and enjoyment of the Shoma Homes at Nautica Single Family Townhomes Complex.

(k) The provisions, conditions and limitations set forth in the Master Declaration.

**Section 2. DELEGATION OF USE.** Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Properties and facilities to the members of his Family, or to the tenants who reside in his Dwelling Unit, subject to all rules and regulations presently in effect and any which may become effective in the future, and further subject to reasonable regulation by the Board.

**Section 3. EASEMENTS FOR VEHICULAR TRAFFIC.** In addition to the general easements for use of the Common Properties reserved herein, there shall be, and Declarant hereby reserves, grants and covenants for itself and all future Owners, their invitees, and Institutional Mortgagees and any holder of a first purchase money

mortgage encumbering the Properties (or portions thereof), and for the Association (the "beneficiaries") that all such beneficiaries shall have a non-exclusive easement appurtenant for vehicular traffic over all private or public streets or drives, as well as alcoves, cul-de-sacs and other paved areas abutting or serving the same within or upon Shoma Homes at Nautica Single Family Townhomes Complex, paved and intended for such purposes. The foregoing grant of easements shall be in addition to, and not a limitation upon, the grants of easements conferred in Article XIV of the Initial Declaration. As of the date of recording of this Declaration, there are no public or private streets located within the Properties that are subject to this Declaration. All streets abutting the Shoma Homes at Nautica Single Family Townhomes Complex are either public streets or private streets maintained by the Master Association.

**Section 4. EASEMENTS FOR PUBLIC SERVICE USE.** In addition to the foregoing easements over Shoma Homes at Nautica Single Family Townhomes Complex, there shall be, and Declarant hereby reserves and covenants for itself and all future Owners, easements for cable TV, municipal and private utility companies, and other governmental public services, including, but not limited to, the right of the police, fire, health, sanitation and other public service personnel to enter upon (with or without vehicles or animals) any part of the Common Properties or Shoma Homes at Nautica Single Family Townhomes Complex for the purpose of carrying out their duties and the right of all utility companies to install, maintain, replace or supplement their equipment and facilities.

Section 5. ACCESS EASEMENT. Declarant hereby reserves perpetual non-exclusive easements of ingress and egress over and across any and all streets (as well as alcoves, cul-de-sacs and other private, paved areas abutting or serving the same) and any private driveways within or upon Shoma Homes at Nautica Single Family Townhomes Complex and all other portions of Shoma Homes at Nautica Single Family Townhomes Complex which are necessary or convenient for enabling Declarant to carry on the work referred to in Article X, Section 13 hereof, which easements shall be for the use of Declarant, Declarant's Permittees, Declarant's successors and assigns, Owners, and the respective lessees, employees, agents, invitees and licensees of Declarant and Owners.

Section 6. WAIVER OF USE. No Owner other than Declarant may exempt himself from personal liability for Assessments duly levied by the Association. No Owner may release the Dwelling Unit owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Properties and the facilities thereon or by abandonment of his Dwelling Unit.

Section 7. TITLE TO THE COMMON PROPERTIES. Declarant shall convey to the Association by quit claim deed or deeds, the fee simple title to the Common Properties on the earlier of (i) the date on which all of the Lots upon which Dwelling Units are intended to be constructed have been conveyed to purchasers thereof; or (ii) December 31, 2010. If, however, an Institutional Mortgage encumbering a Dwelling Unit has been insured or guaranteed by the Veterans Administration or the Federal Housing Administration, then notwithstanding the foregoing provisos, and promptly upon the recordation of such insured or guaranteed

Institutional Mortgage, and in no event, later than thirty (30) days from the date thereof, Declarant shall convey to the Association, by quit claim deed or deeds, the fee simple title to the Common Properties (as defined in the Initial Declaration). Such conveyance shall be free and clear of any liens but subject to:

(a) Any real estate taxes and assessments for the year in which the Common Properties are transferred;

(b) Any covenants, conditions, restrictions, reservations, limitations and easements then of record; and

(c) Any zoning ordinances then applicable. The Association shall accept this conveyance of the Common Properties and Common Areas, if any, and shall pay all costs of such conveyance including documentary stamps, sur tax and other taxes of conveyance, recording charges, title insurance expense, and attorneys' fees. The Association shall thereafter hold title to them for the benefit of those persons entitled to use them under the provisions of the Declaration. The conveyance shall not impair in any way the Declarant's rights and easements set forth elsewhere in the Declaration including, without limiting the generality of the foregoing, Section 13 of Article X and Section 4 of Article XIV of this Declaration.



## ARTICLE IV.

MEMBERSHIP IN ASSOCIATION

Section 1. MEMBERSHIP. Every Owner of a Lot and the Declarant shall be a Member of the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every membership of an Owner in the Association shall be appurtenant to and may not be separated from the fee ownership of his Lot. Ownership of such Lot shall be the sole qualification for membership of an Owner in the Association.

## ARTICLE V.

VOTING RIGHTS

Section 1. CLASSES OF VOTING MEMBERSHIP. The Association shall have two (2) classes of voting Members as follows:

Class A: Class A Members shall originally be all Owners with the exception of Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot which is subject to assessment, as further provided in this Declaration. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon termination of Declarant's Class B Membership as provided below.

Class B: The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to

Class A Membership upon the first to occur of any of the following: (a) the arrival of December 31, 2005; (b) the time at which total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or (c) thirty (30) days after Declarant elects to terminate the Class B Membership; whereupon, the Class A Members shall assume control of the Association and elect the Board. If applicable law requires that Declarant elect to terminate the Class B membership earlier than as required by this Section, then applicable law shall apply.

Section 2. VOTE DISTRIBUTION. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot (such persons being referred to in this Section as "Co-Owners"), all such Co-Owners shall be Members and may attend any meetings of the Association, but only one such Co-Owner shall be entitled to exercise the vote to which the Lot is entitled. Such Co-Owners may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. Where no voting Co-Owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the Co-Owners of the Lot mutually agree. Unless the Board receives a written objection from a Co-Owner, it shall be presumed that the appropriate voting Co-Owner is acting with the consent of his or her Co-Owners. No vote shall be cast for any Lot where the majority of the Co-Owners cannot agree to said vote or other action. The non-voting Co-Owner or Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly-owned Lot and shall be

entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, and/or in the By-Laws of the Association, shall be binding on all Co-Owners, their successors and assigns. If a Lot is owned by a corporation, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by the president or vice president and attested by the secretary or assistant secretary of the corporation and filed with the secretary of the Association.

#### ARTICLE VI.

##### DUTIES AND POWERS OF ASSOCIATION

The Association, acting through the Board of Directors, shall also have the power and duty to:

(a) Maintain, repair and otherwise manage the Common Properties and all facilities, Improvements and landscaping thereon in accordance with the provisions of this Declaration;

(b) Maintain all private streets, driveways and sidewalks within or upon the Common Properties (if any), including cleaning and periodic resurfacing;

(c) Obtain, for the benefit of the Common Properties, all commonly metered water, sanitary sewage and electric services, and may provide for all refuse collection and cable or master television service (if any) as necessary;

(d) Grant easements, rights-of-way or strips of land, where necessary, for utilities, sewer facilities, cable TV and other services over the Common Properties to serve the Common properties and other portions of Shoma Homes at Nautica Single Family Townhomes Complex;

(e) Maintain such policy or policies of liability, fire and casualty insurance with respect to the Common Properties and personal property, if any, located thereon or used in connection therewith and owned by the Association or the Declarant as provided herein for furthering the purposes of and protecting the interests of the Association and Members and as directed by this Declaration and the By-Laws and/or Articles of the Association;

(f) Employ staff or contract with a Management Company (which may be an affiliate of Declarant) to perform all or any part of the duties and responsibilities of the Association, and to delegate its powers to committees, officers and employees;

(g) Install and maintain such security devices, detectors and communication facilities, and employ or contract for employment of security services, guards and watchmen for the Common Properties as the Board deems necessary or appropriate;

(h) Promulgate, amend and alter rules and regulations governing the use of the Common Properties;

(i) Seek (as a matter of right, but not as a duty) the dedication of privately maintained, or vacation of publicly dedicated streets upon or serving the Properties, if any;

(j) Enforce the provisions of this Declaration including, without limitation, maintenance, upkeep, replacement and repair obligations of Owners with regard to all visible portions of their Lots and the Dwelling Units thereon; and

(k) Take such other action which the Board shall deem advisable with respect to the Properties as may be permitted hereunder or under the law.

#### ARTICLE VII.

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Declarant, for each Lot now or hereafter owned by it and located upon lands now or hereafter added as the Properties, hereby covenants, and each Owner of any Lot upon the Properties by acceptance of a deed therefor (or who accepts title thereto as an heir or devisee) whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) Common Assessments for Common Expenses, (b) Capital Improvement Assessments, (c) Special Assessments, and (d) Reconstruction Assessments; all of such assessments to be established and collected as hereinafter provided (whether or not the covenant or agreement is expressly mentioned in the deed or other instrument by which he, she, or it acquired title). Such Assessments, together with any related interest, penalties, and costs of collection including reasonable attorneys' fees, shall be a charge on the Lot and Dwelling Unit located thereon (and any other improvements thereon) and shall be and constitute a continuing lien thereon.

Each such Assessment, together with interest, penalties, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Property against which the Assessment is made or on which the Assessment constitutes or gives rise to a lien and, except as otherwise provided therein, the personal obligation of his successors and assigns. If the Owner consists of more than one (1) person or entity, each such person or entity shall be jointly and severally liable for the aforementioned obligations. Subject to provisions of this Declaration protecting Institutional Mortgagees, the personal obligation for delinquent assessments shall pass with the Lot and successors-in-title to such Lot must pay the same at or before closing. The Board of Directors shall deposit all monies collected in one or more accounts as it shall elect. Maintenance funds collected by Common Assessments may include monies for either a Common Properties Reserve Fund for the replacement, repair, painting, resurfacing and other maintenance of the Common Properties' facilities, or specific budgetary reserves therefor, to the extent necessary under the provisions of this Declaration. The Board shall not commingle any amounts deposited for such purposes with other funds received by it.

Section 2. PURPOSE OF COMMON ASSESSMENTS. The Assessments imposed by this Article shall be used for the Association's operation and administration and fulfillment of its duties hereunder. Such duties shall include the promotion of the common health, safety, benefit, recreation, welfare and aesthetics of the Owners and the Improvements, the maintenance of the Common Properties as provided herein, and compliance with the provisions of the Master Declaration requiring payment of assessments for common expenses of the Master Association. Disbursements shall be

made by the Board for such purposes as are deemed necessary for the discharge of its responsibilities herein for the common benefit of the Owners and to reimburse Declarant for start-up expenses advanced by the Declarant. However, disbursements from the Common Properties Reserve Fund or other reserve funds shall be made by the Board of Directors only for the specific purposes specified in this Article VII except as noted above. Disbursements of funds other than funds held for Common Properties reserves shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners.

Section 3. DAMAGE TO COMMON PROPERTIES BY OWNERS. The foregoing maintenance, repairs or replacements within the Common Properties arising out of or caused by the willful or negligent act of an Owner, his family, guests, invitees or lessees shall be effected at said Owner's expense or a Special Assessment therefor shall be made against his Lot together with all Improvements thereon (unless proceeds of insurance are collected with respect thereto).

Section 4. CAPITAL IMPROVEMENT AND OTHER ASSESSMENTS. In addition to the Common Assessments authorized above, the Board of Directors of the Association may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the Common Properties if any, including fixtures and personal property related thereto; provided that any such Reconstruction

Assessment in excess of Twenty-Five Thousand (\$25,000.00) Dollars, or Capital Improvement Assessment in excess of Fifteen Thousand (\$15,000.00) Dollars, shall require the vote or written assent of a majority of the Members who are subject to such Assessments. The Board of Directors of the Association shall levy a Special Assessment to defray, or to reimburse the Association for the cost of construction, reconstruction, removal, repair or replacement occasioned by its fulfillment of its authority to act under Section 2(e) of Article VIII below. No action authorized in this Section shall be taken without the prior written consent of Declarant as long as Declarant owns any portion of Shoma Homes at Nautica Single Family Townhomes Complex.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting so called, the presence of Members in person or by proxy constituting a majority of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. DATE OF COMMENCEMENT OF UNIT OWNERS' OBLIGATION FOR COMMON ASSESSMENTS. Every Owner other than the Declarant shall be required to pay Assessments under this Article with respect to



his Lot upon acquiring title thereto. The Declarant shall be required to pay any Assessment or, alternatively, to elect to pay other sums due (in accordance with its rights under Section 10 of this Article) on any Lot owned by it.

Section 7. SETTING OF COMMON ASSESSMENTS' DUE DATE. The Board of Directors shall fix the proposed amount of the annual Common Assessment to be levied against each Owner subject to assessment at least thirty (30) days in advance of the period covered by the assessment. During the first fiscal year of the Association (the period of time from the recordation of this Declaration to one year thereafter), the maximum annual assessment for any Lot upon the Property shall not exceed the amounts set forth in the budget as initially approved for the first fiscal term for any such Lot, exclusive of reserves and contributions due under the Master Declaration. From and after the expiration of the first and each subsequent fiscal year of the Association, the maximum annual assessment for the next fiscal year term may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year, without a vote of approval by the Owners. In calculating the percentage amount of any such increase, increases in the Common Assessment resulting from increases in regular assessments and/or special assessments required to be paid by the Master Association pursuant to the Master Declaration shall be excluded. From and after the expiration of the first and each subsequent fiscal year of the Association, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of Members of the Association who are voting in person or by proxy, at a meeting duly called for such purpose. At least thirty (30) days before the beginning of each

fiscal year, the Board of Directors shall prepare and distribute to the Members of the Association a written, itemized Estimated Operating Budget of the expenses to be incurred by the Association during such year in performing its functions under the Declaration. In the event that the annual assessments are not in excess of the maximum annual assessment and ten percent (10%) increase applicable thereto, the Board shall have the obligation and authority to declare such Estimated Operating Budget to be valid and effective. In the event that the maximum annual assessment is increased above the ten percent (10%) annual increase margin described above, such budget shall only be effective upon the vote of the Members as set forth hereinabove. The Assessments shall be based upon an Estimated Operating Budget that includes reasonable reserves for deferred maintenance of Improvements the Association is responsible hereunder for maintaining and may (but need not) include reserves for contingencies. The Board may provide in its absolute discretion that the periodic Assessments be payable either quarterly or monthly. The Board of Directors shall cause to be prepared an annual balance sheet and operating statement for each fiscal year, and shall cause to be distributed a copy of each such statement to each Member and to each institutional mortgagee who has filed a written request for copies of the same with the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the Assessments upon a specified Dwelling Unit have been paid. A properly executed Certificate of the Association as to the status of the Assessments upon such Lot, together with Dwelling Unit thereon, shall be binding upon the Association as of the date of its issuance. Notwithstanding the foregoing, in the event the annual assessments exceed ten percent

(10%) over the prior fiscal year as a result of increases by more than ten percent (10%) of Master Association assessments required to be collected by the Association over the prior fiscal year, then any such increase of ten percent (10%) shall not require the approval of the Owners.

Section 8. EXEMPT PROPERTY. Common Expenses shall be assessed only against Lots, together with Dwelling Units thereon, which are subject to assessment under the provisions hereof, and no portions of the Common Properties shall be subject to assessment for Common Expenses.

Section 9. SHARE OF ASSESSMENTS. The periodic Common Assessments provided for hereinabove that are to be levied upon Owners shall be divided evenly among the Lots subject to the assessment.

Section 10. DECLARANT EXEMPTION. Anything to the contrary herein notwithstanding, Declarant shall only be liable for the payment of any Assessments upon any Lots owned by it, in accordance with the provisions as hereinafter set forth. Declarant shall not be liable for any Assessments as long as the Declarant pays all deficits in operating of the Association above the assessments collectible from other Owners. In calculating such deficit, only actual current expenses (other than capital expenses and reserves) shall be computed. The Declarant may at any time from time to time be relieved of all obligations to fund deficits by electing, for any assessment period or periods, to pay assessments imposed on Lots for which it is the Owner pursuant to the formula set forth above in Section 9 of this Article (except that, in any case, no

assessments need to be paid by Declarant for any Lot it owns until a certificate of occupancy is issued therefor).

Notwithstanding the first paragraph of this Section 10, the following provisions will supersede and control the maintenance payment obligations of Declarant if, but only if, an Institutional Mortgage encumbering a Dwelling Unit has been insured or guaranteed by the Veterans Administration or the Federal Housing Administration. From the date of conveyance of the first Lot upon the Properties until the date each Lot upon the Properties owned by Declarant is conveyed to an Owner other than the Declarant, the Declarant shall, with respect to such Lots, pay the greater of (i) twenty-five (25%) percent of the periodic Assessments due for such Lots, or (ii) deficits in operation of the Association above assessments collectable from other Owners. In calculating the foregoing deficit, only actual current expenses (other than capital expenses and reserves) shall be computed.

Section 11.      ASSOCIATION'S REMEDIES FOR NON-PAYMENT.

(a) Penalties for Delinquency. Any assessment that is unpaid for more than thirty (30) days after the date it is due shall bear interest at the rate of ten (10%) percent per annum from the date it is due until the date it is paid.

(b) Enforcement of Lien. The Association may bring an action in its name to foreclose any lien on a Lot upon which a Dwelling Unit is located in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid periodic or special assessments

with interest thereon (plus the costs and expenses mentioned in Section 11(c) of this Article) without waiving any claim of lien, provided that in either case the Association must give the delinquent Owner at least thirty (30) days' written notice of its intentions and, in the case of a foreclosure, must file a claim of lien in the Public Records of Broward County, Florida. Upon the timely curing of any default (including the payment of fees, costs and attorneys' fees secured by the Association's lien) for which a claim of lien was filed, the Owner curing the default is entitled to have a satisfaction of lien recorded upon payment to the Association of a fee to be determined by the Association but not to exceed Fifty Dollars (\$50.00).

(c) Attorneys' Fees and Other Costs of Enforcement. Reasonable attorneys' fees incurred by the Association or its agent incident to the collection of an unpaid periodic or special assessment or the enforcement of any lien provided for by Section 1 of this Article (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or its agent for taxes and payments on account of superior liens or encumbrances that may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the assessment and be secured by the Association's lien.

(d) Subordination of the Lien to Mortgages. The lien for periodic or special assessments provided for in this Article shall be superior to all other liens save and except first mortgage liens. Sale or transfer of any Lot shall not affect the

assessment lien and every grantee in a voluntary conveyance of a Lot shall be jointly and severally liable for all unpaid periodic or special assessments against the grantor for his share of the Assessments up to the time of conveyance. However, the sale or transfer of any Lot pursuant to a first mortgage foreclosure or in any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer if and only if the lien of the first mortgage was filed for record in the Public Records of Broward County, Florida with respect to the Lot that was the subject to the foreclosure or deed in lieu, prior to the filing for record of the Association's claim of lien in the Public Records of Broward County, Florida as to said Lot. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

(e) Cumulative Remedies. The remedies provided in this Section 11 shall be cumulative and not mutually exclusive.

Section 12. ASSOCIATION'S CERTIFICATE. Each Owner of an assessable Lot and every holder of a mortgage thereon shall have the right to require from the Association a certificate showing the amount of unpaid periodic or special assessments against the Owner with respect to his Lot upon payment to the Association of a reasonable fee not exceeding Ten Dollars (\$10.00). Any person other than the Owner of the Lot in question who relies upon such a certificate shall be protected thereby.

ARTICLE VIII  
MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. BY THE ASSOCIATION-MAINTENANCE OF COMMON PROPERTIES.

The Association shall maintain, or provide for the maintenance of, all of the Common Properties and all Improvements thereon, including all paved roadways and related areas, commonly metered utilities, any and all utility facilities, and structures on the Common Properties. The foregoing shall not, however, be deemed to require the Association to maintain any portions of the Shoma Homes at Nautica Single Family Townhomes Complex which are deemed to constitute Common Areas or appurtenances thereto, the maintenance of which is to be undertaken by the Master Association. In addition, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which are on the Common Properties. The Association shall further maintain, reconstruct, replace and refinish any paved surface on the Common Properties, including the private road system thereon. The Association shall also be responsible for the maintaining (excluding, however, watering) and cutting of all grass in front of any Dwelling Unit constructed on any Lot irrespective of whether or not the grass is located on the private property belonging to the Lot Owner. The Association is hereby granted an easement to enter the Lot for the purpose of carrying on its lawn maintenance responsibilities granted herein. The Association shall also be responsible for the painting, when the Association reasonably deems necessary, of the exterior walls and other exterior portions of all Dwelling Units in the Shoma Homes at Nautica Single Family Townhome

Complex that the Association in its sole discretion deems to be in need of painting (excluding roofs) even though the Dwelling Units are the private property of the Owner. The Association is hereby granted an easement to enter any Lot for the purpose of maintaining its exterior painting responsibilities. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in its judgment to be appropriate.

Section 2. BY THE OWNERS.

(a) Maintenance of Dwelling Unit and Appurtenances.  
Each Owner shall be responsible for keeping the interior and exterior of his Dwelling Unit in a clean, safe and first class condition and in good repair. Each Owner shall be responsible for the maintenance in first class condition, replacement or repair of all roofs, doors, windows, screens, underground sprinkler systems (other than commonly metered irrigation systems serving front yard areas, if any), walls, and other exterior portions of his Dwelling Unit. Similarly, each Owner shall be responsible for the maintenance in first class condition, replacement or repair of all appurtenances to his Dwelling Unit including, without limitation, fences, walls, spas, pools, patio enclosures, balconies and their enclosures or railings, and paved driveways and related surfaces upon the front yard areas. Each Owner shall also be responsible for the maintenance and first class condition and replacement of all landscaping (except to the extent the Association is required to maintain the front yard as specified in Section 1 hereof, including the mowing, trimming, watering, weeding, fertilization and removal of all dead, dying or diseased sod, plants, shrubs or trees. In recognition that it is the intention of Declarant that



Shoma Homes at Nautica Single Family Townhomes Complex continuously maintain an aesthetically excellent and uniform appearance, an Owner shall only be deemed to have fulfilled his maintenance obligations regarding his Lot and Dwelling Unit in first class condition if the same is maintained in substantially identical condition as that which exists at the time title thereto is acquired from Declarant. By way of example, but not of limitation, each Owner shall (i) treat or replace all decorative facing; (ii) replace torn or stained screening; (iii) clean and remove from all sidewalks driveways and parking areas all debris and repair and resurface all cracks or damaged areas; and (iv) clean, repair and maintain all other exterior portions of the Lot and Dwelling Unit for which the Owner has responsibilities hereunder in accordance with such rules and regulations as the Association may from time to time enact.

(b) Fencing and Party Fences. Each fence built as part of the original construction of the various Dwelling Units and Lots and placed on the dividing line between Lots on which they are situated shall constitute a party fence, and each Owner of one of the Lots shall own that portion of the fence which stands on his own Lot together with a cross-easement of support in the other portion. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls or fences and liability for property damage due to negligence or willful acts or omissions shall apply to all such party fences. Easements are reserved in favor of all Lots sharing a party fence for encroachments resulting from original construction or from restoration that conforms substantially to the original construction. The costs of reasonable repair and maintenance of a

party fence shall be shared equally by the Owners who make use of the fence; the foregoing shall not be construed to require any sharing of expenses for the periodic painting or resurfacing of the interior facing of such fence, the expense of which shall be borne by the Owner benefiting therefrom.

If a party fence is destroyed or damaged by fire or other casualty, any Owner who has enjoyed the use of the fence may restore it, but no greater dimension of that party fence, or of any extension or restoration thereof, shall be placed upon the Lot of the other Owner who is not extending, constructing or restoring it than that existing prior to the fire or other casualty, unless the written consent of the latter is first obtained. No part of any addition to the dimensions of that party fence (or of any extension thereof already built) that may be made by either one of the Owners who have used it (or by those claiming under them respectively) shall be placed upon the Lot of the other Owner, unless the written consent of the latter is first obtained. If the other Owner thereafter uses, enjoys or acquiesces to the use the fence, he shall contribute to the cost of restoration thereof on an equal basis, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this subsection shall be appurtenant to the land and shall pass to such Owners' successors in title to his Lot. Upon conveyance or other transfer of title, the liability of the prior Owner shall cease. In the event of any dispute arising concerning

a party fence or under the provisions of this subsection generally, each party shall choose one arbiter, those arbiters shall choose one additional arbiter, and the decision of a majority of the three arbiters thus chosen shall conclusively determinative of the question involved. If a panel cannot be designated in this way, the matter shall be arbitrated pursuant to the rules of the American Arbitration Association (or its successors in function) then obtaining. Any decision made pursuant to these arbitration provisions shall be conclusive and may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code.

(c) Repair and Reconstruction After Casualty. If a Dwelling Unit is damaged by fire or other casualty, its Owner shall promptly restore it to at least as good a condition as it was in before the casualty occurred. Any such work shall be in accordance with the Dwelling Unit's original plans and specifications unless otherwise authorized and shall be otherwise subject in all respects to the provisions of Article IX hereof entitled "Architectural Control".

(d) Insurance. Each Owner shall keep his Dwelling Unit insured in an amount not less than its full insurable value against loss or damage by fire, other hazards covered by standard extended coverage endorsements, and whatever other risks are customarily covered with respect to dwellings similar to his Dwelling Unit in construction, location and use (such as flooding, vandalism and malicious mischief). Evidence of such coverage shall be furnished to the Association promptly upon the Board's request.

(e) Failure to Perform. If an Owner fails to comply with the foregoing provisions of this Section, the Association may proceed in court to enjoin compliance with them. In addition, if the failure relates to the Owner's insurance obligations, the Association shall be entitled (though not obligated) to obtain the required coverage itself and to levy on the offending Owner a special assessment equal to the cost of the premiums and, if it relates to his maintenance or restoration obligations, it shall take such steps as the Board deems appropriate to compel such maintenance or restoration, and shall be entitled (though not obligated) to restore the neglected Lot and/or Dwelling Unit to the condition required by this Section and to levy on the offending Owner a special assessment equal to the cost of the work that was the Owner's responsibility.

**Section 3. PARTY WALLS.**

(a) General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section, the general rule of law regarding party walls and liability for personal damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Shoma Homes at Nautica Single Family Townhomes Complex which are built by Declarant as part of the original construction of the Dwelling Units and any replacement thereof. In the event any portion of any structure or facility, as originally constructed by Declarant, including, without limitation, any Party Wall, shall protrude over an adjoining Dwelling Unit, it shall be deemed that such Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or Party Wall. The foregoing shall also apply to any replacements of any Party Walls. The foregoing conditions shall be

perpetual in duration and shall not be subject to amendment of this Declaration.

(b) Sharing of Repair, Replacement and Maintenance for Party Walls.

(i) Generally. The cost of reasonable repair and maintenance of Party Walls shall be shared equally by the Owners of the Dwelling Units sharing such improvements without prejudice, however, to the right of any Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(ii) Failure to Contribute. In the event that an Owner shall fail or refuse to pay his pro rata share of costs of repair, maintenance, or replacement of a Party Wall (whether or not through his own fault or the failure of his insurance company to pay any claim), then and in that event, the Owner advancing monies therefor shall have a right to file a claim of lien for such monies advanced in the Public Records and shall have the right to foreclose said lien in accordance with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a construction lien; provided, however, such claim of lien shall be filed within ninety (90) days from date repairs or replacements are made to the Party Wall and suit thereon shall be commenced one (1) year from date such lien is filed.

(iii) Alterations. The Owner of a Dwelling Unit sharing a Party Wall with an adjoining Dwelling Unit shall not cut windows or other openings in the Party Wall, nor make any

alterations, additions or structural changes in the Party Wall without the joint agreement of all of the Owners sharing the Party Wall.

(iv) Weatherproofing. Notwithstanding any other provisions of this Declaration, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(v) Easements. Each Owner sharing a Party Wall shall have all easement rights reasonably necessary to perform the obligations contained herein over the Dwelling Unit sharing the Party Wall.

#### ARTICLE IX.

##### ARCHITECTURAL CONTROL

Section 1. MEMBERS OF COMMITTEE. The Architectural Committee sometimes referred to in this Declaration as the "Committee," shall consist of three (3) members. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Dwelling Units planned for construction upon Shoma Homes at Nautica Single Family Townhomes Complex have been conveyed, or at such earlier time as the Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee, other than those

designated by the Declarant, may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the Committee other than those designated by Declarant.

Section 2. REVIEW OF PROPOSED CONSTRUCTION. Subject to Section 8 of this Article, no building, fence, gutters or rainspout, antenna, wall, aerial, micro-wave dish, external enclosure, patio fencing, covers, spa, decking, pool or other Improvement (including landscaping) shall be commenced, painted, erected, installed, planted or maintained on the Properties, nor shall any canopy or shutters be attached to or placed upon outside walls or roofs of any Dwelling Unit by any Owner other than Declarant until and unless the plans and specifications showing the nature, kind, shape, height, materials and location of the same, shall have been submitted to and approved in writing by the Architectural Committee. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of Shoma Homes at Nautica Single Family Townhomes Complex as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee may also issue such rules or guidelines setting forth procedures for the submissions of plans and specifications submitted for its review as it deems proper, including, without limitation, the submission of floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior materials and colors. If the proposed construction alterations or additions are to a portion of

the Improvements which the Association is obligated to maintain, said approval may also be subject to approval by the Board of the Association. The Committee may condition its approval of proposals and plans and specifications in such manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such request. Until receipt by the Committee of any required plans and specifications, or other additional information requested by it, the Committee may postpone review of any plans submitted for approval. The Committee shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and if not rejected within such thirty (30) day period, such plans shall be deemed approved. Notwithstanding any provision in this Article IX to the contrary, the approval of the Architectural Committee shall not be required for any additions, changes or alterations to Dwelling Units that are contained within such structures if such additions, changes or alterations are not visible from outside such Dwelling Units. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. No construction, reconstruction, addition, alteration or change by Declarant shall require the Prior approval or any certificate of consent of the Committee.

Section 3. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8



hereof. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

Section 4. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatsoever subsequently or additionally submitted for approval or consent.

Section 5. COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. INSPECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

(a) Upon the completion of any work for which approved plans are required under this Article IX, the submitting party shall give written notice of completion to the Committee.

(b) Within sixty (60) days thereafter, the Committee or its duly authorized representative may inspect such Improvement. If the Committee finds that such work was not done in substantial compliance with the approved plans it shall notify the submitting party in writing of such non-compliance within such 60-day period,

specifying the particulars of non-compliance, and shall require the submitting party to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification, the submitting party shall have failed to remedy such non-compliance, the Committee shall notify the Board of the Association in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the submitting party shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the submitting party does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance, and the submitting party shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the submitting party to the Association, the Board shall levy a Special Assessment against such submitting party for reimbursement.

(d) If for any reason the Committee fails to notify the submitting party of any non-compliance within sixty (60) days after receipt of said written notice of completion from the submitting party the Improvement and/or alteration shall be deemed to be in accordance with said approved plans.

**Section 7. NON-LIABILITY OF COMMITTEE MEMBERS.** Neither the Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association or to any Owner

or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic consideration, and the overall benefit or detriment which would result to the immediate vicinity and to the community then planned to be created upon Shoma Homes at Nautica Single Family Townhomes Complex. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

**Section 8. VARIANCE.** The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variance must be evidenced in writing and must be signed by at least two (2) members of the Committee. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any

Supplemental Declarations for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including, but not limited to, zoning ordinances and Lot set-back lines or requirements imposed by any governmental or municipal authority.

#### ARTICLE X.

##### USE RESTRICTIONS

All of the Properties, including Lots and Dwelling Units thereon, shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 14 hereof.

Section 1. NUISANCES. No noxious or offensive activity shall be carried on about any portion of Shoma Homes at Nautica Single Family Townhomes Complex, including the Dwelling Units, Lots or on the Common Properties, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. All garage doors shall remain closed except for access to and from the garage. No use or practice shall be allowed in or around any Dwelling Unit which is a source of annoyance to Owners or occupants thereof or which interferes with the peaceful possession or proper use of the Dwelling Units or the surrounding Common Properties. No loud noises or noxious odors shall be permitted in any Dwelling Units, Lots, or on the Common Properties, and the Board of Directors shall have the right to determine in accordance with the By-Laws if any noise, odor or activity producing such noise, odor

or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any portion of the Properties, or exposed to the view of other Owners.

Section 2. SIGNS. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Dwelling Units, Lots, Common Properties, or any portion of Shoma Homes at Nautica Single Family Townhomes Complex without the prior written consent of the Board of Directors, except signs, regardless of size, used by Declarant, its successors or assigns, for advertising during the construction and sale period of any and all of Shoma Homes at Nautica Single Family Townhomes Complex, and excepting such reasonable signs as Declarant shall authorize.

Section 3. PARKING AND VEHICULAR RESTRICTIONS. Parking of vehicles by Owners, their guests, tenants or their invitees is hereby restricted to the enclosed garages constituting portions of their Dwelling Units, and paved portions of Lots affording access thereto, unless otherwise authorized hereunder. The foregoing shall not, however, be deemed as a limitation upon the conversion of enclosed garages to additional interior living space serving the Dwelling Unit provided, however, that such conversion shall be in accordance with all municipal requirements, and, in addition, the

provisions of Article IX hereof. Automobiles, vans designed as non-commercial passenger vehicles with permanent rear seats and side windows, or other ground transport vehicles designed as non-commercial passenger vehicles may be parked upon the paved portions of Lots affording access to garages. No Owner shall park, store or keep outside of his garage any vehicle on which commercial signs or lettering have been affixed, or any truck, or other commercial vehicle without having first received the prior written approval of the Board. No Owner shall park, store or keep any other vehicle outside of his garage which is deemed to be a nuisance by the Board. No boats and trailers, or other recreational vehicles including campers, motorcycles, or mobile homes may be kept outside of Dwelling Unit garages without the prior written approval of the Board or unless authorized by the Rules and Regulations promulgated by the Association. The parking or storage of boats in excess of twenty feet in length outside of Dwelling Unit garages is prohibited. No Owner shall conduct repairs (except in an emergency) or restorations of any motor vehicle, boat, trailer, or other vehicle upon any portion of the Properties visible from any Lot or any portion of the Common Properties (including portions of Lots other than garages).

**Section 4. ANIMAL RESTRICTION.** No animals (including livestock, reptiles or poultry) of any kind shall be raised, bred or kept on the Common Properties. No dog, cat or other pet may run loose and unattended on the Common Properties or portions of the Lots other than enclosed rear yard areas. No animal may be kept in any Dwelling Unit unless the animal is either a dog, a cat or another type of household pet (as defined by the Association). No Unit Owner may keep more than one pet without the prior consent of

the Board, and no pet may be kept, bred or maintained for any commercial purpose or for any purpose which becomes a nuisance or annoyance to neighbors. Owners must clean up all wastes of their pets and dispose of them appropriately. No dogs may be kept or left upon a Lot outside of a Dwelling Unit when such Dwelling Unit's Owner is not present. Violation of any provision of this Section shall entitle the Association to all of its usual rights and remedies (including, but not limited to, the right to fine Owners as provided herein, in the Association's By-Laws or in any applicable rules and regulations).

**Section 5. TRASH AND OTHER MATERIALS.** No rubbish, trash or garbage or other waste material shall be kept or permitted on the Lots and/or Common Properties and/or any other portion of Shoma Homes at Nautica Single Family Townhomes Complex except in sanitary, self-locking containers located in appropriate areas, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or household fabrics shall be hung, dried, or aired in such a way as to be visible, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties except within an enclosed structure appropriately screened from view, except when accumulated during construction by Declarant or except when accumulated by the Association for imminent pickup and discard.

Section 6. TEMPORARY BUILDINGS. No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties, either temporarily or permanently. No trailer, camper, motor home or recreation vehicle shall be used as a residence, either temporarily or permanently, or parked upon the Common Properties. Declarant shall be exempt from this Section.

Section 7. COMMON PROPERTIES FACILITIES. Nothing shall be altered or constructed in or removed from the Common Properties except upon the written consent of the Board.

Section 8. RULES AND REGULATIONS. Notwithstanding any other provision to the contrary in this Declaration, the Board may, from time to time as it deems necessary or prudent, promulgate, rescind, amend, add to, delete or alter rules and regulations concerning, inter alia, the Common Properties without necessity of amending this Declaration. A rule and regulation made, amended, added to, deleted or altered by the Board shall become effective as and when a copy of same shall be posted on the Common Properties and copies of same shall be mailed to Owners. Each Owner, lessee, and their respective families, invitees and guests, and other users of the Properties must strictly adhere to the rules and regulations adopted by the Board as the same may from time to time be amended, promulgated, altered, added to or deleted, and to the restrictions, rules and regulations specified elsewhere in this Declaration. The Association shall have the rights, remedies and privileges specified in the Enforcement section of this Declaration to enforce such obligations, or the breach of any rule, regulation or restriction constituting a breach of the covenants of this



Declaration. However, the Declarant, or so long as it shall be a Member shall be exempt from adherence to such rules and regulations.

Section 9. ALTERATIONS. No Owner shall cause or allow additions or changes to any exterior portion of his Dwelling Unit including, but not limited to, painting or other decorating of any nature, installing of any electrical wiring, television antenna, machinery or air-conditioning units or in any manner changing the appearance of any exterior portion of such Dwelling Unit without obtaining approval therefor as required below. No Owner shall cause or allow any changes or additions to the landscaping of his Lot, or pave or cover with artificial materials any portions thereof, or otherwise install or permit the placement of recreational personalty without obtaining approval therefor as required below. Approvals called for in this section shall mean receipt of such approvals as are required by Article IX hereof.

Section 10. NO IMPROPER USES. No improper offensive, hazardous or unlawful use shall be made of any Dwelling Unit and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any Dwelling Unit shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Dwelling Unit as elsewhere herein set forth.

Section 11. LEASES. No portion of a Dwelling Unit (other than an entire Dwelling Unit) may be rented. All leases shall

provide, and be subject to the requirement that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, of the Articles of Incorporation and the By-Laws of the Association, or applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Dwelling Units. The Owner of a leased Dwelling Unit shall be jointly and severally liable with his tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

Section 12. EXTERIOR IMPROVEMENTS. Without limiting the generality of Section 9 of this Article, no Owner shall, without first obtaining approval therefor, cause anything to be affixed or attached to, displayed or placed on, or hung from the exterior walls, doors, windows, patios, or fencing of his Dwelling Unit (including, but not limited to, awnings, signs, storm shutters, screens, furniture, fixtures and equipment). Approvals called for by this section shall mean "approvals" as defined in Section 9 of this Article.

Section 13. DECLARANT EXEMPTION. Declarant plans to cause the construction of Dwelling Units upon Shoma Homes at Nautica Single Family Townhomes Complex and may undertake the work of constructing other dwelling units upon other portions of the Shoma Homes at Nautica Single Family Townhomes Complex. The completion of that work and the sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of Shoma Homes at Nautica Single Family Townhomes Complex as a residential

community. In order that such work may be completed and a fully occupied community be established on Shoma Homes at Nautica Single Family Townhomes Complex as rapidly as possible, neither Owners nor the Association shall do anything to interfere with Declarant's and/or Declarant's Permittees activities. Without limiting the generality of the foregoing, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant and Declarant's Permittees from doing on any real property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including, without limitation, such alteration of its construction plans and designs as Declarant deems advisable in the course of development (all models or sketches showing plans for future development of Shoma Homes at Nautica Single Family Townhomes Complex or unfinished portions of the Shoma Homes at Nautica Single Family Townhomes Complex may be modified by the Declarant any time and from time to time, without notice); or

(b) Prevent Declarant or Declarant's Permittees from erecting, constructing and maintaining on any property owned or controlled by Declarant such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing a residential community upon Shoma Homes at Nautica Single Family Townhomes Complex and disposing of Dwelling Units thereon by sale, lease or otherwise; or

(c) Prevent Declarant or Declarant's Permittees from conducting on any property owned or controlled by Declarant its or their business of developing, subdividing, grading and constructing

Improvements upon Shoma Homes at Nautica Single Family Townhomes Complex and of disposing of Dwelling Units therein or disposing of dwelling units upon neighboring lands owned and developed by or at the direction of Declarant) by sale, lease or otherwise; or

(d) Prevent Declarant or Declarant's Permittees from determining in its or their sole discretion the nature of any type of Improvements to be initially or ultimately constructed by it or them on Shoma Homes at Nautica Single Family Townhomes Complex;

(e) Prevent Declarant or Declarant's Permittees from selling and leasing existing and planned Dwelling Units (including Dwelling Units on property not intended for submission to, or subsequently withdrawn from, this Declaration and including dwelling units upon neighboring lands owned or developed by Declarant, Declarant's Permittees or its designees) including, but not limited to, constructing and maintaining sales offices, a sales and administrative trailer or trailers, parking areas, fencing and landscaping adjacent to such facilities (and signs thereon) and model Dwelling Units on any portion of Shoma Homes at Nautica Single Family Townhomes Complex, soliciting and receiving the visits of unlimited numbers of prospective purchasers and tenants (all of whom shall have the right while visiting to park upon Lots owned by Declarant or portions of the Common Properties that have been set aside for such purposes by Declarant or Declarant's Permittees, and to visit and inspect the facilities upon the Common Properties), and the placing of signs and other promotional devices upon any portion or portions of Shoma Homes at Nautica Single Family Townhomes Complex without regard to their size, aesthetic

appeal or the project developed by Declarant (or its designee) to which such items relate.

(f) Prevent Declarant or Declarant's Permittees from utilizing the Common Properties and other areas of Shoma Homes at Nautica Single Family Townhomes Complex for the driving, storage or use of motor and construction vehicles and apparatus of any nature deemed necessary or proper by it or them for the construction, sale, leasing, maintenance or repair of Shoma Homes at Nautica Single Family Townhomes Complex.

Section 14. EFFECT ON DECLARANT; SELECTIVE RELIEF. In general, the restrictions and limitations set forth in this Article shall not apply to Declarant, Declarant's Permittees, or to Dwelling Units owned by the Declarant, nor to Institutional Mortgagees, the holder of any purchase money first mortgage or Dwelling Units owned by Institutional Mortgagees. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant or Declarant's Permittees, plans for the development, construction, sale, lease or use of Shoma Homes at Nautica Single Family Townhomes Complex and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article, in addition to whatever remedies at law it might be entitled to. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Article for good cause shown.

Section 15. OUTSIDE INSTALLATIONS. No radio station or shortwave operators of any kind shall operate from any Dwelling Unit. No exterior radio antenna, television antenna or dish, or other antenna of any type shall be erected or maintained upon the Properties and Improvements thereon, except that the architectural committee shall have the right to establish standards for the installation of television antennae which are aesthetically acceptable to it.

Section 16. INSURANCE RATES. Nothing shall be done or kept in the Properties or Improvements thereon which will increase the rate of insurance on any property insured by the Association without the approval of the Board; nor shall anything be done or kept in the Properties or Improvements thereon which would result in the cancellation of insurance on any property insured by the Association.

#### ARTICLE XI.

##### DAMAGE OR DESTRUCTION TO COMMON PROPERTIES

Section 1. Damage to or destruction of all or any portion of the Common Properties shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) In the event of damage or destruction to the Common Properties, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Properties to be repaired and reconstructed substantially as it previously existed.

(b) If the cost of restoration of the Common Properties exceeds the insurance proceeds available for that purpose by Twenty Five Thousand Dollars (\$25,000.00) or less then the Association shall cause such Common Properties to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment proportionately against each of the Owners, in accordance with the provisions of Article VII, Section 4, of this Declaration.

(c) If the cost of restoration of the Common Properties exceeds the insurance proceeds available for that purpose by over Twenty Five Thousand Dollars (\$25,000.00) or more, then by written consent or vote of a majority of the Owners, they shall determine whether (i) to rebuild and restore in substantially the same manner as the Improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Dwelling Units, (ii) to rebuild and restore in a way which is less expensive than replacing these Improvements in substantially the same manner as they existed prior to being damaged, or (iii) subject to approvals, if any, required under the Master Declaration or applicable laws, to not rebuild and to retain available insurance proceeds. Notwithstanding anything contained herein to the contrary, no decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall be effective without the prior written approval of Declarant as long as Declarant owns all or any portion of the lands comprising Shoma Homes at Nautica Single Family Townhomes Complex.

(d) Each Owner shall be liable to the Association for any damage to the Common Properties not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, invitees, lessees and guests, both minors and adults to the maximum extent permissible under state law. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, of the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Dwelling Unit, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and Dwelling Unit thereon and may be collected as provided herein for the collection of assessments.

## ARTICLE XII.

### INSURANCE

Section 1. COMMON PROPERTIES. The Association shall keep all Improvements and fixtures located upon the Common Properties insured against loss or damage by fire for the full insurable replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Properties shall



be written in the name of the Association and the proceeds thereof shall be payable to it. Subject to the provisions of Article XI, insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses to be included in the Common Assessments made by the Association.

Section 2. REPLACEMENT OR REPAIR OF PROPERTY. In the event of damage to or destruction of any part of the Common Properties, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Dwelling Units to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Dwelling Unit Owners, subject to the provisions of Article XI of this Declaration.

Section 3. WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant, Declarant's Permittees, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of, or breach of, any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 4. LIABILITY AND OTHER INSURANCE. The Association shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each Owner against liability to each other Owner. The Association may also obtain Workmen's Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner and the Association, and Board of Directors from liability in connection with the fulfillment of its constituents functions, the premiums for which shall be Common Expenses included in the Common Assessments made against the Dwelling Unit Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board, and the Management Company, if any, against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

#### ARTICLE XIII.

##### MORTGAGEE PROTECTION CLAUSE

Section 1. RIGHTS OF INSTITUTIONAL MORTGAGEES. In addition to all other rights herein set forth and with respect to Improvements upon the Properties, institutional first mortgagees shall have the following rights (and to the extent these added

provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each First Mortgagee of a Mortgage encumbering any Lot upon which a Dwelling Unit is situated, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot and Dwelling Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the By-Laws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Each First Mortgagee of a Mortgage encumbering any Dwelling Unit which obtains title to such Dwelling Unit pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to the Dwelling Unit free and clear of any claims of unpaid assessments or charges against such Dwelling Unit which accrued prior to the acquisition of title to such Dwelling Unit by the Mortgagee.

(c) Unless at least seventy-five percent (75%) of the First Mortgagees (based upon one vote for each Mortgage owned), and seventy-five percent (75%) of the Owners have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to sell or transfer the Common Properties and the Improvements thereon which are owned by the Association; provided, however, that the granting of easements for utilities or for such other purposes consistent with the intended use of such property by the

Association or the Declarant, or the dedication of the private road system to a governmental or quasi-governmental authority, or the transfer of the Common Properties to an unincorporated association of the Owners in accordance with the terms hereof shall not be deemed a transfer within the meaning of this clause;

(2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Dwelling Unit;

(3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of any portion of the Properties;

(4) fail to maintain fire and extended coverage on insurable portions of the Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost) less such reasonable deductions as the Board may deem appropriate;

(5) use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such Improvements (or for reserves for the repair, replacement or reconstruction of the Properties);  
or

(6) amend this Declaration or the Articles or By-laws of the Association in such a manner that the rights of any First Mortgagee will be materially affected.

(d) First Mortgagees shall upon written request to the Association have the right to (i) examine the books and records of the Association during normal business hours, including current copies of the Declaration and its exhibits, and current rules and regulations (ii) receive an unaudited financial statement of the Association within ninety (90) days after each of its fiscal years closes, (iii) receive an endorsement to each insurance policy covering the Properties that requires the Institutional Mortgagee to be given any notice of cancellation provided for in the policy, (iv) receive from the Association written notice of any meeting of the Association's membership and to attend any such meeting and (v) receive timely written notice of casualty damage to or condemnation of any part of any Lot on which a Dwelling Unit is situate and upon which it has a mortgage.

(e) All First Mortgagees who have registered their names with the Association shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of By-Laws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Properties following a decision of the Owners to assume self-management of the Common Properties; and (ii) immediate notice following any damage to the Common Properties whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000.00), and as

soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Common Properties.

(f) First Mortgagees may, jointly or individually, pay taxes or other charges which are in default and which may or have become a charge against any Common Properties facilities and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association and the appropriate Owners thereof.

#### ARTICLE XIV.

##### ENCROACHMENTS; EASEMENTS

**Section 1. ENCROACHMENTS.** If (a) any portion of the Common Properties encroaches upon any other portion of the Properties; (b) any other portion of the Properties or of Shoma Homes at Nautica Single Family Townhomes Complex (including, but not limited to the roofs of any Dwelling Units) encroaches upon the Common Properties of Lots; or (c) any encroachment shall hereafter occur as the result of (i) construction of any Dwelling Unit or other Improvements; or (ii) settling or shifting of a Dwelling Unit or other Improvements; or (iii) any alteration or repair to the Properties or Shoma Homes at Nautica Single Family Townhomes Complex; or (iv) any repair or restoration of any Dwelling Unit or other Improvements or any of the Properties after damage by fire or other casualty or any taking of condemnation or eminent domain proceedings of all or any portion of any Dwelling Unit, Improvements or Properties, then in any such event, a valid

easement shall exist for such encroachment and for the maintenance of the same so long as the structure causing the encroachment shall stand.

Section 2. PIPES, WIRES, DUCTS, VENTS, CABLES, CONDUITS PUBLIC UTILITY LINES, ETC. Each portion of the Properties and all portions of Shoma Homes at Nautica Single Family Townhomes Complex not then declared as Properties, or withdrawn from lands previously declared to constitute the Properties shall have an easement in common with all other parts of the Properties and such other portions of Shoma Homes at Nautica Single Family Townhomes Complex to hook up to, share, use, maintain, repair, alter, relocate and replace all pipes, wires, ducts, vents, cables, conduits, public utility lines, and similar or related facilities located in or on the Properties and/or such other portions of Shoma Homes at Nautica Single Family Townhomes Complex and serving either or both; provided, however, that joint use and sharing shall only be authorized hereunder if such utilities' facilities were designed and intended for such joint use and sharing. Each portion of the Properties shall be subject to an easement in favor of all other portions of Shoma Homes at Nautica Single Family Townhomes Complex to hook up to, share, use, maintain, repair, alter, relocate and replace the pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities located in such portion of the Properties and serving other portions thereof, subject to the limitations set forth in the preceding sentence. The Declarant or other parties providing utilities or service company may by virtue of this easement, install, maintain, relocate, join into, share and replace facilities on the Properties, may excavate for those purposes and may affix, maintain

and replace wires, pipes, circuits, lines, conduits, and cable television equipment on, in, under and/or beside the roofs and exterior walls of Dwelling Units and/or the easement areas of adjacent Lots serving Dwelling Units. The Declarant is expressly authorized to execute and record whatever instruments it deems necessary or desirable to effect or evidence the easement created by this Section, and shall be considered an agent of each Dwelling Unit Owner for the purposes of executing and recording any such instrument with respect to any portion of the Properties owned by that Owner. To be effective, any such instrument need only be executed by Declarant.

**Section 3. EASEMENTS OF SUPPORT.** Whenever any structure or improvement included in the Common Properties adjoins any structure or improvement included in any other part of the Properties, each such structure or improvement shall have and be subject to an easement of support and necessity in favor of the other structure or improvement.

**Section 4. DECLARANT'S RESERVATION.** The Declarant and Declarant's Permittees shall have blanket easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Common Properties, Properties, and other property comprising Shoma Homes at Nautica Single Family Townhomes Complex, owned by Declarant for the purpose of completing construction, leasing and sale of Dwelling Units and facilities upon Shoma Homes at Nautica Single Family Townhomes Complex and, towards this end, Declarant reserves the right to grant and does hereby reserve easements and rights-of-way in, through, under, over and across the Common Properties, Properties, and other property comprising Shoma



Homes at Nautica Single Family Townhomes Complex, owned by Declarant for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, and other utilities and for any other materials or services necessary for the completion of the work. The Declarant, Declarant's Permittees, its successors, employees, assigns and purchasers, also reserve the right to share, connect with and make use of the utility lines, wires, pipes, conduits, cable televisions, sewers and drainage lines which may from time to time be in or along the streets and roads or other areas of the Common Properties, Properties, including the Lots, and other property comprising Shoma Homes at Nautica Single Family Townhomes Complex.

The Declarant and Declarant's Permittees shall have an easement in, on, over and across the Properties, in connection with the development of Shoma Homes at Nautica Single Family Townhomes Complex or any other projects which may be developed by Declarant within the Shoma Homes at Nautica Single Family Townhomes Complex for (i) construction, installation, maintenance, ingress to and egress from and the right to designate and use parking areas and share and tap into all storm and surface water collection and drainage facilities, water, sewer and other utility lines, pipes, conduits, flues, ducts, wires and cable television and other utility lines servicing or located on the Properties or Shoma Homes at Nautica Single Family Townhomes Complex, provided such easement and use does not prevent or unreasonably interfere with the use of the Properties as intended, and (ii) pedestrian and vehicular ingress to and egress from all portions of the Properties across the private paved roads, and the use of said land areas (in common

with Owners) for any lawful purpose, and (iii) to erect, maintain, repair and replace from time to time one or more signs on the Common Properties for the purposes of advertising the sale of Dwelling Units upon all or any portion of Shoma Homes at Nautica Single Family Townhomes Complex and the leasing of space in any such Dwelling Unit and for the purpose of advertising the sale of Dwelling Units which may be constructed by Declarant on land in the vicinity of Shoma Homes at Nautica Single Family Townhomes Complex. Declarant, Declarant's Permittees, its successors, assigns, invitees, licensees, contractors and employees reserve the right to establish, grant and create easements for any additional underground electric, transformer, amplifier, gas, cable television, telephone, water, storm drainage, sewer or other utility lines and appurtenances in, under, over and/or through the Properties or Shoma Homes at Nautica Single Family Townhomes Complex, to relocate any existing utility, sewer and drainage easements in any portion of the Properties to hook up to, join in with or share with any and all existing utilities' pipes, wires, and lines (for the benefit of improvements upon nearby lands owned by Declarant but not within Shoma Homes at Nautica Single Family Townhomes Complex) and to dedicate any or all of such facilities to any governmental body, public benefit corporation or utility company if the Declarant shall deem it necessary or desirable for the proper operation and maintenance of the Properties or any portion thereof or for the general health or welfare of any Owner, provided that such additional utilities or the relocation of existing utilities or the sharing of such utilities will not prevent or unreasonably interfere with the use the Dwelling Units for dwelling purposes. Any utility company or public benefit corporation furnishing services to the Properties, and the

employees and agents of any such company or corporation, shall have the right of access to the Common Properties in furtherance of such easements, provided such right of access is exercised in such a manner as not to unreasonably interfere with the use of any Dwelling Unit.

Section 5. EASEMENTS FOR PEDESTRIAN AND VEHICULAR ACCESS. In recognition that the plan for development of Shoma Homes at Nautica Single Family Townhomes Complex contemplates the addition of the balance of such complex not described by the Initial Declaration as the Properties in phases, Declarant hereby grants and establishes easements for pedestrian and vehicular ingress and egress over, through, and across, the paved portions of the Common Properties in favor of all other owners of dwelling units upon, or of undeveloped portions of, the balance of the lands composing Shoma Homes at Nautica Single Family Townhomes Complex.

## ARTICLE XV.

WORKING CAPITAL FUND

At the time the Declarant sells and closes each Lot to each purchaser, such purchaser shall deposit a sum equal to three (3) times such purchaser's monthly Association maintenance expense into a working capital fund for the purposes of initial maintenance, reserves, emergency needs, initial items, non-recurring items, capital expenses, permits, licenses and all utility deposits and advance insurance premiums for insurance policies and coverages pursuant to this Declaration and the Exhibits attached hereto. All of the foregoing expenses or items may be paid from the working capital fund. If the Declarant has paid any of the foregoing expenses or items, then any such expense or item shall be paid to or reimbursed to the Declarant from the working capital fund. The working capital fund may be commingled by the Association with any of its other funds. In addition to the payment to be made by each purchaser into a working capital fund of the Association, at the time the Declarant sells and closes each Lot to each purchaser, such purchaser shall deposit with the Master Association a sum to be determined from time to time as a Capital Contribution to the Master Association. If prior to Closing with any purchaser on any Lot, the Declarant has previously paid this capital contribution to the Master Association, then the Purchaser shall reimburse Declarant at the time of Closing.

## ARTICLE XVI.

GENERAL PROVISIONS

Section 1. COVENANT RUNNING WITH THE LAND. All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly herein provided to the contrary, be construed to be covenants running with the Lots, the Dwelling Units, the Properties, and with every part thereof and interest therein, and where expressly noted as being applicable thereto, with the lands of Shoma Homes at Nautica Single Family Townhomes Complex and all of the provisions hereof shall be binding upon and inure to the benefit of the Declarant and subsequent owner(s) of the Lots and Dwelling Units and Properties and where applicable, subsequent owners of all or portions of the balance of Shoma Homes at Nautica Single Family Townhomes Complex not declared as or withdrawn from the Properties, or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. Notwithstanding the foregoing or any provisions in the Declaration to the contrary, it is intended that with respect to any and all easements granted pursuant to the provisions of this Declaration, in the event the same shall fail for want of a grantee in being or for any other lawful reason, the same shall be and constitute, covenants running and binding the real property in the manner previously described pursuant to this Section. All present and future owners and tenants and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and

regulations as they may from time to time be amended. The acceptance of a deed or conveyance of a Lot or Dwelling Unit, or the entering into a lease of, or occupancy of any Dwelling Unit shall constitute an adoption and ratification by such Owner, tenant or occupant of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, as they may be amended from time to time, including, but not limited to, a ratification of any attorney-in-fact provisos contained therein.

**Section 2. DURATION.** The covenants and restrictions set forth in the Declaration, as supplemented, shall run with and bind the Shoma Homes at Nautica Single Family Townhomes Complex and/or the Properties as the same may be supplemented from time to time, as indicated, for a term of twenty (20) years from the date the Initial Declaration has been recorded, after which time they shall automatically extend for successive periods of ten (10) years. This Declaration may be terminated by the recordation of an instrument to that effect signed by all Owners, Institutional Mortgagees and any other mortgagees having an interest in all or any portion of Shoma Homes at Nautica Single Family Townhomes Complex.

**Section 3. ENFORCEMENT.** This Declaration, the Articles of Incorporation and the By-Laws may be enforced by the Association as follows:

(a) Breach of any of the covenants or restrictions contained in the Declaration, Articles or the By-Laws and the continuation of any such breach may be enjoined, abated or remedied

by appropriate legal proceedings by any Owner, the Declarant, by the Association or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, late charges, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants or restrictions contained in this Declaration, the Articles or the By-Laws are violated in whole or in part is hereby declared to be 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 any Owner, Declarant and/or by the Association or their successors-in-interest.

(c) The remedies herein provided for breach of the covenants or restrictions contained in this Declaration, Articles or in the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration, the Master Declaration, Articles or in the By-Laws shall not constitute a waiver of the Association's right to enforce the same thereafter.

(e) A breach of the covenants, conditions or restrictions contained in this Declaration, the Articles or in the By-Laws shall not affect or impair the lien or charge of any

Mortgage made in good faith and for value on any Lot containing a Dwelling Unit, provided, however, that any subsequent Owner of such Dwelling Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

**Section 4. SEVERABILITY.** Invalidation of any one of the provisions, covenants or restrictions by judgment or court order shall in no way affect any other covenants, restrictions or provisions which shall remain in full force and effect.

**Section 5. INTERPRETATION.** The provisions of this Declaration shall be literally construed to effectuate its purpose of creating a uniform plan for the phased development of a residential community and for the maintenance of Common Properties. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

**Section 6. AMENDMENTS.** This Declaration may be amended by the Association as follows: (a) by the affirmative vote or written consent of the Owners holding not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Class A Membership and the affirmative vote of the Class B Membership (so long as the Class B Membership exists); or (b) by the affirmative vote of the Class "B" Membership; provided, however, that no amendment shall be permitted which has a material adverse effect upon substantial rights of the Declarant or a First Mortgagee



without the prior written consent of the Declarant or First Mortgagee, as appropriate. Without in any way limiting the generality of clause (b) above, as long as it is the Class B member or owns one or more Lots, the Declarant shall have an absolute right to make any amendments to this Declaration requested or required by the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Veterans Administration, Federal Housing Administration, or other governmental or quasi-governmental body which owns or expects to own one or more institutional mortgages or insures or expects to insure the payment of one or more institutional mortgages or which is requested or required by any institutional mortgagee or prospective institutional mortgagee to enhance the salability of institutional mortgages owned by it to one or more of the foregoing. Nothing contained herein shall affect the right of the Declarant to make such amendments or Supplemental Declarations as may otherwise be permitted herein. The provisions of Section 1 of Article XIII shall be paramount and superior to all provisions of this Section 6. Notwithstanding anything in this Section 6 to the contrary and for so long as Class B Membership shall exist, and in the event that a Dwelling Unit is encumbered by an Institutional Mortgage which has been insured or guaranteed by the Federal Housing Administration or the Veterans Administration, the following actions shall require the prior approval of either agency: annexation of additional lands to Shoma Homes at Nautica Single Family Townhomes Complex, mortgage, dedication or transfer of Common Properties; amendments to the Declaration, provided, however, that such approval shall specifically not be required where the amendment or other change is made to add or declare as Lots or Common Properties any property

identified in this Declaration, or to correct errors or omissions, or is required by any governmental authority; or any merger, consolidation or dissolution of the Association.

Section 7. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

Section 8. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties or Shoma Homes at Nautica Single Family Townhomes Complex does and shall be conclusively deemed to have consented to and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

Section 9. NOTICES. Any notice permitted or required to be delivered by Declarant or the Board of Directors as provided herein shall be in writing and may be delivered either personally or by regular mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person at Shoma Homes at Nautica Single Family Townhomes Complex if no address has been given to the Association. Such address may be changed from time to time by notice in writing

to the Association. Notices by Owners to the Declarant or Board of Directors shall be by certified mail, return receipt requested, and shall only be deemed to have been given upon receipt thereof by the Declarant or Board, as the case may be.

**Section 10. EXECUTION OF DOCUMENTS.** The Declarant's plan for the development of Shoma Homes at Nautica Single Family Townhomes Complex may require, from time to time, the execution of certain documents required by the City of Pembroke Pines, Broward County, Florida, and/or other municipal or quasi-municipal authorities having jurisdiction over Shoma Homes at Nautica Single Family Townhomes Complex. To the extent that said documents require the joinder of any or all Owners or Members, each of said Owners and Members does irrevocably give and grant to the Declarant or any of its officers, individually, full power-of-attorney to execute said documents as his agent and in his place and stead. The foregoing grant shall remain effective for so long as the Declarant has control of the Board of Directors of the Association.

**Section 11. NO REPRESENTATIONS OR WARRANTIES.** No representations or warranties of any kind, express or implied, have been given or made by Declarant, Declarant's Permittees or its agents or employees in connection with any portion of the Common Properties, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and express set forth in this Declaration.

DECLARANT has executed this Declaration on this 14th day  
September, 1999.

Signed, sealed and delivered  
in the presence of:

SHOMA DEVELOPMENT CORP.,  
a Florida corporation

By:

MASOUD SHOJAEI, President  
(CORPORATE SEAL)

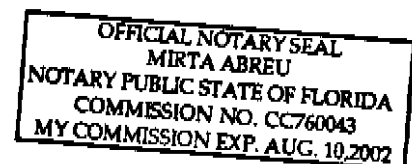
STATE OF FLORIDA )  
 ) SS:  
COUNTY OF MIAMI-DADE )

THE FOREGOING Declaration of Covenants, Restrictions and  
Easements was acknowledged before me this 14th day of September,  
1999, by MASOUD SHOJAEI, as President of SHOMA DEVELOPMENT CORP.,  
a Florida corporation (Declarant) on behalf of the corporation who  
is personally known to me.

WITNESS my hand and official seal in the State and County last  
aforesaid on this 14th day of September, 1999.

Mirta Abreu  
NOTARY PUBLIC

State of Florida at Large  
My Commission Expires



JOINDER

SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES NEIGHBORHOOD ASSOCIATION, INC, a Florida corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES NEIGHBORHOOD ASSOCIATION, INC., has caused these presents to be signed in its name by its proper officers and its corporate seal to be affixed this 14th day of September, 1999.

Signed, sealed and delivered  
in the presence of:

SHOMA HOMES AT NAUTICA SINGLE  
FAMILY TOWNHOMES NEIGHBORHOOD  
ASSOCIATION, INC.

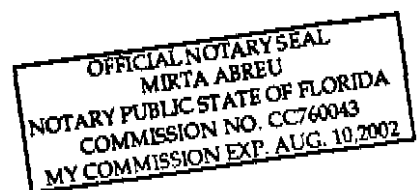
a Florida not-for-profit  
corporation

By: MASOUD SHOJAEI  
MASOUD SHOJAEI, President

STATE OF FLORIDA       )  
                                  ) SS:  
COUNTY OF MIAMI-DADE)

The foregoing joinder was acknowledged before me this 20 day of September, 19 99, by MASOUD SHOJAEI, the President of SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES ASSOCIATION, INC., a Florida corporation not-for-profit, on behalf of said corporation who is personally known to me.

Mikta Abreu  
NOTARY PUBLIC  
State of Florida at Large  
My Commission Expires



JOINDER AND CONSENT OF MORTGAGEE

Bank of America being the owner and holder of the mortgage liens imposed by those certain Mortgages filed for record in Official Records Book 28938 at Page 1939 (as modified), Official Records Book 26583 at Page 311 (as modified), which were recorded in the Public Records of Broward County, Florida, and that certain mortgage lien which was recorded in Official Records Book 16541 Page 5076 of the Public Records of Miami-Dade County, Florida, (as modified), which was also recorded in the Public Records of Broward County, Florida by modifications recorded in Official Records Book 29400 Page 208 and in Official Records Book 29476 Page 1052, both of the Public Records of Broward County, Florida, encumbering all or portions of the real property described in the foregoing Declaration of Covenants, Restrictions and Easements, hereby consents to and joins in the filing of the said Declaration of Covenants, Restrictions and Easements for Shoma Homes at Nautica Single Family Townhomes.

Signed, sealed and delivered  
in the presence of:

BANK OF AMERICA

Elia L. Melero  
Elia L. Melero  
Priscilla White  
Priscilla White

By: [Signature]  
John C. Nichols Vice President

STATE OF FLORIDA           )  
  ) ss:  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 23rd day of September, 1999 by JOHN C. NICHOLS, Vice President of Bank of America, a national banking corporation on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ (type of identification) as identification.

Elia L. Melero  
NOTARY PUBLIC, STATE OF FLORIDA

(Print, Type or Stamp Commissioned Name of  
Notary Public)



EXHIBIT "A"

LEGAL DESCRIPTION OF  
SHOMA HOMES AT NAUTICA SINGLE  
FAMILY TOWNHOMES COMPLEX

All of the lots and blocks in Parcels A and I of Nautica, according to the Plat thereof, as recorded in Plat Book 164 Page 36 of the Public Records of Broward County, Florida (as the same may be replatted).

EXHIBIT "B"

LIMITED COMMON PROPERTIES

NONE



## EXHIBIT "C"

## THE LOTS

All of the Lots located in all of the blocks in Parcels A and I of Nautica, according to the Plat thereof, as recorded in Plat Book 164 Page 36 of the Public Records of Broward County, Florida.

## EXHIBIT "D"

## THE COMMON PROPERTIES

All Lots designated or to be designated or established or set aside by declarant as "Tot Lots" or Green Areas located in any blocks in Parcels A and I of Nautica, according to the Plat thereof, as recorded in Plat Book 164 Page 36 of the Public Records of Broward County, Florida or any replat thereof.

EXHIBIT "E"

ARTICLES OF INCORPORATION



FLORIDA DEPARTMENT OF STATE  
Katherine Harris  
Secretary of State

September 24, 1999

SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES NEIGHBOR  
1321 S.W. 137 AVENUE  
SUITE 210A  
MIAMI, FL 33174

The Articles of Incorporation for SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES NEIGHBORHOOD ASSOCIATION, INC. were filed on September 24, 1999, and assigned document number N99000005709. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number B99000024031.

A corporation annual report will be due this office between January 1 and May 1 of the year following the calendar year of the file date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Neyssa Culligan  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 899A00046945

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES NEIGHBORHOOD ASSOCIATION, INC., a Florida corporation, filed on September 24, 1999, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H99000024031. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N99000005709.

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Twenty-fourth day of September, 1999

Authentication Code: 899A00046945-092499-N99000005709-1/1



CR25022 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State

## ARTICLES OF INCORPORATION

OF

SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES  
NEIGHBORHOOD ASSOCIATION, INC.

The undersigned subscribers, desiring to form a corporation not-for-profit under Chapter 617, Florida Statutes, hereby adopt the following Articles of Incorporation.

## ARTICLE I.

The name of the corporation shall be Shoma Homes at Nautica Single Family Townhomes Neighborhood Association, Inc. (hereinafter referred to as the "Association"). The initial address of the principal office of the Association is 1321 S.W. 107 Avenue, Suite 210A, Miami, Florida 33174.

## ARTICLE II.

Terms used herein shall have the meanings ascribed to them in the Declaration referred to below, unless the context indicates otherwise.

## ARTICLE III.

The purposes for which the Association is formed are:

1. To promote the common good, health, safety and general welfare of all of the Owners;
2. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association arising from Shoma Homes at Nautica Single Family Townhomes Declaration of Covenants, Restrictions and Easements (the "Declaration") as amended and supplemented from time to time and recorded in the Public Records of Broward County, Florida (the definitions of which are incorporated herein by reference);
3. To have and to exercise any and all powers, rights and privileges, including delegation of powers as permitted by law, which a corporation organized under Chapter 617, Florida Statutes, may now or hereafter have or exercise.

The foregoing statement of purposes shall be construed as a statement both of purposes and of powers, and such purposes and powers in each clause shall not be limited or restricted by reference or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers. Notwithstanding any of the above statements of purposes and powers, the Association shall not to a substantial degree engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Association.

#### ARTICLE IV.

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject under the Declaration to assessment by the Association, including contract sellers, but excluding persons or entities holding title merely as security for performance of an obligation and excluding contract purchasers, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment by the Association. The membership shall also be divided into the classes set forth below.

The Association shall have two (2) classes of voting Members as follows:

Class A. Class A Members shall originally be all Owners with the exception of the Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot which is subject to assessment, as further provided in the Declaration or any Supplemental Declaration. The Declarant shall become a Class A Member with regard to Lots owned by the Developer upon termination of the Developer's Class B Membership as provided below.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership upon the first to occur of any of the following: (1) the arrival of December 31, 2005; (2) the time at which total votes outstanding in the Class A Membership equal the total votes in the Class B Membership; or (3) thirty (30) days after the Declarant elects to terminate the Class B Membership; whereupon,

the Class A Members shall assume control of the Association and elect the Board of Directors. If applicable law requires that Declarant elect to terminate the Class B membership earlier than required by this Article, then applicable law shall apply.

#### ARTICLE V.

The Association shall have perpetual existence.

#### ARTICLE VI.

The affairs of the Association shall be managed by a Board of Directors of not less than three (3) persons.

The names and addresses of the members of the first Board of Directors of the Association (which shall be three), who shall hold office until the first election thereafter are as follows:

<u>Name</u>	<u>Address</u>
Masoud Shojaee	1321 SW 107 Avenue, Suite 210A Miami, Florida 33174
Maria Lamas de Shojaee	1321 SW 107 Avenue, Suite 210A Miami, Florida 33174
Tania M. Martin	1321 SW 107 Avenue, Suite 210A Miami, Florida 33174

Except for the first Board of Directors and unless otherwise provided in the By-Laws, Directors shall be elected by the members of the Association at the annual meeting of the membership as provided by the By-Laws of the Association, and the By-Laws may provide for the method of voting in the election and for the removal from office of Directors. Only members of the Association, or authorized representatives, officers or employees of corporate members of the Declarant (or its general partner) may be Directors.



Members elected to the Board of Directors shall hold office until the next succeeding annual meeting of members, and thereafter until qualified successors are duly elected and have taken office.

If a Director elected by the general membership shall for any reason cease to be a Director, the remaining Directors so elected may elect a successor to fill the vacancy for the balance of the unexpired term.

#### ARTICLE VII.

The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect. One person may hold more than one office, subject to the limitations set forth in the By-Laws.

The officers of the Association, in accordance with applicable provisions of the by-laws, shall be elected by the Board of Directors for a term, the duration of which shall be one year, to be extended until qualified successors are duly elected and have taken office.

The names and addresses of the first officers of the Association, who shall hold office until successors are duly elected and have taken office, shall be as follows:

President	Masoud Shojaee
Vice President	Maria Lamas de Shojaee
Vice President/ Secretary/Treasurer	Tania M. Martin

## ARTICLE VIII.

The By-Laws of the Association may be made, altered, or rescinded at any annual meeting of the Association, or any special meeting duly called for such purpose, upon the vote of the Members as provided in the By-Laws, except that the initial By-Laws of the Association shall be made and adopted by the first Board of Directors.

## ARTICLE IX.

Amendments to these Articles of Incorporation may be proposed by a member of the Board of Directors of the Association or Members of the Association holding thirty (30%) percent of the voting rights in the Class A Membership. These Articles may be amended at any annual meeting of the Association, or at any special meeting duly called and held for such purpose, on the affirmative vote of seventy-five (75%) percent of the entire membership present in person or by proxy at a meeting at which a quorum is present. For so long as there shall exist Class B Membership, and if an Institutional Mortgage which has been guaranteed by the Federal Housing Administration or the Veterans Administration shall encumber a Lot, the following actions shall require the prior approval of either of such agency: annexation of additional properties, mergers and consolidations, mortgaging of the Common Properties, dedication of the Common Properties, dissolution and amendment of the Articles of Incorporation. Evidence of such approvals shall be in accordance with the provisions in the Declaration, with regard to approvals by such administrations.

## ARTICLE X.

The name and address of the subscriber to these Articles of Incorporation is:

<u>Name</u>	<u>Address</u>
Masoud Shojaee	1321 SW 107 Avenue, Suite 210-A Miami, FL 33174

## ARTICLE XI.

The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction determines after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be in, or not opposed to, the best interests of the association; and, with respect to any criminal action or proceeding, that he had no reasonable cause to believe his conduct was unlawful; and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself,

create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to hereinabove or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under the first paragraph of this Article XI (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth hereinabove. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the members of the Association.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized

by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount less it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article XI.

The indemnification provided by this Article shall not be deemed exclusive of any other right to which those seeking indemnification may be entitled under any By-Law, agreement, vote of members or otherwise, both as to action in his official capacity while holding such office or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

#### ARTICLE XII.

The initial registered office of this corporation shall be at One Southeast Third Avenue, 28th Floor, Miami, Florida 33131. The

initial registered agent for purposes of accepting service of process shall be American Information Services, Inc.

ARTICLE XIII.


Upon dissolution of the Association, all of its assets shall be conveyed to another non-profit corporation, unincorporated association or public agency.

IN WITNESS WHEREOF, the said subscriber has hereto set his hand this 14th day of September, 1999.

  
\_\_\_\_\_  
MASOUD SHOJAEI

Having been named to accept service of process for the above-stated corporation, at the place designated in this Certificate, I hereby accept to act in this capacity and agree to comply with the provisions of said act relative to keeping open said office.

American Information Services,  
Inc.

By:  V.P.  
Mary C. Toledo, Vice-President

STATE OF FLORIDA       )  
                              ) SS:  
COUNTY OF MIAMI-DADE)

I HEREBY CERTIFY that on this day before me, the undersigned authority, personally appeared **MASOUD SHOJAEI**, to me known to be the subscriber to the Articles of Incorporation, and he acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal at said County and State this 14 day of September, 1999.

Marta Abreu  
NOTARY PUBLIC

My Commission Expires:

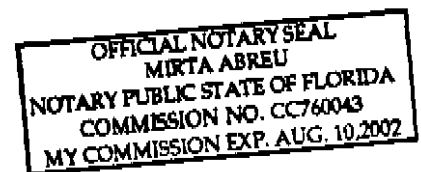


EXHIBIT "F"

BYLAWS



BY-LAWS  
OF  
SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES  
NEIGHBORHOOD ASSOCIATION, INC.

ARTICLE I  
DEFINITIONS

For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the same definition and meaning as those set forth in the Declaration of Covenants, Restrictions and Easements for Shoma Homes at Nautica Single Family Townhomes (the "Declaration of Covenants") as it may be amended or supplemented from time to time unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE II  
LOCATION, PURPOSE AND POWERS

Section 1. The principal office of Shoma Homes at Nautica Single Family Townhomes Neighborhood Association, Inc., (the "Association") shall initially be located at:

1321 SW 107 Avenue, Suite 210-A  
Miami, Florida 33174

or subsequently, at such other address as may from time to time be designated by the Board of Directors. Notwithstanding the principal office of the Association, meetings of members and the Board of Directors of the Association may be held at such places within the State of Florida, County of Broward, as may, from time to time, be designated by the Board of Directors.

Section 2. The purpose for which the Association is organized is to be a homeowners' association within the meaning of the Declaration of Covenants and to manage the property and affairs of the Common Properties as specified in the Declaration of Covenants (and otherwise discharge its duties thereunder), and to exercise all powers granted to it as a not-for-profit corporation under the laws of Florida, these By-Laws, the Articles of Incorporation and the Declaration of Covenants; and to acquire, hold convey and otherwise deal in and with real and personal property in its capacity as a homeowners' association.

Section 3. The Association shall have all power granted to it by law, the Declaration of Covenants, and as set forth in Article II of the Articles of Incorporation.

Section 4. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Common Properties and the discharge of its other responsibilities under the Declaration of Covenants and may take all actions, through the proper offices of the Association in executing such powers, except such acts which by law, the Declaration of Covenants or these By-Laws may not be delegated to the Board of Directors by Owners. Such powers and duties of the Board of Directors shall include without limitation (except as limited elsewhere herein) the following:

(a) Operating, repairing, maintaining and otherwise managing the Common Properties.

(b) Determining the expenses required for the operation of the Common Properties and the Association.

(c) Collecting the Assessments, Special Assessments, Reconstruction Assessments, Capital Improvements Assessments and fees from Owners as specified in the Declaration of Covenants.

(d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Properties.

(e) Adopting and amending rules and regulations concerning the details of the operation and use of the Properties, as provided herein and subject to rights of usage granted in the Declaration of Covenants.

(f) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Purchasing, leasing or otherwise acquiring Lots or other property in the name of the Association or its designee.

(h) Purchasing Lots or other property at foreclosure or other judicial sales, in the name of the Association or its designee.

(i) Selling, leasing, mortgaging, or otherwise dealing with Lots or other property acquired by and subleasing Dwelling Units leased by the Association or its designee.

(j) Organizing corporations to act as designees of the Association in acquiring title to or leasing Lots or other property.

(k) Obtaining and reviewing insurance for the Properties as required by the Declaration of Covenants, for the Association, and for the Board of Directors.

(l) Making repairs, additions, restorations and improvements to or alterations of the portions of the Properties as required or necessary to the discharge of its duties in accordance with the provisions of the Declaration of Covenants or after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings.

(m) Enforcing obligations of the Owners, allocating profits and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Common Properties and its functions as specified in the Declaration of Covenants.

(n) Levying fines or taking other actions against the Owners for violations of the Declaration of Covenants or violations of the rules and regulations established by the Association to govern the conduct of the Owners their guests or invitees.

(o) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the Common Properties or the acquisition of property, and granting mortgages and/or security interests on Association property.

(p) Contracting (if the Board in its sole discretion so desires) for the management of the Common Properties and Improvements and delegating to such contractor such powers and duties of the Board of Directors as the Board may deem appropriate under the circumstances, except those which may be required by the Declaration of Covenants and these By-Laws to be approved by the Board of Directors and members of the Association; contracting for the management or operation of portions of the Common Properties susceptible to separate management or operation; and granting

concessions for the purpose of providing services to the Owners. In exercising this power, the Association may contract with affiliates of itself and the Declarant.

(q) Allowing use of the Common Properties by Declarant or Declarant's Permittees in accordance with the terms and provisions of the Declaration of Covenants.

(r) Exercising (i) all powers specifically set forth in the Declaration of Covenants, the Articles of the Association and these By-Laws, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not-for-profit.

### ARTICLE III MEMBERSHIP

Section 1. Membership of the Association is as set forth in Article IV of the Articles of Incorporation of the Association.

Section 2. Members are subject to the payment of Assessments or fees levied by the Association in accordance with the terms and provisions of the Declaration of Covenants and, without limiting the generality of the foregoing, Article VII thereof.

Section 3. The Association shall have two (2) classes of voting Members as provided in Article V of the Declaration of Covenants.

Section 4. Unless otherwise expressly provided in these By-Laws or the Declaration of Covenants, any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

Section 5. Except as otherwise provided in these By-Laws, the Articles of Incorporation, or the Declaration of Covenants, the presence in person or by proxy of at least thirty-three and one-third (33 1/3%) percent of the Members of the Association entitled to vote shall constitute a quorum of the Membership. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. In the event, however, that the required quorum is not present, another meeting may be called subject to the same notice requirement, although the required quorum at the subsequent meeting

shall remain thirty-three and one-third (33 1/3%) percent of the total Members of the Association entitled to vote.

Section 6. Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Secretary at least twenty-four (24) hours before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed and upon conveyance by the Member of the fee simple title of his Unit.

Section 7. Vote distribution shall be in accordance with Section 2 of Article V of the Declaration of Covenants.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. Initially, there shall be a minimum of three (3) directors of the Association who shall be elected annually at the annual meeting of the Members but, from time to time, without amendment hereof, the number of directors may be increased by a vote of the members of the Association as hereinafter provided. After termination of Class B Membership and the election of a majority of the Directors by members other than Declarant, there shall not be less than three (3) nor more than nine (9) Directors.

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

(a) Election of directors shall be held at the annual members' meeting except as provided herein to the contrary.

(b) Nominations for directors and additional directorships created at the meeting may be made from the floor.

(c) The election shall be by written ballot (unless dispensed with by a majority consent of the Units represented at the meeting) and by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

(d) Except as to vacancies resulting from removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be filled by the remaining Directors provided that all vacancies in directorships to which

Directors were appointed by the Declarant pursuant to the provisions of subdivision (f) hereof shall be filled by the Declarant without the necessity of any meeting.

(e) Subject to the rights of Declarant set forth in Section 13 hereof, any director may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all Owners. A special meeting of the Owners to recall a director or directors may, subject to the rights of Declarant set forth in Section 2(f) and 13 hereof, be called by ten (10%) percent of the Owners giving notice of the meeting as required for a meeting of Owners and the notice shall state the purpose of the meeting. The vacancy in the Board of Directors so created shall be filled by the members of the Association at the same meeting unless such director was appointed by the Declarant, in which case the Declarant shall appoint another director without the necessity of any meeting.

(f) Provided, however, that until a majority of the Directors are elected by the members other than the Declarant, neither the first Directors of the Association nor any Directors replacing them, nor any Directors named by the Declarant, shall be subject to removal by members other than the Declarant. The first Directors and Directors replacing them may be removed and replaced by the Declarant without the necessity of any meeting.

Section 3. The first meeting of the duly elected Board of Directors, for the purpose of organization shall be held promptly after the recordation of the Declaration of Covenants, provided the majority of the members of the Board elected are present. Any action taken at such meeting shall be by a majority of the Board members present. If the majority of the members of the Board elected shall fail to elect officers, the meeting of the Board to elect officers shall then be held within thirty (30) days thereafter upon three (3) days' notice in writing to each member of the Board elected stating the time, place and object of such meeting.

Section 4. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board of Directors shall be open to all Owners and notice of such meetings shall be posted conspicuously on the Common Properties at least forty-eight

(48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided however that the Owners shall not be permitted to participate and need not be recognized at any such meeting.

**Section 5.** Special meetings of the Board of Directors may be called at any time by the President or by any two (2) members of the Board and may be held any place or places within Broward County, Florida; and at any time. Notice of Special Meetings shall be given to Owners in the manner required for regular meetings, provided that Owners shall not be permitted to participate and need not be recognized at any such meeting.

**Section 6.** Notice of each special meeting of the Board of Directors, stating the time, place and purpose thereof, shall be given by or on behalf of the President or by or on behalf of the Secretary or by or on behalf of any two (2) members of the Board to each member of the Board not less than three (3) days by mail or one (1) day by telephone or telegraph prior to the meeting. Special meetings of the Board may also be held at any place and time without notice to directors by unanimous waiver of notice by all the directors.

**Section 7.** Any director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any director at a meeting shall constitute a waiver of notice of such meeting except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

**Section 8.** A quorum at a directors' meeting shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of directors is specifically required by the Declaration of Covenants, the Articles or these By-Laws.

**Section 9.** If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 10. The joinder of a director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of that director except for the purpose of constituting a quorum.

Section 11. The presiding officer of the directors' meetings shall be the Chairman of the Board, or his designees, if such an officer has been elected; and if none, the President shall preside (or may designate any other person to preside). In the absence of the presiding officer, the directors present may designate any person to preside.

Section 12. A director may receive compensation for any service rendered to the Association should the Board of Directors approve or designate the same, the vote of the director seeking such compensation not being counted.

Section 13.

(a) Notwithstanding anything to the contrary contained in this Article IV or otherwise, the Declarant shall have the right to appoint or direct that there be elected specific directors of the Association until such time as Class B Membership terminates in accordance with Section 1 of Article V of the Declaration of Covenants.

(b) Within sixty (60) days after Unit Owners other than the Declarant or a successor are entitled to elect or appoint a member or members of the Board of Directors, the Association shall call and give not less than thirty (30) days nor more than forty (40) days notice of, a meeting of the Owners for this purpose. The meeting may be called and the notice may be given by any Owner if the Association fails to do so.

(c) The Declarant may waive or relinquish in whole or in part any of its rights to appoint or elect one or more of the Directors it is entitled to appoint or elect.

(d) This Article IV, Section 13 shall not be modified or amended without the consent of the Declarant so long as the Declarant shall in accordance with the terms of these By-Laws have the right to appoint or cause to be elected any Directors.



ARTICLE V  
OFFICERS

Section 1. Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board.

Section 2. The President shall be the chief executive officer of the Association. The President shall preside (or designate a Chairman to preside) at all meetings of the Members of the Association and of the Board of Directors. He shall have the general powers and duties of supervision and management of the Association which usually pertain to his office, and shall perform such duties as usually pertain to such office or as are properly required of him by the Board of Directors. In the absence or disability of the President, the Vice-President shall perform the duties and exercise the powers of the President. The Secretary shall issue notice of all meetings of the Membership of the Association and the Directors where notices of such meetings are required by law or in these By-Laws. He shall keep the minutes of the meetings of the Membership and of the Board of Directors.

Section 3. The Treasurer shall have the care and custody of all the monies and securities of the Association. He shall enter on the books of the Association, to be kept by him for that purpose, full and accurate accounts of all monies received by him and paid by him on account of the Association. He shall sign such instruments as require his signature and shall perform all such duties as usually pertain to his office or as are properly required of him by the Board of Directors.

Section 4. One person may hold more than one office.

ARTICLE VI  
RESIGNATION. VACANCY. REMOVAL

Section 1. Any director or officer of the corporation may resign at any time, by instrument in writing. Resignation shall take effect at the time specified therein and if no time is specified, at the time of receipt by the President or Secretary of the corporation. The acceptance of a resignation shall not be necessary to make it effective.

Section 2. When a vacancy occurs on the Board, the vacancy shall be filled by the remaining members of the Board at their next

meeting by electing a person who shall serve until the next annual meeting of members at which time a director will be elected to complete the remaining portion of the unexpired term.

Section 3. When a vacancy occurs in an office for any cause before an officer's term has expired, the office shall be filled by the Board at its next meeting by electing a person to serve for the unexpired term or until a successor has been elected by the Association.

Section 4. A majority of the members of the Association present at any regular meeting or special meeting at which a quorum is present and duly called at least in part for the purpose of removing a director or officer may remove any such director or officer for cause affecting his ability or fitness to perform his duties.

Section 5. Officers and directors of the Association shall be indemnified to the full extent provided by Florida law and in Article XI of the Articles of Incorporation.

#### ARTICLE VII MEETINGS OF MEMBERS

Section 1. The regular annual meeting of the Members shall be held in each year beginning in the year in which the Declaration of Covenants is recorded, at such time, date and place as shall be determined by the Board of Directors, but no later than thirteen (13) months from the date of the previous annual meeting.

Section 2. Special meetings of the Members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by any two or more Members of the Board of Directors, or upon written requests of the Members who have a right to vote one-fourth of all votes of the entire Membership including Class "B" Member votes (while such voting class shall exist).

Section 3. Notices concerning meetings held in accordance with the above shall be given to the Members by sending a copy of the notice by mail, postage thereon fully paid, to the addresses appearing on the records of the Association. The post office certificate shall be retained as proof of such mailing. Each Member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice shall

be posted in a conspicuous place on the Common Properties at least fourteen (14) days in advance of the meeting and shall set forth the general nature of the business to be transacted provided, however, that if any business of any meeting shall involve any action governed by the Articles of Incorporation or Declaration of Covenants, notice shall given or sent as therein provided. Recitation in the minutes of a meeting that the meeting was held pursuant to notice properly given shall be evidence that such notice was given.

**Section 4.** The presence in person or by proxy at the meeting of Members entitled to cast thirty-three and one-third (33-1/3%) percent of the votes shall constitute a quorum for any action governed by these By-Laws.

**Section 5.** Any Member may give to a specified Board of Director or to any other Member a proxy to vote on behalf of the absent Member at any meeting. Such proxy shall be in writing, shall be signed by the absent Member and filed with the Association prior to or at the meeting. The proxy shall be effective only for the specific meeting for which it is originally given. It will be revocable at the pleasure of the Owners executing it if revoked by a duly delivered written notice thereof.

**Section 6.** The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Owners for all purposes except where otherwise provided by law, the Declaration of Covenants, the Articles of Incorporation or these By-Laws. As used in these By-Laws, the terms "majority of the Unit Owners" and "majority of the members" shall mean those Owners having more than fifty (50%) percent of the then total authorized votes present in person or by proxy and voting at any meeting of the Owners and at which a quorum shall have been attained.

#### ARTICLE VIII

##### BOOKS AND RECORDS; DEPOSITORIES; FISCAL YEAR

**Section 1.** The books, records and papers of the Association shall be subject to the inspection of any Member of the Association during normal business hours provided such Member has submitted a prior written request therefor and set forth therein the basis for such request.

Section 2. The funds of the Association shall be deposited in a bank or banks or in a state or federal savings and loan association in Palm Beach, Broward, or Dade County, Florida. Such deposits shall be to an account of the Association under resolutions approved by the Board of Directors and the funds deposited shall be withdrawn only over the signature of the Treasurer and countersigned by the President or Vice President. Said funds shall be used only for corporate purposes.

Section 3. The Association shall maintain accounting records according to generally accepted accounting principles. Such records shall include an account of receipts and expenditures; an account for each Owner which shall designate the name and address of the Owner, the amount of each Assessment and fee, the due dates and amount of each Assessment and fee, the amounts paid upon the account and the balance due; and a register for the names of any mortgage holders or lien holders who have notified the Association of their liens, and to which lien holders the Association will give notice of default upon request by such lien holders. The Association shall furnish a reasonable written summary of the foregoing to each Owner at least annually. The Board of Directors shall present at each annual meeting of the Association members a full and clear statement of the business and condition of the Association.

#### ARTICLE IX ADMINISTRATIVE RULES AND REGULATIONS

The Board of Directors may from time to time adopt rules and regulations governing the details of the operation of and as are designed to prevent unreasonable interference with the use of the Properties by the Members in accordance with the Declaration of Covenants.

#### ARTICLE X VIOLATIONS AND DEFAULTS

In the event of a violation (other than non-payment of an Assessment or fee by an Owner) of any of the provisions of the Declaration of Covenants, these By-Laws, the Rules and Regulations of the Association or the Articles of Incorporation of the Association, the Association, after reasonable notice to cure not to exceed fifteen (15) days, shall have all rights and remedies provided by law and in the Declaration of Covenants including without limitation (and such remedies shall or may be cumulative)

the right to sue for damages, the right to injunctive relief and, in the event of a failure to pay Assessments or fees, the right to foreclose its lien provided in the Declaration of Covenants. In every such proceeding the Owner at fault shall be liable for court costs and the Association's reasonable attorney's fees. If the Association elects to enforce its lien by foreclosure, the Owner shall be required to pay a reasonable rent for his Lot together with Dwelling Unit thereon during the litigation and the Association shall be entitled to the appointment of a receiver to collect such rent. A suit to collect unpaid Assessments or fees may be prosecuted by the Association without waiving the lien securing such unpaid Assessments or fees.

## ARTICLE XI OBLIGATIONS OF OWNERS

### Section 1.

(a) All Owners are obligated to pay, in accordance with the provisions of the Declaration of Covenants, all Assessments imposed by the Association to meet all expenses of the Association, which may include, without limitation, liability insurance policy premiums and insurance premiums for policies to cover repair and reconstruction work in case of hurricane, fire, flood or other hazard, as more fully provided in the Declaration of Covenants.

(b) All delinquent Assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration of Covenants, including, without limitation, Article VII thereof.

Section 2. All plans for alterations and repair of Improvements to the Properties must receive the prior written consent of the Board and otherwise comply with the provisions for architectural control in the Master Declaration.

## ARTICLE XII AMENDMENT OF BY-LAWS

Except where the Declaration of Covenants or the Articles of Incorporation provide otherwise, these By-Laws may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

(b) A resolution for the adoption of a proposed amendment may be proposed by a majority of the Board of Directors or by not less than one-third (1/3rd) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary prior to the commencement of the meeting.

The approval must be:

(1) by not less than two-thirds (2/3rds) of the total votes of the members of the Association, except that the Declarant shall have the right to veto amendments while the Class "B" Membership exists; or

(2) by not less than one hundred (100%) percent of the entire Board of Directors.

(c) No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant or mortgagees of Units without the consent of the Declarant and said mortgages in each instance. No amendment shall be made that is in conflict with the Articles of Incorporation or the Declaration of Covenants.

(d) A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the By-Laws which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed or by the Declarant alone if the amendment has been adopted consistent with the provisions of the Declaration of Covenants allowing such action by the Declarant. The amendment shall be effective when stated therein.

### ARTICLE XIII FISCAL MANAGEMENT

The Board of Directors shall from time to time, and in accordance with its rights and duties under Article VII of the Declaration of Covenants, prepare a budget for the Association (which shall detail all accounts and items of expenses), determine the amount of Assessments payable by the Owners to meet the expenses of the Association, and allocate and assess such expenses

among the Owners in accordance with the provisions of the Declaration of Covenants. The adoption of a budget for the Association shall comply with the terms and provisions of Article VII of the Declaration of Covenants.

#### ARTICLE XIV MORTGAGEES

Section 1. An Owner who mortgages his Lot shall notify the Association by notice to the Secretary of the Board of Directors of the name and address of his Mortgagee. The Association shall maintain such information in a book entitled "Mortgagees of Lots". Any such Owner shall likewise notify the Association as to the release or discharge of any such mortgage.

Section 2. The Board of Directors of the Association shall, at the request of a Mortgagee of a Lot, report any unpaid assessments due from the Owner of such Lot in accordance with the provisions of the Declaration of Covenants.

Section 3. The Board of Directors of the Association shall fully protect, enforce and comply with the rights of institutional first mortgagees as more particularly set forth in Article XII of the Declaration of Covenants.

#### ARTICLE XV MEANING OF TERMS

All terms appearing herein which are defined in the Declaration of Covenants shall have the same meanings as are applied to such terms in the Declaration of Covenants.

#### ARTICLE XVI CONFLICTING PROVISIONS

In case of these By-Laws conflict with any provisions of the laws of the State of Florida, such conflicting By-Laws shall be null and void upon final court determination to such effect, but all other By-Laws shall remain in full force and effect. In case of any conflict between the Articles and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration of Covenants and these By-Laws, the Declaration of Covenants shall control.

ARTICLE XVII  
MISCELLANEOUS

Section 1. The Board of Directors may authorize any officer or officers agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent, committee member, or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

Section 2. The Association shall keep in its office for the transaction of business the original or a copy of these By-Laws as amended or otherwise altered to date certified by the Secretary, which shall be open to inspection by the Owners and all First Mortgagees at all reasonable times during office hours.

Section 3. The fiscal year of the Association shall be determined by the Board of Directors and having been so determined, shall be subject to change from time to time as the Board of Directors shall determine in accordance with the Declaration of Covenants.

Section 4. The Association shall keep and maintain in its office for the transaction of business a book containing the name and address of each Member. Termination or transfer of ownership of any Lot by an Owner shall be recorded in the book, together with the date on which such ownership was transferred in accordance with the provisions of the Declaration of Covenants

The foregoing were adopted as the By-Laws of SHOMA HOMES AT NAUTICA SINGLE FAMILY TOWNHOMES NEIGHBORHOOD ASSOCIATION, INC., a corporation not-for-profit, under the laws of the State of Florida, this 14 day of Sept, 1999

  
\_\_\_\_\_  
MASOUD SHOJAEI, President



