

prepared by and return to: Curtis R. Mosley, Esq., of Wolfe,  
Mosley, P. A., Post Office Box 757, Cocoa Beach, Florida 32931

BREVARD COUNTY, FLA.



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TO DECLARATION OF CONDOMINIUM

OF

PORT ROYAL CONDOMINIUMS

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REC FEE \$ 249.00  
DOC ST. \$  
INT TAX \$  
SER CHG \$  
REFUND \$  
1.00  
TAXED PAYMENT \$3  
INDICATED FOR CLASS  
"C" INTANGIBLE & DOC  
STAMP TAXES. SIGNED  
Clerk Circuit Court Brevard Co Florida



DECLARATION OF CONDOMINIUM

OF

PORT ROYAL CONDOMINIUMS

PORT ROYAL OCEANSIDE, INC., a Florida corporation, hereinafter called "Developer," does hereby make, declare, and establish this Declaration of Condominium (hereinafter sometimes called "this Declaration"), as and for a plan of condominium apartment ownership for PORT ROYAL CONDOMINIUMS, consisting of real property and improvements thereon as hereinafter described.

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall rule perpetually unless terminated as provided herein and shall be binding upon all parties or persons subsequently owning property in said condominium, and in consideration of receiving and by acceptance of a conveyance, grant, devise, lease, or mortgage, all grantees, devisees, lessees, and assigns and all parties claiming by, through or under such persons, agree to be bound by all provisions hereof. Both the burdens imposed and the benefits shall run with each unit and the interests in the common property as herein defined.

I

ESTABLISHMENT OF CONDOMINIUM

The Developer is the owner of the fee simple title to that certain real property situate in the County of Brevard, and State of Florida, which property is more particularly described as follows; to-wit:

SEE SHEET FOUR OF EXHIBIT A ATTACHED HERETO AND  
INCORPORATED HEREIN BY REFERENCE.

and on which property the Developer owns two (2) five-story apartment buildings containing a total of fifty-five (55) apartments and other appurtenant improvements as hereinafter described. There are ten (10) "A" type units which contain one bedroom, one bath, with approximately 960 square feet of living area, including patios or balconies. There are five (5) "B" type units which contain two bedrooms, two baths, with approximately 1220 square feet of living area, including patios or balconies. There are five (5) "C" type units which contain two bedrooms, two baths, with approximately 1700 square feet of living area, including patios or balconies. There are fifteen (15) "D" type units which contain two bedrooms, two baths, with approximately 1400 square feet of living area, including patios or balconies. There are five (5) "E" type units which contain three bedrooms, two baths, with approximately 1400 square feet of living area, including patios or balconies. There are fifteen (15) "F" type units which contain three bedrooms, two baths, with approximately 1840 square feet of living area, including patios or balconies. The Developer does hereby submit the above described real property, together with the improvements thereon, to condominium ownership pursuant to the Florida Condominium Act, and hereby declares the same to be known and identified as PORT ROYAL CONDOMINIUMS, hereinafter referred to as the "condominium."

The provisions of the Florida Condominium Act are hereby adopted herein by express reference and shall govern the condominium and the rights, duties and responsibilities of apartment owners hereof, except where permissive variances therefrom appear in the Declaration and the By-Laws and Articles of Incorporation of PORT ROYAL CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit.

The definitions contained in the Florida Condominium Act shall be the definition of like terms as used in this Declaration and exhibits hereto unless other definitions are specifically set forth. As the term is used herein and in exhibits hereto, "apartment" shall be synonymous with the term "unit" as defined in said Act, and the term "apartment owner" synonymous with the term "unit owner" as defined therein.

II

SURVEY AND DESCRIPTION OF IMPROVEMENTS

- A. Attached hereto and made a part hereof, and marked Exhibit A, consisting of twenty (20) sheets, are boundary surveys of the entire premises, a graphic plot plan of the overall planned improvements, and graphic descriptions of the improvements contemplated in which apartments are located, and plot plans thereof, identifying the apartments, the common elements and the limited common elements, and their respective locations and dimensions.

Said surveys, graphic descriptions and plot plans were prepared by:

ALLEN ENGINEERING, INC.  
By: JOHN R. CAMPBELL  
Professional Land Surveyor  
No. 2351, State of Florida

and have been certified in the manner required by the Florida Condominium Act. Each apartment is identified and designated by a specific number. No apartment bears the same numerical designation as any other apartment. The specific numbers identifying each apartment are listed on Sheets 5 through 14 of Exhibit A attached to this Declaration of Condominium.

It is anticipated that construction of the condominium will be completed by May 31, 1985.

III

OWNERSHIP OF APARTMENTS AND APPURTENANT  
SHARE IN COMMON ELEMENTS AND COMMON  
SURPLUS, AND SHARE OF COMMON EXPENSES

Each apartment shall be conveyed as an individual property capable of independent use and fee simple ownership and the owner or owners of each apartment shall own, as an appurtenance to the ownership of each said apartment, an undivided one fifty-fifth (1/55) share of all common elements of the condominium, which includes, but is not limited to, ground support area, walkways, yard area, parking areas, foundations, etc., and substantial portions of the exterior walls, floors, ceiling and walls between units. The space within any of the units and common property shall not be further subdivided. Any undivided interest in the common property is hereby declared to be appurtenant to each unit and such undivided interest shall not be separate from the unit and such interest shall be deemed conveyed, devised, encumbered or otherwise included with the unit even though such interest is not expressly mentioned or described in the conveyance, or other instrument. Any instrument, whether a conveyance, mortgage or otherwise, which describes only a portion of the space within any unit shall be deemed to describe the entire unit owned by the person executing such instrument and an undivided one fifty-fifth (1/55) interest in all common elements of the condominium.

The Developer hereby, and each subsequent owner of any interest in a unit and in the common property, by acceptance of a conveyance or any instrument transferring an interest, waives the right of partition of any interest in the common property under the laws of the State of Florida as it exists now or hereafter until this condominium apartment project is terminated according to the provisions hereof or by law. Any owner may freely convey an interest in a unit together with an undivided interest in the common property subject to the provisions of this Declaration. The Developer hereby reserves the right to remove any party walls between any condominium units in order that the said units may be used together as one (1) integral unit. All assessments and voting rights, however, shall be calculated as if such units were as originally designated on the exhibits attached to this Declaration, notwithstanding the fact that the several units are used as one.

All owners of units shall have as an appurtenance to their units a perpetual easement of ingress to and egress from their units over walks, terraces and other common property from and to the public highways bounding the condominium complex, and a perpetual right or easement, in common with all persons owning an interest in any unit in the condominium complex, to the use

and enjoyment of all public portions of the buildings and to other common facilities (including but not limited to facilities as they now exist) located in the common property.

All property covered by the exhibits hereto shall be subject to a perpetual easement for encroachments which now exist or hereafter may exist caused by settlement or movement of the buildings, and such encroachments shall be permitted to remain undisturbed and such easement shall continue until such encroachment no longer exists.

All units and the common property shall be subject to a perpetual easement in gross granted to PORT ROYAL CONDOMINIUM ASSOCIATION, INC., and its successors, for ingress and egress for the purpose of having its employees and agents perform all obligations and duties of the Association set forth herein. The Association shall have the right to grant utility easements under, through or over the common elements and such other easements as the Board, in its sole discretion, shall decide.

The common expenses shall be shared and the common surplus shall be owned in the same proportion as each such unit owner's share of the ownership of the common elements, that is one fifty-fifth (1/55).

#### IV

##### APARTMENT BOUNDARIES, COMMON ELEMENTS, AND LIMITED COMMON ELEMENTS

The apartments of the condominium consist of that volume of space which is contained within the decorated or finished exposed interior surfaces of the perimeter walls, floors (excluding carpeting and other floor coverings) and ceilings of the apartments, the boundaries of which apartments are more specifically shown on Exhibit A, pages 5 through 14, attached hereto. The dark solid lines on the floor plans hereinabove mentioned represent the perimetrical boundaries of the apartments, while the upper and lower boundaries of the apartments, relating to the elevations of the apartments, are shown in notes on said plan.

There are limited common elements appurtenant to each of the units in this condominium, as shown and reflected by the floor and plot plans. These limited common elements are reserved for the use of the units appurtenant thereto, to the exclusion of other units, and there shall pass with a unit, as an appurtenance thereto, the exclusive right to use the limited common elements so appurtenant.

In addition, there are thirty (30) garage parking spaces and twenty-five (25) storage spaces, as shown on Sheet 3 of Exhibit A. The developer reserves the right to designate the units to which the garage parking spaces and storage spaces shall be assigned. After the developer transfers control of the Association to the unit owners, garage parking spaces and storage spaces may be transferred among unit owners provided the prior approval of the Association is obtained. An instrument reflecting the transfer of the garage parking space and/or storage space shall be signed by the unit owners involved in the transfer and by the Association. The transfer shall not be effective until the instrument is recorded in the Public Records of Brevard County, Florida.

Expenses of maintenance, repair or replacement relating to the limited common elements shall be treated as and paid for as a part of the common expenses of the Association, except the expenses of maintenance relating to the floor, ceiling and inside walls surfaces shall be borne by and assessed against the individual unit owner. However, the expense of maintenance, repair or replacement made necessary by the act or any unit owner shall be borne by said unit owner.

The common elements of the condominium unit consist of all of the real property, improvements and facilities of the condominium other than the apartments and the limited common elements as the same are hereinabove defined, and shall include easements through the apartments for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the apartments, limited common elements and common

elements and easements of support in every portion of an apartment which contributes to the support of improvements and shall further include all personal property held and maintained for the joint use and enjoyment of all the owners of the apartments.

There are located on the common grounds of the condominium property swale areas for the purpose of water retention and these areas are to be perpetually maintained by the Association so that they will continue to function as water retention areas.

V

ADMINISTRATION OF CONDOMINIUM BY  
PORT ROYAL CONDOMINIUM ASSOCIATION, INC.

The operation and management of the condominium shall be administered by PORT ROYAL CONDOMINIUM ASSOCIATION, INC., a corporation not for profit, organized and existing under the laws of the State of Florida, hereinafter referred to as the "Association."

The Association shall make available to unit owners, lenders and the holders and insurers of the first mortgage on any unit, current copies of the Declaration, By-Laws and other rules governing the condominium, and other books, records and financial statements of the Association. The Association also shall be required to make available to prospective purchasers current copies of the Declaration, By-Laws, other rules governing the condominium, and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

The Association, upon written request from any of the agencies or corporations which have an interest or prospective interest in the condominium, shall prepare and furnish within a reasonable time a financial statement of the Association for the immediately preceding fiscal year.

The Association shall have all of the powers and duties set forth in the Florida Condominium Act and, where not inconsistent therewith, those powers and duties set forth in this Declaration, Articles of Incorporation and By-Laws of the Association. True and correct copies of the Articles of Incorporation and the By-Laws are attached hereto, made a part hereof, and marked Exhibit B and Exhibit C, respectively.

VI

MEMBERSHIP AND VOTING RIGHTS

The Developer and all persons hereafter owning a vested present interest in the fee title to any one of the units shown on the exhibits hereto and which interest is evidenced by recordation of a proper instrument in the Public Records of Brevard County, Florida, shall automatically be members and their memberships shall automatically terminate when they no longer own such interest.

There shall be a total of fifty-five (55) votes to be cast by the owners of the condominium units. Such votes shall be apportioned and cast as follows: The owner of each condominium unit (designated as such on the exhibits attached to this Declaration) shall be entitled to cast one (1) vote. Where the condominium unit is owned by the Association, no vote shall be allowed for such condominium unit. Where a condominium unit is owned by more than one (1) person or by a corporation or other legal entity, all the owners thereof shall be collectively entitled to the vote assigned to such unit and such owners shall, in writing, designate an individual who shall be entitled to cast the vote on behalf of the owners of such condominium unit of which he is a part until such authorization shall have been changed in writing. The term, "owner," as used herein, shall be deemed to include the Developer.

All of the affairs, policies, regulations and property of the corporation shall be controlled and governed by the Board of Administration of the corporation who are all to be elected annually by the members entitled to

vote, as provided in the By-Laws of the corporation. Each director shall be the owner of a condominium unit (or a partial owner of a condominium unit where such unit is owned by more than one (1) individual, or if a unit is owned by a corporation, including the Developer, any duly elected officer or officers of an owner corporation may be elected a director or directors). The first election of directors shall be held sixty (60) days from the date of recording of the Declaration of Condominium.

The owners shall place members on the Board or Administration in accordance with the schedule as follows: When unit owners other than the Developer own fifteen percent (15%) or more of the units, the unit owners shall be entitled to elect not less than one-third (1/3) of the members of the Board of Administration. Unit owners other than the Developer shall be entitled to elect not less than a majority of the members of the Board of Administration: (a) Three years after fifty (50%) percent of the units that will be operated ultimately by the Association have been conveyed to the purchasers; (b) one hundred twenty (120) days after the date by which seventy-five (75%) percent of the units that will be operated ultimately by the Association have been conveyed to purchasers; (c) three (3) years from the date of the first conveyance to a unit purchaser, whichever shall occur first. The Developer is entitled to elect at least one member to the Board of Administration of the association as long as the Developer holds for sale in the ordinary course of business at least one (1%) percent of the units in the condominium.

## VII

### COMMON EXPENSES, ASSESSMENTS, COLLECTION LIEN AND ENFORCEMENT, LIMITATIONS

The Board of Administration of the Association shall propose annual budgets in advance for each fiscal year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the common expense budget, which shall include, without limitation, the generality of the foregoing, the estimated amounts necessary for maintenance, and operation of common elements and limited common elements, landscaping, street and walkways, office expense, utility services, replacement and operating reserve, casualty insurance, liability insurance, administration and salaries. Failure of the board to include any item in the annual budget shall not preclude the board from levying an additional assessment in any calendar year for which the budget has been projected. In determining such common expenses, the Board of Administration may provide for an operating reserve not to exceed fifteen (15%) percent of the total projected common expenses for the year. Each apartment owner shall be liable for the payment to the Association of one fifty-fifth (1/55) of the common expenses as determined in said budget.

After adoption of the budget and determination of the annual assessment per unit, as provided in the By-Laws, the Association shall assess such sum by promptly notifying all owners by delivering or mailing notice thereof to the voting member representing each unit at such member's most recent address as shown by the books and records of the Association. One-twelfth (1/12) of the annual assessment shall be due and payable in advance to the Association on the first (1st) day of each month.

The Developer shall be excused from the payment of its share of the common expenses and assessments related thereto on units it owns in the said condominium for the period of time commencing with the date of the recording of the Declaration until February 1986, or until the unit owners, other than the Developer, elect the majority of the Board Members, whichever occurs first, during which period of time the Developer guarantees that the assessments for common expenses of the condominium imposed upon the respective unit owners shall not increase over the dollar amount as set forth in the Projected Operation Budget, which is attached hereto and made a part hereof, and obligates itself to pay any amount of common expenses incurred during said period of time and not produced by the assessments at the guaranteed level. The guaranteed assessment is \$99.08 per unit per month.

Each initial unit owner shall pay at closing an additional assessment to the Association's operating account in an amount at least equal to two months assessments for the unit. This additional assessment shall not be credited



against the regular assessments for the unit and the assessment may be used for any purpose related to the condominium.

Special assessments may be made by the Board of Administration from time to time to meet other needs or requirements of the Association in the operation and management of the condominium and to provide for emergencies, repairs or replacements, and infrequently recurring items of maintenance. However, any special assessment which is not connected with an actual operating, managerial or maintenance expense of the condominium, shall not be levied without the prior approval of the members owning a majority of the apartments in the condominium

The liability for any assessment or portion thereof may not be avoided by an apartment owner or waived by reason of such apartment owner's waiver of the use and enjoyment of any of the common elements of the condominium or by his abandonment of his apartment.

The record owners of each unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, made by the Association and for all costs of collection of delinquent assessments. In the event assessments against a unit are not paid within thirty (30) days after their due date, the Association shall have the right to foreclose its lien for such assessments.

Assessments that are unpaid for over thirty (30) days after due date shall bear interest at the maximum rate permitted by law per annum until paid. The Board of Administration shall have the sole discretion to impose a late charge not to exceed Twenty-Five (\$25.00) Dollars on payments more than ten (10) days late.

The Association shall have a lien on each condominium parcel (the term "condominium parcel" shall include the condominium unit and the interest in the common elements) for any unpaid assessments and interest thereon which has been assessed against the unit owner of such condominium parcel and for reasonable attorney's fees incurred by the Association incident to the collection of the assessment for enforcement of the lien. The lien shall be effective from and after the time of recording in the Public Records of Brevard County, Florida (the same being the county in which the subject condominium is located) of a claim of lien stating the description of the condominium parcel, the name of the record owner, the amount due and the date when due. No such lien recorded after October 1, 1984 shall continue for a longer period than one (1) year after the claim of lien has been recorded, unless within that time an action to enforce the lien shall secure all unpaid assessments, interest, costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. All claims of lien shall include only assessments which are due and payable when the said claim of lien is recorded and all such claims of lien shall be signed and acknowledged by an officer or agent of the corporation. Where any such lien shall have been paid, the party making payment thereof shall be entitled to receive a satisfaction of such lien in such form that it may be recorded in the Public Records of Brevard County, Florida. By recording a notice in substantially the following form, a unit owner or his agent or attorney may require the Association to enforce a recorded claim of lien against his condominium parcel:

Notice of Contest of Lien

TO: PORT ROYAL CONDOMINIUM ASSOCIATION, INC.  
1700 North Atlantic Avenue  
Cocoa Beach, Florida 32931

You are notified that the undersigned contests the claim of lien filed by you on \_\_\_\_\_, 19\_\_\_\_, and recorded in Official Records Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Public Records of Brevard County, Florida, and that the time within which you may file suit to enforce your lien is limited to ninety (90) days from the date of service of this notice.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signed: \_\_\_\_\_  
Owner, Agent or Attorney

OFF. REC.

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After service of a copy of the Notice of Contest of Lien, the Association shall have ninety (90) days in which to file an action to enforce the lien, and if the action is not filed within that ninety (90) day period, the lien is void.

The Association may bring an action in its name to foreclose a lien for assessment in the manner a mortgage or real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified mail, return receipt requested, addressed to the unit owner. If after diligent search and inquiry the Association cannot find the unit owner or a mailing address at which the unit owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in Section 718.116(4).

If the unit owner remains in possession of the unit and the claim of lien is foreclosed, the court in its discretion may require the unit owner to pay a reasonable rental for the unit and the Association is entitled to the appointment of a receiver to collect the rent.

The provisions of Section 718.116 of the Florida Condominium Act are incorporated herein by reference and made a part hereof, and the Association shall have all of the powers and duties as set forth in said Section 718.116, as well as all the powers and duties set forth in this Article VII of this Declaration, where the same are not in conflict with or limited by Section 718.116.

The Association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage and convey it.

When the mortgagee of a first mortgage of record, or other purchaser, of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title and his successors and assigns shall not be liable for the share of common expenses or assessments by the Association pertaining to the condominium parcel or chargeable to the former unit owner of the parcel which became due prior to acquisition of title as a result of the foreclosure, unless the share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. The unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners, including such acquirer, his successors and assigns. The foregoing provision may apply to any mortgages of record and shall not be restricted to the first mortgage(s) of record. A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

Within fifteen (15) days after request by a unit owner or unit mortgagee, the association shall provide a certificate stating all assessments and other monies owed to the association by the unit owner with respect to the condominium parcel. Any person other than the owner who relies upon such certificate shall be protected thereby.

Any unit owner has the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his condominium parcel. The holder of a mortgage or other lien of record has the same right as to any condominium parcel upon which he has a lien.

Any first mortgagee may make use of any unit acquired as may facilitate its sale including, but not limited to, the showing of the property and the display of "For Sale" signs and neither the other apartment owners nor the corporation shall interfere with the sale of such apartments.

As to priority between the lien of a recorded mortgage and the lien for any assessment, the lien for assessment shall be subordinate and inferior to any recorded mortgage, unless the assessment is secured by a claim of lien which is recorded prior to the recording date of the mortgage.

Any person purchasing or encumbering a unit shall have the right to rely upon any statement made in writing by an officer of the Association regarding assessments against units which have already been made and which are due and payable to the Association, and the Association and the members shall be bound thereby. No action or suit shall be brought to enforce foreclosure of any lien arising under this Declaration after two (2) years from the date of any unpaid assessment.

The Association may at any time require owners to maintain a minimum balance on deposit with the corporation to cover future assessments. Said deposit shall in no event exceed three (3) months' assessment.

A unit owner, regardless of how title is acquired, including without limitation a purchase at a judicial sale, shall be liable for all assessments coming due while he is an owner of a unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amount paid by the grantee therefor.

#### VIII

##### INSURANCE COVERAGE, USE AND DISTRIBUTION OF PROCEEDS, REPAIR OR RECONSTRUCTION AFTER CASUALTY

###### A. Type and Scope of Insurance Coverage Required

###### 1. Insurance for Fire and Other Perils

The Association shall obtain, maintain, and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the common elements and limited common elements, (except land, foundation and excavation costs) including fixture, to the extent they are part of the common elements of the condominium, building service equipment and supplies, and other common personal property belonging to the Association. All references herein to a "master" or "blanket" type policy of property insurance shall denote single entity condominium insurance coverage. In addition, any fixtures, equipment or other property within the units (regardless of whether or not such property is a part of the common elements) shall be covered in such "master" or "blanket" policy.

The "master" policy shall be in an amount equal to one hundred (100%) percent of current replacement cost of the condominium, exclusive of land, foundation, excavation and other items normally excluded from coverage.

The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor trustee, as insured, for the use and benefit of the individual owners. Loss payable shall be in favor of the Association or insurance trustee, as a trustee, for each unit owner and each such owner's mortgagee. The Association or insurance trustee, if any, shall hold any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear. Each unit owner and each unit owner's mortgagee, if any, shall be beneficiaries of the policy in the fraction of common ownership set forth in this Declaration. Certificates of insurance shall be issued to each unit owner and mortgagee upon request. Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted

by private institutional mortgage investors in the Brevard County area and shall name any holder of first mortgages on units within the condominium. Such policies shall provide that they may not be cancelled or substantially modified, without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies.

Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FEDERAL HOME LOAN MORTGAGE CORPORATION, hereinafter referred to as FHLMC, FEDERAL NATIONAL MORTGAGE ASSOCIATION, hereinafter referred to as FNMA, or the designee of FHLMC or FNMA; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

The policies shall also provide for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against unit owners individually; that the insurance is not prejudiced by any act or neglect of individual unit owners which is not in the control of such owners collectively; and that the policy is primary in the event the unit owner has other insurance covering the same loss.

The insurance policy shall afford, as a minimum, protection against the following:

- (a) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
- (b) in the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident per location (or such greater amount as deemed prudent based on the nature of the property); and
- (c) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement.

In addition, such policies shall include an "agreed amount endorsement" and, if available, an "inflation guard endorsement."

The Association shall provide, on an individual case basis, if required by the holder of first mortgages on individual units, construction code endorsements (such as a demolition cost endorsement, a contingent liability from operation of building laws endorsement and an increased cost of construction endorsement) if the condominium is subject to a construction code provision which would become operative and require changes to undamaged portions of the building(s), thereby imposing significant costs in the event of partial destruction of the condominium by an insured hazard.

## 2. Liability Insurance

The Association shall maintain comprehensive general liability insurance coverage covering all of the common elements, commercial space owned and leased by the Association, and public ways of the condominium project. Coverage limits shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies shall provide that they may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage on any unit in the condominium which is listed as a scheduled holder of a first mortgage in the insurance policy. The Association shall provide, if required by the holder of first

mortgages on individual units, such coverage to include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and use, including but not limited to, host liquor liability, employers liability insurance, contractual and all written contract insurance, and comprehensive automobile liability insurance.

### 3. Flood Insurance

If the condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the Association, but not less than the following:

The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) one hundred (100%) percent of current "replacement cost" of all such buildings and other insurable property within such area.

Such policy shall be in a form which meets the criteria set forth in the most current guidelines on the subject issued by the Federal Insurance Administrator.

### 4. Fidelity Bonds

Blanket fidelity bonds shall be maintained by the Association for all officers, directors, and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association. If a management agent has the responsibility for handling or administering funds of the Association, the management agent shall maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The premiums of all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, insurance trustee and the Federal National Mortgage Association, if applicable. Under no circumstances shall the principal sum of the bonds be less than \$10,000 for each officer, director or employee.

### 5. Insurance Trustees; Power of Attorney

The Association may name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to herein as "insurance trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Each unit owner by acceptance of a deed conveying a unit in the condominium to the unit owner hereby appoints the Association, or any

insurance trustee or substitute insurance trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases or liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

6. Qualifications of Insurance Carriers

The Association shall use generally acceptable insurance carriers. Only those carriers meeting the specific requirements regarding the qualifications of insurance carriers as set forth in the Federal National Mortgage Association Conventional Home Mortgage Selling Contract Supplements and the FHLMC Sellers Guide shall be used.

7. Condemnation and Total or Partial Loss or Destruction

The Association shall represent the unit owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common elements, or part thereof, by the condemning authority. Each unit owner hereby appoints the Association as attorney-in-fact for such purpose.

The Association may appoint a trustee to act on behalf of the unit owners, in carrying out the above functions, in lieu of the Association.

In the event of a taking or acquisition of part or all of the common elements by a condominium authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, to be held in trust for unit owners and their first mortgage holders as their interests may appear.

In the event any loss, damage or destruction to the insured premises is not substantial (as such term "substantial" is hereinafter defined), and such loss, damage or destruction is replaced, repaired or restored with the Association's funds, the first mortgagees which are named as payees upon the draft issued by the insurance carrier shall endorse the draft and deliver the same to the Association, provided, however, that any repair and restoration on account of physical damage shall restore the improvements to substantially the same condition as existed prior to the casualty.

Substantial loss, damage or destruction as the term is herein used, shall mean any loss, damage or destruction sustained to the insured improvements which would require an expenditure of sums in excess of ten (10%) percent of the amount of coverage under the Association's casualty insurance policy or policies then existing, in order to restore, repair or reconstruct the loss, damage or destruction sustained.

In the event the Association chooses not to appoint an insurance trustee, any casualty insurance proceeds becoming due by reason of substantial loss, damage or destruction sustained to the condominium improvements shall be payable to the Association and all first mortgagees which shall have been issued loss payable mortgagee endorsements, and such proceeds shall be made available to the first mortgagee which shall hold the greater number of mortgages encumbering the apartments in the condominium, which proceeds shall be held in a construction fund to provide for the payment for all work, labor and materials to be furnished for the reconstruction, restoration and repair of the condominium improvements. Disbursements from such construction fund shall be by usual and customary construction loan procedures. No fee whatsoever shall be charged by such first mortgagee for its services in the administration of the construction loan fund. Any sums remaining in the construction loan fund after the completion of the restoration, reconstruction and repair of the improvements and full payment therefore, shall be paid over to the Association and held for, and/or distributed to the apartment owners in proportion to each apartment owner's share of common surplus. If the insurance proceeds payable as the result of such casualty are not sufficient to pay the estimated costs of such restoration, repair and reconstruction, which estimate shall be made prior to proceeding with restoration, repair or reconstruction, the Association shall levy a special assessment against the apartment owners for the amount of such insufficiency, and shall pay said sum



into the aforesaid construction loan fund.

Notwithstanding which first mortgagee holds the greater number of mortgages encumbering the apartments, such mortgagees may agree between themselves as to which one shall administer the construction loan fund.

If the damage sustained to the improvements is less than substantial, as heretofore defined, the Board of Administration may determine that it is in the best interests of the Association to pay the insurance proceeds into a construction fund to be administered by an institutional first mortgagee as hereinabove provided. No institutional first mortgagee shall be required to cause such insurance proceeds to be made available to the Association prior to completion of any necessary restoration, repairs or reconstruction, unless arrangements are made by the Association to satisfactorily assure that such restoration, repairs and reconstruction shall be completed. Such assurances may consist of, without limitation: (1) obtaining a construction loan from other sources; (2) obtaining a binding contract with a contractor or contractors to perform the necessary restoration, repairs and reconstruction; and (3) the furnishing of performance and payment bonds.

Any restoration, repair or reconstruction made necessary through a casualty shall be commenced and completed as expeditiously as reasonably possible, and must substantially be in accordance with the plans and specifications for the construction of the original building. In no event shall any reconstruction or repair change the relative locations and approximate dimensions of the common elements and of any apartment, unless an appropriate amendment be made to this Declaration.

Where physical damage has been sustained to the condominium improvements and the insurance proceeds have not been paid into a construction loan fund as hereinabove more fully provided, and where restoration, repair or reconstruction has not been commenced, an institutional mortgagee who has commenced foreclosure proceedings upon a mortgage encumbering an apartment, shall be entitled to receive that portion of the insurance proceeds apportioned to said apartment in the same share as the share in the common elements appurtenant to said apartment.

If substantial loss, damage or destruction shall be sustained to the condominium improvements, and at a special members' meeting called for such purpose, the owners of a majority of the apartments in the condominium vote and agree in writing that the damaged property will not be repaired or reconstructed, the condominium shall be terminated; provided, however, such termination will not be effective without the written consent of all first mortgagees holding mortgages encumbering apartments.

## IX

### RESPONSIBILITY FOR MAINTENANCE AND REPAIRS

- A. Each apartment owner shall bear the cost and be responsible for the maintenance, repair and replacement, as the case may be, of all air conditioning and heating equipment, electrical and plumbing fixtures, kitchen and bathroom fixtures, and all other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his apartment and which may now or hereafter be affixed or contained within his apartment. Such owner shall further be responsible for maintenance, repair and replacement of any air conditioning equipment servicing his apartment, although such equipment not be located in the apartment, and of any and all wall, ceiling and floor surfaces, painting, decorating and furnishings and all other accessories which such owner may desire to place or maintain therein. Unit owners are responsible for the maintenance, including cleaning, repair or replacement of windows and screening thereon and fixed and sliding glass doors.
- B. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all the common elements and limited common elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring and other facilities located in the common elements, for the furnishing of utility

services to the apartments, and including artesian wells, pumps, piping, and fixtures serving individual air conditioning units. Painting and cleaning of all exterior portions of the building, including all exterior doors opening into walkways, but excluding sliding glass doors, and screen windows and screen, shall also be the Association's responsibility. Should any damage be caused to any apartment by reason of any work which may be done by the Association in the maintenance, repair or replacement of the common elements, the Association shall bear the expense of repairing such damage.

- C. Where loss, damage or destruction is sustained by casualty to any part of the building, whether interior or exterior, whether inside an apartment or not, whether a fixture or equipment attached to the common elements or attached to and completely located inside an apartment, and such loss, damage or destruction is insured for such casualty under the terms of the Association's casualty insurance policy or policies, but the insurance proceeds payable on account of such loss, damage or destruction are insufficient for restoration, repair or reconstruction, all the apartment owners shall be specially assessed to make up the deficiency, irrespective of a determination as to whether the loss, damage or destruction is to a part of the building, or to fixtures or equipment which it is an apartment owner's responsibility to maintain.
- D. In the event owners of a unit fail to maintain it as required herein or make any structural addition or alteration without the required written consent, the Association or an owner with an interest in any unit shall have the right to proceed in a court of equity to seek compliance with the provisions hereof. The Association shall have the right to levy at any time a special assessment against the owners of the unit for the necessary sums to put the improvements within the unit in good condition and repair or to remove any unauthorized structural addition or alteration. After making such assessment, the Association shall have the right to have its employees and agents enter the unit, at reasonable times, to do such work as deemed necessary by the Board of Administration of the Association to enforce compliance with the provisions hereof.
- E. The Board of Administration of the Association may enter into a contract with any firm, person or corporation for the maintenance and repair of the condominium property and may join with other condominium corporations on contracting with the same firm, person or corporation for maintenance and repair.
- F. The Association shall determine the exterior color scheme of all buildings and shall be responsible for the maintenance thereof, and no owner shall paint an exterior wall, door, window, patio or any exterior surface, etc., at any time without the written consent of the Association.

X

USE RESTRICTIONS

- A. Each apartment is hereby restricted to residential use. There are no restrictions on the number of occupants in each unit or upon children.
- B. The apartment may be rented provided the occupancy is only by one (1) lessee and members of his immediate family and guests. No rooms may be rented and no transient tenants may be accommodated. No lease of an apartment shall release or discharge the owner thereof of compliance with this Section X or any of his other duties as an apartment owner. Time sharing of apartments is prohibited. Ownership of an apartment on a monthly or weekly time sharing program is prohibited. Subleasing of apartments is prohibited. All leases shall be in writing and shall be subject to this Declaration, the Articles of Incorporation, By-Laws, and the Rules and Regulations of the Association.
- C. No nuisances shall be allowed to be committed or maintained upon the condominium property, nor any use or practice that is the source of annoyance to residents or which interfere with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or

garbage allowed to accumulate, nor any fire hazard allowed to exist. No apartment owner shall permit any use of his apartment or use of the common elements that will increase the cost of insurance upon the condominium property.

- D. No immoral, improper, or offensive use shall be made of the condominium property nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the condominium shall be observed.
- E. Reasonable regulations concerning the use of the condominium property may be made and amended from time to time by the Board of Administration of the Association as provided by its Articles of Incorporation and By-Laws.
- F. The Board of Administration or the agents and employees of the Association may enter any unit at reasonable times for the purpose of maintenance, inspection, repair and replacement of the improvements within units or the common property, or in case of emergency threatening units or the common property, to determine compliance with these restrictions, reservations, covenants, conditions and easements, and the By-Laws of the Association.
- G. No sign, advertisement or notice of any type shall be shown on the common property or any unit and no exterior antennas and aerials shall be erected except as provided under uniform regulations promulgated by the Association. This subparagraph G shall not apply to the Developer and/or institutional first mortgagees.
- H. An owner shall not place or cause to be placed in the walkways or in or on any other common areas and facilities, stairs, or stairwells, any furniture, packages or objects of any kind. Such areas shall be used for no other reason than for normal transit through them.
- I. It is prohibited to hang garments, rugs, etc., from the windows, patios or balconies from any of the facades of the buildings.
- J. It is prohibited to dust rugs, etc., from windows, patios or balconies or to clean rugs, etc., by beating on the exterior of the buildings.
- K. No auto parking space may be used for any purpose other than parking automobiles which are in operating condition. No other vehicles or objects, including but not limited to trucks, motorcycles, recreational vehicles, trailers, and boats, will be parked or placed upon such portions of the condominium property unless permitted by the Board of Administration. No parking space shall be used by any other person other than an occupant of the condominium who is an actual resident or by a guest or visitor and by such guest or visitor only when such guest or visitor is, in fact, visiting and upon the premises.
- L. Until the Developer has closed all the sales of the apartments in the condominium, neither the other apartment owners nor the Association shall interfere with the sale of such apartments. The Developer may make such use of the unsold units and common elements as may facilitate its sales, including but not limited to maintenance of a sales office, model apartments, the showing of the property, and the display of signs.
- M. One (1) pet shall be allowed to be kept in the owner's unit, however, the pet shall not exceed twenty-five (25) pounds in weight. All pets must be kept on a leash outside the owner's unit. Each pet owner shall be responsible for cleaning up after his pet in the common areas.
- N. No unit owner shall allow anything whatsoever to fall from the window, patio, balcony, terrace, porch, or doors of the premises, nor shall he sweep or throw from the premises any dirt or other substance into any of the corridors, halls, patios, balconies, terraces or porches, elevators, ventilators, or elsewhere in the building or upon the grounds. A unit owner shall not place, store or use any item, upon any patio, balcony, terrace or porch without the approval of the Association, other than standard patio chairs, tables and furnishings.

XI

LIMITATIONS UPON RIGHT OF OWNER TO  
ALTER OR MODIFY APARTMENT

No owner of an apartment shall make any structural modifications or alterations of the apartment. Further, no owner shall cause any improvements or changes to be made on or to the exterior of the apartment buildings, including painting or other decoration, the installation of awnings, shutters, electrical wiring, air conditioning units and other things which might protrude thorough or be attached to the walls of the apartment building; further, no owner shall in any manner change the appearance of any portion of the apartment building not wholly within the boundaries of his apartment.

XII

ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY  
ASSOCIATION

Whenever in the judgment of the Board of Administration the condominium property shall require additions, alterations or improvements (in the excess of the usual items of maintenance), and the making of such additions, alterations or improvements shall have been approved by written approval of a majority of the apartment owners, the Board of Administration shall proceed with such additions, alterations or improvements and shall specially assess all apartment owners for the cost thereof as a common expense.

XIII

AMENDMENT OF DECLARATION

These restrictions, reservations, covenants, conditions and easements may be modified or amended by recording such modifications in the Public Records of Brevard County, Florida, after approval by the owners of sixty-seven (67%) percent of the units whose votes were cast in person or by proxy at the meeting duly held in accordance with the By-Laws and Articles of Incorporation of the Association, and, provided further, no amendment to this Declaration shall be adopted which would operate to affect the validity or priority of any mortgage held by an institutional first mortgagee or which would alter, amend or modify, in any manner whatsoever, the rights, powers and privileges granted and reserved herein in favor of any institutional first mortgagee or in favor of the Developer without the consent of all such mortgagees or the Developer, as the case may be. There shall be no amendment adopted altering the share of ownership in the common elements or surplus, or altering the share of common expenses, except by the unanimous vote of all members in the Association and by their respective institutional first mortgagees.

The Association shall provide a holder, insurer or guarantor of a first mortgagee, upon written request (such request to state the name and address of such holder, insurer or guarantor and the unit number) timely notice of:

- A. Any proposed amendment of the condominium instruments effecting a change in (i) the boundaries of any unit or the exclusive easement rights appertaining thereto, (ii) the interests in the general or limited common elements appertaining to any unit or the liability for common expenses appertaining thereto, (iii) the number of votes in the owners Association appertaining to any unit; or (iv) the purposes to which any unit or the common elements are restricted;
- B. Any proposed termination of the condominium regime;
- C. Any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- D. Any delinquency in the payment of assessments or charges owed by an owner of a unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days;
- E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

Notwithstanding anything to the contrary contained in this Declaration, the Developer expressly reserves the right to amend the Declaration so as to correct any legal description contained herein, which legal description or descriptions may have been incorrect by reason of a scrivener's or surveyor's error. The Developer may amend this Declaration as aforescribed by filing an amended legal description (or descriptions) as an amendment to the Declaration among the Public Records of Brevard County, Florida, which amendment (or amendments) shall expressly describe that legal description which is being corrected (by reference to the exhibit containing said legal description or otherwise), in addition to the corrected legal description. Such amendments need be executed and acknowledged only by the Developer and need not be approved by the Association, unit owners, lienors or mortgagees of units of the condominium whether or not elsewhere required for amendments. As part and parcel of any such amendment as provided for in this subparagraph, however, there shall be attached thereto an affidavit of the individual or individuals responsible for the original incorrect legal description, whether he be scrivener or surveyor, which affidavit shall set forth (1) that said individual made an error in the legal description, (2) that the error is corrected by the description contained in the amendment, and (3) that it was the intent at the time of the incorrect original legal description to make that description such as is contained in the new amendment. In the event the party responsible for the original incorrect legal description has died, or is not available, then in that event, any other party having personal knowledge of the incorrect legal description by reason of the scrivener's or surveyor's error may execute the required affidavit for the amendment provided herein.

In the event it shall appear that there is an error or omission in this Declaration or exhibits thereto, then and in that event the Association may correct such error and/or omission by an amendment to this Declaration in the manner hereinafter described to effectuate an amendment for the purpose of curing defects, errors or omissions. Such an amendment shall not require a vote of approval as provided above but shall require a vote in the following manner:

(a) Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such proposed amendment is to be considered.

(b) A resolution for the adoption of such a proposed amendment may be proposed by either the Board of Administration of the Association or by the members of the Association, and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing delivered to the secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

(i) Not less than thirty-three and one-third (33 1/3%) percent of the Board of Directors and by not less than ten (10%) percent of the votes of the entire membership of the condominium; or

(ii) Not less than twenty-five (25%) percent of the votes of the entire membership of the Association; or

(iii) In the alternative, an amendment may be made by an agreement signed and acknowledged by all unit owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Brevard County, Florida.

(c) The foregoing provisions relative to amendments for defects, errors or omissions are in accordance with and pursuant to Section 718.304(1), Florida Statutes.

(d) That the amendment made pursuant to this paragraph need only be executed and acknowledged by the Developer or the Association and by no other parties whatsoever.

Notwithstanding anything to the contrary contained in this Declaration,



the Developer reserves the right to change the interior designs and arrangement of all units and to alter the boundaries between units, as long as the Developer owns the units so altered; however, no such change shall increase the number of units nor alter the boundaries of the common elements, except the party wall between any units, without amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in units, as provided in this paragraph, such changes shall be reflected by an amendment to this Declaration with a survey attached reflecting such authorized alteration of units, and said amendment need only be executed and acknowledged by the Developer and any holders of institutional mortgages encumbering the said altered units. The survey shall be certified in the manner required by the Condominium Act. If more than one (1) unit is concerned, the Developer shall not apportion between the units the shares in the common elements, common expenses and common surplus of the units concerned and such shares of common elements, common expenses and common surplus shall remain unchanged in the amendment of this Declaration unless all unit owners approve the amendment changing the shares.

No provision of the Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language:

Substantial rewording of Declaration. See provision... for present text." Non-material errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

Invalidation of any one (1) or more of these restrictions, reservations, covenants, conditions and easements, or any provision contained in this Declaration, or in a conveyance of unit by the Developer, by judgment, court order, or law, shall in nowise affect any of the other provisions which shall remain in full force and effect.

In the event that any court should hereafter determine that any provision, as originally drafted herein, violates the rule against perpetuities or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, measuring life shall be that of the youngest incorporator of the Association.

These restrictions, reservations, covenants, conditions and easements shall be binding upon and inure to the benefit of all property owners and their grantees, heirs, personal representatives, successors and assigns, and all parties claiming by, through or under any member.

#### XIV

#### TERMINATION OF CONDOMINIUM

Except as otherwise provided in Article VIII of this Declaration, the condominium created and established hereby may only be terminated upon the vote of members of the Association owning sixty-seven (67%) of the apartments in the condominium, provided that the written consent to such termination is obtained from all institutional first mortgagees holding mortgages encumbering the apartments.

Immediately after the required vote of consent to terminate, each and every unit owner shall immediately convey by warranty deed to the Association all of said unit owners' right, title and interest to any unit and to the common property, provided the Association's officers and employees handling funds have been adequately bonded and the Association or any member shall have the right to enforce such conveyance by specific performance in a court of equity.

The Board of Administration of the Association shall then sell all of the property at public or private sale upon terms approved in writing by all of the institutional first mortgagees. Upon the sale of said property, the costs, fees and charges for affecting said sale, the cost of liquidation and dissolution of the Association and all obligations incurred by the Association in connection with the management and operation of the property up to and including the time when distribution is made to the unit owners, shall be paid out of the proceeds of said sale, and the remaining balance (hereinafter referred to as "net proceeds of sale") shall be distributed to the unit owners in the manner now about to be set forth.

The distributive share of each unit owner in the next proceeds of sale, though subject to the provisions hereinafter contained, shall be the following portion thereof; to-wit:

AN UNDIVIDED ONE FIFTY-FIFTH (1/55)

Upon the determination of each unit owner's share as above provided for, the Association shall pay out of each unit owner's share all mortgages and other liens encumbering said unit in accordance with their priority, and upon such payment being made, all mortgagees and lienors shall execute and record satisfactions or releases of their liens against said unit or units, regardless of whether the same are paid in full. Thereupon, the directors of the Association shall proceed to liquidate and dissolve the Association, and distribute the remaining portion of each distributive share, if any, to the owner or owners entitled thereto. If more than one person has an interest in a unit, the Association shall pay the remaining distributive share allocable to said unit to the various owners of such unit, excepting that if there is a dispute as to the validity, priority or amount of mortgages or liens encumbering a unit, then payment shall be made to the owner and/or owners of such unit and to the owners and holders of the mortgages and liens encumbering said unit.

As evidence of the members' resolution to abandon passed by the required vote or written consent of the members, the President and Secretary of the Association shall effect and place in the Public Records of Brevard County, Florida, an affidavit stating that such resolution was properly passed so approved by the members and also shall record the written consents, if any, of institutional first mortgagees to such abandonment.

After such an affidavit has been recorded and all owners have conveyed their interest in the condominium parcel to the Association and the Association to the purchaser, the title to said property thereafter shall be free and clear from all restrictions, reservations, covenants, conditions and easements set forth in this Declaration, and the purchaser and subsequent grantees of any of said property shall receive title to said lands free and clear thereof.

XV

ENCROACHMENTS

If any portion of the common elements now encroaches upon any apartment, or if any apartment now encroaches upon any other apartment or upon any portion of the common elements, or if any encroachment shall hereafter occur as the result of settling of the building, or alteration to the common elements made pursuant to the provisions herein, or as the result of repair and restoration, a valid easement shall exist for the continuance of such encroachment for so long as the same shall exist.

XVI

ASSOCIATION TO MAINTAIN REGISTER  
OF OWNERS AND MORTGAGES

The Association shall at all times maintain a register setting forth the names of all owners of apartments in the condominium, and any purchaser or transferee of an apartment shall notify the Association of the names of any party holding a mortgage upon any apartment and the name of all lessees in order that the Association may keep a record of same.

XVII

ESCROW FOR INSURANCE PREMIUMS

Any institutional first mortgagee holding a mortgage upon an apartment in the condominium shall have the right to cause the Association to create and maintain an escrow account for the purpose of assuring the availability of funds with which to pay premium or premiums due from time to time on casualty insurance policy or policies which the Association is required to keep in existence, it being understood that the Association shall deposit in an escrow depository satisfactory to such institutional first mortgagee or institutional first mortgagees a monthly sum equal to one-twelfth (1/12) of the annual amount of such insurance expense, and to contribute such other sum as may be required therefor to the end that there shall be on deposit in said escrow account at least one (1) month prior to the due date for payment of such premium or premiums, a sum which will be sufficient to make full payment therefor.

XVIII

REAL PROPERTY TAXES  
DURING INITIAL YEAR OF CONDOMINIUM

In the event that during the year in which this condominium is established, real property taxes are assessed against the condominium property as a whole, such taxes will be a common expense.

XIX

RESPONSIBILITY OF APARTMENT OWNERS

The owner of each apartment shall be governed by and shall comply with the provisions of this Declaration as well as the By-Laws and Articles of Incorporation of the Association. Any apartment owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his act, neglect or carelessness, or by that of any members of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of an apartment. Nothing herein contained, however, shall be construed so as to modify any waiver of rights or subrogation by insurance companies.

In any action brought against an apartment owner by the Association for damages, or injunctive relief due to such apartment owner's failure to comply with the provisions of this Declaration or By-Laws of the Association, the Association shall be entitled to court costs, reasonable attorney's fees and expenses incurred by it in connection with the prosecution of such action.

XX

WAIVER

The failure of the Association, an apartment owner or institutional first mortgagee to enforce any right, provision, covenant or condition which may be granted herein, or in the By-Laws and Articles of Incorporation of the Association, or the failure to insist upon the compliance with same, shall not constitute a waiver of the Association, such apartment owner or institutional first mortgagee to enforce such right, provision, covenant or condition, or insist upon the compliance with same, in the future.

No breach of any of the provisions contained herein shall defeat or adversely affect the lien of any mortgage at any time made in good faith and for a valuable consideration upon said property, or any part thereof, and made by a bank, savings and loan association, or insurance company authorized to transact business in the State of Florida and engage in the business of making loans constituting a first lien upon real property, but the rights and remedies herein granted to the Developer, the Association, and the owner or owners of any part of said condominium, may be enforced against the owner of the power of said property subject to such mortgage, notwithstanding such

mortgage. The purchaser at any sale upon foreclosure shall be bound by all of the provisions herein contained, unless said purchaser be an institutional first mortgagee which had a mortgage on said unit at the time of the institution of said foreclosure action, or the Developer.

XXI

CONSTRUCTION

The provisions of this Declaration shall be literally construed so as to effectuate its purposes. The invalidity of any provision herein shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration.

XXII

GENDER

The use of the masculine gender in this Declaration shall be deemed to refer to the feminine or neuter gender, and the use of the singular or plural shall be taken to mean the other whenever the context may require.

XXIII

CAPTIONS

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provisions hereof.

XXIV

REMEDIES FOR VIOLATIONS

For violation or a breach of any provisions of this Declaration, Articles and By-Laws of the Association by any unit owner or any authorized occupant, the Association, and the members thereof, or an institutional first mortgagee, or any of them severally, shall have the right to proceed at law for damages or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them, or for such other relief as may be appropriate. In addition to the foregoing right, the Association shall have the right, whenever there shall have been built within the condominium any structure which is in violation of this Declaration to enter upon the property where such violation of this Declaration exists, and summarily abate or remove the same at the expense of the owner, provided, however, the Association shall then make the necessary repairs or improvements where such violation occurred so that the property shall be in the same condition as it was before said violation occurred, and any such entry and abatement or removal shall not be deemed a trespass. The failure promptly to enforce any of the provisions of this Declaration shall not bar their subsequent enforcement. In any proceeding arising because of an alleged violation by an apartment owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court, and in any supplemental proceedings and appellate proceedings pursuant thereto, the prevailing party shall be entitled to attorney's fees for said proceedings subsequent to final judgment as the appropriate judicial body may award.

XXV

TIME-SHARE RESERVATION

No reservation is made pursuant to Section 718.1045, Florida Statutes, for the creation of time-share estates. Time-share estates are prohibited.

IN WITNESS WHEREOF, the above-stated Developer has caused these presents

to be signed and sealed on this 18th day of June, A.D. 19 85.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Bephane M. Bradley  
Brenda C. Spurr

PORT ROYAL OCEANSIDE, INC.

By: Alan Dolenshek  
ALAN DOLENSHEK, President

STATE OF FLORIDA     )  
                                  ) ss:  
COUNTY OF BREVARD    )

I HEREBY CERTIFY that on this 18th day of June, A.D. 1985, before me personally appeared ALAN DOLENSHEK, President of PORT ROYAL OCEANSIDE, INC., a Florida corporation, to me known to be the person described in and who executed the foregoing and he acknowledged the execution thereof to be his free act and deed as such officer for the uses and purposes therein mentioned; and that he affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at Cocoa Beach, in the State and County last aforesaid on the day and year last aforesaid.

My commission expires:

0641R/35R

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES SEPT 13 1986  
BONDED THRU GENERAL INSURANCE UND

Brenda C. Latrech  
Notary Public