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THIS INSTRUMENT PREPARED BY,
RECORD AND RETURN TO:
Leonard Lubart, Esq.
Greenspoon, Marder, Hirschfeld
Rafkin, Ross & Berger, P.A.
100 West Cypress Creek Road, Suite 700
Fort Lauderdale, Florida 33309

EASEMENT AND MAINTENANCE AGREEMENT
FOR ACCESS, INGRESS, EGRESS AND RECREATIONAL USE

THIS AGREEMENT, made and entered into this 19th day of October, 2000, by and between DAYTONA BEACH RESORT AND CONFERENCE CENTER CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit (hereinafter referred to as the "Association") and DAYTONA BEACH RESORT, L.L.C., a Florida limited liability company (hereinafter referred to as "Developer").

W I T N E S S E T H:

WHEREAS, the Developer is the Owner of the Property set forth on Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Property"); and

WHEREAS, the Developer has created or shall cause to be created on a portion of the Property that certain condominium known as DAYTONA BEACH RESORT AND CONFERENCE CENTER, A CONDOMINIUM RESORT (hereinafter referred to as the "Condominium"); and,

WHEREAS, the Condominium shall be developed in up to eighteen (18) Phases; and

WHEREAS, the legal descriptions for the proposed Phases (if, as and when submitted to the condominium form of ownership in accordance with the Declaration of Condominium for DAYTONA BEACH RESORT AND CONFERENCE CENTER, A CONDOMINIUM RESORT) are set forth on Exhibit "B" attached hereto; and,

WHEREAS, the Developer shall reserve unto itself, its successors and assigns a fee simple interest on the land and air space not submitted to the Condominium, including the subsurface underlying the Condominium Property, the air space rising above the surface of the land up to the boundary of the commencement of the lower level of the Condominium Property, and pending the submission of any additional Phases shall further reserve all right, title and interest in the air space constituting all proposed future Phases of the Condominium as hereinafter referenced (hereinafter referred to as the "Retained Property"); and,

WHEREAS, the Association is the entity responsible for the preservation, maintenance, repair, upkeep and management of the Condominium Property; and,

WHEREAS, the Developer desires to grant in favor of the Association a right of access, ingress, egress and use upon portions of the Retained Property; and,

WHEREAS, the Developer and the Association shall grant unto each other certain mutual easements as more particularly set forth herein; and,

WHEREAS, the Association shall be required to pay a proportionate amount to the Developer for the privilege of using certain portions of the Property.

NOW, THEREFORE, in consideration of Ten ($10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Representations**. The representations as set forth above are true and correct and are made a part hereof.

2. **Terms**. The terms not otherwise defined herein shall have the meanings as set forth in the Declaration of Condominium for the Condominium Property, if so defined, unless the context clearly requires otherwise.

3. **Easements in Favor of the Association for Utilities and Support**. The Association and each member of the Association, jointly and severally, shall have the following easements of access, ingress and egress over portions of the Retained Property:

a. An easement of access, ingress and egress over and through all portions of the Retained Property as may be necessary to provide access to the Condominium Property, including, but not limited to, an easement for access, ingress and egress to all stairwells and elevators for the purpose of having access, ingress and egress to the Condominium Property.

b. An easement of access for all utilities for the provision of water, gas, electricity and telephone, as well as sewage lines presently existing or hereafter constructed, including all facilities for the delivery of cable television, air conditioning, heating and garbage disposal and an easement for use of the elevator shafts and every other means of access to all portions of the Condominium Property, including access to the roof and basement areas as may be necessary to service, maintain and provide for utilities and electrical services.

c. An easement of subjacent and lateral support in every portion of the Retained Property and building underlying the Condominium Property and the air space located in proposed future Phases which contributes to the support of the Condominium Property.

4. **Easements in Favor of Developer for Utilities and Support**. The Developer, its successors, assigns, licensees and grantees shall have an easement of access, ingress and egress through all portions of the Condominium Property as may be necessary to have access to all portions of the Retained Property. Such easement shall include access, ingress and egress to all stairwells, elevators and utilities for the provision of water, gas, electricity and telephone, as well as sewage lines presently existing or hereafter constructed and including all facilities for the delivery of cable television, air conditioning, heating and garbage disposal. The Developer, its successors, assigns, licensees and grantees shall also have an easement of subjacent and lateral support and all other support in every portion of the Condominium Property which contributes to the support of the Retained Property.

5. **Right of First Refusal - Cable Television, Satellite, Internet or Other Telecommunication Services**. Notwithstanding anything contained herein to the contrary, the Developer hereby reserves unto itself, and the Association hereby grants in favor of the Developer, a right of first refusal with respect to the installation of cable television service, satellite, internet or

other telecommunication services (collectively referred to as "Telecommunication Services") in the Condominium. In this regard, the Association hereby grants unto the Developer a right of first refusal for future installation of Telecommunication Services. In the event that the Association elects to have any Telecommunication Service installed in the Condominium, the Developer shall have a right of first refusal to install the Telecommunication Service upon the same terms and conditions as are contained in the offer for similar service by a third party. The Developer shall exercise such right of first refusal within fifteen (15) days of the date of notice provided by the Association to the Developer.

6. **Cross Easements**. The Association and each of its members, jointly and severally, and the Developer, its successors, assigns, licensees and grantees shall have cross easements for the use of all sidewalks, building facade, building superstructure, roofs, meter and pump rooms, utilities lines, pipes, conduits, closets, shafts, shoots, ducts and all similar items and equipment used in connection with the mechanical, electrical, plumbing and other utility services.

7. **Easements in Favor of Association for Use of Recreational and Other Commonly Used Facilities**. The Developer does hereby grant, declare, create and establish in favor of the Association and each member of the Association, jointly and severally, easements over portions of the Retained Property for the use and enjoyment of certain areas which shall for the purposes hereof be defined as "Recreational and Other Commonly Used Facilities" and are designated as such on Exhibit "C".

The foregoing easements shall also be specifically subject to rules and regulations as may be established and adopted from time to time by the Developer in its sole discretion and shall be further conditioned upon payment by the Association of its pro rata share of the costs and expenses incurred in the operation, maintenance and management of the Recreational and Other Commonly Used Facilities as referenced herein pursuant to the terms and conditions hereinafter set forth. It is specifically understood and agreed that the Developer, its successors and assigns shall have the full right and authority to control and manage the Recreational and Other Commonly Used Facilities referenced herein subject to the easements herein granted.

The easements set forth herein shall include an easement for access, ingress and egress as may be reasonably necessary throughout those portions of the Retained Property so as to have access to the Recreational and Other Commonly Used Facilities referenced herein.

All portions of the Retained Property referenced herein and designated as Recreational and Other Commonly Used Facilities shall be those areas as designated on the Survey, Plot Plan and Graphic Description of Improvements attached as Exhibit "B" to the Declaration of Condominium for Daytona Beach Resort and Conference Center, a Condominium Resort.

8. **Maintenance Obligations of the Association with Respect to Utilities, Elevator, Roof, Roof Support, Electrical and Mechanical Systems**. The Association and its members, jointly and severally, shall be responsible for all of the following costs in connection with the easements of access, ingress, egress and use granted herein as follows:

a. All costs and expenses directly or indirectly related to the maintenance of the elevators and elevator shafts, including all freight and/or service elevators as more particularly designated on the Survey, Plot Plan and Graphic Description of Improvements attached as Exhibit "B" to the Declaration of Condominium for Daytona Beach Resort and Conference Center, a Condominium Resort.

b. All costs and expenses incidental to maintenance and servicing of all water lines and equipment; gas lines and equipment; electricity systems and equipment; sewage lines;

plumbing lines; fixtures and equipment; air conditioning systems and equipment; heating systems and equipment; garbage disposal and the delivery of telecommunication services.

c. All expenses incurred for the maintenance, repair: or replacement of the roof and all structural components and systems comprising the Condominium Property.

Notwithstanding anything contained herein to the contrary, the obligation of the Association for the costs and expenses set forth herein shall apply irrespective of the fact that some or all of these systems and equipment referenced herein, including electrical, mechanical, water, plumbing, sewage and other systems, shall not be contained within the boundaries of the Condominium Property or that some of such systems service all or any portion of the Retained Property.

9. **Association's Responsibility of Maintenance of Recreational and Other Commonly Used Facilities**. In addition to the Association's responsibility for payment of the expenses as set forth in Paragraph 8 hereof, the Association shall be required to pay assessments as shall, be established from time to time by the Developer and approved by the Association as described herein. Such assessments shall be directly related to the Recreational and Other Commonly Used Facilities described herein by the Association and its members. In accordance with the foregoing, the Association shall be responsible for the following expenses:

a. Ninety (90%) percent of the total charges for a water and sewer service supplied to the Property.

b. Thirty-five (35%) percent of all real property and personal property taxes assessed against the Property, exclusive of taxes assessed directly with respect to the Condominium Property.

c. Thirty-five (35%) percent of all electricity and gas charges incurred with respect to the Property, exclusive of the charges for electricity and gas incurred directly with respect to the Condominium Property.

d. Ninety (90%) percent of all expenses incurred in the maintenance, management, repair and operation of the main lobby, pool deck area, front entrance and driveway area, and front entrance building facade, which expenses shall include, but not necessarily be limited to, the furniture and furnishings therein, the floor, ceiling and equipment associated therewith, including all glass fixtures and including labor expenses, including Federal and State employee and employer taxes associated therewith, and all other expenses related to the use, maintenance and upkeep of such areas including reasonable reserves for replacement.

The Developer shall be responsible for the remainder of the expenses not borne by the Association and shall be responsible, directly or indirectly, for all expenses for management, upkeep, repair and replacement of the Retained Property not included within the Recreational Other Commonly Used Facilities designated for use by Owners.

For all years subsequent to the first fiscal year of the Association (for the first fiscal year being the period commencing the date hereof through December 31, 2000, or such other fiscal years may be adopted by the Association as the first fiscal year), the Developer shall provide to the Association, within thirty (30) days following the end of any such fiscal year, an estimated operating budget for Recreational and Other Commonly Used Facilities, as set forth herein, for the expenses described above for the ensuing year of the Association, together with a statement of expenditures for all such expenses incurred by the Developer in the maintenance of such areas for the proceeding

fiscal year of the Association. The Association shall have thirty (30) days from the delivery of said notice by the Developer in which to approve or reject the budget provided by the Developer or, in the alternative, to suggest an alternative budget. Failure of the Association to respond in writing within said thirty (30) day period shall be deemed to be an approval by the Association of the assessment. In the event the budget, as proposed by the Developer, is not approved by the Association as set forth herein, the Association shall continue to pay the assessments applicable for the previous year. The Developer shall, in its sole discretion, be entitled to increase the total assessment by a sum not to exceed fifteen (15%) percent of the previous year's assessments until such budget has been approved by the Association in order to cover any projected deficits.

In the event the Developer shall at any time (except during the first fiscal year of the Association) determine that the estimated amount assessed to the Association for use of the Recreational and Other Commonly Used Facilities is insufficient to pay the actual maintenance cost thereof (including reserves), the Developer shall immediately notify the Association of the deficit and request the Association to approve a special assessment in order to pay the deficit. The Association shall approve or reject the special assessment within fifteen (15) days of delivery of notice thereof by the Developer. Failure of the Association to respond in writing within the fifteen (15) day period shall be deemed to be an approval of the Association of the assessment. The special assessment shall be payable by the Association within thirty (30) days of approval, as provided for herein. However, the Developer may not request and the Association may not impose such a special assessment during any time that a developer guarantee of the Estimated Operating Budget is in effect.

All payments (except special assessments which are due as provided for in the notice of special assessment) required to be made hereunder by the Association to the Developer shall be payable by the Association on a monthly basis, all payments due in advance on the first day of each month.

Notwithstanding anything contained herein to the contrary, the Developer shall not be required to subsidize any deficits caused by an insufficiency in the budget, including, but not limited to, a failure by the Association to approve any operating budget proposed by the Developer or to approve any special assessment proposed by the Developer. In this regard, it is understood that the Developer, its successors and assigns shall not be liable to the Association nor any member of the Association for a lack of adequate service or for failure to properly maintain the Recreational and Other Commonly Used Facilities in the event the Association fails to approve the budget proposed by the Developer or any special assessment.

In addition to the budget referenced herein, the Developer may, at its option, provide to the Association a separate budget for the costs and expenses set forth in Paragraph 7 hereof or may provide for such items of expense to be directly billed to the Association if, as, and when necessary.

10. **Developer's Obligation to Maintain Future Phases Pending the Submission of Future Phases to Condominium Ownership**. The Developer shall be responsible for the costs and expenses of all interior maintenance of the Property included within proposed future Phases and specifically excluding any of the expenses for which the Association is liable pursuant to the provisions of Paragraph 8 hereof. In this regard, it is understood that the Developer shall be solely responsible for all repairs and maintenance of future Phases only to the extent of interior maintenance, together with the maintenance of any electrical, mechanical or plumbing systems and equipment located solely within the interior boundaries of future Phases. If, as and when future Phases are submitted to the condominium form of ownership, the Developer's maintenance obligations pursuant to the terms hereof shall cease and thereafter the Association shall be solely responsible for the maintenance thereof.

Pending the submission of future Phases to the condominium form of ownership the Developer and the Association shall share expenses for utility services furnished to such future Phases and for maintenance and service of the elevators servicing the Condominium Property in proportion to which the square footage of all undeclared future Phases (floor space and not cubic feet) bears to the entire square footage (floor space and not cubic feet) of all declared and undeclared Phases of the Condominium Property. In this regard, such expenses shall be payable monthly based upon a statement rendered by the Association to the Developer setting forth the amount of the Developer's share for such expenses, together with a copy of supporting documents identifying the costs for such services. Such statement shall set forth the basis for the calculation of such expenses and the Developer shall have the right, in its sole discretion, to provide separately for utility services to future Phases in which case the Developer shall cease to be responsible for its pro rata share of expenses for maintaining or furnishing such utility services.

11. **Failure to Pay Assessments**. In the event the Association shall fail to pay the assessments established and assessed in accordance with the terms hereof or shall fail to pay such other sums as may be due and payable in accordance with the terms of this Agreement, the Association shall be deemed to be in default and the Developer may notify the Association of the suspension of the privilege to use and enjoy the Recreational and Other Commonly Used Facilities referenced herein, together with such other easements for access, ingress, egress and use as are described herein. Upon delivery of such notice, the Association and all Unit Owners shall thereafter be denied access to the Recreational and Other Commonly Used Facilities and such easement rights as are otherwise described herein until such time as all arrears and assessments and other financial obligations set forth herein have been paid in full. However, any such denial of access to the Recreational and Other Commonly Used Facilities shall not be deemed to include a denial of access to the Owner's own Unit. In the event of the failure to pay any assessments or other charge due hereunder when due, the Developer shall be entitled to charge and collect interest on such unpaid assessments or other sums from the date due at the highest lawful rate of interest allowable under Florida law.

The Developer shall have a lien on each condominium parcel in the Condominium for unpaid assessments and other charges, with interest thereon, and for reasonable attorneys' fees incurred by the Developer incident to the collection of the assessment or other charge and the enforcement of any lien. The lien shall be effective from and after the recording of a Claim of Lien in the Public Records of Volusia County, Florida. The Developer may bring an action in its name to foreclose a lien for assessments or other charges in the manner a mortgage on real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments or charges without waiving any claim of lien. The remedies provided herein shall be non-exclusive and cumulative and shall not exclude any other remedy available to the Developer by this Agreement, law or otherwise.

12. **Developer's Right to Make Any Legal Use of Property Included Within "Reserved Rights of Developer"**. It is understood and agreed that the Developer shall have the right, in its sole discretion to make any legal use of the Retained Property including, but not limited to, the right to further improve the Retained Property, including the expansion or construction of additional recreational facilities and further including the construction of additional buildings upon the Retained Property which may include, but not necessarily be limited to, condominiums, apartments, co-operatives, timeshare units, commercial buildings, additional hotel units, a gambling casino or any other structure authorized by applicable zoning requirements now existing or hereafter adopted. In this regard it is further agreed that the Association and each member of the Association

shall be deemed to have consented to such additional construction, improvements, or use and shall, as a condition to the use rights and easements granted herein by the Developer in favor of the Association and its members, consent to any building permit application by the Developer or application for a change in zoning or any necessary variance deemed necessary by the Developer in furtherance of the terms hereof.

It is further understood and agreed that in the event the Developer further improves the Retained Property, which may include the additional construction of units, neither the Association nor any Unit Owner shall have a right to object nor shall have any cause of action against the Developer as a result of any visual obstruction caused by the construction of additional units. It is further understood and agreed that in the event casino gambling is at any time authorized on the subject premises the Developer shall have the right in its sole discretion to use any and all portions of the Retained Property (excluding the Condominium Property) as the Developer may deem suitable for the establishment of a casino gambling operation, and the Developer shall be entitled to all proceeds or benefits thereof.

It is further understood and agreed that during any period of construction, improvements or expansion of the Property, the Developer may temporarily suspend use of the Recreational and Other Commonly Used Facilities and such use shall be restored upon the completion of any improvements constructed upon the Property. During any period of temporary suspension, all fees due from the Association to the Developer shall be likewise suspended except with respect to the payment of the Association's pro rata share of real estate taxes and insurance and except to the extent that portions of the Recreational and Other Commonly Used Facilities continue to be available for use by the Association and its members.

Notwithstanding the ability of the Developer to temporarily suspend the use by the Association and its members of the Recreational and Other Commonly Used Facilities and except during such period of suspension, the Developer shall at all times throughout the term of this Agreement maintain a swimming pool and pool deck area of a quality substantially similar to that existing as of the date hereof for use by the Association and all of its members on the Property. The parties hereto do specifically recognize that expansion of the Recreational and Other Commonly Used Facilities upon the Property may result in an increase in the maintenance assessments chargeable by the Developer to the Association and its members.

13. **Insurance**. The Developer and the Association shall have a joint obligation to maintain all necessary and adequate insurance coverages including liability, casualty, hazard and fire insurance for the Property. The nature and extent of such insurance coverage and the receipt and disbursement of insurance proceeds shall be as follows:

a. Nature and Amount of Coverage:

(1) Liability Insurance. The Developer and the Association shall obtain public liability and property damage insurance insuring the Property including all common elements of the Condominium Property and further insuring the Association and the Unit Owners as their interests may appear. Such liability policy shall also insure all liability and property damage with respect to all other portions of the Property, including all areas and easements required to be maintained by the Association, the Recreational and Other Commonly Used Facilities and the Retained Property. The amount of such insurance shall be as mutually determined by the Association and the Developer provided, however, that the minimum amount of such coverage shall be $100,000/$300,000/$10,000. Such insurance coverage shall include, but not necessarily be limited to, water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverage. All liability

insurance shall contain a cross liability endorsement to cover liabilities of the Unit Owners as a group and the Developer.

(2) Casualty Insurance. The Association and the Developer shall obtain fire and extended coverage insurance and vandalism and malicious mischief insurance insuring all the insurable improvements within the Condominium Property, including personal property owned by the Association, in and for the interest of the Association and all Unit Owners and their: Mortgagees as their interests may appear and in favor of the Developer with respect to-the Retained Property and Recreational and Other Commonly Used Facilities. The amount of such insurance shall be equal to the maximum insurable replacement value as mutually determined by the Association and Developer or as it may be determined by the insurance agent or underwriter(s) supplying such insurance coverages.

b. Payment of Cost of Insurance. The Association shall be responsible for the payment of its pro rata share for the cost of such policies of insurance. Such pro rata share shall be equal to the percentage for which the Association is responsible for sharing the costs and expenses for maintaining the main lobby and pool area or such other percentage as may be designated in a certificate or statement furnished by the agent or underwriter(s) supplying such insurance coverages designating the percentage value to which the Condominium Property bears to the entire Property.

c. Developer to Obtain Policy. Notwithstanding anything contained herein to the contrary, the Developer shall be responsible for procuring the insurance coverages required hereunder and shall name the Association as an additional insured as its interest may appear. Such policy or policies shall contain any endorsements as may be necessary to insure the Association and Condominium Property in accordance with the terms hereof.

d. Insurance Trustee. The Developer shall designate an insurance trustee which shall be a bank in Florida with trust powers. The insurance trustee shall not be liable for the payment of premiums nor for the renewal, sufficiency of the policies, the failure to collect any insurance proceeds, nor the form or content of the policies. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and hold same in trust for the purposes herein stated and for the benefit of the Association, Unit Owners of the Association, their respective Mortgagees, and the Developer (hereinafter referred to as the "Beneficial Owners"). The insurance trustee shall also be responsible for the disbursement of proceeds strictly in accordance with the terms hereof.

e. Allocation of Insurance Proceeds in the Event of Loss. With respect to any loss or damage occurring to both the Condominium Property and all or any portion of the Recreational and Other Commonly Used Facilities described herein or of those portions of the Property reserved for access, ingress, egress and use, all insurance proceeds shall be allocated for the repair and or replacement of any such damages. In the event such loss or damage relates solely to portions of the Retained Property which are not included as part of the Recreational and Other Commonly Used Facilities nor part of the areas of the Retained Property reserved for access, ingress and egress in favor of the Association or its members, such proceeds shall be available for distribution exclusively to the Developer and shall be disbursed to the Developer by the insurance trustee upon demand by the Developer (and the Association shall endorse any check for insurance proceeds) and such proceeds need not be utilized by the Developer for the repair, replacement or restoration of any such damage. Notwithstanding any term, condition or provision of the Declaration of Condominium to the contrary, any damage insured hereunder (except loss or damage occurring to areas of the Retained Property for which the Developer is entitled to received such insurance proceeds as set forth herein) shall be repaired or replaced except by mutual consent of the Association and tile Developer and all institutional first mortgagees as that term is defined in the Declaration of Condominium.

In the event the net insurance proceeds are insufficient to pay for the estimated cost of restoration and/or replacement, the Association and/or Developer, as the case may be, shall be responsible for any deficiency attributable to the cost of such restoration. In this regard the Association shall be solely responsible for any deficiency in the event such costs involve restoration or repair of all or any portion of the Condominium Property or those portions of the Retained Property included within the easement rights granted herein for which the Association is solely responsible for repair as defined in Paragraph 7 hereof. The Association shall be responsible for its pro rata share of the cost to repair the Recreational and Other Commonly Used Facilities. The Developer shall also be responsible for its pro rata share of the cost of repair of all or any portion of the Recreational and Other Commonly Used Facilities. The pro rata share of the Association and the Developer for the cost to repair the Recreational and Other Commonly Used Facilities shall be equal to the percentage of sharing expenses for maintenance of the main lobby and pool deck area. The Developer shall not be responsible for any deficiency for loss or damage to the Retained Property for which the Developer is entitled to the direct disbursement of insurance proceeds by the insurance trustee.

Failure of either party to pay any insufficiency with respect to the insurance as outlined herein shall entitle the aggrieved party, as the case may be, to file a lien (in the event funds are not provided by the defaulting party within sixty (60) days of the date of notice by the insurance trustee that such are necessary) and such lien may be foreclosed in the manner of foreclosing a mortgage.

Any insufficiency of insurance proceeds shall be based solely on a certificate executed by the insurance trustee provided to both the Association and the Developer indicating that the insurance proceeds for any particular loss are insufficient, together with a further statement of the amount of such insufficiency hereof.

f. Association and/or Developer to Supply Estimates for Repair. With respect to any insured loss occurring solely to the Condominium Property or to any portion of the Retained Property for which the Association is solely responsible repair (as set forth in Paragraph 7 hereof), the Association shall be responsible for obtaining detailed estimates for the costs of any repair or restoration. Such estimates shall be: provided to the insurance trustee and copies of such estimates shall be provided to the Developer. In this regard the Association shall have the right and obligation to negotiate and contract for repair and restoration of any such damage. The insurance trustee may rely upon the certificate of the Association as to the payee and the amount to be paid from such insurance proceeds. All payees shall deliver paid bills and waivers of mechanic's liens to the insurance trustee and execute any affidavits required by law, and same shall be delivered to the insurance trustee by the Association. With respect to any insured loss for which the Association is responsible to repair as set forth herein and above, the Developer shall have the right to require the Association to obtain a completion, performance and payment bond in an amount and with a bonding company authorized to do business in the State of Florida which is acceptable to the Developer.

With respect to any loss occurring to the Retained Property, including the Recreational and Other Commonly Used Facilities (other than those areas that the Association is solely responsible to repair), the Developer shall be responsible to obtain detailed estimates for the cost of such repair and/or restoration. The Developer shall provide copies of such detailed estimates to the Association. In this regard, the Developer shall have the right and obligation to negotiate the contract for the repair thereof. The insurance trustee may rely on the certificate of the Developer as to the payee and the amount to be paid from such insurance proceeds. All payees shall deliver paid bills and waivers of mechanic's liens to the insurance trustee and execute any affidavit required by law to the Developer and the Developer shall deliver same to the insurance trustee.

g. Plans and Specifications. Any repairs and restorations shall be substantially in accordance with the plans and specifications for the original building, or as the building was last constructed, or according to the plans and specifications approved by the Developer, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of the Association shall also be required.

h. Power to Compromise Claims. The Association is hereby irrevocably appointed as the agent for each Unit Owner for the purpose of compromising the settling of claims under insurance policies purchased in accordance with the terms hereof and to execute and deliver releases therefor upon the payment of such claims. Notwithstanding anything contained herein to the contrary, the Developer shall have the full authority to negotiate, settle and compromise all insurance claims, such policies subject, however, to the approval of the Association (which approval shall not be unreasonably withheld) with respect to any insurance proceeds which the Association is entitled to receive.

i. Surplus. Any insurance proceeds remaining after the cost of all repair and restoration if any shall be distributed jointly to the Developer and the Association in accordance with the pro rata share of each party for the cost and expenses of maintaining such insurance coverages.

j. Distribution of Proceeds With Respect to Losses Occurring to the Condominium Property. With respect to any losses occurring to the Condominium Property, the proceeds of any insurance coverage shall be distributed to the Unit Owners and their respective institutional mortgagees as follows:

i. Condominium Units: Proceeds on account of Units shall be in the following undivided shares:

(a) Partial Destruction In the event of any partial loss occurring to some but not all Units within the Condominium, such Units shall be repaired and restored for the Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each such Unit Owner.

(b) Loss Within a Single Unit. In the event any loss shall occur within a single Unit without damage to the common elements, the insurance proceeds shall be distributed to the Unit Owner with remittances to the Unit Owner and his mortgagee being payable jointly. This shall be a covenant for the benefit for any institutional first mortgagee of a Unit and may be enforced by such institutional first mortgagee; provided, however, that such remittance shall be made solely to an institutional first mortgagee in the event its mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt. Upon the payment of such remittance, the Unit Owner is fully responsible for restoration of his Unit.

ii. Total Destruction of Condominium. In the event the Condominium Property is totally or substantially destroyed (in the event seventy-five (75%) percent or more of the Units are rendered untenable), the share of each Owner with respect to such insurance proceeds shall equal each Unit Owner's share of the common elements appurtenant to such Unit.

Institutional Mortgagees. In the event any institutional first mortgage encumbers a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner, as their interest may appear, provided, however, that no mortgagee shall have any right to

determine or participate in the determination as to whether or not any damage to the Property shall be reconstructed or repaired.

k. Institutional First Mortgagee's Right to Advance Insurance Premiums. Should the Association fail to pay insurance premiums required hereunder when due, or should the Association fail to comply with other insurance requirements of the Institutional Mortgagee(s), said Institutional Mortgagee(s) shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance, and to the extent of the money so advanced, said Institutional Mortgagee shall be subrogated to the assessment and lien rights of the Association as against the individual Unit Owners for the payment of such item of common expense.

14. **Payment of Expenses by Developer**. In no event shall the Association be required to pay more than its proportionate share of the expenses as set forth in this Agreement. The Developer shall be responsible for all costs and expenses incidental to use, operation, maintenance, management, repair and replacement of the Property with respect to those areas of the Property not included within the Condominium Property and not included within the Recreational and Other Commonly Used Facilities.

15. **Indemnification**. The Developer shall not be liable for any damage or injury to any person or property whether it be the person or Property of the Association or a Unit Owner, or any employees, agents, guests or invitees thereof, by reason of Association occupancy and use of the Property or because of fire, flood, windstorm, acts of God or for any other reason. The Association and each Unit Owner agrees to indemnify and save harmless the Developer from and against any and all loss, damage, claim, demand, liability or expense by reason of damage to person or property which may arise or be claimed to have arisen as a result of the occupancy or use of the Property by the Association or any Unit Owner or by reason thereof or in connection therewith, or in any way arising on account of any injury or damage caused to any person or property on or in the Property from and against the claims of all persons claiming by, through or under Developer.

16. **Assignment**. It is understood that the Association shall not assign its rights or obligations under this Agreement, or any part thereof, without the prior written consent of Developer.

Developer may assign its rights and/or obligations under this Agreement to any other party provided such party first agrees in writing to be bound by all terms and conditions set forth herein. Developer may establish a "Master Association", which shall be a Florida not-for-profit corporation, in order to assume management and control of the Recreational and Other Commonly Used Facilities pursuant to the terms and provisions of this Agreement.

In lieu of the creation of a Master Association, the Developer may designate a manager to perform management services with respect to the Recreational and Other Commonly Used Facilities designated herein, which management firm may be the same management firm employed by the Association. The Developer and the Association hereby consent and agree that the Association and the Developer may employ the same management firm and that such management firm shall have an independent fiduciary duty to each party.

17. **Condemnation**. In the event the whole or any part of the Property shall be taken or condemned for any public or quasipublic use or purpose, or is taken by private purchase in lieu of condemnation, the proceeds of any such condemnation shall be payable to the insurance trustee as designated in Paragraph 13 hereof, and any proceeds shall be disbursed to the Association and the Developer as their interests may appear. Notwithstanding anything contained herein to the contrary,

the Association shall be entitled to receive one hundred (100%) percent of all proceeds of such condemnation payable in the event the Condominium Property is taken in whole or in part, however, the Developer shall be entitled to receive one hundred (100%) percent of all proceeds payable in the event all or any portion of the Retained Property is taken in whole or in part, including, but not limited to, Recreational and Other Commonly Used Facilities.

18. **Subordination**. This Agreement, and all rights granted by Developer in connection therewith, is subject to and is hereby declared to be subordinate to any encumbrance, mortgage or ground or underlying lease now or hereafter placed by Developer upon or affecting the Property. The Association agrees to execute any and all documents or instruments necessary to effectuate said subordination, including the execution of one or more subordination agreements in favor of any party designated by Developer specifically subordinating the rights of Association and all Unit Owners under this Agreement to such lender.

19. **Holding Over**. If Association retains possession of the Property or any part thereof after the termination of the Agreement, Association shall pay to Developer fees at double the amount payable for the year immediately preceding said holdover for the time Association remains in possession. The provisions of this paragraph do not waive the Developer's rights of re-entry or any other right hereunder.

20. **Waiver**. Failure of Developer to declare any default immediately upon occurrence thereof or delay in taking any action in connection therewith shall not waive such default, but Developer shall have the right to declare any such default at any time and take such action as might be lawful or authorized thereunder, either in law or in equity.

21. **Notices**. In every instance where it shall be necessary or desirable for the Developer to serve any notice or demand upon Association, it shall be sufficient:

a. To deliver or cause to be delivered to the Association at the Condominium Property a written printed copy thereof, in which event the notice or demand shall be deemed to have been served at the time the copy is so delivered; or,

b. To send a written or printed copy thereof by United States certified mail, postage prepaid, addressed to the Association at the Condominium Property in which event the notice or demand shall be deemed to have been served at the time the copy is deposited in the United States mail, postage prepaid.

22. **Miscellaneous Provisions**.

a. The terms and provisions set forth in this Agreement shall be deemed to be covenants running with the land and shall bind all of the parties hereto, as well as their successors in interest, their heirs, administrators and assigns.

b. This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of Florida.

c. In the event of any litigation arising out of any of the terms or provisions of this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorneys' fees, including all costs and attorneys fees incurred on any appeal.

d. This Agreement represents the entire agreement between the parties and may only be amended or modified by another Agreement signed by the party intended to be bound.

23. **Term**. This Agreement shall be effective upon recordation of the Declaration of Condominium for Daytona Beach Resort and Conference Center, a Condominium Resort, and shall continue in full force and ,effect and shall run concurrently with the existence of the Condominium and shall terminate upon the termination of the Condominium as provided pursuant to the Declaration of Condominium.

24. **Covenant Running With the Land**. The rights, easements, obligations and agreements set forth herein shall be a covenant running with the properties described herein upon the Association and its members and the Developers and their respective successors, assigns, licensees, grantees and designees, and such rights, easements, agreements and maintenance obligations shall be enforceable in law or equity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the date and year first above written.

Signed, Sealed and Delivered
in the Presence of:

DAYTONA BEACH RESORT AND CONFERENCE CENTER CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit

Print Name: ~~HUGH O. NOWELL~~
~~HUGH O. NOWELL~~

Print Name: ~~Kathy Pioth~~
Kathy Pioth

BY: Stephen E. Farley
Name: Stephen E. Farley
Title: President

DAYTONA BEACH RESORT, L.L.C., a Florida limited liability company

Print Name: ~~HUGH O. NOWELL~~
~~HUGH O. NOWELL~~

Print Name: ~~Kathy Pioth~~
Kathy Pioth

BY:
Name: W. Harrison Merrill
Title: Member

STATE OF FLORIDA)
) SS.
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me this 19 day of October, 2000, by Stephen E. Farley, as President of DAYTONA BEACH RESORT AND CONFERENCE CENTER CONDOMINIUM ASSOCIATION, INC., a Florida corporation

not-for-profit, on behalf of the corporation. He/She is personally known to me or has produced _____ as a type of identification.

ROBERT McCAIN

Print Name:
Notary Public, State of:
Serial Number, if any:

My commission expires: 12/15/00

ROBERT E MCCAIN
Notary Public
State of Florida
My Comm. Exp: 12/15/00
Comm#: CC607701

STATE OF FLORIDA)
) SS.
COUNTY OF VOLUSIA)

The foregoing instrument was acknowledged before me this 19th day of October 2000, by W. Harrison Merrill, as a member of DAYTONA BEACH RESORT, L.L.C., a Florida limited liability company, on behalf of the company. He/She is personally known to me or has produced _____ as a type of identification.

ROBERT McCAIN

Print Name:
Notary Public, State of:
Serial Number, if any:

My commission expires:

ROBERT E MCCAIN
Notary Public
State of Florida
My Comm. Exp: 12/15/00
Comm#: CC607701