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Doc# 2002324662
Book: 10765
Pages: 459 - 520
Filed & Recorded
11/14/2002 01:47:12 PM
JIM FULLER
CLERK CIRCUIT COURT
DUVAL COUNTY
RECORDING \$ 249.00
TRUST FUND \$ 31.50

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
BERKMAN PLAZA TOWNHOMES**

THIS DECLARATION is made this 13th day of November, 2002 by **BP TOWNHOMES, L.L.C.**, a Georgia limited liability company, authorized to transact business in the state of Florida, having its principal office at 3190 Northeast Expressway, Suite 400, Atlanta, Georgia 30341 ("Declarant"), and joined in by **BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation not-for-profit ("Association").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of Berkman Plaza Townhomes (as that term is hereinafter defined); and

WHEREAS, Berkman Plaza Townhomes is located in Duval County, Florida upon lands that are more particularly described on Exhibit "A" attached hereto; and

WHEREAS, Declarant is developing Berkman Plaza Townhomes as a planned, residential community; and

WHEREAS, Declarant by this Declaration imposes those certain protective covenants, conditions and restrictions set forth herein upon the land described on Exhibit "A" attached hereto and shall be herein referred to as "Committed Property"; and

WHEREAS, Declarant may, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within or without Berkman Plaza Townhomes by deed, easement, or otherwise to the Association (which must accept the same), or Declarant may, in its sole discretion, cause additional parties to do so, for the purpose of maintenance, landscaping, drainage, recreation or other purposes that will be for the use and benefit of some or all of its "Members" (as that term is hereinafter defined) and of families, tenants and guests; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities established as aforesaid to create a not-for-profit corporation pursuant to Chapter 617, Florida Statutes, known as the Berkman Plaza Townhomes Homeowners Association, Inc., which Association has joined in this Declaration and to which there has been and will be delegated and

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assigned certain powers and duties of operation, administration, maintenance and repair of portions of Berkman Plaza Townhomes, including the collection and disbursement of the "Operating Expenses" (as that term is hereinafter defined), all as more particularly set forth herein;

NOW, THEREFORE, Declarant declares that the Committed Property is and shall be owned, used, sold, conveyed, encumbered, demised, and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Declaration, all as hereinafter set forth, which shall run with the Committed Property and be binding on all parties having any right, title or interest in the Committed Property, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each "Owner" (as that term is hereinafter defined) thereof.

ARTICLE I

Definitions

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

1.1. "Access Area" shall mean and refer to that portion of each Improved Lot which surrounds the exterior of the Dwelling Unit.

1.2. "Adjacent Lot" shall mean and refer to that Lot or Lots immediately to either side of a Lot.

1.3. "Architectural Review Committee" or "Committee" shall mean and refer to a committee appointed by Declarant pursuant to Article XI, Section 11.3, herein.

1.4. "Articles" shall mean and refer to the Articles of Incorporation of Berkman Plaza Townhomes Homeowners Association, Inc., a Florida corporation not for profit, attached hereto as Exhibit "B," as may be amended from time to time.

1.5. "Association" shall mean and refer to the Berkman Plaza Townhomes Homeowners Association, Inc., a Florida corporation not for profit, its successors or assigns, which has its principal place of business in Duval County, Florida. The Association is NOT a condominium association.

1.6. "Berkman Plaza Development" shall mean and refer to the overall development of approximately 8.4 acres in Duval County, Florida known as Berkman Plaza and which may include townhomes, multi-family residential units, retail/service shops, a restaurant, parking garages, a riverwalk for public use, approximately thirty (30) boat slips and various recreational amenities, including a pool and tennis courts all as contemplated by Ordinance No. 99-511E, as it may be amended from time to time.

1.7. "Berkman Plaza Townhomes" shall mean and refer to the townhome development to be located on the property described in attached Exhibit "A" or such additional property as Declarant may, from time to time designate in accordance with this Declaration.

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

1.9. "Building" shall mean and refer to a building in Berkman Plaza Townhomes containing two or more attached Dwelling Units sharing party walls and a common roof.

1.10. "Bylaws" shall mean and refer to the Bylaws of the Association, attached hereto as Exhibit "C," as may be amended from time to time.

1.11. "Committed Property" shall mean and refer to the property described in Exhibit "A" attached hereto and made a part hereof or any additional property hereafter made subject to this Declaration by the Declarant in accordance with the provisions of this Declaration.

1.12. "County" shall mean and refer to Duval County, Florida.

1.13. "Declarant" shall mean and refer to BP Townhomes, L.L.C., a Georgia limited liability company, its designee, successors and assigns, and subsidiaries.

1.14. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Berkman Plaza Townhomes, as may be amended from time to time.

1.15. "Dwelling Unit" shall mean and refer to a residential townhouse unit in Berkman Plaza Townhomes to be used as an abode for one family and shall include the foundation beneath the townhouse and the roof above the townhouse and that portion of the party wall between two townhouses located upon the applicable Lot Owner's Lot.

1.16. "Garage Parking Spaces" shall mean and refer to certain parking spaces located within the Parking Garage which are designated for use by the Lot owners.

1.17. "Improved Lot" shall mean and refer to any Lot upon which a Dwelling Unit has been constructed.

1.18. "Institutional Mortgagee" shall mean and refer to a lending institution having a first mortgage lien upon a Lot including any of the following institutions: (a) Federal or State Savings and Loan or Building and Loan Association, a national or state bank or real estate investment trust, or mortgage banking company doing business in the State of Florida, or life insurance company; or (b) any "Secondary Mortgage Market Institution" including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and such other Secondary Mortgage Market Institution as the Board shall hereafter approve in writing which has acquired a first mortgage upon a Lot; or (c) any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Declarant to acquire, or construct

improvements upon the Committed Property and who have a mortgage lien on all or a portion of the Committed Property securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Lot.

1.19. "Liberty Street Garage" shall mean the Parking Garage within the Berkman Plaza Development located on Liberty Street.

1.20. "Lot" means portion of the Committed Property subdivided and legally described as a townhome lot and depicted on a survey, whether improved or unimproved and intended for the construction of a Dwelling Unit.

1.21. "Member" shall mean and refer to all those Owners who are members of the "Association."

1.22. "Operating Expenses" shall mean and refer to the expenses for which Owners are liable to the Association as described in this Declaration and in any other document governing Berkman Plaza Townhomes, and include, but are not limited to, the costs and expenses incurred by the Association in fulfilling its obligations hereunder and in administering, operating, owning, constructing, reconstructing, financing, maintaining, repairing and replacing the portions of the Lots and Dwelling Units as provided in this Declaration, paying its prorata share of the cost of maintaining, repairing and replacing the Shared Facilities, as well as expenses incurred by the Association in fulfilling its obligations under this Declaration and any other document governing Berkman Plaza Townhomes, which mean and include the costs and expenses described in these documents as such and include regular and special assessments made by the Association in accordance with the terms hereof.

1.23. "Owner" or "Lot Owner" shall mean and refer to the record owner (other than Declarant), whether one or more persons, firms or entities, who has acquired fee simple title to any Lot.

1.24. "Party Wall" shall mean and refer to the entire wall, from front to rear, all or a portion of which is used for support of each adjoining structure, situate or intended to be situate on the boundary line between adjoining Lots.

1.25. "Property Line" shall mean and refer to the perimeter boundary line of any Lot (hereinafter defined) within the Committed Property.

1.26. "Property Plan" shall mean and refer to the graphic depiction of Berkman Plaza Townhomes and the Berkman Plaza Development as attached hereto as Exhibit "D" as may be amended from time to time.

1.27. "Public Property" shall include the roadways providing access to the parking garages, the riverwalk including the board walk, the two foot wall and four foot planters located along that portion of the Berkman Plaza Development located on the St. Johns River, the Riverwalk fountain plaza and pedestrian walkways and landscaped areas located on the Interior of the Development, all

of which are or will be deeded to the City of Jacksonville and available for public use and enjoyment subject to easement rights granted hereby and reserved in the instrument of conveyance to the City.

1.28. "Rules and Regulations" shall mean and refer to the rules and regulations promulgated by the Board in accordance with the terms of this Declaration.

1.29. "Shared Facilities" shall mean and refer to certain facilities that are owned by others but which the Lot Owners are entitled to use or derive benefit from and which include a swimming pool and deck, two tennis courts, a covered trellis, the parking garages and surface water or stormwater management and maintenance facilities as required by the St. Johns River Water Management District under Permit No. 40-031-62406-1 that are a part of the Surface Water or Stormwater Management System.

1.30. "Supplemental Declaration" shall mean and refer to an instrument executed by Declarant for the purpose of subjecting additional real property to this Declaration, or for such other purposes as more fully described herein.

1.31. "Surface Water or Stormwater Management System" shall mean 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, overdrainage, 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, Florida Administrative Code for the Berkman Plaza Development.

ARTICLE II

Plans for Development and Declarant's Rights and Powers

2.1. General Plan of Development. Declarant is the owner of Berkman Plaza Townhomes and presently plans to develop Berkman Plaza Townhomes as a townhome development. Berkman Plaza Townhomes are a part of the Berkman Plaza Development which may include, among other things, a restaurant, two (2) parking garages, two (2) tennis courts, a thirty (30) boat slip marina, retail/service shopping area, pedestrian walkways with fountains and landscaped areas on the interior of the Berkman Plaza Development and a river walk along the river front portion of the Berkman Plaza Development. Declarant has the right, but is not obligated, to build up to twenty (20) Dwelling Units within the real property described in Exhibit "A" to this Declaration, hereafter known as Berkman Plaza Townhomes. Declarant, however, reserves the right to add an additional phase to Berkman Plaza Townhomes, thereby increasing the total number of Dwelling Units to comprise the Committed Property, so long as the maximum number of Dwelling Units in the Committed Property does not exceed a total of twenty seven (27) Dwelling Units.

2.2. Committed Property. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN CONTAINED OR CONTAINED IN ANY OTHER DOCUMENT, ONLY THAT PORTION OF BERKMAN PLAZA TOWNHOMES WHICH IS COMMITTED PROPERTY (AS THAT TERM IS DEFINED IN THIS DECLARATION) SHALL BE SUBJECT TO THE

PROVISIONS OF THIS DECLARATION AND ANY OTHER DOCUMENT GOVERNING THE COMMITTED PROPERTY.

2.3. Additions to Committed Property; Certain Amendments. Declarant shall have the right, and hereby reserves the right, from time to time to bring other property not presently part of Berkman Plaza Townhomes into the Committed Property. The right of Declarant as provided for in the preceding sentence of this Section 2.3 shall be for a period of twenty (20) years commencing with the recording of this Declaration in the Public Records of Duval County, Florida.

Declarant, its successors and assigns, shall not be obligated to add to the Committed Property and bring within the scheme of this Declaration any or all of the remaining portions of Berkman Plaza Townhomes. The additions and amendments authorized under this subsection shall only be made by Declarant, shall not require the consent or approval of the Association, Members or any other person or entity, and shall be made by the recording in the Public Records of Duval County of a Supplemental Declaration with respect to the additional property, which shall extend the scheme of this Declaration to such property or modify the Declaration with respect to such additional properties as hereinafter set forth. Such Supplemental Declaration(s) shall identify Lots and Common Properties within the properties described therein. Declarant's rights under this Section 2.3 are paramount to the provisions of Section 13.7 of Article XIII of this Declaration.

Supplemental Declarations may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of that portion of Berkman Plaza Townhomes or the additional properties which are the subject of such Supplemental Declaration as are not inconsistent with the scheme of this Declaration, as determined by Declarant. Further, such Supplemental Declarations may contain provisions relating to such portions of Berkman Plaza Townhomes and/or such additional property, or any portions thereof, dealing with, among other things, assessments and the basis thereof, rules and regulations, architectural controls and other provisions consistent with the nature of the development of such properties and pertaining to all or part of such portion and/or such additional properties to the exclusion of other portions of Berkman Plaza Townhomes. In the Supplemental Declaration, the Declarant shall have the right to adjust the prorata share of expenses for the Shared Facilities allocable to the Association and the Lot Owners as defined Article IV of this Declaration.

The provisions of this Article II, Section 2.3, cannot be amended without the written consent of Declarant, and any amendment of this Article II, Section 2.3 without the written consent of Declarant, shall be deemed null and void.

2.4. Warranties. Upon conveyance of a Dwelling Unit to an Owner, Declarant shall assign all warranties from the applicable sub-contractor, and if no such warranty exists, Declarant shall warrant the improvement against defects in workmanship and materials for a period of one year from conveyance. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, EXCEPT FOR THE WARRANTIES DESCRIBED IN THIS SECTION 2.4, DECLARANT DISCLAIMS ANY OTHER EXPRESS WARRANTIES, OR ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS AS TO THE DWELLING UNIT OR IMPROVED LOT, AND ALL ITEMS OF PERSONAL PROPERTY CONTAINED THEREIN, WHETHER ARISING FROM CUSTOM,

USAGE, COURSE OF TRADE, CASE LAW OR OTHERWISE, OR ANY OTHER WARRANTIES WHATSOEVER.

2.5. Irrigation System. There shall be constructed on each Lot a irrigation system for irrigation purposes. The irrigation system shall be maintained by the Association.

2.6. Changes in Use or Boundaries. Declarant shall have the right, by an amendment or Supplemental Declaration executed by Declarant alone, without the consent of the Association, any Institutional Mortgagees or the Owners, to take such action as may be required to relocate portions, change the use, add to or modify the boundaries of any of the Shared Facilities.

ARTICLE III

Membership and Voting Rights in the Association

3.1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is or is at any time made subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of a Lot. Transfer of Lot ownership either voluntarily or by operation of law shall terminate membership in the Association, and said membership shall thereupon be vested in the transferee.

When any one Lot is owned by more than one person, firm, individual, corporation or other legal entity, the composite title holder shall be and constitute one member of the Association. Any person, firm, individual, corporation or legal entity owning more than one Lot shall be as many Members as the number of Lots owned.

3.2. Classes of Memberships and Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all of those Owners as defined in Section 3.1, with the exception of Declarant. The Class A Members shall be entitled to one membership interest and one vote for each Lot in which they hold the interests required for membership by Section 3.1.

Class B. Class B Members shall be Declarant, including any of its subsidiaries to which Declarant may transfer title. The Class B Member shall be entitled to ten (10) membership interests and ten (10) votes for each Lot in which it holds the interest required for membership by Section 3.1 and shall be entitled to elect a majority of the Board of Directors until three (3) months after ninety percent (90%) of the Lots in all phases of Berkman Plaza Townhomes have been sold and conveyed by the Declarant (the "Transfer Date").

Upon the transfer of title of any Lot which is held for sale by Declarant to an Owner other than to one of Declarant's subsidiaries, the Class B membership interest appurtenant to such Lot

shall be automatically converted to a Class A membership interest.

When any one Lot is owned by more than one person, firm, individual, corporation or other legal entity, the voting rights pertaining to such Lot shall be as prescribed in the Articles or Bylaws.

ARTICLE IV

Shared Facilities

4.1. Recreational Facilities. The owner of the pool, covered trellis and tennis courts ("Recreational Facilities") shall assess the Association a fee equal to nine percent (9%) of the cost of operation, maintenance, repair and replacement of the Recreational Facilities ("Recreational Facility Assessment"). The Association shall assess the Recreational Facility Assessment to each Lot Owner as an Operating Expense.

4.2. Parking Garage. Each Lot Owner shall, in its deed, be designated two (2) parking spaces located in the Liberty Street Garage. The owner of the parking garage shall assess to the Association a fee equal to eight percent (8%) of the total cost of operation, maintenance, repair and replacement of the Parking Garage (the "Parking Garage Assessment"). The Association shall assess the Parking Garage Assessment to each Lot Owner as an Operating Expense.

4.3. Surface Water Management System. Berkman Plaza Townhomes is a part of a Master Surface Water Management System (the "System") within the Development pursuant to Permit No. 40-031-62406-1. The Association shall be responsible for its prorata share of the operation, maintenance, repair and replacement of the System which prorata share shall be an amount equal to nine percent (9%) of the total cost. The Association shall assess its prorata share of the cost of such system to the Lot Owners as an Operating Expense. Maintenance of the System shall mean the exercise of practices which allow the System to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the System shall be as permitted, or, if modified, as approved by the St. Johns River Water Management District.

ARTICLE V

Grant and Reservation of Easements

5.1. Easement of Enjoyment. Each Member and each tenant, agent or invitee of Members shall have a right and easement of enjoyment in and to the Shared Facilities, and such easement shall be appurtenant to and shall pass with the title of the Lot, subject to this Declaration, including the following:

a. The right and duty of the Association to levy assessments against each Lot for the purpose of paying its prorata share of the total cost of operating, maintaining, repairing and replacing the Shared Facilities.

b. The right of the owner of the Shared Facilities to adopt and enforce rules and regulations governing the use of the Shared Facilities.

c. The right of the owner of the Shared Facilities to dedicate or transfer all or any part of the Shared Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to between the owner of the Shared Facilities and such public agency, authority or utility.

d. The right of Declarant and the Association to grant and reserve easements and rights-of-way in, through, under, over and across the Committed Property for the installation, maintenance, and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television and other utilities, and the right of Declarant to grant and reserve easements and rights-of-way in, through, under, over, upon and across the Committed Property for the completion of the Development.

5.2. Access Easements. Declarant does hereby establish and create for the benefit of the Association and for the benefit of any and all Owners of Lots subject to this Declaration, their tenants, invitees and Institutional Mortgagees and does hereby give, grant and convey to each of the aforementioned, the following easements, licenses, rights and privileges:

a. Right-of-way for ingress and egress by vehicles or on foot, as contemplated by the Property Plan, in, through, over, under and across the streets, roads, and walks within Public Property (as they may be built or relocated in the future) for all purposes.

b. Right-of-way for ingress and egress by vehicles or on foot, in, through, over, under and across the Liberty Street Garage for the purpose of exercising such Member's right to park in two parking spaces located in the Liberty Street Garage.

5.3. Public Easements. Fire, police, health, sanitation, and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Committed Property as needed.

5.4. Easement for Encroachments on Lots.

a. If any portion of any fence, gate, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, irrigation system or any other structure as originally constructed by Declarant or its designee, successor or assign encroaches on any Lot, it shall be deemed that the Owner of such Lot has granted a perpetual easement to the Owner of the adjoining Lot or the Association as the case may be, for continuing maintenance and use of such encroaching fences, gates, roof drainage system, roof, trellis, water line, sewer line, utility line, irrigation system or other structure originally constructed by Declarant. The foregoing shall also apply to any replacement of any such roadway, walkway, fence, gate, parking area, roof drainage system, roof, trellis, water lines, sewer lines, utility lines, irrigation system or other structure, if same are constructed in substantial conformance to the original. Other encroachments may hereafter be maintained as provided in a Supplemental Declaration. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of this Declaration.

b. There shall be an easement for encroachment in favor of the Association and all Lot Owners in the event any Dwelling Unit now or hereafter encroaches upon any other Dwelling Unit as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement. The encroaching improvements shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvement in favor of the Dwelling Unit Owners, their designees, mortgagees and the Association.

5.5. Easement for Maintenance by Association. Declarant hereby grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Lot to permit the Association, its employees, subcontractors, agents or designees to maintain and replace, as necessary, those portions of the Lot required to be maintained, replaced and repaired by the Association, as provided in this Declaration.

5.6. Easement for Irrigation System. Declarant hereby reserves to itself and grants to the Association, its employees, subcontractors, agents and designees, a non-exclusive, perpetual easement over, through, across and under each Lot for the installation, maintenance, operation, repair and replacement of irrigation system lines and irrigation heads, which lines and heads are hereby deemed to be the property of the Association. Should a irrigation line(s) or irrigation head(s) be required to be maintained, repaired or replaced as a result of the negligence by an Owner, his family, servants, guests or invitees, the applicable Owner shall be responsible for the costs thereof, and the Association shall have the right to levy an assessment against the Owner of said Lot for same, which assessment shall have the same force and effect as all other special assessments.

5.7. Utility Easement. Declarant hereby grants to the Owner of each Lot a non-exclusive perpetual easement on, over, under and across all other Lots for the installation, maintenance, operation, repair and replacement of utility lines, including water and sanitary sewer lateral pipes servicing the Lot, together with wires, pipes, conduits, cable television lines, telephone lines and equipment and drainage lines.

5.8. Reservation of Easement by Declarant.

a. Easements for Development and Sales.

i. Declarant reserves the easements, licenses, rights and privileges of a right-of-way in, through, over, under and across the Committed Property, including all Lots, for the purpose of constructing adjacent properties and completing its work in developing and providing for the development of the Committed Property; and, toward this end, reserves the right to grant and reserve easements and rights-of-way, through, under, over and across the Committed Property, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, cable television, electric and other utilities and for any other materials or services necessary for the completion of such work.

ii. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers, and drainage lines which may

from time to time be in or along the streets and roads of other areas of the Committed Property.

iii. Declarant also reserves the right for itself, its designees, successors and assigns, to continue to use the Committed Property, and any roadways, sales offices, model homes, signs and parking spaces located on the Committed Property, in its efforts to market or develop Dwelling Units or Lots in the Berkman Plaza Development.

b. Amendment. For so long as the Class B membership exists, this section may not be amended without the prior written consent of Declarant.

5.9. Surface Water Management System Maintenance Easement. An easement in favor of the entity permanently responsible for maintenance of the Surface Water Management System shall exist over and across the Committed Property as may be necessary to operate and maintain the Surface Water Management System.

ARTICLE VI

Maintenance

6.1. Lot Maintenance.

a. Association.

i. The Association, through action of its Board of Directors, shall provide exterior maintenance at its expense upon each Lot as follows: paint, repair, replace and care for roofs, gutters, downspouts, and exterior building surfaces, including wood trim, all as originally installed by Declarant.

ii. In addition to the exterior maintenance referred to in the preceding sentence, the Association shall be obligated to maintain in good repair and replace as necessary that part of the fences, gates, paving, drainage structures, landscaping, trees, shrubs, grass, walks, drives, irrigation systems, street lighting fixtures and other exterior improvements situated on each Lot and outside each Dwelling Unit, all as originally installed by Declarant.

iii. The Association shall not maintain landscaping or grass installed by any Lot Owner, nor will it maintain plantings within the rear yard, deck or patio area of a Dwelling Unit, which will specifically be the responsibility of the Lot Owner to maintain. The Association shall be responsible for watering the grassed area and landscaping on the Lot, excluding grass or landscaping NOT originally installed by Declarant. The time and frequency of watering shall be determined by the Association. The cost of irrigation as well as the maintenance and repair of the sprinkling system shall be an Operating Expense. The cost and expense of repair, maintenance and replacement of any part of the irrigation system damaged by a Lot Owner, his family, lessees, guests, servants or invitees, may be assessed against said Lot.

iv. The Association shall contract for garbage removal, and the Lot Owner shall comply with the regulations promulgated in such regard. The cost and expense of garbage removal shall be an Operating Expense.

v. The Association shall not maintain any other portion of the Lot and improvements thereon.

vi. Maintenance of the Surface Water Management System and the Shared Facilities shall be as provided in Article IV of this Declaration.

6.2. Lot Owner. The Lot Owner is responsible to maintain and repair everything on the Lot, including but not limited to, the Dwelling Unit and any other improvements, except for items which the Association is required to maintain, as specifically provided in the paragraph above. Provided, however, Lot Owners shall be responsible for the maintenance, repair and replacement, if applicable, of water and sanitary sewer lateral pipes servicing their Dwelling Unit, which laterals extend from the applicable water and sewer main to the Dwelling Units. The Lot Owner is responsible to maintain, repair and replace the air-conditioning and heating system and appurtenances thereto, servicing the Dwelling Unit and improvements located on his Lot. The Lot Owner shall also maintain all screening, glass, and all doors, windows or other openings in the exterior of the Dwelling Unit, except for any periodic painting or staining required.

6.3. Assessments. All maintenance performed by the Association pursuant to Sections 6.1 and 6.2 above, all expenses allocated to the Association for the Shared Facilities as provided in this Declaration and all other expenses hereunder shall be paid for by the Association as Operating Expenses through assessments imposed by the Board of Directors in accordance with Article VII. Such assessments shall be against all Lots equally. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Shared Facilities or abandonment of his right to use the Shared Facilities. Assessments shall include payment for liability insurance.

6.4. Disrepair of Dwelling Units and Lots. If the Owner of any Lot shall fail to maintain his Lot, and the improvements situated thereon, as required by any provision of this Declaration, in a manner reasonably satisfactory to the Board of Directors of the Association or any committee established by such Board, except for such areas as the Association is required to maintain, upon direction of the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon the Lot to maintain and restore the improvements erected on such Lot. The cost of any maintenance supplied by the Association pursuant to this Section shall be added to and become part of the assessment to which such Lot is subject.

6.5. Access at Reasonable Hours. For the sole purpose of performing the maintenance required by this Article, the Association, through its duly authorized agents and employees, shall have the right without notice to enter upon any Owner's Lot at reasonable hours on any day except Sunday and legal holidays.

6.6. Negligence of Owner. Should any portion of a Dwelling Unit which the Association is required to maintain pursuant to this Article be required to be maintained, repaired or replaced as a

result of the negligence of the Owner, his family, lessee, guests, servants or invitees, the applicable Owner shall be responsible for the cost thereof and the Association shall have the right to levy an assessment against the Owner of said Lot for same, which assessment shall have the same force and effect as all other assessments.

6.7. Management. The Association, through the action of its Board of Directors, shall have the right to employ a manager or management firm which employment may either be on the basis of an employee of the Association or as an independent contractor.

ARTICLE VII

Covenant for Maintenance Assessments

7.1. Creation of the Lien and Personal Obligation of the Assessments. Each Owner of any Lot by acceptance of a deed therefor or instrument of conveyance, whether or not it shall be so expressed in such deed or other instrument of conveyance, including any purchaser at a judicial sale, or by the acquisition of title in any other manner, shall be deemed to covenant and agree to pay to the Association annual assessments or charges for the maintenance of the Lots and payment of the Operating Expenses as provided in this Declaration, including such reasonable reserves as the Association may deem necessary, special assessments as provided in this Article, and assessments for maintenance as provided herein. Assessments for Operating Expenses shall be fixed, established and collected from time to time as herein provided. The annual, special and other assessments, together with such interest and costs of collection as hereinafter provided, shall, upon the recordation of a claim of lien, be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs of collection, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment became due. All assessments by the Association for Operating Expenses shall be assessed against all Lots equally. No Owner may waive or otherwise escape liability for the assessments provided herein by non-use or abandonment. Furthermore, the obligation of the Association and the Owners for assessments, and the obligation for maintenance shall commence upon conveyance of the Lot.

7.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners in Berkman Plaza Townhomes and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the appropriate portion of the Shared Facilities and of the Lots situated upon the Committed Property, including, without limiting the foregoing, the payment of taxes (if any), insurance, repair, replacement, maintenance, additions, and the cost of labor, equipment, materials, utilities, services, management and supervision, as well as any other costs set forth in this Declaration for which the Association is responsible.

7.3. Budget and Commencement of Payment.

a. The Association's Board of Directors shall, from time to time, but at least annually, fix and determine a budget representing the sum or sums necessary and adequate for the

continued operation of the Association. The Board shall determine the total amount of Operating Expenses, including the operational items such as insurance, repairs, replacements, reserves, maintenance and other expenses, as well as charges to cover any deficits from prior years and capital improvements and reserves approved by the Board. The total annual assessments and any supplemental assessments shall be shared by all Lots based upon the formula and terms and provisions set forth herein and in the Articles and Bylaws.

b. Each Lot shall commence paying its share of the Association assessments commencing on the later of (i) January 1, 2003; or (ii) on the date title of the Lot is conveyed by deed from Declarant to the first grantee thereof, provided, however, a conveyance by Declarant to a related or affiliated entity or subsidiary shall not be deemed a conveyance to the first grantee. Subject to the provisions of Section 7.4 immediately below (which provisions are only applicable during any guarantee period or any extension thereof), the assessment for Operating Expenses for each Lot shall be the dividend arrived at by dividing the total anticipated Operating Expenses reflected by the budget, other than those Operating Expenses which are properly the subject of a special assessment, by the total number of all Lots which have been conveyed by Declarant as of the date the budget was adopted. The total number of Lots responsible for payment of Operating Expenses will be adjusted from time to time in accordance with this Declaration. All questions regarding the number of Lots subject to assessments shall be determined by the Association.

7.4. Interim Assessment Period. Between the date of recording of this Declaration and until January 1, 2003 (the "Assessment Moratorium Period"), Declarant shall pay the Operating Expenses of the Association. During the Assessment Moratorium Period, however, Declarant's responsibility to fund deficits in the budget is not intended to include, and does not include and shall never be deemed to include, funding of reserves for repair or replacement of Capital Improvements, expenses or fees called for or occasioned by an action or decision of the Board of Directors when Lot Owners, other than Declarant, elect a majority of the Board of Directors, when such expenses or fees are inconsistent with expenses or fees preceding that time. In such event, Declarant, at its option, may pay the sums required to be paid by it; or, Declarant, at its option, may terminate the Assessment Moratorium Period. In such case, it shall pay the assessments of the Association as to the Lots owned by it.

For so long as the Class B membership is in effect, Declarant hereby reserves the right, to be exercised in its sole discretion, to extend from time to time the termination date of the Assessment Moratorium Period for such period of time as Declarant determines. Should Declarant elect to extend the Assessment Moratorium Period, Declarant shall notify the Board of Directors of the Association of its election prior to the termination date of the original term or an extended term, and such notice shall set forth the new termination date of the Assessment Moratorium Period.

7.5. Due Dates; Duties of the Board of Directors. All assessments shall be payable monthly or quarterly in advance or on such other basis as is ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot and shall prepare a roster of the Lots and assessments applicable, which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his Institutional Mortgagee, the Board shall promptly furnish

such Member or his Institutional Mortgagee with a written statement of the unpaid charges due from such Member.

7.6. Effect of Non-Payment of Assessment; The Personal Obligation of the Member; The Lien; Remedies of the Association. If an assessment is not paid on the date when due, then at the option of the Board, such assessment, together with the balance of the annual assessment established by the Board, shall become delinquent and shall, together with such interest thereon, late charges and the cost of collection thereof, including reasonable attorneys' fees and court costs, thereupon become a continuing lien on the Member's Lot which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien is effective and shall relate to the date of recording of this Declaration, unless there is a first mortgage lien of record affecting the Lot, then the lien is effective from and after the recording of a claim of lien in the public records of the County. The personal obligation of the Member who was the Owner of the Lot when the assessment fell due, to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them, although the lien shall continue to encumber the Lot.

If the assessment is not paid within ten (10) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum permissible rate in the State of Florida. A late charge of up to \$25.00 may be assessed by the Board and the Association through its Board. The Board may bring an action at law against the Member or former Member personally obligated to pay the same or it may bring an action to foreclose the lien against the property. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the court, together with the cost of the action and the aforesaid late charge.

7.7. Selling, Leasing and Gifts of Lots, Etc.

a. No Member shall convey, mortgage, pledge, hypothecate, sell or lease his Lot and the Dwelling Unit thereon unless and until all unpaid assessments assessed against such Lot shall have been paid as directed by the Board of Directors; such unpaid assessments, however, may be paid out of the proceeds from the sale of the Lot or by the purchaser of such Lot. Any sale or lease of the Lot in violation of this section shall be voidable at the election of the Board of Directors.

b. Upon the written request of a Member or his Institutional Mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Member which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement but unlisted thereon. A reasonable charge may be made by the Board for issuance of such statements.

c. The provisions of this section shall not apply to the acquisition of a Lot by an Institutional Mortgagee who shall acquire title to such by foreclosure or by deed in lieu of foreclosure. In such event the unpaid assessments against the Lot which were assessed for Operating Expenses and became due prior to the acquisition of title by such Institutional Mortgagee shall be deemed waived by the Association and shall be charged to all other members of the Association as

an Association expense. Such provisions shall, however, apply to any assessments which are assessed and become due after the acquisition of title by the Institutional Mortgagee and to any purchaser from such Institutional Mortgagee.

d. Whenever the term Lot is referred to in this section, it shall include the Member's interest in the Association and the Member's interest in any property acquired by the Association. Any Member may convey or transfer his Lot by gift during his lifetime or devise the same by will or pass the same by intestacy.

e. The provisions of this section shall not apply to Declarant. This section may not be amended without the prior written consent of Declarant.

7.8. Subordination of Lien. The lien for assessments provided for in this Article shall be superior to all other liens, except tax liens and mortgage liens which are recorded prior to the recording of a claim of lien by the Association in the public records.

7.9. Exterior Maintenance Assessment. The Association, through action of its Board of Directors, shall provide exterior maintenance upon each Lot as provided in Article VI. The cost of the exterior maintenance referred to in Article VI shall be an Operating Expense.

7.10. Capital Improvements/Special Assessments. Funds necessary for capital improvements, emergencies or non-recurring expenses or expenses attributable to a particular Owner may be levied by such Association as special assessments, upon approval of a majority of the Board of Directors of such Association, upon approval by two-thirds favorable vote of the Members of such Association voting at a meeting or by ballot as may be provided in the Bylaws of such Association.

7.11. Certificate of Assessment. The Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid.

ARTICLE VIII

Common Structural Elements

8.1. Definition. Each Building contains or shall contain certain elements, features or parts which are structural elements of the Building or of more than one Dwelling Unit (such elements, features, or parts being hereinafter referred to as "Common Structural Elements"). The Common Structural Elements of each Building shall include the following:

a. Party Walls. All division walls between two Dwelling Units beginning at the unfinished surface of each side of such wall (hereinafter referred to as "Party Walls") located upon a Property Line between two Dwelling Units, provided that the mere fact such a division wall between two Dwelling Units is found not to be on a Property Line shall not preclude such division wall from being a Party Wall.

b. Roofing. The entire roof of the Building, any and all roof support structures, and any and all appurtenances to such roof and roof support structures, including, without limitation, the roof covering, roof trim and roof drainage fixtures, all of which are collectively referred to herein as the "Roofing." Should the Roofing or part thereof extend beyond the Dwelling Units, same shall not be deemed to violate the provisions of this Declaration and such easements as may be necessary to accommodate and permit the Roofing as same shall be constructed are hereby imposed.

c. Foundation. The entire concrete floor slab or wood floor system if used in lieu thereof and all foundational and support structures and appurtenances thereto are collectively referred to as the "Foundation." Should the Foundation or part thereof extend beyond the Dwelling Units, same shall not be deemed to violate the provisions of this Declaration and such easements as may be necessary to accommodate and permit the Foundation as same shall be constructed are hereby imposed.

d. General. Each Owner shall own that portion of the Party Wall which stands on his own Lot. To the extent not inconsistent with the provisions of this Article, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each Party Wall (or party fence, if applicable) which is built by Declarant as part of the original construction of the Dwelling Units upon the Lots and any replacement thereof.

If any portion of any structure, as originally constructed by Declarant or its designee, including any Party Wall or fence, shall protrude over two adjoining Lots, it shall be deemed that said Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection, Party Wall or fence. The foregoing shall also apply to any replacements of any structures, Party Walls or fences, if same are constructed in conformance with the original structure, Party Wall or fence. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

8.2. Sharing Maintenance or Repair. The costs of reasonable repair and maintenance of Common Structural Elements shall be shared equally by the Owners who make use of the Common Structural Element in proportion to such use, except as otherwise provided herein. Such costs shall not be an Operating Expense.

8.3. Destruction by Fire or Other Casualty. In the event of damage or destruction of Common Structural Elements or Dwelling Units from any cause whatsoever, other than the negligence or willful misconduct of an Owner, the Owners shall, at their joint expense, repair or rebuild said Dwelling Unit and/or Common Structural Elements in accordance with the requirements of Article XI, Section 11.7 of this Declaration, and each Owner, his successors and assigns, shall have the right to full use as herein contained of said Common Structural Elements so repaired or rebuilt. If damage or destruction is a result of one Owner's negligence or willful misconduct, said Owner shall be responsible for the total repair and replacement in a timely fashion. If any Owner ("Defaulting Owner") fails to pay his share of repair or replacement, as aforesaid, then the other affected Owner(s) ("Non-defaulting Owner") shall have such Common Structural Elements repaired or reconstructed and shall be entitled to file in the Public Records of the County, a claim of lien on the premises of the Defaulting Owner for such Defaulting Owner's share of the repair or replacement costs. Non-defaulting Owner(s) shall have the right to foreclose said claim of lien in accordance

with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a mechanic's lien; provided, however, said claim of lien shall be filed within ninety (90) days from the date of repairs or replacements were made to the Party Wall or Common Structural Element, and suit thereon shall be commenced one (1) year from date such lien is filed. If any Owner shall give or shall have given a mortgage or mortgages upon his property to an Institutional Mortgagee, then such Institutional Mortgagee shall have the full right, at its option, to exercise the rights of its mortgagor as an Owner hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the Institutional Mortgagee for repairs hereunder and not reimbursed to said Institutional Mortgagee by the Owners.

8.4. Easement for Repairs. If repairs or reconstruction to the Common Structural Elements shall be necessary, all necessary entries on or into the adjacent Dwelling Unit upon the Adjacent Lot shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a timely and workmanlike manner. Consent is hereby given to enter on or into adjacent Dwelling Units to effect necessary repairs and reconstruction.

8.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

8.6. Weather Proofing. Notwithstanding other provisions of this Article, 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 repair and protection against such elements.

8.7. Arbitration. In the event of any dispute arising concerning Common Structural Elements, or under the provisions of this Article, each party shall choose one arbiter, and such arbiters shall choose one additional arbiter, and the decision of a majority of all of the arbiters shall be final and conclusive of the questions involved.

8.8. 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.

8.9. Structural Cross Easements. Cross easements of support and use over, upon, across, under, through and into the Common Structural Elements shall exist in favor of the Association, the Owners or their designees for the continued use, benefit and enjoyment and continued support, service, maintenance, repair and design of all Dwelling Units and Common Structural Elements within any of the Buildings.

ARTICLE IX

Insurance

9.1. Committed Property.

a. General Liability. The Association, by action of its Board of Directors, shall maintain public liability insurance, to the extent obtainable, covering the Association and each Member, lessee and occupant, and the managing agent, if any, against liability for any negligent act of commission or omission attributable to them which occurs on or in the Committed Property.

b. Additional Insurance. The Board of Directors may also obtain the following insurance:

i. worker's compensation insurance, if required by law; and,

ii. Directors' and Officers' liability insurance, fidelity insurance and other insurance it may deem proper to protect the Association, its members and property.

iii. Casualty insurance to insure the Common Structural Elements to the extent that the policies obtained by Owners are not adequate to insure, repair and/or replacement of the Common Structural Elements.

c. Assured and Loss Payable. All casualty insurance policies purchased by the Association hereunder shall be for the benefit of the Association and all Owners and their mortgagees as their interests may appear and shall provide that all proceeds covering casualty losses of \$10,000.00 or less shall be paid to the Association. Any sum in excess of \$10,000.00 shall be paid either to the Association or to an insurance trustee as the Association shall determine at the time. An "Insurance Trustee" shall be any bank or trust company or other corporate trustee authorized for and doing business in Florida, as designated by the Board of Directors of the Association. The duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust pursuant to the terms of the Insurance trust agreement to be executed by the Association and the Insurance Trustee, which shall not be inconsistent with any of the provisions herein set forth.

d. Payment of Premiums. The Board of Directors shall collect and pay the premiums for insurance as a part of the Operating Expenses. Expenses of any Insurance Trustee appointed shall be paid by means of special assessment authorized by the Board of Directors.

e. Mandatory Repair. Unless there occurs substantial damage or destruction to all or a substantial part of a Building, the Association and the Owners shall use insurance proceeds to repair, replace and rebuild the damage caused by casualty loss. Related costs and expenses not covered by insurance shall be borne by the Owners in a fair and equal manner.

f. Association as Agent. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute releases thereof.

9.2. Dwelling Units, Lots.

a. Owner's Insurance Coverage. Each Owner shall be required to obtain and maintain adequate insurance on his Dwelling Unit which shall insure the property for its full replacement value, with no deductions for depreciation, against loss by fire, storm or other hazards or casualty. Such insurance shall name the Association an additional insured and shall be sufficient to cover the full replacement value, or to cover necessary repair or reconstruction work. Such insurance shall be written in the manner acceptable to the Board of Directors of the Association and shall contain a clause which provides ten (10) days prior written notice to the Board of Directors of the Association before the policy can be cancelled. Each Owner shall be required to supply the Board of Directors with evidence of insurance coverage on his Dwelling Unit which complies with the provisions of this Section. Each Owner shall also be responsible for the purchasing of liability insurance for accidents occurring on his or her Lot.

b. Action by Board. If the insurance provided under this Section has not otherwise been adequately obtained by each Owner, as determined by the Board of Directors, then the Board shall obtain such insurance coverage. Insurance obtained by the Board of Directors shall be written in the name of the Association as Trustee for the benefit of the applicable Owner.

c. Payment of Premium. Premiums for insurance obtained by the Board of Directors for the benefit of an individual Owner, as provided hereinabove, shall not be an Operating Expense, but shall be an individual assessment (special assessment) payable in accordance with the provisions of Article VII of this Declaration.

d. Repair or Replacement of Damaged or Destroyed Property. Each Owner shall be required to reconstruct or repair any Dwelling Unit destroyed by fire or other casualty, covered by insurance written in the name of the Association as Trustee. The insurance proceeds shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature(s) of an agent(s) duly authorized by the Board of Directors. If no repair or rebuilding has been contracted for, or otherwise substantially started by the Owner within thirty (30) days of the receipt of the insurance proceeds, the Board of Directors shall itself initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Dwelling Unit pursuant to the appropriate sections hereof.

9.3. Association Action. Notwithstanding the provisions of the above Section 9.2(a), the following provisions shall also apply to Dwelling Units which have Common Structural Elements:

a. Association Approval. The insurance referred to in Section 9.2 (a) shall be written in a manner acceptable to the Association. The Association shall carry out the functions set forth hereafter.

b. Insurance Trustee. Each policy shall contain a loss payment provision which provides that the proceeds of any loss shall be payable to the Association who shall hold such funds in trust to insure that repairs are made as hereinafter set forth. Each policy shall also contain a clause that it is non-cancelable without ten (10) days prior written notice to the Association. Each Owner shall be required to supply the Association with evidence of insurance coverage on his Dwelling Unit which complies with the provisions of this Section.

c. Action by Board. If the insurance provided under this Section has not otherwise been adequately obtained by each Owner, as determined by the Board of the Directors of the Association, then the Board of Directors of the Association shall obtain such insurance coverage. The purpose of such insurance will be to protect, preserve and provide for the continued maintenance and support of separately owned Dwelling Units which shall include Common Structural Elements. Insurance obtained by the Board of Directors of the Association shall be written in the name of the Association, as Trustee, for the benefit of the applicable Owner.

d. Payment of Premiums. Premiums for insurance obtained by the Board of Directors for the benefit of an individual Owner, as provided hereinabove, shall not be a part of the Operating Expenses, but shall be an individual special assessment payable in accordance with the provisions of Article VII of this Declaration.

e. Repair or Replacement of Damaged or Destroyed Property. Each Owner shall, with the concurrence of the Owner's Institutional Mortgagee, if any, and the Board of Directors of the Association, be required to reconstruct or repair any Dwelling Unit destroyed by fire, storm or other casualty in accordance with the requirements of Article XI, Section 11.7 of this Declaration. Insurance proceeds issued for such repair shall be in the name of the Association, as Trustee. The insurance proceeds shall be deposited in a bank or other financial institution, subject to withdrawal only by the signature(s) of an agent(s) duly authorized by Board of Directors of the Association. If no repair or rebuilding has been contracted for or otherwise substantially started by the Owner within thirty (30) days after the Association receives the insurance proceeds, the Board of Directors of the Association is hereby irrevocably authorized by such Owner to initiate the repair or rebuilding of the damaged or destroyed portions of the structure and/or exterior of the Dwelling Unit. Repairs should be done in a good and workmanlike manner in conformance with the original plans and specifications. The Board of Directors of the Association may advertise for sealed bids from any licensed contractors and may then negotiate with said contractors. The contract or contracts selected to perform the work shall provide full performance and payment bonds for such repair or rebuilding, unless such requirement is waived by the Board of Directors of the Association. If the insurance proceeds are insufficient to fully pay the costs of repairing and/or rebuilding the damaged or destroyed portions in a good and workmanlike manner, the Board of Directors of the Association shall levy a special assessment against the Owner in whatever amount is required to make up the deficiency. If the insurance proceeds exceed the cost of repairing and/or rebuilding, such excess shall be paid over to the respective Owner and/or the Owner's mortgagee in such portions as shall be independently determined by those parties.

9.4. Administrative Fee. Should the Association obtain the insurance coverage on a Dwelling Unit pursuant to this Article, then the Association may charge and the applicable Owner

shall be responsible for, as a special assessment against the Lot, an administration fee of \$100.00. Said fee is in addition to the charge for the premium, for which Owner is also responsible.

Notwithstanding anything to the contrary in this Article, the Association, its Directors or officers, shall not be liable to any person should it fail for any reason whatsoever to obtain insurance coverage on a Dwelling Unit.

ARTICLE X

The Association

The Association shall have all statutory and common law powers of a Florida corporation not for profit, to the extent they do not conflict with all powers provided in its Articles and Bylaws, and all powers granted in this Declaration.

ARTICLE XI

Building and Use Covenants

11.1. Land Use. The use of a Dwelling Unit by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the Articles and Bylaws and the Rules and Regulations of the Board of Directors. A Dwelling Unit shall be used only for residential purposes for immediate members of a single family and their guests and invitees.

11.2. Building Type. No building shall be erected, altered, placed or permitted to remain on any Lot other than the Dwelling Unit of the type originally constructed by Declarant. All Building exteriors shall be completed within six (6) months from commencement of construction or issuance of a building permit, whichever comes first.

11.3. Architectural Control.

a. No building, wall, fence, decking, paving, awning, spa, storage shed, door screening or other structure or improvement of any nature other than such structures originally constructed by Declarant shall be erected, placed, modified, altered or permitted to remain on any Lot unless the construction plans and specifications and a plan showing the kind, shape, materials, colors and location of the structure, exterior elevations, and landscaping, as may be required by the Architectural Review Committee have been approved in writing by the Architectural Review Committee. In the case of structures initially constructed by Declarant on a Lot prior to the sale of that Lot to the initial Owner other than Declarant, no review and approval by the Architectural Review Committee shall be required. All other buildings, walls, fences, or other structures or improvements of any nature, together with the landscaping, shall be erected, placed or altered upon the Committed Property only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plan, or any of them, may be based on any ground, including purely aesthetic grounds, which, in the sole discretion of said Architectural Review Committee, seems sufficient. Any change in the exterior appearance of any building, wall, fence or other structure or improvements, and any change in the appearance of the landscaping, shall

be deemed an alteration requiring approval. The Architectural Review Committee shall have the power to promulgate such rules and regulations, including the power to adopt and charge appropriate uniform fees for required reviews, as it deems necessary to carry out the provisions and intent of this paragraph.

b. The Architectural Review Committee shall review the proposed submission as to the type and quality of materials, harmony of the exterior design and location of the building or structure with existing buildings or structures, location of the building or structure with respect to topography, trees, vegetation and the finished grade elevation and finished floor elevation, exterior color(s) of any building or structure and any other relevant considerations. Upon completion of the proposed improvements, an "as-built" survey showing the finished floor and grade elevation and location of all improvements shall be filed with the Association and with the Architectural Review Committee.

c. The Architectural Review Committee shall be composed of not less than three (3) nor more than seven (7) persons. The members of the Committee shall be appointed by Declarant, its designees, successors or assigns. The membership, rules of procedure and duties of the Committee shall be prescribed by and, from time to time, changed or modified by Declarant. If and when Declarant deems the circumstances appropriate, Declarant, in its sole discretion, may assign to the Association or any other body, all or part of the rights, duties, and functions of the Architectural Review Committee as set forth in this Declaration. From and after the date of any such assignment, Declarant shall be relieved of any further duties or obligations concerning the Committee, and the Association or other body shall assume the duties and obligations and perform the functions as set forth herein.

d. If the Architectural Review Committee shall disapprove, in whole or in part, any submission required herein, the Committee shall notify the person, firm or entity making the submission of the reasons for such disapproval. If the Architectural Review Committee fails or refuses to approve or disapprove a submission containing all the requirements as set forth herein within forty-five (45) days after submission is received by the Committee, it shall then be presumed that the submission has been approved by the Architectural Review Committee.

11.4. Change in Buildings. Neither the Association nor any Owner shall make or permit any structural modification or alteration of any Building except with the prior written consent of the Architectural Review Committee, or its successor, and all Institutional Mortgagees holding a mortgage on a Dwelling Unit within said Building. Consent may be withheld if, in the sole discretion of the party requested to give the same, it appears that such structural modification or alteration would affect or in any manner endanger other Dwelling Units. No Building shall be demolished or removed without the prior written consent of all Owners of all other Dwelling Units within such Building and of all Institutional Mortgagees holding a mortgage on a Dwelling Unit within said Building, and also the prior written consent of Declarant or its successors. Declarant shall have the right, but shall not be obligated, to assign all of its rights and privileges under this Article to the Association.

11.5. Regulations. Regulations promulgated by the Board of Directors, or any committee established by the Board of Directors, or any committee established by the Board concerning the use

of Berkman Plaza Townhomes shall be observed by the Members and their family, invitees, guests and tenants; provided, however, that copies of such regulations are furnished to each Member by personal delivery or by regular mail prior to the time the regulations become effective.

11.6. Building Location. Buildings shall be located in conformance with this Declaration, the applicable ordinances of Duval County and any specific approvals thereunder, or as originally constructed on a Lot by Declarant or its successors or assigns.

11.7. Damage to Buildings. If a Dwelling Unit is damaged, through Act of God or other casualty, then the Owner shall promptly cause his Dwelling Unit to be repaired and rebuilt substantially in accordance with the architectural plans and specifications used by the Declarant for the original construction of such Dwelling Unit. It shall be the duty of the Association to enforce such repair or rebuilding of the Dwelling Unit to comply with this responsibility in accordance with Article IX hereinabove. To accomplish the requirements of this Section, each Owner shall insure his Dwelling Unit at the highest insurable value, including, but not limited to, full replacement value of the premises, in accordance with Article IX, above.

11.8. Temporary and Accessory Structures. No accessory building or structure of a temporary character, or trailer, tent, mobile home, or recreational vehicle shall be permitted on any Lot at any time or used as living quarters or for storage at any time, either temporarily or permanently, except as permitted by the Architectural Review Committee. No gas tank, gas container, or gas cylinder serving a Dwelling Unit shall be permitted to be placed on or about the outside of any Dwelling Unit or any ancillary building.

11.9. Signs. A single "for sale" sign of no more than eight by ten inches may displayed on a Dwelling Unit during any period when the Dwelling Unit is being offered for sale. The Committee shall have the right to adopt and enforce uniform standards as to the appearance and method of display of such "for sale" signs. No other sign, advertisement or poster of any kind shall be erected or displayed to the public view on the Committed Property without the prior written approval of the Architectural Review Committee as to size, color, content, material, height and location. This paragraph shall not apply to Declarant.

11.10. Pets, Livestock and Poultry. No animals, livestock, or poultry of any kind or size shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept within a Dwelling Unit, subject to the rules and regulations governing their keeping adopted by the Board of Directors. In no event shall the number of pets exceed two (2) for any Lot. No permitted pet may be kept, bred or maintained for any commercial purpose. No permitted pet may be kept if the pet becomes a nuisance or annoyance to any neighbor, as determined by the Board of Directors. No dogs or other pets shall be permitted to have excretions on the Committed Property, except in locations designated by the Association.

11.11. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood.

11.12. Antenna. No television, radio, electronic or other type antenna or satellite dish may be erected on the Committed Property or attached to any Dwelling Unit thereon.

11.13. Exterior Appearances and Landscaping. The paint, coating, stain, and other exterior finishing colors on all buildings may be maintained as originally installed by the Declarant, without prior approval of the Architectural Review Committee. Prior approval by the Architectural Review Committee shall be necessary before any such exterior finish color is changed. Furthermore, prior approval shall be required if the Association or any Owner wishes to paint, varnish, stain or make any application to exterior trellises or wood treatment, if any. The landscaping, including, without limitation, the trees, shrubs, lawns, flower beds, walkways, and ground elevations, shall be maintained as originally installed by Declarant, unless the prior approval for any substantial change is obtained from the Association and the Architectural Review Committee. Neither aluminum foil, paper, nor anything which the Architectural Review Committee deems objectionable, may be placed on windows or glass doors. No Owner may place any furniture, equipment or objects of any kind or construct any structures, slabs or porches beyond the limits of any Building or patio wall or place any objects such as bicycles, toys, barbecues, etc., on the rear patio unless concealed from the view of the other Dwelling Units, except, however, customary outdoor furniture.

All Lots shall be kept in a clean and sanitary manner and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist.

11.14. Existing Trees. Neither the Association nor an Owner or other person, without the prior written consent of the Architectural Review Committee, shall remove any live tree with a trunk of four (4) inches or more in diameter (as measured one (1) foot from ground level) from any portion of the Committed Property. If said trees are removed without the Committee's prior consent, the Owner or the Association, as appropriate, may be required by the Committee to replace the removed trees with trees of comparable size.

11.15. Grades and Elevations. To preserve and maintain proper drainage in Berkman Plaza Townhomes, no changes in grades or elevations of any portion of a Lot (including the swale areas) shall be made without the prior written approval of the Architectural Review Committee. Finished floor elevations and all other applicable grades must be shown on the site plan and approved by both the Committee and the Association prior to construction.

11.16. Drainage Swale. The Association shall maintain all drainage swales within the Committed Property. Standards for the location, width, depth and invert grades of culverts shall be initially established by the Declarant and enforced by the Architectural Review Committee. The Declarant shall provide the Association and Architectural Review Committee with sets of "as-built" drawings which set forth the location of invert grade, width and depth. Nothing shall be constructed, maintained, altered or permitted to exist on any portion of the Committed Property if, in the opinion of the Committee, it obstructs, would obstruct or otherwise impede the flow of surface drainage.

11.17. Fertilizers. To reduce the dissolution of nitrogen into the ground and surface waters in amounts injurious to the environment, only fertilizers which are capable of releasing nutrients at a controlled rate, such as organic fertilizer, are permissible.

11.18. Vehicles, Trucks, Trailers, Campers and Boats. No vehicles of any kind, including trucks, commercial vehicles, campers, mobile homes, motor-homes, automobiles or boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored overnight at any place on any Lot; except if such vehicle is being used in the construction of improvements on the Committed Property and then only during the periods of approved construction on said Lot.

11.19. Sales and Rentals. No Lot or Dwelling Unit thereon may be sold, rented, or sublet without express written notice to the Board of Directors of the Association. This provision is for the purpose of making certain that subsequent owners and renters understand the rights and obligations of Members of the Association, including, but not necessarily limited to, the Declaration and Rules and Regulations. In addition, the Board of Directors may authorize the use of a registration form to be completed by prospective purchasers or renters. No Dwelling Unit may be rented, leased or sublet for a period of less than twelve (12) months. All enforcement procedures applicable to this Declaration shall be equally applicable to enforcement of this section.

11.20. Walls/Fences. No fence, wall, gate, hedge, or other structure shall be erected or maintained on any Lot, except as originally installed by Declarant or Declarant's assignee, or except any approved in writing by the Architectural Review Committee as provided herein.

11.21. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited on any Lot except in areas designated by the Association for such purpose. All equipment for storage or disposal of such material shall be kept clean and sanitary condition and shall be kept hidden from view.

11.22. Outdoor Drying and Laundry. No clothing, laundry or wash shall be aired or dried on any portion of any Lot in an area viewable to any other Lot or Dwelling Unit, the Public Property or the Shared Facilities. No garments, rugs, etc., shall be hung from windows or doorways of Dwelling Units, and no clotheslines or similar type structure shall be permitted on any Lot in an area viewable from any other Lot, Dwelling Unit, the Public Property or the Shared Facilities.

11.23. Spas and Screen Enclosures. All screen enclosures, deck areas, patios, spas, hot tubs, jacuzzis, and sun decks, except for such structures originally installed by Declarant as part of the first construction of a Dwelling Unit, must be approved in writing by the Architectural Review Committee.

11.24. Lawful Conduct. No immoral, improper, offensive or unlawful use shall be made of any Lot or other improvements. All valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be strictly observed.

11.25. Risks. No Owner shall permit or suffer anything to be done or kept in his Dwelling Unit or upon his Lot which will increase the rate of insurance to other Owners or as to their Lots or to the Association.

11.26. Parking Spaces. Each Owner shall have the exclusive right to use the two parking spaces in the Liberty Street Garage, subject to such reasonable rules and regulations as may be imposed from time to time by the owner of the Parking Garage.

11.27. Basketball Boards. Basketball boards are prohibited, whether attached to the Dwelling Unit or free-standing.

11.28. Skateboard Ramps. Skateboard ramps are prohibited on any Lot.

11.29. Flagpoles. All flagpole structures and their locations must be approved by the Committee prior to construction and/or installation of same.

11.30. Decorative Items. The use of decorative items, including, but not limited to, statues, gates, rocks, planters, bird baths and other ornamental accessories are prohibited, unless the Architectural Review Committee has given written permission for their installation prior to use, installation or construction.

11.31. Mailboxes. All mailboxes shall be of the standardized type originally installed by the Declarant or as thereafter may be designated by the Architectural Review Committee as to style, location, material, color, height and type of post mounting.

11.32. Lighting. All exterior lighting, including, but not limited to, accent lighting, must be approved by the Architectural Review Committee prior to construction or installation.

11.33. Businesses. No trade, business, professional office, or any other type of commercial activity shall be conducted on any portion of the Committed Property, including any Dwelling Unit. This restriction shall not prohibit the Declarant and its assigns from operating sales models and/or a sales and leasing office on any portion of the Committed Property.

11.34. Wells, Mining, Drilling and Excavation. No wells, mining, drilling or excavation of any type, except for such excavation as may be necessary for construction of Dwelling Units, shall be permitted on any portion of the Committed Property. No Owner of any Dwelling Unit shall draw water from any water body near to any of the Committed Property.

11.35. Violations. In the event of a violation of this Declaration, or of any rule properly promulgated by the Board of Directors of the Association, the Association may, as an additional remedy, provide written notice of the violation to the Owner of record, and if said violation shall continue for a period of seven (7) days from the receipt of the written notice, the Owner may be assessed an amount up to \$5.00 per day, per violation. This assessment shall be considered in the same manner as hereinbefore provided for regular assessments and those sections providing for the recording of the assessment lien, enforcement and collection shall also apply.

11.36. Declarant Rights. Notwithstanding any other provision in this Declaration, Declarant is irrevocably empowered to sell, lease or rent Lots on any terms to any purchasers or lessees for as long as it owns any Lot. This section is intended to provide Declarant with the broadest authority and power to transact and implement its business, and such activities shall be free and clear of any

restrictions contained in this Declaration which would impede such activities. Declarant shall have the right to transact any business necessary to consummate sales and leases of said Lots, temporarily use Dwelling Units for model homes and/or sales offices, maintain signs, have employees in the office and show Lots. Sales office signs and all items pertaining to sales shall not be considered property of the Association and shall remain the property of Declarant.

ARTICLE XII

Additional Powers Reserved to Declarant

12.1. Declarant Related Documents. So long as Declarant shall own any of the Committed Property, no Declarant related amendment shall be made to the Declaration, to any Supplemental Declaration, to the Articles, Bylaws, Rules and Regulations, or any other similar Association document ("Berkman Plaza Townhomes Documents"), nor shall any such Declarant related amendments or documents be executed, adopted or promulgated by the Association or the Board of Directors unless such Declarant related amendment or document shall be specifically approved in writing by Declarant in advance of such execution, adoption, promulgation and recording.

12.2. Definitions. For the purposes of Section 12.1 of this Article, an amendment or document which does any of the following shall be considered to be a Declarant related amendment:

- a. Discriminates or tends to discriminate against Declarant as an Owner or otherwise;
- b. Directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners;
- c. Modifies the definitions provided for by Article I of this Declaration in a manner which alters Declarant's rights or status;
- d. Modifies or repeals any provision of Article II of this Declaration;
- e. Alters the character and rights of membership as provided for by Article III of this Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association;
- f. Alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivision, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities;
- g. Denies the right of Declarant to record a Supplemental Declaration with respect to portions of Berkman Plaza Townhomes or adding properties subject to this Declaration or otherwise making provisions in accordance with the powers granted to Declarant in this Declaration;
- h. Modifies the basis or manner of Association assessments as applicable to Declarant or any Lots owned by Declarant as provided for by Articles VI and VII;

- i. Modifies the provisions of Article XI (architectural control) as applicable to Declarant or any Lots owned by Declarant;
- j. Alters the provisions of any Supplemental Declaration;
- k. Denies the right to Declarant, its contractors and subcontractors, to maintain temporary construction trailers, sheds or other buildings upon the Committed Property; or
- l. Alters or repeals any of Declarant's rights or any provision applicable to Declarant's rights as set forth in any provision of this Declaration or of any Supplemental Declaration or other document applicable to Declarant.

The decision to approve or not approve any Declarant related document or Amendment by Declarant in accordance with Section 12.1 of this Article shall be in the sole and absolute discretion of Declarant and Declarant shall not be liable to the Association, its Members or any party as a result of granting or refusing to grant such approval.

12.3. Declarant Lands. So long as Declarant continues to construct any facilities in the Berkman Plaza Development, no action may be taken by the Board or the Association applicable to the Declarant or any of the Lots or other land owned by Declarant unless such action shall be approved in writing by Declarant; or, unless the need therefor shall be waived by the Declarant in writing.

ARTICLE XIII

General Provisions

13.1. Beneficiaries of Easements, Rights and Privileges. The easements, licenses, rights and privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to, the Association, Declarant and its subsidiaries and assigns, the Owners of Lots, and to any other party to whom the Declarant or Association is entitled to grant such easements, licenses, rights and privileges under this Declaration; and any Owner may also grant the benefit of such easement, license, right or privilege to his tenants and guests and their immediate families for the duration of their tenancies or visits, subject to the Rules and Regulations of the Board of Directors; however, the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

13.2. Duration. The covenants and restrictions of this Declaration shall run with and bind the land that has been made a part of the Association and shall inure to the benefit of and be enforceable by Declarant, the Association, or the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds of the Lots and all Institutional Mortgagees of Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless made and recorded one (1) year in advance of the

effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

13.3. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

13.4. Enforcement. Enforcement of these covenants and restrictions shall be by Declarant, its assigns, the Association or any Owner of a Lot by 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. Failure by Declarant, the Association, any Owner or other party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Review Committee. The prevailing party in any proceeding at law or in equity provided for in this Section shall be entitled to recover in said suit the cost of the action, including reasonable attorneys' fees as fixed by the court, including attorneys' fees in connection with appeal of any action.

13.5. Disposition of Assets Upon Dissolution of Association. Upon dissolution of the Association, its real and personal assets, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the case of the Surface Water or Stormwater Management System which is maintained, in part, by the Association, the responsibility for the operation and maintenance of the System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code and be approved by the St. Johns River Water Management District prior to any termination, dissolution or liquidation of the Association. If such dedication is refused acceptance, which refusal in the case of the County shall be by formal resolution of the Board of County Commissioners, such assets shall be granted, conveyed and assigned to any corporation not for profit, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants and deeds applicable to Berkman Plaza Townhomes, unless made in accordance with the provisions of this Declaration or said covenants and deeds.

13.6. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect any other provisions which shall remain in full force and effect.

13.7. Amendment. Excepting Supplemental Declarations and in addition to any other manner herein provided for the amendment of this Declaration, the covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time, upon the execution and recordation of any instrument executed by: (a) Declarant, for so long as the Class B Membership is in effect, and said amendment

by Declarant shall not require the consent of any mortgagees, Owners of Lots nor of the Association, either now or in the future; or, alternatively, (b) by Owners holding not less than two-thirds vote of the membership in the Association or by an instrument signed by the President and Secretary of the Association attesting that such instrument was approved by Members entitled to vote two-thirds of the votes of the Association at a meeting of the Members called for such purpose; provided, that so long as Declarant is the owner of any Lot affected by this Declaration, Declarant's consent must be obtained; and (c) by all Institutional Mortgagees of Lots affected by this Declaration, provided that so long as Declarant is the owner of any Lot affected by this Declaration, Declarant's consent must be obtained. Any amendment must be properly recorded in the Public Records of Duval County.

Any amendment to this Declaration which alters the Surface Water or Stormwater Management System, beyond the maintenance in its original condition, must have the prior approval of the St. Johns River Water Management District.

13.8. Administration. The administration of the Association shall be in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws which are made a part of this Declaration and attached hereto as Exhibits "B" and "C" respectively.

13.9. Conflict. In case of any conflict between the Articles and Bylaws, the Articles shall control. In case of any conflict between the Articles or Bylaws and this Declaration, this Declaration shall control.

13.10. Effective Date. This Declaration shall become effective upon its recordation in the Official Records of Duval County.

13.11. Approval of Association Lawsuits by Owners. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of seventy five percent (75%) of all Owners (at a duly called meeting of the Owners at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- a. the collection of Assessments;
- b. the collection of other charges which Owners are obligated to pay pursuant to the Berkman Plaza Townhomes Documents;
- c. the enforcement of the use and occupancy restrictions contained in the Berkman Plaza Townhomes Documents, including, but not limited to, those against tenants; or
- d. in an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to Berkman Plaza Townhomes or any portion thereof.

IN WITNESS WHEREOF, BP Townhomes, L.L.C. has hereunto caused this documents to be signed by its proper officers this 13th day of November, 2002.

Signed in the presence of:

BP TOWNHOMES, L.L.C., a Georgia limited liability company, authorized to transact business in the state of Florida

John L. Whitman
Print Name: JOHN L. WHITMAN

By: *Alan J. Travis*
Print Name: ALAN J. TRAVIS
Its President

Herbert Joseph O'Shields
Print Name: HERBERT JOSEPH O'SHIELDS

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing Declaration of Covenants, Conditions and Restrictions for Berkman Plaza Townhomes was acknowledged before me on the 13th day of November 2002, by Alan J. Travis, as _____ President, of BP Townhomes, L.L.C., Georgia limited liability company, authorized to transact business in the state of Florida, on behalf of the company. He is personally known to me or produced _____ as identification.

Herbert Joseph O'Shields
Notary Public HERBERT JOSEPH O'SHIELDS
State of Florida
Commission Expires: _____
Commission No.: _____

(Seal)



Herbert Joseph O'Shields
MY COMMISSION # DD031812 EXPIRES
August 29, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

EXHIBIT "A"

PARCEL 3

A PART OF THE SUBMERGED LANDS IN THE ST. JOHNS RIVER LYING SOUTHERLY OF WATER LOTS 12 AND 13, DOGETT'S MAP OF JACKSONVILLE OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, AND BEING IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET (BOTH ARE VARIABLE WIDTH RIGHTS-OF-WAY); THENCE SOUTH 14°30'46" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET A DISTANCE OF 679.83 FEET; THENCE SOUTH 75°19'46" EAST LEAVING SAID RIGHT-OF-WAY LINE A DISTANCE OF 113.58 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE SOUTH 75°19'46" EAST A DISTANCE OF 169.37 FEET; THENCE SOUTH 14°40'14" WEST A DISTANCE OF 86.14 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 19.62 FEET; THENCE NORTH 16°06'04" EAST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 10.91 FEET; THENCE SOUTH 16°06'04" WEST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 37.07 FEET; THENCE NORTH 16°06'04" EAST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 10.98 FEET; THENCE SOUTH 16°06'04" WEST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 36.97 FEET; THENCE NORTH 16°06'04" EAST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 10.96 FEET; THENCE SOUTH 16°06'04" WEST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 37.04 FEET; THENCE NORTH 16°06'04" EAST A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST A DISTANCE OF 5.91 FEET; THENCE NORTH 14°40'14" EAST A DISTANCE OF 79.91 FEET TO THE POINT OF BEGINNING.

EXHIBIT "A" (Continued)

TOGETHER WITH:

PARCEL 4

A PART OF SUBMERGED LANDS IN THE ST. JOHNS RIVER LYING SOUTHERLY OF WATER LOTS 12 AND 13, DOGGETT'S MAP OF JACKSONVILLE OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, TOGETHER WITH A PART OF COURTHOUSE DRIVE (A VARIABLE WIDTH RIGHT-OF-WAY) AND ALL BEING IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA AND ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET (A 70 FOOT RIGHT-OF-WAY AS NOW ESTABLISHED) WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET (A VARIABLE WIDTH RIGHT-OF-WAY); THENCE SOUTH 14°41'16" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET A DISTANCE OF 335.21 FEET; THENCE NORTH 75°19'09" WEST LEAVING SAID RIGHT-OF-WAY LINE A DISTANCE OF 24.09 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 6.19 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 37.69 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 10.20 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 37.79 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 10.26 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 37.71 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 10.25 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 37.78 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 10.23 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 37.77 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 10.26 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 37.73 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 10.31 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 1.65 FEET; THENCE SOUTH 14°40'51" WEST A DISTANCE OF 19.36 FEET; THENCE NORTH 75°19'09" WEST A DISTANCE OF 84.16 FEET; THENCE NORTH 14°40'51" EAST A DISTANCE OF 313.54 FEET; THENCE SOUTH 75°19'09" EAST A DISTANCE OF 82.51 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN EASEMENT FOR PEDESTRIAN INGRESS, EGRESS AND ACCESS OVER THE LANDS HEREINAFTER DESCRIBED AS PARCEL 5A:

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PARCEL 5A

A PART OF WATER LOTS 17 AND 18, KNIGHTS MAP OF JACKSONVILLE FLORIDA AS RECORDED IN DEED BOOK "Y", PAGES 428 AND 429 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, SAID LOTS ALSO KNOWN AS WATER LOTS 12 AND 13 AS SHOWN ON DOGETT'S MAP OF JACKSONVILLE OF SAID FORMER PUBLIC RECORDS, TOGETHER WITH A PART OF COURTHOUSE DRIVE (A VARIABLE WIDTH RIGHT-OF-WAY, CLOSED BY OFFICIAL RECORDS VOLUME 9501, PAGE 543 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY), AND A PART OF THE SUBMERGED LANDS IN THE ST. JOHNS RIVER LYING SOUTHERLY OF AND ADJACENT TO SAID WATER LOTS 17 AND 18, ALL IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST OF SAID COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET (A VARIABLE WIDTH RIGHT-OF-WAY) WITH THE EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET (A VARIABLE WIDTH RIGHT-OF-WAY); THENCE SOUTH 14°30'46" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET, A DISTANCE OF 12.00 FEET; THENCE SOUTH 75°44'44" EAST, PARALLEL WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID BAY STREET, A DISTANCE OF 274.86 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 14°13'29" WEST, A DISTANCE OF 69.04 FEET TO THE POINT OF CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 40.41 FEET; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 39.57 FEET, MAKING A CENTRAL ANGLE OF 56°06'04" AND HAVING A CHORD BEARING OF SOUTH 12°07'03" EAST AND A CHORD DISTANCE OF 38.00 FEET TO A POINT OF CUSP; THENCE SOUTH 14°13'01" WEST, A DISTANCE OF 107.43 FEET; THENCE NORTH 76°16'33" WEST, A DISTANCE OF 140.53 FEET; THENCE SOUTH 13°58'57" WEST, A DISTANCE OF 133.47 FEET; THENCE SOUTH 76°12'31" EAST, A DISTANCE OF 4.13 FEET; THENCE SOUTH 13°58'57" WEST, A DISTANCE OF 269.60 FEET; THENCE NORTH 75°50'33" WEST, A DISTANCE OF 126.76 FEET; THENCE SOUTH 14°09'27" WEST, A DISTANCE OF 6.48 FEET; THENCE NORTH 75°50'33" WEST, A DISTANCE OF 33.42 FEET TO THE AFOREMENTIONED EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET; THENCE SOUTH 14°30'46" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 147.43 FEET TO THE FACE OF A CONCRETE BULKHEAD ON THE ST. JOHNS RIVER; THENCE SOUTH 73°55'28" EAST, ALONG SAID BULKHEAD, A DISTANCE OF 312.90 FEET TO ITS INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE WESTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET (A 70 FOOT RIGHT-OF-WAY); THENCE NORTH 14°41'16" EAST, ALONG SAID SOUTHERLY PROLONGATION AND RIGHT-OF-WAY LINE, A DISTANCE OF 485.18 FEET AN INTERSECTION WITH THE FACE OF A CONCRETE BULKHEAD ON THE ST. JOHNS RIVER; THENCE SOUTH 75°15'00" EAST, ALONG SAID CONCRETE BULKHEAD, A DISTANCE OF 70.00 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF SAID WASHINGTON STREET; THENCE NORTH 14°41'16" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 294.49 FEET TO A POINT THAT LIES 12.00 FEET SOUTH OF THE AFOREMENTIONED SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET; THENCE NORTH 75°48'03" WEST, PARALLEL WITH SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 70.00 FEET; THENCE NORTH 75°44'44" WEST, CONTINUING PARALLEL WITH SAID SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET, A DISTANCE OF 40.30 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM PARCELS 3 AND 4 PREVIOUSLY DESCRIBED HEREIN AND LESS AND EXCEPT PARCEL 2 DESCRIBED AS FOLLOWS:

EXHIBIT "A" (continued)

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PARCEL 2

A PART OF THE SUBMERGED LANDS IN THE ST. JOHNS RIVER LYING SOUTHERLY OF WATER LOTS 11 AND 12, DOGGETT'S MAP OF JACKSONVILLE OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA AND BEING IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET (A VARIABLE WIDTH RIGHT-OF-WAY) WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET (A VARIABLE WIDTH RIGHT-OF-WAY); THENCE SOUTH 14°30'46" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET, A DISTANCE OF 676.44 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 75°19'46" EAST, A DISTANCE OF 42.87 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 22.81 FEET; THENCE SOUTHEASTERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 10.31 FEET, MAKING A CENTRAL ANGLE OF 25°53'16" AND HAVING A CHORD BEARING OF SOUTH 75°19'46" EAST AND A CHORD DISTANCE OF 10.22 FEET; THENCE SOUTH 75°19'46" EAST, A DISTANCE OF 12.60 FEET; THENCE SOUTH 14°40'14" WEST, A DISTANCE OF 1.00 FOOT; THENCE SOUTH 75°19'46" EAST, A DISTANCE OF 47.90 FEET; THENCE SOUTH 14°40'14" WEST, A DISTANCE OF 82.30 FEET; THENCE NORTH 73°53'56" WEST, A DISTANCE OF 5.07 FEET; THENCE SOUTH 16°06'04" WEST, A DISTANCE OF 2.00 FEET; THENCE NORTH 73°53'56" WEST, A DISTANCE OF 95.31 FEET; THENCE NORTH 16°06'04" EAST, A DISTANCE OF 5.09 FEET; THENCE NORTH 73°53'56" WEST, A DISTANCE OF 13.11 FEET TO THE AFOREMENTIONED EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET; THENCE NORTH 14°30'46" EAST, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 77.38 FEET TO THE POINT OF BEGINNING.

EXHIBIT "A" (continued)

Book 10765 Page 495

TOGETHER WITH AN EASEMENT FOR VEHICULAR INGRESS, EGRESS AND ACCESS OVER PARCEL 5B.

PARCEL 5-B

A PORTION OF WATER LOT 19, AS SHOWN ON KNIGHT'S MAP OF JACKSONVILLE, FLORIDA, BEING RECORDED IN DEED BOOK Y, PAGES 428 AND 429 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, SAID LOT ALSO BEING KNOWN AS WATER LOT 11, AS SHOWN ON DOGGETT'S MAP OF JACKSONVILLE OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA. ALSO, A PORTION OF THE SUBMERGED LANDS LYING IN THE ST. JOHNS RIVER, SOUTHERLY OF AND ADJACENT TO SAID WATER LOT 11 OF DOGGETT'S MAP OF JACKSONVILLE, AND A PORTION OF COURTHOUSE DRIVE (A VARIABLE WIDTH RIGHT-OF-WAY CLOSED BY ORV 9501, PAGE 543 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY), ALL LYING IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST OF SAID DUVAL COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET (A VARIABLE WIDTH RIGHT-OF-WAY) WITH THE EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET (A VARIABLE WIDTH RIGHT-OF-WAY); THENCE SOUTH 14°30'46" WEST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET, A DISTANCE OF 267.69 FEET TO THE **POINT OF BEGINNING**;
THENCE SOUTH 76°01'03" EAST, A DISTANCE OF 78.86 FEET;
THENCE SOUTH 14°30'46" WEST, A DISTANCE OF 79.37 FEET;
THENCE NORTH 76°01'03" WEST, A DISTANCE OF 78.86 FEET;
THENCE NORTH 14°30'46" EAST, A DISTANCE OF 79.37 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH an easement for ingress, egress, access and parking as to certain parking spaces within the parking garage located on a portion of Parcel 1:

PARCEL 1

A PORTION OF WATER LOTS 17, 18 AND 19 AS SHOWN ON KNIGHT'S MAP OF JACKSONVILLE, FLORIDA, RECORDED IN DEED BOOK "Y", PAGES 428 AND 429 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, SAID LOTS ALSO BEING KNOWN AS WATER LOTS 11, 12 AND 13 AS SHOWN ON DOGGETT'S MAP OF JACKSONVILLE, OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, TOGETHER WITH A PART OF THE SUBMERGED LANDS LYING IN THE ST. JOHNS RIVER, SOUTHERLY OF AND ADJACENT TO SAID WATER LOTS 11 AND 12 OF DOGGETT'S MAP OF JACKSONVILLE, AND A PORTION OF COURTHOUSE DRIVE (A VARIABLE WIDTH RIGHT-OF-WAY CLOSED BY OFFICIAL RECORDS VOLUME 9501, PAGE 543 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY), ALL LYING IN THE J. BELLAMY GRANT, SECTION 38, TOWNSHIP 2 SOUTH, RANGE 26 EAST OF SAID DUVAL COUNTY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE, COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET (A VARIABLE WIDTH RIGHT-OF-WAY) WITH THE EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET (A VARIABLE WIDTH RIGHT-OF-WAY); THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET, SOUTH 14°30'46" WEST, A DISTANCE OF 12.00 FEET TO THE **POINT OF BEGINNING**; THENCE SOUTH 75°44'44" EAST, PARALLEL WITH SAID SOUTHERLY RIGHT-OF-WAY LINE OF BAY STREET, A DISTANCE OF 274.86 FEET; THENCE SOUTH 14°13'29" WEST, A DISTANCE OF 69.04 FEET TO A POINT OF CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 40.41 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 39.57 FEET, MAKING A CENTRAL ANGLE OF 56°06'04", AND HAVING A CHORD BEARING OF SOUTH 12°07'03" EAST AND A CHORD DISTANCE OF 38.00 FEET TO A POINT OF CUSP; THENCE SOUTH 14°13'01" WEST, A DISTANCE OF 107.43 FEET; THENCE NORTH 76°16'33" WEST, A DISTANCE OF 140.53 FEET; THENCE SOUTH 13°58'57" WEST, A DISTANCE OF 133.47 FEET; THENCE SOUTH 76°12'31" EAST, A DISTANCE OF 4.13 FEET; THENCE SOUTH 13°58'57" WEST, A DISTANCE OF 269.60 FEET; THENCE NORTH 75°50'33" WEST, A DISTANCE OF 126.76 FEET; THENCE SOUTH 14°09'27" WEST, A DISTANCE OF 6.48 FEET; THENCE NORTH 75°50'33" WEST, A DISTANCE OF 33.42 FEET TO A POINT ON THE AFOREMENTIONED EASTERLY RIGHT-OF-WAY LINE OF LIBERTY STREET; THENCE NORTH 14°30'46" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 621.61 FEET TO THE POINT OF BEGINNING.



FLORIDA DEPARTMENT OF STATE

Katherine Harris
Secretary of State

April 5, 2001

ROGERS, TOWERS

The Articles of Incorporation for BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC. were filed on April 5, 2001 and assigned document number N01000002413. Please refer to this number whenever corresponding with this office regarding the above corporation.

PLEASE NOTE: COMPLIANCE WITH THE FOLLOWING PROCEDURES IS ESSENTIAL TO MAINTAINING YOUR CORPORATE STATUS. FAILURE TO DO SO MAY RESULT IN DISSOLUTION OF YOUR CORPORATION.

A CORPORATION ANNUAL REPORT/UNIFORM BUSINESS REPORT MUST BE FILED WITH THIS OFFICE BETWEEN JANUARY 1 AND MAY 1 OF EACH YEAR BEGINNING WITH THE CALENDAR YEAR FOLLOWING THE YEAR OF THE FILING DATE NOTED ABOVE AND EACH YEAR THEREAFTER. FAILURE TO FILE THE ANNUAL REPORT/UNIFORM BUSINESS REPORT ON TIME MAY RESULT IN ADMINISTRATIVE DISSOLUTION OF YOUR CORPORATION.

A FEDERAL EMPLOYER IDENTIFICATION (FEI) NUMBER MUST BE SHOWN ON THE ANNUAL REPORT/UNIFORM BUSINESS REPORT PRIOR TO ITS FILING WITH THIS OFFICE. CONTACT THE INTERNAL REVENUE SERVICE TO INSURE THAT YOU RECEIVE THE FEI NUMBER IN TIME TO FILE THE ANNUAL REPORT/UNIFORM BUSINESS REPORT. TO OBTAIN A FEI NUMBER, CONTACT THE IRS AT 1-800-829-3676 AND REQUEST FORM SS-4.

SHOULD YOUR CORPORATE MAILING ADDRESS CHANGE, YOU MUST NOTIFY THIS OFFICE IN WRITING, TO INSURE IMPORTANT MAILINGS SUCH AS THE ANNUAL REPORT/UNIFORM BUSINESS REPORT NOTICES REACH YOU.

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

Joey Bryan, Document Specialist
New Filing Section

Letter Number: 501A00020265

FILED

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION
OF
BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

(A Florida corporation not for profit)

The undersigned, by these Articles, associate themselves for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and certify as follows:

EXPLANATION OF TERMINOLOGY

A. The terms contained in these Articles of Incorporation shall have the meaning of such terms set forth in the Declaration of Covenants, Conditions and Restrictions for Berkman Plaza Townhomes Homeowners Association (the "Declaration").

B. "Association" as used herein shall mean and refer to the Berkman Plaza Townhomes Homeowners Association, Inc., a Florida corporation not for profit, the corporation formed by these Articles, its successors or assigns.

ARTICLE I

NAME/DURATION/PRINCIPAL OFFICE

The name of the corporation is BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC. Its duration shall be perpetual. The address of the principal office and mailing address shall be 3190 Northeast Expressway, Suite 400, Atlanta, Georgia 30341.

ARTICLE II

PURPOSE AND POWERS

The purpose of this corporation is to provide for a unified effort in protecting the value of the property of the Members of the Association, in accordance with the Declaration recorded (or to be recorded) in the Public Records of Duval County, Florida, and any Supplemental Declaration filed in accordance therewith. The Association shall exercise all the powers and privileges and perform all of the duties and obligations of the corporation as defined and set forth in these Articles, the Bylaws, and the Declaration. The Association shall also have all powers granted by statutory and common law not in conflict with the terms of the Declaration and these Articles, and terms, conditions, covenants and restrictions wherever recorded that pertain to Berkman Plaza Townhomes, townhome developer located in Duval County. The powers of the Declaration include the establishment and enforcement of the payment of charges or assessments contained therein (including the assessment and collection of assessments adequate to defray the costs of maintenance and operation of the surface water and stormwater management system), the operation, maintenance and management of the surface water and stormwater management systems in Berkman Plaza Townhomes in a manner consistent with the St. Johns River Water Management District Permit #40-031-62406-1 requirements and applicable District rules, and to

assist in the enforcement of the restrictions and covenants contained therein, and the power to contract for the management of the Association and engagement in such other lawful activities as may be to the mutual benefit of the Members and their property.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the personal benefit of any Member or individual person, firm or corporation.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS
IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is or is at any time made subject to the Declaration shall be a Member of the Association. Membership shall be appurtenant to and inseparable from ownership of a Lot. When any one Lot is owned by more than one person, firm, individual, corporation or other legal entity, the composite title holder shall be and constitute one Member of the Association. Any person, firm, individual, corporation or legal entity owning more than one Lot shall be as many Members as the number of Lots owned. Membership in the corporation and transfer thereof shall be upon such terms and conditions as provided in the Declaration and Bylaws.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all of those Owners as defined in Section 1, with the exception of Declarant. The Class A Members shall be entitled to one (1) membership interest and one (1) vote for each Lot in which they hold the interests required for membership by Section 1.

Class B. Class B Members shall be Declarant, including any of its subsidiaries to which Declarant may transfer title. The Class B Member shall be entitled to ten (10) membership interests and ten (10) votes for each Lot in which it holds the interest required for membership by Section 1 and shall be entitled to elect a majority of the Board of Directors until three (3) months after ninety percent (90%) of the Lots in all phases by Berkman Plaza Townhomes have been sold and conveyed by the Declarant (the "Transfer Date").

ARTICLE IV
BOARD OF DIRECTORS

The affairs of the corporation shall be managed by the Board of Directors consisting of not less than three (3) nor more than seven (7) persons. Directors need not be Members of the corporation. The number of persons who are to serve initially on the Board of Directors until the first annual meeting thereof shall be three (3) and their names and addresses are as follows:

Alan J. Travis 3190 Northeast Expressway, Suite 400, Atlanta, Georgia 30341
David Berkman 3190 Northeast Expressway, Suite 400, Atlanta, Georgia 30341
Steven Berkman 3190 Northeast Expressway, Suite 400, Atlanta, Georgia 30341

The Board of Directors shall be elected by the Members of the Association at the Annual Meetings as provided in the Bylaws, provided that Declarant shall be entitled to elect a majority of the Board of Directors until three (3) months after ninety percent (90%) of the Lots in all phases of Berkman Plaza Townhomes have been sold and conveyed by the Declarant. Declarant is entitled to elect at least one member of the Board of Directors as long as the Declarant holds for sale at least Five Percent (5%) of the Lots in all phases of Berkman Plaza Townhomes.

ARTICLE V
OFFICERS

Section 1. Indemnity. The Association shall indemnify any person who was or is a party to any pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is or was a Director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 no reasonable cause to believe his conduct was unlawful. However no indemnification shall be made in respect to any claim, issue or matter in which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his or her duty to the Association. 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.

Section 2. Approval. Any indemnification under Section 1 above (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 under the circumstances because he or she has met the applicable standard of conduct set forth in Section 1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of the Directors who were not parties to such action, suit or proceeding, or (b) if a majority of disinterested Directors so directs, by independent legal counsel in a written opinion or by a majority vote of the members.

Section 3. Advances. 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 said action, if it is authorized by the Board of Directors in the specific case. Provided, the Board must first request an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article.

Section 4. Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members or otherwise.

Section 5. Insurance. 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, insuring 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 VII
SUBSCRIBERS

The following person hereby subscribes to these Articles of Incorporation:

Douglas A. Ward

The office address of the subscriber is:

1301 Riverplace Boulevard, Suite 1500
Jacksonville, Florida 32207

ARTICLE VIII
BYLAWS

The Bylaws shall be adopted by the Board of Directors. Prior to the first annual meeting, the Bylaws may be amended, altered or rescinded by the unanimous vote of all Directors. As set forth in the Bylaws, the Bylaws may thereafter be adopted, amended, altered or rescinded only with the approval of not less than eighty (80%) percent of all the Directors or not less than fifty-five (55%) percent of the Members of the Association. Provided, that no amendment shall be effective which would affect the rights of the Class B Member without the approval of said Member.

The Bylaws shall include the time and place for annual meetings and for regular and special meetings, quorum requirements, the manner for electing directors and officers and voting requirements.

ARTICLE IX
AMENDMENT OF ARTICLES

Section 1. Before Recording Declaration. Prior to the recording of the Declaration amongst the Public Records of Duval County, Florida, these Articles may be amended only by an instrument in writing signed by all of the Directors and filed in the Office of the Secretary of State of the State of Florida. The instrument amending these Articles shall identify the particular Article or Articles being amended and a certified copy of each amendment shall be attached to any certified copy of these Articles and shall be an Exhibit to a Declaration upon recording of the Declaration.

Section 2. After Recording Declaration. When the Declaration has been recorded amongst the Public Records of Duval County, Florida, these Articles may be amended by the following methods:

A. At a duly called meeting of the Board of Directors, which may be either the Annual Meeting, or a special meeting, by the affirmative vote of not less than eighty (80%) percent of all Directors;

B. At a duly called meeting of Members, which may be either the Annual Members Meeting, or a special meeting, by the affirmative vote of not less than seventy-five (75%) percent of the Members of the Association. ;

C. An Amendment may be adopted by a written statement signed by not less than eighty (80%) percent of all Directors or seventy-five (75%) percent of all Members setting forth their intention that an amendment to these Articles be adopted.

Section 3. Class B Approval. No amendment to these Articles shall be effective which would affect the rights of the Class B Member without the approval of such Member.

Section 4. Conflict. In case of any conflict between these Articles of Incorporation and the Bylaws, these Articles shall control; and in case of any conflict between these Articles of Incorporation and Declaration, the Declaration shall control.

ARTICLE X
INITIAL REGISTERED OFFICE AND AGENT

The street address of the initial registered office of this Corporation is 1300 Riverplace Boulevard, Suite 1500, Jacksonville, Florida 32207, and the name of the initial registered agent of this Corporation is Douglas A. Ward.

ARTICLE XI
DISSOLUTION

The Association may be dissolved, consistent with the applicable provisions of Florida Statutes, upon petition having the assent given in writing and signed by not less than three-fourths (3/4) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be disposed of in accordance with the Declaration.

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

ARTICLE XII
NO STOCK OR DIVIDENDS

There shall be no dividends to any of the Members. This corporation shall not issue shares of stock of any kind or nature whatsoever.


The undersigned, being the subscriber hereto, does hereby subscribe to these Articles of Incorporation and in witness whereof has caused its duly qualified officers to execute this document and affix its corporate seal this 2nd day of April, 2001.



Douglas A. Ward

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 2nd day of April, 2001
by Douglas A. Ward. He is personally known to me.



Notary Public


My Commission Expires:
My Commission Number is:



Marsha Isham
MY COMMISSION # CC875773 EXPIRES
November 30, 2003
BONDED THRU TROY FAIN INSURANCE, INC.

ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for the above stated corporation, at place designated in this certificate, I hereby accept the appointment in this capacity, and agree to comply with the provision of said Act relative to keeping open said office. I am familiar with, and accept, the obligations of a registered agent provided for in Chapter 617, Florida Statutes (1990).

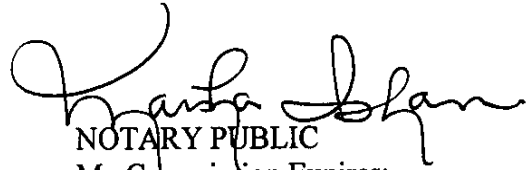


Douglas A. Ward

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 2nd day of April, 2001 by Douglas A. Ward. He is personally known to me or who presented _____ as identification.


NOTARY PUBLIC
My Commission Expires:

My Commission Number is:



Marsha Isham
MY COMMISSION # CC875773 EXPIRES
November 30, 2003
BONDED THRU TROY FAH INSURANCE, INC.

R:\Berkman Plaza\Townhomes\Articles

FILED
01 APR -5 PM 12:33
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

BYLAWS OF
BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
GENERAL

Section 1. Identity: The name of the corporation shall be BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC., which is a corporation not for profit organized for the purpose of managing, operating and administering the Berkman Plaza Townhomes Homeowners Association to be established on the real property more fully described in the Declaration of Covenants, Conditions and Restrictions for Berkman Plaza Townhomes Homeowners Association (hereinafter called "Declaration"), as recorded in the Public Records of Duval County, Florida.

Section 2. The Principal Office: The initial principal office of the corporation shall be 3190 Northeast Expressway, Suite 400, Atlanta, Georgia 30341, or at such other place as may be subsequently designated by the Board of Directors.

Section 3. Definitions: The terms contained in these Bylaws shall have the meaning of such terms set forth in the Declaration. "Association" as used herein shall mean and refer to the Berkman Plaza Townhomes Homeowners Association, Inc., a Florida corporation not for profit, its successors and assigns.

ARTICLE II
DIRECTORS

Section 1. Number and Term: The number of directors which shall constitute the whole Board shall not be less than three (3) persons and may be increased from time to time by the members of the Board, provided the total number of members does not exceed seven (7). Directors need not be Members of the Association.

The initial Board of Directors shall be appointed by Declarant and shall hold office and exercise all powers of the Board of Directors until such time that they resign or are replaced by other Directors appointed by Declarant or are joined or replaced by Directors elected by the Members as follows:

Declarant shall be entitled to elect a majority of the Board of Directors until three (3) months after ninety percent (90%) of the Lots in all phases of Berkman Plaza Townhomes have been sold and conveyed by the Declarant. Declarant is entitled to elect at least one member of the Board of Directors as long as the Declarant holds for sale at least Five Percent (5%) of the Lots in all phases of Berkman Plaza Townhomes.

After the initial election of a Director to the Board by the Members, in accordance with the terms above, non-appointed Directors shall be elected at the annual meeting of the Members and each Director shall be elected to serve for the term of one (1) year or until his or her successor shall be elected and shall qualify.

Section 2. Removal: Except for any Directors appointed by Declarant, a Director may be removed from office with or without cause by the vote or agreement in writing of a majority of the Members. Provided, before any Director is removed from office, he or she shall be notified in writing that a motion to remove him or her will be made prior to the meeting at which said motion is made. Such Director shall be given an opportunity to be heard at such meeting, should he or she be present, prior to the vote of his or her removal.

A Director elected or appointed by Declarant may be removed at any time by Declarant, who shall thereupon designate the successor Director.

Section 3. Vacancy and Replacement: If the office of any Director or Directors other than Directors appointed by Declarant, becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, at a special meeting of Directors duly called for this purpose, shall choose a successor or successors, who shall hold office for the unexpired term in respect to which vacancy occurred. Any Director unable to attend said special meeting may vote by proxy or absentee ballot. Said proxy or ballot shall be in writing and be signed by the Director and, in addition, this proxy shall designate the person to vote the proxy. All proxies shall be filed with the President or Secretary of the Board of Directors prior to the special meeting.

If the office of any Director appointed by Declarant becomes vacant, Declarant shall thereupon designate the successor Director.

Section 4. Powers: The property and business of the corporation shall be managed by the Board of Directors which may exercise all corporate powers not specifically prohibited by law, the Declaration, the Articles of Incorporation, or that, by these Bylaws is directed or required to be exercised or done by the Members. These powers shall specifically include, but not be limited to, the following:

- a. To levy upon the Members assessments as are necessary for anticipated current Operating Expenses of the Association. The Board of Directors may increase the assessments or vote a special assessment in excess of that amount, if required, to meet any necessary additional expenses, but said increase can only be made in accordance with the Articles of Incorporation, the Declaration, or these Bylaws.
- b. To use and expend the assessments collected to maintain, care for and preserve the Common Area and portions of the Dwelling Units, as provided in the Declaration, or to otherwise carry out the intent of the Declaration;
- c. To pay taxes and assessments levied and assessed against any real property the Association might own and to pay for such equipment and tools, supplies

and other personal property purchased for use in such maintenance, care and preservation;

d. To enter into and upon the Dwelling Units when necessary and at as little inconvenience to the Owner as possible in connection with such maintenance, care and preservation. For the purpose of preservation, care and restoration of Association property, each Dwelling Unit is subject to a perpetual easement to the then existing Board of Directors, or its duly authorized agents, in the event of an emergency to enter into the Dwelling Unit if the necessities of the situation should require;

e. To repair, alter or replace any Association facilities, machinery or equipment;

f. To insure and to keep insured the Association-owned property against loss from public liability and to carry such other insurance as the Board of Directors may deem advisable; and, in the event of damage or destruction of real property, real or personal, covered by such insurance, to use the proceeds for repairs and replacement, all in accordance with the provisions of the Declaration;

g. To collect delinquent assessments by suit or otherwise; to abate nuisances; and to enjoin or seek damage from Owners for violations of the Declaration, the Articles of Incorporation, these Bylaws, or any Rules and Regulations adopted by the Board of Directors;

h. To employ such personnel, make such purchases and enter into such contracts as may be necessary or desirable in carrying out the operation and management of the Association.

i. To make, amend and repeal Rules and Regulations governing the operation, maintenance and management of the Association.

j. To open bank accounts and to borrow money on behalf of the Association and to designate the signatories to such bank accounts.

k. To enter into contracts for the management, maintenance and operation of the Association property.

l. To bring and defend actions by or against one or more Members as to matters relating to the Association, and to assess the Members for the cost of such litigation.

m. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees or Members, each of such committees to consist of at least one (1) Director, which, to the extent provided in said resolution, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Association and may have power to sign all papers which may be required, provided the said resolution shall specifically so provide. Such committee or

committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors, shall keep regular minutes of their proceedings, and shall report the same to the Board, as required.

n. Notwithstanding anything to the contrary contained in these Bylaws, so long as Declarant or its designee shall own any membership interest in the Association, the Board may not, without Declarant's prior written consent, (i) make any addition, alteration or improvement to the Committed Property, or (ii) assess any charges for the creation of, addition to or replacement of all or part of a reserve, contingency or surplus fund, or (iii) hire any employee when it results in a greater number of employees employed by the Association than in its prior fiscal year, or (iv) enter into any service or maintenance contract for work not being performed by the Association in its prior fiscal year, or (v) borrow money on behalf of the Association, or (vi) reduce the services performed by the Association in its prior fiscal year, or (vii) amend these Bylaws, the Articles of Incorporation, or the Declaration of Covenants and Restrictions.

Section 5. Compensation: Directors and officers shall serve without compensation.

Section 6. Meetings.

a. The first meeting of each Board after election by the Members of new Directors shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practicable. The annual meeting of the Board of Directors shall be held at the same place as the annual Members' meeting, and immediately after the adjournment of same, at which time the dates, places and times of regularly scheduled meetings of the Board shall be set.

b. Regular meetings of the Board shall be held quarterly at such time and place as the Board shall fix from time to time.

c. Special meetings of the Board may be called by the President on two (2) days notice to each Director either personally or by mail or telegram. Special meetings shall be called by the President or Secretary in a like manner and on like notice on the written request of at least two (2) Directors.

d. Meetings of the Board shall be open to all Members.

e. At all meetings of the Board, a majority of the Directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law, by the Declaration, by the Articles of Incorporation or by these Bylaws. If a quorum shall not be present in any meeting of Directors, the Directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

f. Emergency Meeting: Any member of the Board, or the President, may call a meeting, without notice, for the purpose of considering any matter deemed to be an emergency.

g. Any meeting of the Board may be held by a telephone conference call, at which each member may hear, and be heard by all other members.

h. The joinder of a member of the Board in the action of a meeting may be by signing and concurring in the minutes of the proceedings of the Board. Such consent shall have the same effect as a unanimous vote.

i. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 7. Annual Statement: The Board shall present at the annual Members' meeting, and when called for by a vote of the Members at any special meeting of the Members, a full and clear statement of the business and condition of the Association, including an account of the financial transactions during the preceding fiscal year.

The Association shall maintain accounting records according to good accounting practices, which shall be open to inspection by Dwelling Unit Owners or their authorized representatives at reasonable times. Written summaries of said records shall be supplied at least annually to Dwelling Unit Owners or their authorized representatives.

ARTICLE III **OFFICERS**

Section 1. Elective Offices: The officers of the Association need not be Members of the Association. They shall be chosen by the Directors and shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose one or more additional vice presidents, assistant secretaries, assistant treasurers, or other officers. No more than one Owner in each Dwelling Unit may be an officer at any one time.

Section 2. Time of Election: The Board of Directors at its first meeting after each annual meeting of general Members shall elect officers, none of whom, excepting the President, need be a Director.

Section 3. Appointive Offices: The Board may appoint such officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. Term: The officers of the Association shall hold office for a period of one (1) year or until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors shall serve at the pleasure of the Board and may be

removed, at any time, by the affirmative vote of a majority of the whole Board. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board.

Section 5. The President and Vice President:

a. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Members and Directors, shall be ex-officio member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. The President shall be a member of the Board of Directors.

b. He shall execute bonds, mortgages, and other contracts requiring a seal, under the seal of the Association, except when the same are required or permitted by law to be otherwise signed and executed and except when the signing and execution thereof shall be expressly delegated by the Board of Directors to another officer or agent of the Association.

c. In the absence of the President, the Vice President shall perform the duties of the President.

Section 6. The Secretary:

a. The Secretary shall attend all sessions of the Board and all meetings of the Members and record all votes and the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall perform like duties for the standing committees when required. The minutes book shall be kept in a businesslike manner and shall be available for inspection by Dwelling Unit Owners and the Board of Directors. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision he or she shall serve. He or she shall keep in safe custody the seal of the Association, and, when authorized by the Board, shall affix the same to any instrument requiring it; and, when so affixed, the seal shall be attested by his or her signature or by the signature of the Treasurer or an Assistant Secretary.

b. Assistant Secretaries, in order of their seniority, shall, in the absence or disability of the Secretary, perform the duties and exercise the power of the Secretary and shall perform such other duties as the Board of Directors shall prescribe.

Section 7. Treasurer and Assistant Treasurer:

a. The Treasurer shall have the custody of the Association funds and securities and shall keep full and accurate accounts of the receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board.

b. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, making proper vouchers for such disbursements, and shall render

to the President and Directors, at the regular meeting of the Board, or whenever they may require it, an account of all transactions by the Treasurer and of the financial condition of the Association.

c. Assistant Treasurers, in the order of their seniority, shall, in the absence or disability of the Treasurer, perform the duties, exercise the powers and assume the obligations of the Treasurer, and shall perform such other duties as the Board shall prescribe.

Section 8. Bonding of Corporate Officers: The Board of Directors may elect to have the Treasurer and all Assistant Treasurers, if any, the President and Secretary, bonded, in an amount to be determined by the Board, with a fiduciary bonding company licensed and authorized to transact business in the State of Florida. If the Board so elects, the cost of the premium for this bond shall be paid by the Association.

Section 9. Indemnification of Corporate Officers: Every Director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding or any settlement thereof, to which he may be a party, or in which he may become involved, by reason of his being or having been an officer or Director of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all rights to which such officer or Director may be entitled.

ARTICLE IV **MEMBERSHIP AND VOTING PROVISIONS**

Section 1. Membership: Membership in the Association shall be limited to record Owners of the Dwelling Units in Berkman Plaza Townhomes Homeowners Association, as further defined herein and in Article III of the Articles of Incorporation of this Association and Article III of the Declaration. Transfer of ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership shall become titled in the transferee. If unit ownership is titled in more than one person, the composite title holder shall be and constitute one Member for voting purposes; however, all of the persons so owning said Dwelling Unit shall be Members eligible to hold office and attend meetings in accordance with these By-Laws.

Section 2. Rights and Obligations: The rights of membership are subject to the payment of assessments levied by the Association, the obligation of which assessment is imposed against each Owner of, and becomes a lien upon, the Dwelling Units against which such assessments are made, as provided in the Declaration. No Member shall have any vested right, interest or privilege in or to the assets, functions, affairs or facilities of the Association.

Section 3. Rules and Regulations: All present and future Members shall be subject to these Bylaws and to the rules and regulations issued by the Association to govern the conduct of its Members.

Section 4. Voting:

a. As set forth in the Declaration and in Article III of the Articles of Incorporation, the Owner(s) of each Dwelling Unit other than Declarant shall be entitled to one (1) vote per Dwelling Unit. If a Dwelling Unit Owner other than Declarant owns more than one (1) Dwelling Unit, he or she shall be entitled to one (1) vote for each Dwelling Unit owned. Until transfer of control to the Members, Declarant shall be entitled to ten (10) votes for each Dwelling Unit owned, as set forth in the Articles of Incorporation.

b. A majority of the Owners' total votes present in person or by written proxy or absentee ballot, at any meeting at which a quorum is present, shall decide any questions, unless the Declaration, the Bylaws, or Articles of Incorporation of the Association provides otherwise.

Section 5. Proxies and Absentee Ballots: Votes may be cast in person, by absentee ballot or by proxy. All proxies and absentee ballots shall be in writing on forms approved by the Board of Directors and signed by the person entitled to vote (as set forth below in Section 6), and shall be filed with the Secretary prior to the meeting in which they are to be used, and shall be valid only for the particular meeting designated therein. Proxies shall also designate the person to vote the proxy and such person must be a "Voting Member" as such term is hereinafter defined. When a Dwelling Unit is owned jointly by a husband and wife, and if they have not designated one of them as a Voting Member, a proxy must be signed by both husband and wife when a third person is designated. No one person, other than Declarant, shall be designated to hold more than five (5) proxies for any purpose.

Section 6. Designation of Voting Member: If a Dwelling Unit is owned by one person, his right to vote shall be established by the recorded title to the Dwelling Unit. If a Dwelling Unit is owned by more than one person, the person entitled to cast the vote for the Dwelling Unit shall be designated in a certificate signed by all of the record Owners of the Dwelling Unit, and filed with the Secretary of the Association. If a Dwelling Unit is owned by an association or corporation, the officer or employee thereof entitled to cast the vote for the Association shall be designated in a certificate for this purpose, signed by the President or Vice President, attested to by the Secretary or Assistant Secretary of the Association, and filed with the Secretary of the Association. If a Dwelling Unit is owned by any other legal entity, the certificate shall be signed by any party permitted by law to execute documents on behalf of such entity. The person designated in such certificate who is entitled to cast the vote for a Dwelling Unit shall be known as the "Voting Member." If such a certificate is not on file with the Secretary of the Association for a Dwelling Unit owned by more than one person or by any legal entity, the vote of the Dwelling Unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Dwelling Unit, except if said Dwelling Unit is owned by a husband and wife. Such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until there is a change in

the ownership of the Dwelling Unit concerned. If a Dwelling Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

- a. They may, but they shall not be required to, designate a Voting Member.
- b. If they do not designate a Voting Member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. As previously provided, the vote of a unit is not divisible.
- c. When they do not designate a Voting Member, and only one is present at a meeting, the person present may cast the vote individually, without establishing the concurrence of the absent person.

ARTICLE V MEETINGS OF MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at the office of the Association, or may be held at such place and time as shall be stated in the notice thereof.

Section 2. Annual Meeting:

- a. Regular annual meetings of the Members shall be held in each fiscal year, at such time, date and place as shall be determined by the Board of Directors.
- b. All annual meetings shall be held at such hour as the Board of Directors may determine.
- c. At the annual meeting, the Members shall elect a Board of Directors, as provided by these Bylaws and transact such other business as may properly be brought before the meeting.
- d. Written notice of the annual meeting shall be served upon or mailed via regular mail to each Member entitled to vote at such address as appears on the books of the Association at least fourteen (14) days prior to the meeting. Notice of the annual meeting shall be posted at a conspicuous place on the Association property at least fourteen (14) days prior to said meeting.

Section 3. Special Meetings of Members:

- a. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by law or by the Articles of Incorporation, may be called by the President, and shall be called by the President or Secretary at the request in writing of not less than one-fourth (1/4) of the membership entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.
- b. Written notice of a special meeting of Members, stating the time, place and object thereof, shall be served upon or mailed, via regular mail, to each Member

entitled to vote at such address as appears on the books of the Association at least five (5) days before such meeting.

c. Business transacted at all special meetings shall be confined to the objects stated in the notice thereof.

Section 4. Quorum: Thirty-three percent (33%) of the total number of Members entitled to vote in the Association present in person or represented by written proxy or absentee ballot, shall constitute a quorum at all meetings of the Members for the transaction of business, except as otherwise provided by law, by the Articles of Incorporation, the Declaration or by these Bylaws. If, however, such quorum shall not be present or represented at any meeting of the Members, the Members entitled to vote who are present in person or represented by written proxy or absentee ballot shall have the power to adjourn the meeting for not less than one (1) hour until a quorum shall be present or represented. If, when the meeting has been resumed and a quorum is not present or represented by proxy or absentee ballot, the Members entitled to vote thereat may be declare a quorum that shall constitute twenty five percent (25%) of the total number of Members entitled to vote. Any business may be transacted at the resumed meeting that could have ben transacted at the meeting as originally called.

Section 5. Vote Required to Transact Business. When a quorum is present at any meeting, the vote of a majority of the Members entitled to vote, present in person or represented by written proxy or absentee ballot, shall decide any question brought before such meeting unless the question is one upon which, by express provision of law, the Articles of Incorporation, the Declaration or these Bylaws, a different vote is required, in which case, the express provision shall govern and control the decision of such question.

Section 6. Right to Vote: At any meeting of the Members, every Member having the right to vote shall be entitled to vote in person or by proxy or absentee ballot. Such proxy or absentee ballot shall only be valid for such meeting or adjournments thereof, must be in writing, signed by the Member, and filed with the Secretary prior to the meeting.

Section 7. Waiver and Consent: Whenever the vote of Members at a meeting is required or permitted by any provision of law, the Declaration, the Articles or these Bylaws to be taken in connection with any action of the Association, the meeting and vote of Members may be dispensed with, if all the Members who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such action being taken.

Section 8. Rules of Procedure: Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with law, the Articles, the Declaration, or these Bylaws.

ARTICLE VI

NOTICES

Section 1. Definition: Whenever under law the Articles, these Bylaws or the Declaration notice is required to be given to any Director or Member, it shall not be construed to mean personal notice; but, such notice may be given in writing, by mail, or by depositing the same in a

post office or letter box. Mailed notices shall be in a postpaid, sealed wrapper, addressed to such Director or Member at such address as appears on the books of the Association.

Section 2. Service of Notice Waiver: Whenever any such notice is required to be given, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

ARTICLE VII **FINANCES**

Section 1. Fiscal Year: The fiscal year shall be fixed by resolution of the Board of Directors and may be a calendar year, beginning on the first day of January in each year.

Section 2. Checks: All checks or drafts for money and notes of the Association shall be signed by any two of the following officers: President, Vice President, Secretary or Treasurer, or by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Assessments:

a. The Board of Directors of the Association shall, from time to time, at regular meetings or special meetings called for this purpose, fix and determine the sum or sums necessary and adequate for the continued operation of the Association. The Board shall determine the total amount required, including the Operating Expenses such as taxes on Association property, insurance, repairs, maintenance, operating capital, reserves for deferred maintenance, other reserves, and other expenses, and expenses designated as Operating Expenses from time to time by the Board of Directors of the Association or under the provisions of the Declaration. The total annual Operating Expenses shall be assessed as a single sum against all Dwelling Units in the Association and prorated equally to each of said Dwelling Units, as further specified in the Declaration. Said assessments shall be payable quarterly in advance or as otherwise ordered by the Board. Special assessments, should such be required, shall be levied and paid in the same manner as hereinbefore provided for regular assessments except that some special assessments may apply to fewer than all of the Dwelling Units as provided in the Declaration. The Owner agrees to pay promptly when due all assessments assessed against his or her Dwelling Unit. Delinquent assessments will bear interest and late charges as set forth in the Declaration. No Member shall be personally liable for any debts of the Association whatsoever; however, Dwelling Unit Owners are personally liable for unpaid assessments as further set forth in the Declaration.

b. So long as Declarant is in control of the Board of Directors, the Board shall not impose an assessment which exceeds the previous year's assessment by more than 25% without approval of a majority of the Dwelling Unit Owners. In determining whether assessments exceed assessments in prior years by 25%, there shall be excluded in the computation any provision for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Association property or in respect of anticipated expenses by the Association which are not anticipated to be incurred on a regular or

annual basis and there shall be excluded from such computation, assessment for betterments to the Association property or reserves, or assessments for betterments to be imposed by the Board of Directors.

Section 4. Accounts: There shall be established and maintained such bank account or accounts as the Board of Directors shall deem advisable, into which shall be deposited all assessments as fixed and determined for all Dwelling Units. Disbursements from said accounts shall be for the general needs of the Association, including, but not limited to, wages, repairs, betterments, maintenance and other expenses of the property of the Association.

Section 5. Association Expenses: The expenses for which the Members shall be liable as set forth in the Declaration shall be those costs and expenses deemed necessary or desirable by the Association for the operation and maintenance of the Association, including the Operating Expenses. Said expenses shall not include maintenance of the interior of a Dwelling Unit, nor any such other items for whose maintenance and repair a Dwelling Unit Owner is responsible. Such expenses shall include, but not be limited to, maintenance of all lawns, shrubbery and landscaping, sprinkler system, electricity or rent for street lighting, painting upkeep on the exterior of all buildings, maintenance and repair of roofs on all buildings, costs and fees under any management agreement, and expenses declared Operating Expenses pursuant to the Declaration.

ARTICLE VIII **ENFORCEMENT**

The Association, by direction of the Board of Directors, shall have the right to enforce by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations and liens now or hereafter imposed by the Declaration, the Articles, these Bylaws or any Rules and Regulations of the Association.

ARTICLE IX **PARAMOUNT RIGHTS OF DECLARANT**

All of the applicable terms and provisions of these Bylaws shall be subject to any sections of the Declaration, Articles or Bylaws regarding rights and powers of Declarant, which rights and powers shall be deemed paramount to the applicable provisions of these Bylaws.

ARTICLE X **ACQUISITION OF DWELLING UNITS**

At any foreclosure sale of a Dwelling Unit, the Board of Directors may, with the authorization and approval by the affirmative vote of Members casting not less than sixty-six and two-thirds (66-2/3%) percent of the authorized votes of the Members, present in person or by proxy or absentee ballot, at any regular or special meeting of the Members, acquire, in the name of the Association, or its designees, a Dwelling Unit being foreclosed. The term "foreclosure," as used in this Article, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments. The power of the Board of Directors to acquire a Dwelling Unit at any foreclosure sale shall never be interpreted as a requirement or obligation on the part

of said Board of Directors or of the Association to do so at any foreclosure sale, the provisions hereof being permissive in nature and for the purpose of setting forth a power of the Board of Directors to do so should the requisite approval of the Members be obtained. The Board of Directors shall not be required to obtain the approval of Owners at the foreclosure sale of a Dwelling Unit, due to the foreclosure of the Association's lien for assessment under the provisions of the Declaration, notwithstanding the sum that the Board of Directors determines to bid at such foreclosure sale.

ARTICLE XI
SEAL

The seal of the Association shall have inscribed thereon the name of the Association, the year of its organization, and the words "not for profit." Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or in any other form evidencing the intent of the signing officer or officers to have the effect of the corporate seal.

ARTICLE XII
AMENDMENT

Until the first annual meeting of the membership of the Association, the Board of Directors shall have full power without membership approval or vote to amend, alter or rescind these Bylaws by unanimous vote of all the Directors. Thereafter, these Bylaws may be amended in the following manner, as well as in the manner elsewhere provided:

Section 1. Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

Section 2. Resolution: A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the Members entitled to vote. Directors and Members not present at the meeting considering the amendment may express their approval in writing. Except as elsewhere provided, such approval must not be less than eighty percent (80%) of all Directors or by not less than fifty-five percent (55%) of all of the Members entitled to vote who are either present or voting by proxy or absentee ballot.

Section 3. Agreement: In the alternative, an amendment may be made by an agreement executed by all Members of the Association in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Duval County, Florida.

Section 4. Proviso: No amendment to these Bylaws shall be passed which would operate to impair or prejudice the rights of the Declarant, nor any Institutional Mortgagee. No amendment shall discriminate against any Dwelling Unit Owner nor against any class or group of Dwelling Units unless the Dwelling Unit Owners so affected shall consent; and no amendment shall increase the Owner's proportionate share of the Operating Expenses unless the record Owner of the Dwelling Unit concerned and all record Owners of Mortgages thereon shall join in the execution of the amendment. All amendments to these Bylaws shall be recorded in the Public Records of Duval County, Florida.

ARTICLE XIII
MISCELLANEOUS

Section 1. Construction: The definitions of particular words and phrases contained in the Declaration shall apply to such words and phrases when used in these Bylaws. In case of any conflict between the Articles and these Bylaws, the Articles shall control, and in case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 2. Severability: Should any provisions of these Bylaws be void or unenforceable in law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.

Section 3. Subordination: Any lien or other encumbrance upon or against a Dwelling Unit or portion of the Committed Property in favor of the Association is hereby declared to be, and shall be, subject, subordinate and inferior to the lien of any mortgage encumbering such Dwelling Unit or portion of the Committed Property when such mortgage is made by an Institutional Mortgagee, regardless of whether such mortgage was made or recorded before or after the aforesaid lien or encumbrance of the Association.

Section 4. Rules and Regulations: The Board of Directors shall have the power to promulgate rules and regulations which shall govern the use of the Association property. Such rules and regulations may be amended, altered, or changed by the Board from time to time.

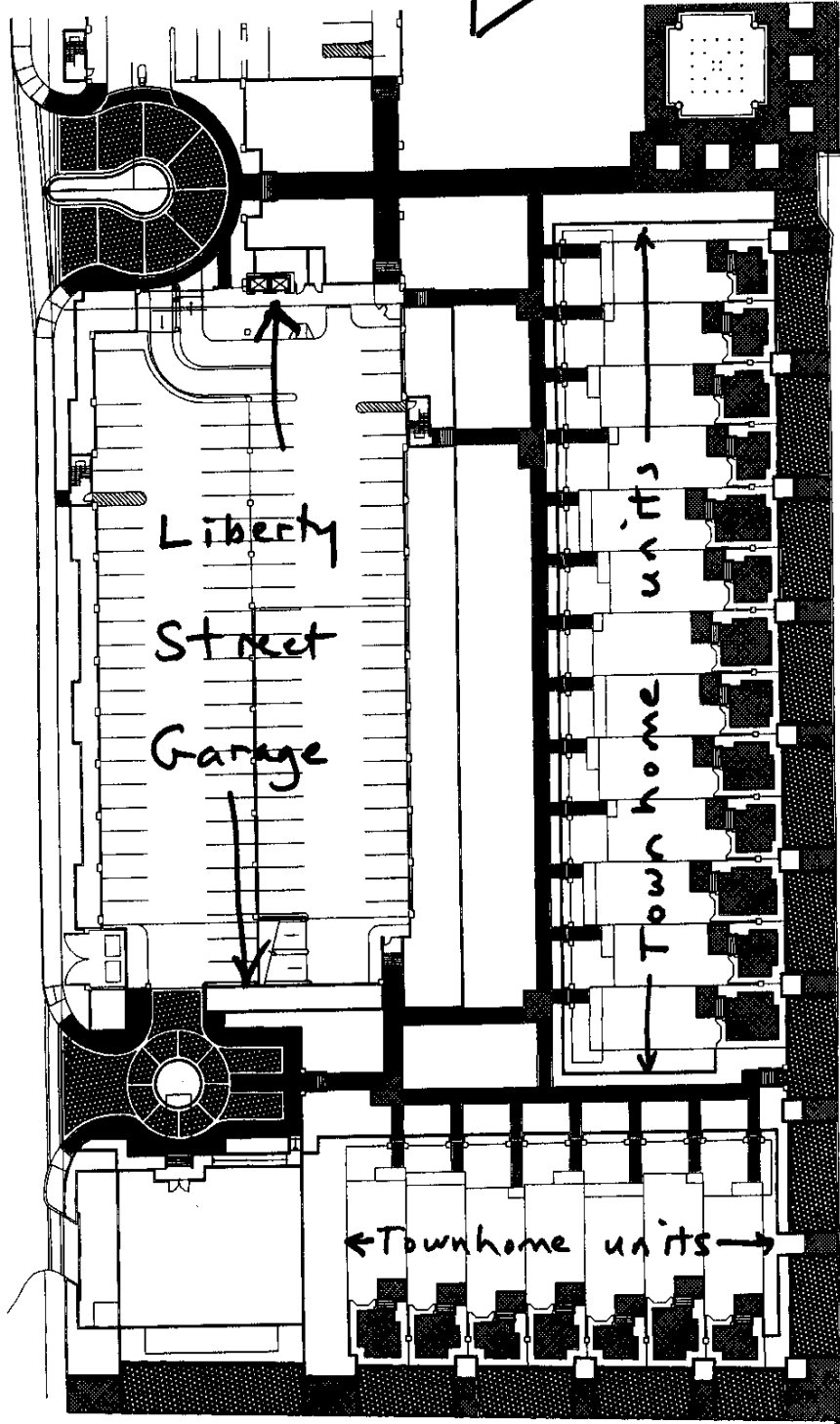
The foregoing were adopted by the Board of Directors as the Bylaws of BERKMAN PLAZA TOWNHOMES HOMEOWNERS ASSOCIATION, INC., as of this 20th day of April, 2001.

By: /s/ Alan J. Travis
Alan Travis, President

Part of Berkman Plaza Development
not depicted on this Property Plan.



Liberty Street



St
Johns
River

St Johns River
PROPERTY PLAN
EXHIBIT "D"