

CERTIFICATE OF AMENDMENT
TO THE DECLARATION OF COVENANTS AND RESTRICTIONS FOR
OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC

WHEREAS, the Declaration of Restrictions for OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC. was originally recorded in Official Records Book **3246**, Page **3683**, Public Records of Brevard County, Florida (hereinafter referred to as the "Declaration");

WHEREAS, the Declaration was amended through a first amendment recorded in Official Records Book **3350**, Page **1846**, Public Records of Brevard County, Florida.

WHEREAS, the Declaration was amended through a second amendment recorded in Official Records Book **3369**, Page **998**, Public Records of Brevard County, Florida.

WHEREAS, the Declaration was amended through a third amendment recorded in Official Records Book **5536**, Page **3361**, Public Records of Brevard County, Florida.

WHEREAS, the Declaration was amended through a second amendment recorded in Official Records Book **7823**, Page **661**, Public Records of Brevard County, Florida.

WHEREAS, the owners within OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC. approved amendments to the Declaration at a duly-noticed meeting which was held on April 4, 2022;

THEREFORE, the Declaration shall be amended as follows:

DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS
for
OCEAN GARDENS

THIS DECLARATION is made this 15th day of October, 1992, by WILLIAM BENNIX, TRUSTEE, the owners of the property who declares that the real property described in Article I, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens as set out herein, as well as the statutory provisions in the HOA Act in Chapter 720, Florida Statutes, as amended from time to time. The Restrictions and Covenants are to run with the land and shall be binding upon all parties, entities and all persons owning units in OCEAN GARDENS or claiming an interest under them. In any conflict between these Restrictions and Covenants and the HOA Act in Chapter 720, Florida Statutes, as amended from time to time, the provisions in the HOA Act shall control.

If the owners of such lots or any of them, or heirs, or assigns, shall violate any of the covenants hereinafter set out, it shall be lawful for any other person owning real property situate in such subdivision to prosecute any proceedings at law or in equity against the person or persons violating any of such covenants, and either to prevent him/her from so doing or to recover damages for such violation of both.

ARTICLE I
PROPERTY SUBJECT TO THIS DECLARATION

1. LEGAL DESCRIPTION: The real property, which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Cape Canaveral, Brevard County, Florida, and is more particularly described as:

SEE ATTACHMENT "A"

ARTICLE II
DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

A. "Owner's Association", "Townhouse Association", "Homeowner's Association" shall mean and refer to OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC., a Florida Not-for-profit Corporation.

B. "Properties" shall mean and refer to all such existing properties and additions thereto as are subject to this Declaration.

C. "Common Areas" ~~or "Access Areas"~~ shall mean and refer to all certain real property and improvements thereto for which the association is responsible for maintenance, upkeep and improvements; including front entrance landscaping and walls, medians, stormwater, street sidewalks, sewer, etc. as described in Exhibit "A" attached hereto and incorporated herein by the reference. "Common Areas" are intended to be that are conveyed in fee simple of the Association, ~~subject to the provisions of this Declaration. As well as, the front and side areas of the owner's property.~~

D. "Lot" shall mean and refer to certain real property and improvements thereon as described in Exhibit "A". Lots are intended to be conveyed to Owners in ~~fees~~ fee simple, subject to the provision of this Declaration.

E. "Owner" shall mean and refer to the record owners, whether one or more persons or entities, of the fee simple title to any lot.

F. "Member" shall mean and refer to all those Owners who are members of the Association, as provided in Article III, Paragraph 2 3 hereof.

G. "Developer" shall mean and refer to WILLIAM BENNIX, TRUSTEE, his heirs, or assigns.

H. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

I. "OCEAN GARDENS" shall mean and refer to the development which is described in Attachment "A".

ARTICLE III
OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC.

1. ESTABLISHMENT: There shall be established an "Association", composed of record owners of each lot. The Association shall be OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC., a Florida Not-for-Profit Corporation. The Association shall administer the operation, repair, and maintenance of the "Common Areas" of the Development known as Tract A and Tract B including the private sewer system.

2. POWERS: The Association is responsible for the maintenance and upkeep and capital improvements of the common ~~landscaped~~ areas of the development. The Association will maintain and upkeep the landscaped front and side yards for each lot owner. In order to do this, the Association will collect from the owners of the lots the necessary amounts to pay for these services including the liability insurance. The Association shall have all the powers and duties set forth in this Declaration, it's Articles of Incorporation, other association incorporated rules/regulations, and the powers as granted by the State of Florida regarding Not-For-Profit-Corporations and Florida Statute Chapter 720

3. MEMBERSHIP: Every person or entity, who is a record owner of a fee or undivided interest in any lot, shall be a member of the Association. Whenever a member shall cease to be a record owner, such member shall automatically be terminated. Notwithstanding anything else to the contrary set forth in this Declaration, any such person or entity who holds such interest merely as security for the performance of any obligations, shall not be a member of the Association.

4 VOTING RIGHTS: The Association ~~shall have two classes of voting membership:~~

~~Class A: Class A members shall be all those Owners as defined in Article III, Paragraph 2 3, with exception of the Developer. Class A members and shall be entitled to one (1) vote for each lot in which they hold the interests required by membership. When more than one person holds such interest or interests in any lot, all such persons shall be members, and the vote for such lot shall be exercised by one such member as specified in the Articles of Incorporation and/or the By-Laws of the Association, but in no event shall more than one (1) vote be cast with respect to any such lot.~~

~~Class B: The Class B member shall be the developer or his assigns. The Class B member shall be entitled to one (1) vote for each lot in which it holds the interest required for membership by Paragraph 2, provided however, and notwithstanding any provision to the contrary, the Developer shall have the right to elect the Board of Directors of the Association until such time as seventy five (75%) of the lots subject to this Declaration, have been sold or until the Developer voluntarily relinquishes control, whichever first occurs.~~

5 VOTING LIMITATIONS: Although each part owner of lot is defined as a Member of the Association, when counting votes by the membership, each lot is entitled to just one (1) vote. In the event that lot owners are unable to arrive at or determine which member is the voting member, then such lot shall relinquish its vote until such time as a member is designated as the voting member.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON AREAS

1. MEMBERSHIP EASEMENTS: Each member of the Association and each tenants, agent, and invitee of such Member shall have a permanent and perpetual easement for the use of all common areas in common with all other Members of the Associations, their tenants, agents, and invitees, subject to the following:

(a) The right and duty of the Association to levy assessments against each lot for the purpose of maintain the Common Areas and facilities in compliance with the provisions of the Declaration. This includes routine and periodic maintenance, and any major repair, to ensure safe and continued operation and condition of street lighting, drainage, sidewalks, and street pavement in the subdivision.

(b) These common areas shall include all common areas indicated on the Plat.

(c) The right of Owners to use ~~and enjoyment~~ of the Common Areas and facilities thereon shall extend to the members of ~~his~~ his/her immediate family who reside with ~~him~~ him/her, subject to regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations.

2. EASEMENTS APPURTENANT: The easement provided in Article IV, Paragraph I, shall be appurtenant to and shall pass with the title to each lot.

3. UTILITY AND INGRESS AND EGRESS EASEMENTS: Easements for installation and maintenance of utilities and for ingress and egress are reserved as shown on the Plat and Site Plan of the Properties, Exhibit "A". Within these easements, no structure, planting, or other materials may be placed or permitted to remain that will unreasonably interfere with the vehicular traffic or prevent the maintenance of utilities.

4. PUBLIC EASEMENTS: Fire, police, sanitation or other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Properties.

5. ASSOCIATION EASEMENTS: For the purpose of performing its duties, the Board of Directors and the Association through its duly authorized agents or employees or independent contractors, shall have the right, after reasonable notice to the Owner, to enter upon any lot at reasonable hours. In the event of any emergency, such right of entry shall exist without notice.

ARTICLE V MAINTENANCE ASSESSMENTS

1. CREATION OF A LIEN AND PERSONAL OBLIGATION FOR THE ASSESSMENTS: ~~The Developer, for each lot owned by it within the Properties, hereby covenants, and each~~ Each owner of any lot, by the acceptance of deed therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agrees to pay to the Association annual assessments and charges for the maintenance of the common areas, and sewer system, including such reasonable reserves as the Association ~~my~~ may deem necessary, and special assessments, such assessments to be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be continuous lien upon the property against, which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided shall also be the personal obligation of the person who was the owner of the lot at the time when the assessment fell due. All assessments, both regular and special by the Association, shall be against all lots subject to its jurisdiction equally.

2. PURPOSE OF ASSESSMENTS: The Assessments levied by the Association, shall be used for maintenance of the common areas, for capital improvements, to provide insurance, to employ personnel, such as accountants, to enforce the provisions of this Declaration and to carry out the purposes of this Declaration.

3. CAPITAL IMPROVEMENTS: Funds necessary for capital improvements relating to the common areas under the ownership of the Association may be levied by such Association as special assessments, upon approval of the Board of Directors of the Association and upon the approval of a majority of the Owners either at a meeting or in writing.

~~At the closing of each lot sold, there shall be a one-time initial capital contribution paid to the Homeowner's Association of \$100. This \$100 fee applies only to the first purchaser when ownership of a particular lot sold is from Developer to Owner.~~

4. MAINTENANCE RETENTION AREAS, ETC.: Maintenance of retention areas, rear lot and side lot swales, grass cutting, and structure repairs ~~will be~~ is the responsibility of the ~~Homeowners~~ Association.

5. MAINTENANCE OF LOT AND IMPROVEMENT THEREON: Each lot Owner shall comply with the provisions of this Declaration, which include maintaining ~~his~~ his/her property in good condition, in an appearance conforming to the provisions of this Declaration and meeting standards that may be enacted by the Board of Directors of the Association. Each lot Owner acknowledged by ~~his~~ his/her acquisition of an interest in a lot that ~~he~~ he/she agrees that the Properties in their use and maintenance are to be oriented towards a clean, orderly, and genial residential community. Each Owners shall be responsible for the cost, maintenance, repair, and replacement of the structures located on ~~his~~ his/her lot.

If the Owner fails to maintain ~~his~~ his/her Property as required, he shall be notified in writing by the Board of Directors and given five (5) days to bring ~~his~~ his/her lot into conformance with the standards maintained by the Association. In the event the Owner fails to maintain ~~his~~ his/her property as required, the Associations shall have the right to maintain the property as would have been required of the Owner and to assess the Owner for the cost of such maintenance or upkeep. If all such sums due from the Owner are not paid by said Owner within ten (10) days after being provided with written notice and demand for payment from the Association of such costs, the same shall become a lien upon Owner's lot until paid and may be collected by the Association in the same manner together with additional similar costs and interest that may be incurred by a lot Owner in failing to other assessments.

6. ESTABLISHMENT OF ANNUAL ASSESSMENTS: There shall be a monthly assessment for each lot owner for the following year as determined by the Association in its annual meeting.

This monthly assessment is for maintenance and upkeep of the common areas including the cost for water, electricity, and insurance. Included in this assessment is the painting of walls and the maintenance or repair of sidewalks and fences on common land, and for front and side yard maintenance and upkeep. (Please note: Enclosed areas in rear of an owner's lot are not covered by this assessment.)

This monthly assessment also includes the landscaping and its upkeep of all the common areas and the front yard of the individual lot owners. It also includes the provision of professional services; such as management, accounting, legal, etc., as well as, capital improvements of the common areas included in this Declaration as the responsibility of the Association.

From the date of closing of the first lot sold, to three years thereafter, the amount of the monthly assessment is \$50.00 prorated at the time of closing. After this period of time, in the future, the monthly assessment can be amended as needed by the Association. However, future monthly assessments thereafter cannot be increased by more than \$10.00 in each calendar year.

7. THE EFFECT OF NON-PAYMENT OF ASSESSMENTS: THE LIEN: REMEDIES OF THE ASSOCIATION:

a. Late Fees: Monthly Assessments shall be due on the 1st day of the month for that month. Upon such time that the Monthly Assessment is not received by the 10th

day of the month, a Late Fee shall be applied. The Late Fee shall be \$10.00 (ten dollars) In the event the 10th of the month falls on a Saturday, Sunday, or Monday of a Federally recognized Holiday, the due date to avoid incurring a Late Fee will be the immediate Monday or Tuesday when normal banking business resumes.

Late Fees on any Special Assessments will incur a Late Fee if not received within 10 days of the due date. The Late Fee will equal 10% of the Special Assessment or \$10.00, whichever is greater.

The Board of Directors will have the authority to waive Late Fees under reasonable circumstances and when approved by a majority of the Board of Directors during a regularly scheduled meeting. Reasonable circumstances include payments that are lost in transit and the owner has a 12-month history of on-time payments, payments that are destroyed in the mail and/or issue with electronic funds transfer through the owner's bank, verifiable medical/emergency hardships, natural or man-made disasters that result in unanticipated bank closure(s), or when the owner is under a Board approved payment plan thus late fees are not continuing to accrue.

If past due Assessments and Late Fees are not satisfied within the calendar year in which they are incurred, the unpaid balances shall bear interest at the rate as provided by Florida Statutes, ~~of 5% annually, compounded annually~~. All Late Fees will continue to be due and accrue interest until paid in full. Any payments received shall be applied in accordance with Florida Statutes. Additionally, any unpaid balances exceeding \$1,000.00 shall have a lien placed against the property in accordance with the below.

b. Liens: While all unpaid Assessments and late fees will continue to be due until paid, the Association shall cause a lien on each lot for any unpaid assessments and Late Fees with an unpaid balance of more than \$1,000.00, interest thereon, advances, costs, and reasonable attorney's fees incurred by the Association incident to the collection of such assessment or enforcement of such lien against the Owner of such lot. In the event that an owner's unpaid balance continues for more than twenty-four (24) consecutive months without a Board approved payment plan, the Association shall cause a lien on each lot in the same manner. All such liens shall be levied in accordance with Florida Statutes, ~~subordinated to the lien of a mortgage or other lien recorded prior to the time of the recording of the Claim of Lien.~~

~~The lien shall be effective from and after the time of recording in the Public Records of Brevard County, Florida, a Claim of Lien describing the lot, the record owner(s) and the amount due and the date when due. The Lien shall continue in effect until all sums secured by the Lien shall have been fully paid. Once fully paid, the satisfaction of Claims of Lien shall be signed and verified by an officer or agent of the Association and such proof of satisfaction of the Lien recorded.~~

c. Remedies of the Association: The Board of Directors may take such actions as it may deem necessary to collect assessments by personal action or by enforcing and foreclosing said lien and may settle and compromise the same if it deems it is in the best interest of the

Association. A delinquent Owner shall pay all costs, including reasonable Attorney's fees incurred by the Association incident to the collection of such assessment, together ~~with~~ with all sums advanced and paid by the Association pertaining to such lot, such as for taxes, mortgage and insurance. The Lien shall be deemed to cover additionally said costs and advances. The filing of one action shall not be a bar for filing of other actions. The Association through its Board of Directors will be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien; and it may apply as a cash credit against its bid and all sums due the Association covered by the lien, the Owner shall be required to pay a reasonable rental for the unit. The Plaintiff in such foreclosure action will be entitled to the appointment of a receiver to collect the same from the Owner or Occupant, or both. A suit to recover a money judgement for unpaid assessments may be maintained without waiving the lien securing the same.

~~8. EFFECT ON DEVELOPER: Notwithstanding any provision that may be contained to the contrary in this instrument, for as long as the Developer is the owner/owners of any lot, the Developer is not liable for assessments against such lot.~~

8 DUTIES OF THE BOARD OF DIRECTORS: ~~Except for the initial assessments,~~ The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot subject to the Association's jurisdiction for each assessment period, at least thirty (30) days in advance of such date or period. Written notice of the assessment shall thereupon be sent to each Owner, subject thereto.

The Association shall upon demand within a reasonable time, furnish to an Owner or Mortgagee of a lot, or both, a certificate in writing, signed by an Officer of the Association, setting forth the assessments for the respective lot and the status of their payments. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

The Association through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement from time to time with one or more persons, firms, or associates for management services. The Association shall have all other powers provided in its Articles of Incorporation.

ARTICLE VI
GENERAL RESTRICTIVE COVENANTS

1. APPLICABILITY: Provisions of this article shall be applicable to all lots situated within the Properties.

2. LAND USE: No lot shall be used except for residential purposes, and for storage of Association equipment. ~~Temporary uses for model home, parking lots, and/or sales office shall be permitted until Developer has sold all lots.~~

3. ARCHITECTURAL CONTROL: No building, wall, fence, or other structure or improvement of any nature shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure and landscaping has been approved by the Board of Directors of the Association.

a. Each building must provide continuity with the rest of the development to include the following:

1) All must appear to be a semi-detached townhome with stucco and stucco banding encircling the home.

2) Garages must be centered in the front of the structure, have no more than 2-single car garages or one-two car garage per unit but the same total count for the two units, have a separated driveway going to each unit, and be separated by a section/wall/stucco to ensure the look of 2 separate townhomes.

3) Front doors are to be set back along the sides of the structures and less visible from the road.

4) Exterior paint, shingles, and driveways of units on the same structure must be of the same materials and colors.

b. Any change in the exterior appearance of any building, wall, fence, or other landscaping shall be deemed an alteration requiring approval.

c. The Board of directors shall have the power to develop and disseminate such rules and regulations, including aesthetic reasons, as it deems necessary to carry out the provisions and intent of this Paragraph.

4. EXTERIOR APPEARANCE AND LANDSCAPING: The Association shall maintain the landscaping, including the trees, shrubs, lawns, flower beds, walkways, and ground elevations. However, landscaping changes to the afore mentioned items that are made by the owner without documented prior approval of the Board, and the owner refuses to rectify/undo the changes, shall not be the responsibility of the Association to maintain. The owner's failure to get approval shall be noted in a Board meeting and documented as the owner's responsibility to maintain and will remain with the property regardless of a change in ownership.

- a. Aluminum foil or reflective materials may not be placed on windows of glass doors.
- b. Discretely located home security equipment is permitted.
- c. Side and back yards that are behind the owner's fence or wall, and thus not visible to the street, or beyond the front door when no fence or wall is present, are not the responsibility of the Association.
- d. Storage of tools, equipment (both personal and commercial) and materials must be stored the owner's garage or out of sight of the general public.

5. NUISANCES: ~~No noxious or offensive activity shall be carried on upon the property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other lot Owner. No obnoxious, offensive or unlawful activity shall be conducted upon the property, or on or about the Common Area, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Area that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property. No activity deemed noxious or offensive by the Board of Directors shall be carried on upon any Property or within the Common Area of the association. The Board of Directors will have ultimate authority in determining the nuisance and the method of enforcement to obtain compliance of this covenant. The Board of Directors may establish reasonable rules and regulations for enforcing the provisions of this paragraph.~~

6. TEMPORARY STRUCTURES: No structure of a temporary character shall be permitted on any lot, temporarily or permanently, without the prior written consent of the Board of Directors of the Association.

7. SIGNS: No sign of any kind shall be displayed to the public view on the Properties, except one sign of not more than one square foot used to indicate the name of the resident, or ~~after the Developer has sole all of the lots, one sign of not more than five square feet advertising the property for sale. This sign restriction shall not apply to the Developer until it has sold all its lots, or a sign identifying the properties as approved by the Board of Directors.~~

8. LEASING: The Lessee shall hold tenancy subject to all the provisions of this Declaration and any and all rules and regulations of the Board. It shall be the responsibility of the Owner that ~~his~~ his/her Lessee complies therewith. The minimum rental period is for 12 (twelve) months with a maximum of 2 persons per bedroom.

9. VEHICLES:

a. All motor vehicles (defined as automobiles, motorcycles or trucks used to transport persons or property and propelled by power other than muscular power) shall be kept in driveways or closed garages and shall be maintained in working condition with a valid current vehicle registration tag.

b. All motor vehicles must be parked in accordance with the City of Cape Canaveral's Code of Ordinances and/or State of Florida Statutes. At any time that the City or State rules change creating a conflict with this section, the Code of Ordinances and/or State Statutes stand.

c. There shall be no parking/storage of the following: boats, recreational vehicles of any type, trailers of any type or similar property outside of closed garages.

d. Long term parking in the designated area for visiting motor vehicles shall only be permitted if the owner cannot accommodate the visitor's vehicle in their driveway. Long term is to be defined as a period not to exceed fourteen (14) consecutive days and may not reoccur in less than thirty (30) days. Designated area is in the common area located in the south-end of the circle, but not blocking access to the mail boxes or yard debris pickup area on the scheduled day. The 14 days shall not be exercised repeatedly and is for visitors only. Any extension to the 14 days must be approved, in writing by the Board of Directors.

Short term parking exceptions may be provided for motor vehicles that cannot fit within an enclosed garage, such as recreational vehicles or moving trucks and trailers to allow for loading/unloading for no more than 48 hours two (2) consecutive days between dawn to dusk, no overnight. Requests and approvals must be in writing. Vendor's vehicles providing periodic maintenance and/or service to the owner, that are parked on the street, must be able to immediately be moved in the event of an emergency. Circumstances preventing this action and/or beyond the owner's control should be reported to the Board or the property manager.

e. Any violation of the above could result in the ticketing and/or towing of the vehicle(s) upon which the Association assumes no liability for.

10. PETS: No pets, outside of normally recognized pets, should be allowed by the Association. Examples of allowed pets are dogs, cats, fish, caged birds or caged reptiles/amphibians, etc., so long as they pose no danger to other residents of the community. Examples of those not allowed are horses, cows, pigs, sheep, chicken or any livestock animal, wild animal or fowl, etc. The foregoing shall also apply to animals/pets which visit the Association All pets must be kept on a leash when on the common elements, must be kept under control by the pet's owner or attendant at all times and the attendant shall be responsible for immediately cleaning up and properly disposing of the animal's waste. No animal shall be permitted to create a nuisance or otherwise annoy or unreasonably interfere with the peaceful possession and enjoyment of the property by

other residents. The owner of any animal shall be strictly liable for any damage or injury which may be caused by the animal or the owner's failure to comply with these provisions. The failure to comply with this provision or any of the governing documents regulating pets shall be grounds without limitation for removal of the pet. Whether a pet constitutes a nuisance shall be subject to the Board's discretion whose determination shall be conclusive. No other pets shall be allowed except as expressly permitted herein. No owner shall engage in the commercial breeding of any permitted pet."

ARTICLE VII PARTY WALLS, ROOFS, SHARED SPACE

1. GENERAL: Each wall built as part of the original construction upon the Properties and place on the dividing line between the lots thereof, shall constitute a party wall and each Owner shall own that portion of the wall which stands on his own lot with a cross easement of support of the other portion.

2. SHARING OF REPAIRING MAINTENANCE: The cost of the usual repair and maintenance of a party wall shall be shared equally by the Owners, who make use of the wall.

3. DESTRUCTION BY FIRE OR OTHER CASUALTY: If the party wall or roof is destroyed or damaged by fire or other casualty, at no cause by either Owner, then both Owners may restore the same. If the party wall is destroyed, damaged or exposed to the elements by negligence or willful act of an Owner, the Owner shall be solely responsible for restoring the party wall or roof to the same pre-existing condition. If both parties agree in writing, changes can be made in accordance with these documents and approval by the Architectural Committee and Board of Directors. ~~but no greater dimension of said party wall, or of any extension, or restoration thereof, shall be placed upon the land of the other owner, then existing prior to such fire or other casualty without the written consent of the other owners. If the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice; however, to the right of any such Owners to call for a larger contribution from the others under any rule of law, regarding liability for negligent or willful acts or omissions.~~

4. ~~WEATHERPROOFING: Notwithstanding any other provisions of this Article, any owner, who by his negligence or willful act, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.~~

5. ~~RIGHT TO CONTRIBUTION RUNS WITH LAND: The right of any Owners to contribution of any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.~~

6. DISPUTES AND ARBITRATION: In the event of any dispute arising, concerning a party wall, roof or shared space or under the provisions of this Article, the parties

shall appeal to the Board of Directors. The Board, if the Board so desires, may hold a special meeting to attempt to arrive at a compromise solution. The Board's decision shall be final and conclusive of the question involved.

~~If one party does not agree with the Board's decision, or if the Board decides not to consider the dispute, then each party shall choose an Arbitrator and such Arbitrators shall choose one additional Arbitrator and the decision of a majority of all Arbitrators shall be final and conclusive of the question involved.~~

7. LIENS: Amounts ~~owned~~ owed under this Article shall be enforceable by lien as provided in these Restrictions and Covenants.

ARTICLE VIII **SURFACE WATER AND STORMWATER MANAGEMENT SYSTEM**

DEFINITIONS: "Surface Water or Storm water Management System" means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C.

USE OF PROPERTY: SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM: The Association shall be responsible for the maintenance, operation and repair of the surface water or storm water management system. Maintenance of the surface water or storm water management system (s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or storm water management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

AMENDMENT: Any amendment to the Covenants and Restrictions which alter the surface water or storm water management system, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

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

ARTICLE IX **GENERAL PROVISIONS**

1. DURATION: The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit and be enforceable by the Developer, the Association, or the Owner of any land subject to this Declaration and their respective legal representative, their successors and assigns, for a term of 99 years from the date this Declaration is recorded, after which time said covenant shall be automatically extended for successive periods of ten (10) years each, unless an instrument, to the contrary, signed by the then Owners of two-thirds of the lots have been recorded. Provided further that in the event the provisions herein are declared void by a Court of competent jurisdictions by reason of the period of time herein stated for which the same shall be reduced to the maximum term allowable by law.

2. NOTICE: Any notice required to be sent to any member or owner under the provision of this Declaration, shall be deemed to be properly sent when personally delivered or emailed, mailed, postage prepaid, to the last known address of the person, who appears as member or owner on the rules of the Association at the time of such mailing.

3. ENFORCEMENT: Enforcement of these covenants and restrictions shall be at any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the ~~Developer and~~ Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Every Owner shall be responsible for any violation of these covenants and restrictions committed by his or her contractors, guests, invitees, agents, and tenants, or the tenants' contractors, guests, invitees, agents, and subtenants. The Association, or any Owner, shall have the right to remove any tenant in possession of any Property where the tenant (or his or her contractors, guests, invitees, agents and subtenants) is in violation of these covenants and restrictions, provided that the Owner and tenant have both been provided at least seven days' written notice to cure the violation, and such violation has not been cured, has re-occurred, or is continuing following the seven days. In any action to remove a tenant from possession, the prevailing claimant shall have the right to recover any and all attorney's fees and costs from the Owner (who is the tenant's landlord) associated with enforcing the provisions of this paragraph. Notice in this paragraph may be given by mail, posting, actual delivery, text message, email, or any other written method of communication.

4. SEVERABILITY: Invalidation of any one of these covenants or restrictions by judgment of Court Order shall in no way effect any other provisions which shall remain in full force and effect.

5. AMENDMENT: In addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges and lines of this Agreement may be amended, changed, added to, derogated, or deleted at any time from time to time upon the execution and recordation of any instruments executed by: ~~(1) Developer, for so long as it holds title to any lot affected by this Declaration; or (2) by Owners holding not less than two-thirds vote of the membership in the Association. provided that so long as the Developer is the Owner of any lot affected by this Declaration, the Developer's consent must be obtained.~~

6. EFFECTIVE DATE: This Declaration shall become effective upon its recordation in the Brevard County Public Records.

7. ATTORNEYS FEES AND COSTS: In connection with any litigation, including appellate proceedings arising out of this Declaration, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing party.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal on the date indicated below.

ATTACHMENT A

LEGAL DESCRIPTION :

A PARCEL OF LAND LYING IN SECTION 14, TOWNSHIP 24 SOUTH, RANGE 37 EAST, CITY OF CAPE CANAVERAL, BRE VARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE AFORESAID SECTION 14; THENCE S 0°54'29" E, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 2617.91 FEET; THENCE S 89°49'32" E. A DISTANCE. OF 438.40 FEET; THENCE S 89°38'33" E. A DISTANCE OF 200.06 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°49'33", A DISTANCE OF 498.39 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF NORTH ATLANTIC AVENUE (A 60 FOOT RIGHT-OF-WAY AS PRESENTLY LOCATED) THENCE S 7°14'54" W, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 300.18 FEET; THENCE N 89°49'22" W, A DISTANCE OF 276.38 FEET; THENCE N 2°39'23" E, A DISTANCE OF 158.04 FEET; THENCE S 72°38'44" W, A DISTANCE OF 150.05 FEET TO THE POINT-OF-CURVATURE OF A RADIAL CIRCULAR CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 85.00 FEET AND A CENTRAL ANGLE OF 40°42'54"; THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 60.40 FEET TO THE POINT-OF-REVERSE CURVATURE OF A RADIAL CIRCULAR CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 268°21'55"; THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 234.19 FEET; THENCE N 0°00'00" W, A DISTANCE OF 151.40 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 2.88 ACRES, MORE OR LESS.

The legal description for OCEAN GARDENS, WAVE TWO is as follows:

LEGAL DESCRIPTION :

A PARCEL OF LAND LYING IN SECTION 14, TOWNSHIP 24 SOUTH, RANGE 37 EAST, TALLAHASSEE BASE MERIDIAN, CITY OF CAPE CANAVERAL, BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE AFORESAID SECTION 14; THENCE S 0°54'29" E, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 2617.91 FEET; THENCE S 89°49'32" E. A DISTANCE. OF 15.00 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°49'32" E. A DISTANCE OF 423.40 FEET; THENCE S 89°38'33" E. A DISTANCE OF 200.06 FEET TO THE NORTHWEST CORNER OF LOT 10, OCEAN GARDENS WAVE ONE AS RECORDED IN PLAT 38, PAGE 72, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 0°00'00" E, ALONG THE WEST LINE OF SAID LOT 10, A DISTANCE OF 151.40 FEET TO AN INTERSECTION WITH A

RADIAL CIRCULAR CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 268°21'55" ; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE CF 234.19 FEET TO THE POINT-OF-REVERSE CURVATURE OF A RADIAL CIRCULAR CURVE CONCAVE TO THE SOUTH HAVING A RADIUS OF 85.00 FEET AND A CENTRAL ANGLE OF 40°42'54' THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 60.40 FEET; THENCE N 72°38'44" E, A DISTANCE OF 150.05 FEET TO THE WEST LINE OF LOT 43 OF THE AFORESAID PLAT OF OCEAN GARDENS WAVE ONE; THENCE S 02°39'23" W, ALONG SAID WEST LINE, A DISTANCE OF 158.04 FEET; THENCE N 89°49'20" W, A DISTANCE OF 298.63 FEET; THENCE N 0°00'00" W, A DISTANCE OF 133.56 FEET; THENCE S 90°00'00" W, A DISTANCE OF 231.70 FEET TO THE POINT-OF-CURVATURE OF A RADIAL CIRCULAR CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE 97°33'07"; THENCE ALONG THE ARC OF SAID CURVE A DISTANCE OF 85.13 FEET; THENCE S 28°09'31" W, A DISTANCE OF 27.34 FEET; THENCE S 0°00'00" E, A DISTANCE OF 81.99 FEET; THENCE N 89°49'23" W, A DISTANCE OF 189.19 FEET; THENCE N 0°54'29" W, PARALLEL TO AND 15.00 FEET EAST OF THE WEST LINE OF SECTION 14, A DISTANCE OF 300.15 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 3.70 ACRES, MORE OR LESS.

IN WITNESS WHEREOF, the Association has caused this instrument to be signed in its name and by its President this 20 day of April, 2022, for purposes of recording in the Brevard County Public Records as required by the Florida HOA Act.

CERTIFICATE OF ASSOCIATION

The undersigned officer of OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC. hereby certifies that the foregoing Amendment to the Declaration of Condominium was adopted by the Association at a duly called meeting held on April 4, 2022.

OCEAN GARDENS TOWNHOME OWNERS ASSOCIATION, INC.

WITNESSES:

X [Signature]
Print Name: Tim D Maitland

By: [Signature]
Print Name: Gary Arthurs
President

X [Signature]
Print Name: ES. CALLAHAN

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of personal appearance or online notarization on this 20 day of April, 2022, by Gary Arthurs, who is personally known to me or who has produced _____ as identification and who did not take an oath.



Notary Public
[Signature]
Name: Jennifer Vo
State of Florida at Large (SEAL)

My Commission Expires: July 6, 2025