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AMENDED DECLARATION OF CONDOMINIUM

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ESTABLISHING

1616 - SEA COVE

FRANKA WRIGHT  
CLERK OF CIRCUIT COURT  
INDIAN RIVER CO., FLA.  
CLINTA STROUD, C.

WHEREAS, CITY NATIONAL BANK OF MIAMI, Trustee, as Declarant and NORTHGATE PROPERTIES, INC., as Developer, hereby amend in toto the Declaration of Condominium submitted on the property hereinafter described.

NOW, THEREFORE, <sup>5006229</sup> CITY NATIONAL BANK OF MIAMI, as Trustee Under Land Trust No. 5002268 (the "Trustee"), a national banking association, does hereby declare as follows:

1. Introduction and Submission.

a. The Land. The Trustee owns fee title to certain land located in Indian River County, Florida, as more particularly described as follows:

Lots 1, 2 and 3, Block 14, and Tract A, THE OCEAN CORPORATION SUBDIVISION, according to the Plat filed in the office of the Clerk of the Circuit Court of Indian River County, Florida, in Plat Book 3, page 9.

b. Submission Statement. The Trustee hereby submits the Land and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, to the condominium form of ownership and use pursuant hereto and otherwise in the manner provided by the Florida Condominium Act as it exists on the date hereof.

c. Name. The name by which this condominium is to be identified is 1616 - SEA COVE, a CONDOMINIUM (hereinafter called the "Condominium"), located at 1600 South Ocean Drive, Indian River County, Florida.

d. Definitions. The following terms when used in this Declaration and in its exhibits, and as they may hereafter be amended, shall have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning:

(i) "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as hereafter renumbered.

(ii) "Developer" means Northgate Properties, Inc., a Georgia corporation authorized to do business in the State of Florida, its successors and assigns as to whom or which the rights of Developer hereunder are specifically assigned or accrue under law.

(iii) "Institutional Mortgage" means a mortgage held by a bank, savings and loan association, insurance company, or union pension fund authorized to do business in the State of Florida, or an agency of the United States Government.

(iv) "Unit Owner" or "Owner of a Unit" or "Owner" means the Owner of a condominium parcel, or, in the case of parcels owned by the Trustee, the beneficial Owner of such parcels.

2. Survey and description of improvements. Annexed hereto and expressly made a part hereof as Exhibit "A" consisting of pages (numbered 1-A through 39-A) is a survey of the land and graphic description and plot plans of the improvements constituting the Condominium, identifying the Units, the Common Elements and the Limited Common Elements and their respective location and dimensions. Said survey and plot plans have been prepared by Dana Howard, Land Surveyor.

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Registration No. 2805 and the graphic descriptions had been prepared by Charles E. Block, A.I.A., an architect authorized to practice in the State of Florida, and designated as his Commission no. 7010. Each Unit is identified by a building name plus a specific Unit number in each of the five-story buildings and by building name-Villas, plus Unit number in each of the Villas located above the covered parking as found on said Exhibit "A". The South five-story building is designated 1616 Building with the Easterly attached three-story structure designated 1616 Villas. The North five-story building is designated as Sea Cove Building with the Westerly attached three-story structure designated Sea Cove Villas. No unit has the same designation as any other unit. Similarly, each parking space constituting Limited Common Property is identified by a specific number designation on said Exhibit "A". No parking space or storage space constituting a part of said Limited Common Property bears the same designation as any other parking space or storage space. Annexed hereto and expressly made a part hereof as Exhibit "B" is the Certificate of Dana Howard that such construction of the improvements described is sufficiently complete so that such material, together with the wording of the Declaration relating to such matters of survey, is a correct representation of the improvements described, and further, that with such material there can be determined therefrom the identification, location and dimensions of the Common Elements and of each unit.

3. Units, Common Property and Limited Common Property. The Condominium consists of Units, Common Property and Limited Common Property, as said terms are hereinafter defined.

a. "Units", as the term is used herein, shall mean and comprise the ninety-four (94) separate and numbered dwelling units, as said units are defined in the Condominium Act, which are designated in Exhibit "A" to this Declaration of Condominium. Each Unit will include that part of the building containing the Unit that lies within the following described boundaries of the Unit:

(i) The horizontal boundaries shall be as described below, extended to an intersection with the perimetrical, or vertical, boundaries, hereinafter defined:

Upper boundary: the plane of the unpainted or unfinished surface of the ceiling of each Unit.

Lower boundary: the plane of the lowest surface of the unfinished floor under the floor of each unit including the floor slab over a balcony or terrace or other portion of the building serving only the unit being bounded.

(ii) The vertical or perimetrical boundaries of each Unit shall be the unfinished interior surface of the walls bounding the Unit extended to the plane's intersections with each Unit and with the upper and lower boundaries, provided that, where there is appurtenant to a Unit a balcony or terrace the base of which is an extension of floor system constituting the lower boundary of the Unit and such balcony or terrace is vertically bounded by an extension of a building wall which is a part of the Unit's perimetrical boundary, the perimetrical boundaries of the Unit shall be extended to include such balcony or terrace; there shall be included with each Unit the exterior doors and windows appurtenant to the same.

The perimetrical boundaries of the Units are set forth on pages 4 through 17 and pages 23 through 36, inclusive of Exhibit "A" attached



b. "Common Property", as the term is used herein, shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Units, as same are hereinabove defined, and shall include easements through Units for conduits, pipes, ducts, plumbing, wiring and other facilities for the furnishing of utility service to all Units (provided however, that no such easement shall exist where no Unit shares utility services in common with any other Unit) and Common Property and easements of support in every portion of a Unit which contributes to the support of the improvements, and shall further include all personal property held and maintained for the joint use and enjoyment of all of the owners of all such Units, including the lift station and appurtenant line subject to the Utility Maintenance and Relocation Agreement with the City of Vero Beach. All bearing walls located within a Unit or any improvement constitute part of the Common Property up to the unpainted finished surface of said walls.

c. "Limited Common Property", as the term is used herein, shall mean and comprise that portion of the Common Property consisting of forty-seven (47) separate and designated covered parking spaces, one hundred forty-five (145) separate and designated uncovered parking spaces, and ninety-four (94) storage spaces as specifically identified on Exhibit "A" attached hereto, as to each of which said parking and storage spaces a right of exclusive use may be reserved as an appurtenance to a particular Unit, as hereinafter provided. "Limited Common Property" shall also mean and comprise that portion of the Common Property consisting of additional uncovered separate, designated and numbered parking spaces, as specifically identified and numbered in Exhibit "A" attached hereto, as to each of which said parking spaces a right of exclusive use may be reserved as an appurtenance to any Unit, as hereinafter provided.

4. Administration of the Condominium by the Association. To efficiently and effectively provide for the administration of the Condominium by the owners of Units, a non-profit Florida corporation, known and designated as "1616 - SEA COVE CONDOMINIUM ASSOCIATION, INC." (referred to herein as the "Association"), has been organized, and said corporation shall administer the operation and management of the Condominium, and undertake and perform all acts and duties incident thereto in accordance with the terms, provisions and conditions of this Declaration of Condominium, and in accordance with the terms of the Articles of Incorporation of the Association, and the By-Laws of said corporation. A true copy of the Articles of Incorporation and By-Laws of said corporation are annexed hereto and expressly made a part hereof as Exhibits " D " and " E " respectively. The owner or owners of each Unit

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shall automatically become members of the Association upon his, their or its acquisition of an ownership interest in or title to any Unit in 1616 - SEA, a condominium, and the appurtenant undivided interest in Common Property and Limited Common Property in 1616 - SEA COVE, a condominium, and upon recording evidence of such ownership in the Public Records of Indian River County, Florida, and the membership of such owner or owners shall terminate automatically upon such owner or owners being divested of such ownership interest in or title to such unit, regardless of the means by which such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association, or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, said Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration of Condominium, levy and collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units, Common Property and Limited Common Property as the Board of Directors of the Association may deem to be in the best interests of the Condominium.

On all matters on which the membership is entitled to vote, there shall be only one (1) vote for each Unit in this Condominium, which vote may be exercised by the owner or owners of each Unit in the manner provided in the By-Laws of the Association, and which vote shall be subject to any limitations or restrictions provided in said By-Laws or in this Declaration of Condominium. Reference is hereby made to paragraph 30 and provisions therein made relating to the Board of Directors of the Association. Should any member own more than one Unit in the Condominium, such member shall be entitled to exercise as many votes as he owns Units.

5. Perpetual non-exclusive easement in Common Property.

The Common Property shall be, and the same is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the owners of Units in this Condominium for support, ingress and egress over streets, walks, rights-of-way securing the Units for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, including reasonable access to the public ways, and for the furnishing of services, utilities and facilities for which the same are reasonably intended for the enjoyment of said owners of Units, and as the same may exist or be necessary or desirable for the furnishing of the same to Units or other areas of this condominium from time to time. Notwithstanding anything above provided in this paragraph to the contrary, the Association hereinbefore identified shall have the right to establish rules and regulations pursuant to which the owner or owners of any Unit may be entitled to the exclusive use of any parking space or spaces (other than those parking spaces comprising Limited Common Property). Such easements shall not be encumbered by any leasehold or lien.

6. Easement for air space. The owner of each Unit shall have an exclusive easement for the use of air space occupied by said Unit as it exists at any particular time and as said Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

7. Easement for unintentional and non-negligent encroachments. In the event that any Unit shall encroach upon any Common Property for any reason not caused by the purposeful or negligent act of the Unit owner or owners, or agents of such owner or owners, then an easement appurtenant to such Unit shall exist for the continuance of such encroachment onto the Common Property for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Property shall encroach upon any Unit, then an easement shall exist for the continuance of such encroachment of the Common Property into any Unit for so long as such encroachment shall naturally exist.

8. Ownership of Units and appurtenant share in Common Elements, Common Surplus and Common Expense. Each Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the owner or owners of each said Unit shall own, as an appurtenance to each Unit, an undivided share of all Common Elements and any Common Surplus of the Condominium according to the schedule hereinbelow set forth for each Unit:

1616 BUILDING

<u>Unit No.</u>	<u>% of Ownership of Common Elements</u>
101	1.10304%
102	1.00800%
103	1.00224%
104	1.01088%
106	1.01952%
107	1.01376%
108	1.01376%
109	1.12608%
201	1.12608%
202	1.03104%
203	1.02528%
204	1.03392%
205	1.06848%
206	1.04832%
207	1.03680%
208	1.03968%
209	1.14624%
301	1.14624%
302	1.04544%
303	1.03968%
304	1.04832%
305	1.08288%
306	1.05984%
307	1.05966%
308	1.05408%
309	1.16352%
401	1.16352%
402	1.06272%
403	1.05408%
404	1.06272%
405	1.09728%
406	1.08288%
407	1.07712%
408	1.07136%
409	1.18080%
501	1.18080%
502	1.07424%
503	1.06848%
504	1.09440%
505	1.11168%
506	1.10592%
507	1.09440%
508	1.08864%
509	1.19520%

1616 BUILDING - VILLAS

201	.99623%
202	.93863%
203	.99623%
204	.93863%
301	.99019%

<u>Unit No.</u>	<u>% of Ownership of Common Elements</u>
302	.96192%
303	.99019%
304	.96192%

SEA COVE BUILDING

101	1.10304%
102	1.00800%
103	1.00224%
105	1.01952%
106	1.01864%
107	1.12608%

201	1.12608%
202	1.03104%
203	1.02528%
204	1.06560%
205	1.04832%
206	1.03968%
207	1.14912%

301	1.14624%
302	1.04544%
303	1.03968%
304	1.08288%
305	1.05984%
306	1.05408%
307	1.16352%

401	1.16352%
402	1.06272%
403	1.06560%
404	1.12320%
405	1.07712%
406	1.07136%
407	1.18080%

501	1.18080%
502	1.07424%
503	1.09440%
504	1.13760%
505	1.10592%
506	1.08864%
507	1.19520%

SEA COVE BUILDING - VILLAS

201	1.01376%
202	.99072%
203	.99648%
204	.95040%
301	.97920%
302	.97920%
303	.96192%
304	.96192%

100.00 %

Each Unit owner and each Unit shall be liable for a proportionate share of the Common Expenses according to the percentage of ownership of Common Elements shown above. Each Unit owner and Unit shall have a proportionate share in the Common Surplus, such shares being the same proportion as the owner's percentage of ownership of Common Elements shown above.

9. Restraint upon separation and partition of Common Property. Recognizing that the proper use of a Unit by any owner



or owners is dependent upon the use and enjoyment of the Common Property in common with the owners of all other Units and that it is in the interest of all owners of Units that the ownership of the Common Property be retained in common by the owners of Units in the Condominium, it is declared that the undivided interest in the Common Property appurtenant to each Unit shall remain undivided and no owner of any Unit shall bring or have any right to bring any action for partition or division.

10. Restriction against further subdividing of Units and separate conveyance of appurtenant Common Property, etc. Except as reserved to Developer, no Unit may be divided or subdivided into a smaller Unit or smaller Units than as shown on Exhibit hereto, nor shall any Unit, or portion thereof, be added to or incorporated into any other Unit without the prior written consent of the Board of Directors of the Association, as hereinbelow provided. The undivided interest in the Common Property declared to be an appurtenance to each Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Unit, and the undivided interest in Common Property appurtenant to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to affect the interest or lien in, to or upon a Unit shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit and its appurtenant undivided interest in Common Property, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit which describes said Unit by the Unit number assigned thereto in Exhibit "A" without limitation or exception shall be deemed and construed to affect the entire Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its appurtenant undivided interest in Common Property by more than one (1) person or entity as tenants in common, joint tenants or as tenants by the entirety.

11. Use or acquisition of interest in the Condominium to render user or acquirer subject to provisions of Declaration of Condominium, rules and regulations. All present or future owners, tenants or any other person who might use the facilities of the Condominium in any manner are subject to the provisions of this Declaration of Condominium, and to the rules and regulations of Association, as the same may from time to time be adopted and promulgated, and the mere acquisition or rental of any Unit, or the mere act of occupancy of any Unit, shall signify that the provisions of this Declaration of Condominium and of the Association's rules and regulations are accepted and ratified in all respects.

12. Assessments: Liability, lien and enforcement. The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interests of the owners of all Units. To properly administer the operation and management of the project, the Association will incur, for the mutual benefit of all of the owners of Units, costs and expenses which will be continuing or non-recurring costs, including reserves, as the case may be, which costs and expenses are sometimes herein referred to as "Common Expense". To provide the funds necessary for such proper operation and management, the said Association has heretofore been granted the right to make, levy and collect assessments against the owners of all Units and against the said Units. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of this condominium, the following provisions shall be operative and binding upon the owners of all Units, to-wit:







by reason of the divestment of his ownership of such Unit, by whatever means, Association shall not be required to account to such owner for any share of the funds or assets of Association, or which may have been paid to said Association by such owner, as all monies which any owner has paid to Association shall be and constitute an asset of said corporation which may be used in the operation and management of this Condominium.

d. The liability for any assessment or portion thereof may not be avoided by a Unit owner or waived by reason of such Unit owner's waiver of the use and enjoyment of any of the Common Elements of the Condominium or by his abandonment of his Unit.

e. Any assessment or installment thereon not paid within ten (10) days from the date upon which it is due shall be deemed delinquent and shall bear interest thereon at the highest interest rate permissible under the usury laws of Florida at the time of creation of the obligation from its due date and shall remain delinquent until fully paid, together with accrued interest. In addition, in the event of foreclosure, the Unit owner shall be required to pay a reasonable rental for the Condominium parcel, as provided by Florida Statutes, Chapter 718.116. If such delinquency is not made good within sixty (60) days from the date the same occurred, the balance of the annual assessment remaining unpaid shall become immediately due and payable, and the Association may proceed to collect the same in any manner provided by law, including without limitation, the foreclosure of its lien as provided in the Condominium Act.

f. The provisions of Section 718.116 of the Florida Condominium Act, where the same are not in conflict with other provisions of this section of this Declaration, are incorporated herein by reference and made a part hereof.

g. The lien provided for in Section 718.116 of the Florida Statutes shall also secure reasonable attorney's fees and costs incurred by the Association incident to the collection of assessments or enforcement of the lien thereon, as well as any sums expended by the Association to protect the security of its lien.

h. The holder of a first mortgage acquiring title to a Unit by a foreclosure of its mortgage or by acceptance of a voluntary conveyance in lieu thereof, or a purchaser at judicial sale resulting from the foreclosure of a first mortgage, and their successors and assigns, shall not be solely liable for the share of Common Expenses or assessments pertaining to such Unit or chargeable to the former Unit owner, which become due prior to such acquisition of title, unless the share is secured by claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of Common Expenses shall be collectible from all members of the Association and from all of the Unit owners, in this Condominium whose owners may be members of the Association, including such acquirer of title. Should Association be the owner of any Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by Association, shall be apportioned and assessment therefor levied ratably among the owners of all Units in the Condominium, based upon their proportionate membership in Association exclusive of the membership therein appurtenant to any Unit or Units owned by Association.

i. In any voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against grantor made prior to the time of



such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed to be an election precluding the institution of suit at law to attempt to effect collection of any sum then remaining owing to it.

13. Maintenance and repair of Common Property and Limited Common Property by Association. Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property and Limited Common Property, and all conduits, ducts, plumbing, wiring, elevators and other facilities located in the Common Property and the Limited Common Property for the furnishing of utility or drainage services to the Units and said Common Property and Limited Common Property, and, should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement on, of or at any Common Property, the said Association shall, at its expense, repair such accidental damage. If repairs to Common Property, Limited Common Property or windows are made necessary by the negligence of any Unit owner, members of his family, or his guests, employees, agents, invitees, or lessees, then such repairs shall be affected by the Association at the expense of said Unit owner, and payment for the same shall be made within ten (10) days of demand by the Association; if unpaid within ten (10) days, the Association may proceed to collect the same, plus interest at the highest rate permissible under Florida usury laws, together with costs of collection, as herein provided for the collection of delinquent assessments for maintenance.

14. Insurance coverage, use and distribution of proceeds, repair or reconstruction after casualty.

a. All insurance policies upon the Condominium property shall be purchased by the Association. The named insured shall be the Association, and the Unit owners and their mortgagees as their interest may appear. Provision shall be made for the issuance of mortgagee endorsements and/or memoranda of insurance to the Unit owners and their mortgagees.

b. The Association shall be required to obtain and maintain casualty insurance covering all improvements upon the land, including all parts of the buildings, both exterior and interior, and including fixtures, installations, additions and other portions of the buildings within boundaries of the Unit originally installed therein or replacement thereof of like, kind and quality, in accordance with the original plans and specifications therefor but excluding all furniture, furnishings or other personal property owned, supplied or installed by individual owners or tenants of unit owners, as are ordinarily covered by similar types of insurance policies, in an amount equal to the maximum insurable value, exclusive of foundation and excavation costs, as determined annually by the insurance carrier; or, if approved by the Board of Directors, such insurance may be carried on not less than an eighty percent (80%) co-insurance basis. The coverage shall afford protection against the loss or damage by fire, windstorm, and other hazards covered by a standard coverage endorsement, and such other risks as shall be customarily covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief. The Association shall also be required to carry public liability insurance maintained by the Association and its members. All liability insurance maintained by the Association shall contain cross-liability endorsements to cover liability of the Unit owners as a group to each Unit owner.

The Association may carry such other insurance, or obtain



such other coverage, as the Board of Directors may determine to be desirable. Employer's liability insurance shall be obtained if necessary to comply with the Workmen's Compensation Law.

c. The premiums upon all insurance policies shall be paid by the Association as a Common Expense.

d. Association is hereby declared to be and is appointed as authorized agent for all of the owners of all Units for the purpose of negotiating and agreeing to a settlement as to the value and extent of any loss which may be covered under any policy of casualty insurance, and is granted full right and authority to execute in favor of any insurer a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss or damage to insured property.

e. Any proceeds becoming due under the casualty insurance policy or policies for loss, damage or destruction sustained to the buildings or other improvements shall be payable to the Association and the institutional first mortgagees to which have been issued loss payable mortgagee endorsements.

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 institutional first mortgagees which are named as payees upon the drafts issued by the insurance carrier shall endorse said drafts 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 used herein, shall mean any loss, damage or destruction sustained to the insured improvements which would require an expenditure of sums in excess of five percent (5%) of the amount of coverage applicable to the particular improvements suffering loss, damage or destruction in any one instance under the Association's casualty insurance policy or policies then existing, in order to restore, repair and reconstruct the loss, damage or destruction sustained.

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, unless there shall have been issued loss payable mortgagee endorsement to an institutional first mortgagee, in which case insurance proceeds shall be payable to Association and such mortgagee, and such proceeds shall be made available to the institutional first mortgagee which shall hold the mortgage on the particular improvement sustaining loss, damage or destruction, or, in the event of loss, damage or destruction to more than one Unit, to the institutional first mortgagee which may hold the greater number of mortgages encumbering the Units which may have sustained loss, damage or destruction in any one instance in the Condominium, which proceeds shall be held in a construction fund to provide for the payment of all work, labor and materials to be furnished to the reconstruction, restoration and repair of the Condominium improvements. Disbursements from such construction fund by such institutional first mortgagee shall be in accordance with such institution's usual and customary construction loan procedures. In the event of the loss of or damage to Common Property, Limited Common Property and any Unit or Units, which loss or damage is covered by the casualty insurance, the proceeds paid to the Association to cover such loss or damage shall be first applied to the repair, replacement or reconstruction, as the case may be, of Common Property, real or personal, and Limited Common Property, and then any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any Unit or Units which may have sustained loss or damage so covered. Any

sums remaining in the construction fund after the completion of the restoration, reconstruction or repair of the improvements and full payment therefor shall be paid over to the Association and held for, and/or distributed to, the Unit owners in proportion to each Unit owner's share of the Common Surplus. If the insurance proceeds payable as a 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 owner of the damaged Unit and against all members and all Unit owners (as a Common Expense) in case of damage to Common Elements, for the amount of such insufficiency, and shall pay said sum into the aforesaid construction fund. If at any time during reconstruction and repair or upon completion of reconstruction and repair the funds in the hands of the Association for the payment of the costs therefor are insufficient, assessments shall be made against the owners who own the damaged Units, and against all owners of Units in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against owners of Units for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments for damage to Limited Common Elements shall be in proportion to each owner's share in the Limited Common Elements.

Notwithstanding which institutional first mortgagee holds the greater number of mortgages encumbering the Units, such mortgagees may agree between or among themselves as to which one shall administer the construction fund in the event of loss or damage to more than one Unit in any one instance. If there be no institutional mortgagees as to whom a loss payable endorsement has been issued for any Unit, then the insurance proceeds for loss or damage to such unencumbered Unit shall be paid to the Association and used for reconstruction and repair in the same manner as hereabove provided for use by an institutional first mortgagee.

If the damage sustained to the improvements is less than substantial, as heretofore defined, the Board of Directors 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 mortgagee shall be required to cause such insurance proceeds to be made available to the Association prior to completion of any necessary restoration, repair or reconstruction, unless arrangements are made by the Association to satisfactorily assure that such restoration, repair and reconstruction shall be completed. Such assurances may consist of, without limitation, obtaining (1) a construction loan from other sources, (2) a binding contract with a contractor or contractors to perform the necessary restoration, repair and reconstruction, or (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 or of any Unit, unless an appropriate amendment be made to this Declaration.

f. Where physical damage has been sustained to the Condominium improvements and the insurance proceeds have not been paid into a construction 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 a Unit which shall have



sustained loss, damage or destruction shall be entitled to receive that portion of the insurance proceeds applicable to the loss sustained by said Unit provided that no other Unit, Common Property or Limited Common Property shall have sustained loss, damage or destruction occasioned at the same time and from the same cause (in which event said institutional mortgagee shall only be entitled to receive the portion of the insurance proceeds apportioned to said Unit in the same share as the share in the Common Elements appurtenant to said Unit).

g. If substantial loss, damage or destruction shall be sustained to the Condominium improvements, a majority of the Board of Directors of Association, at a special meeting called for such purpose, may vote that the damaged property will not be repaired or reconstructed, and may further vote to terminate the Condominium, provided, however, such termination will not be effective without the written consent of all institutional first mortgagees holding mortgages encumbering Units. See paragraph 35 concerning termination of the Condominium.

15. Personal liability and risk of loss of owner of Unit and separate insurance coverage, etc. The owner of each Unit may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects and other personal property belonging to such owner, and may, at his own expense and option, obtain insurance coverage against personal liability for injury to the person or property of another while within such owner's Unit or upon the Common Property or Limited Common Property. All such insurance obtained by the owner of each Unit shall, wherever such provision shall be available, provide that the insurer waives its right of subrogation as to any claims against other owners of Units, Association and the respective servants, agents and guests of said owners and Association, and such other insurance coverage shall be obtained from the insurance company from which Association obtains coverage. Risk of loss or damage to any furniture, furnishings, personal effects and other personal property (other than such furniture, furnishings and personal property constituting a portion of the Common Property) belonging to or carried on the person of the owner of each Unit, or which may be stored in any Unit, or in, to or upon Common Property or Limited Common Property, shall be borne by the owner of each such Unit. All personal property and furnishings or fixtures constituting a portion of the Common Property and held for the joint use and benefit of all owners of all Units shall be covered by such insurance as shall be maintained in force and effect by Association as herein provided. The owner of a Unit shall have no personal liability for any damages caused by the Association or in connection with the use of the Common Property or Limited Common Property. The owner of a Unit shall be liable for injuries or damages resulting from an accident in his own Unit, to the same extent and degree that the owner of a house would be liable for an accident occurring within his house.

16. Right of Association to alter and improve property and assessment therefor. Association, pursuant to the Act, shall have the right to make or cause to be made such alterations or improvements to the Common Property as do not prejudice the rights of the owner of any Unit in the use and enjoyment of his Unit, (unless such Owner's written consent has been obtained), provided the making of such alterations and improvements are approved by the Board of Directors of said Association, and the cost of such alterations or improvements shall be assessed as Common Expenses to be assessed and collected from all of the owners of Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the owner or owners of a Unit or Units exclusively or substantially benefited, the assessment shall be levied in such proportion as may be determined by the Board of Directors of

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of any such emergency, the owner of each Unit, if required by the Association, shall deposit, under the control of the Association a key to such Unit.

20. Limitation upon right of owners to alter and modify Units. No owner of a Unit shall permit there to be made any structural modifications or alterations in such Unit without first obtaining the written consent of Association, which consent may be withheld in the event that a majority of the Board of Directors of Association determine, in their sole and absolute discretion, that such structural modifications or alterations would affect or in any manner endanger the Condominium in part or in its entirety. If the modification or alteration desired by the owner of such Unit involves the removal of any permanent interior partition, such owner, without consent of the Association or its Board, shall have the right to permit such removal so long as the permanent interior partition to be removed is not a load bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provision of utility services constituting Common Property located therein. No owner shall cause any improvements or changes to be made on the exterior of his Unit or of the Condominium, including painting or other decoration, or the installation of electrical wiring, television antenna, machines or air conditioning units, which may protrude through the walls or roof of the Condominium building, or in any manner change the appearance of any portion of the building not within the walls of such Unit. No Unit owner will cause anything to be hung, displayed or placed on the exterior walls, doors or windows of the Condominium building, and no Unit owner will in any way change or alter the appearance of any portion of the exterior of the Condominium building or any surface of an interior building wall facing Common Elements without the prior, written consent of the Association. No clothes lines or similar devices, and no signs or any type, will be allowed on any part of the Condominium.

Association shall determine the exterior color scheme of the buildings and the nature and color of all exterior decorative elements, fixtures of furnishings.

21. Residential use restriction, use of Common Property and Limited Common Property subject to rules of Association. Each Unit is hereby restricted to single family, private residential use and the use of Common Property by the owner or owners of all Units, and all other parties authorized to use the same, and the use of Limited Common Property by the owner or owners entitled to use the same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association.

The use of each Unit, including Common Property and Limited Common Property, is further restricted:

a. Pets. After the owner's original pet (which must be approved by the Association prior to purchase) being a cat or dog has died, then the Owners' pets which may be allowed must be domestic cats and dogs, weighing under ten (10) pounds full grown, and birds. The owners of all pets shall insure that, if required, said pet shall receive annual rabies shots in accordance with the laws of the State of Florida.

All pets must be kept within the confines of an owner's apartment except when the same are walked.

All pets must be carried in walkways and elevators.

All dogs must be under leash at all times when not in an owner's apartment. Owners must clean up all nuisances made by pets in the common areas.

All pets must be sufficiently under control at all times so that they do not become a nuisance to the owners of other apartments in the Condominium. In the event that any pet becomes a nuisance, the Board of Directors shall have the right to give the apartment owner owning said pet thirty (30) days written notice of said fact. In the event that said owner does not remove said pet from the premises during said thirty (30) day period, the Board of Directors shall be entitled to take such action as may be necessary to secure removal of said pet from the premises, including but not limited to securing an injunction requiring the removal of said pet.

b. Children. Although there is no age limitation for children owners are responsible for their children and any nuisance caused by an owner's child or children to the owners of other Units in the Condominium. In the event a child or children of an owner causes a nuisance, thirty (30) days' written notice shall be given by the Board of Directors to the owner. In the event the nuisance is not corrected within said thirty (30) day period, the Board of Directors shall have the right to take such action as deemed necessary including securing an injunction requiring the owner to abate their child's or children's nuisances.

c. Refuse. All trash, garbage or refuse shall be deposited by the owners in a central location provided by the Association, and no trash, garbage, or refuse shall be deposited or be permitted to stand on the exterior of any building or in any walkway or stairway.

Until the Developer has closed sales of all of the Units in this Condominium, neither the other Unit owners nor the Association shall interfere with the sale of such Units. 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 Units, the showing of the property and the display of signs.

22. The Condominium to be used for lawful purposes, restriction against nuisances, etc. No immoral, improper, offensive, or unlawful use shall be made of any Unit or of the Limited Common Property, nor any part thereof, and all rules and regulations, all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No owner of any Unit shall permit or suffer anything to be done or kept in his Unit or on the Common Property, or the Limited Common Property, which will increase the rate of insurance on the Condominium or which will obstruct or interfere with the rights of other owners or annoy them by unreasonable noises, nor shall any such owner undertake any use or practice which shall create and constitute a nuisance to any other owner of a Unit, or which interferes with the peaceful possession and proper use of any other Unit, or the Common Property, or the Limited Common Property.

23. Automobile Parking Spaces and Storage Spaces. The location and dimensions of automobile parking spaces and storage spaces are as more particularly described on the plan which is attached hereto as Exhibits "2-A and 21-A" and Exhibits "3-A and 22-A", respectively, and are each identified numerically on such plan. One such parking space and storage space shall be assigned to the exclusive use of each Unit owner so that the occupants of each Unit will be entitled to one (1) parking space for one (1) automobile and one (1) storage space. The initial assignment of each parking space and storage space shall be made by the Developer. Subsequent assignments may be made by each Unit owner, or by operation of law, to any other Unit owner in exchange of spaces or the sale or transfer of a Unit, provided, a Unit always has an assigned parking space and storage space. Every assignment



24. Sales and leasing of Units, right of first refusal in Association, exceptions.

b. Notwithstanding the provisions of paragraph 24(a), the Board of Directors of Association may affirmatively approve and give consent to such proposed sale or lease, and may do so without the approval of the members of the Association.

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provided that a majority of the Board of Directors of Association concur and evidence such concurrence in writing in the form of a certificate executed by the President and Secretary of the Association with the formalities of a deed so that the same shall be entitled to recordation in the public records of Indian River County, Florida, delivered to the Unit owner desiring to sell or lease his Unit. Such certificate shall bind the Association and no grantee or mortgagee shall be obligated to make further determination of such approval, but may rely upon such certificate.

c. Any purported sale or lease of a Unit where the owner has failed to comply with the foregoing provisions of this paragraph 24 shall be voidable at the election of the Board of Directors of the Association, provided, however, that such voidability shall exist for a period of no longer than ninety (90) days from the consummation of such sale or lease transaction, such consummation to be evidenced by occupancy of the Unit or by the recordation of a deed of conveyance thereto; and provided, further, that the Association commences an action within such ninety (90) day period to have the same declared void.

d. Any institutional first mortgagee making a mortgage loan for the purpose of financing the purchase of a Unit in the Condominium shall not be required to make inquiry into whether or not its mortgagor's grantor complied with the provisions of this paragraph 24, and any failure of such mortgagor's grantor to so comply will not operate to affect the validity or priority of such mortgage.

e. Any purchaser of a Unit in the Condominium, whose prospective seller has been in title for at least ninety (90) days preceding such purchase, shall not be required to make inquiry into whether or not such seller's grantor complied with the provisions of this paragraph 24 in selling such Unit to such seller. After ninety (90) days following the consummation of any transaction involving the sale of a Unit in the Condominium, which consummation shall be evidenced by the recordation of a deed conveying the title to such Unit, no action whatsoever may be brought by the Association to void such transaction by reason of non-compliance with this paragraph 24.

f. No lease entered into by an Owner or assign shall be for a term of less than one (1) month and there shall be no limitation as to the number of times an Owner may lease a Unit.

g. Any lease approved by the Board of Directors shall provide that it may not be extended or assigned without the approval of the Board of Directors, and the lessee may not sublet without such approval. Any lessee occupying a Unit under an approved lease shall be fully subject to the terms of this Declaration and the rules, regulations and By-Laws of the Association, and such lease shall be subject to cancellation by Association without notice if the lessee thereunder shall fail to comply with the rules and regulations contained herein or which may hereafter be established by the Association.

h. The right of first refusal granted to the Association shall not apply or be operative to any foreclosure or other judicial sale of a Unit, although a purchaser at such judicial sale, except as hereinafter provided, shall thereafter be subject to the right of first refusal in the Association relative to the sale or lease of a Unit.

i. All the terms and provisions of this paragraph 24 set forth hereinabove relative to the right of first refusal of the Association shall at all times be wholly inapplicable and inoperative as to any institutional first mortgagee which has



acquired title to a Unit by reason of a foreclosure of its mortgage or by the acceptance of a voluntary conveyance in lieu thereof, and such institutional first mortgagee shall have the unequivocal right and power to sell, transfer, lease or otherwise dispose of such Unit as it may deem in its best interest, without first offering the same to the Board of Directors and without any restriction whatsoever. The exceptions to the right of first refusal as set forth in this section (i) of this paragraph 24 shall be fully applicable to the Developer, which likewise shall have the unrestricted right to sell or lease Units which it owns in the Condominium without the approval of Association, its members or Directors.

25. Transfers other than by sale.

a. If any Unit owner shall acquire his title by gift, the continuance of his ownership of his Unit will be subject to the approval of the Board of Directors of the Association.

b. If any Unit owner shall acquire his title by devise or inheritance, the continuance of his ownership of his Unit will be subject to the approval of the Board of Directors of the Association.

c. If any Unit owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of his Unit will be subject to the approval of the Board of Directors of the Association.

d. A Unit owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Board of Directors of the Association notice of the acquiring of his title, together with such information concerning the Unit owner as said Board may reasonably require and a certified copy of the instrument evidencing the owner's title. If the above required notice to the Board of Directors of the Association is not given, then, at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Unit, said Board, at its election and without notice, may approve or disapprove the transaction or ownership. If said Board disapproves the transaction or ownership, it will proceed as if it had received the required notice on the date of such disapproval.

e. If the Unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner not previously mentioned, then, within sixty (60) days after receipt from the Unit owner of the notice and information required to be furnished, the Board of Directors, if it shall affirmatively disapprove such ownership, may deliver or mail by registered mail to the Unit owner an agreement to purchase the Unit concerned by a purchaser approved by it, who will purchase and to whom the Unit owner must sell the Unit under the following terms:

(1) The sale price will be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price will be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators will be two (2) appraisers appointed by the American Arbitration Association who will base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration will be paid by the purchaser.

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(2) The purchase price will be paid in cash.

(3) The sale will be closed within ten (10) days following the determination of the sale price.

(4) A certificate approving the purchaser will be executed by the President and Secretary of the Association.

(5) If the Board of Directors of the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then, notwithstanding the disapproval, such ownership will be deemed to have been approved, and said Board shall furnish a certificate of approval as elsewhere provided.

f. No provision or limitation hereinabove provided in this paragraph 25 shall be applicable or operative as to any transfer by Developer.

26. Association to maintain registry of owners and mortgagees. Association shall at all times maintain a registry setting forth the names of the owners of all of the Units, and, in the event of the sale or transfer of any Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Unit together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Unit. Further, the owner of such Unit shall at all times notify Association of the names of the parties holding any mortgage or mortgages on any Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Unit may, if they so desire notify the Association of the existence of any mortgage or mortgages held by such party on any Unit, and, upon receipt of such notice, Association shall register in its record all pertinent information pertaining to the same.

27. Approval of corporate owner or purchaser. Inasmuch as the Condominium may be used only for residential purposes and a corporation cannot occupy a Unit for such use, if the Unit owner or purchaser of a Unit is a corporation, the approval of ownership by the corporation may be conditioned by requiring that all persons occupying the Unit be approved by the Board of Directors of the Association. No provision or requirement of this paragraph 27 shall be applicable to or operative as to Developer.

28. Mortgages. No Unit owner, excepting the Developer, may mortgage a Unit or any interest in it without the approval of the Board of Directors of the Association, unless such mortgage be to an institutional lender or to the Developer or to the Seller of a Unit to secure a portion or all of the purchase price. The approval of any other mortgage may be upon such conditions as may be determined by the Board of Directors of Association, or may be arbitrarily withheld by the said Board. No provision or requirement of this paragraph 28 shall be applicable to or operative as to Developer.

29. Apportionment of tax or special assessment if levied and assessed against the Condominium as a whole. In the event that any taxing authority having jurisdiction over the Condominium shall levy or assess any tax or special assessment against the Condominium as a whole, as opposed to levying and assessing such tax or special assessment against each Unit and its appurtenant undivided interest in Common Property, as now provided by law, then such tax or special assessment so levied shall be paid as



a Common Expense by Association, and any taxes or special assessments which are to be so levied shall be included, wherever possible, in the estimated annual budget of Association, or shall be separately levied and collected as an assessment by Association against all the owners of all Units and said Units if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by Association in the event that such tax or special assessment is levied against the Condominium as a whole, instead of against each separate Unit and its appurtenant and undivided interest in Common Property shall be apportioned among the owners of all Units so that the amount of tax or special assessment so paid or to be paid by Association and attributable to and to be paid by the owner or owners of each Unit shall be that portion of such total tax or special assessment which bears the same ratio to said total tax or special assessment as the undivided interest in Common Property appurtenant to each Unit bears to the total undivided interest in Common Property appurtenant to all Units. In the event that any tax or special assessment shall be levied against the Condominium in its entirety, without apportionment by the taxing authority to the Units and appurtenant undivided interests in Common Property, then the assessment by Association, which shall include the proportionate share of such tax or special assessment attributable to each Unit and its appurtenant undivided interest in Common Property, shall separately specify and identify the amount of such assessments attributable to tax or special assessment, and the amount of such tax or special assessments so designated shall be and constitute a lien prior to all mortgages and encumbrances upon any Unit and its appurtenant undivided interest in Common Property, regardless of the date of the attachment or recording of such mortgage or encumbrance, to the same extent as though such tax or special assessment has been separately levied by the taxing authority upon each Unit and its appurtenant undivided interest in Common Property.

All personal property taxes levied or assessed against personal property owned by Association shall be paid by said Association and shall be included as a Common Expense in the annual budget of Association.

30. Right of Developer or Trustee to sell or lease Units owned by it free of right of first refusal or right of redemption, and right of Developer to representation on Board of Directors of Association. So long as the Developer or Trustee shall own any Unit, the said Developer shall have the absolute right to lease or sell any such Unit to any person, firm or corporation upon any terms and conditions as it shall deem to be in its own best interests, and, as to the lease or sale of any Unit by Developer or Trustee, the right of first refusal and any right of redemption herein granted to Association shall not be operative or effective in any manner.

When Unit owners other than the Developer or Trustee own fifteen percent (15%) or more of the Units that will be operated ultimately by the Association, the Unit owners other than the Developer or Trustee shall be entitled to elect not less than one-third (1/3) of the members of the Board of Directors of the Association. Unit owners other than the Developer or Trustee shall be entitled to elect not less than a majority of the members of the Board of Directors of the Association three (3) years after sales by the Developer have been closed of fifty percent (50%) of the Units that will be operated ultimately by the Association, three (3) months after sales have been closed by Developer or Trustee of ninety percent (90%) of the Units that will be operated ultimately by the Association have been completed, some of them have been sold, and none of the others are being offered for sale by the Developer or Trustee in the ordinary course of business, or at such time as the Developer may, in Developer's sole discretion, elect to allow

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Unit owners the right to elect, whichever shall first occur. The Developer shall be entitled to elect not less than one (1) member of the Board of Directors of the Association as long as the Developer or Trustee holds for sale in the ordinary course of business at least five percent (5%) of the units in the condominium operated by the Association. Whenever Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors of Association the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation or By-Laws of Association, and Developer or Developer's successors or assigns, shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Developer need not be a resident in the Condominium or a member of Association.

Any representative or designee of Developer or Trustee serving on the Board of Directors of Association shall not be required to disqualify himself upon any vote upon any management contract or any other business matter between Developer and Association where the said Developer may have a pecuniary or other interest. Similarly, Developer, as a member of Association, shall not be required to disqualify itself in any vote which may come before the membership of Association upon any management contract or any other matter between Developer and Association where the said Developer may have a pecuniary or other interest.

31. Remedies in event of default. The owner or owners of each Unit shall be governed by and shall comply with the provisions of this Declaration of Condominium, the Articles of Incorporation and By-Laws, and the rules and regulations of the Association, as any of the same are now constituted or as they may hereafter be amended or adopted from time to time. A default by the owner or owners of any Unit shall entitle Association or the owner or owners of another Unit or Units to the following relief:

a. Failure to comply with any of the terms of this Declaration of Condominium or other restrictions and regulations contained in the Articles of Incorporation or By-Laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by Association or, if appropriate, by an aggrieved owner of a Unit.

b. The Owner or Owners of each Unit shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect, or carelessness, or by that of any member 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 a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation. A Unit owner will pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances, or of the Common Elements by the Unit owner.

c. In any proceeding arising because of an alleged default by the owner of any Unit, the Association, if successful, shall be entitled to recover the costs of the proceeding, and



such reasonable attorneys' fees as may be determined by the Court, but in no event shall the owner of any Unit be entitled to such attorneys' fees.

d. The failure of Association or of the owner of a Unit to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or other above-mentioned documents shall not constitute a waiver of the right of Association or of the owner of a Unit to enforce such right, provision, covenant or condition in the future.

e. All rights, remedies and privileges granted to Association or the owner or owners of a Unit pursuant to any terms, provisions, covenants or conditions of this Declaration of Condominium or other above-mentioned documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

f. The failure of Developer to enforce any right, privilege, covenant or conditions which may be granted to it by this Declaration of Condominium or other above-mentioned documents shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.

32. Declaration of Condominium binding upon Developer, its successors and assigns, and subsequent owners. The restrictions and burdens imposed by the covenants of this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Unit and its appurtenant undivided interest in Common Property, and this Declaration of Condominium shall be binding upon the Developer, the Trustee subject to the limitation of liability stated herein, and successors and assigns, and upon all parties who may subsequently become owners of Units in the Condominium, and their respective heirs, legal representatives, successors and assigns.

33. Liberal construction. The provision of this Declaration of Condominium shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership.

34. Severability. In the event that any of the terms, provisions or covenants of this Declaration of Condominium are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify or impair in any manner whatsoever any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable.

35. Termination. Notwithstanding anything to the contrary contained in paragraph 14 hereof, in the event of fire or other casualty or disaster which shall so destroy the Condominium building containing Units as to require more than forty-eight (48) of said Units, as determined by the Board of Directors of the Association, in its sole and absolute discretion to be reconstructed, then this Declaration of Condominium and the plan of condominium ownership established herein shall terminate, unless owners of Units to which at least seventy-five percent (75%) of the Common Elements are appurtenant agree that the Condominium building shall be reconstructed, or unless any policy or policies of casualty insurance which may cover the damage or destruction of said building requires the reconstruction thereof as a condition precedent to the payment of insurance proceeds under such policy or policies. If, as above provided,

this Declaration of Condominium and the plan of condominium ownership established herein is to be terminated, then a certificate of a resolution to the Board of Directors of Association to said effect and notice of the cancellation and termination hereof shall be executed by the President and Secretary of Association in recordable form, and such instrument shall be recorded in the public records of Indian River County, Florida. Upon termination of this Declaration of Condominium and the plan of condominium ownership established herein, all of the owners of Units shall be and become tenants in common as to the ownership of the real property herein described, and any then remaining improvements thereon, the undivided interest in such real property and remaining improvements held by the owner or owners of each Unit to be the same as the undivided interest in Common Property which was formerly appurtenant to such Unit and the lien of any mortgage or other encumbrance upon each Unit shall attach, in the same order of priority, to the percentage of undivided interest of the owner of a Unit in the property and the then remaining improvements as above provided. Upon termination of this Declaration of Condominium and the plan of condominium ownership established herein, the Association shall distribute any insurance indemnity which may be due under any policy or policies of casualty insurance to the owners of the Units and their mortgagees, as their respective interests may appear, such distribution to be made to the owner or owners of each Unit in accordance with their then undivided interest in the real property and the remaining improvements as hereinbefore provided. The assets of the Association, upon termination of the plan of condominium ownership created hereby, shall then be distributed to the owner or all of the owners of each Unit and to his or their mortgagees, as their respective interests may appear, in the same manner as was above provided for the distribution of any final insurance indemnity.

Except in the event of this Declaration of Condominium and the plan of condominium ownership established herein being terminated as hereinabove provided, this Declaration of Condominium and said plan of condominium ownership may only be otherwise terminated by the unanimous consent of all of the owners of all Units and all of the parties holding mortgages, liens, or other encumbrances against any of said Units, and by the Board of Directors of Association, in which event the termination of the Condominium shall be by such plan as may be then adopted by said owners and parties holding any mortgages, liens or other encumbrances and by the Board of Directors of Association. Such election to terminate this Declaration of Condominium and the plan of condominium ownership established herein shall be executed in writing by all of the aforementioned parties, and such instrument or instruments shall be recorded in the public records of Indian River County, Florida.

In the event of the termination of the Condominium as herein provided any exclusive right to use a parking or storage space constituting Limited Common Property and which may be an appurtenance to any Unit shall be automatically cancelled and terminated, and all Limited Common Property shall be treated in the same manner as though the same constituted a portion of Common Property as to which no exclusive rights to use the same for parking or storage purposes ever existed.

36. Amendment of Declaration of Condominium. Except for alteration in the percentage of ownership in Common Property appurtenant to each Unit, or alteration of the basis for apportionment of assessments which may be levied by Association in accordance with the provisions hereof, in which said instances consent of all of the owners of all Units and their respective mortgagees shall be required and except for any alteration, amendment or modification of the rights and privileges



granted and reserved hereunder in favor of Developer or Trustee, which said rights and privileges granted and reserved unto the said Developer shall only be altered, amended or modified with the express written consent of said Developer, and provided that 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, this Declaration of Condominium may be amended in the following manner:

An amendment or amendments to this Declaration of Condominium may be proposed by the Board of Directors of Association acting upon a vote of the majority of the Directors or by members of Association owning a majority of the Units in the Condominium, whether meeting as members or by instrument in writing signed by them. Upon any amendment or amendments to this Declaration of Condominium being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of Association, or other officer of Association in the absence of the President, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment or amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such special meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at his post office address as it appears on the records of Association, the postage thereon prepaid. Any members may, by written waiver of notice signed by such member, waive such notice and such waiver, when filed in the records of Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. At such meeting, the amendment or amendments proposed must be approved by an affirmative vote of the members owning Units in the Condominium as to which at least sixty-six and two-thirds percent (66 2/3%) of the Common Elements are appurtenant in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments of this Declaration of Condominium shall be transcribed and certified by the President and Secretary of Association with the same formalities as a deed and shall be recorded in the public records of Indian River County, Florida, within ten (10) days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording data identifying the Declaration of Condominium. Thereafter, a copy of said amendment or amendments in the form in which the same were placed of record by the officers of Association shall be delivered to all of the owners of all Units, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment or amendments. At any meeting held to consider such amendment or amendments, the written vote of any member of Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of Association at or prior to such meeting.

Provided, and anything hereinabove to the contrary notwithstanding, Developer joined by the Trustee, if it is then the record title holder of unsold Units, reserves the right to change

the interior design and arrangement of all Units, and to alter the boundaries between Units, so long as Developer owns the Unit or Units so altered. No such change shall increase the number of Units nor alter the boundaries of the Common Elements without amendment to the Declaration by approval of the Association, Unit owners and institutional first mortgagees in the manner hereinabove provided. If Developer joined by the Trustee shall make any changes in Units so authorized, such changes shall be reflected by an amendment of this Declaration. If more than one (1) Unit is concerned, Developer joined by the Trustee shall apportion between the Units the shares in the Common Elements appurtenant to the Units concerned. An Amendment to this Declaration reflecting authorized alteration of Unit plans by Developer needs to be signed and acknowledged only by the Developer joined by the Trustee and need not be approved by the Association, Unit owners or lienors or mortgagees of Units or of the Condominium, whether or not elsewhere required for amendment. Further provided, anything contained in this Declaration or any exhibits hereto to the contrary notwithstanding, that this Declaration may be amended by the vote of a majority of the Board of Directors or the Association without vote of the membership, so long as Developer reserves or retains rights as hereinabove provided in paragraph 30, and, in the event of amendment by a majority of the Board of Directors, such amendment shall be transcribed and certified by the President and Secretary of the Association with all of the formalities of a deed or in such manner as will entitle such amendment to recordation in the public records of Indian River County, Florida.

37. Estimated Time of Completion At the time of the signing of this Declaration, the construction of the Condominium is not substantially completed. Upon substantial completion, the Developer or the Association shall amend the Declaration to include the surveyor's certificate required by Florida Statutes Chapter 718.104(4)(e). The estimated time of completion of the Condominium is November 1, 1982.

38. Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law, or otherwise) and each occupant by reason of his occupancy shall be deemed to have acknowledged and agreed that all the provisions of this Declaration and the Articles and By-Laws of the Association, are fair and reasonable in all material respects.

39. No Personal Liability. The Trustee is executing this Declaration solely in the capacity as Trustee under a Florida land trust and is not the Developer of the Condominium for any purpose. No personal liability of any kind shall apply to the Trustee for any reason. Without limiting the generality of the foregoing, the Trustee shall have no personal liability for the payment of any assessments against Units owned by it. Recourse against the Trustee shall, therefore, be limited absolutely to the property held in trust by the Trustee, if any.

IN WITNESS WHEREOF, the Trustee has caused this amended Declaration to be duly executed and its corporate seal to be hereunto affixed this 27 day of October, 1982.

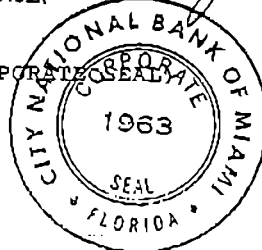
CITY NATIONAL BANK OF MIAMI,  
as Trustee and not personally

Signed, sealed and delivered  
in the presence of:

By

Frank B. Bragman Jr.  
SENIOR VICE PRESIDENT & President  
TRUST OFFICER

(CORPORATE SEAL)



BOOK 0601 PAGE 2305



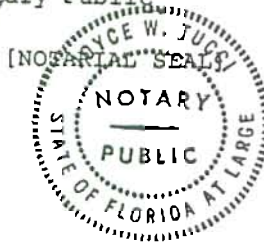
STATE OF FLORIDA )  
 ) SS:  
COUNTY OF DADE )

The foregoing instrument was acknowledged before me this 27 day of October, 1982, by FRANK G. BRIGANCE, JR., a Vice President and Trust Officer of CITY NATIONAL BANK OF MIAMI, a national banking association, on behalf of said national banking association.

James W. Tucci  
Notary Public

My Commission expires:

Notary Public, State of Florida at Large  
My Commission Expires March 11, 1983



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IN WITNESS WHEREOF, the Trustee has caused this Amended Declaration to be re-executed in order to correct a scrivener's error on an improper reference on page 1 of the Amended Declaration of Condominium which reference should be Trust No. 5006229, this 18 day of April, 1983.

CITY NATIONAL BANK OF MIAMI,  
as Trustee under Land Trust No. 5006229  
and not personally

Signed, sealed and delivered  
in the presence of:

Samuel T. Smith

Royce W. Tucco

By Frank G. Brigance, Jr.

SENIOR VICE PRESIDENT & TRUST OFFICER

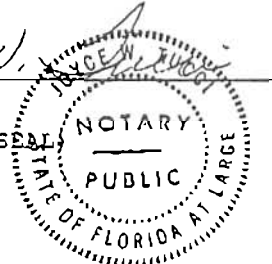


STATE OF FLORIDA     )  
                              )SS:  
COUNTY OF DADE     )

The foregoing instrument was acknowledged before me this 18  
day of April, 1983, by FRANK G. BRIGANCE, JR.  
as SENIOR VICE PRESIDENT & TRUST OFFICER of CITY NATIONAL BANK  
OF MIAMI, a national banking association, on behalf of said national  
banking association.

Royce W. Tucco  
Notary Public

(NOTARY SEAL)



My commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES MAR 11 1987  
BONDED THRU GENERAL INSURANCE UNDER

200000001 MAR 23 1987



JOINDER

NORTHGATE PROPERTIES, INC., a Georgia corporation, authorized to do business in the State of Florida, being designated as Developer in the foregoing Declaration hereby accepts such designation and all of the benefits provided by law and in equity, and approves all of the terms of, the said Declaration and all Exhibits attached thereto.

EXECUTED this 25<sup>th</sup> day of February, 1983.

Signed, sealed and delivered  
in the presence of:

NORTHGATE PROPERTIES, INC.

William A. Heimer

By: David Page

President

Lorraine P. Heimer

(CORPORATE SEAL)

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF INDIAN RIVER        )

The foregoing Joinder was acknowledged before me this 25th day of February, 1983, by DAVID PAGE, as President of NORTHGATE PROPERTIES, INC., a Georgia corporation authorized to do business in the State of Florida, on behalf of the corporation.

William A. Heimer  
Notary Public, State of Florida at Large.

My commission expires:

Mar. 23, 1986

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JOINDER

1616 - SEA COVE CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, the Association caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 25<sup>th</sup> day of February, 1983.

Signed, sealed and delivered  
in the presence of:

1616 - SEA COVE CONDOMINIUM ASSOCIATION,  
INC.

Patricia A. Hemen  
Lorraine Carson

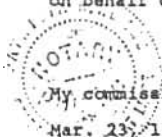
By:

David Page  
President

(CORPORATE SEAL)

STATE OF FLORIDA )  
                          ) SS:  
COUNTY OF INDIAN RIVER )

The foregoing Joinder was acknowledged before me this 25th  
day of February, 1983, by DAVID PAGE, as President of 1616 -  
SEA COVE CONDOMINIUM ASSOCIATION, INC., a corporation not for profit,  
on behalf of said corporation.



Patricia A. Hemen  
Notary Public, State of Florida at  
Large.

My commission expires:  
Mar. 23, 1986

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