

**EXHIBIT 1**

**AMENDED AND RESTATED<sup>1</sup>  
DECLARATION  
for  
THE JAMESTOWN CONDOMINIUM**

This Amended and Restated Declaration for the Jamestown Condominium (“Declaration”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by JAMESTOWN OF INDIAN HARBOUR BEACH HOMEOWNERS’ ASSOCIATION, INC. n/k/a JAMESTOWN OF INDIAN HARBOUR BEACH CONDOMINIUM ASSOCIATION, INC., a Florida Not for Profit Corporation (“Association”).

**RECITALS**

WHEREAS, Developer, Jamestown of Indian Harbor Beach Co., an Ohio corporation, recorded the Declaration of Condominium Ownership for the Jamestown Condominium (“*Original Declaration*”), at Book 2001, Page 581, in the Official Records for Brevard County, Florida, as amended by the Amendment to Declaration of Condominium for the Jamestown Condominium (“*First Amendment*”), at Book 2047, Page 15, in the Official Records for Brevard County, Florida, as amended by the Declaration Amendment (“*Second Amendment*”), at Book 4485, Page 291, in the Official Records for Brevard County, Florida The above documents will be collectively referred to as the “Original Declaration”; and

WHEREAS, this Amended and Restated Declaration for the Jamestown Condominium (“Declaration”), is such an extensive change to and substantial rewording of the Original Declaration that specifically identifying each change to the Original Declaration would hinder, rather than assist, an understanding of this document and the amendments to the Original Declaration; and

WHEREAS, at a Meeting of the Members of the Association held on July 25, 2022, this Declaration was adopted and approved by at least 66 2/3% of the total voting membership of the Association pursuant to Article XIII, Section B, of the Original Declaration; and

NOW, THEREFORE, the Original Declaration is hereby amended and restated, by this Declaration such that all property subject to the Original Declaration, as well as all property included within any Amendment referenced above shall hereafter be subject to this Declaration. All Exhibits to the Original Declaration, as amended from time to time, including that subject to reformation, are incorporated herein by reference as if fully attached as Exhibits hereto.

**DECLARATION**

The Developer, for itself and on behalf of its successors and assigns, hereby submits the Land lying and being in Brevard County, Florida, owned in fee simple by Developer, together with

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<sup>1</sup> This Document contains substantial rewording and amendment to the initial Declaration and the subsequent amendments thereto. The ~~stricken through~~ and **underlined** version of this document showing all additions and deletions is available for review upon request to the Association.

all buildings and improvements thereon, and all rights and easements appurtenant thereto, including those created hereafter, to the provisions of Chapter 718, and which is hereby submitted to the condominium form of ownership and is legally described as follows:

From the Southwest corner of the Northwest Quarter of the Southwest Quarter of Fractional Section 12, Township 27 South, Range 37 East, run North 1 degree 20 minutes 01 seconds West along the West line of said Fractional Section 12 a distance of 41.68 feet to the Northwest corner of the South 80.0 acres as described in Deed Book 416, Page 111 of the Brevard County, Florida, Public Records, said corner being 0.90 feet North of an iron pin at the Northwest corner of Seacoast Shores, Unit Five, Section 3 as recorded in Plat Book 16, Page 56, aforesaid Public Records; hence North 89 degrees 29 minutes 00 seconds East along the aforesaid North line of Deed Book 416, Page 111, a distance of 1492.94 feet to the Point of Beginning; run thence North 00 degrees 31 minutes 00 seconds West a distance of 515.30 feet to the Point of Curvature of a curve concave to the East having a radius of 50 feet and a central angle of 151 degrees 02 minutes 40 seconds; thence from a tangent bearing of North 76 degrees 02 minutes 20 seconds West run 131.81 feet along the arc of said curve to the Point of Tangency; thence from a tangent bearing North 75 degrees 00 minutes 20 seconds East run North 00 degrees 31 minutes 00 seconds West a distance of 72.03 feet to a point on the South right-of-way curve of a proposed 90 feet wide street; said curve being concave to the North having a radius of 509.99 feet and a central angle of 2 degrees 25 minutes 04 seconds; thence from a tangent bearing of South 88 degrees 07 minutes 20 seconds East run 21.52 feet along said curve to the Point of Tangency; thence continue along the aforesaid proposed South right-of-way North 89 degrees 27 minutes 36 seconds East a distance of 590 feet to a point South 39 degrees 27 minutes 36 seconds West a distance of 314 feet from the West right-of-way of State Road A1A; thence South 12 degrees 26 minutes 05 seconds East parallel with the said State Road right-of-way a distance of 698.95 feet to a point on the aforesaid North line of Deed Book 416, Page 111; thence South 89 degrees 29 minutes 00 seconds West a distance of 555.86 feet to the point of beginning.

Together with a non-exclusive, perpetual easement for access to the beach and the Atlantic Ocean, located along and over the northerly five (5) feet (running from the east right-of-way line of State Route A1A to the Atlantic Ocean and the beach) of the following described property, to wit:

From the point of intersection of the East right-of-way of State Road A-1-A and an easterly projection of the North line of the South 80.0 acres of Fractional Section 12, Township 27 South, Range 37 East

as described in Deed Book 416, Page 111, Brevard County, Florida Public Records (said line being parallel with and 0.90 feet North of the Easterly projection of the North line of Seacoast Shores, Unit Five, Section 3, as recorded in Plat Book 16, Page 56, aforesaid Public Records); run North 12 degrees 26 minutes 05 seconds West along the aforesaid right-of-way 499.12 feet to the Point of Beginning; run thence North 89 degrees 27 minutes 36 seconds East parallel with the Quarter Section line of aforesaid Fractional Section 12 a distance of 260 feet, more or less to the present bluff line of the Atlantic Ocean, return to the Point of Beginning and run thence North 12 degrees 26 minutes 05 seconds West along the aforesaid right-of-way 200.00 feet; thence North 89 degrees 27 minutes 56 seconds East parallel with the aforesaid Quarter Section line 260 feet more or less to the aforesaid present bluff line, thence Southerly along said line to close on the first call aforesaid.

All Exhibits attached to this Declaration are fully incorporated by reference.

## **ARTICLE I** **DEFINITIONS**

A. The following words and phrases used in this Declaration and By-Laws shall have the following meaning ascribed to them:

(1) Articles. The Articles of Incorporation of the Association as filed with the Secretary of State, State of Florida. Said Articles are attached hereto as Exhibit "P", and by reference made a part hereof.

(2) Assessment. Those amounts levied by the Board against the Unit Owners pursuant to authority granted in the Florida Condominium Act, this Declaration and the By-Laws in order to enable it to adequately operate, maintain, repair, improve or reconstruct the Condominium Property or otherwise to further the aims of the Condominium. Assessments shall be a lien against each Unit when perfected as provided by law.

(3) Association. The Jamestown of Indian Harbor Beach Condominium Association, Inc., a Florida corporation not for profit, being the organization of all of the Unit Owners, which entity administers the Condominium Property. Association includes the term Board of Administration and corporation, and reference in the Articles to the term corporation includes Association.

(4) Board. The Board of Directors of the Association and individuals elected by the members of the Association to the Board of Directors, which Board shall have the right and responsibility to manage the business, operation and affairs of the Condominium Property. The Board shall initially be those individuals elected by Developer and later elected by the Unit Owners as provided herein.

(5) Building. Any multi-Unit structure or structures or complex thereof, a part of the Condominium Property and used, or intended for use, for residential purposes.

(6) By-Laws. The governing regulations of the Association as are adopted pursuant to Chapter 718 which are identical to the regulations of a non-profit corporation and the rules of the Unit Owners Association (as required by the provisions of Chapter 718). Said By-Laws are attached hereto as Exhibit "O", and by reference made apart hereof.

(7) Carport Units. Parking spaces in a carport building and the right to the exclusive use of such, available for purchase by Unit purchasers from Developer as determined by the applicable contract to purchase.

(8) Chapter 718. That portion of the Florida Statutes which pertains to condominium ownership.

(9) Common Charges. Those Assessments levied against the Unit Owners and payable by the Unit Owner in monthly installments in order to defray the Common Expense and established operating and capital replacement and improvement reserves.

(10) Common Elements. That part of the Condominium Property not included in a Unit as defined in Section A, Article V, Declaration.

(11) Common Expense. Includes:

(i) expenses of administration, management, operation, insurance, taxes, assessments, utilities, maintenance, repair or replacement of the Common Elements. Water and gas supplied to and trash or refuse collection services provided to all Units in the Condominium shall be a Common Expense. Each Unit is separately metered for electricity and each Unit Owner shall be responsible to pay his own electrical charges based on the meter charge to the individual Unit. Electricity, gas and other utility services furnished to or for the Carport Units and Common Elements shall be a Common Expense:

(ii) expenses declared Common Expenses by the Florida Condominium Act, by this Declaration or by the By-Laws;

(iii) expenses agreed upon as Common Expenses by the Board and lawfully assessed against the Unit Owners in accordance with this Declaration and the Bylaws; and

(iv) expenses of management and administration of the Condominium by the Board, including without limitation, compensation of all employees, managers, accountants, attorneys and other personnel hired by the Board whether as employees, independent contractors or otherwise.

(12) Common Surplus. The balance at the end of each fiscal year of all Common Charges and Assessments collected from Unit Owners remaining after the deduction of all Common Expenses for such period.

(13) Condominium. The Jamestown Condominium.

(14) Condominium Parcel. A Unit together with the undivided share in Common Elements which is appurtenant to the Unit.

(15) Condominium Property. As defined in Article II of the Declaration.

(16) Declaration. The instrument by which the Condominium Property of the Condominium is submitted to the provisions of Chapter 718, and any and all amendments thereto.

(17) Developer. Jamestown of Indian Harbor Beach Co., an Ohio corporation, its successors and assigns.

(18) Drawings. The plans and drawings filed in the Official Public Records of Brevard County, Florida, prepared and certified by Outlaw Engineering Associates, Inc., consulting engineers, in accordance with the requirements of Chapter 718.

(19) Land. The real estate described in this Declaration which has been submitted to the Condominium form of ownership pursuant to the provisions of Chapter 718.

(20) Limited Common Elements. Those Common Elements designated in the Declaration as reserved for use of a certain Unit or Units to the exclusion of the other Units, such areas being defined in Section, Article VI, Declaration.

(21) Rules. The rules and regulations governing the operation and use of the Condominium Property, or any portion thereof, as may be adopted by the Board from time to time.

(22) Unit or Units. Those parts of the Condominium Property described and defined in Section A, Article IV, Declaration, which are the subject of individual ownership, together with their respective undivided interest in Common Elements which is assigned thereto in this Declaration. Unless otherwise specified, the term "Unit" when used in this Declaration or in the Bylaws refers to, and includes, both the 144 residential Units and the 74 Carport Units as designated in the Drawings and as referred to in Article IV hereof.

(23) Unit Owner. The person or persons, natural or artificial, holding title to the fee simple estate to a Unit.

B. Unless the context clearly indicates otherwise or so requires, all other terms used in this Declaration and the Bylaws, shall be assumed to have the meaning attributed to said term by Chapter 718.

**ARTICLE II**  
**THE CONDOMINIUM PROPERTY, NAME AND PURPOSE**

The "Condominium Property" includes the Land and all easements, rights and appurtenances belonging thereto, together with all 12 Buildings containing 144 Units, and 8 carport buildings containing 74 Carport Units, improvements and structures thereon (as more particularly delineated in Articles III, IV and V hereof), and all articles of personal property, which have been submitted to the provisions of Chapter 718.

The Condominium Property also includes an easement (located directly across State Route A1A) for access to the beach and Atlantic Ocean. The name by which the Condominium Property shall be known is hereby established to be "The Jamestown Condominium".

The purpose for which the Condominium Property is submitted to the provisions of Chapter 718 is to provide 144 separate Condominium Parcels and 74 Carport Units to which the fee simple title, together with their respective undivided interest in the Common Elements, may be conveyed for single family residential living.

**ARTICLE III**  
**GENERAL DESCRIPTION OF BUILDINGS**

The Buildings of the Condominium include 12 residential structures containing, in total, the living areas of 144 Units which are part of the Condominium Property. Buildings are numbered 1 through 12 and each Building contains 12 Units. Each Building is stucco brick constructed on its exposed exteriors. All residential Buildings are two stories in height above ground.

Units contained in Buildings No. 1, 2, 5, 6, 11 and 12 are garden-type structures, each Building containing the living space for 12 one or two bedroom Units. Each of these Buildings has three entrances limited in use to the Units which they service. Hallways, stairs and common entrances in each Building are Limited Common Elements, as disclosed in Exhibit "B" – "M" reserved for use by the Units to which they extend to the exclusion of other Units. Balconies serve Units located on the second floor of the garden-type Buildings, such balconies together with stairs therefrom being shared as Limited Common Elements by two Units each.

Units contained in Buildings No. 3, 4, 7, 8, 9 and 10 are townhouse-type structures, each Building containing the living space for 12 one, two or three bedroom Units. Each of these Buildings has 6 walkways and stoops (leading to separate front-door entrances for each Unit) limited in use to the Units which such walkways and stoops service. One continuous fire escape is located to the rear of each Building, with a single stairway therefrom to ground level, serving each of the Units of each Building as Limited Common Elements.

**ARTICLE IV**  
**UNIT DESCRIPTIONS, DESIGNATIONS AND BOUNDARIES**

A. Definition of Unit. A Unit consists of: (i) the space bounded by the interior surfaces of the perimeter walls, windows and doors, the cement floor slab or flooring, as the case may be, and the roof of such Unit, projected, if necessary, by reason of structural divisions such as interior walls, floors, ceilings and other partitions, as may be necessary to form a complete enclosure of space with respect to such Unit; (ii) together with all interior walls and ceilings (excluding the structural components thereof and their surfaces (including drywall and plaster) and the decorated

surfaces thereof, including paint, lacquer, varnish, wallpaper, paneling, tile, and any other finishing material applied to interior walls, doors, floors and ceilings and interior surfaces of perimeter walls, windows, doors, floors and ceilings; (iii) all doors (exterior or interior) and floors, excluding the structural components thereof; (iv) all windows, screens and window frames and woodwork; (v) all ducts, plumbing and electrical systems, and all fixtures, equipment, and appurtenances, including heating and air-conditioning systems and control devices, located within the bounds of such Unit or which serve only such Unit; (vi) all gas, electric, water or other utility or service lines, pipes, wires and conduits located within the bounds of such Unit or which serve only such Unit; (vii) cement floor slabs or floorings, as the case may be; and (viii) if applicable, a Carport Unit.

The interior partitions or walls within the confines or boundary lines of each Unit are approximately placed in the Drawings. These interior partitions or walls may, from time to time, be removed or replaced subject to the prior written approval as provided in Section 1, Article VII hereof; in the event a Unit Owner does not remove or replace any or all interior partitions or walls, no amendment of this Declaration will be necessary or required.

A Unit may include as part of the Limited Common Elements, a carport unit as detailed in Exhibit "A" as such Limited Common Elements are defined in Article VI(c). Parking spaces in the carport building and the right to the exclusive use of such is available for purchase by Unit purchasers from Developer as determined by the applicable contract to purchase. If a Unit Owner purchases a Carport Unit, such includes the exclusive right to use a carport space in the carport building. In addition, each Carport purchaser shall be entitled to the exclusive use of a storage bin located in the proximate area of the Carport Unit so purchased.

B. Number of Units and Designation. There are 144 residential Units located in 12 buildings. The graphical designation of each Unit, its location, building plans and floor plans are detailed in the set of Drawings contained in Exhibits "A" – "M", all of such Drawings are in accordance with and pursuant to the requirements of §718.104(4)(e), Florida Statutes. The Common Elements or immediate Limited Common Elements appurtenant to each Unit are set forth in Articles V and VI hereof and indicated upon the Drawings attached thereto.

C. Unit Designation. Units are designated by individual numbers (1 through 144) assigned to each Unit. No Unit bears the same designation as any other Unit. The identifying number of a Unit is also the identification as to the Condominium Parcel.

D. Table of Designations. The table annexed hereto as Exhibit "N" sets forth for each Unit its designation, the percentage of interest in the Common Elements appurtenant to such Unit, and the total number of rooms in each Unit.

## **ARTICLE V**

### **COMMON AREAS AND FACILITIES**

A. Definition. The Common Elements include the Land and all other parts of the Condominium property except the Unit, as detailed in the Drawing designated on Exhibit "A".

B. Percentage of Interest. The percentage of interest in the Common Elements of a Unit shall be as set forth in the Table (Exhibit "N") made a part of Section D, Article IV, Declaration as determined by Developer in accordance with the provisions of §718.104, Florida Statutes.

C. Use of Common Elements by Unit Owners. Each Unit Owner, his family, guests and invitees have the right to use the Common Elements in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his Unit. No person shall use the Common Elements or any part thereof in such manner as to hinder or encroach upon the lawful rights of other Unit Owners as established by law or in the Declaration, By-Laws or any Rules.

D. Rules of Board Relating to Common Elements. The Board has the authority to promulgate reasonable Rules for the use, maintenance, repair, replacement or improvement of any of the Common and Limited Common Elements, including authority to: (i) make reservations of portions thereof for the exclusive use of the Unit Owners and their guests, or certain of them, from time to time, and to make reasonable charges for such exclusive use, provided such exclusive use for any number of Unit Owners shall not exceed two days, including not more than one weekend day, or holiday, during any single week; (ii) limit the number of guests that may use the Common Elements; (iii) charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Elements; and (iv) suspend the voting rights and right to use the recreational facilities by any Unit Owner for any period during which any Assessment against his Unit remains unpaid or for a period not to exceed 30 days for any infraction of the published Rules, the Declaration or the By-Laws.

**ARTICLE VI**  
**LIMITED COMMON ELEMENTS**

A. Definition. The Limited Common Elements with respect to each Unit consist of:

(i) all conduits, plumbing, wires and other facilities for the furnishing of utility services whether located within a Unit or otherwise which service part or parts of the Condominium Property other than a single Unit;

(ii) hot water heaters serving more than a single Unit;

(iii) balconies, walkways, common hallways, stairs and entrances, patios, stoops, courtyards, wood walls and fences (surrounding the patios to Units), garbage receptacle areas, landscaping located on or in any balcony or patio area appurtenant to a Unit, and other appurtenant improvements, which serve only such Unit; and

(iv) all other Common Elements (as may be located within the bounds of such Unit or which serve only such Unit) , as are rationally of limited use for less than all Units.

B. Use of Limited Common Elements. Each Unit Owner is hereby granted an irrevocable easement to use and occupy the Limited Common Elements located within the bounds of his Unit or which serve only his Unit.

C. Carport Parking Spaces. Each carport parking space as shown on Exhibit "A" is a Limited Common Element. The unit owner who is designated to have the exclusive use of a carport



parking space may thereafter sell and assign the exclusive use of same not only to the purchaser of his unit but may sell, convey and assign the exclusive use of same to the unit owner of another unit in this condominium, subject to the terms hereof. Such designation shall be made in an instrument of conveyance by the Developer having the same formality as a deed which shall be recorded in the Public Records of Brevard County, Florida. The Unit Owners who have the right to the use of carport parking spaces on this condominium shall be responsible for the maintenance, care and preservation of said carport structures, excluding therefrom the paving which shall be deemed to be a part of the Common Expenses of the condominium.

**ARTICLE VII**  
**MAINTENANCE, ALTERATIONS, REPAIRS,**  
**IMPROVEMENTS AND MANAGEMENT**

Responsibility for the maintenance and management of Condominium Property, and restrictions upon the alteration and use thereof, shall be as stated in this Article.

A. Units. Each Unit Owner shall maintain (in good order and condition), repair and replace, at the Unit Owner's expense, all portions of the Unit, including but not limited to, doors (exterior and interior), windows (glass and screens), plumbing fixtures (drains and pipes thereto), utility services (lines, pipes, wires and conduits), water heaters, heating and air conditioning equipment and ducts, lighting fixtures, electrical outlets, wiring and fixtures, refrigerators, freezers, dishwashers, clothes washers, clothes dryers, disposals, ranges and/or other equipment, appliances, fixtures or systems which are used exclusively in connection with the individual Unit (including those items located remotely from the individual Unit).

Each Unit Owner shall promptly furnish, perform and be responsible for, at his own expense, all of the maintenance, repairs and replacements within his own Unit which, if omitted, would adversely affect the safety of the Condominium Property, provided however, such maintenance, repairs and replacements as may be required to bring water, electricity and gas to such Unit shall be furnished as part of the Common Expense.

No Unit Owner shall make any structural addition, structural partition or wall change or structural alteration or improvement in or to his Unit without prior written consent of the Board and, if required in the mortgage documents, the mortgagee of said Unit. The Board shall have the obligation to answer any written request by a Unit owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's Unit within 60-days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed structural addition, alteration or improvement. The Board has the authority to delegate its responsibilities hereunder to the President or to a committee of Unit Owners formed for such purpose.

B. Common Areas and Facilities.

(1) The Association shall maintain, operate, repair and replace as a Common Expense all portions of the Common Elements, excluding the Limited Common Elements except as provided in Section C below. All incidental damage caused to a Unit by reason of the aforementioned work shall be promptly repaired at the expense of the Association.

(2) Except in the case of an emergency, whenever in the judgment of the Board the Common Element require additions, alterations or improvements costing in excess of \$25,000, the making of such additions, alterations or improvements shall be approved by a majority of the Unit Owners, and if approved, the Board shall proceed with such additions, alterations or improvements and assess all Unit Owners for the cost thereof as a Common Expense. Any additions, alterations, or improvements costing less than \$25,000 may be made by the Board without approval of the Unit Owners and the cost thereof shall constitute part of the Common Expenses. Notwithstanding the foregoing, if in the opinion of not less than 80% of the members of the Board, such additions, alterations or improvements are exclusively or substantially exclusively for the benefit of the Unit Owner or Unit Owners requesting the same, such requesting Unit Owner or Unit owners shall be assessed therefor in such proportion as they jointly approve, or if they are unable to agree thereon, in such proportions as may be determined by the Board.

(This limitation shall not apply to maintenance or repair of existing facilities, property and equipment.)

(3) Each Unit Owner shall observe and perform all obligations of a Unit Owner set forth in the Declaration, Bylaws, or Rules with respect to the maintenance, operation or use of Common Elements.

C. Limited Common Areas and Facilities.

(1) By the Association. The Association shall maintain, repair and replace as a Common Expense:

- (a) conduits, plumbing, wiring and other facilities for the furnishing of utility services which are contained within a Unit that service part or parts of the Condominium Property in addition to the Unit within which they are contained;
- (b) balconies and the stairs thereof;
- (c) all wood fences;
- (d) all walkways, steps, stairs, hallways and stoops common to more than a single Unit;
- (e) landscaping (except within the patio and balcony areas); and
- (f) structural maintenance and repairs to carport buildings.

(2) By Unit owners. Unit Owners shall maintain, repair and replace at the Unit Owner's expense all portions of the Limited Common Elements designated for his exclusive use except the portion to be maintained by the Association.

Buildings with townhouse-type Units have hot water heaters which will be used in common by the Unit owners owning Units in such Buildings. Unit owners in these Buildings will be assessed a separate monthly amount (collected in addition to the monthly Common Expense applicable to

such Units) in order to defray the costs of repair and maintenance of applicable hot water heaters as well as an amount to pay for the costs of use thereof.

D. Report of Damage. Each Unit owner shall promptly report to the Association any defect or need for repair for which the Association is responsible.

E. Management. The Board has the responsibility properly to manage the Condominium Property. The Board may retain and employ for the Condominium a professional managing agent to perform such duties and services as the Board shall authorize. Such delegation to a managing agent may be evidenced by a management contract, the terms of which shall not exceed three years in duration. Such contract shall provide for the payment of reasonable compensation to the managing agent as a Common Expense Without intending to limit the generality of the foregoing, such agreements may provide for the allocation of expenses, purchase of equipment and supplies, and joint sharing of employees and management overhead.

## **ARTICLE VIII**

### **USE OF CONDOMINIUM PROPERTY AND RESTRICTIONS THEREON**

A. Proper Use of Condominium Property. Each residential Unit shall be occupied and used for private residential purposes exclusively, except such temporary non-residential uses as may be permitted by the Board from time to time.

B. Restrictions. The following restrictions and covenants as to use and occupancy of the Condominium Property run with the land and are binding upon each Unit Owner, his family, guests or occupant of a Unit.

(1) Without having first obtained the written consent of the Board or as provided in the Declaration, Bylaws or Rules, there shall be no obstruction of the Common Elements (including, but not limited to, sidewalks, entrances, passages, stairways, fire escapes and fire exits, corridors, or hallways); storage in or on the Common Elements; use of the Common Elements utility services except for existing lighting in Carport Units; building, planting or construction over or under Common Elements; placing or dumping of trash, garbage, refuse, debris or excess materials of any kind on or about Common Elements except in receptacles specifically designated therefor; painting, decorating or otherwise changing the appearance of any portion of the exterior of any Building.

(2) Nothing shall be done or kept in any Unit or the Common Elements which will increase the rate of insurance of any Building or the contents thereof beyond the rates applicable for residential Units, without prior written consent of the Board. No Unit owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on any Building or the contents thereof, or which will be in violation of any law.

(3) No sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed, in, on or upon any part of the Unit or Condominium Property by any Unit Owner or occupant without written permission of the Board. The foregoing

includes signs within a Unit which are visible from outside the Unit and posters, advertisements or circulars used upon the Condominium Property, Units or vehicles parked upon the Condominium Property, and distributing advertisements or circulars to Units within the Condominium. No awning, canopy, shutter, radio or TV antenna, or other projection shall be affixed to or placed upon the exterior walls, doors or roof of any Building without the prior written permission of the Board. No clothes (or clothes lines), sheets, blankets, laundry of any kind, or any other articles shall be hung or exposed on any part of the Unit or the Common Elements.

(4) The maintenance, keeping, breeding, boarding and/or raising of animals, livestock, or poultry of any kind, regardless of number, shall be prohibited within any Unit or upon any Common Elements, except that this shall not prohibit the keeping of a domestic pet, provided that it is not kept or maintained for commercial purposes or for breeding. Pets shall not be permitted upon the Common Elements of the Condominium unless accompanied by an adult and unless they are carried or on leash. Any member who keeps or maintains any pet upon any portion of the Condominium shall indemnify and hold harmless the Association, each of its members free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium. The Board shall have the right to order any person whose pet is a nuisance, to remove such pet from the premises, and/or to charge such person for any extraordinary costs of maintaining the Common Elements caused by the presence of the pet. The payment and collection of this charge shall be in accordance with the terms providing for payment and collection of Assessments in the Bylaws.

(5) No Unit Owner shall make or permit any disturbing noises by himself, his family, servants, employees, agents, visitors, and lessees, nor do or permit anything by such persons that will interfere with the rights, comforts or convenience of the Unit Owners. No Unit Owner shall play upon or suffer to be played upon any musical instrument, or operate or suffer to be operated, a phonograph, television, radio or sound amplifier in his Unit, in such manner as to disturb or annoy other occupants of the Condominium. No Unit Owner shall conduct or permit to be conducted, vocal or instrumental instruction at any time.

(6) Nothing shall be done to any Unit or on or in the Common Elements which will impair the structural integrity of any Building or which will structurally change the Building.

(7) The Board may retain a pass-key to all Units. No Unit owner or occupant shall alter any lock or install a new lock, without the written consent of the Board. Where such consent is given, the Unit Owner shall provide the Board with an additional key for the use of the Association and the Board, pursuant to its right of access.

(8) No industry, trade, business, occupation or profession of any kind may be conducted, maintained or permitted on any part of the Condominium Property.

(9) All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Condominium Property shall be observed.

(10) Draperies, blinds or curtains showing solid white colors or linings to the exterior must be installed by the Unit Owner on all windows of each Unit and must be maintained in said windows at all times.

(11) The Common Elements comprising the recreational facilities may be used for general recreational purposes by Unit Owners, their families, tenants and their guests. All person~ using said facilities will abide by the Rules as established from time to time by the Board.

(12) No Unit shall be either rented for transient or hotel purposes or without the prior written approval of the Board for any period less than one month. Any Unit Owner who leases a Unit shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Board. Any such lease shall contain a provision to the effect that the rights of the tenant to use and occupancy of the Unit shall be subject and subordinate in all respects to the provisions of the Declaration and these Bylaws and to such Rules relating to the use of the Common Elements, or other "House Rules", as the Board may from time to time promulgate. In lieu of forwarding a conformed copy of the lease to the Board as hereinabove provided, any Unit Owner who leases his Unit may certify that such lease contains the provisions described in this paragraph. Any Unit Owner of any Unit who shall lease his Unit in violation of this Subsection shall forfeit his right to the use of the recreational facilities in the condominium until the violation is cured.

(13) No boats, trailers, trucks, motorcycles, recreational vehicles, commercial trucks or vans, except delivery trucks in the course of making deliveries or temporarily servicing the Condominium Property, shall be permitted to park or be stored on any portion of the Condominium Property except as expressly authorized in writing by the Board. No automobile or other motor vehicle, including but not limited to motorbikes and motorcycles, shall be parked on or about the Common Elements unless it has both a current vehicle license tag displayed and, if applicable, the appropriate inspection certificate or sticker displayed, all conforming to the laws of the State in which the vehicle is registered. No motor vehicle shall be repaired or disassembled on the Common Elements without the prior written consent of the Board.

(14) Bedrooms located on the second floor of all three-bedroom townhouse-type Units which extend over another Unit located on the lower level must be and remain fully padded and carpeted; except for lower-level Units, all garden-type Units must be and remain fully padded and carpeted throughout with the exception of kitchens and bathrooms.

## **ARTICLE IX**

### **UNIT OWNERS' ASSOCIATION**

A. Formation. Developer initially formed, for the purpose of administering the Condominium Property, a non-profit Florida corporation to be called "The Jamestown of Indian Harbor Beach Homeowners' Association, Inc." Subsequently, the Association changed the corporate name to "Jamestown of Indian Harbor Beach Condominium Association, Inc.," which corporation consists of an organization of all of the Unit Owners of Units in the Condominium Property. Each Unit Owner upon acquisition of title to a Unit automatically becomes a member of the Association; such membership terminates upon the sale or other disposition by such Unit Owner

of his Unit, at which time the new owner of such Unit shall automatically become a member of the Association.

B. Voting Rights. One vote may be cast with respect to each residential Unit on each matter properly submitted to the members for vote. All quorums and percentages of votes required by an Association meeting shall be based upon a residential Unit basis and not upon any percentage of interest in the Common Elements. A true copy of the Bylaws of the Association is attached hereto as Exhibit "O".

C. Service of Process. The Board of Directors shall have the authority to designate, from time to time in its sole discretion, an appropriate registered agent for service of process on the Association.

**ARTICLE X**  
**COMMON EXPENSES & ASSESSMENTS**

A. Determination by Board. As provided elsewhere herein, the Board shall determine all matters relating to administration, maintenance, repair and replacement of the Common Areas and Facilities and also all matters relating to the common Expenses.

B. Common Charges.

(1) Each Unit Owner shall pay to the Board a monthly sum (here and elsewhere sometimes referred to as "Common Charges") equal to one-twelfth of the Unit Owner's proportionate share of the sum required or established by the Board to meet the annual Common Expenses and, if imposed by the Board, to establish the operating and/or capital improvement or replacement reserves.

(2) The Board shall determine the amount of the Common Charges annually, but may do so at more frequent intervals should circumstances so require.

(3) The Board shall make reasonable efforts to estimate and establish the amount of the Common Charges payable by each Unit Owner for each assessment period as provided in Section G of this Article and shall at that time, prepare a list of the Unit Owners and Common Charges applicable to the Units which shall be kept in the office of the Board and shall be open to inspection by any Unit Owner upon reasonable notice to the Board. Written notice of the Common Charges shall be sent to each Unit Owner with the annual budget. The omission of the Board before the expiration of any assessment period to establish Common Charges for the next assessment period shall not be deemed a waiver or modification of the provisions of this Section, or a release of any Unit Owner from the obligation to pay the Common Charges or any installment thereof for that or any subsequent assessment period. The Common Charges fixed for the preceding period shall continue in full force and effect until the new Common Charges are established. No Unit Owner may gain exemption from liability for the Common Charges or any Special Assessments by a waiver of the use or enjoyment of any of the Common Elements or by abandonment of any Condominium Unit.

C. Special Assessments. In addition to the Common Charges authorized above, the Board may levy in any year a Special Assessment or Assessments, applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, improvement, unexpected repair or replacement of any capital improvement located on or in the Condominium Property, including the necessary fixtures and personal property related thereto, or for such other purposes as the Board may consider necessary or appropriate.

D. Additional Assessments. In the event that the Board decides that additional monies (referred to as the "Additional Assessments") are required in addition to Common Charges and/or Special Assessments levied in any one year, the Board shall give the Unit Owners at least 10-days written notice of the total monies required, allocating said amounts among the Unit Owners, together with the time for payment of said proportionate amounts which may be at one time or in installments, as the Board decides. Provided, however, that if Unit Owners representing 40% of the votes of the Association object in writing to the additional assessments within 15-days after mailing of such notice, the Board shall call a special meeting of the Unit Owners for the purpose of obtaining approval of the Additional Assessments, at which meeting the additional assessments of the Board to be approved must receive a vote of 60% of the number of votes represented and entitled to vote at such meeting.

E. Reserve for Replacements. The Board may establish and maintain a reserve fund for the repair, restoration or replacement of capital improvements by the allocation and payment monthly to such reserve fund of any portion of the Common Charges or Special Assessments designated from time to time by the Board. Such reserve funds shall be deposited in a special account with a lending institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board be invested in obligations of, or obligations fully guaranteed as to principal by, the United States of America. The reserve for replacements may be expended only for the purpose of effecting the repair, restoration, replacement or improvement of the Common Elements together with fixtures or equipment associated therewith or for contingencies of a non-recurring nature. The amounts allocated to the replacement reserve may be reduced or eliminated pursuant to the requirements of Chapter 718.112, *Florida Statute*, as may be amended or renumbered from time to time. The proportionate interest of any Unit Owner in any replacement reserve shall be considered an appurtenance of his Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Unit to which it appertains and shall be deemed to be transferred with such Unit.

F. Initial Assessment. The Board shall determine the budget as defined in this Section. Assessments shall be levied against the Unit Owners during said period as provided in this Article. The Board will levy against the purchaser at the time he settles on his purchase contract, an Assessment in an amount equal to one monthly annual assessment payment plus part of one monthly annual assessment payment, prorated from the date of settlement to the end of the calendar month in which the settlement occurs.

G. Common Expense Benefiting Less Than All Units. Any Common Expenses benefiting less than all of the Units or caused by the conduct of all those entitled to occupy the same or by their licensees or invitees shall be specially assessed against the Unit or Units involved, in accordance with such reasonable provisions as may be made by the Board for such cases.

H. Effect of Nonpayment of Common Expenses; Remedies of the Association.

(1) Any Common Charge or Assessment levied pursuant to the Declaration or these Bylaws, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a lien upon the Condominium Unit belonging to the Unit Owner against whom such assessment is levied and shall bind such Condominium Unit in the hands of the then Owner, his heir, devisees, personal representatives, successors and assigns. The lien may be perfected as provided by law. The personal liability and responsibility of the Unit Owner to pay such Common Charge or Assessment shall, however, remain his personal legal obligation, and the Board may maintain actions at law to recover sums due, or for damages associated therewith, or in equity for injunctive or such other relief as is available.

(2) Any Common Charge or Assessment levied pursuant to the Declaration or these Bylaws, or any installment thereof, which is not paid within 10-days after it is due shall bear interest from the date due at a rate fixed by the Board but in no event more than the maximum permitted legal rate, and the Board may bring an action at law against the Unit Owner personally obligated to pay the same, and/or foreclose the lien against the Unit then belonging to said Unit Owner, in either of which events interest, costs and reasonable attorney's fees, to the extent permitted by law, shall be added to the amount of each Common Charge or Assessment. In the event that a Unit Owner is delinquent in the payment of any Common Charge or Special Assessment the Unit Owner and any member of his or her family or other persons using the Unit may be prohibited from using the Condominium recreational facilities pursuant to Section 718.303, *Florida Statute*, as may be renumbered or amended from time to time.

(3) The Common Charges or Assessments shall be levied against each unit on an annual basis at the beginning of each year and shall be payable in monthly installments. If any Unit Owner shall be in default in the payment of an installment of the Common Charges or Assessments, the Board may accelerate the remaining installments upon written notice to the Unit Owner, and the then unpaid balance of the Common Charges or Assessments for the current year shall come due upon the date stated in the notice. but not less than 5 days after delivery of the notice to the Unit Owner, or 10 days after the mailing of such notice to him by registered or certified mail, whichever shall first occur.

I. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any existing first mortgage on such applicable Unit at the time the lien is perfected. Sale or transfer of any Unit (except to a mortgagee) shall not affect the assessment lien.

J. Preparation and Approval of Budget. Each year on or before the first day of the fiscal year, the Board shall adopt a budget for the Condominium containing an estimate of the total amount which it considers necessary to pay the cost of utility services, maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which the Board has all powers and responsibility with regard to maintenance, repair, renovation, restoration and replacement, and the cost of wages, materials, insurance premiums, services,



supplies and other expenses that may be declared to be Common Expenses by Chapter 718, these By-Laws, the Declaration, or a resolution of the Association, and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Condominium and the rendering to the Unit Owners of all related services. Along with the notice of meeting at which the proposed budget will be considered by the Board, the Board shall send to each Unit Owner a copy of the budget, in a reasonable itemized form which sets forth the amount of the Common Expenses payable by each Unit Owner. The said budget shall constitute the basis for determining each Unit Owner's contribution for the Common Expenses of the Condominium.

K. Books and Records of Association. The Board shall keep correct and complete books and records of account and the same shall be open for inspection by any Unit Owner or any representative of a Unit Owner duly authorized in writing at reasonable times and upon written request by Unit Owner pursuant to Section 718.111, *Florida Statute*, as may be renumbered or amended from time to time. All books and records of the Association shall be audited at least once a year by an independent auditor.

L. Division of Common Surplus and Common Expenses. The Common Surplus of the Condominium Property shall be allocated among, and the Common Expenses shall be assessed against, the Unit Owners by the Association according to the percentages of interest in the Common Elements of the respective Units. The Common Surplus shall not be distributed to the Unit Owners by the Association without the prior approval of the Board of Directors. Every Unit Owner shall pay his proportionate share of Assessments levied against him, and no Unit Owner shall exempt himself from liability for such Assessments by waiver or the use or enjoyment of the Common Elements or by the abandonment of his Unit.

M. Lien of Association. The Association shall have a lien upon each Condominium Parcel for any unpaid Assessments with interest and reasonable attorneys fees incurred incident to the collection of the Assessments or the enforcement of the lien. In addition, each Unit Owner shall be personally liable for all Assessments chargeable against such Unit during the period he has an ownership interest therein, and any Assessment not paid within ten days after the same shall become due and payable shall bear interest at the rate established by the Board, within the maximum rates allowed by law, until such time as the same is paid in full.

N. Liability for Assessments Upon Voluntary Conveyance. Upon transfer of a Unit, or any interest thereof, the grantee (except a mortgagee as provided in Section P below) of the Unit or any interest therein becomes jointly and severally liable with the grantor for all unpaid Assessments levied by the Association against such Unit Owner prior to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, such prospective grantee shall, upon written request, be entitled to a statement from the Board setting forth the amount of all unpaid Assessments due the Association with respect to the Unit to be conveyed, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments which became due prior to the date of the making of such request if the same were not set forth in such statement.

O. Mortgagee Liability for Assessments. Except as provided by controlling law, any first mortgagee which obtains title to a Unit pursuant to the remedies provided in the mortgage or

deed of trust or through foreclosure of such mortgage or deed (assignment) in lieu of foreclosure, shall take the Unit subject to the liability for unpaid Assessments or Common Charges against the mortgaged Unit which accrue prior to the acquisition of title to such Unit by the mortgagee, pursuant to the limitation provided in Section 718.116, *Florida Statute*, as may be renumbered or amended from time to time.

## **ARTICLE XI** **EASEMENTS**

The following easements, rights and licenses are applicable to the Condominium Property:

A. **Encroachments**. If (a) any portion of the Common or Limited Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common or Limited Common Elements; or (c) any encroachment shall hereafter occur as a result of (i) construction of a Building; (ii) settling or shifting of a Building; (iii) any alteration or repair to the Common or Limited Common Elements made by or with the consent of the Board or made by a Unit Owner in accordance with this Declaration or the Bylaws; (iv) any repair or restoration of a Building (or any portion thereof), any Unit, or Common or Limited Common Elements after damage by fire or other casualty or anything by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common or Limited Elements, then, in any such event, a valid easement exists for such encroachment and for the maintenance of the same so long as the Building or Unit shall stand.

B. **Support**. Each Unit has an easement of support and of necessity and is subject to an easement of support and necessity in favor of all other Units and the Common or Limited Common Elements.

C. **Utilities**. There is hereby granted a blanket easement in favor of the Association, upon, across, over and under all of the Condominium Property for ingress, egress, installation, replacing, repairing, and maintaining any pipes, wires, ducts, conduits, master television antenna system, cable television system, public utility lines or structural components through the walls of the Units. No sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Condominium Property except as initially programmed and approved by the Developer or hereafter approved by the Board. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association by its Board has the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on the Condominium Property.

D. **Ingress and Egress**. Every Unit owner and his invitees has a right of reasonable ingress and egress to his Unit over and through the Common Elements. Each Unit and Unit Owner has an easement over present roads (whether Common Elements or not) for direct exit to State Road A1A or Palm Springs Boulevard, public highways.

E. **Pipes, Wires and Other Common Elements Inside of Units**. Each Unit has an easement in common with all other Units to use, maintain, repair, alter and replace all pipes, wires,

ducts, vents, cables, conduits, public utility lines and all other Common or Limited Common Elements located in any of the other Units or elsewhere on the Condominium Property and serving such Unit. Each Unit shall be subject to an easement in favor of all Units to use, maintain, repair, alter and replace the pipes, wires, ducts, vents, cables, conduits, public utility lines and all other Common or Limited Common Elements located in such Unit or elsewhere on the Condominium Property and serving other Units. The Board has a right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common or Limited Common Elements contained therein or elsewhere in the Condominium Property; provided such right of access may be exercised only during reasonable hours with the prior consent of the Unit owner affected by the exercise of such easement.

F. Other. There is hereby granted a blanket easement to the Association, and to any appropriate political subdivision and its lawful agents, to enter upon the Condominium Property or any part thereof (including Units) for the purpose of maintaining the safety, health, and welfare of all persons using the same and for repair and maintenance of the Elements. Except in the event of emergencies, the rights accompanying the easements provided for in this subsection shall be exercised only during reasonable hours with prior notice to the Unit Owner affected by the exercise of such easement. Without limiting the generality of the foregoing, said easements shall include the ingress and egress for police and fire protection, public and school bus service, and trash and refuse collection.

## **ARTICLE XII** **COMPLIANCE AND LIABILITY FOR NEGLIGENCE**

Each Unit Owner shall be governed by and comply with the terms of the Declaration, Articles, the Bylaws, and any Rules adopted by the Association, and all of such documents, as they may be amended from time to time. Each Unit Owner is liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees. In the event the estimated damages do not exceed the deductible on the policy that may provide coverage for said damages, the negligent Unit Owner will be responsible and liable for the total amount of such damages. In the event the damages exceed the applicable policy deductible, the negligent Unit Owner shall be liable for payment of the policy deductible as well as any damage amounts over and above the payout proceeds resulting from any insurance claim filed by the Association.

If any Unit Owner fails to maintain or repair any part of his Unit or the Limited Common Elements required to be maintained and repaired by such Unit Owner, or if a Unit Owner becomes liable for maintenance, repair or replacement due to negligent conduct as provided in the foregoing paragraph, and if such maintenance or repair is necessary, in the sole discretion of the Board, to protect the Common Elements, or any other portion of the Condominium Property, and such failure of the Unit Owner to maintain or repair continues for a reasonable time after written notice of the necessity of such maintenance or repair has been delivered by the Board to the Unit Owner, the Board may levy a special assessment against such Unit Owner for the cost of said maintenance or repair and cause such repairs or maintenance to be made. Such special assessment shall be subject to the lien provisions of Section N, Article X, Declaration.

**ARTICLE XIII**  
**AMENDMENT OF DECLARATION**

A. An amendment to this Declaration may be adopted at a meeting of the Unit Owners, held for such purpose, by the affirmative vote of the Unit Owners exercising not less than 51% of the total voting interests of all Unit owners, or without a meeting by a writing signed by at least 85% of all of the voting interests of all Unit Owners.

B. A certificate setting forth any amendment to the Declaration by the Unit Owners and the manner of its adoption shall be executed by the president or a vice president and by the secretary or an assistant secretary of the Association in the manner provided for the execution of deeds. Such certificate shall be filed as provided by Florida law, and such amendment shall be effective as an amendment to the Declaration or By-Laws, or both, as the case may be, as of the time it is recorded,

**ARTICLE XIV**  
**MORTGAGES**

A. Notice to Board. A Unit owner who mortgages his Unit shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Board.

B. Notice of Unpaid Assessments for Common Expenses. The Board, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid Assessments for Common Expenses due from, or any other default by, the Unit Owner of the mortgaged Unit.

C. Right to Examine Books and Records. First mortgagees or holders of notes secured by first mortgages encumbering any Unit in the Condominium shall have the right to examine the books and records of the Association or the Condominium during regular and normal business hours after reasonable notice.

D. Approval by Mortgagees. Unless at least 66-2/3 of the first mortgagees (based upon one vote for each first Unit mortgage owned) of Units have given their prior written approval, the Association shall not be entitled to:

- (1) By act or omission, seek to abandon or terminate the Condominium;
- (2) Change the pro rata interest or obligations of any Unit for purposes of (i) levying Assessments or Common Charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro rata share of ownership of each Unit in Common Elements;
- (3) Partition or subdivide any Unit;
- (4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. (The granting of easements for public purposes consistent with the

intended use of the Common Elements by the Condominium shall not be deemed a transfer within the meaning of this clause);

(5) Use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such Condominium Property, except as provided by statute in case of substantial loss to the Units and/or Common Elements of the Condominium.

E. Partition or Subdivisions of Units. No Unit may be partitioned or subdivided or otherwise modified unless the record owner so affected shall have approved the amendment as provided for in Florida Statute 718.110.

F. Annual Audited Financial Statements and Notice of all Meetings. First mortgagees or holders of note secured by first mortgages encumbering any Unit shall be entitled, upon request, to receive an annual audited financial statement of the Condominium within 90-days following the end of any fiscal year of the Association and to receive written notice of all meetings of the Association and, further, shall be permitted to designate a representative to attend all such meetings.

G. Substantial Damage to or Destruction of any Unit or any Part of the Common Elements. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the institutional holder of any first mortgage encumbering a Unit will be entitled to timely written notice of any such damage or destruction.

H. Condemnation or Eminent Domain Proceedings. If any Unit, or portion thereof, or the Common Elements, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings, or is otherwise sought to be acquired by the condemning authority, then the institutional holder of any first mortgage lien encumbering a Unit will be entitled to timely written notice from the Board of any such proceedings or proposed acquisition.

**ARTICLE XV**

**PROVISIONS RELATING TO SALE OR RENTAL OR OTHER ALIENATION OR MORTGAGING OF CONDOMINIUM UNITS**

A. Sale or Rental of Units - Association to Have First Right of Refusal. In the event any Unit Owner wishes to sell, rent or lease his Unit, the Association, shall have the option to purchase, rent or lease said Unit, upon the same conditions as are offered by the Unit Owner to a third person. Any attempt to sell, rent or lease said Unit without prior offer to the Association shall be deemed a breach of this Declaration and shall be wholly null and void, and shall confer no title or interest whatsoever upon the intended purchaser, tenant or lessee.

Should a Unit Owner wish to sell, lease or rent his Condominium Parcel, he shall, before accepting any offer to purchase, sell or lease, or rent, his Condominium Parcel, deliver to the Board or such committee designated by the Board a written notice containing the terms of the offer he has received or which he wishes to accept, the name and address of the person(s) to whom the proposed sale, lease or transfer is to be made, two bank references and three individual references, local, if possible, and a completed application form, and such other information (to be requested within five days from receipt of such notice) as may be required by the Board. Applicant(s) shall be required

to present themselves for an interview before the Board at such time and place as said Board determines if so requested by the Board. The Board is authorized to waive any or all of the foregoing.

The Board, within ten days after receiving such notice and such supplemental information as is required by the Board, shall either consent to the transaction specified in said notice, or by written notice to be delivered to the Unit Owner's Unit (or mailed to the place designated by the Unit Owner in his notice), designate the Association or any other person(s) satisfactory to the Board who are willing to purchase, lease or rent, upon the same terms as those specified in the Unit Owner's notice, or object to the sale, leasing or renting to the prospective purchaser, tenant or lessee, for good cause, which cause need not be set forth in the notice from the Board to the Unit Owner. However, the Association shall not unreasonably withhold its consent to the prospective sale, rental or lease.

The stated designee of the Board shall have 14 days from the date of the notice sent by the Board within which to make a binding offer to buy, lease or rent, upon the same terms and conditions specified in the Unit Owner's notice. Thereupon, the Unit Owner shall either accept such offer or withdraw and or reject the offer specified in his notice to the Board. Failure of the Board to designate such person(s), or failure of such person(s) to make such offer within the said 14-day period, or failure of the Board to object for good cause, shall be deemed consent by the Board to the transaction specified in the Unit Owner's notice, and the Unit owner shall be free to make or accept the offer specified in his notice and sell, lease or rent said interest pursuant thereto, to the prospective purchaser or tenant named therein, within 90 days after his notice was given,

The consent of the Board shall be in recordable form, signed by two officers of the Association, and shall be delivered to the purchaser or lessee. Should the Board fail to act, as herein set forth, and within the time provided herein, the Board shall, nevertheless, thereafter prepare and deliver its written approval, in recordable form as aforesaid, and no conveyance of title or interest whatsoever shall be deemed valid without the consent of the Board as herein set forth.

The sub-leasing or sub-renting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require that a substantially uniform form of lease or sub-lease be used, or in the alternative the Board's approval of the lease or sub-lease form to be used shall be required. After approval, as herein set forth, Units may be rented provided the occupancy is only by the lessee, his family and guests. No individual rooms may be rented and no transient tenants may be accommodated.

Where a corporate entity is the owner of a Unit, it may designate the occupants of the Units as it desires and for such period of time as it desires, without compliance with the provisions of Section A of this Article XV. The foregoing shall not be deemed an assignment or sub-leasing of a Unit. The phrase "sell, lease or rent" as used in this Article, in addition to its general meaning and definition, includes transfers of Unit Owner's interests in Units by gifts or devise.

B. Rights of Mortgagees. Any right of first refusal contained in Section A of this Article shall not impair the rights of a first mortgagee to:

- (1) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage or deed of trust,
- (2) accept a deed (or assignment) in lieu of foreclosure in the event of default by the mortgagor, or

(3) interfere with a subsequent sale or lease of a Unit so acquired by the mortgagee.

C. Exclusions from Right of First Refusal. Section A of this Article shall not apply to transfers by a Unit Owner to any member of his immediate family (viz. - spouse, children or parents).

In the event a Unit Owner dies and his Unit is conveyed or bequeathed to some person other than his spouse, children or parents, or if some other person is designated by the decedent's legal representative to receive the ownership of the Unit, or if, under the laws of descent and distribution of the State of Florida, the Unit descends to some person or persons other than the decedent's spouse, children or parents, the Board may, within 30-days of proper evidence or rightful designation served upon the President or any other officer of the Association, or within 30-days from the date the Association is placed on actual notice of the said devisee or descendant, express its refusal or acceptance of the individual or individuals so designated as the owner of the Condominium Parcel.

If the Board shall consent, ownership of the Condominium Parcel may be transferred to the person or persons so designated who shall, thereupon, become the owner(s) of the Condominium Parcel, subject to the provisions of the Declaration.

If, however, the Board shall refuse to consent, then the Association shall be given an opportunity during 30-days next after said last above mentioned 30-days, within which to purchase or to furnish a purchaser for cash, the said Condominium Parcel, at the then fair market value thereof. Should the parties fail to agree on the value of such Condominium Parcel, the same shall be determined by an Appraiser appointed by the Senior Judge of the Circuit Court in and for the area wherein the Condominium is located, upon ten days' notice, on the petition of any party in interest. The expense of appraisal shall be paid by the said designated person or persons, or the legal representative of the deceased owner, out of the amount realized from the sale of such Condominium Parcel. In the event the Association does not exercise the privilege of purchasing or furnishing a purchaser for said Condominium Parcel within such period and upon such terms, the person or persons so designated may then, and only in such event, take title to the Condominium Parcel; or, such person or persons, or the legal representative of the deceased owner, may sell the said Condominium Parcel, and such sale shall be subject in all other respects to the provisions of this Declaration.

## **ARTICLE XVI** **INSURANCE**

A. Authority to Purchase; Named Insured. All insurance policies covering the Condominium Property shall be purchased by the Board on behalf of the Association. The named insured shall be the Association individually and as agent for the Unit Owners, without naming them, as agent for their mortgagees, and all persons lawfully in possession or control of any part of the Condominium Property. Provision shall be made for the issuance of mortgagee endorsements and memoranda of insurance to the mortgagees of Unit owners.

B. Requirements of Policies. The Board on behalf of the Association shall obtain and maintain in effect insurance, as set forth herein, against liability for personal injury or property damage arising from or related to the Common Elements and shall also obtain for the benefit of

those entities or parties stated in Section A to this Article fire and extended coverage insurance on all Buildings and structures of the Condominium Property.

Such insurance shall be governed by the following provisions:

(a) The Board shall be required to obtain a single master policy covering physical damage for the entire Condominium Property under which the insurance company will issue to each Unit Owner a certificate or sub-policy specifying the portion of the master policy allocated to each Unit Owner's Unit and his undivided interest in the Common Elements.

(b) In addition, the Board shall be required to secure a master policy covering physical damage that will provide the following:

(1) the insurer waives its rights of subrogation to any claims against the Developer, the Board, the managing agent, the Unit Owners and their respective agents, employees, guests, and the members of their households;

(2) the master policy on the Condominium Property cannot be cancelled, invalidated, or suspended on account of the conduct of any member of the Board, officer or employee of the Board or the managing agent, without a prior demand in writing that the Board or the managing agent cure the defect;

(3) any "no other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(4) until the expiration of 30-days after the insurer gives notice in writing to the mortgages of any Unit, the mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Unit Owner of such Unit, the other Unit Owners, the Board, or any of their agents, employees or household members, nor cancelled for nonpayment of premiums.

(5) the master policy may not be cancelled or substantially modified without at least 30-days' prior written notice to the Board and all mortgagees of Units;

(6) the net proceeds of such policies, if less than \$25,000 shall be payable to the Board, and if more than \$25,000 shall be payable to Title Insurance Trustee designated in Section E of this Article;

(7) the master policy shall contain a standard mortgage clause in favor of each mortgagee of a Unit to the extent of the portion of the coverage of the master policy allocated to each Unit, which shall provide that the loss, if any, thereunder shall be payable to such mortgagee and the Unit Owner as their interests may appear, subject, however, to the loss payment and adjustment provisions in favor of the Board and the Insurance Trustee contained in Sections E and F of this Article XVI.

(c) All policies of insurance shall be written with a company licensed to do business in the State of Florida and holding a rating of "AAA" or better by Best's Insurance Reports.



(d) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Unit Owners or their mortgagees.

(e) Each Unit Owner shall be required to notify the Board of all improvements made by the Unit owner to his Unit, the value of which is in excess of \$1,000.

(f) Any Unit Owner who obtains individual insurance policies covering any portion of the Condominium Property, other than personal property belonging to such Unit Owner, shall be required to file a copy of such individual policy or policies with the Board within 10-days after the purchase of such insurance. Such Unit Owner shall also promptly notify, in writing, the Board in the event such policy is cancelled.

C. Insurance Coverage.<sup>2</sup>

(1) The Board is required to the extent available to obtain and maintain the following insurance:

(a) Fire with extended coverage, vandalism, malicious mischief and windstorm endorsements, insuring the Condominium Property and covering the interests of the Board and all Unit Owners and their mortgagees, as their interests may appear, in the amount equal to the maximum insurable replacement value of the property or as otherwise required by Florida law.

(b) Workmen's Compensation insurance if and to the extent necessary to meet the requirements of law.

(c) Such other insurance as the Board may determine.

(2) The Board is also required to obtain and maintain to the extent obtainable public liability and property damage insurance in such limits as the Board may from time to time determine, insuring the Developer, each member of the Board, the managing agent, and each Unit Owner against liability to the public or to the Unit Owners (and their invitees, agents and employees arising out of, or incident to, the ownership and/or use of the Common Elements). Said insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his action against another named insured. The Board shall review such limits one a year, but in no event shall insurance be less than \$1,000,000 with respect to any one accident or occurrence and \$1,000,000 with respect to any claim for property damage. It is the responsibility of each Unit Owner to obtain, at his own expense, liability insurance with respect to his ownership and/or use of his Unit, and the Board not being responsible for obtaining such insurance.

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<sup>2</sup> As shown, Section C(1)(a) was specifically amended by the Declaration Amendment recorded at Book 4485, Page 291, in the Official Records for Brevard County, Florida.

(3) A duplicate original of the master policy of physical damage insurance, all renewals thereof, and all sub-policies or certificates issued thereunder, together with proof of payment of premiums, shall be delivered to all mortgagees of Units at least 30-days prior to expiration of the then current policies. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board shall obtain an appraisal from an insurance company, or such other source as the Board may determine, of the full replacement value of the property, without deduction for depreciation for the purpose of determining the amount of physical damage insurance to be affected pursuant to this Section.

D. Separate Insurance. Each Unit Owner has the right, at his own expense, to obtain additional insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability, provided that no Unit Owner shall be entitled to exercise his right to acquire or maintain such additional insurance coverage so as to decrease the amount which the Board, on behalf of all Unit Owners, may realize under any insurance policy which it may have in force on the Condominium Property at any particular time or to cause any insurance coverage maintained by the Board to be brought into contribution with such additional insurance coverage obtained by the Unit Owner. All such additional policies shall contain waivers of subrogation.

E. Insurance Trustee.

(a) The Board shall have the right to designate any bank, trust company, management agent, savings and loan association, building loan association, insurance company, or any institutional lender, or the Association, as the Insurance Trustee, and all parties beneficiary interested in such insurance coverage shall be bound thereby. The Insurance Trustee at the time of the deposit of such policies and endorsements shall acknowledge that the policies and any proceeds therefrom will be held in accordance with the terms of this Declaration.

(b) The Insurance Trustee shall not be liable for the payment of premiums, the renewal of the policies, the sufficiency of coverage, the form or content of the policies, the correctness of any amounts received by it on account of the proceeds of any insurance policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these Bylaws, for the benefit of the Unit Owners and their respective mortgagees.

F. Premiums. Premiums upon insurance policies purchased by the Board shall be paid by the Association as a Common Expense.

G. Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Unit Owners in the following manner:

(1) Expense of the Association. All expenses of the Association or Board shall be paid first or provisions made for such payment.

(2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost of such as

elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Unit Owners involved in the claim and their mortgages, remittances to Unit Owners and their mortgagees being payable jointly to them as their interests may appear. This provision is a covenant for the benefit of any mortgagee of any Unit and may be enforced by such mortgagee.

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which proceeds are paid shall not be repaired or reconstructed, the remaining proceeds shall be distributed to the beneficial Unit Owners involved in the claim and their mortgages, remittances to Unit Owners and their mortgagees being payable jointly to them as their interests may appear.

H. Board as Agent. The Board is irrevocably appointed agent for each Unit Owner and for each holder of a mortgage or other lien on a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims.

## **ARTICLE XVII**

### **RECONSTRUCTION OR REPAIR AFTER CASUALTY**

A. Determination to Reconstruct or Repair. In the event any part of the Condominium Property is damaged by casualty, the determination of whether or not such damaged Condominium Property shall be reconstructed or repaired shall be made in the following manner:

(1) Common Elements. If the damaged improvement is any of the Common Elements not contained within the dwelling buildings, the damaged Common Elements shall be reconstructed or repaired.

(2) Unit Building.

(a) Minor damage. If the damaged improvement is any one or more of the Buildings which contain Units to which less than 50% of the Common Elements are appurtenant the damaged property shall be reconstructed or repaired.

(b) Major damage. If the damaged improvements are to one or more of the Buildings and if Units to which more, than 50% of the Common Elements are appurtenant are found by the Board to be not tenable then the damaged property will not be reconstructed or repaired and the Condominium will be terminated with agreement of mortgagees as elsewhere provided unless within 60 days after the casualty the Unit Owners exercising no less than 75%, of the voting power of Units so affected agree in writing to such reconstruction or repair.

B. Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, or according to plans and specifications approved by the Board and if the damaged Condominium Property is a Building, approval by the Unit Owners of not less than 75% of the voting power of the Units so affected is also required.

C. Responsibility. To the extent that damage is to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty.

D. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Board, or if at any time during reconstruction and repair the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners who own the damaged Units and against all Unit Owners in the case of damage to Common Elements not included in the dwelling units, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Buildings shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Unit Owner's percentage share in the Common Elements. Provided, however, in the event that the insurance proceeds are insufficient to pay the Association's and Board's fees and expenses and to make needed repairs and any Unit Owner is unable to pay an assessment to make up such insufficiency, then such Unit Owner's mortgagee, if any, shall have the option to make up said insufficiency or to require the Board and the insurer to pay such mortgagee as its interests may appear from the insurance proceeds.

### **ARTICLE XVIII** **MISCELLANEOUS**

A. Liability. Except for willful or grossly negligent acts, neither Developer nor any employee, agent, successor or assign of Developer shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with the authority granted or delegated to them or any of them by or pursuant to this Declaration.

B. Covenants Running with the Land. Each grantee of Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance,

C. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

D. Severability. If any provision of this Declaration, or any section, sentence, clause, phrase or word, or the application thereof shall in any circumstances be judicially held in conflict with the laws of the State of Florida, then the said laws shall be deemed controlling and the validity, force and effect of the remainder of this Declaration and the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

E. Service of Notices on the Board. Notices required to be given to the Board of the Association may be delivered to any two members of the Board or to the President of the Association, either personally or by certified mail, with postage prepaid, addressed to such members or officer at his unit.

F. Headings. The heading to each Article and section hereof is inserted only as a matter of convenience for reference and in no way defines, limits or describes the scope or intent of this Declaration.

G. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class condominium development.

H. Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.