

THIS AGREEMENT is made this 10th day of May, 1983, by and between Necdet Senturk, herein called "Senturk", and The Beachcomber Condominium Association, Inc., a Florida corporation not for profit, herein called "Association". This contract shall be binding upon and inure to the benefit of the Parties, and their respective heirs, devisees, legal representatives, successors in interest and assigns.

FOR VALUE RECEIVED, in consideration of the mutual promises stated in this document, and other good and valuable consideration, the receipt and legal sufficiency of which consideration is acknowledged by the Parties, the Parties hereby agree as follows

1. Overview.

Senturk has essentially completed construction of The Beachcomber, a twelve (12) unit condominium ("condominium"). The lands comprising the condominium and containing the improvements constituting the condominium ("condominium lands") are more particularly described in Schedule A attached to this instrument and incorporated by this reference. The condominium lands and the improvements have been submitted to the condominium form of ownership by virtue of the Declaration Of Condominium Of The Beachcomber, A Condominium ("declaration"), as recorded under Clerk's No. 83-34872 of the current public records of Duval County, Florida. Senturk is the fee simple owner of adjoining lands containing an existing swimming pool ("swimming pool"), which lands are more particularly described in Schedule B attached to this instrument and incorporated by this reference and which lands and the swimming pool improvements are graphically shown in Exhibit A to the declaration even though the swimming pool improvements and the lands within which they lie were not submitted to condominium ownership by virtue of the declaration. Senturk is also the fee simple owner of other adjoining lands ("other lands not in condominium"), which are more particularly described in Schedule C, attached hereto and incorporated by this Declaration, although like the swimming pool the other lands not in condominium were not submitted to condominium ownership by the declaration. This day, Senturk has conveyed the swimming pool to the Association by warranty deed recorded under Clerk's No. 83-34873 of the current public records of Duval County, Florida. The present, overall development plan of Senturk is to develop the condominium, which has now been substantially done, to not submit the swimming pool to the condominium under the declaration but to convey it to the Association, which has now been done, and to perhaps in the future to develop a separate condominium on the other lands not in the condominium, with the right of the developer and his successors in interest to use and enjoy the swimming pool under a contractual relationship with the Association. It is the purpose of this contract to establish certain rights and duties between

THIS INSTRUMENT WAS PREPARED BY:
WILLIAM B. RYAN, JR., ATTORNEY
SCHNEIDER, DUNAY, RYAN & MARKS, P. A.
SUITE 20, 2105 PARK AVENUE,
ORANGE PARK, FLORIDA 32073

RETURN TO: WBR
c/o SCHNEIDER, DUNAY, RYAN & MARKS, P. A.
SUITE 20, 2105 PARK AVENUE,
ORANGE PARK, FLORIDA 32073

OFFICIAL RECORDS

OFFICIAL RECORD

Senturk and the Association concerning the ownership, use and enjoyment of the swimming pool.

2. Establishment Of Value Of Swimming Pool.

Senturk has not required and shall not in the future require the Association to pay him any cash or property for the swimming pool as the transfer of his interest in and to the swimming pool to the Association is part of his present, overall development plan. However, it is expressly agreed that for documentary and income tax purposes the value of the swimming pool, including the lands and the improvements is \$ 30,000.00.

3. Release Or Subordination By Existing Mortgagees.

At the time of the making of this contract, some or all of the swimming pool is encumbered by a construction loan mortgage for the development of the condominium in favor of the Southeast Bank, N.A., and a purchase money mortgage in favor of Leonard Shan a single man. By instruments respectively recorded under Clerk's No. 83-34875 and No. 83-34876, those mortgagees have either released the lien of their mortgage as to the swimming pool or have subordinated their interest to the terms and conditions of this instrument in the same manner and to the same extent as they did for the declaration.

4. Ownership And Control Of Swimming Pool.

Subject to certain rights expressly granted to Senturk, and his successors and assigns, in this instrument, the ownership and control of the swimming pool shall be by the Association, which shall be entitled to adopt assessments for maintenance of the swimming pool and to adopt rules and regulations for use of the swimming pool to the extent provided by the declaration, which assessments, rules and regulations shall be binding upon owners of units in the condominium and upon Senturk and his successors in interest for the other lands not in condominium.

5. Ownership, Maintenance And Use Of Swimming Pool As Appurtenance To Condominium.

Although the swimming pool has not been submitted to the condominium by the declaration, its ownership, maintenance and use shall be an appurtenance to each unit in the condominium as follow:

- (a) This ownership as an appurtenance shall at all times be subject to the terms and conditions of this instrument
- (b) The Association shall not encumber or divest its ownership in the swimming pool without the prior written consent of all owners of all units in the condominium.
- (c) The ownership, maintenance and use of the swimming pool shall be an appurtenance to each unit in the condominium

OFFICIAL RECORDS

OFFICIAL RECORDS

by virtue of the fact that the declaration provides that membership in the Association is an appurtenance to each unit in the condominium.

- (d) These appurtenant rights and duties in connection with the swimming pool shall pass with the title to each unit in the condominium whether or not expressly provided in any conveyance, mortgage or lien.
- (e) No owner of any unit in the condominium shall be entitled to separately transfer these appurtenant rights and duties, which in all events shall pass only with title to the unit in the same manner as is provided for other appurtenances in the declaration.

6. Rights And Duties Of Senturk And Successors In Interest To Use And Maintenance Of Swimming Pool.

The rights and duties of Senturk and his successors in interest to the use and maintenance of the swimming pool shall be as follows:

- (a) The other lands not in condominium are presently improved with motel improvements as are shown in Exhibit A to the declaration, although they have not been made subject to the condominium by the declaration. Senturk hereby covenants in favor of the Association to entirely remove the existing motel improvements at his expense not later than thirty (30) days after the date upon which he fully retires the existing construction loan for the condominium in favor of the Southeast Bank. From the date of recordation of the declaration to and through the date of removal of the motel improvements, Senturk shall not allow any owner, occupant, or invitee of or to the motel improvements to use or enjoy the swimming pool.
- (b) The rights of Senturk and his successors in interest to the use and enjoyment of the swimming pool presently vest at the time of the making of this instrument, but shall not be subject to exercise unless and until Senturk should substantially complete development of the separate condominium on the other lands not in condominium and should receive a certificate of occupancy or similar instrument from the governmental body having jurisdiction.

OFFICIAL RECORDS

OFFICIAL RECORDS

- (c) Likewise, the duties of Senturk and his successors in interest to contribute to the maintenance of the swimming pool presently vest but shall not be subject to performance until the issuance of the certificate of occupancy or similar instrument.
- (d) Senturk is hereby granted and hereby reserves easements over, under, in and through the swimming pool for the purpose of pedestrian traffic by owners, tenants and social invitees of the separate condominium if developed on other lands not in condominium, which easements shall be of equal dignity with the rights of access and use of the swimming pool as exist by virtue of this instrument for owners, tenants and social invitees for the condominium.
- (e) The rights and duties in favor of and imposed upon Senturk and his successors and assigns for use and maintenance of the swimming pool shall be an appurtenance to units in the separate condominium if developed on other lands not in condominium in the same manner and to the same extent as provided in the foregoing paragraph 5, for appurtenances to the units within the condominium, except, of course, Senturk and his successors and assigns if the separate condominium on other lands not in condominium is developed shall not be entitled to membership in the Association, and, therefore, shall not be entitled to fee simple ownership of the swimming pool.
- (f) If at any time the condominium and the Association are dissolved as permitted by applicable provisions of contract or law, such dissolution shall not act to mitigate, discharge, or enlarge the rights and duties of Senturk and his successors and assigns in and to the use and maintenance of the swimming pool.
- (g) The rights of Senturk and his successors and assigns in and to the use of the swimming pool shall be of equal dignity to the rights and use of the owners, tenants and invitees of units in the condominium, but shall also be subject with equal application to rules and regulations adopted by the Association from time to time under the powers granted to the Association by the Declaration and by law. No rule or regulation so adopted by the Association shall directly or indirectly impose a greater burden upon Senturk and his successors and assigns than is imposed upon owners, tenants and invitees of units in the condominium.
- (h) Senturk and his successors and assigns shall be subject to assessments for maintenance of the swimming pool as adopted from time to time by the Association pursuant to the powers granted to the Association by the decla-

VOL. 5836 PG 67

OFFICIAL RECORDS

ration and by applicable law. These assessments shall be a personal obligation of Senturk and his successors and assigns, jointly and severally, and shall also be a lien upon the other lands not in condominium, shifting to units if and when the separate condominium is developed upon other lands not in condominium, in the same manner as is now provided for the effect and enforcement of assessments against units in the condominium by the Declaration.

In the adoption of such assessments, Senturk and his successors in interest shall have no voting rights and shall thereby be subject to whatever the Association adopts so long as such assessments are adopted by the Association in accordance with the provisions of the Declaration and applicable law and so long as such assessments are based upon fair and equitable principles established by the Association by considering such factors as the number of persons using and enjoying the swimming pool within the condominium and the resulting separate condominium on other lands not in condominium.

7. Applicable Laws And Remedies.

In connection with the interpretation and enforcement of this contract, the rules shall apply:

- (a) This instrument shall be construed and enforced according to the laws of the State of Florida.
- (b) A waiver of a right, duty or default under this contract shall not constitute a waiver of such right, duty or default at another time, or of any other right, duty or default at any time.
- (c) No modification or waiver of the rights and duties created by this instrument shall be binding unless it is made in writing and signed by all of the parties having an interest in and to this instrument at that time.
- (d) In the event of a default under this instrument, the rights of the defaulting Party(s) shall not automatically terminate, but, rather, the defaulting Party(s) shall have thirty (30) days following the date of default within which to fully cure the default.
- (e) In any action by the Association to enforce an assessment, rule or regulation against Senturk and his successors in interest it is expressly agreed that the Association shall be the proper party for representation of all owners, mortgagees, lienholders, tenants, and invitees of units within the condominium. In any such actions, the proper party's defendants shall be determined by then applicable Florida procedural and substantive laws but in all events in the same manner as party's defendants.

Vol. 5836 PG 68
OFFICIAL RECORDS
(F)

would be determined for enforcements of assessments by the Association under the terms of the declaration against persons or parties having an interest in the condominium by virtue of the declaration.

In all other other actions under this instrument, it is expressly agreed that the Association shall be the representative of all owners, mortgagees or lienholders, tenants and invitees of units in the condominium with service of process being in the same manner as provided by applicable law for service of process upon the Association. In such event and if Senturk has not then developed the separate condominium on lands not in condominium to the point of the issuance of the certificate of occupancy; the proper party's defendant shall be as established by then applicable provisions of Florida procedural and substantive laws. If, however, the separate condominium on lands not in condominium has then been created and a corporation not for profit has been formed for that separate condominium, then that corporation not for profit shall be the proper party representing all owners, mortgagees, tenants, and invitees of units in the separate condominium with service of process being as then provided by applicable provisions of Florida law upon corporations not for profit.

- (g) All persons or parties who are entitled to enforce this instrument shall be entitled to all rights and remedies provided by Florida law, including but not limited to the right and remedy of specific performance. In any court or agency action arising out of this instrument, the prevailing party(s) shall be entitled to recover all cost and a reasonable attorney's fee including all levels of appeals.
- (h) Notwithstanding the domicile of any person or party having a right of enforcement under this instrument, it is expressly agreed that in the event of any court action concerning this instrument that jurisdiction and venue shall lie within the appropriate court within Duval County, Florida.
- (i) Except in case of enforcement by the Association of duly adopted assessments that remain unpaid by Senturk or his successors interest, or duly adopted regulations which not being complied with by Senturk or his successors interest, which the Association shall be required to initially pursue through the appropriate court within Duval County, Florida, all other disputes concerning the

OFFICIAL RECORDS

OFFICIAL RECORDS

interpretation and performance of this instrument shall be first submitted to this non-binding arbitration procedure before resort to the appropriate court, and if resort to the appropriate court is first made contrary to the provisions of this non-binding arbitration provision, that court shall have the power to order the parties to proceed with this non-binding arbitration before the court takes any action in regard to any such case. The Association shall select one arbitrator. Senturk or his successors in interest as a class shall also select one arbitrator, but in the event that a decision cannot be reached as to the identity of such arbitrator, the court having jurisdiction shall have the power to designate and appoint the arbitrator representing Senturk or his successors in interest as a class. Those two arbitrators shall select a third arbitrator within ten (10) days following the date of the appointment of the first two (2) arbitrators. The three (3) arbitrators shall consider such evidence as they deem appropriate without consideration of the technical rules of evidence for court litigation and shall reach a decision based upon a simple majority vote of the three (3) arbitrators. Except for extraordinary events excusing performance, the panel of arbitrators shall consider such evidence and reach a decision within thirty (30) days after the identity of all three (3) arbitrators. The reasonable fees and expenses of the three (3) arbitrators shall be paid one-half by the Association and one-half by Senturk or his successors in interest, which in the latter event shall be borne on a pro-rata basis (in the event that the representation at that time is by a corporation not for profit for the separate condominium on other lands not in condominium, those fees and expenses shall be paid by that Association). If in good faith either side to this non-binding arbitration decides that it shall not abide by the finding of the arbitrators, then the issue shall be submitted to the appropriate court; provided, however, it is expressly agreed that the decision of the arbitrators shall be admissible into evidence before the appropriate court and that the appropriate court shall be entitled to consider the finding of the panel of arbitrators in making the court's final determination.

8. Effect Of This Instrument Upon Mortgagees And Lienholders.

Mortgagees and lienholders for units in the condominium, for lands not in condominium, or for units in the separate condominium if and when it is developed upon other lands not in condominium, shall be entitled to the benefits and shall be subject to the duties created under this instrument to the same extent and in the same manner as is provided for mortgagees and lienholders of units in the condominium under the declaration.

VOL 5836 PG 70

OFFICIAL RECORDS

9. Conflicts Between Instruments.

In the event that there is a conflict between the Declaration, this instrument, and any declaration that Senturk may impose upon other lands not in condominium, that conflict shall be resolved by this priority, first priority shall be given to the terms and conditions of the declaration, second priority shall be given to the terms and conditions of this instrument, and last priority shall be given to the terms and conditions of any declaration that Senturk may in the future impose upon other lands not in condominium.

10. Termination Of This Instrument.

As stated above, the dissolution of the declaration and the Association shall not automatically terminate this instrument, which shall survive such dissolution. Therefore, it is expressly agreed that this instrument shall not be terminated except by an order of court having jurisdiction under then applicable provisions of law and contract or by a mutual, written agreement between all owners of the condominium and all owners of other lands not in condominium.

11. Effect Of This Instrument.

In addition to any other express provisions contained in the foregoing sections of this instrument, it is expressly agreed that all provisions of this instrument are enforceable equitable servitudes running with the title to the swimming pool (the lands constituting the swimming pool) and other lands not in condominium. Although the rights and duties under this instrument are expressly provided as an appurtenance to the title to units in the condominium, this instrument does not constitute an equitable servitude running with the title to the lands constituting the condominium as described in Schedule A to this instrument and the declaration.

12. Counterparts.

This instrument and other documents or instruments issued pursuant to it may be made in two or more counterparts. In such event, and in the event it becomes necessary to prove this instrument or any other such instruments, it shall only be necessary to prove one counterpart. Further, as regards proof of this instrument, a certified copy of this instrument from the Clerk of the Circuit Court for Duval County, Florida, as this instrument is recorded in that office, shall be sufficient evidence of this instrument.

VOL. 5836 PG. 71.

OFFICIAL RECORDS

13. Limited Warranty By Senturk As To Swimming Pool.

Because the swimming pool is being conveyed to the Association outside of the condominium as created by the Declaration, it is understood and agreed that the provisions of the "Roth Act", Florida Statutes 718 Part VI (1982) do not apply. However, Senturk makes this limited warranty to the Association concerning the quality of the improvements constituting the swimming pool: As of the time of the execution of this contract the improvements constituting the swimming pool are in compliance with applicable health or other public codes and are operational as a swimming pool in accordance with reasonable use of the existing improvements. From and after the date of the making of this contract, the Association assumes all responsibility in connection with compliance with health codes and other public laws and regulations and with the maintenance and use of the swimming pool. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED ARE HEREBY EXPRESSLY EXCLUDED.

14. Easement For Condominium.

Senturk and the Association hereby create in favor of all owners, mortgagees, lien holders, tenants, and invitees of units in the condominium easements over, under, in and through the swimming pool for the purpose of pedestrian traffic to and from the condominium lands and the swimming pool by owners, tenants, and social invitees of units in the condominium, which easements shall be of equal dignity with the rights of access and use of the swimming pool as are created in paragraph 6 of this instrument in favor of Senturk and his successors in interest.

15. Other Agreements Concerning Swimming Pool.

In addition to any of the other foregoing provisions, these additional agreements apply:

- (a) It is expressly agreed that as regards the rights created by this instrument in favor of Senturk and his successors in interest as owner of the other lands not in condominium, there shall exist no rights except as expressly and implicitly contained in this instrument so that in no event shall the Declaration be construed as a third party beneficiary contract for Senturk or his successors' interest for the other lands not in condominium. Conversely, any later declaration imposed by Senturk for the separate condominium if developed upon other lands not in condominium shall not be a third party beneficiary, contract in favor of the Association for any owners of units in the condominium.
- (b) For pertinent issues, including but not limited to insurance, reconstruction and repair, the swimming

9. Conflicts Between Instruments.

In the event that there is a conflict between the Declaration, this instrument, and any declaration that Senturk may impose upon other lands not in condominium, that conflict shall be resolved by this priority, first priority shall be given to the terms and conditions of the declaration, second priority shall be given to the terms and conditions of this instrument, and last priority shall be given to the terms and conditions of any declaration that Senturk may in the future impose upon other lands not in condominium.

10. Termination Of This Instrument.

As stated above, the dissolution of the declaration and the Association shall not automatically terminate this instrument, which shall survive such dissolution. Therefore, it is expressly agreed that this instrument shall not be terminated except by an order of court having jurisdiction under then applicable provisions of law and contract or by a mutual, written agreement between all owners of the condominium and all owners of other lands not in condominium.

11. Effect Of This Instrument.

In addition to any other express provisions contained in the foregoing sections of this instrument, it is expressly agreed that all provisions of this instrument are enforceable equitable servitudes running with the title to the swimming pool (the lands constituting the swimming pool) and other lands not in condominium. Although the rights and duties under this instrument are expressly provided as an appurtenance to the title to units in the condominium, this instrument does not constitute an equitable servitude running with the title to the lands constituting the condominium as described in Schedule A to this instrument and the declaration.

12. Counterparts.

This instrument and other documents or instruments issued pursuant to it may be made in two or more counterparts. In such event, and in the event it becomes necessary to prove this instrument or any other such instruments, it shall only be necessary to prove one counterpart. Further, as regards proof of this instrument, a certified copy of this instrument from the Clerk of the Circuit Court for Duval County, Florida, as this instrument is recorded in that office, shall be sufficient evidence of this instrument.

OFFICIAL RECORDS

VOE 5836 FE 73

OFFICIAL RECORDS

pool shall be treated in the same manner as is now provided in the Declaration for common elements within the condominium even though the swimming pool is not a common element of the condominium. In that regard, neither Senturk nor his successors in interest of the other lands not in condominium shall have any rights in determining issues concerning insurance, reconstruction, repair or the like; provided, however, when the rights and duties of Senturk and his successors in interest for other lands not in condominium become subject to exercise and performance as provided in this instrument, he and they shall be entitled to become additional insureds or beneficiaries of any insurance covering the swimming pool maintained by the Association with the premiums for such insurance to be a part of the assessment for the maintenance and use of the swimming pool as established by the Association from time to time and with Senturk and his successors and assigns being subject to liability in favor of the Association for any acts or omissions to act which increase the expense of that insurance to the same extent and in a similar manner as is provided in the Declaration for such liability being imposed upon owners of units in the condominium.

- (c) Senturk agrees that in the event that he should develop the separate condominium upon other lands not included in condominium that he will make the terms and conditions of any such resulting declaration subordinate to and subject to the terms and conditions, rights and duties of this instrument.

This instrument was mutually and fully executed upon the dates stated below.

Signed, sealed and delivered in the presence of:

Witnesses as to Senturk: W Blyard, Myra Thompson. Date: 5/10/83. Necdet Senturk. 'Senturk'

Witnesses as to Association: W Blyard, Myra Thompson. Date: 5/10/83. By: Necdet Senturk, President. 'Association'. THE BEACHCOMBER CONDOMINIUM ASSOCIATION, INC. 1983 MAY 10 10 00 AM

OFFICIAL RECORDS

STATE OF FLORIDA)
COUNTY OF Clay)

This instrument was acknowledged before me this 10th day
of May, 1983, by Necdet Senturk.

William Benedict Senturk
Notary Public, State of Florida

My commission expires: 3/4/84

STATE OF FLORIDA)
COUNTY OF Clay)

This instrument was acknowledged before me this 10th day
of May, 1983, By Necdet Senturk, President of The Beachcombe
Condominium Association, Inc., a Florida corporation not for profit,
on behalf of the corporation.

William Benedict Senturk
Notary Public, State of Florida

My commission expires: 3/4/84